

<b>Decision maker:</b>	<b>Cabinet member commissioning, procurement and assets</b>
<b>Decision date:</b>	<b>Friday 2 October 2020</b>
<b>Title of report:</b>	<b>Building maintenance, small works and cleaning services for Herefordshire Council</b>
<b>Report by:</b>	<b>Strategic property services manager</b>

## **Classification**

Open

## **Decision type**

Key

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.

Notice has been served in accordance with Part 3, Section 10 (General Exception) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012.

## **Wards affected**

(All Wards);

## **Purpose**

To approve a variation of the cabinet decision of 30 January 2020 (minute 122 resolution (a)) and approve the tendering and procurement of a building maintenance, small works and cleaning services contractor for a period from 1 April 2021 to 30 June 2023. The services delivered under this contract are critical to ensuring that the council is able to maintain its buildings in a condition that is safe for community users and staff. This contract enables the council to react to these requirements in a timely and cost effective way.

Under a cabinet decision on 30 January 2020 the building maintenance, small works and cleaning services were to be tendered for a period from 1 September 2020 to 30 June 2023. Due to the Covid emergency the tender process was suspended and a cabinet member decision was taken

to grant an extension of the existing contract of one year to enable time for the contract to be re-tendered.

The current provider, Balfour Beatty Living Places (BBLP), declared in August 2020 that they would only be willing to provide the service up to 31 March 2021.

The relatively short term of this contract will provide a timeline for the completion of a strategic review of property services and subsequent implementation of change subject to approval.

The council has a duty of care to ensure the safety of the users of over 100 of the council's operational buildings such as libraries, offices, children's centres and schools both visiting public and our staff; this contract enables the council to comply with these duties.

## **Recommendation(s)**

**That:**

- a) The cabinet member approves the variation of the cabinet decision of 30 January 2020 (minute 122 resolution (a)) in respect of the procurement of a property maintenance and cleaning service contract to a two year and three month period from 1 April 2021 – 30 June 2023 with provision for a one year extension; and**
- b) the cabinet member approve the tendering and procurement of a building maintenance, small works and cleaning services contractor for a period from 1 April 2021 to 30 June 2023 and delegates all operational decisions and activity to the director of economy and place.**

## **Alternative options**

1. To take the service in-house; this option is not recommended as the council have outsourced this service and do not have the capacity to take the service in house given the short timescale.
2. An alternative option would be to separate the already approved service model into different sections e.g. maintenance, and cleaning. However this would require additional internal resource to manage multiple contracts and ultimately not achieve the economies of having a single contracted provider. It would also require the drafting of new contracts and ultimately it would not be possible to meet the required deadline.
3. To not undertake the procurement exercise in a timely manner will render the council at risk of having no service provision for the building maintenance and cleaning services from 1 April 2021. This would render the estate unfit for use and non-compliant.
4. To procure a longer term contract; this option is not recommended as a strategic review of property services will be undertaken prior to 2023; this review will include recommendations which encompass the future delivery of maintenance and cleaning services, to ensure the council procure the most efficient and effective service going forward which accords with the new property service model.
5. To transfer the services into the public realm contract; this option is not recommended as the council are seeking to undertake a fundamental service review and may therefore need to extract the service from the public realm contract at a future date, to procure the service going forward and this would create unnecessary cost and work.

## Key considerations

6. The current maintenance and cleaning service contract is delivered by BBLP; the contract was awarded in September 2018 following an open market tender exercise further to a [cabinet decision on 12 April 2018](#). The authority to undertake the procurement to replace the current contract was made by cabinet on 30 January 2020 <http://councillors.herefordshire.gov.uk/mglIssueHistoryHome.aspx?IId=50032296>, which outlined that the contract be procured for a two years and nine month period from 1 September 2020 – 30 June 2023; with provision for a one year extension.
7. In the light of Covid-19 and difficulties in taking forward the tender process a cabinet member decision was taken on 2 June 2020, <http://councillors.herefordshire.gov.uk/mglIssueHistoryHome.aspx?IId=50033760> so that the term of the current contractor [BBLP] be extended for a further 12 months; which would take the contract end date to 31 August 2021. This decision paper was submitted further to dialogue with BBLP who had indicated that they would continue to provide the services up to the end of August 2021.
8. Subsequently BBLP confirmed in August 2020 that they would provide the services until the end of March 2021.
9. As stated in the January decision paper a short term contract will enable time for the council to review its ongoing requirements in light of the Covid pandemic, further develop Better Ways of Working (BWOW), and most significantly allow for a full strategic review of property services to be completed. Subsequent to which, and subject to approval, a service redesign and a procurement process will be implemented for the long-term provision of maintenance and cleaning services. This is to ensure the council employs the most effective and efficient model of service delivery going forward.
10. Subsequent to the decision in January to proceed with the tender, improvements to the contract documents have been made in light of learning from the current contract and recent audits. These include for:
  - Enhanced social value clauses
  - Improvements to key performance indicators
  - Inclusion of Covid cleaning requirements
  - More transparent cost data provision
  - Transfer of budget responsibilities for core services to meet service need and reduce cost risks to the council
  - More detail around market testing requirements
  - Enhanced requirements around sustainability and use of local contractors, and in turn benefits to the local economy
11. The council will be managing the contract and will undertake regular service reviews for continuous improvement and to demonstrate value for money; an example being grounds maintenance which was reviewed and delivered cost savings and improved efficiencies under the existing contract. This will include the provider's supply chain and subcontractors. Findings and outcomes will be shared for learning and implementation at contract level with any significant findings presented to the council's management board for cross directorate learning and improvements.

12. The contract will set out key performance indicators to monitor the performance of the service, this will be reviewed on a monthly basis through contract operational meetings. The key performance indicators will include measures to reduce the generation of carbon and align with council policy in respect of the Climate Emergency. A robust contract governance will be set out in the contract for clear routes of escalation and reporting. Data in respect of the estate assets covered by the contract will be verified for accuracy prior to the procurement process and subject to ongoing scrutiny during the contract period.
13. The contract will also incorporate terms that will reflect the council's aims in respect of social value. As stated in the January decision paper the tender will be evaluated on a cost and quality basis, with 60% quality and 40% cost, due to the contract model, with quality questions included in the invitation to tender (ITT) being given marks which will form the basis of the quality evaluation. The contract will also include social value requirements such as the use of local sub-contractors and labour.
14. The council has undertaken market engagement in preparation for the tender going out to the market and the contractors who were engaged in the aborted process at the start of the year have been contacted and remain interested in bidding for the contract
15. The proposed procurement will be delivered in accordance with the council's contract procedure rules and the timetable for the process will be:
  - Out to tender: October 2020
  - Tender evaluation: December 2020
  - Contract Award: January 2021
  - Mobilisation: January – March 2021
  - Commencement of new contract: 1 April 2021
16. As part of the new contract work will be undertaken to assess improved ways of managing the council's buildings, in partnership with the incoming provider, which will be utilised and tested in contract and in readiness for the long-term strategic contract procurement in due course.
17. As stated in the January decision paper the strategic review of the council's future service needs will be undertaken in conjunction with the period of the new contract. The review will include options appraisals and horizon scanning to assess future needs. Once all options have been fully investigated and a preferred model has been identified, consideration will be given to the type and form of future maintenance and cleaning provision.
18. The contract will have a one year extension period built in, for risk mitigation against unanticipated events (given the experience of the Covid emergency).

## **Community impact**

19. The services delivered are critical to the council to enable it to ensure that its buildings are maintained in a condition that is safe for community users and staff. This contract enables the council to react to these requirements in a timely and cost effective way.
20. Effective asset management, by using the contract will ensure the council are spending funding on areas which will have the most positive impact for individuals utilising the buildings and are in line with corporate objectives.

21. The council has a duty of care to ensure the safety of the users of over 100 of the council's properties such as libraries, offices, children's centres and schools both visiting public and our staff; this contract enables the council to comply with these duties.
22. The contract will be used to ensure statutory compliance of our asset by providing the vehicle to deliver the appropriate servicing and inspection regime. This will enable compliance with all relevant health and safety legislation.

### **Environmental Impact**

23. The council provides and purchases a wide range of services for the people of Herefordshire. Together with partner organisations in the private, public and voluntary sectors we share a strong commitment to improving our environmental sustainability, achieving carbon neutrality and to protect and enhance Herefordshire's outstanding natural environment.
24. The environmental impact of this proposal has been considered through the service specification and includes appropriate requirements on the contractor/delivery partner to minimise waste, reduce energy and carbon emissions and to consider opportunities to enhance biodiversity. This will be managed and reported through the ongoing contract management and ensuring that key performance indicators are met.
25. Replacement of assets, by means of improving building service installations; for instance replacing less efficient light fittings for more efficient ones, and introduce controls to better manage heating systems, These proposals will contribute towards the delivery of the aims within the council's corporate plan to 'support improvement in the quality of the natural and built environment' and 'to make best use of the resources available in order to meet the council's priorities' as well as improve the council's energy efficiency, reduce its carbon footprint, provide cost savings.
26. The re-procurement of this service contract has sought to minimise any adverse environmental impact and will actively seek opportunities to improve and enhance environmental performance such as reusing and recycling waste generated in the service and ensures appropriate separation of waste and recycling, the use of 100% recycled and unbleached paper materials like paper towels and they are recycled and recyclable.

### **Equality duty**

27. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

  - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

28. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. The successful provider will be made fully aware of their contractual requirements in regards to equality legislation. This decision will have no negative impact on the council or providers compliance with this duty.
29. Ensuring that statutory compliance checks are undertaken will ensure that the council's equality responsibilities are met in so far as the physical built environment is managed in such a way as to comply with the Equality Act.
30. The Equality Act 2010 established a positive obligation on local authorities to promote equality and to reduce discrimination in relation to any of the nine 'protected characteristics' (age; disability; gender reassignment; pregnancy and maternity; marriage and civil partnership; race; religion or belief; sex; and sexual orientation). In particular, the council must have 'due regard' to the public sector equality duty when taking any decisions on service changes.

## **Resource implications**

31. The annual contract value is up to £9m per annum. There are three key areas of spend, as detailed below. The contract value allows the provision of additional capital projects, should funding be available:
  - (i) the provision of planned, reactive building maintenance and cleaning service up to £2.m – included in revenue budget
  - (ii) the provision of council building renovation/improvement projects up to £3.6m - included in the capital budget
  - (iii) there is flexibility within the total contract value to add up to a further of up to £3.m of additional capital projects, subject to identifying funding
32. All capital projects will be subject to the council's due governance requirements.
33. Expenditure in relation to maintenance construction services covers both revenue and capital elements. Expenditure in recent years has varied in line with demands placed upon the service (for example reflecting severe weather conditions), works identified as part of the condition surveys carried out on the council's estate and delivery of major projects.
34. The services are subject to Transfer of Undertakings (Protection of Employment) regulations (TUPE) for the existing contractor's staff and the TUPE information is being requested from the current providers and will be issued as part of the procurement process.

## **Legal implications**

35. This is an executive function under the council's constitution Part 3 Section 3 and is a key decision because it is likely to be significant having regard to the strategic nature of the decision; and/ or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards in Herefordshire) affected. It is also likely to result in the council incurring expenditure which is, or the making

or savings which are, significant having regard to the council's budget for the service or function concerned. The leader has delegated this key decision to the cabinet member commissioning, procurement and assets as it relates to their portfolio.

36. In common with all occupiers and landowners, the council has legal obligations under legislation (including the Health and Safety at Work Act 1974 and the Building Act 1984), as well as under common law of negligence, to maintain its properties to a safe standard of repair and hygiene. The services proposed in this report should be regarded as essential to the council.
37. The procurement route recommended in this report is compatible with the requirements of the Public Contracts Regulations 2015. Additionally the competitive tendering exercise, coupled with robust performance management under the NEC contract model, should enable the council to demonstrate that it is meeting its statutory duty to secure best value in the delivery of these contracted services.
38. Given the change in circumstances set out above and a need to meet the new procurement timeline it has been necessary to use the general exception in the Part 3, Regulation 10 (General Exception) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012

## Risk management

39. Risks are being managed throughout this procurement process and a risk register is in place with appropriate mitigation identified. A number of key risks have been identified which are set out below:

Risk / opportunity	Mitigation
Satisfactory tenders may not be submitted	Given the response to the previous procurement exercise we believe there will be sufficient interest in the contract
TUPE. There are a small number of staff who would be TUPE'd on Local Government Pension Scheme	TUPE information will be provided at start of tender stage and engagement with Human Resources and Pension scheme to provide full information
TUPE. Sufficient mobilisation period to support TUPE is not possible but due to the timeframe available mobilisation will need to be completed within two months.	The required period is three months and this has been built into the procurement timeline. The council will work closely with the current provider who is aware of the timeframes and will support the incoming provider through as early effective engagement as possible
Delay achieving the target commencement date due to a compressed timetable for procurement and mobilisation	The council will support the appointed provider with mobilisation through a project management approach and apply sufficient resources to ensure that the target commencement date can be met

Ensuring value for money is achieved	Value for money will be tested at various stages of the commissioning process and during the contract period. The partnership will review ways to improve
Good quality effective service is continuously delivered	Performance will be closely monitored through Key Performance Indicators, to ensure services are delivering to target and continuously improved, where possible.
Slippage to the procurement timetable	Sufficient resources will be allocated to the process and technical support is available to ensure the procurement proceeds to plan.
Potential negative perception of the council if service is not continuous.	A robust approach to mobilisation planning will be incorporated into the procurement to ensure the provider puts in place service delivery arrangements for the complete range of services to be provided. This will include clear communication plans to explain any new arrangements to our customers and stakeholders.
Risk of the new contract not being in place by 1 April	The council will deploy staff to undertake a number of tender exercises on a split service model. These will be for smaller packages of work and focus purely on essential and statutory requirements only.

## Consultees

40. Political groups have been consulted with as part of this decision and no material comments have been received.

## Appendices

None

## Background papers

None identified.



## **Glossary of terms, abbreviations and acronyms used in this report.**

Transfer of Undertakings (Protection of Employment) regulations (TUPE): When a business changes owner, its employees may be protected under the TUPE. TUPE applies to employees of businesses in the UK and applies in the following situations:

- the employees' jobs usually transfer over to the new company - exceptions could be if they're made [redundant](#) or in some cases where the business is [insolvent](#)
- their employment terms and conditions transfer
- continuity of employment is maintained