

Title of report: Building maintenance, small works and cleaning services - Service Continuity Plan

Decision maker: Cabinet member commissioning, procurement and assets

Decision date: Tuesday, 9 February 2021

Report by: Capital Programme and Maintenance Manager

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 11 (Cases of Special Urgency) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012.

Wards affected

(All Wards);

Purpose

Approval is being sought to enter into a new arrangement for the current Building Maintenance, Small Works and Cleaning contract which is due to cease on 31 March 2021. A procurement process for these services was undertaken but interrupted by the Covid-19 pandemic in 2020. The procurement exercise was relaunched in the autumn of 2020 that has now concluded and been unsuccessful. This therefore presents a risk in respect of service continuity.

A review of available options has been undertaken so that an urgent decision can be taken to mitigate the risk and ensure continuity of service.

Recommendation(s)

That:

- a) the cabinet member for commissioning, procurement and assets in consultation with the s.151 officer agrees to the transfer of the building maintenance, small works and cleaning service to Hoople Ltd.**

Alternative options

1. To procure a contract; this option is not possible due to the time scale remaining with the current contract. The earlier procurement exercise was disrupted by Covid and the latter procurement process demonstrated there was an insufficient level of interest in the contract due to the way in which the services have been packaged together. The services could be separated and re-tendered, however there is insufficient time to do this now with the current contract is ending in March 2021.
2. Not to provide the service: this option is not recommended as council buildings need to be cleaned, maintained and fit for purpose.
3. To take up a short term contract extension with BBLP for service continuity purposes whilst a procurement process is undertaken to procure two separate contracts (one for building cleaning and one for building maintenance and minor work). This was discounted as BBLP did not want to extend the contract under the same terms and conditions, which would have seen an increase in costs.
4. To deliver the services through the public realm contract. This would have resulted in an increase in costs and there was insufficient time to undertake a detailed best value review.

5. A further option considered was to bring the service in-house. There is insufficient in-house resource to manage the service without additional investment being made, which would not be achievable within the budget and insufficient time to undertake a detailed review of the full impact.

Key considerations

6. As no satisfactory bids for the service had been received under the procurement process undertaken this financial year, other available options have been considered. Undertaking another procurement exercise does not meet the required timeframe given the expiry of the current contract on 31 March 2021. The earlier procurement exercise was directly affected by the pandemic, and the majority of those interested parties chose not to participate in the recent tender exercise. Given the available timeframe, the alternative routes provide five possible options: to commence a further procurement process; to extend the current contract; to transfer the service to Balfour Beatty Living Places (BBLP) under the Public Realm contract; to move the service in-house, or subject to Hoople board approval, transfer the service to Hoople Ltd. Of the five options considered, the transfer of the services to Hoople Ltd is the preferred option, as this strategic decision aligns with the council's ambition to support local delivery, and provides the best option in being able to meet the target cost savings identified within the first year.

7. The most significant issue in respect of the risk to service continuity is that the existing contract with (BBLP) terminates on 31 March 2021. This timescale represents a challenge in respect of delivering either option that will be addressed by the establishment and actions of a project team.

8. The project team will be established and resourced to determine and undertake the necessary actions required, subject to authorisation, to deliver the preferred option of transferring the service to Hoople Ltd.

9. In order for the transfer of staff under TUPE regulations it is understood that consultation with affected personnel will, subject to further Human Resource Dept. guidance, need to commence on 11 February 2021.

10. On-going consultation will take place with Hoople Ltd regarding their own feasibility assessment so that, subject to the necessary approval, the recommended option to move the service to Hoople Ltd can be implemented within the timeframe. Any conflicts of interest, between board members who hold a role within the council, will be addressed as part of the standard governance process.

Community impact

11. 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.
12. Delivering the service either through Hoople Ltd (a Teckal company) or by the council will enable greater flexibility to contract with local sub contractors and service providers thereby benefiting the local economy and community
13. The council has a duty of care to ensure the safety of the users of over 100 of the council's properties such as offices, children's centres, libraries and museums both visiting public and our staff; this contract enables the council to comply with these duties.
14. The service delivery model will 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

15. Ensuring that property assets are improved, maintained and compliant will mean that they are fit for purpose and safe environments for visitors and members of the public in so far as they comply with Health and Safety legislation.
16. Property assets that are correctly maintained will, as appropriate, be open and accessible to the public.
17. The council is committed to providing a healthy and safe environment for all individuals impacted by the council's funded activities. The council endeavours to ensure that the work they and their partners undertake, does not adversely affect the health, safety or welfare of members of the public. Council partners are expected to work to the same health and safety standards and codes of practice as the council, as far as is reasonably practicable. This requirement will be included as part of the ongoing contractor review meeting agendas.
18. By investing in 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 by reducing reactive repair works.
19. The environmental impact of this proposal has been considered through the service specification that will include appropriate measures to minimise waste, reduce energy and carbon emissions and to consider opportunities to enhance biodiversity. This will be managed and reported through the ongoing monitoring. Furthermore consideration will be given, where possible, to use local labour in order to reduce

vehicular travel to and around the county. As part of any scoping of works consideration will be given of the use of suitable materials that have or can be are recycled.

Equality duty

20. 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.
21. 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. Our providers will be made aware of their contractual requirements in regards to equality legislation.
22. Ensuring that improvement works are undertaken will safeguard 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. 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

23. The annual contract value is up to £5m per annum, which includes for an initial £500k savings target within the first year. There are two key areas of spend, as detailed below:
- (i) the provision of planned/cyclical, reactive building maintenance and cleaning service up to £1.93m (based on estimated savings).
 - (ii) the provision of council building renovation / improvement projects up to £3.1m - included in the capital budget.
24. All capital projects will be subject to procurement rules and regulations.

25. Expenditure in relation to building 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.
26. Budget management is presently undertaken by Property Services and it is proposed that this will not change in respect of the recommended option but can be subject to review in the future.
27. If the service transfers to Hoople Ltd the client and service provider relationship will continue in the same manner as currently exists, along with line management. If the service is brought in house, line management will amalgamate with the Property department that will be structured accordingly.
28. Pension and TUPE issues will be managed under the project team's remit that will incorporate the necessary personnel from HR and Finance Departments. The assessment of IT systems required to deliver the service will be part of the project team's remit. The call management/work allocation function is presently covered by staff in BBLP who will transfer under the TUPE process. Information regarding the current supply chain is being made available by BBLP and the novation of contracts is also part of the project team's remit.
29. The services proposed in this report should be regarded as essential to the council.

Legal implications

30. In common with any all landowners or occupiers in the UK, the council has a number of legal and statutory obligations to maintain its properties to a safe standard of repair and hygiene that makes it a necessity to undertake regular maintenance and improvement of council owned or operated properties. These obligations include the Health and Safety at Work etc. Act 1974, the Building Act 1984, the Equality Act 2010 and other related legislation. The council must also be aware of the Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2019 which came into force on the 1 April 2019 which make detailed amendments to the MEES Regulations (minimum energy efficiency standards). The council could be at risk of criminal proceedings and/or civil claims should buildings not be maintained to lawful standards with financial penalties and adverse publicity should enforcement action be taken for breaches of MEES Regulations.
31. The Council has existing contractual arrangements with Hoople Ltd (of which the Council is the majority shareholder) for the provision of some services. Those arrangements will need to be varied to provide for building maintenance and cleaning. There is no legal impediment to such a variation.
32. As is mentioned elsewhere in the report the Council and Hoople will be transferees for the purposes of TUPE in respect of the services that are being transferred to them from BBLP. Accordingly, the obligations placed upon transferees by TUPE will need to be complied with.

Risk management

Risks will be managed throughout this process and a risk register will be in place with appropriate mitigation identified. A number of key risks have been identified which are set out below;	Mitigation
Inability to meet deadline	Determine whether essential elements of the service can continue. There might be an initial lag in some service areas which may prove disruptive to the delivery of the service. This will be managed on a risk basis. Any risks escalated to enable informed agile decision making to be adopted.
TUPE deadlines for consultation.	TUPE information is available and provided for the council and Hoople to assess
Sufficient mobilisation period to support TUPE is not possible.	The outgoing provider has requested a minimum of 6 weeks to undertake all work in relation to TUPE. The council will work closely with the current provider who is aware of the timeframes and will support through effective engagement.
Sufficient mobilisation budget	Mobilisation costs are to be identified and may be escalated as a risk through the project team.
Ensuring value for money is achieved.	Value for money will be tested as part of the assessment process and monitored against performance measures when the service is in place.
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.
Covid -19 pandemic.	Measures are currently in place to ensure continuity of services affected by the pandemic

Potential negative perception of the council if service isn't continuous.	A robust approach to planning the transfer of the service will be implemented to ensure service delivery arrangements are in place for the complete range of services to be provided.

Consultees

None

Appendices

'None'.

Background papers

'None identified'.

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

TUPE - Transfer of Undertakings (Protection of Employment) Regulations 2006;