

Connected Communities Scrutiny Committee

New Public Realm Services Working Group

Report and Findings

Background

In 2013 Herefordshire Council awarded a contract to Balfour Beatty Living Places (BBLP) to deliver public realm services including highways, traffic management, public rights of way, parks and open spaces, street cleaning and street lighting. The contract operation was largely outsourced with the council retaining a small client and contract management function. Public rights of way and traffic management services were brought back in house in 2021. The contract term had the potential to be extended until 2033.

Following this, an enhanced contract management team was introduced to improve control and performance of the contractor. But despite improvement in recent years a further review concluded that the current contract model will not deliver the services to the council's current requirements. The prospect of modifying the contract with BBLP was assessed to establish new processes and procedures that became known as the Future Operating Model. However legal advice concluded that the degree of contract modification required to instigate the model would not be permitted under procurement regulations.

In April 2024 Cabinet therefore agreed that the contract with BBLP will not be extended and will end 31 May 2026. The 27 June 2024 Cabinet agreed a proposed new future operating model and to begin market engagement on it. Cabinet asked for the findings of the exercise to be presented at its meeting on 24 October 2024. Since then, the agreed date of presentation to Cabinet has moved to 28 November 2024.

The Connected Communities Scrutiny Committee asked to look at the findings from the market engagement exercise before it was presented to Cabinet. This report details the findings from that work.

The committee's work

In order to carry out the work in time for the presentation to Cabinet it agreed to set up a working group comprising of members of the committee. The group met once, shortly after the conclusion of the market engagement exercise, with the Corporate Director, Economy and Environment,

Service Director Economy and Growth, Head of Highways and Transport and the Interim Programme Director – Major Contracts. The aims of the group were to:

- Understand the future operating model, and how it differs from the current model operated in partnership with BBLP.
- Evaluate any changes to the proposed operating model following the market engagement exercise.
- Appraise the findings of the market testing exercise, and the viability of any future operating model in the marketplace.
- Report and make recommendations to Connected Communities Scrutiny Committee for consideration for presentation to Cabinet.

Findings

The future operating model, and how it differs from the current model operated in partnership with BBLP

The group heard that under the proposed model, the contractor would deliver the following core services:

- Network resilience and civil emergencies services
- Winter service
- Reactive maintenance (potholes and patching)
- Carriageway and footway maintenance programmes
- Drainage (gully cleansing and land drainage)
- Street lighting
- Structures (maintenance of bridges and culverts)
- Street cleaning (bin emptying, fly tipping & road sweeping)
- Fleet management and mechanical workshop (to be confirmed)
- Parks and open spaces (highways verges and trees)
- Cemeteries and burials, included as a separate lot to allow comparison with current delivery via Hoople
- Schemes up to a value of up to £100,000 directly awarded through the contract at the council's discretion

The contractor supplies labour, vehicles and materials. The council would then supply:

- Contract management
- Business and IT support
- Performance management and reporting
- Supervisors
- Contract accountancy
- Quantity surveying
- Social value, carbon and environmental services
- Fleet management
- Depots and depot management
- Health and safety services

This marked a significant change in services from the contractor and the council, with many of the services supplied by the council were previously supplied by BBLP. The proposed new contract would result in the following services transferring to Herefordshire Council.

- Asset management team
- Network management
- Locality stewards (including highway inspections)
- Design / project management / quantity surveying (part)
- Customer services (enquiries and complaints)
- Communications lead (communications management including social media)
- Fleet (part)
- Health and safety / CDM (part)

An initial assessment identified that 59 roles would transfer from BBLP to the council.

The aim of this change is to give a greater degree of assurance and oversight, where the council commission works and own the development of the annual plan and work programmes, with expertise being provided from the contractor.

The new contract would also change how Herefordshire Council would reimburse for work undertaken. At present the control operates under a contract based on the NEC 3 term service contract options, primarily using option E whereby works are agreed and paid for on an open book basis. This creates financial risk for the council as it cannot control prices set by the contractor. The new contract would instead use a combination of the NEC 4 term service contract options A, C and E. This would allow the council and its new contractor to set prices for most work (option A), minimising financial risk to the council.

Option	Description	Scenario for use
Option A: priced contract with price list	Lump sum activity or item rate from price list	Core services and schemes
Option C: target contract with price list	Target is built up from price list contractor is paid their “defined costs” and fee risk is shared: loss/gain 50/50 (tbc)	Option from year 3 of the contract for core services and schemes that the council may invoke

Option E: Cost reimbursable contract	Works are agreed and paid on an open book basis Contractor is paid their “defined costs” plus the fee percentage	By exception for unusual services that are not catered for in the price list
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Table 1: NEC 4 Term Service Contract payment options

The market engagement exercise

The group heard that the council carried out a comprehensive market engagement exercise during the summer. This included an in-person event on 16 July 2024, where potential suppliers were invited to attend a presentation of the council’s proposed model and procurement route. The council engaged with the potential contractors during the in-person event to gain rapid feedback on the proposed contract model and to suggest ideas to develop it further.

Following the event the council held online one-to-one meetings with potential suppliers, to seek their more considered views on the proposed model and to gauge interest in bidding for the contract. To interested suppliers, the council provided a “Request for Information” template, issued to secure written feedback where suppliers could express interest in or identify difficulties with the model, and to provide an opportunity to propose alternative options might work better.

The findings of the market engagement exercise and subsequent changes to the proposed operating model

From this work, the group heard that council identified a number of recommended changes to the scope, procurement process and the contract that would make it more attractive to potential supplier. These include:

1. An increase the maximum value of schemes directly awarded through the contract at the council’s discretion.
2. Including flexibility to commission additional scheme work above the maximum value at client discretion where value for money can be demonstrated. The limited circumstances where this may be appropriate are where the type of scheme is particularly suited to the contractor, speed may be of the essence and/or where there is not a suitable supplier on an alternative framework that can deliver the scheme to the council’s requirements.
3. Continuing to engage positively with the market demonstrating that the council is listening and refining the model to meet market sentiment.
4. Providing as much data (consider TUPE, budget, depots, fleet and asset) as possible, as early as possible in the process.
5. Avoiding onerous risk transfer under the contract.
6. Being supportive of collaborative proposals that will see the client and contractor working together enabling the contractor to influence and provide their expertise into development of policy and plans.
7. Adopting an evaluation criteria that measures both work quality and price.
8. Consider early transfer of staff into the council ahead of the contract start date.
9. Applying a grace period for some aspects of the performance management regime for the first few months of the contract.

10. Adopting the NEC Term Services Contract including option A (price list) as the main payment mechanism for the contract, with option C (target cost) used only in limited circumstances including for services and projects with undefined scope and timescales, and option E (cost reimbursable) used only in exceptional circumstances.

The group heard that Cabinet were minded to agree to all of the above recommendations with regard to the contract and its development. The group however sought reassurance that some of the recommendations had been implemented, and that these recommendations did not call into question the viability of the model more widely. In particular, the group sought reassurance on the contract size, its options for payment, and the ability to recruit and retain staff. This is covered in the next section of this report.

The members of the group also sought reassurance about fleet management under the terms of the new contract, with particular regard to fleet electrification. The group heard that in drawing up the proposed contract, officers and the new contractor would determine which fleet technology could be electrified during the life of the new contract, and had asked to contractors to bid on the basis where they would lease vehicles where electrification was likely in future years, and buying fleet where this was unlikely to be the case. Officers noted too that the rural topography of Herefordshire made it more difficult to operate electric vehicles due to the operational challenges and high mileage required.

The viability of any future operating model in the marketplace, and contractors' willingness to bid.

The group heard that the council's contract value, forecast at around £12 million, was relatively small compared to those offered by other local authorities. The removal of large capital projects from the contract had reduced its size and its value to contractors. The group heard from prospective contractors that being able to bid for larger capital projects within the model was desirable, and that this formed one of the key recommendations arising from market feedback.

There were a number of factors outside the council's control that could reduce the number of potential bidders. A typical bid for a local authority contract such as this could cost between £300,000 and £500,000, meaning that contractors were selective in which contracts to bid. The group heard too that the contract would be put out to tender at the same time as those for other local authorities. However, the officers attending the group told members that they didn't think there were an excessive number that would depress interest.

The group were informed that the model would transfer some services from BBLP to the council and this would be managed by respective human resource teams and early staff engagement and communication. Retaining staff and managing flight risk during this period of change was identified as a key risk that needs to be managed sensitively.

Group members also sought reassurance that the contract model, as drafted, would deliver the desired-for improvement in the quality of the work carried out by the contractor. The officers supporting the group noted that the new contract model, whereby work is selected for a fixed price, should provide considerable more certainty about agreed work. By moving staff back to Herefordshire Council, the council will have increased capacity and expertise to inspect work carried out by the contractor, and only releasing the payment for the work when it has been

carried out to the council's satisfaction. This marked a considerable departure from current contractual arrangements whereby the contractor is primarily responsible for its own quality assurance with some limited checking and assurance from the council.

Committee members also sought assurance that the new contract arrangements would not further weaken local arrangements to respond to small jobs quickly. The group heard that the council's 'lengthsman' scheme, which devolves some minor highway works to parish councils and enables parish councils to identify minor defects and maintenance requirements, was now operated entirely by Herefordshire Council. The group heard that this scheme would remain within Herefordshire Council irrespective of who the council contracted.

Conclusion

The group noted and thanked officers for the work it has undertaken to produce the future public services realm contract model. It notes the considerable challenges faced by the existing contract with BBLP, in particular the difficulty in assuring costs and in ensuring a high standard of work. It agrees that the new contract model, with a different cost model and with more staff employed directly by the council, will help address these challenges. It supports the proposed model, and recommends that Cabinet do so too.

Recommendations

The group makes no recommendations to alter the proposed future operating model.