

Cabinet

Date of Meeting: 12 January 2021

Report Title: Procurement of Facilities Management Services

Portfolio Holder: Cllr Nick Mannion, Environment and Regeneration

Senior Officer: Frank Jordan - Executive Director Place

1. Report Summary

1.1 The Council currently holds the following facilities management contracts which are due to expire on 31 March 2022:-

- Building Maintenance
- Statutory Compliance

1.2 In considering the options for the replacement of these contracts, two key elements have been taken into consideration:-

- The Council's Environment Strategy and Carbon Action plan, acknowledging that works need to be undertaken to enable our buildings to be carbon efficient
- The estates transformation programme which is currently underway

1.3 Given this strategic direction, the arrangements being proposed would ensure that these contracts are flexible to enable the Council to deliver any future changes it would wish to make.

1.4 This report reviews the available options for procurement of maintenance services in order to ensure our buildings are safe and fit for purpose.

1.5 In addition, the Council currently has a contract to provide the procurement of the Council's energy (gas and electricity) and the direct provision of associated billing and management services. The contract for this managed service has a value of £50,000 per annum. As part of that service the provider

competitively procure the Council's energy, which amounts to approximately £7.3m per annum. The existing contract is due for renewal on 1 April 2022.

1.6 The Council preferred option is to procure a fully managed service whereby the provider purchases energy for and on behalf of the Council via a compliant framework. This provides a flexible procurement method of purchasing energy and provides an end-to-end billing and management service. This negates the need for the Council to deal directly with the energy providers with the provision of energy bills being administered electronically.

1.7 This paper seeks delegated authority to the Executive Director of Place in consultation with the Portfolio Holder for Environment and Regeneration to award contracts for these services.

2. Recommendations

2.1 That Cabinet

2.2.1 Approve the procurement of a Building Services contract (to be procured through the Facilities Management Marketplace Framework (RM3830)).

2.2.2 Approve the procurement of the Council's energy supply via a flexible procurement approach and to award a contract for a maximum period of 5 years.

2.2.3 Note that the Council will enter into individual Memoranda of Understanding with such Schools and Academies that indicate they wish to participate in the energy supply contract (subject to the Council's contract with the successful provider allowing such participation).

2.2.4 Delegate authority to the Executive Director Place in consultation with the Portfolio Holder for Environment and Regeneration and the Director of Governance and Compliance to award contracts to providers meeting the specified requirements.

3. Reasons for Recommendations

3.1 Building Services – it is essential that the Council has the necessary mechanisms in place to ensure its buildings are kept safe, secure and fit for purpose and that they meet statutory compliance regulations.

3.2 Energy Supply – the existing contract is due for renewal on 1 April 2022. However, selecting a preferred supplier in advance of that date will maximise the supplier's ability to include the Council's future energy requirements within their decision process when purchasing volumes on the futures market. Delaying our decision limits the window of opportunity for our future energy usage to be included and results in higher energy costs.

3.3 Legal Services and Procurement will be engaged to provide advice on the procurement process and to review contract documentation.

4. Other Options Considered

4.1 An options appraisal has been undertaken, which can be seen in detail in Appendix A (attached) and is summarised in section 5.3.

5. Background

Building Services

5.1 The current contracts for these services will end on 31 March 2022, making it necessary that a procurement process is commenced in January 2021.

5.2 With any contract of this nature, it takes some time for relationships to mature and for the contract to move into a steady state. Whilst the current maintenance and compliance contracts are for 5 years with the option to extend for two years, it is proposed that any new contract is put in place for a period of 7 years, with the option to extend this on +1+1+1 basis.

5.3 The following options for procurement were considered and can be seen in more detail in Appendix A:-

5.3.1 **Option 1 – Contract for Maintenance and Compliance**

5.3.1.1 Procuring the maintenance and statutory compliance contracts through a framework minimises the procurement time and cost for delivery of a compliant contract. There is the ability to tailor further competitions to ensure delivery considerations such as SMEs and our own social value priorities to deliver measurable benefits and an efficient and sustainable public estate.

5.3.1.2 As the Council reviews its estate, it is essential to ensure that there is a degree of flexibility within the Contract. This option enables the removal and addition of properties as the estate is reviewed. It also limits the impacts that would be created through the use of the alternative options identified as there would be no TUPE transfer of Council staff although there may be a TUPE transfer of staff between the current any new provider of the services.

5.3.1.3 There will be robust Key Performance Indicators put in place to ensure that the contract is managed appropriately, and the Council's interests are protected.

5.3.1.4 From both a strategic and financial point of view, this is considered to be the most beneficial option at this time.

5.3.2 Option 2 – Total Facilities Management

5.3.2.1 A total facilities management contract means outsourcing all facilities management requirements to one supplier, which would lead to a TUPE implication for both council employees and those of current providers. Furthermore, a contract management team would need to be retained to ensure the contract continues to meet all the Council's requirements and statutory obligations.

5.3.2.2 Given that the Council is reviewing its estate this may not be a viable option for any TFM provider. Any new provider would wish to build in a liability clause which makes the Council responsible for future redundancy cost, whether they be ex-Council or provider staff.

5.3.2.3 As there would be the requirement for a transfer of Council staff under TUPE regulation, which would have costly implications, this is not considered to be a viable option from a strategic or financial viewpoint.

5.3.3 Option 3 – CWAC/Engie Joint Venture (Qwest)

5.3.3.1 Cheshire West and Chester Council entered into a joint venture with Engie in 2015 to provide all their business functions, which included Facilities Management. This contract was open to other local authorities to join. No other LA joins as a 'partner', but can use all or elements of the JV, with CWAC receiving a 2% rebate on all sums payable. The JV is owned 51% Engie and 49% Cheshire West and Chester Council.

5.3.3.2 As with the TFM solution, this would result in a large TUPE implication for both CEC staff and, potentially, existing providers.

5.3.3.3 As there would be the requirement for a transfer of Council staff under TUPE regulation, which would have costly implications, this is not considered to be a viable option from a strategic or financial viewpoint.

5.3.4 Option 4 – CEC to create a Direct Labour Organisation for the delivery of maintenance and compliance works

5.3.4.1 The Council could choose to appoint its own workforce to deliver its maintenance and statutory compliance services. However, it would be impossible to cover all disciplines and specialist requirements. Therefore, there would be a requirement for a large number of individual specialist contracts

to be procured, which would be both costly and time consuming.

5.3.4.2 In addition, a large recruitment drive would be required in order to ensure the Council had the necessary staffing resource to deliver works to its diverse range of buildings. This would be both from a direct labour and professional point of view. There would also be TUPE implications as many of the existing contractor staff would have the right to transfer into the Council.

5.3.4.3 This is not considered to be a viable option from a strategic or financial viewpoint.

5.4 Given the current Estates Review Option 1 was deemed to be the most suitable approach to adopt at this time.

Energy Supply

5.5 Cheshire East Council has opted for a flexible purchasing model since April 2019. This has proven to be successful as the current contract has delivered gas and electricity prices 4.9% lower than the market average during the period of the contract.

5.6 The current contract for electricity and gas supply agreements, which have a combined annual value of approximately £7.3m per annum, are due to expire on 31st March 2022.

5.7 The Council currently utilises a managed service through a third party who, in turn, uses a compliant framework for the supply of gas and electricity to the Council. This is the preferred option for future energy procurement.

5.8 The benefits of a managed service are that:-

5.8.1 There is the flexibility to reduce and increase buildings as the need arises, which would be essential when taking the review of the Council's estate into consideration.

5.8.2 The 'type' of energy procured is also flexible, for example, the decision was taken in 2019 to switch the Council's electricity supply to green energy from April 2020 across its operational estate. This was extended to the schools estate with effect from October 2020. This would be a pre-requisite of any replacement contract.

5.8.3 All costs are broken down to include energy prices, pass through costs and management fees. Trading gains made from capturing falls in the energy market are also shown transparently. The management fee is fixed for the duration of the contract.

5.8.4 Each month every site is contacted via email to remind them to read their utility meters which include a link to a central website.

- 5.8.5 Each month every site is contacted via email to notify them that their bills have been produced and can be viewed on a central website.
 - 5.8.6 Bills are issued by the managed service provider rather than directly from the utility company. A major advantage of this arrangement is that the monthly charges can be split into separate bills, based on a percentage ratio, so that multiple occupants can be billed directly (such as where there is joint use of a site, e.g. a school and a leisure facility). This arrangement eliminates the need for the host site to recharge the tenant.
 - 5.8.7 Technical support is provided regarding industry and legislative changes.
 - 5.8.8 Regular reviews of the whole portfolio's billing queries are undertaken.
 - 5.8.9 An annual consultation regarding the setting of capped prices including a mid term review and the validation of revisions as a result of any adjustments is provided.
 - 5.8.10 The service provides budget advice for individual sites and for the portfolio as a whole.
 - 5.8.11 The service includes a dedicated site works coordinator to liaise with builders, contractors and electricians for new connections, meter installations, the upgrade of existing supplies, meter relocations and disconnections.
- 5.9 A managed service also provides the option to collect a customer service delivery oncost element within the annual unit rates of all bills on behalf of the Council.
- 5.10 In summary a Managed Service provides a compliant way of securing the Council's energy requirements using a flexible procurement strategy.

6. Implications of the Recommendations

6.1 Legal Implications

Building Services

- 6.1.1 Procuring the maintenance and statutory compliance contracts through the CCS framework complies with the Public Contracts Regulations 2015 and the Council's Contract Procedure Rules (CPRs). As noted above, use of a framework is likely to minimise the procurement time and cost for delivery of a compliant contract. Legal will be engaged in advising on the framework terms and preparing the contract utilising the materials provided on the CCS framework.

Energy Supply

- 6.1.2 The Council may buy works, goods and services from or through a Central Purchasing Organisation (CPO) and in doing so will be deemed to have complied with the Public Contracts Regulations 2015 (the Regulations) to the extent that CPO has itself complied with Regulations. CPOs supply gas and electricity via separate framework agreements which have been entered into as a result of a competitive process.
- 6.1.3 Whilst the purchase of the energy itself would be compliant (purchasing gas and electricity via a CPO complies with EU regulations and the Council's own internal rules), the purchase of the managed service itself needs to be separately considered. Depending on the contract value for the managed service element it may be possible to make a direct award under the Council's CPRs; alternatively consideration may need to be given to accessing these services via a compliant framework or via a competitive tender process.

6.2 Financial Implications

Building Services

- 6.2.1 The combined value for the Building Services contract (to include maintenance and statutory compliance), for a 10-year period is estimated to be £97 million. The majority of the budget for this contract sits with Facilities Management.
- 6.2.2 It should be noted at this stage that the prices for a revised contract may be higher than the current contract rates. However, a revised contract will be managed within existing budget levels by managing the overall scope of the programme in any given year. Furthermore, the as outlined in this report the council will be seeking to reduce overall maintenance costs through its estate transformation programme.

Energy Supply

- 6.2.3 Annual expenditure on gas and electricity procured via the contract is approximately £7.3m covering Corporate Buildings, Street Lighting, Schools and Academies. This is funded both from the Council's revenue budget and those of Schools and Academies.
- 6.2.4 The benefits of utilising this flexible purchasing model have been demonstrated since its adoption by the Council - this has been proven to be successful as the contract has delivered gas and electricity prices 4.9% lower than the market average during the period of the contract since April 2019; a two year performance review has indicated that prices have been £303k below the market average.

6.3 Policy Implications

- 6.3.1 The recommendations in this report support the delivery of the council's priorities by ensuring that its buildings meet all statutory compliance regulation, are safe and fit for purpose.

6.4 Equality Implications

- 6.4.1 There are no equality implications for this report.

6.5 Human Resources Implications

- 6.5.1 If the chosen procurement route is agreed, there will be no TUPE implication for Cheshire East staff. However, there will be TUPE implications for existing providers.

6.6 Risk Management Implications

- 6.6.1 The procurement is supported by a Project Team comprising specialist support staff from a range of council services.
- 6.6.2 A robust project risk register will be maintained where risks are identified and managed. Risks that cannot be managed or mitigated will be escalated to the project sponsor as appropriate.

Building Services

- 6.6.3 Bringing statutory compliance, response, planned and cyclical maintenance together will ensure that the Council's buildings are compliant and fit for purpose, ensuring there is no duplication of works.
- 6.6.4 The selected partner will ensure that the Council's asset data base remains robust and up to date at all times.
- 6.6.5 The Council's objectives to be carbon neutral by 2025 will be supported through this joined up approach, and the scope will be widened to enable further energy projects to be included within the contract.

Energy Management

- 6.6.6 Flexible purchasing allows the Council to take advantage of price changes in the energy market. By choosing this purchasing strategy, it spreads its price risk over a number of purchasing decisions throughout the year.
- 6.6.7 The commodity, gas or electricity, is purchased over multiple occasions direct from the wholesale market. Our future energy

requirements are split into base load and peak volume blocks for electricity, or into tranches for gas, that can be bought in monthly, quarterly or seasonal periods. Any residual load covering additional volume requirements can be traded separately.

- 6.6.8 In utilizing a fully flexible procurement approach the Councils risk of exposure to market variations can be controlled and monitored as volumes will be aggregated with the ability to take advantage of fluctuating market prices.
- 6.6.9 There is budget certainty for each financial year with the benefit of a capped price that could be reduced within the period. Energy prices/budgets can be determined as the Council will agree on capped 12 month prices so if costs increase, the Council/users will be protected from the increases and will be able to budget sufficiently.
- 6.6.10 If energy costs fall, prices will be monitored and the provider will be able to unlock/unset tranches of energy thus enabling the participating authorities to benefit from the lower market rates. Any such saving facilitates a reduction in the capped price within the specific 12 month period.
- 6.6.11 Because of the nature of flexible purchasing a Capital At Risk fund is established (in the current contract this is equivalent to 5% of the contract value. This fund is held in reserve and will be returned at the end of the agreed contract period).
- 6.6.12 Potential trading gains when prescribed conditions occur which are used to offset unit costs.
- 6.6.13 This trading provides added value over and above the ability to secure competitive market prices.

6.7 Rural Communities Implications

- 6.7.1 There are no direct implications for rural communities.

6.8 Implications for Children & Young People/Cared for Children

- 6.8.1 There are no direct implications for children and young people.

6.9 Public Health Implications

- 6.9.1 There are no direct implications for public health.

6.10 Climate Change Implications

6.10.1 In line with the Council's intention to be carbon neutral by 2025, these contracts will include the requirement to support these objectives where practically possible.

6.10.2 The Council already purchases green electricity; the implementation of the energy supply contract will enable this to be purchased on the futures market.

7. Ward Members Affected

7.1 No ward Members are directly affected by these procurement exercises.

8. Consultation & Engagement

8.1 None

9. Access to Information

9.1 Appendices attached.

10. Contact Information

10.1 Any questions relating to this report should be directed to the following :

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