



## CABINET

**Subject Heading:**

**Public Realm Transformation**

**Cabinet Member:**

Cllr. Dervish

**SLT Lead:**

Sue Harper, Director of Neighbourhoods

**Report Author and contact details:**

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**Policy context:**

This decision supports the Corporate Plan, especially 'A Great Place to Live' as outlined in the Places theme

**Financial summary:**

There is a MTFS requirement to save £500k It is projected the £300K will be realised in 2021/22 with the remaining £200K delivered in 2022/23.

**Is this a Key Decision?**

Financial impact: Saving of over £500k over the life of the contract...

Significant effect on two or more Wards

**When should this matter be reviewed?**

18 September 2019

**Reviewing OSC:**

Environment

**The subject matter of this report deals with the following Council Objectives**

Communities making Havering  
Places making Havering

**Cabinet, 18 September 2019**

Opportunities making Havering  
Connections making Havering

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**SUMMARY**

1. The report sets out the details of the Business Case and the Procurement Strategy for the Integrated Public Realm Services Contract (Contract), and the rationale behind the proposed new service delivery model.
2. The procurement of the new Contract contributes to achieving a number of the Council's objectives. The aim for the new Contract is to improve the delivery of the services through an integrated approach. This in turn will improve the way in which Havering looks and feels. Helping residents feel better about their surroundings whilst contributing to the Council's savings programme.
3. Preliminary market engagement with a wide range of providers showed a strong interest in this opportunity because of the services potentially in scope and the approach demonstrated by the Council. It also gave useful guidance on the market's ability to maximise the quality standards and minimise the cost of service delivery.
4. Three main service delivery models have been evaluated in detail.
  - Outsourcing: conduct a procurement exercise and engage an external contractor to deliver the Public Realm services.
  - In-house: keeping and bringing all the services in-house so that the Public Realm services are delivered directly by employees of the council.
  - Local Authority Company (LAC): deliver the Public Realm services through a LAC (commonly referred to as a Teckal company), either by setting up a new company or use an existing company founded by the Council to deliver the services.
5. A detailed analysis of the risks, benefits and potential savings concluded that the Outsourcing option (at exempt Appendix 1) should be the preferred service delivery model going forward.

**RECOMMENDATIONS**

1. Cabinet is asked to:

Review and approve exempt Appendix 1: Business Case for the Public Realm Transformation and future delivery of Public Realm services to meet Council priorities and the optimum delivery option(s) which includes:

- The case for change and the considerations for the various options assessed.
  - The chosen service delivery model for the future delivery of the Public Realm services to meet the Council's priorities.
  - The commercial case for the procurement process.
  - The governance, risks and control framework for the Public Realm Transformation Programme to ensure successful delivery.
2. In consideration of the Procurement Strategy, to approve the commencement of the procurement for the Public Realm Provision which includes:
- The choice of procurement procedure that will be implemented to procure a new Integrated Public Realm Services Contract.
  - The initial contract length of 8 years with the option for the Council to extend for up to a further 8 years (extension could range from one to eight years, subject to relevant decisions at the time).
  - The evaluation criteria for the award of the new Contract based on a 50% Price / 50% Quality split.
  - The indicative procurement timetable.

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| <b>REPORT DETAIL</b> |
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## **1.0 Background**

- 1.1 This report seeks approval for a new strategic direction for the delivery of public realm services as outlined in the Business Case for the Public Realm Transformation Programme (Appendix 1 – exempt) to be implemented through a procurement process for a new Integrated Public Realm Services Contract (Contract). The Reasons and Options section of this report provides the justification for the selection of the preferred service delivery model.
- 1.2 The purpose of the Business Case is to establish whether the procurement of the new Contract is desirable, viable and achievable. The Business Case, both as a product and a process, will provide the Council with a management tool for evidence-based and transparent decision making and a framework for the management, control and delivery of the proposed way forward.
- 1.3 It is not intended that the Business Case will be a static document. A key requirement will be to actively maintain and continually update it with current information on costs, risks and benefits. Oversight and governance of this programme has followed Council policy and a Public Realm Transformation (PRT) Board of appropriate senior officers and experts, supported by a

Project Team of specialists, oversees the programme. The Business Case will be monitored by the Public Realm Transformation Board with Cabinet Members updated as appropriate and where necessary, subject to appropriate decisions.

## **2.0 Strategic Outcomes**

2.1 The procurement of the new Contract seeks to save the Council money while creating a new emphasis on the management, maintenance and condition of the public realm. The following strategic outcomes will oversee the delivery of the future service delivery model:

- Strategic Outcome 1: Improve the way in which Havering looks and feels.
- Strategic Outcome 2: Make Havering a cleaner and tidier place.
- Strategic Outcome 3: Make people feel better about their surroundings.
- Strategic Outcome 4: Make a positive impact on social, environmental and economic sustainability.

## **3.0 Services in Scope**

3.1 The Council currently delivers its Public Realm services through a combination of in-house operations and outsourced contracts. Many of the services represent statutory functions that the Council must deliver, therefore the reason for the Business Case is primarily driven by statutory responsibilities that the Council must discharge. The contracts for the services that are currently outsourced come to end at various dates from March 2021 to August 2021. The waste and recycling collection contract, in particular, ends in August 2021, therefore the Council must, in any event, prepare for the re-procurement of a new contract for these services.

3.2 Services included in the scope of the Business Case are caretaking (external housing estate cleansing and grounds only), grounds maintenance, gully cleansing, elements of parks development, park gates locking, street cleansing, winter maintenance (all currently delivered in-house), tree maintenance, waste and recycling collection, trunk road cleaning and weed control (all currently outsourced).

## **4.0 Programme Objectives and Benefits**

4.1 The objectives that the Council will aim to achieve as part of the procurement of the new Contract are:

- Financial savings. Achieve a minimum of £500k savings from the integration of the public realm services as outlined in the Medium Term Financial Strategy (MTFS).

- Improve service delivery. An integrated contract has the potential to deliver better co-ordinated management of the Public Realm services. By working in partnership with one contractor, there will be a uniform approach to service delivery, shared processes, procedures and contract monitoring systems. It is anticipated that this new way of working will achieve significant improvements in the way in which residents, service users and customers receive and request services which in turn improves the customer satisfaction and experience.
- One brand. A unified approach to the delivery of the Public Realm services will enhance the local identity so that the services are all managed under one single brand, for all the relevant public realm functions.
- Better commissioning, procurement and project management. Officers have designed a robust governance and control framework for the implementation of the Programme and have secured the project management, technical, procurement and legal support, which represent the critical functions for the success of the Programme.
- Expert acquisition. The new Contract has the potential to lead to the development and retention of a multi skilled workforce, as the integrated solution may present more opportunities for staff that wish to develop their professional career within the Council. The new Contract has also the potential to result in significant cultural harmonisation benefitting both the Council and the contractor in areas such as knowledge pool, sharing of good practice, sharing of technology, and more innovative ways of working.
- Council Strategy. The new contract will contribute towards other Council strategies such as improved air quality, social values and community benefits.

## **5.0 Critical Success Factors**

### **5.1 The critical success factors for the service delivery model are:**

- Business needs. The outsourcing solution satisfies the existing and the future business needs of the organisation.
- Benefits optimisation. The outsourcing solution optimises the delivery of the strategic outcomes and the achievement of the project's benefits, both qualitative and quantitative.
- Affordability. The procurement of the new Contract will achieve the efficiency savings of £500k as established in the MTFS. This target will be achieved through a combination of: design of technical, financial, commercial and legal documents which aim to achieve the right balance of standards, performance management and risk allocation. In addition, officers will be able to dialogue and negotiate with the bidders during the procurement process all relevant aspects of the Contract to mitigate the risk that the award of the new Contract is not affordable.
- Potential achievability. The outsourcing solution will offer the best opportunity to the Council to innovate, adapt and introduce new ways of working as a result of the market intervention and contribution to the design of the requirements for the new Contract.

- Supply side capacity and capability. The procurement of the new Contract falls within a busy pipeline of opportunities, therefore the design of an attractive procurement process will be paramount to securing market's interest and competition. There is established market maturity in the delivery of similar contracts (scope, value, geography, risk); therefore there is no risk in relation to the market's ability to deliver the required services.

## **6.0 The Commercial Case**

- 6.1 The implementation of the Business Case to deliver the preferred service delivery model will be supported by a detailed Procurement Strategy, which Cabinet is required to approve.
- 6.2 The decisions in the Procurement Strategy have been formulated taking into account of both officers' considerations and the market's perspective, given that officers undertook preliminary market engagement with a wide range of providers.
- 6.3 The PRT Board has selected the Competitive Dialogue (CD) procedure to undertake the procurement of the new Contract. This procedure is best selected when the technical specification cannot be defined with precision and when the requirements may necessitate and involve innovative solutions which can be best delivered with the input of the market. As the Council is proposing to create a new integrated contract for the Public Realm services, the CD procedure offers significant flexibility, as the Council can continue with the process until it is satisfied that a solution (or solutions) that is capable of meeting the needs has been identified. An 'outcome-based' specification, which informs bidders of the service standards that must be met but not the methods of delivery needed to achieve these outcomes, is required. This gives bidders greater flexibility to decide how and when to deliver the services and encourages innovation. The contract will seek prices to deliver services as they are currently delivered but will also seek prices for separate recycling methods, especially food waste collection, and refuse containerisation to ensure the flexibility to introduce these options in the future should legislation require. Based on their experience of delivering similar services across the country and beyond, bidders will have different approaches on how to achieve each of the Council's outcomes.
- 6.4 The new Contract will be awarded for an initial period of 8 years, with the option for the Council to extend for up to a further 8 years, the duration of which may range from 1 year to 8 years, with no lower or upper limit to the number of extensions the Council can arrange, subject to not exceeding the maximum contract length of 16 years (initial contract term plus all extensions). The flexibility built into the extension provisions will allow the Council to adapt to future service changes, including possible changes in waste collection requirements when the East London Waste Authority's (ELWA) waste disposal contract ends (due to expire in 2027), innovation, new technologies, new legislation, financial pressures, and whether to

continue or retender the contract depending on contractor performance and the Council's long-term strategy.

- 6.5 The Council will base the award of the Contract on the Most Economically Advantageous Tender (MEAT) and a price/quality split of 50%/50% will apply. The bidders' solutions will be measured against the evaluation criteria, sub-criteria and weightings set by the Council. The Council will discuss with the bidders how each of the outcomes will be measured during the procurement process.
- 6.6 The contract will give due consideration, during the formulation of the contract and the procurement documents, to the development of a concise set of Key Performance Indicators (KPIs) which focus on the strategic aspects of the services and enable effective contract management activities. The new Contract will be largely self-monitoring and guided by the use of effective technology to measure performance. A payment and performance mechanism which is based on good contract management principles will be included in the contract. A concise number of KPIs, focusing on the strategic aspects of the services, will be an efficient means of measuring performance and effective in driving service improvement where needed. The Council will continue to have the adequate instruments to deal with poor performance during the contract.

## **7.0 Indicative timetable**

- 7.1 Subject to the approval of the strategic direction outlined in Business Case by Cabinet, the implementation of the procurement is in accordance with the following indicative timetable.
- 7.2 Contract notice in the Official Journal of the European Union (OJEU) in published in October 2019. Potential providers may express a request to participate in the opportunity and complete the Selection Questionnaire (SQ). The submissions will be evaluated and those organisations which have demonstrated adequate economic and financial standing, technical and professional abilities will be selected to progress. It is also anticipated that leaseholder consultation will commence at this stage of the process.
- 7.3 The main stages of the Competitive Dialogue process will then start. A two-stage Competitive Dialogue process, consisting of: Invitation to Submit Detailed Solutions (ISDS) followed by Invitation to Submit Final Tenders (ISFT) if selected. The consecutive stages will be used to reduce the number of bidders by applying the award criteria and until the Council has identified the solutions which are capable of meeting its needs. It is envisaged that this process will start in October 2019/November 2019 and conclude in the summer of 2020. Following submission of the final solutions, officers and their advisors will carry out an evaluation to determine the preferred bidder. The Cabinet report will then be developed and it is anticipated that the award of the contract will take place in summer 2020.



The mobilisation of the services will commence and officers are mindful that adequate timeframe is necessary to ensure that the new contractor can prepare for the delivery of the new services from the start of the new Contract in August 2021. Services will be migrated into the new integrated contract from this date, starting with all cleansing functions (streets, housing estates & gullies) and waste collection services followed by tree maintenance, horticultural services and winter maintenance in October 2021.

## **8.0 Planning for successful delivery**

8.1 The proposed governance structure for a project of this scale and complexity will be:

- Cabinet
- Theme Board (Places)
- Senior Leadership Team
- Public Realm Transformation (PRT) Board
- Project Team

8.2 The PRT Board will manage and agree the programme outcomes. Strong and effective representation of all relevant areas is necessary and subject matter experts attend both the Public Realm Transformation Board and the Project Team. The Council has also secured relevant external support in the critical areas of project management, technical, procurement and legal functions.

## **REASONS AND OPTIONS**

### **9.0 Reasons for the decision:**

9.1 The recommended option for the future delivery of the Public Realm services is to procure an Integrated Public Realm Services Contract.

9.2 The Outsourcing option is capable of delivering the “best” balance of benefits and risks:

- A well understood solution with predictable implementation costs and timetable.
- The ability to transfer most of the financial risks to the selected contractor.
- The opportunity to attract competition during the procurement process to secure best value and achieve the savings target of £500k.
- The ability to maximise market innovation to secure a contract which is fit for the future.

9.3 The procurement of an integrated contract achieves some of the following benefits:

- Reducing demarcation inefficiencies and conflicts at the interface of service delivery.
- Increased operatives' accountability and more collaborative working.
- Improved co-ordination and sharing of resources.
- Efficiencies in the client management structures.
- Increased value of the potential contract to the market which could lead to improved competition and better demonstration of best value.

9.4 The Council has a legal obligation to tender contracts of this value. It also provides an opportunity to demonstrate that the Council is obtaining best value for money by carrying out an open and transparent process and engaging with the market. The competitive tension provided through a procurement process incentivises innovation and reduces costs.

#### **10.0 Other options considered:**

10.1 PRT Board considered options for the future service delivery model and to achieve the strategic outcomes.

The selection of the options was mainly driven by the following considerations:

- The nature of the services in scope.
- The solutions available, taking into account existing and new ways of working, re-design of the business process and configuration.
- The availability of service providers, ranging from within the organisation to external service providers.
- The ability of the supply side to deliver the required services within the constraints of delivery timeframe, the option of phasing the introduction of the services over time.

10.2 The three options identified for a more detailed review were:

##### **10.2.1 Option 1: Contracting Out (Outsourcing).**

The option of "Contracting Out the services" through a procurement process was considered and taken forward for additional analysis. This option was considered viable given the Council's aspiration to deliver an integrated solution for the entirety of the Public Realm services.

##### **10.2.2 Option 2: Combination of keeping and bringing the services in-house.**

The option of “Insourcing the services” was considered and taken forward for additional analysis. This option was considered viable given the Council’s aspiration to deliver an integrated solution for the entirety of the Public Realm services.

10.2.3 Option 3: Setting up a Local Authority Company.

The option of “Delivering the services through a LAC” was considered and taken forward for additional analysis. This option was considered viable given the Council’s aspiration to deliver an integrated solution for the entirety of the Public Realm services.

10.3 Officers engaged external consultants to carry out a detailed review of the three shortlisted commissioning options.

10.4 The three commissioning options were appraised against the following two criteria:

- cost modelling and financial assessment, and
- assessment of qualitative factors and risks.

## **11.0 Cost Modelling and Financial Assessment**

11.1 The financial modelling undertaken allows the Council to understand the comparative cost of each commissioning option. By using current service costs as a baseline position, the consultants modelled the impact of the main cost parameters under each option (such as the pension contribution costs, corporate overhead and profit). The additional savings that could be achieved as a result of an integrated contract, given the information provided by the market during the preliminary market engagement, was also modelled.

11.2 The financial output concluded that:

- There are very small cost differences between the options.
- The integration of the services delivers better value for money compared to the current arrangement of having a combination of delivery models in place as outlined in Appendix 2 (exempt).

## **12.0 Assessment of qualitative factors and risks**

12.1 The qualitative and risk component aims to establish the risk appetite towards different commissioning options, in common risk categories such as: the control and ability to make changes, the degree of financial risk transfer, the operational and reputational risks, and the demonstration of best value.

12.2 The assessment of the options concluded that there is a strong preference for Outsourcing the services as part of an integrated contract.

- Demonstrating best value. The process of going out to market was identified as a key way of ensuring costs are kept competitive while benefiting from innovation and best practice that the private sector can offer.
- Control and ability to change. The ability to exert a level of control over the contract through well executed contract management and KPI's was considered a significant factor favouring the Outsourcing commissioning route.
- Operational risk. The Council would be able to transfer operational risk onto a contractor who is better placed to deal with relevant risks.

12.3 Financial Risk: The Council will benefit from an improved, albeit relative, financial certainty compared to an in-house or LAC options.

## **IMPLICATIONS AND RISKS**

### **13.0 Financial implications and risks:**

#### 13.1 Savings

The likely financial savings to be made by outsourcing these services as outlined in Appendix 2 (exempt) should exceed the MTFS requirements (£300K in 2021/22 and £200K in 2022/23). The expectation is that savings made through the programme will cover both the MTFS savings of £500k, and any other relevant fixed overhead costs (i.e. workshop fixed overhead costs), which will need to be reapportioned to services outside of Environment.

#### 13.2 Vehicles

Outsourcing in-house services will leave the council with a surplus of vehicles mainly from grounds maintenance, cleansing and gully cleansing services. These vehicles are internally leased from transport. Some vehicles have shorter leases than others. A few vehicles may be transferred to the incoming contractor while the remainder will be disposed of through auction. Appendix 2 outlines the estimated residue lease costs outstanding at the point of transfer.

### 13.3 Performance Management

A new client team is to be created to manage the contract. There is already a Client team to manage waste collection, weed contractor and tree maintenance. The number of staff required to manage the integrated contract will be slightly expanded to manage/client additional functions and services, namely cleansing and grounds maintenance. The intention is that this will be done within existing budgets, outlined in Appendix 2. Should it be determined that additional resources are needed in the Client Team the expectation is that these will be met from the savings made above the MTFS savings (£500k) requirement, as outlined in Appendix 2.

### 13.4 Risks

There are a few financial risks associated to this programme; if the predicted savings are not made, the MTFS will not be satisfied. However all indications suggest the required savings will be made. In the event that this is not the case, this will be clearly outlined in a future report to Cabinet. The vehicles auctioned may not clear the balance, and the service's budget will be put under pressure. An estimate will be made on the auction value of the vehicles nearer to the time of award, and included in a cost matrix in the Cabinet report outlining award in the summer of 2020. Cabinet has the final decision to award a contract or not.

## **14.0 Legal implications and risks:**

14.1 The Council is under a number a statutory duties to provide a lot of the services detailed within this report which are the subject of transfer. Amongst these the Highways Act 1980 provides in s41 that a Highway Authority must maintain a public highway and that includes a requirement to keep it clean and free from obstructions. The Council is also a principal litter authority under the Environmental Protection Act 1990. Under the Landlord and Tenant Act 1985, the long leases it grants to long leaseholders and the Housing Act 1980 the Council has various obligations to its long leaseholders and secure tenants to maintain and clean estate blocks and common areas. Some arrangements will require appropriate consultation during the procurement stages.

14.2 The Council is required to procure this above threshold services contract under Public Contract Regulations 2015. This report and its appendices detail the procurement strategy officers have developed with the aid of an external consultant. Pursuant to Reg 40 PCR 2015, the Council conducted preliminary market consultation before commencing the procurement procedure via soft market testing meetings and previous know how. In accordance with Reg 26 (Choice of Procedures) PCR 2015 the PRT Board agreed the Competitive Dialogue (CD) procedure.

14.3 The Council may use the CD procedure in circumstances where any one or more of the grounds set out in Reg26(4) PCR 2015 exist(s):

- (i) the needs of the contracting authority cannot be met without adaptation of readily available solutions;
- (ii) the services include design or innovative solutions; and
- (iii) the technical specifications cannot be established with sufficient precision by the contracting authority with reference to a standard, European Technical Assessment, common technical specification or technical reference. To enable develop a solution best suited to the locality.

14.4 Reg 46(2) PCR 2015 requires the Council to provide an indication of the main reasons for their decision not to subdivide into lots. The reasons must be included in the procurement documents or in reports such as this report and its appendices drawn up under Reg 84(1) PCR 2015).

14.5 The Council has a legal obligation to ensure due diligence and appropriate consultation for the Council's staff that are to be transferred through the Transfer of Undertakings (Protection of Employment) Regulations 2006(TUPE). Officers are developing what will translate to a detailed mobilisation which will include the staggered transfer of its staff and staff of 3<sup>rd</sup> party contractors at the end of their contracts to the newly procured contractor post contract award. The pensions arrangements have been considered and the Council will seek either admission to its own pension fund or alternatively any new contractor will be required to provide a broadly comparable fund under the pensions regulations.

## **15.0 Human Resources implications and risks:**

15.1 The in-house services to be included in this procurement are grounds maintenance, gully cleansing, elements of parks development and street cleansing. These services employ 162 staff directly, with additional seasonal agency workers as required. HR has been involved in this programme from an early stage, and is represented on the PRT Board. They will continue to offer guidance on staffing matters throughout this programme.

15.2 The Council employees would be TUPE transferred to the winning contractor in a controlled manner, in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006 and their terms and conditions protected.

15.3 The Council would also ensure it facilitates regarding current contractors staff subject to a TUPE transfer to the new contractor.

15.4 Transferring employees' pensions will be safeguarded; soft market testing indicated that all contractors are very likely to seek admission to the Local

Government Pension Scheme (Admitted Body Status (ABS)). The Pensions Service has indicated that if the correct conditions are met, this is an acceptable outcome. The Contract will include provisions regarding pensions risk sharing and the admission to the LGPS would be subject to the execution of the contractor admission agreement. There are risks around the employer contribution rate payable into the LGPS Fund for the eligible employees and dealing with any deficit or surplus of the LGPS Fund at the cessation of the Contract. These legal matters will be subject to negotiation with the market during the procurement process.

- 15.5 If this report is agreed, the Council intend to undertake three change management programmes to ensure the Council is best placed to manage the future contract. These are:
- 15.5.1 Creating a robust client team. There is already a Client team to manage the waste collection, weed control and tree maintenance contracts. A new team will be created reflecting the skills, knowledge and experience necessary to client the new contract.
  - 15.5.2 Current caretaking staff clean and maintain the internal and external features of housing estates. Only the external cleaning functions are to be included in the contract. The change management programme will assign posts and functions to internal and external functions
  - 15.5.3 Some posts that are in the Park Development team are likely to be assigned to the TUPE list; others will not as they will remain directly employed by the Council to deliver internal requirements.
- 15.6 The Council's change management process will be followed in each case, with the reviews taking place over the coming months. Any indirect Restructure which become apparent following this Transformation Programme will be managed through the Council's Change Management process.
- 15.7 This may be an unsettling time for staff. Managers have kept staff and Trade Unions updated, and will continue to keep them informed as the programme progresses. Support will continue to be offered to all staff through the Employee Assistance Programme. Formal consultation with Trade Unions and staff will commence at the appropriate time. Due diligence will be taken accordingly to mitigate against the risk of challenge that may be made, and an Equalities Impact Assessment (EqIA) has been conducted.
- 15.8 The tree maintenance, waste and recycling collection services, trunk road cleansing and weed control services are already outsourced. The Council has limited responsibilities with the regard to the TUPE process for these staff, but will endeavour to ensure due diligence as it is the Council's best interest to ensure that this progresses smoothly, to ensure services are not affected and there is a smooth transition (if an incumbent is not awarded the contract) from one provider to another.

**16. Equalities implications and risks:**

- 16.1 Appendix 3 outlines the detail of the Equalities Impact Assessment (EqIA). As outlined above 162 full-time staff directly in current in-house services. It is unlikely that there would be any specific individual impacts to any particular characteristic or group of staff.

**BACKGROUND PAPERS**