



CABINET

Subject Heading:

Public Realm Transformation – New Operating Model

Cabinet Member:

Cllr Dervish

SLT Lead:

Barry Francis, Director of Neighbourhoods

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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:

Should Members agree the recommendation to tender for an integrated waste and recycling collection and street cleansing contract, this will deliver the best value for money as outlined in exempt Appendix 4

Is this a Key Decision?

Yes: expenditure or saving (including anticipated income) of £500,000

When should this matter be reviewed?

7 July 2021

Reviewing OSC:

Environment

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

Communities making Havering
Places making Havering
Opportunities making Havering
Connections making Havering

Appendix 1, 2, 3 and 4 of this report are exempt from publication by virtue of paragraph 3 and 5 of the Access to Information Procedure Rules set out in the Constitution pursuant to Schedule 12A Local Government Act 1972, as amended in that they contain information relating to the financial or business affairs of any particular person (including the authority holding that information); and information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

SUMMARY

In September 2019, the Council started the procurement process for an integrated public realm services contract, tendering for a single contract to include waste and recycling collection, street cleansing, grounds and tree maintenance and associated services. Tendering had commenced but the outbreak of the Covid-19 pandemic introduced a period of uncertainty with bidders concentrating on service delivery and not new business jeopardising the procurement project plan timetable, leading to a significant risk that the programme would fail with severe disruption to services. Consequently, in September 2020 Cabinet agreed to stop this procurement.

The Public Realm Transformation programme has been reviewed again, concluding the market has now recovered to restart a procurement exercise. In the light of the previous Options Appraisal, Business Case and the present circumstances, three main service delivery models have been reconsidered:

- Continuing with the current operating model, with waste and recycling collection services and tree maintenance outsourced while street cleansing and grounds maintenance remain in-house. The Tree maintenance contract was extended for one year and is due to expire on 31st March 2022. The Waste and Recycling Contract will expire on 29th July 2023.
- Conduct a procurement exercise and engage an external contractor to deliver waste and recycling collection, street cleansing, grounds and tree maintenance and associated services in a single contract, or various permutations of these services to be included in the procurement with waste services
- Deliver public realm services through a Local Authority Company either by setting up a new company, using an existing company founded by the Council or partnership arrangement to deliver the services.

Assisted by Eunomia, a recent review indicates that the option likely to deliver the best outcome for the Council is to tender a waste and recycling collection service combined, and integrating, the street cleansing service. The research also indicated that retendering a standalone waste and recycling collection contract was likely to reduce bidder participation, reducing competition.

An integrated waste and recycling collection and street cleansing service contract will provide the Council opportunities to:

- Remove demarcation inefficiencies about who is responsible for litter and spillages in the street scene to achieve cleaner streets
- Improve supervision across waste collection and street cleansing services
- Share processes, procedures and ICT systems for swifter rectification of waste and street scene issues
- Lower its carbon footprint and improve local air quality with the introduction of ULEZ compliant vehicles, and may include electric and/or hydrogen vehicles where practicable
- Improve service performance within a framework of best value for money
- Increase value of the potential contract to the market which could lead to improved competition demonstrating value for money.

This report outlines the reason for the recommendation seeking approval to change the Council's operating model to deliver waste and recycling collection, weed control, trunk road cleaning and street cleansing functions in one combined integrated contract and for procurement to start as soon as practicably possible.

RECOMMENDATIONS

For the reasons highlighted in this report and its appendices, Cabinet is asked to:

1. Approve the new operating model whereby waste and street cleansing, trunk road cleaning, recycling collection and weed control services are combined in one single integrated contract offering and the commencement of the procurement of that contract; and
2. Delegate authority to the Director of Neighbourhoods, in consultation with the Cabinet Member for Environment and Director of Legal & Governance, to take all necessary steps to award the contract post procurement at the estimated value of £10 million per year and deliver an integrated contract for street cleansing, trunk road cleaning, waste and recycling collection and weed control.

REPORT DETAIL

1.0 Background

- 1.1 On 18 September 2019, Cabinet agreed that—grounds maintenance, gully cleansing, elements of parks development, park gates locking, street cleansing, winter maintenance (all delivered in-house), tree maintenance,

waste and recycling collection, trunk road cleaning and weed control (all outsourced) were to be tendered in one integrated contract. However, due to the Covid-19 pandemic, bidders struggled to undertake due diligence delaying procurement activity that jeopardised the project timetable. With key milestones not being delivered, the project was at serious risk of being unable to deliver these important services. Consequently, as agreed by Cabinet on 16 September 2020, the project was halted. Services that were already outsourced either had their contracts extended or the procurement opportunities were retendered.

- 1.2 The extended waste and recycling collection service contract is outsourced, with the extended contract due to expire in July 2023. To ensure service continuity this contract requires retendering imminently. The weed control contract is to expire in late 2023, and can be phased into a new contract in 2023 if required. The trunk road cleaning contract is updated annually with the highways contractor, and can be terminated for July 2023.

2.0 **Market Testing and Operating Model**

- 2.1 Recent research indicates the market has recovered from the pandemic sufficiently to tender. Research also indicated:

- With a shrinking market, there are fewer companies able to tender for waste and/or an integrated public realm contract
- There is market congestion with many similar contracts to be tendered at a similar period in London and other areas of England as Havering's procurement opportunity
- Of those companies that have the capacity to tender, several are targeting locations and services, and may concentrate their efforts where they hope to retain their contracts
- The market advised against the fully integrated public realm approach as previously procured and especially indicated a lack of appetite for grounds and tree maintenance services to be included with waste services
- If waste and recycling collection contract was retendered by itself, the market is less interested in this procurement opportunity as it is of lower value than many other procurement opportunities in the wider market.
- The Council will have greater procurement successes if it procures a waste and recycling collection contract combined with street cleansing services. More detail outlining the outcome of the recent market testing is in Appendices 1 and 2 (Exempt).

- 2.2 The risk profile of the project is appended at exempt Appendix 3 including mitigation steps that can be taken.

- 2.3 It is noted that strong market indication is that if the Council does not include street cleansing services in the tender with waste and recycling collection, it

is likely fewer bidders will tender for Havering's opportunity, decreasing competition that may result in less competitive pricing and innovation.

- 2.4 Consequently, to ensure procurement success, this report seeks approval to change the public realm operating model to deliver waste and recycling collection, weed control, trunk road cleaning and street cleansing services within one single integrated contract (the 'Contract'), to be delivered by one single contractor.

3.0 Governance and Procurement

- 3.1 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, will oversee the programme. The project will be monitored by the PRT Board with the Cabinet Member for Environment updated as appropriate. It is expected the award for the new Contract will be made the summer 2022.

- 3.2 The procurement of the new Contract seeks to deliver good value for money while creating a new emphasis on the management, maintenance and condition of the public realm, especially the street scene. The objectives that the Council will aim to achieve as part of the procurement of the new Contract are:

- Value for money
- An integrated Contract with the potential to deliver better co-ordinated management of the street scene, including cleaner streets.
- A contract that contributes towards other Council strategies such as improved air quality, as the Council will seek the best environmental solutions that are practicably available ensuring vehicles are ULEZ compliant, and may include electric & hydrogen vehicles, social values and community benefits where possible, assisting with the future sustainability of Havering.
- Improved technology, embracing innovative systems to improve service delivery and communications

- 3.3 Procurement will be through the Competitive Dialogue (CD) procedure. 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 waste collection, weed control and street cleansing 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. Given the market testing, this procurement opportunity will not be offered in lots. As outlined in section 5, an integrated solution has the potential to remove demarcation of responsibilities, join up services delivery and accountability and deliver cleaner streets within a framework to deliver value for money.

- 3.4 Where appropriate and in consultation with the Cabinet Member for Environment, 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, will be adopted. 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 best to achieve the Council's required outcomes.
- 3.5 The new Contract will be awarded for an initial period of 8 years with, subject to acceptable performance, 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). Annual reviews with associated improvement plans will be specified to assist in driving improved performance and efficiency. Flexibility will be built into the extension provisions that will allow the Council to adapt to future service changes, including possible changes in waste collection requirements when there are legislative changes, the East London Waste Authority's (ELWA) waste disposal contract ends (due to expire in December 2027), innovation, new technologies, financial pressures, and whether to continue or retender the contract depending on contractor performance and the Council's long-term strategy.
- 3.6 The Council will base the award of the Contract on the Most Economically Advantageous Tender (MEAT) and, to ensure high standards of performance and market participation, 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.
- 3.7 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 include an element of self-monitoring and be guided by the use of effective technology to measure performance that will be shared with the Council's client team. A payment and performance mechanism, including default mechanisms and profit sharing, 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.

Cabinet, 7 July 2021

3.8 Before procurement can commence, the Council is obliged to consult with the GLA on waste issues to ensure they align with the Mayor of London's Environment Strategy. The initial stages of consultation has begun to enable the procurement timetable to be adhered to.

3.9 Subject to Cabinet approval for the operating model outlined in this report, officers will review the internal requirements and arrangements to ensure a robust client team is available for the new Contract. This will be conducted alongside an internal review of public realm management, grounds maintenance and parks development due to commence this summer.

4.0 Indicative timetable

4.1 Subject to the approval of the strategic direction outlined in this report, the implementation of the procurement is in accordance with the following indicative timetable.

4.2 The contract notice is likely to be published in September 2021. 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.

4.3 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 late 2021 and conclude in the early summer of 2022. Following submission of the final solutions, officers and their advisors will carry out an evaluation to determine the preferred bidder. A detailed report will then be developed and it is anticipated that the award of the contract will take place in summer 2022. The mobilisation of the services will commence within an adequate timeframe to ensure that the new contractor can prepare for the delivery of the new services from the start of the new Contract in July 2023.

4.4 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 the PRT Board. Relevant external support in the critical areas of project management, technical, procurement and legal functions will also be secured.

4.5 Trade Unions and employees have been updated on the proposals outlined in this report, and regular updates will continue. Formal consultation with Trade Unions and employees will be undertaken at the appropriate times.

REASONS AND OPTIONS

5.0 Reasons for the decision:

5.1 It is recommended the option for the waste and recycling services, weed control, trunk road cleaning and street cleansing services are procured as a single integrated Contract as this option is capable of delivering the “best” balance of benefits and risks:

- The ability to transfer some of the financial risks to the selected contractor.
- Maximises market participation.
- The opportunity to attract greater competition during the procurement process to secure best value for money.
- The ability to maximise market innovation to secure a contract which is fit for the future.
- The opportunity for improved technology, embracing innovative systems to improve service delivery and communications.

5.2 The procurement of this integrated contract achieves the following benefits:

- Reducing demarcation inefficiencies and conflicts at the interface of service delivery, especially in the street scene.
- Increased operatives’ accountability and more collaborative working.
- Improved co-ordination and sharing of resources, offering better value for money.
- Improved ICT systems leading to quicker decisions to rectify issues if they arise
- Increased value of the potential contract to the market which could lead to improved competition and better demonstration of value for money.

5.3 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.

6.0 Other options considered:

6.1 Other service delivery model options were considered. 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.

- The ability of the supply side to deliver the required services within the constraints of delivery timeframe with other procurement opportunities in the pipeline.

6.2 The three options reviewed were:

- 6.2.1 Option 1: continuing to deliver services as the current operating model, i.e. waste & recycling collection to remain outsourced while street cleansing to remain an in-house service.

This option was not deemed viable as, because of the number of procurement opportunities in the pipeline in England, to retender a standalone waste services contract would significantly curtail participation for this lower valued contract compared to other procurement opportunities available to bidders at the same time. This situation is compounded by other risks as outlined in Appendix 3 (Exempt). Also, this option would not allow the Council to negotiate with suppliers the best delivery model for waste services, particularly removing the flexibility to allow the market to suggest ways to capitalise from any changes in the ELWA contract.

- 6.2.2 Option 2: contracting out (outsourcing) an integrated solution for the entirety of the Public Realm services, or various combinations of Public Realm services to be included in the procurement with waste services

The outsourcing completely of Public Realm services into a single integrated option is dismissed as research indicates, with fewer companies tendering for public realm contracts, a significant number of companies indicated they would not participate in the procurement if grounds and tree maintenance were included. Others indicated if they did participate, these services would have to be sub-contracted to third parties.

The Market strongly suggested procuring the waste and recycling collection service to be tendered in an integrated contract to include street cleansing would be the better procurement route (for reasons already outlined in this report). The market strongly indicated it would not bid for a waste and recycling collection service combined with grounds maintenance only.

- 6.2.3 Option 3: Set up a Local Authority Company to deliver the Contract.

The option to deliver the services through a Local Authority Company was considered and rejected as this option leaves all the financial risks with the Council and does not allow for contractors to inform the Council of the best way to structure and deliver services. Also, unless

refuse delivery specialists were engaged, the Council lacks the skills and management to progress this option at the present time.

- 6.2.4 The option of “insourcing the services” was not considered as this option has been rejected before as it is prohibitively expensive; the circumstances that led to this conclusion have not changed.

IMPLICATIONS AND RISKS

7.0 Financial implications and risks:

7.1 Savings

The financial impacts of this procurement route are outlined in Appendix 4 (exempt). It is unlikely that any savings (reduction in the Council’s overall budget) will be made through this procurement. However, it is likely that tendering for a combined waste collection and street cleansing contract will provide efficiencies and offer overall better value for money. If the government pursue the option to increase additional kerbside recycling for residents, i.e. food, glass, etc., it is likely that the cost to collect these materials will increase the contractor’s costs, which may be reflected in bid submissions.

7.2 Vehicles and Workshops

Outsourcing in-house services will leave the council with a surplus of cleansing vehicles. These vehicles are internally leased from workshops. Some vehicles have shorter leases than others, with almost all leases ending before the new Contract starts. All vehicles will be disposed of through auction. Currently street cleansing vehicles are also maintained and serviced at the council’s workshops. A contractor may or may not separately negotiate to continue to have their fleet serviced at the council’s workshops. If they do not, workshop income will reduce, requiring workshop fixed overhead costs to be reviewed and reapportioned to all other users.

7.3 Performance Management

A new client team is to be created to manage the contract. There is already a client team to manage waste collection and weed control contractors. The number of staff required to manage the integrated contract will be expanded to manage/client additional functions and services, namely street cleansing. Additional costs will be met from the savings through internal review process, as outlined in exempt Appendix 4.

7.4 Risks

There are several financial risks associated with this programme; with the introduction of additional recycling, there is a potential for contract prices to increase. This will be clearly outlined in a future report for contract award. 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 report outlining award in the summer of 2022.

8.0 Legal implications and risks:

8.1 The Council is under a number of 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. This can be coupled with the council having a general power of competence under section 1 of the Localism Act 2011 to act as that of an individual, subject to other statutory provisions limiting or restricting its use.

8.2 The Council is required to procure this above threshold services contract under Public Contract Regulations 2015 (as amended) (PCR 2015). This report and its appendices detail the outcome and learning from the market testing 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.

8.3 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 development of a solution best suited to the locality.

8.4 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).

Cabinet, 7 July 2021

- 8.5 Due to the length of the contract there is likely to be some changes in the law, technology, etc., which will have an impact during the life of the contract. Some of these, where known are identified in this report. The procurement exercise and subsequent contract will try and capture, where possible, all these in a “clear, precise and unequivocal manner” as required under Regulation 72 PCR 2015 thus allowing the council and the market certainty as to intentions to include such provision, particularly where these offer best fit for the future delivery of services to residents.
- 8.6 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 plan which will include the transfer of its staff and staff of 3rd party contractors (where applicable) at the end of their contracts to the newly procured contractor post contract award. The pension’s arrangements have been considered and the new contractor will seek either admission to the Havering pension fund or alternatively will be required to provide a broadly comparable fund under the pension’s regulations.
- 8.7 Officers are aware to the need for careful management of existing contracts associated with this new opportunity to be tendered.

9.0 Human Resources implications and risks:

- 9.1 The in-house service to be included in this procurement is street cleansing. This service employs 80 staff directly, with additional agency workers as required. HR has been involved in this programme from an early stage, and is represented on the PRT Board, and will continue to offer guidance on staffing matters throughout this programme.
- 9.2 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.
- 9.3 Transferring employees’ pensions will be safeguarded; market testing indicated that all contractors are likely to seek admission (Admitted Body Status (ABS)) to the Local Government Pension Scheme (LGPS). The Pensions Service has previously 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. Potential bidders are likely to seek pass-through to mitigate against pension risks and, if the right conditions are met, pass-through will be agreed during the initial stages of procurement.

Cabinet, 7 July 2021

These legal matters will be subject to negotiation with the market during the procurement process. These risks are outlined further in Appendix 3 (exempt).

- 9.4 If this report is agreed, the Council intend to undertake a change management programme over the coming months to ensure it is best placed to manage the future contract. There is already a client team to manage the waste collection and weed control contracts. This team will be reviewed to ensure the skills and resources required to manage all aspects of the new contract, including street cleansing. This will be undertaken as part of a larger internal review that is to consider public realm management, grounds maintenance and parks development.
- 9.5 Any indirect Restructure which become apparent following this Transformation Programme will be managed through the Council's Change Management process.
- 9.6 This may be an unsettling time for staff. Managers will keep 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.
- 9.7 The 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 in 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.

10.0 Equalities implications and risks:

- 10.1 Under section 149 of the Equality Act 2010, the Council has a duty when exercising its functions. This includes to have "due regard" to the need to eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act and advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. This is the public sector equality duty. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 10.2 "Due regard" is the regard that is appropriate in all the circumstances. The weight to be attached to each need is a matter for the Council. As long as the

council is properly aware of the effects and has taken them into account, the duty is discharged.

- 10.3 Appendix 5 outlines the detail of the Equalities Impact Assessment (EqIA). As outlined, currently 80 full-time staff are directly employed in the in-house street cleansing service. It is unlikely that there would be any specific individual impacts to any particular characteristic or group of staff.

11.0 Health and Wellbeing implications and Risks

- 11.1 Neutral impact. There will be no changes to current services and where assisted services are required, these will continue in any new contract.
- 11.2 Positive impact. Improved air quality through the introduction low emission vehicles. Also, learning from the Covid-19 pandemic, contractors will continue to adopt safer methods for street cleansing and waste collection functions, including staff health protection.

BACKGROUND PAPERS

None

Appendix 1 (Exempt) – Market testing, Havering

Appendix 2 (Exempt) – Market testing, Eunomia

Appendix 3 (Exempt) – Risks

Appendix 4 (Exempt) – Finance

Appendix 5 - Equalities Impact Assessment (EqIA)