

## **SLOUGH BOROUGH COUNCIL**

**REPORT TO:** Overview & Scrutiny Committee      **DATE:** 15<sup>th</sup> September 2016

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**WARD(S):** All

### **PART I** **FOR COMMENT AND CONSIDERATION**

#### **PROCUREMENT OF ENVIRONMENTAL SERVICES**

##### 1. **Purpose of Report**

This report advises members of progress made and consideration to either confirm the decision made on 14 March 2016 by Cabinet to commence procurement of a contract for delivery of Environmental Services or to confirm and instruct officers to commence arrangements for the delivery of Environmental Services and Highways in - house;

Overview & Scrutiny Committee are requested to review, comment and feedback on the information provided in Appendices A and B. They are requested to give due consideration to any additional information that might need to be considered by Cabinet not currently encapsulated within these reports that may be of an influential nature in terms decision making.

This report advises members on the timeline for delivery and resource implications on the respective insourcing and outsourcing proposals.

##### 2. **Recommendation**

The Overview and Scrutiny Committee is requested to take note and comment on the proposed and preferred contract vehicles and services scopes.

Overview & Scrutiny Committee are requested to review, comment and feedback on the information provided in Appendices A and B. They are requested to give due consideration to any additional information that might need to be considered by Cabinet not currently encapsulated within these reports that may be of an influential nature in terms decision making.

Furthermore, they are requested to review the recommendation that if the service is agreed to be brought in-house that the recommendation be for the Teckal Company vehicle.

### 3. The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan

#### 3.1 Slough Joint Wellbeing Strategy Priorities

Slough Borough Council has stated through the Sustainable Community Strategy in the Environment and Regeneration section that it will pursue steps to:

- move up the waste hierarchy and increase the amount of waste recycled;
- reduce the overall amount of waste produced; and
- reduce dependency on landfill for final waste disposal.

The primary environmental commitment and statement made by the Council through the Slough Sustainable Community Strategy is that the council has set itself the target of recycling 60% of its waste by 2028. This is a core driver behind the Waste Strategy and defines the strategic horizon period.

#### 3.2 Five Year Plan Outcomes

The Five Year Plan's outcomes the proposal will help to deliver are:

- ***Slough will be the premier location in the south east for businesses of all sizes to locate, start, grow, and stay***

**Ensure that the gateways to the town, prominent places and green spaces are clean and well maintained**

A fully functioning and dedicated public realm service is a key deliverable working towards keeping the gateways to the town, prominent places, parks, memorial gardens, cemeteries, roads and pavements clean. It improves the visual amenity of the town, prevents additional waste being flytipped and is a fundamental component of civic pride in the area.

The Highways infrastructure including maintenance of the asset and ongoing repairs together with winter maintenance is critical to ensure a fit for business transport infrastructure.

### 4. Other Implications

#### (a) Financial

##### **Environmental Services Contract:**

The financial implications of Environmental Services are exceptionally significant and have a combined total value of over £8 million to the Council (excluding additional works) and nearly £12 million including highways, pass through costs and additional works.

A headline financial appraisal has been undertaken regarding the financial differentials between 'insourcing or outsourcing' the service in Appendix A. In summary, it is understood that services can be provided at a lower cost than current provision from the incumbent contractor although the Council has greater

flexibility to dictate the extent of savings from a competitively procured outsourced contract.

Full year data for 2015 from the incumbent contractors Management Accounts for Slough Enterprise Ltd have been used to align the data to the year the ghost bid analysis that was produced (1 November 2015) by Ricardo for waste collection. No adjustments for inflation have been made.

The analysis shows that outsourcing to a Single Status Workforce through a private sector operator would result in a c. 19% (£1,608,800) saving whilst insourcing with a single status workforce would result in a c. 16% saving (£1,354,780). However, migrating to an in-sourced two tier workforce would result in savings of approximately 22% (£1,862,820).

As such, any frontloaded savings resulting from insourced provision will not match the 30% (£2,540,210) savings that would be requested from the market from a competitively procured outsourced contract to meet the Five Year Plan savings targets. However, an insourced contract does provide greater flexibility for the provision of income generating services although these provisions are limited by the respective insourced vehicle.

Therefore, the private sector could be specified to yield a saving of 28 - 30% against the total budget if stipulated to do so from a competitively tendered outsource. The frontloaded savings if the services were fully outsourced would be considered to be around 28 – 30% of the current budget equating to approximately £2,370,000 – £2,540,000 as this would be stated categorically within the specification for tender.

This is in contrast to an In-house service which could yield a 16 - 22% saving against the total budget depending on workforce type. Current estimates of savings are expected to be around £1,350,000 - £1,850,000 per full financial year as part of the transformation if the service were to come in - house.

The balance is between the ability to make frontloaded savings of 28 – 30% of the budget through outsourcing against the ability to make frontloaded savings from insourcing and then deliver a business plan that can provide savings potentially in excess of 30% savings over a period of ten years.

The key differential that influences delivery confidence is the ability to trade and generate income for the Council. Therefore, in order to quantify the best route for the Council over what would be the strategic horizon period (deemed to be ten years as this would be the length of any outsourced contract) then the NPV (Net Present Value) with the overall Maximum Net Benefit with an assumed Discount rate needs to be calculated.

The Public Contracts Regulations 2015 (the Regulations) provide that more than 80% of the Teckal company's activities must relate to the performance of tasks entrusted to it by the authority concerned. This means that only up to 19% of the Teckal company's activities may take place on the open market. The Options Appraisal of insourcing vehicles in Appendix B indicates that the greatest efficiencies can be yielded from operating a Teckal company operating with a 10% profit with a 1% year on year increase in profit every year – year on year up to a maximum of 19% (the rationale behind this threshold is that if the Teckal company's open market activities are higher than 19% then it becomes anti-

competitive). Even in the absence of the profit plan the Teckal company is still more financially viable than an outsourced service.

NPV difference between outsourcing and a Teckal company with no profit plan is £992,370. NPV difference between outsourcing and a Teckal company with a 1% increase in profit per year plan is £5,203,770.

This in-depth assessment of these options including assumptions is provided in Appendix B. The recommendation of this assessment provided demonstrates that insourcing through the provision of a Teckal company provides the best overall vehicle over the 10 year strategic horizon period.

(b) Risk Management

Risk	Mitigating action	Opportunities
Legal - The current Environmental Services Contract expires on 01/12/17 and new contracts have not been procured before the expiry date	<p><b>Environmental Services:</b> If Council are to insource services then it is recommend that a contract extension for the existing service is considered as a contingency to alleviate time constraints of insourcing the service by proposed start date of 1 December 2017.</p> <p>If Council are to outsource services then it is recommend that a contract extension for the existing service is considered as a contingency to alleviate time constraints of outsourcing the service by proposed start date of 1 December 2017.</p>	
Community Support	N/A	N/A
Community Safety	N/A	N/A
Communications – residents	Voice of the Customer Plan is currently being composed for sessions with residents to understand what their engagement and communication priorities are for services.	Opportunity to manage expectations of service improvements deliverables and get insight into resident / service user priorities.
Contract & Client Management - Council currently has a fragmented Environment client and contract management team.	Curation of public realm team to manage all land management, green estate client and contract functions as reinforced in 5.11.	

Equalities Issues	N/A	N/A
Property - Managing Chalvey Transfer Station permits transfer.	SBC have begun process of assessing current permits and licenses for viability of transfer to new contractor or into the Council under waste management.	N/A
Procurement - Composition of most inviting and innovative lot packaging and batching to stimulate the market and ensure competitive pricing mechanisms (known as Lot 3) has been lost if Waste Treatment is outsourced separately to Environmental Services.	Waste treatment to be procured using competitive dialogue to ensure a robust engagement with the industry to maximise value for money and avoid hidden costs.	
<b>Outsourcing Specific Risks</b>		
Consultation - Under s20 of the Landlord and Tenant Act 1985 the landlord of any premises is under a duty to undertake a process of statutory consultation before undertaking "qualifying works" or entering into a "qualifying long term agreement".	A section 20 for outsourcing has already been completed.	
Employment Issues - Status of TUPE as a result of second generation outsource contract	Internal legal team to liaise with Berkshire Pensions Team and Financial Appraisal to consider pension stretch.	Ensures full disclosure to potential contractors during dialogue stages. Need to ensure that management team migrate into new contractor to mitigate 'knowledge loss'.
Financial - Market changes might mean that savings are made on some services but that increases are felt in other areas negating overall efficiencies.	Savings are projected from rebasing the contract costs through a competitive tender scenario.  When additional savings are required then service changes and their respective scaling can drive further efficiencies.	Opportunity to rebase the contract and financially benchmarking with new contractor performance related mechanism.

<p>Financial – reprocurement costs could exceed the approved 'transformation' funding</p>	<p>Unlikely: Clearly specified and procured external and technical expertise, robust monitoring and control by Environmental Strategy &amp; Governance Manager.</p> <p>Delivering the reprocurement milestones on time. Timely and appropriate escalation and resolution of 'blockages' or major issues with clearly defined workstreams. This is dependent on project being properly resourced.</p>	
<p>Financial (any outsourcing) – The contract price exceeds available budgets/funding</p>	<p>PQQ clearly identifies outcomes, pricing mechanism and savings targets.</p> <p>Financial evaluation and dialogue with bidders clearly identifies contract price and potential variations.</p> <p>Contract documentation clearly identifies 'risks', contract variations, change mechanisms, indexation etc.</p> <p>Clienting function and monitoring systems are robust, clearly resourced and effective to ensure that the contractor meets outcomes, outputs, performance targets and financial targets.</p>	<p>N/A</p>
<p>Timetable for delivery (outsourcing Environmental Services)</p> <p>Timeline to deliver both Waste Treatment &amp; Environmental Services contracts through Lot 3 is no longer a viable option.</p> <p>Significant risk. Due to delay of the publication of the OJEU notice there is now a significant risk that the outsourcing cannot be completed within the existing timetable without there</p>	<p>Timetable for delivery is based on no service changes and has fully mobilised internal project management and task &amp; finish resources.</p> <p>If Council are to outsource services then it is recommend that a contract extension for the existing service is considered as a contingency to alleviate time constraints of outsourcing the service by proposed start date of 1 December 2017.</p>	<p>Will ensure highest level of project management available to project. Will ensure that clients are in a position to have oversight of contract.</p> <p>Oversight from the Project Management Office for Corporate accountability.</p>

<p>being a major risk on the mobilisation for the contract and ergo total service failure on 1 December 2017.</p>		
<p><b>Insourcing Specific Risks</b></p>		
<p>Legal - Best Value Duty under the 1999 Act - the Council will need to be satisfied it is best value to bring the service in house otherwise the Council's decision could be susceptible to challenge on judicial review grounds.</p>	<p>Appendix B details a financial appraisal of the best route for the Council over the strategic horizon period of ten years with the strongest overall Maximum Net Benefit.</p> <p>This initial appraisal is provided in Appendix B.</p>	<p>A dedicated legal note outlining activities to be undertaken currently in composition.</p>
<p>Legal – Under Best Value Duty under the 1999 Act there is a requirement to consult about major changes in service provision under the 1999 Act.</p>	<p>The Council will ensure and deliver required consultation as outlined under the Act.</p>	<p>Dedicated legal note outlining potential activities to be undertaken currently in composition.</p>
<p>Communications – Unions</p>	<p>If service are to be brought in-house then a dedicated Union engagement programme will be introduced led by the Strategic Director, Customer &amp; Community Services.</p>	<p>Opportunity to redraft Local Agreement</p>
<p>Consultation - Under s20 of the Landlord and Tenant Act 1985 the landlord of any premises is under a duty to undertake a process of statutory consultation before undertaking “qualifying works” or entering into a “qualifying long term agreement”.</p>	<p>The proposal to bring the service in-house does not constitute “qualifying works” (as these are not works to premises) or a “qualifying long term agreement” (since the service will be provided by the Council's employees).</p> <p>If the Council instead sets up a Teckal company to provide services and lets the contract to that company then this will constitute a qualifying long term agreement and the obligations to undertake s20 consultation will apply.</p>	<p>This has implementation issues for the delivery of services by the 1st December 2017.</p>
<p>Employment Issues - Status of TUPE as a result from insourcing</p>	<p>Internal legal team to liaise with Berkshire Pensions Team and Financial Appraisal to consider pension stretch.</p>	<p>Ensures full disclosure from contractor to Council to consider pension stretch implications.</p>

Employment Issues - major gaps in skills and capacity.	Organisational Development & Human Resources will need to profile training and development programmes for any new staff.	Early engagement with contractor to outline skills analysis, skills gap, training requirements and likely personnel loss rate.
Employment Issues – temporary workers & sickness absence – workforce flexibility	With an insourced provision sickness absence still needs to be covered at additional cost whereas would normally be absorbed by outsourced contractors resource pool	
Environmental Performance - Increased carbon management footprint and asset maintenance responsibly	Provides greater control over services to ensure that carbon and energy are calculated, captured and recorded.	
Financial (insourcing of Environmental Services) - Market changes might mean that savings are made on some services but that increases are felt in other areas negating overall efficiencies.		
Financial – insourcing costs will exceed the approved 'transformation' funding	Definite: There will be an additional resource requirement for the provision of insourcing Environmental Services – this figure is anticipated to be an additional £400,000 due to increased legal and professional services costs.	To be netted off NPV value surplus and requested through Transformation Board.
Financial - Providing the In House service offers no competition.	The Council would need to identify an appropriate Council(s) to bench mark the services to evaluate performance and VfM.  The Council can use APSE benchmarking and create its own relevant monitoring and evaluation.	
Health and Safety – if service is insourced then Health and Safety accountability of Council will increase significantly	Fully engage Health and Safety department to ensure full scale viability and support into proposed Insource programme.	N/A



Procurement / Contract Management	Council will have to develop ways to challenge the way in which it an internal delivery vehicle provides its services.	Use of refined 'Ethics wall' for contract / client management of in-house service.
Procurement – Flexibility of Public Procurement Regulations to provide diverse and ad hoc equipment for in-house provision of services	Procurement of services on ad-hoc basis and novation of Service Level Agreements	
Project Capacity - Limited contingency arrangement and contingencies to introduce at the point of transfer to guarantee service delivery	Dedicated project management team with strategic oversight and reporting processes to senior management and commissioner(s) and Cabinet members.	
Project Capacity - Inadequate management structure, capacity and skills in place to prepare and deliver an in-house service	Restructured departments to align capacity and skills	
<p>Timetable for delivery</p> <p>Timelines are very tight to deliver insourcing Environmental Services contracts and there will be an implication on resources.</p> <p>Significant risk. Due to delay of the publication of the OJEU notice there is now a significant risk that the insourcing can not be completed within the existing timetable without there being a major risk on the mobilisation for the services on 1 December 2017.</p>	<p>Timetable for delivery is based on no service changes and has fully mobilised internal project management and additional task &amp; finish resources as identified in 4.a)</p> <p>If Council are to insource services then it is recommend that a contract extension for the existing service is considered as a contingency to alleviate time constraints of insourcing the service by proposed start date of 1 December 2017.</p>	Oversight from the Project Management Office for Corporate accountability.

(c) Human Rights Act Implications

There are no Human Rights Act Implications.

(d) Equalities Impact Assessment

N/A

5. **Supporting Information**

- 5.1 As a Unitary Council Slough Borough Council is responsible for collection, management and disposal of all municipal waste generated within the borough and all street cleaning, gully and channel sweeping, litter picking and detritus sweeping operations within the borough, grounds maintenance in public spaces including parks, cemeteries and open spaces and highway maintenance including winter maintenance. The Waste Collection / Management, Street Cleaning, Grounds Maintenance and Highways reactive work functions for Slough Borough Council is delivered by Amey under the Environmental Services contract which runs until November 2017
- 5.2 The waste management, street cleaning, green estate, highways and transport service managers have been through a dedicated commissioning process whereby the preferred contract delivery vehicle and service batching was appraised and assessed against critical criteria. This included feedback from the market through a soft market testing day undertaken in January 2016.
- 5.3 The PRETH (Public Realm, Environment, Transport and Highways) sub-commissioning group was formed in June and met fortnightly to discuss and create scopes for the respective services. The PRETH group reported to the Contract Re-provision Board in October 2015 that it did not recommend bringing the service in-house which was reinforced in March 2016. This was primarily due to lack of political appetite and the need for immediate 30% savings to be delivered as a primary outcome.
- 5.4 However, the PRETH group did state the second generation outsource would ensure that the client teams delivery succession planning in filling the gaps identified. This is to ensure that an 'in-house bid' has greater potential after the conclusion of the second generation outsource term.
- 5.5 A reinvigorated consideration for provision of 'In-house services' as a result in a change of political leadership has reinforced the need for a revised assessment of the 'in-house provision' option for the Council. A greater emphasis on provision of commercial services, ability to identify and absorb risk as an Authority to mitigate excess cost and reduce overheads paid to the private sector has led to the compilation of the options appraisal in Appendix A.
- 5.6 The risks of providing an In-house service against the risk of outsourcing the services to the market are reinforced in Appendix A and in Table 4b) above.
- 5.7 The two initial options are either an outsourced contractor through a single contract refined by service area or provision of an in-house service against which there are several options in terms of delivery vehicle.
- 5.8 The high level options appraisal for Insourcing and Outsourcing of Environmental Services is provided in Appendix A. Appendix B identifies the options appraisal for if insourcing the service for either bringing the service in as a DSO (Direct Services Organisation also known as a DLO – Direct Labour Organisation) or a Teckal Company.

- 5.9 Overview & Scrutiny Committee are requested to review, comment and feedback on the information provided in Appendices A and B and give due consideration to any additional information that might need to be considered by Cabinet not currently encapsulated within these reports that may or may be not of an influential nature in terms decision making.
- 5.10 The options appraisals are aggregated across several key areas including risk (including health and safety), ability to deliver against finance (cost savings), IT, contract monitoring, ability to improve performance and management and timetables for delivery.
- 5.11 If are requested to decide if the Council are to pursue a Direct Services Organisation or a Teckal company. This high level options appraisal for Direct Services Organisation or Teckal company is provided in Appendix B.
- 5.12 Irrespective of decision all budgets for the services to be collocated from 2016/17 and under the single financial and strategic overview of a waste & environment and dedicated public realm client. This includes street cleaning, grounds maintenance, parks and open spaces (and all ancillary provisions), rights of way, playgrounds and highways land management budgets.
- 5.13 The dedicated contract management and client function will be responsible for all strategic, financial and service delivery decisions (including direction and instruction to act) and will be curated and responsible for performance, finance and strategic management of either the contractor (outsourced) or DSO / Teckal Company (insourced) and allows for the ability of the organisation to pro-actively manage the relationship based on a thorough understanding of the overall end-to-end process.
- 5.14 The dedicated contract management and client function will also focus on maximisation and enhancement of productivity including compilation and co-authoring of business and profit plans with either the outsourced or insourced service provider, service provision and planning and delivering future service changes in accordance with the dictates of the respective service. Cabinet are to note the increase costs of client monitoring as a result of insourcing as denoted in Appendix A.
- 5.15 As a result of the timetable implications as denoted in Appendix B Cabinet is requested to delegate necessary powers to the Strategic Director, Customer & Community Services for an option to extend the existing contract as a contingency in the event that due to unforeseen circumstances new arrangements are not finalised prior to the existing contract termination date.
- 5.16 Key Service Delivery Options appraisal for Direct Services Organisation or Local Authority Teckal company and Financial Delivery Options Appraisal for Outsourcing, Teckal company and DSO with workforce variations contains the resource and timetable delivery implications of each potential insource option. Based on the ability to provide the Best Value for the Council as outlined in the financial appraisal then it is recommended that Environmental Services and Highways are insourced as a Teckal Company.

5.17 If insourced as a Teckal company then the company would be limited by shares or a company limited by guarantee. In a company limited by shares, a council would make an investment into the company and, in return, would have shares issued to it. In this type of company, any profits made can be distributed to the shareholders – in this case the Council. This type of company is therefore the most common for trading activities whereas companies limited by guarantee are often used where profit is not the main motivator as profits cannot be distributed to the shareholder(s). As Teckal companies can be either form then the initial recommendation would be that the company would be limited by shares with the Council as the sole shareholder.

## 6. **Comments of Other Committees**

None.

## 7. **Conclusion**

A commercially astute Council can react, absorb and mitigate risk, provide a direct, transparent and accountable service to residents and can create a roadmap for income generation which can be delivered through an in-house Teckal company.

A Council which wishes to mitigate the significant risks associated with these services, expunge workforce related issues and harness private sector investment and wider resources provision would pursue an outsourced service.

This report presents the options available and the associated risks and opportunities encapsulated within the key consideration of Best Value for the Council over a ten year period.

The Overview and Scrutiny Committee is requested to take note and comment on the proposed and preferred contract vehicles and services scopes.

Overview & Scrutiny Committee are requested to review, comment and feedback on the information provided in Appendices A and B.

Furthermore, they are requested to review the recommendation that if the service is agreed to be brought in-house that the recommendation be for the Teckal Company vehicle.

## 8. **Appendices Attached**

‘A’ - Options appraisal for Insourcing and Outsourcing of Environmental Services

‘B’ - Key Service Delivery Options appraisal for Direct Services Organisation or Local Authority Teckal company and Financial Delivery Options Appraisal for Outsourcing, Teckal company and DSO with workforce variations

## 9. **Background Papers**

None.