

Grounds Maintenance Contract

For Cabinet on 13 January 2022

Summary

Lead Member: Councillor Jane March Portfolio Holder for Culture and Leisure

Lead Director: Paul Taylor Director of Change and Communities

Head of Service: Gary Stevenson Head of Housing, Health and Environment

Report Author: Nigel Bolton Interim Service Manager

Classification: Partially Exempt from Disclosure – Appendix A exempt by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended): Information relating to the financial or business affairs of any particular person (including the authority holding that information).

Wards Affected: All

Approval Timetable	Date
Management Board	5 January 2022
Portfolio Holder	13 December 2021
Communities CAB	11 January 2022
Cabinet	13 January 2022

Recommendations

Officer / Committee recommendations as supported by the Portfolio Holder:

1. That Cabinet give the Head of Housing, Health and Environment delegated authority to enter into a further 2-year contract extension with Tivoli to end 31 December 2024 in consultation with the Council's Monitoring officer and Section 151 Officer.
2. That Cabinet give delegated authority to the Council's Monitoring Officer and S151 Officer to undertake all legal and financial requirements necessary to complete the extension of the Grounds Maintenance Contract.

1. Introduction and Background

- 1.1 The grounds maintenance services for the Council's parks, open spaces, sports grounds, recreation areas and cemetery and crematorium grounds are carried out under the terms of a Grounds Maintenance (GM) contract.
- 1.2 The GM contract was awarded to Sodexo in 2010 and was due to end on 31 December 2021. Sodexo sold their horticultural division to Tivoli Group Ltd and in March 2021 Cabinet decided that the GM contract could be novated to Tivoli and that the contract would be extended to 31 December 2022.
- 1.3 A review has been carried out of the Council's options for delivering the service from 1 January 2023. This review included the engagement of specialist GM consultants through Waste Consulting LLP (WCL) to assess cost impacts of the specification, the current GM market, improving sustainability and outline options for service delivery.
- 1.4 Consideration has been given to establishing if there are additional sports clubs or other interested organisations that would be interested in managing and operating their own facilities. There are some existing arrangements in place where clubs maintain outdoor facilities on Council land. Currently Tunbridge Wells Football Club lease the Culverden Stadium, TW Croquet Club lease land at Calverley Grounds and Tunbridge Wells Tennis Club lease land at the Nevill Ground. There are ongoing discussions with Tunbridge Wells Rugby Club and Foresters Football Club with a view to them managing and operating St. Marks Recreation Ground (the rugby club already own a substantial area of the adjacent land) and Bayham Sports Pitches respectively.
- 1.5 The current contract with Sodexo/Tivoli includes the majority of the service specification. Around 10% of the service specification by value is undertaken by smaller local contractors. These works include arboriculture and some playground and other infrastructure maintenance. The opportunity to explore the feasibility of breaking the service specification into smaller Lots to attract local contractors is explored later in this report.

2. Consultation

- 2.1 All key stakeholders were contacted earlier in the process to review the updated specification and 10 returned comments. In general, the comments from friends groups and sports clubs centred around the current service provision and raising of standards.

- 2.2 In addition 30 sports clubs, friends groups and other interested parties were invited to take part in a consultation exercise which ended on 2 November 2021.
- 2.3 There were 19 responses from organisations. Out of these responses eight confirmed that they would be interested in managing or operating the facility they currently use by having a lease or licence.
- 2.4 A supplier engagement process was held in October 2021 open to organisations of all sizes which resulted in five submissions one of which was from an organisation based in the Borough. The conclusion of this process was that moving to a full tender at this stage would likely see a poor level of response and a high likelihood of significant cost increases for the service.

3 Findings from the WCL Report

- 3.1 WCL have a specialist grounds maintenance team and they were engaged to advise the Council on cost impacts of the specification, the current GM market, improving sustainability and outline options for service delivery. A copy of the WCL report can be found at Exempt Appendix A
- 3.2 WCL reviewed the original bid made by Sodexo in 2009. They have also estimated the cost of the work taking into account that the Sodexo bid which included an offer of a 1.5 percentage point deduction from the RPI annual indexation and the potential future costs.
- 3.3 WCL confirmed that the proposed service specification is fit for purpose and would deliver an acceptable level of service. Any further reduction of the specification would rely on changes to management plans and reliance on voluntary labour. Service reduction will need key and contentious decisions balancing statutory obligations against visual or desirable elements (such as sports provision and seasonal bedding) which would impact on what service users have come to expect.
- 3.4 There has been a consolidation of the UK's ground maintenance market since 2013 with the number of contractors reducing from 12 to 7. Local authorities have been extending contracts beyond previous extension dates where costs and budgets are aligned or have been taking services in-house.
- 3.5 WCL concluded that continuing to externalise the service via a contractor would overall be lower cost and have certainty of cost while an in-house provider can provide greater flexibility.

Sustainability and Carbon Reduction

- 3.7 There are some established processes in place within the GM industry that are reflected in the service specification including weed control, use of biofuel, recycling and use of green waste, management of large grass swards and tree planting.
- 3.8 It is possible for contractors to utilise battery handheld and pedestrian equipment but the initial cost is three to four times higher than petrol equivalents.
- 3.9 There is currently little or no availability of large non fossil fuelled plant, grass cutting equipment or vans with an adequate towing weight however it is expected that more of this type of equipment will come to market during the next few years.
- 3.10 Any future tender process will require bidders to specify costed plans for reducing carbon emissions and operating in a sustainable manner. The invitation to tender will also require bidders to provide environmental management plans which must include site specific details for the delivery of the service.

4 Options Considered

- 4.1 The following options have been identified together with the advantages and disadvantages of each. This is followed by a comparison of the estimated cost of each option.

Option 1 - Do minimum by extending current contract by a further 2 years

This option would be a continuation of the service currently provided by Tivoli. Discussions have progressed with Tivoli on the option to extend for a further two years (to end 31 December 2024) and this will be in the region of 1.5% plus RPI per annum.

Advantages:

- 1) Locks in the lowest cost option giving financial certainty.
- 2) Creates capacity to allow for discussions with more community partners on the potential to transfer service responsibility.
- 3) Allows time for the Council to establish pandemic, climate and financial impacts on extent and specification of service that will be required in the medium to longer term.
- 4) Certainty over emerging projects from sports strategies and Local Plan would be in place before a longer term contractual arrangement is made.
- 5) Carbon reduction measures could be introduced although they would likely require Council funding.

Disadvantages:

- 1) Flexibility to change specification during the short term life of the extension is limited.

Option 2 - Single contractor to provide the majority of the grounds maintenance service (current model).

This option is the current method that the Council uses to provide its grounds maintenance service. The majority of works are included in one contract but some ad hoc works are carried out by smaller local contractors. These ad hoc works include arboriculture and repairs/maintenance to equipment and infrastructure.

Advantages:

- 1) Economies of scale in the procurement and use of plant and equipment.
- 2) Contractor responsible for variable financial aspects such as staffing, materials and fuel costs.
- 3) Economies of scale in matching workforce to tasks.
- 4) Access to corporate specialist advisors to contribute to horticultural, sports maintenance and administrative functions such as health and safety.
- 5) Council can continue to use small local contractors to carry out some ad hoc works such as arboriculture, specialist maintenance and improvement projects.
- 6) Specification can be increased or decreased during term of the contract through variation orders.
- 7) Contract cost provides certainty for budget management.
- 8) Majority of risks sit with the contractor.

Disadvantages:

- 1) Council must provide a contract management role.
- 2) Performance is only as good as the local manager and staff provided by the contractor.
- 3) If the contractor fails then it affects the majority of the service.
- 4) Cost of variation orders may be disproportionate to the change in service.
- 5) Contract cost will include private sector profit and contribution to overheads.

Option 3 - Single contractor to provide the entire grounds maintenance service.

This would result in some additional ad hoc works being included in the specification that are not included in option 1 above.

Advantages:

- 1) Economies of scale in the procurement and use of plant and equipment.
- 2) Contractor responsible for variable financial aspects such as staffing, materials and fuel costs.
- 3) Economies of scale in matching workforce to tasks.

- 4) Access to corporate specialist advisors to contribute to horticultural, sports maintenance and administrative functions such as health and safety.
- 5) Specification can be increased or decreased during term of the contract through variation orders.
- 6) Contract cost provides certainty for budget management.
- 7) Majority of risks sit with the contractor.

Disadvantages:

- 1) Council must provide a contract management role.
- 2) Performance is only as good as the local manager and staff provided by the contractor.
- 3) If the contractor fails then it affects the entire service.
- 4) Cost of variation orders may be disproportionate to the change in service.
- 5) Cost of ad hoc works likely to be higher than current due to tenderers uncertainty on volumes.
- 6) Contract cost will include private sector profit and contribution to overheads.
- 7) Additional on-cost if the contractor sub-contracts labour in more specialised areas.

Option 4 - Split contract and engage smaller local contractors

This option relies on the specification being split into tranches to attract smaller and perhaps local contractors to bid.

Advantages:

- 1) Potential for increased support to the local economy.
- 2) If one contractor fails the entire service does not fail.

Disadvantages:

- 1) Increased level of activity and complexity to manage the contracts which would in turn increase the Council's contract management costs.
- 2) Splitting the contract by function would lead to multiple contractors working on the same sites.
- 3) Splitting the contract geographically would result in multiple contractors employing similar specialist staff.
- 4) Uncertainty of the effect on current staff as any TUPE arrangements would be complicated.
- 5) Deployment of plant and machinery would be inefficient as it would not be used over the entire service.
- 6) There would be no economies of scale.
- 7) Ability to redeploy staff to deal with urgent priorities would be limited.
- 8) Small contractors at greater risk of take over by large operators.
- 9) No comparator has been identified where a similar service has been provided using smaller contractors.

- 10) WCL reviewed the market local to Tunbridge Wells and were unable to identify contractors that may be suitable to undertake the work.

Option 5 - Provide the Service In-house (DSO)

This option would require the Council to accept the TUPE transfer of the existing contractors staff, recruit to any vacant posts and purchase or lease plant and equipment.

Advantages:

- 1) There would be no client contract management costs.
- 2) Increased flexibility in making changes to the specification during the contract term.
- 3) Staff would be employed on the Council's terms and conditions.
- 4) Council already owns its depot facilities

Disadvantages:

- 1) Cost of the Council employing staff is higher than the private sector for example pension costs and the difference in weekly working hours (37 hours for Council versus 40 hours for private sector).
- 2) Council would have to budget for capital or lease costs for plant and machinery without the advantage of national purchase agreements.
- 3) Council would be taking higher financial risk on variables such as staffing, fuel and materials.
- 4) Council support services would require additional capacity for instance HR, Payroll, H&S and Finance.
- 5) The Council will need to recruit senior staff who are experienced in setting up and managing DSO's.
- 6) All reputational risk for the delivery of the contract will sit with the Council.
- 7) Timescale not sufficient to develop a business case and mobilise the works.

Option 6 - In-house LATC

This option would require the setting up and management of an arm's length trading company that would employ staff outside of the terms and conditions that apply to current Council staff.

Advantages:

- 1) Council can award services to a LATC through a Teckal exemption saving the need for a procurement process
- 2) Staff conditions (including pensions) remain the same as the previous employer.
- 3) Can generate external income (as long as 80% of activities are with the Council).

- 4) Council retains control of service activities and therefore changes do not need to be negotiated through a contract.
- 5) A LATC can develop a more commercial culture and approach to HR and Finance.

Disadvantages:

- 1) The Council would have to recruit senior staff to establish, operate and manage the LATC
- 2) Establishment of a company board and governance structure.
- 3) Capital investment would require funding.
- 4) Community and political pressure may require the Council to employ staff on the same terms and conditions as Council Staff (LATC2)
- 5) More complicated than a DSO and not viable from a management and financial aspect due to low value of contract.

Option 7 - In-house LATC2

This option would require the setting up and management of an arm's length trading company that could employ staff on higher terms than the current contractor including using the same terms and conditions as existing Council staff.

Advantages:

- 1) Council can award services to a LATC through a Teckal exemption saving the need for a procurement process
- 2) Can generate external income (as long as 80% of activities are with the Council).
- 3) Council retains control of service activities and therefore changes do not need to be negotiated through a contract.
- 4) A LATC can develop a more commercial culture and approach to HR and Finance.

Disadvantages:

- 1) The Council would have to recruit senior staff to establish, operate and manage the LATC
- 2) Establishment of a company board and governance structure.
- 3) Capital investment would require funding.
- 4) There would be additional staffing costs compared to the LATC in option 5.
- 5) More complicated than a DSO and not viable from a management or financial aspect due to low value of contract.

Option 8 - Partner with another Council to procure a contractor

This option would require the Council to identify a nearby local authority who wanted to provide a similar service within the same timescales.

Advantages:

- 1) Increased value for money/economies of scale.
- 2) Shared overheads.
- 3) Improved resilience.
- 4) Increased negotiating power.
- 5) Shared risk.

Disadvantages:

- 1) Identifying a partner who is geographically close and has the same timescales for procurement.
- 2) Differing aims and objectives and/or political priorities.
- 3) Failure due to lack of shared vision/poor communication/reporting/decision making.

Financial Comparison of Options

4.2 The costs in the table below were either identified in the WCL report or have been estimated using assumptions in the WCL report except for Option 1 which was introduced after their report had been completed.

Option	Description	Estimated Annual Cost	Add Hoc Works (Based on 2019/20)	Client Cost	Total Cost	Comments
1	Extend current contract	1,095,000	132,000	50,000	1,277,000	
2	Single contractor provides majority of service (as now)	1,288,000	132,000	50,000	1,470,000	
3	Single contractor provides entire service	1,420,000	0	50,000	1,470,000	
4	Service split into smaller lots and awarded to local contractors	1,633,000	0	88,000	1,721,000	Estimated cost based on option 3 plus 15% for loss of economies of scale. Client cost increased due to quantity

						and complexity of monitoring
5	In house (DSO)	1,588,000	0	0	1,588,000	Annual cost includes WCL estimate plus ad hoc works plus £80k additional management cost
6	LATC	1,500,000	0	0	1,500,000	Annual cost includes WCL estimate plus ad hoc works plus £110k additional management and company support
7	LATC 2	1,654,000	0	0	1,654,000	Annual cost includes WCL estimate plus ad hoc works plus £110k additional management and company support
8	Partnership with another Council	1,349,000	0	50,000	1,399,000	This assumes that the partnership is to procure a contractor and that there is a 5% reduction due to economies of scale

4.3 It has been assumed that the Council would continue to retain income as it does now. The income in the last full year, 2019/20, was £251,897.

4.4 The figures that have been used by WCL are high level and actual costs will only be known once the procurement process has been completed.

5 Preferred Option and Reason

5.1 The preferred option is Option 1 – extend the current contract with Tivoli for a further two years beyond the one year extension already agreed. This is the

lowest cost option, gives the Council certainty of cost over the next three years, minimises risk for the Council, provides time for the market to settle, allows further discussions to take place regarding sections of the specification being transferred to existing clubs and allows capacity for a further supplier engagement exercise to take place to ascertain the appetite for smaller Lots.

6 Consultation on Options

- 6.1 A project team drawn from officers across the Council have been working on the procurement process and have included representatives from Finance, HR, Legal, Property and Procurement.
- 6.2 An informal briefing was held with Leaders of all groups on 24 November 2021. Group Leaders supported the principle that the Council should extend the contract with Tivoli for a further two years to a) give certainty of cost; b) allow further time to explore disaggregating the contract into smaller lots; c) allow further time for engagement with local clubs and d) allow the market to settle.

Recommendation from Cabinet Advisory Board

The Communities Cabinet Advisory Board were consulted on 11 January 2022 and agreed the following:

A verbal update will be given at the meeting.

7 Implementation

- 7.1 A deed of variation will be issued to extend the current contract until 31 December 2024.

8 Appendices and Background Documents

Appendices:

- Exempt Appendix A: Exempt WCL Report

9 Cross Cutting Issues

A. Legal (including the Human Rights Act)

Once the contract has been novated to Tivoli (the Council has executed the Deed to do this and are awaiting Tivoli's executed documents), the Council can vary the contract to allow an up-to five years extension period.

Lucinda MacKenzie-Ingle. Team leader MKLS 21 December 2021

B. Finance and Other Resources

To follow

C. Staffing

To follow

D. Risk Management

There are no significant risk management issues.

E. Environment and Sustainability

Whilst the reasons for extending the contract for a further two years is acknowledged, it is essential that this extension in time is used to fully explore the opportunities for carbon reduction and how to mitigate the biodiversity emergency. This will need to include engaging early with future providers to advise that as from start of any new provision, starting in January 2025, meeting the Council's ambition to be carbon neutral and reducing the impact of this service provision on the local environment will be a key aim.

The Council's Corporate Carbon Descent Plan and the Laser report identify the grounds maintenance contract as contributing around 2% to the overall carbon emissions of the Council, based on 2018/19 data. Whilst this is a small percentage, given the importance of aiming to reduce as much of the Council's emission as possible it is critical to review and implement reductions in as many areas as possible.

The modelling undertaken as part of developing the carbon descent plan included the emissions for the Grounds Maintenance contract. These were assumed to abate in a linear

fashion from current levels to net zero over the course of the next contract, with this having been built into the tender specifications at contract renewal in 2021. As this is now not expected to be the case it is important to recognise that a step change in emissions from current levels to nearer net zero carbon will be required at contract renewal in 2025.

The reasons for this are a recognition that as stated in the [IPCC's sixth assessment report](#), released 9th August 2021, which makes clear that rapidly cutting CO2 emissions to net zero, while making major cuts to other greenhouse gases such as methane, is the only way to avert the worst impacts of climate change.

Karin Grey 20 December 2021

F. Community Safety

No community safety issues are expected to arise as a result of this report

Terry Hughes, Community Safety Manager, 28/10/2021

G. Equalities

There is no apparent equality impact on end users resulting from the recommended option set out in the report.

Ingrid Weatherup, Corporate Governance Officer, 22 December 2021

H. Data Protection

There are no data protection considerations resulting from the recommended option set out in the report.

Ingrid Weatherup, Corporate Governance Officer, 22 December 2021

I. Health and Safety

The TWBC Parks team have competent contract monitoring officers who ensure that the contractor is working to legal requirements and do not put persons, or the council at risk through its operations. Potentially the more interaction that TWBC may wish to take in the day-to-day operations if the grounds maintenance operation the more legally and financially liable they may be in the event of any incidents that may occur.

Mike Catling, Corporate health & Safety advisor, 16 December 2021

J. Health and Wellbeing

There are no health and wellbeing implications.

Rebecca Bowers, Health Improvement Team Leader, 1 November 2021