

## CABINET

19<sup>th</sup> September 2017

### FUTURE PROVISION OF BUILDING CONTROL SERVICES

#### Report of the Director for Places

Strategic Aim:	Sustainable Growth	
Key Decision: Yes	Forward Plan Reference: FP/190517	
Exempt Information	No	
Cabinet Member(s) Responsible:	Councillor Oliver Hemsley, Deputy Leader and Portfolio Holder for Growth, Trading Services and Resources	
Contact Officer(s):	Helen Briggs, Chief Executive	01572 758201 hbriggs@Rutland.gov.uk
	Andrew Edwards, Head of Property Services	01572 758391 aedwards@Rutland.gov.uk
Ward Councillors	All	

#### DECISION RECOMMENDATIONS

That Cabinet:

1. Authorise the Head of Property Services in consultation with the Portfolio Holder for Growth, Trading Standards and Resources , the Director for Resources and Peterborough Legal Services to agree and finalise terms in respect of either a Joint Service Provision (Option 3) or Delegation of Responsibility to another Authority (Option 4) subject to the development of a viable business case.
2. Authorise the Head of Property Services in consultation with the Portfolio Holder for Growth Trading Standards and Resources, the Director for Resources and Peterborough Legal Service to agree and finalise the selection criteria for a new service provider and run a tender process to choose a preferred supplier, subject to acceptable tenders(Option 5). This option will only be pursued if Options 3 and 4 are not viable but given the timescales will run concurrently with other activities.
3. Authorise the Head of Property Services in consultation with the Portfolio Holder for Growth, Trading Standards and Resources , the Director for Resources and Peterborough Legal Services the authority to extend the existing contract (Option 2) for up to three years if Options 3, 4 or 5 are not viable or have not been finalised within the necessary timeframe.
4. Authorise the Head of Property Services in consultation with the Portfolio Holder for Growth, Trading Standards and Resources , the Director for Resources and Peterborough Legal Services to enter into a contract to pursue whichever option ultimately provides the best value for money for the Council

## **1 PURPOSE OF THE REPORT**

- 1.1 To ensure that the Council has in place the necessary capacity and capability to deliver the Business Control function required by statute.
- 1.2 To seek Cabinet approvals as set out in the recommendations above. The approvals requested will ensure that the contract can be placed with the minimum of delays.

## **2 BACKGROUND AND MAIN CONSIDERATIONS**

- 2.1 There is a statutory requirement for the Council to provide the Building Control function. This does not need to be undertaken in-house and can be provided by others via outsourcing either through a contract as at present or through joint working with another Council or Councils.
- 2.2 The primary function of Building Control is to ensure that new or refurbished buildings comply with the Building Regulations. These are a set of standards set by central government and cover all aspects of a building. All new and refurbished buildings must comply with Building Regulations.
- 2.3 There is no requirement for any party to use the Council's Building Control service and individuals or companies can use Approved Inspectors (AIs). These are appointed by the party undertaking the works. They are responsible for ensuring that the works comply with Building Regulations and issuing the necessary certification to the Local Authority.
- 2.4 In addition the Council's Building Control service also reviews dangerous structures. This can involve a proactive approach where the condition of structures which are known to be at risk are regularly reviewed and where necessary action taken. It can also involve a reactive approach where support is provided 24 hours a day to emergency services when a structure is considered to be unsafe.
- 2.5 Since the 1<sup>st</sup> April 2014 this function has been undertaken by Rutland Building Consultancy (RBC). The end date of their contract is the 31<sup>st</sup> March 2018. The contract has already been extended by one year and the contract provides the potential for the contract to be extended for a further 3 years
- 2.6 Since it could take up to six months to put in place a replacement contract consideration has to be given now as to the way forward.

## **3 OPTIONS**

- 3.1 There are number of options to be considered:

### **3.1.1. Option 1: Do nothing**

This would involve the Council not providing this service. By law, the Council must offer a building control service.

### **3.1.2 Option 2: Extension of the existing RBC contract**

As briefly outlined there is provision within the existing contract to extend for up to a further 3 years – until March 2021. Whilst this option would ensure continuity of

service with staff who know the area this would not allow for the cost of the service to be tested commercially at today's prices and would weaken our ability to demonstrate value for money for this work.

3.1.3 In addition Contract Procedural Rules [Para 20.3(f)] require that when the value of the Corporate Contract exceeds £500k Cabinet approval is obtained for an extension. Given that annual expenditure is approximately £120k (£480 by March 2018) the costs will exceed £500k during the Financial Year 2018/19.

### 3.1.3 **Option 3: Joint Service Provision**

3.1.4 An issue that this Council always faces is that the small size of the service gives very little scope to drive out economies of scale or to be attractive to the larger providers. The opportunity of a shared service with one of more Councils would allow the parties to drive out economies of scale in addition to ensuring that resilience is built into the service provision.

3.1.5 Discussions have taken place with Peterborough City Council (PCC) and East Midlands Building Consultancy (EMBC).

3.1.6 EMBC is a partnership of South Kesteven, Newark, Sherwood, and Rushcliffe. Whilst initial discussions were positive it has become clear that they have no desire to have an additional partner at the moment. Whilst they could provide a service it would require a formal tender which negates the benefits of partnership

3.1.7 It is clear from the proposals that PCC have put forward that RCC would be a junior partner in such a structure and the benefits and costs were not fully defined. Given the immaturity of their proposals there is a risk that any solution would not be in place by the 31<sup>st</sup> March 2018.

### 3.1.4 **Option 4: Delegation of Responsibility**

3.1.5 Another option would be to delegate responsibility to another Local Authority to undertake the works on our behalf.

3.1.6 This would be dependent upon a suitable Local Authority being prepared to undertake the works on our behalf. Whilst this may be a possibility it will involve a period of negotiation which, subject to identifying a suitable Local Authority, could take a number of months.

3.1.7 Given the immaturity of this there is a risk that any solution would not be in place by the 31<sup>st</sup> March 2018

### 3.1.8 **Option 5: Re-Tendering the Service.**

3.1.9 This option would involve retendering the service. The advantage of this approach is that we give all other parties (including EMBC & PCC) the opportunity of tendering for the works and that we can be assured that the rates are competitive.

3.1.10 The disadvantage of this approach is that given the small size of the service there may be little if any interest. Research has shown that after the last tendering exercise in spring 2014 only three companies submitted a bid.

3.1.11 In order for this option to be viable the Council needs to start the tendering process as soon as possible to ensure there is sufficient time for the process to be completed in line with the deadlines imposed by the existing contract.

#### **4 PROPOSED ACTION**

- 4.1 With the information available at present is it not clear which of options 2 to 5 will provide the best value for the Council. However, Option 5 has an additional time factor which means that unless work starts on this Option now, it will no longer be a viable option in any event.
- 4.2 Taking all of the above into account it is proposed that RCC move forward with Option 5. This will allow us to tender the works to ensure Value-for-Money for the authority. It is anticipated that Rutland Building Consultancy - the current holder of the contractor will submit a bid.
- 4.3 Should there be little or no interest from alternative suppliers then the option remains to extend the existing contract (Option 2) subject to Cabinet agreement for an additional 12 months until March 2019.
- 4.4 The proposal to proceed with Option 5 does not prevent the Council from pursuing other options. If a viable proposal in line with Options 3 or 4 comes forward then there is no reason why the Council cannot abandon Option 5 and proceed down one of these alternative routes. The time required to pursue Option 5 means that cabinet approval is required for this course of action now.
- 4.5 If a business case can be developed for Options 3 or 4 then Cabinet will be asked to delegate to the Head of Property Services in consultation with the Portfolio Holder – Finance and Places and the Director for Resources to enter into an agreement that either delegates authority to another Council for the provision of the Building Control Service or a Joint Service Provision.
- 4.6 Given the nature of this procurement, its non-contentious nature and timescales it is proposed that Cabinet provide full delegation to the Head of Property Services in consultation with the Portfolio Holder – Finance and Places and the Director for Resources to agree and finalise the selection criteria for the new service provider and subject to acceptable tenders appoint a new supplier.
- 4.7 If this proves to be untenable then the option to extend the existing contract for up to an additional 3 years will be considered.

#### **5 CONSULTATION**

- 5.1 Consultation has taken place internally with Senior Elected Members, Chief Officers, Legal Services, Welland Procurement and Finance

#### **6 ALTERNATIVE OPTIONS**

- 6.1 Alternative options are set out earlier in Section 3 of the report.

#### **7 FINANCIAL IMPLICATIONS**

- 7.1 This service is demand driven. Anticipated net income (surplus) for Financial Year 17/18 is circa £50k.

7.2 Other than a potential increase in net revenue income there are no financial implications. This service is already fully funded and contained within the existing budget.

## 8 PROCUREMENT PROGRAMME

8.1 Assuming that Cabinet agree to recommendations within this report an outline is identified below for a full tendering in accordance with EU procurement requirements.

Action	By Who	By When	Comments
Agree procurement approach	All	31/07/17	Underway
Draft Invitation to Tender documents inc. criteria and weightings	WProc	15/08/17	Complete
Draft OJEU notice	WProc	25/08/17	Complete
Approval for procurement	Cabinet	19/09/17	
Agree all procurement documentation	RCC	22/09/17	Complete
Publish OJEU notice	WProc	25/09/17	
Publish Contracts Finder/ Source Rutland notices	WProc	27/09/17	
Deadline for clarification questions	Bidders	13/10/17	
Deadline for responses to clarification questions	All	18/10/17	
Return date for tender	Bidders	31/10/17	
Tender evaluations (paper submissions)	All	10/11/17	
Clarification meetings (if required)	All	24/11/17	
Agree preferred bidder	All	01/12/17	
Issue notification of award	WProc	04/12/17	
Standstill starts		05/12/17	Please note that due diligence also happens during this period
Standstill ends		15/12/17	
Award contract	RCC	18/12/17	
Transition period		Jan-Mar 2018	
Contract commencement		1st April 2018	

## 9 LEGAL AND GOVERNANCE CONSIDERATIONS

9.1 The service will be acquired in accordance with Contract Procedural Rules and will follow the EU Procurement Rules.

9.2 Delegation of Authority to the Head of Property Services will ensure that alternative options can be considered whilst ensuring that the Council continues to provide a statutory service.

## 10 EQUALITY IMPACT ASSESSMENT

10.1 This report seeks approval to seek tenders and award a contract. Whilst not required at this stage an EIA will be completed later in the process when the preferred option becomes clear.

## 11 COMMUNITY SAFETY IMPLICATIONS

11.1 There are no Community Safety Implications

## **12 HEALTH AND WELLBEING IMPLICATIONS**

12.1 There are no Health and Wellbeing Implications

## **13 HUMAN RESOURCE IMPLICATIONS**

### **13.1 Pension Matters**

13.1.1 Employees are given protection by the 'Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) if the service in which they are employed changes hands. In effect their employment and any associated liabilities, legally moves from the old employer to the new employer.

13.1.2 Employees' pension rights are not directly protected by the TUPE Regulations. However, employers that participate in the LGPS should be aware of the legal position regarding staff TUPE transferring from their organisation to an external service provider (i.e. a Contractor) including obligations to ensure 'pension protection' going forward.

13.1.3 In cases of delegation to another LGPS Employer, pension protection can be achieved by ensuring that transferring staff have either:

- (a). Continuing access to Membership of the LGPS, or
- (b). Access to a pension scheme which has been certified by the Government Actuary Department (GAD) as being 'broadly comparable' to the LGPS.

13.1.4 Risk relates to liabilities and deficits which have already accrued or can accrue over the course of an agreement, regarding funding the provision of Members' LGPS benefits. RCC, as the Scheme Employer will need to decide whether any pensions deficit which there may already be in respect of the employees to be TUPE transferred will be retained by ourselves (i.e. the transferred service is to be treated as fully-funded); or any pensions deficit is to be transferred to the contractor.

13.1.5 It is assumed that the Council will not look to transfer any pension deficit which may exist (at this stage the Council is not aware of any deficit or what the level of it is) but given the number of staff involved this is not considered to be significant. Should the pension deficit remain with the Council this would be funded through ongoing contribution rates. Once staff have transferred the Fund Actuary may calculate a new Employer Contribution Rate - the charge made to a Scheme Employer of underpinning costs of providing the occupational pension scheme benefits provided by the LGPS not met by Member contributions and returns on Fund investments.

13.1.6 Given the likely number of staff transferring, it is unlikely that the Council's contribution rate would change significantly). A lump sum payment to clear any deficit is not required.

### **13 Transfer of Undertakings (TUPE)**

13.2.1 Two staff have the potential be directly affected by the proposals set out in this report depending upon the option selected. Assuming that either Options 3, 4 or 5 are selected it will be necessary to enter into formal consultation with the recognised Trade Unions and staff regarding a TUPE transfer. It is considered at

this stage that TUPE would apply. Staff have already been informally advised of the proposals.

13.2.2 Formal consultation on the proposal will take place when there is an agreement to proceed. Staff will be kept up to date during the tender process and in particular the development of the tender documentation.

#### **14 ORGANISATIONAL IMPLICATIONS**

14.1 Dependent upon the route selected there is the potential for a 2 staff to be subject to TUPE. If this is the outcome then any transfer will be conducted in accordance with current policy and legal requirements.

#### **15 CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS**

15.1 The proposals set out in this report will ensure that the Council can move forward with the procurement of a Building Control service whilst ensuring that we are still able to pursue other options.

15.2 The proposed delegations will ensure that RCC will be able to respond effectively to opportunities as they arise ensuring that a statutory service is provided at all times.

#### **16 BACKGROUND PAPERS**

16.1 There are no additional background papers

#### **17 APPENDICES**

17.1 There are no appendices

**A Large Print or Braille Version of this Report is available upon request – Contact 01572 722577.**