

GROWTH, INFRASTRUCTURE AND RESOURCES

SCRUTINY COMMITTEE

10th February 2022

MINERALS AND WASTE PLANNING ADVICE CONTRACT

Report of the Strategic Director of Places

Strategic Aim:	Sustainable Growth	
Exempt Information	No	
Cabinet Member(s) Responsible:	Mr I Razzell Cabinet Portfolio Holder for Planning, Highways and Transport	
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Ward Councillors		

DECISION RECOMMENDATIONS

That the Scrutiny Committee:

- 1.1 Notes the decision that has been made to award the contract to provide minerals and waste planning advice to the Council.
- 1.2 Comments on the arrangements set out in the report as to how the contract will be monitored to achieve the required performance and ensure value for money.

1 PURPOSE OF THE REPORT

- 1.1 This report has been produced following a request for the matter of the contract award for the provision of minerals and waste planning advice to be referred to the Scrutiny Committee for its consideration.
- 1.2 The Scrutiny Committee is requested to note that a decision has been made to award this contract in line with the Council's contract procedure rules and taking account of recommendations arising from an Internal Audit report on contract management.
- 1.3 In addition, the Scrutiny Committee is requested to consider comments on the

arrangements set out in the report as to how the contract will be monitored to achieve the required performance and ensure value for money.

2 BACKGROUND AND MAIN CONSIDERATIONS

2.1 Background to contract

- 2.1.1 Rutland County Council has an inter-authority agreement with North Northamptonshire to provide advice related to minerals and waste planning services. This covers both planning policy and development management and is supported by a Service Level Agreement (SLA). This agreement was originally with Northamptonshire County Council and transferred to North Northamptonshire Council following local government reorganisation.
- 2.1.2 The agreement commenced in 2014 and has been extended twice to coincide with delays in bringing forward the submitted and now withdrawn Local Plan.
- 2.1.3 The current agreement is due to cease at the end of January 2022.

2.2 Contract monitoring

- 2.2.1 The agreement monitoring arrangements worked well up to March 2019. At that time, the lead officer in fulfilling the requirements of the SLA from Northamptonshire County Council left the authority to join the Planning Inspectorate. Since that time, whilst most of the requirements of the SLA have continued to be delivered effectively, the service provider has struggled to fulfil a regular programme of site monitoring visits.
- 2.2.2 Coupled with the loss of the lead officer from the service provider, this coincided with a period of extreme pressure for the preparation of the Rutland Local Plan. At that time, the post of Planning and Housing Policy Manager was being undertaken through a shared service arrangement with South Kesteven District Council on the basis of 2 days a week. This post within the County Council was responsible for acting as the primary contact for the SLA.
- 2.2.3 The Cabinet portfolio holder and Director were kept informed of this situation; it was determined that re-procurement of the service would commence when the emerging Local Plan was completed to adoption. Unfortunately, circumstances meant that there were delays in the statutory consultation and subsequent submission of the Local Plan following the decision made by full Council in February 2020 to approve these. The plan was eventually submitted in February 2021 and was then withdrawn following the decision made by full Council in September 2021.
- 2.2.4 One outcome from the decision to withdraw the Local Plan was to enable commencement of the work on the re-tendering of the minerals and waste planning advice, to align with the preparation and timetable for the new Local Plan.

2.3 Internal Audit Review

- 2.3.1 In recognition of the contract management issues set out above, an Internal Audit review was undertaken in Autumn 2021. This was one of four contracts selected for review, with the purpose that the outcome of the review would assist in future procurement of the minerals and waste planning service.

2.3.2 Overall, the outcome of the testing for these four contracts was that the following overall assurance ratings have been given:

- Control environment: Good Assurance
- Compliance with controls: Good Assurance
- Organisational impact: Minor.

2.3.3 Recommendations were made by the auditor regarding the management of the minerals and waste planning service and the future re-procurement of this service; these are set out in Appendix 1. A medium priority was attached by the auditor in relation to their recommendations. These recommendations have been taken into account in the re-procurement of this service and will also be used to ensure future effective contract management.

2.4 Contract tendering process

2.4.1 Based on the expected contract value reflecting the current SLA, re-procurement has been undertaken under Rule 11 of the Contract Procedure Rules. Rule 11 requires that at least three written quotations should be obtained.

2.4.2 Six nearby minerals planning authorities were approached to quote against the service specification set in the request for quotations. Nearby authorities were approached due to the need to undertake the site monitoring visits required within the service specification; whereas the planning policy elements of the service specification are capable of being delivered at “arms-length”.

2.4.3 The procurement process was managed through the Welland Partnership to ensure transparency.

2.4.4 Only one tender response was received with respect for tender quotations.

2.5 Contract Evaluation and award

2.5.1 Following receipt of this tender, the Council issued a note requesting clarification on several issues.

2.5.2 Following the receipt of the clarifications, the tender response was evaluated by three senior officers against the award criteria and a combined moderated score created.

2.5.3 The scoring methodology against which the bid was assessed contained the following provision, so that if any part of the bid response scored low it could be excluded from further consideration: “*Scoring ‘0-1’ for any response to the method statements would give grounds for excluding the quotation from further consideration. If a quotation is so excluded, the bidders’ price shall also be excluded from the evaluation*”. In this case, no score of 0 or 1 was made against any of the award criteria.

2.5.4 Based on the evaluation of the tender, it was recommended for contract award. This has now been completed and arrangements in hand to commence on the new terms, underpinned by the Council’s standard Contract Terms and Conditions setting out relevant performance monitoring and reporting measures.

2.6 Conclusions

- 2.6.1 It is recognised by all involved that the minerals and waste contract has not been managed effectively in recent years, particularly with regard to site monitoring. This is confirmed by the internal audit review which set out recommendations about re-procurement of the service and future contract management.
- 2.6.2 These recommendations have been taken into account in re-procuring the service and will be used in future contract management. Further details are set out below.
- 2.7 Contract management arrangements: the Planning and Housing Policy Manager is now employed by the Council on a full-time basis enabling more time to be devoted to establishing robust management arrangements, with the support of colleagues. In particular, the service specification sets out the requirements for: a start-up meeting (one during SLA period); project progress meetings (quarterly – four per annum); project team updates (monthly – twelve per annum); and an annual review meeting (one per annum). These will be rigorously followed.
- 2.8 Performance indicators: in line with the internal audit recommendations, the performance of the contract will be monitored through specific SMART indicators related to the timely processing of all minerals planning applications in an effective way; the undertaking of an agreed programme of minerals site monitoring visits as determined at the inception of the contract and by annual review; the timely provision of information and advice on strategic minerals planning issues to meet the intended programme for the production of a new Local Plan for Rutland; and the expected response times to deal with emails and complaints.
- 2.9 Site monitoring: the contractor is required to commit to delivering a monitoring schedule to be agreed by annual review which would assess each site at the start of each programme year and determine the number of visits that site will receive over the forthcoming 12-month period. The number of site visits will be based upon factors such as:
- the size and nature of the site
 - the number and complexity of conditions attached to the consent
 - the stage of operations currently at an individual site
 - any ongoing or arising matter that needs to be immediately monitored or discussed, and
 - the history of compliance demonstrated by the site operator over the previous period.
- 2.10 Resilience of the service: annual and quarterly contract meetings will review the resilience of the service associated with staff turnover and absence cover, taking account of responses made to the request for further clarification. In addition, it is proposed to continue to engage with Peterborough regarding site environmental issues and also seek to train Development Management staff in matters related to site monitoring and the enforcement of conditions.
- 2.11 Contract termination: the contract sets out the circumstances whereby either party may terminate the contract. Clauses include the provision that the Council reserves the right to terminate the Contract at will (in whole or in part) at any time with or without notice (except that it will give as much notice as possible in the circumstances) if the service provider shall commit a material or persistent breach of this Contract.

3 CONSULTATION

- 3.1 There is no requirement to consult the public on the re-procurement of the provision of minerals and waste planning advice.

4 ALTERNATIVE OPTIONS

- 4.1 The contract award has been made following the Council's procedures and the evaluation of the response received in line with the contract award criteria. This decision has been made, and so it is not for Scrutiny to re-consider, the role of Scrutiny now is to consider how the contract will be monitored to achieve the required performance and ensure value for money.
- 4.2 For the benefit of members of the Scrutiny Committee, the following options for procuring this service were considered prior to the award of the contract.
- 4.3 One option would have been to approach the private sector to tender for this service. The contractual arrangements have previously been based on an inter-authority agreement. In practice, whilst there are private sector companies able to provide minerals advice, the vast majority of their clients are site operators and developers. There is a lack of expertise and relevant experience in the private sector regarding strategic minerals plan making, including Minerals Local Plan production and adoption. This option would therefore create a risk to the preparation of the Local Plan. In addition, whilst this option has not been market tested, it is expected to be more expensive and so not offer value for money. Any private sector organisation is also likely to need a local presence in order to deliver site monitoring on a cost neutral basis.
- 4.4 A second option, taking account of the above, would have been to split the service specification into two contracts; one to cover planning policy and the other to deal with all development management matters. This would create an additional burden on staff to manage two contracts and would also lose the synergies and continuity of having a single service provider.
- 4.5 A further alternative would have been for the Council to employ directly or through an agency the staff required to deliver the service specification. This is unlikely to be a cost-effective arrangement given the range of functions required to be undertaken. It would also not offer service resilience.
- 4.6 The final option considered was to re-tender the contract, requesting quotations from a wider base of local authorities. Given the national shortage of minerals planners and the response rate received to the procurement process, there is no guarantee that this was result in a greater number of responses able to deliver the specification. Also, seeking responses from authorities more geographically distant would create a risk of the service provider not delivering site monitoring on a cost neutral basis.

5 FINANCIAL IMPLICATIONS

- 5.1 The cost of providing the minerals and waste service is likely to be greater than the current budget provision. Additional funding to support the preparation of evidence on strategic minerals and waste planning is included in the reserve established for the Local Plan, as approved by full Council on 1st September 2021.

5.2 Due to the timetable for the production of the Local Plan, the budget proposed for 2022/23 with respect to minerals and waste planning is likely to be sufficient given the scope to draw on the Local Plan reserve evidence base budget.

5.3 This will be kept under review as part of monitoring the Local Plan budget reserve.

6 LEGAL AND GOVERNANCE CONSIDERATIONS

6.1 The procurement process has been undertaken in line with the Council's Corporate Procurement Rules.

7 DATA PROTECTION IMPLICATIONS

7.1 There are no Data Protection Impact Assessment implications arising from this report.

8 EQUALITY IMPACT ASSESSMENT

8.1 An Equality Impact Assessment has not been completed as it is not deemed relevant to this report.

9 COMMUNITY SAFETY IMPLICATIONS

9.1 None directly arising from this report.

10 HEALTH AND WELLBEING IMPLICATIONS

10.1 None directly arising from this report.

11 ORGANISATIONAL IMPLICATIONS

11.1 These are set out in the above report.

12 CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

12.1 The Scrutiny Committee is requested to comment on this report.

13 BACKGROUND PAPERS

13.1 None

14 APPENDICES

14.1 Appendix 1 – Recommendation of the Internal Audit Review on contract management and how this has been considered through re-procurement and future contract management

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

Appendix 1 – Recommendation of the Internal Audit Review on contract management and how this has been considered through re-procurement and future contract management

ISSUE	RECOMMENDATION	Priority	HOW THIS HAS BEEN CONSIDERED THROUGH RE-PROCUREMENT AND FUTURE CONTRACT MANAGEMENT
<p>The minerals and waste agreement does not include sufficient performance indicators or targets to support effective performance management. In addition, staff changes at the supplier authority have led to a deterioration of the service, lack of performance monitoring reports and cessation of contract monitoring meetings. The situation has been tolerated pending a decision on the Local Plan. Now that the plan has been withdrawn the service is due to be re-procured when the current contract expires in January 2022. This should be taken as an opportunity to address these issues and to consider how staff availability risks can be mitigated in future.</p>	<p>On re-procurement of the minerals and waste contract, ensure that the following matters are taken into account:</p> <ul style="list-style-type: none"> a) that the procurement strategy and evaluation of potential service providers takes account of risks in relation to service resilience associated with staff turnover and absence cover. b) the contract should include an appropriate range of SMART performance indicators and targets to support effective performance monitoring for both planning policy and development management work. This could include completion of quarry monitoring visits at agreed intervals and specified turnaround times for planning policy and development management responsive work. c) that regular progress and performance review meetings and receipt of associated performance reports are reinstated with all meetings being fully minuted. d) that arrangements for periodic price review and approval are clearly set out in the contract or agreement; and e) that fully itemised invoices showing the amount of time spent on each activity are received on a quarterly basis to support effective financial control and budget monitoring. 	<p>Medium</p>	<ul style="list-style-type: none"> a) The issue of staff competencies was set out in the service specification and formed part of the contract award criteria. Following the one response received to the request for quotations, clarifications were sought from the potential service provider as to how they would seek to fill a vacant post and also deliver the contract in the event of vacancies. The scoring of the response took the response to clarifications into account in making the assessment against the award criteria. It is intended to manage robustly the contract on a quarterly and annual basis, including issues related to staff turnover and absence cover. b) SMART performance indicators and targets are included in the contract to support effective performance monitoring for both planning policy and development management work. These include quarry monitoring visits as well as the timely delivery of planning policy and development management responsive work c) The service specification and contract require a start-up meeting (one during SLA period); project progress meetings (quarterly – four per annum); project team updates (monthly – twelve per annum); and an annual review meeting (one per annum). These will be rigorously followed. Meetings will be minuted. d) The quotation response is based on a fixed price for the planning policy element of the service specification with any variations arising to the service specification being charged at an hourly rate. With respect to development management the tender response proposes that costs will be charged at hourly rates on a time and material basis, i.e. for work undertaken only. The tender response notes the requirement in the service specification that site monitoring would be undertaken on a cost neutral basis for Rutland, i.e. that the proposed tenderer would be paid the fee that Rutland receives

			<p>from the site operator for the monitoring of minerals and waste sites. Hourly rates will be revised to reflect inflationary salary changes.</p> <p>e) Taking account of responses to clarifications, it is proposed that fully itemised invoices showing the amount of time separately on planning policy and development management are received on a quarterly basis to support effective financial control and budget monitoring.</p>
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