

Agenda Item 8

Cabinet Member: Councillor Bridget Kendrick, Cabinet Member for Finance and Organisation

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Date: 24 November 2020

Ward(s) affected: All

Key Decision: Yes

SUBJECT: Shared Procurement Service

Recommendations:

The Cabinet is asked to:

- a) delegate the provision of its procurement services to Crawley Borough Council from 1 December 2020 under section 101 of the Local Government Act 1972;
- b) enter into an Inter-Authority Agreement for the provision of procurement services for the period commencing 1 December 2020;
- c) delegate authority to the Legal Services Manager to agree the terms of the Inter-Authority Agreement which reflects the principles outlined in the report.

The Cabinet has the authority to determine the Recommendations

Executive Summary:

The Cabinet is asked to agree that MVDC joins the shared procurement service arrangement operated by Crawley Borough Council (**CBC**) as the host authority on behalf of itself, Horsham District Council (**HDC**) and Mid Sussex District Council (**MSDC**).

MVDC has participated informally in the shared procurement service by way of a pilot since the start of 2020. The pilot is considered to have successfully demonstrated the value of the partnership for both MVDC and for the existing partners in the form of collaborative procurement opportunities, increased service resilience and potential efficiencies through reducing duplication.

Formal participation in the shared procurement service requires MVDC to delegate the provision of its procurement services to CBC under section 101 of the Local Government Act 1972 and to enter into an Inter Authority Agreement (**IAA**) to set out the responsibilities of each of the partner authorities as well as the allocation/apportionment of any risks such as withdrawal of any of the partners from the shared procurement service.

As MVDC will have no permanent procurement officers in post with effect from 1 December, there is a time limited opportunity to enter into this arrangement without having the additional resource and risk implications associated with a future potential transfer of staff in accordance with the Transfer of Undertakings (Protection of Employment) regulations (TUPE).

The budget implications for MVDC for the current year 2020/21 and for the next financial year 2021/22 are cost-neutral – however the rationale for the recommendations are not service cost related, but relate to ongoing opportunities to maximise resilience and efficiencies coupled with the contribution that procurement can make to achieving cashable savings through collaborative procurement.

Council Strategy Priority Outcomes:

The recommendations in this report are consistent with the ‘Living within our means’ guiding principle in the Council Strategy 2019-2024 which states we are to “be mindful of current and future costs in our approach to delivering and developing services”.

1.0 Introduction

In early 2019, MVDC approached Crawley Borough Council (**CBC**) about the potential to join the shared procurement service arrangement operated by CBC as the host authority on behalf of itself, Horsham District Council (**HDC**) and Mid Sussex District Council (**MSDC**). The rationale was to create greater capacity and stability of resources, develop staff skills and knowledge, and seek efficiencies by avoiding duplication.

In addition, as the partners are all district and borough councils, with much commonality of service provision and adjacent boundaries forming part of the same economic area (the Gatwick Diamond and the wider Coast to Capital LEP), there was an enhanced potential for joint or collaborative procurement enhancing the attractiveness of tender opportunities. Finally, the shared procurement service arrangement between CBC, HDC and MSDC has been in operation since 2010, is well established and well regarded, with a proven track record in delivering a substantial programme of procurement processes delivering significant savings to each of its participating authorities.

Agreement was reached to expand the shared procurement service arrangement to MVDC on a 12-month trial basis starting in December 2019 by way of a joint working arrangement. MVDC’s full-time Procurement Officer and an additional part-time Procurement Officer were seconded to the shared service. The trial has been successful, despite the pandemic changing some of the priorities for each of the authorities, and the opportunity to undertake joint procurements has already been realised with MVDC and HDC successfully undertaking a joint Cash Collection tender.

2.0 Formal establishment of a shared procurement service

With the end of the 12 month trial period approaching, MVDC has been invited to formally join the shared procurement service. This means MVDC formally delegating the provision of procurement services to CBC by way of an Inter-Authority Agreement

(IAA) and it is proposed that is with effect from 1 December 2020.

Through attrition, as of 1 December 2020, MVDC will not have any permanent procurement officers in post. Joining the shared procurement service with effect from 1 December 2020 means that the recruitment activity already underway can be completed in a timely manner from both a service and recruitment perspective through the posts being appointed by CBC.

This avoids the additional complexities of otherwise transferring existing MVDC staff in accordance with Transfer of Undertakings (Protection of Employment) regulations (**TUPE**) to CBC which would have resource implications for both CBC and MVDC. All staff within the shared procurement service will be subject to the same terms and conditions of employment which assist in creating greater equality within the team.

It is proposed that for the period 1 December 2020 to 31 March 2022, MVDC's annual budget contribution to the service would be equal to MVDC's existing annual 2020/2021 budget of £78,900. This represents a 27% contribution of the total costs of the service, but provides for the additional upfront costs and time incurred by CBC as the lead authority which range from appointing and on-boarding two new members of staff and aligning working practices and documentation, including migrating MVDC procurement activity onto one instance of the e-procurement portal (currently MVDC has retained a separate instance of the product).

With effect from 1 April 2022, it is proposed that MVDC's contribution would be 25% of the total cost of the service in common with CBC, HDC and MSDC. Potential risks arising from the procurement shared service are shared equally between the four partners with operational governance secured through the Joint Procurement Board.

The Joint Procurement Board is attended by senior officers (Heads of Service/Directors) from each of the partner authorities. It oversees the work programme and monitors the procurement shared service budget and performance. It meets at least quarterly.

Financial Implications

The proposals in this report are anticipated to be broadly cost neutral to MVDC. There is a residual risk of exceptional costs arising under the terms of the Inter Authority Agreement should the Shared Procurement Service be brought to an end and the existing staff (4 FTE excluding MVDC) are not redeployed across each of the four authorities and are made redundant. The regulation of public sector procurement will survive the end of the Brexit transition period as it is incorporated in domestic law. Furthermore, the UK government imposed additional requirements on the public sector over and above those derived from EU public procurement directive which suggests that public sector procurement will continue to be regulated in order to achieve specific policy goals as well as supporting the achievement of value for money.

The real financial benefits of this proposal are through joint or collaborative procurement which reduce the costs of resourcing individual procurement projects and make contract opportunities more likely to attract bidders, particularly in those markets/services where there has been supplier concentration.

Legal Implications

MVDC will be entering into a partnership arrangement whereby the provision of procurement services is delegated to Crawley Borough Council under Section 101 of the Local Government Act 1972.

Section 9EA of the Local Government Act 2000 and regulation 5(2)(a) of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012

enables Cabinet to delegate the discharge of one of its executive functions to another authority.

Procurement services are by default an executive function.

Risk Implications

The recommendations set out in this report represent an opportunity to participate in a mature and well-regarded shared procurement service. Feedback from colleagues who have benefitted from the shared procurement service's support to date has been positive, opportunities to collaboratively procure services have been realised and it provides much needed resilience through reduced key person dependency which is of particular value in what remains a difficult recruitment area, even in the current economic climate.

It is not recommended as an opportunity to save service costs. It does create efficiencies through collaborative development and updating of common policies and procedures and potentially eliminating MVDC's standalone instance of the e-procurement portal which enable resource to be focused on maximizing the allocation of skilled procurement resource to project delivery and the achievement of the desired financial, social or service improvement benefits (as the case may be).

Whilst pre-pandemic, the prospect of a shared service being hosted by another local authority may have raised concerns about the service being too impersonal/remote, the adoption of remote working across the four organisations whilst delivering a number of individual and joint procurement projects has demonstrably mitigated that concern. MVDC will be an equal partner at the Joint Procurement Board which will ensure that projects are appropriately and objectively prioritised.

3.0 Options

The preferred option is for MVDC to formally join the Shared Procurement Service as set out in the recommendations section of this report (**Option 1**).

The alternative options available to MVDC at this time are to continue with the recruitment process which is underway with a view to MVDC appointing to the vacant posts and either

- continue to participate in the procurement shared service for a further year as an interim arrangement (**Option 2**)
- bring its participation in the procurement shared service to an end and revert to providing procurement support in-house (**Option 3**).

Option 2 is not recommended for the following reasons:

- the opportunity for MVDC to participate in the shared procurement service has the support of CBC, HDC and MSDC now;
- it retains the potential future requirement to manage the transfer of MVDC staff to CBC under TUPE;
- the trial period has already demonstrated the benefits of participating in a shared procurement service, despite all the challenges to business as usual that the pandemic has had on ways of working and on individual business and council priorities.

Option 3 is not recommended as the benefits of participating in the shared procurement service have been demonstrated through the trial period to date and

concerns about the potential disadvantages have been demonstrated to be unfounded.

Prior to trialling participation in the shared procurement service, officers explored a range of alternative partnerships, including Orbis and working with other East Surrey authorities. Orbis was discounted as MVDC would be too small a client and its requirements insufficiently aligned with those of the Orbis partner authorities to offer the same benefits of collaborative procurement. The East Surrey authorities were either not interested or not in a position to contemplate establishing a shared procurement service with MVDC.

The risks of setting up a new shared service are considered to be greater than those of joining a mature shared service with established governance and management structures already in place. The opportunity of undertaking joint procurements with authorities other than, or in addition to, CBC, HDC and MSDC is still however available.

4.0 Corporate Implications

Monitoring Officer commentary

The Monitoring Officer confirms that all relevant legal implications have been taken into account.

S151 Officer commentary

The s151 Officer confirms that all relevant financial implications have been taken into account.

Equalities Implications

There are no equalities issues arising as a direct result of this report.

Employment and Resource Implications

The proposed model will mean that MVDC no longer has any staff on the establishment for this service. MVDC will still have a requirement to provide necessary IT equipment in order that officers employed by the Procurement Shared Service can work effectively on MVDC projects remotely and while working at our offices.

By approving the recommendations in this report with effect from 1 December 2020, MVDC and CBC will not need to support the additional complexities of transferring newly appointed members of MVDC staff to CBC in accordance with TUPE.

Sustainability Issues

There are no sustainability issues arising as a direct result of this report.

Consultation

Not applicable

Communications

MVDC's external website pages "Tendering for Work at MVDC" and "Contracts with MVDC" and the internal intranet pages for procurement will be updated.

Background Papers

None.

