

**Manchester City Council
Report for Information**

Report to: Resources and Governance Scrutiny Committee – 19 July 2022

Subject: Management of Major Contracts

Report of: Head of Integrated Commissioning and Procurement and
Strategic Lead Integrated Commissioning

Summary

This report describes how (i) major contracts are managed and (ii) the key considerations for the council when looking at future commissioning options, including insourcing versus outsourcing decisions, and the associated capacity the council would need in place to take a major contract back in house either as a result of a procurement decision or to address market failure.

Recommendations

The Committee is recommended to consider and comment on the information in the report.

Wards Affected: All

Environmental Impact Assessment - the impact of the issues addressed in this report on achieving the zero-carbon target for the city

The issues discussed in this paper have no direct impact on the environment but effective contract management is a key part of ensuring social value and environmental contractual obligations are delivered.

Equality, Diversity and Inclusion - the impact of the issues addressed in this report in meeting our Public Sector Equality Duty and broader equality commitments
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The issues discussed in this paper do not have any direct impact on equality, diversity and inclusion, but the council looks to promote equality, diversity and inclusion through its contracts with suppliers, as set out in its social value policy.
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Manchester Strategy outcomes	Summary of how this report aligns to the OMS/Contribution to the Strategy
A thriving and sustainable city: supporting a diverse and distinctive economy that creates jobs and opportunities	<p>Through its procurement, the council seeks suppliers that can help create wider social value for the city. Our social value framework, which is a shared framework across Greater Manchester, identifies six overarching areas of focus, which closely align with the Manchester Strategy outcomes. These are:</p> <ul style="list-style-type: none"> • Create the employment and skills opportunities that we need to build back better • Provide the best employment that you can • Be part of a strong local community • Develop a locally based and resilient supply chain • Keep the air clean • Make your organisation greener
A highly skilled city: world class and home grown talent sustaining the city's economic success	
A progressive and equitable city: making a positive contribution by unlocking the potential of our communities	
A liveable and low carbon city: a destination of choice to live, visit, work	
A connected city: world class infrastructure and connectivity to drive growth	

Full details are in the body of the report, along with any implications for:

- Equal Opportunities Policy
- Risk Management
- Legal Considerations

Financial Consequences – Revenue

None

Financial Consequences – Capital

None

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Background documents (available for public inspection): None.

1.0 Introduction

- 1.1 The council's contracts portfolio contains a diverse range of contracts, both in terms of value and nature, and the contract management approach needs to be tailored accordingly. This paper first sets out the framework officers use for managing major contracts. The paper then looks at the key considerations involved in commissioning a new contract, particularly major contracts, including the appraisal of different delivery options.

2.0 Background

Approach for contract management of major contracts

- 2.1 The council promotes a proportionate approach to managing contracts, with the largest and most critical contracts requiring more intensive management compared with smaller and/or less critical contracts. Officers use a 'Gold, Silver, Bronze' model for categorising the significance or 'criticality' of a contract - Gold being the most critical – a model based on that used by the Government Commercial Function in central government.
- 2.2 The term 'criticality' is used because whilst major contracts tend to be the largest in value, there are other considerations too that might make a contract particularly critical, such as how easy it is to source an alternative supplier (if needed), the reputational risk if the contract were to fail etc. There are also nuances for certain services. For example, in ICT, one of the most important considerations is business continuity in the event of supplier failure, which could potentially impact multiple contracts depending on the supplier. ICT therefore assign importance by supplier on that basis. The underpinning principle though is the same – more critical contracts (and by association suppliers) should in general require more intensive management.
- 2.3 Criticality isn't however the sole driver for prioritising contract management resource. Performance is another key factor and if a less critical contract started to perform below contractual expectations, that would require appropriate attention.
- 2.4 In practical application, there isn't a one-size-fits all approach to managing major contracts – management of a waste collection contract is different to managing a contract for Microsoft licences, for example. However, the key elements of managing a contract - including supplier relationship management, financial management, risk management, performance management, contract administration, etc – will be common features across the board, and the depth of management will be correspondingly higher for these contracts. As an illustration, a gold contract would typically involve:
- Daily operational engagement with the supplier, plus regular (e.g. monthly) meetings with the supplier to review contract performance, supported by regular strategic supplier meetings (e.g. quarterly / six-monthly), and, where needed, an annual meeting, particularly to look ahead and where any service or contract changes need to be negotiated.
 - Regular (e.g. daily / weekly / monthly) performance data returns and reviews, including social value performance.

- Robust risk management procedures, with regular joint reviews of key risks and mitigating actions.
 - Deeper, more complex contract administration, including management of orders and invoices, managing resourcing, contract variations etc.
 - Regular due diligence on the supplier, from annual checks on key required policies and insurance levels, to checks on the supplier's economic and financial standing.
- 2.5 The above apply to both 'revenue' funded contracts (e.g. resident-facing services) and capital projects (e.g. building and works contracts, ICT investment). As an example of the latter, Capital Programmes Major Projects Team hold a monthly performance review of all the major construction projects, and have regular senior engagement with all the major projects suppliers.
- 2.6 The Integrated Commissioning and Procurement Team (ICP) supports contract managers with contract management, including through providing guidance on the key processes involved in contract management, template contract management tools, workshops with teams to develop their processes (ICP and Children's Services are currently working together on a contract management development programme), and support with individual contracts.

Key considerations for future commissioning

- 2.7 Most of the council's critical contracts are for services which will continue to be required in future years and which will therefore be recommissioned accordingly. The re-commissioning process will usually be a significant undertaking and for the largest contracts can take up to a year of design work, or even longer, particularly where contracts are to be heavily redesigned. This is before the procurement and implementation phases, which can be equally involved for more complex projects, particularly implementations involving new systems which involve significant staff engagement and process redesign, or commissions that involve significant market change or markets that are facing wider challenges (e.g. homecare services).
- 2.8 With long lead-in times for recommissioning of major contracts, the council needs to plan its sourcing timeline accordingly. The ICP Team has regular – usually monthly – meetings with services to update procurement forward plans. As examples: Highways has recently established a new Procurement Board to support forward planning, bringing together Highways, Legal and Procurement officers; Northwards and ICT have an Integration Board, so called because legacy Northwards ICT contracts are being integrated into wider council arrangements.
- 2.9 Digging into the recommissioning process itself, part of the time involved is for working with residents (e.g. in the case of frontline services), the market and wider stakeholders, consistent with the Our Manchester ways of working. The Manchester Local Care Organisation's (MLCO) Commissioning Plan, for example, sets out the co-production approach it looks to take in its commissioning of adult social care services. Children's Services have a similar focus on co-production with children and young people.

2.10 The commissioning work will also involve a review / analysis phase, and the development and appraisal of options, including delivery options. MLCO, for example, is reviewing how its current adult social care contracts have performed (e.g. in learning disability services), how the contracts work alongside and compare with similar services elsewhere (e.g. how employment support services for people with a learning disability work complement wider employment support services), reviewing data on demand for the service, and demographic data (with analytical support from the council's Performance, Research and Intelligence team). These are standard for any new commissioning but, in the case of health services commissioned by Population Health and Wellbeing (formerly known as Public Health), considerations like these may become legal requirements under forthcoming regulations that the government will introduce later this year, as part of its new Provider Selection Regime.

2.11 When appraising how a service should be delivered, government guidance states the following on delivery model assessments (also known as Make verses Buy): "Contracting authorities should conduct a proportionate delivery model assessment before deciding whether to outsource, insource or re-procure a service through evidenced based analysis." (National Procurement Policy Statement, 2021). The government's Sourcing Playbook expands a little on this, setting out some relevant considerations, including the:

- ability to acquire or build and maintain the required expertise and assets
- impact of TUPE regulations and pension liabilities
- organisational governance, processes and capability, including senior management and backroom functions
- potential increase to risk exposure
- impact on market health and other public services
- interdependencies with other public services
- accessing required service information and intellectual property

2.12 The consideration of insourcing tends to be undertaken most in situations where there is already a mix of both in-house and external provision (e.g. in adult social care), or where there are close synergies with other parts of the council (e.g. the care leavers service, which was insourced), or where the council either has previous experience of delivering such services and/or could build up the required expertise relatively quickly. The option appraisal process starts with an outline business case which would include the viability of insourcing the service. These tend to include the following stages:

- Evaluation of the current 'as is' service, including what worked well, what required improvement and the future challenges and changes the service faced. This includes feedback from stakeholders alongside a rigorous analysis of the current service performance and expected legislative and policy changes.
- The identification of the available options and the associated research activity with other organisations to fully understand the rationale behind decisions that had been made elsewhere.

- A detailed evaluation of the options identified and the relative opportunities, benefits, risks and costs associated with each in order to reach a recommendation.

2.13 If insourcing is identified as a potential option more detailed work is required pulling in expertise from across the Council and, where necessary, external legal, financial or market advice. This work considers the types of delivery model and commercial structuring and governance (for example should the service be delivered by an external partner through procurement, be fully insourced to the local authority or delivered through some other means such as a joint venture). It will also explore the practical considerations, including those set out in the Sourcing Playbook such as:

- Capacity and expertise within the Council to manage the services and if not in place how quickly this could be accessed. This includes the management expertise as well as potential impact on support services.
- Workforce considerations including terms and conditions and pensions considerations. For example, are there broader equal pay implications and what will be the impact and cost for the Local Government Pension Scheme.
- ICT implementation, can be critical (particularly in the current market climate where there are long lead-in times for some equipment)
- Setting out the financial and legal implications of each option along with an assessment of the potential risks and benefits.

2.14 As an example of the above, the decision to let the waste collection and street cleaning services to a contractor was subject to a detailed analysis of potential delivery models. The approach taken was similarly detailed both when the initial contract was let and prior to the decision being taken to extend the current arrangements. In both cases external validation of the approach and analysis was obtained through subject matter experts with recent and relevant experience of similar processes that had been undertaken elsewhere within the industry / public sector.

3.0 Main issues

3.1 On the contract management side, there are several developments currently:

- Policy changes. The government has just updated its Government Commercial Standards, which set out what good practice looks like across the commissioning cycle. These standards have historically applied to central government but now extend to NHS and Local Government. Manchester City Council has been involved in discussions with government, the LGA and other local authority partners in the development of these. Government intends that authorities will benchmark themselves against the new standards, and that there will be a peer review process (following what central government departments currently do). ICP will be working initially with contract managers of Gold contracts to identify where we can develop practice.
- Market risk. During the pandemic provider failure was a high risk, and whilst the nature of the risk has changed, there is still significant market

uncertainty. The council uses various tools and approaches to mitigate risk of provider failure. One of the headline indicators the council regularly monitors is a company's 'H-score', which is a score produced by the risk agency Companywatch, and which is a summary indicator for a company's risk of failure over the next 12 months. Central government also use this tool.

- Inflation and financial management. The current very high inflation rates are resulting in more requests from suppliers to increase prices. The council has a process for reviewing well-evidenced price increase requests, which are only awarded if delivery of public services would otherwise be put at risk, for example if the provider were to terminate the contract or under-deliver. These risks are very real though for contracts like home-to-school transport, where operators have limited opportunity in the short-term to mitigate high fuel prices.
- Contract management skill development. The ICP Team promotes the Government Commercial Function's e-learning Contract Management Foundations course across all contract managers, and there is more in-depth training available for those managing more complex managers - the council, has had two cohorts of staff go through CIPFA's Certificate in Contract Management, and there are further staff signing up for that this year. As referred to above, the ICP Team is also working alongside teams (e.g. Children's and MLCO) to develop contract management practice.
- Contract management system. The council is currently procuring a new contract management system to support contract management. The procurement is currently inviting the equivalent of expressions of interest and capability from interested bidders and will then invite a shortlist to submit a tender.

3.2 On the commissioning considerations, and in particular delivery considerations and insourcing potential, the main current issues are as follows:

- The latest Government guidance makes clear that 'complex' procurements should include an appraisal of delivery options including insourcing, and that 'should-cost' modelling should be undertaken. The latter involves challenges, particularly when accounting for indirect costs (e.g. corporate overheads involved) and for commercial risk. It is why for This City – one of the council's more recent commercial ventures – has brought in external expertise to advise and stress-test various legal, financial and business case aspects. Elsewhere, the MLCO is conducting its review into care costs using externally validated tools to better understand the nature of care costs, particularly the harder to quantify costs such as acceptable rates of return on property.
- Implementation complications. There is learning from previous insourcing decisions, such as when the council brought the Care Leavers service in-house in 2018/19 – a service which recently received praise from Ofsted. With that project, there were particular structuring considerations – e.g. whether to bring the service into Children's Services or whether to set up a wholly owned company – which took time to work through and were critical as that decision then determined other aspects like back-office SLA requirements and workforce and pension considerations, which subsequently were developed under challenging timescales at the time.

The learning from that was that insourcing is generally more complex and as the detail is worked through, new issues can arise which in turn can have knock-on impacts on other aspects. Plans for insourcing therefore need to allow additional implementation time, compared with a transfer of service from one external provider to another provider.

- Retention of expertise. With any transfer of a service, either to another external provider or bringing in-house, although TUPE may apply, experience shows that the transfer can still result in staff moving on. This is less of a risk where the council already has in-house operations in that field and has management and recruitment expertise in place; it is more of a risk where a transfer in would be a new venture for the council, particularly with current labour market conditions.
- Back-office support requirements. These are not always like-for-like pre- and post-insourcing. Public bodies have different standards and requirements to private sector – procurement processes being one – which need to be considered in detail when determining what level of resource is needed. Today, bodies like MLCO have worked with corporate services over the last couple of years to clarify respective functions, roles and expectations, for example.
- Urgent insourcing as a result of supplier or market failure. In some circumstances the council may have to take over a service at short notice, for example if a supplier ceases trading, the standard of service drops below an acceptable level or the market fails to respond to an Invitation to Tender. Often another provider stepping in will be an optimal approach but there are exceptions – for example, the council temporarily took on a care home for a short period to retain continuity of care prior to identifying a longer-term market solution. In such circumstances, the points covered above under “retention of expertise” would apply and the council would need to act urgently to develop or acquire the capacity to deliver the service. It could be possible that TUPE would apply and some experienced staff would be available and a plan would be put in place to mainstream delivery of the service over time or to reframe a tender and go to market again. The approach would be dependent upon several factors including the complexity and performance levels of the service being transferred.

3.3 One of the big debates will be whether local authorities should continue to outsource some of their major services. This is likely to come to the fore as market conditions and issues with supply chain and workforce shortages start to impact. The council will need to be able to act quickly if the market fails in any area and a service has to be recommissioned or taken back in house at very short notice.

3.4 It will be important to objectively weigh up the pros and cons of the available options. External partners have brought considerable knowledge and expertise, with access to specialist skills and knowledge which the council does not have, and driven service improvement. Insourcing can deliver added benefits such as service integration and better control. All decisions must be made on a sustainable and legal basis and where the Council looks at proposals of how to deliver any service, the quality of that delivered service and the social and financial value for money must be considered.

- 3.5 All outsourced contracts should be regularly reviewed according to quality, performance, value for money, and staff terms and conditions to explore whether the delivery option remains the most appropriate and whether insourcing should be considered. In the light of the current market conditions a more systematic approach will need to be taken to this work.
- 3.6 In summary, commissioning of major contracts has long-lead in times to allow for design of the requirements, the procurement, and the implementation. Insourcing should be considered for major contracts, noting that certain contracts will be more amenable than others to insourcing. In either case though, insourcing involves additional complexity compared with a reprocurement, and often specialist external advice will be required to inform the options appraisal.

4.0 Recommendations

- 4.1 The Committee is recommended to consider and comment on the information in the report.