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Report title: Procurement of Programme Management for property related Capital Works	
Report to: Cabinet	
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Date: 15 September 2020	For: Decision
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County Divisions affected: All Essex	

Confidential Appendix

This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

1. Purpose of Report

- 1.1 ECC has a contract with Mitie Ltd (Mitie) under which Facilities Management and Property Management services are provided (the Contract). Part way through the contract, we decided to buy additional services from Mitie relating to the provision of a Programme Management Office (PMO) to manage capital works to property. The agreement relating to the provision of these services expires on 30 September 2020.
- 1.2 In 2018 all other Mitie services were extended until 30 September 2026. This report asks Cabinet that Mitie Limited should provide the Programme Management Office until 30 September 2026.
- 1.3 This report is a follow-on paper from the previous extension report that Cabinet approved in December 2018 in relation to the extension of the overarching main facilities / property management contract with Mitie.

2. Recommendations

- 2.1. Agree to extend PMO element of the Mitie Contract for PMO services from 1 October 2020 until 30 September 2026.
- 2.2. Agree to extend the current fee agreement with Mitie Limited for PMO services from 1 October 2020 until 31 March 2021 on the current rates.
- 2.3. Agree to enter into a new fee agreement with Mitie Limited for PMO services commencing 1 April 2021 until 30 September 2026 on the revised rates set out in the confidential appendix.

3. Summary of issue

- 3.1. ECC property and facilities management services (including PMO) are provided by Mitie Ltd. This includes Hard Facilities Management (which relates to the physical fabric of buildings such as heating, lighting and building maintenance) and Soft Facilities Management (for example cleaning, security and waste management).
- 3.2. Following a decision taken by Cabinet in 2018, the main contract was extended in 2018 to run until 2026. This extension did not include the PMO service. This was because, at the time of the 2018 cabinet decision, it was agreed that further work and investigation would be undertaken at ECC regarding the future provision of the PMO services. This work has now been carried out and is set out below in this report.

PMO services

- 3.3. The PMO provides project and asset management services to deliver a range of ECC projects. It provides two distinct functions, programme management, which includes the oversight of the capital maintenance requirements and the coordination of works and programmes and project delivery which includes the project management of the specific projects that are delivered through the PMO. Its main deliverables include
 - Programme planning and strategy
 - Asset Management/lifecycle planning
 - Supply Chain Management
 - Works Programme Management
 - Cost Management & Reporting
 - Audit & Benchmarking
- 3.4. The PMO provides a range of services to support at ECC in capital Maintenance and project delivery the following areas.
- 3.5. PMO works are commissioned periodically by ECC by issuing a Fee Agreement in accordance with the terms of the Mitie FM contract. The Current Fee Agreement for PMO services is due to expire on 30th September 2020 in order to continue with the PMO services, at the current rate, ECC is required to give notice to Mitie Limited before 30th September 2020- If the fee agreement is not extended, it will end on the same date.
- 3.6. There is a significant volume of work that is required to be delivered across the ECC core and schools estate, and a PMO service has assisted with delivery of works for programmed each year. The table below sets out the value of PMO works undertaken for the financial year 2019/20 and this represents as typical amount of work undertaken by the PMO. Covid-19 impacted delivery in the final month of the 2019/20 spend which resulted in a small underspend against budget as projects were shut down for a period of time.

Core Estate	£4.7m
Schools Estate	£5.8m
Direct Delivery	£2.6m
Insurance	£0.7m
Total	£13.8m

Review of PMO services

3.7. At the point of agreeing to extend the main FM contract in December 2018, it was determined that more work was required to established whether the PMO element was delivering value for money. Since this time, ECC officers have carried out a comprehensive review of the existing PMO service including reviewing business requirements, benchmarking costs, obtaining stakeholder feedback, undertaking market analysis and audit. A review of the fee percentage has been carried out with Mitie as part of this extension process and significant reduction achieved (also applicable to Insurance projects going forward), further details are set out in the confidential appendix. Key findings of the review are as follows:

- ECC is Mitie's 3rd largest Public Sector and the largest Local Authority customer.
- Benchmarking against other existing Framework Agreements was difficult due to not being able to compare like for like in terms of the services provided within the PMO. When comparing to one other framework agreement, the existing rates provided were favourable even before further reductions within the updated proposal (Option 1C).
- A follow-on audit review of the procurement processes used within the PMO was carried out as part of this work. In comparison to the previous review in 2018, there has been an improvement across a number of areas previously identified. A number of recommendations have been identified which will be progressed with Mitie as part of the recommended option.
- Extensive work has been carried out with Mitie to develop their own proposals and negotiate an updated attractive fee agreement (Options 1B and 1C below).
- Survey was carried out to gather stakeholder feedback regarding the existing PMO service offer, overall the outcome was that there were no areas that needed to be materially changed. Other areas identified as part of the feedback were already being addressed by putting in place better working practices.

3.8. Analysis was also undertaken following the review to identify the options that are available to deliver a robust PMO function which has included involvement from ECC colleagues across a number of teams at ECC such as Infrastructure Delivery and Facilities Management, Finance, Procurement, and Service Areas. The timescales for this have unfortunately been delayed due to Covid-19 and the

support that was required in the Facilities Management area where staff have been required to divert focus towards other activities.

- 3.9. Three main options were identified under by the analysis and review. These are detailed in the options section of this report. The recommended option is option 1C. It is proposed that ECC extend the Mitie contract for PMO Services until 2026, extend the current Fee Agreement until 31 March 2021 on its current rates and then issue a Fee Agreement to Mitie to provide PMO services until 2026 on revised and improved rates.

Review of PMO Rates

- 3.10. A review of the fee percentage was carried out with Mitie and significant reduction achieved (also applicable to Insurance projects going forward), further details set out in the confidential appendix.
- 3.11. Currently, the costs to ECC of the existing PMO function (overall programme management support) are based upon an annual fixed fee for the programme as a whole which is paid in monthly instalments. This ensures the delivery of all the programme management, budget and strategic reporting for the capital maintenance programmes. The fixed fee also includes the provision of staffing and a team that are dedicated to the ECC account and embedded within the ECC offices.
- 3.12. A percentage fee is then applied to each individual ECC project delivered through the PMO. The percentage fee is consistent across all works (and all project values) with the exception of Insurance works that currently have a different (higher) rate. Ad-hoc/direct delivery works are typically delivered at the standard percentage fee unless a different rate has been negotiated due to the nature of the work required.
- 3.13. At the time of the 2018 Cabinet paper it was acknowledged that more work was required to establish whether the existing PMO service was delivering value of money. Since 2018 and as part of analysis and review undertaken to inform future PMO services, the rates for PMO services with Mitie were reviewed on an open book basis with a view to achieving savings. This exercise led to an immediate reduction that is already in place and a further proposed significant reduction in rates and the fixed fee payable for PMO services if Option 1C is selected. Details of the review, the revised and improved rates and proposed new fee arrangements are detailed in the confidential appendix.
- 3.14. The review and resulting significant reduction in rates, coupled with the benchmarking market comparison work undertaken and evidence of improved delivery performance over the life of the PMO contract demonstrates that good value is demonstrated by the recommended option.

Future PMO services

- 3.15. It is proposed that the existing Fee Agreement that expires on 30 September 2020 is extended until 31 March 2021.

- 3.16. From April 2021, a new Fee Agreement will be issued to Mitie requesting PMO services until 30 September 2026 on a new, significantly improved and revised rate and service offering. This revised rate and offering is further detailed in the confidential appendix to this report.
- 3.17. This arrangement will align with the facilities management/property management arrangements in the Mitie FM contract. All projects for 2020/21 within the core Capital Maintenance Programmes have already been commissioned under the existing fee agreement, however any additional works identified will have the new fee agreement rates applied.
- 3.18. The proposals will deliver significant financial savings as are detailed in paragraph 5.1 below and ECC and Mitie have committed also to working together to deliver additional savings through improvements to ways of working and supply chain development. Further work is being undertaken to consider improvements including using schedule of rates for time efficiencies, batching projects, consideration of moving to a traditional contracting approach with design separate are all being considered and a further report will follow detailing the outcome of this work.
- 3.19. There have been no significant performance concerns with the delivery of the PMO by Mitie over the last year and feedback has been good. Delivery targets have been achieved on the core and schools estate programmes. Mitie have worked closely with ECC over the last 6 months to ensure that effective processes are in place, especially around the delivery of ad-hoc projects, which has significantly improved stakeholder engagement and communication.
- 3.20. There would be significant issues in having a separate third-party supplier providing this PMO work. A large part of the work undertaken by the PMO is lifecycle replacement of ECC assets. These assets are maintained by Mitie under the main FM contract. Having two separate contractors would create significant interface risks that would need to be managed by ECC. Under current arrangements Mitie are responsible for both elements and as such are accountable for any issues. If two parties were involved an exercise of apportioning responsibility should any issue arise would need to take place and be managed by ECC and this can be very challenging to determine for some projects.
- 3.21. With the duration of the extension it is possible that Local Government Reform may affect this contract. In consideration of this there are options around break clauses with further details found in the Confidential Appendix.

4. Options

- 4.1. There are 3 primary options to consider with the first option having three sub-options as set out below. Financial analysis of each of the options is included in the Confidential Appendix:

4.2 Option 1a – Extend the existing PMO arrangement on an annual basis with Mitie on the same terms as currently in-use (Do Nothing)

Extend the PMO fee agreement on the same basis as currently in place and continue with the same rates and service offering which would be reviewed on an annual basis.

- Enables the continuation of the PMO services by Mitie without any stoppage or interruption in service provision and project involvement.
- Ensures current knowledge of the estate and projects is retained due to no change in provider but means that no efficiencies or improvements in the process could be implemented into the service offering.
- Annual review requires internal and external resources to be employed each year.
- Mitie and the supply chain are not provided with any certainty to work with ECC to encourage improvement of the service offering.

4.3 Option 1b – Extend the PMO on an improved fee agreement/service offer with Mitie for 1 year.

Extend the PMO service offer, with Mitie for 1 year (September 2020 – September 2021) and enter into a new fee agreement.

- As with option 1a, this would provide continuity of supply and retention of knowledge of the estate and ECC projects.
- The 1-year extension proposal from Mitie would see a reduction in the annual fixed fee, however, the project percentage fee that is applied on each project would remain the same as the current agreement, therefore achieving limited savings overall.
- By entering into a further 1-year agreement for the PMO function, it would mean that another review would need to be carried out in 2021 and each year following to determine the approach to be taken. This would involve significant resource to carry out and complete each year.

4.4 Option 1c – Extend the PMO fee agreement until 31 March 2021 and enter into a new Fee Agreement with Mitie from April 2021 until September 2026 (Preferred Option)

Extend the PMO service offer, with Mitie for an initial 6 months (September 2020 – April 2021) on the existing Fee Agreement/rates and then from April 2021 extend until September 2026 based upon a new fee agreement and rates.

- Provides continuity of supply and retention of knowledge of the estate and ECC projects.
- The 5-year proposed extension would see a reduction in the annual fixed fee, a significant reduction to the project percentage fee and also a rationalisation of the insurance works fees to create a fixed rate across the

contract – leading to significant savings on insurance fees as set out in the Confidential Appendix.

- Working in partnership and focussing on continuous improvement will enable additional savings to be achieved through the supply chain in addition to the direct costs paid to Mitie.
- This option provides certainty of work over the next 5 years with the Core and Schools projects.
- Lowest cost (highest savings) of the Options as detailed in paragraph 5.1 below and the Confidential Appendix.

4.5 Option 2 – In-house approach to the provision of the PMO services

This option would move all services that are currently being provided by Mitie as part of the PMO in-house to be provided instead by the ECC Infrastructure Delivery and Facilities Management (IDFM) Team.

- ECC would be required to recruit and retain appropriately qualified Project Managers, Quantity Surveyors and Engineers. There are already some specialists in the IDFM Team however recruitment is challenging. Management of fluctuations in work would be at a cost to ECC. There is not currently sufficient resource at ECC and this would require recruitment or to secure alternative third party support.
- TUPE would be likely apply to staff employed within the current PMO, as a result, immediate savings through reduced salary costs would not be achieved.
- Mitie currently undertake the Principal Designer and Principal Contractor role under the Construction Design and Management regulations on all projects they deliver. If ECC were to take this on it would transfer significant risk to the Authority. Mitie currently pick up the cost risk of design errors and issues. Under this option this would instead be borne by ECC or paid for with another contractor.

4.6 Option 3 – Procure a new contractor for the provision of the PMO service

- ECC would need to manage interface between Mitie, ECC and a new contractor. It should be noted that this is needed every time that there is a change of contractor.
- A new supplier which would need to be appointed following a full procurement process or use available existing framework agreements.
- The removal of the PMO from the overall Mitie contract would significantly impact the total contract value to Mitie, reducing it to a level where it would no longer be classed as a Strategic Partner contract under Mitie's definitions. Strategic Partner Contracts receive the added benefits of a Strategic Account Director, greater focus from the Mitie Managing Director Team. ECC has received significant added value as a result of being a Strategic Partner. An example of this is the level of social value, which is in excess of contractual requirements and has recently seen the ECC/Mitie partnership awarded the RICS Social Impact award for the East of England.

- There could be an impact on knowledge transfer and continuity if there was a provider change.
- Significant interface issues would occur and interface risk that would sit with ECC to manage. There is extensive overlap between the Facilities Maintenance services and PMO, although this is a risk which was envisaged when the contract was originally entered into.

5. Issues for consideration

5.1. Financial implications

5.1.1 Further detail is to be found within the Confidential Financial Appendix.

5.1.2 Reductions to capital expenditure and Insurance costs arising from the Preferred Option (1c) are estimated at £329,000 per annum and it is proposed that these are retained and reinvested within the capital programme in view of specific funding streams and asset condition backlogs. Over the life of the contract extension the reduction to capital expenditure is estimated to be £1.810m on the assumption of a continuation of current budget levels.

5.1.3 The costs arising from this proposed contract extension are a capital cost to ECC and are already allowed for within ECC's future Capital Programme, and the associated revenue cost of borrowing are provided for within the MTRS and as such there are no direct budgetary implications of this decision.

5.1.4 Since the Schools element is funded by grant and the Insurance element through the Insurance reserve then it is assumed that those expenditure reductions will need to be reinvested, in turn delivering greater VFM. However alternatively Members could decide to realise the ECC core estate capital reductions of £120,000 per annum in turn which would equate to a revenue saving of £41,000 per annum from reduced borrowing costs.

5.1.5 The negotiated proposal within the stated Preferred Option (Option 1c) represents significant Capital and Insurance cost reductions to ECC.

5.1.6 The cost reductions arise both from a reduction in the fixed fee component and a reduction in the fee chargeable to each project.

5.1.7 There exists a backlog in Capitalised Maintenance Plans and a deficit in Building condition on both the core and schools estates. It is assumed that within this context and because of specific funding streams that the capital expenditure that would otherwise have been incurred will be retained within the allocated budgets and recycled to deliver further works, although ongoing monitoring of estate condition and works backlogs will be undertaken to confirm whether current budget levels should continue to be retained. Thus currently it is assumed that whilst more value will be achieved from existing budgets there would not be cashable savings.

5.1.8 The budget levels are determined for these Capitalised Maintenance programmes each year and the totals of £5m for Core Estate and £6.6m for

Schools are as reflected in the Published Capital Programme for 2020/21 and future years, noting that for 2021/22 onwards they are indicative only. Should the values allocated in the budget change from £5m and £6.6m then it is the budgeted values that would be delivered through the PMO. For Insurance clearly costs are reactive, and cost reductions have been modelled on recent historical averaging, noting that there can be significant variation year on year.

5.2. Legal implications

- 5.2.1. ECC has a duty to secure best value in the delivery of its services. The duty is 'to make arrangements to secure continuous improvement in the way functions are exercised, having regard to a combination of economy, efficiency and effectiveness.'
- 5.2.2. ECC is a Contracting Authority for the purposes of the Public Contracts Regulations 2015 (PCR 2015). The extension of the contract will require a contract variation.
- 5.2.3. Regulation 72 (1)(e) allows a variation to a contract in its term when the modifications, irrespective of value are not substantial. It is likely that the variation will not be viewed as substantial particularly given that they do not affect the economic balance of the contract in favour of the Contractor (the variation relates to a reduction in price rather than an increase) and the variation does not extend the scope of the contract considerably (it remains broadly similar to the original procurement).

6. Equality and Diversity implications

- 6.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
 - (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 6.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 6.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

7. List of appendices

Appendix 1: Confidential Appendix

Appendix 2: Equality Impact Assessment

8. List of Background papers

None