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| <b>Subject:</b>         | <b>Provision of the Commercial Portfolio's Estate Management Consultancy Contract</b> |  |                     |
| <b>Date of Meeting:</b> | <b>14 July 2011</b>   |  |                     |
| <b>Report of:</b>       | <b>Strategic Director, Resources</b>  |  |                     |
| <b>Lead Member:</b>     | <b>Cabinet Member for Finance &amp; Central Services</b>                              |  |                     |
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| <b>Key Decision:</b>    | <b>Yes</b>  | <b>Forward Plan No: CAB23507</b>             |                     |
| <b>Wards Affected:</b>  | <b>All</b>  |  |                     |

**FOR GENERAL RELEASE****1. SUMMARY AND POLICY CONTEXT:**

- 1.1 To review the method of service provision of the Estate Management consultancy contract for the council's Commercial portfolio, currently provided externally by national consultants Cluttons and Smiths Gore for the Urban and Downland Estate portfolios respectively. The current contracts expire at the end of March 2012. The report explores the rationale for direct and indirect management options to inform the decision on how to procure these services in the future. If (part of) the service provision is to be delivered externally then the retender will need to be advertised in the Official Journal of the European Union (OJEU) as required by European Legislation. This is a lengthy process that needs to be started soon to adhere to the OJEU timetable.

**2. RECOMMENDATIONS:**

- 2.1 That Cabinet authorises:
- (a) The retendering of the Estate Management consultancy service for the commercial Urban portfolio, for a 5 year period, with an option for up to a 2 year extension. The timetable and process, are set out in paragraph 3.13 and Appendix 2.
  - (b) The granting of delegated powers to the Strategic Director, Resources in consultation with the Cabinet Member for Finance and Central Services to, a) award the contract following the recommendations of the evaluation panel and the results of the tendering process and b) approve an extension of up to 2 years to the contract if required dependent on performance.
  - (c) That the tender specifications be reviewed to ensure a quality service monitored by specific performance indicators with a positive attitude to income generation.

- 2.2 That Cabinet considers the options of continuing to outsource or bringing in-house the estate management of the Downland Estate as set out in the body of the report, and agrees on a way forward.
- 2.3 That in the event that Cabinet decides on the outsourcing option for the estate management of the Downland Estate, Cabinet grants the corresponding authorisations as per 2.1 a), b) and c) above for the retendering of the Estate Management consultancy service for the Downland Estate.

### **3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**

- 3.1 The Council has a large commercial (Urban and Downland) portfolio that generates an annual income of approximately £9.5m pa. The portfolio comprises a mixture of properties as detailed in Appendix 1. The Council's property portfolio is significantly different to a standard institutional investment portfolio managed purely on investment criteria.
- 3.2 The urban portfolio comprises mainly secondary and tertiary properties and a small proportion of prime retail property. In addition there are a number of industrial estates developed mainly in the 1960s on ground leases and a wide range of other properties. Income generation is a key factor as we have a legal obligation to adopt sound working practices to secure best consideration in respect of such an important public asset. In addition the income helps support other key services in the city.
- 3.3 The agricultural portfolio or Downland Estate extends to about 10,500 acres (4400hectares) consisting of 22 Agricultural Act Holdings, 14 farm business tenancies, 7 commercial tenancies and 7 license agreements. Although the portfolios are currently held mainly for investment purposes, they are managed on the basis of more wide-ranging criteria taking account of environmental, social and economic regeneration as detailed under the Downland Initiative strategy. The Property and Design support service are the current owners of this strategy.
- 3.4 The Council also retains a large seafront property holding comprising a mixture of leisure and retail uses which generates an income of approximately £1m pa. Historically the seafront has been excluded from the main core contract as this is a specialist area regenerated in accordance with a specific strategy. It is not therefore proposed that the management of these properties be outsourced and this service will continue to be managed by a dedicated Estate surveyor in Property & Design but specialist advice is to be engaged particularly in regard to the clubs and bars which require specialist property knowledge of those trades and the factors affecting the businesses and assessment of their value.

#### **3.5 Current Estate Management**

The Property & Design service manage two outsourced contracts for the core day-to-day estates functions of the Council's commercial (Urban and Downland) portfolio. The Urban contract is handled by Cluttons and the Downland by Smiths Gore. These companies provide a full range of services including; rent and service charge collection, chasing arrears, new lettings, rent reviews, lease renewals, assignments of leases, instructing and liaising with solicitors, addressing tenants queries, maintenance issues, facilities management,

disputes, landlord & tenant issues and a range of minor activities involved in managing buildings and engaging with hundreds of tenants.

- 3.6 The more sensitive and strategic functions are managed by the council's Property Estates team within the Property and Design service. About 20% of the urban portfolio of properties, that require low maintenance and management, are managed by the Council's Property Estates team. This represents value for money for the council as the degree of management intervention is limited.

### **3.7 Urban Portfolio**

The management of the urban portfolio has been outsourced since 1995 and retendered in 2000 and 2005. As part of the Asset Management process Property & Design service continues to review the commercial portfolio both as a whole and in parts together with the management arrangements. The rationale identified for holding properties continues to work well and facilitates comprehensive investment, revitalisation and redevelopment of the City in line with corporate objectives as well as generating income to support other services. We have progressively developed strategic themes which form an important part of the overall management approach of the council that are put into effect through the contract specification by the managing agents. These themes include; retaining the character and mixed independent retail trading nature of The Lanes and the North Laine, promoting small and medium enterprises (SMEs), encouraging diversity, retaining individuality and adapting leasing arrangements to assist small businesses.

- 3.8 Experience demonstrates that outsourcing of the urban portfolio provides a number of advantages not available with in-house management including;

- The ability to utilise the breadth and depth of commercial property experience available in a large national property practice and take advantage of the research capability and in depth market knowledge available within professional commercial firms working full time in the property market. The commercial property market has become very sophisticated and such market knowledge and marketing expertise are vital to letting properties especially in times of difficult market conditions like those we have experienced over the past 3 years.
- Greater flexibility to deal with inevitable peaks and troughs in workload which can be greatly accentuated in times of prolonged market uplift or downturn
- Avoidance of the problem of attracting and retaining suitably qualified professional staff to the council.
- Enabling the Property Estates team to concentrate on strategic property issues whilst the management agents address the many demands of the commercial urban portfolio.

- 3.9 Due to the commercial complexity of the urban estate, it is proposed that the outsourcing of these core management functions to one main contractor continues. Additionally, it is proposed that the tendered contract specification be reviewed and updated with lessons learned to reflect better performance measures and incentives to ensure a quality service with a positive attitude to income generation. It is considered that value for money and greater flexibility will be achieved more readily with a 5-year contract offering the option of an extension of up to 2-years subject to performance. If as a result of the re tendering exercise the contract is awarded to a contractor who is different to the

incumbent, there may be issues involving the transfer of legal obligations in relation to personnel between those parties.

### **3.10 Agricultural Portfolio – Downland Estate**

The Downland Estate is currently managed to provide income generation, but within the Downland Initiative policy developed in 2005. The Downland Initiative vision is to ensure social, economic and environmental aims and benefits are achieved and has the overarching aim to “reconnect the people of Brighton & Hove to a more biodiverse Downland with better education and improved access and a better sense of connection to the land”. So far, there has been limited success in implementing the policy mainly due to the lack of central drive to join-up the large range of services and partners involved and sufficient funding.

The Downland Initiative is now 6 years old and needs reviewing in light of some significant changes since its inception:

- The Downland Estate is a key to the new Administration’s strategic direction to create a Biosphere Reserve.
- The formation of the South Downs National Park which provides a great opportunity for different approaches to the development of the Downs.
- The rapidly increasing potential for eco-tourism.

A review would give the development of the Downland new vigour and would allow us to bid for support from the different funding streams that are becoming available. Critical partners in the implementation of any Downland policy are the tenant farmers and our relationship and ability to influence them is therefore vital to success. As estate management is a key method of influencing tenant farmers, it is suggested that alternative ways of delivering the service are also considered.

3.11 Smiths Gore took over the day-to-day estates management contract in 2005. They have had some success in introducing changes, under the direction of the Property and Design service, to support the Downland Initiative. Additionally, they have improved relationships with tenant farmers that had floundered under previous contractors. However, the nature of any contract places our relationship at arms length. Currently, risks associated with this issue are managed through the design of the contract’s specifications and contract management. A more direct relationship, by bringing the day-to-day estate management in-house, could minimise these risks and provide the Council with greater influence in implementing a revised policy.

3.12 However, there would be additional on-going cost in pursuing the in-housing option and it may be difficult to recruit sufficiently skilled staff. The current contract costs approximately £80k pa (£20k of which is unfunded, the budget being approximately £60k) for which Smiths Gore provide ad-hoc specialist support and employ 1.5 FTEs to provide basic estate management. As the council has no experience in directly managing the Downland Estate and it is vital to attract the right calibre of staff, it is difficult to calculate the exact additional on-going cost of in-housing. It is estimated to be in the region of £50k to £70K pa spread across legal, finance, estate management and some spot purchasing of outside very specialist support (a total spend of between £130k to £150k). These additional costs could be reduced by a holistic review of all staff likely to be involved in the support of the Downland Estate and ensuring work is placed in

teams where economies of scale can be maximised. Additionally, the successful implementation of a reinvigorated Downland Initiative, may reduce overall environmental costs in the longer term and, in so doing, allow us to bid for external funding and release funds from partner agencies. It is therefore proposed that if the in-housing option is agreed, further work be carried out to decide exactly how the new system would operate.

Cabinet are therefore asked to consider in-housing the estate management of the Downland Estate as well as the option of re-tendering the contract to continue with the outsourcing arrangements.

### **3.13 Re-tendering Timetable**

The existing contract for both services ends on 31 March 2012. The proposed OJEU timetable set out in Appendix 2 and is tight. Subject to Cabinet approval we would need to place the OJEU advert(s) as soon as possible in order to achieve tender award(s) in January 2012 followed by a mobilisation period. To prepare for the re-tendering process a cross departmental working group will be established to work on the specification, evaluation criteria and procurement process to comply with European legislation. The Property Estates team are working closely with the Procurement team. Any recruitment and selection issues would also need to be addressed within the proposed timetable.

## **4. CONSULTATION**

- 4.1 Regular consultation will continue with the relevant stakeholders, councillors and the cross departmental working group

## **5. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

- 5.1 It is expected that the estimated expenditure under the retendered contract will increase by 5-10% in line with the increase of professional fees over the past 7 years although some further variation will depend upon the inclusion of additional properties and services. The new contract will be off-set to a degree by the variations in the scope of the portfolio and functions tendered and will have to be reviewed at the tender evaluation stage to enable the appropriate negotiations to occur.
- 5.2 Bringing the Downland estate management contract in house will increase on-going costs across finance, legal and estate management. The current budget is £59,160. There is expected spend of £27k in 11/12 to cope with an increase in very specialist support to lease renewals etc. The current budget base provision would need to be increased to approximately between £110k and £130k (an increase of £50k to £70k) and if work levels continue at last year's rate, an additional £27k will need to be found for continued specialist support. However, further work will be required to design the most effective way to manage the services in house and therefore better identify the cost involved. An additional budget will be need to be identified to meet the development and on-going implementation of a revised Downland Initiative strategy; this is projected to be in the region of £25,000. These additional costs would be identified within the FY12/13 budget.

*Finance Officer consulted: Rob Allen*

*Date: 27/06/11*

Legal Implications:

- 5.3 The retender of the Estate Management consultancy service contract(s) is subject to compliance with the full application of applicable EU legislation together with the Public Contracts regulations 2006, the Council's Contract Standing Orders and Financial Regulations.
- 5.4 The Transfer of Undertaking (Protection of Employment) regulations 2006 (TUPE) may apply should the management of the Agricultural (Downland) portfolio be transferred in-house. Under the existing contract with Smiths Gore, the contractor is obliged to provide the council with TUPE information which will help determine whether TUPE applies. As this information has not yet been requested, it is not possible at this juncture to comment on what liabilities the council will be taking on board. If there is not an employee and/or organised group of employees immediately before the change whose principal purpose is carrying on the relevant activities, a TUPE transfer will not occur. If a TUPE transfer does not occur, a recruitment process will need to be initiated and if upon provision of information it is determined that a TUPE transfer has occurred all of Smiths Gore's rights, duties and liabilities under or in connection with the transferring employees' contracts pass to the Council.
- 5.5 The recommendations in section 2 are proper to be referred to Cabinet for approval. This is to comply with Contract Standing Order 3.1, which stipulates that authority to enter into a contract(s) worth more than £500,000 be given by either Cabinet or the relevant Cabinet Member.

*Lawyer Consulted:*

*Isabella Hallsworth*

*Date: 27/06/11*

Equalities Implications:

- 5.6 Equalities issues are addressed in recruitment and the tendering process and contract agreement.

Sustainability Implications:

- 5.7 These issues will be addressed in the developing Downland Strategy and policies and tender specification ensuring that the successful bidder has commitments in place consistent with those promoted by the council.

Crime & Disorder Implications:

- 5.8 There are no crime & disorder implications.

Risk & Opportunity Management Implications:

- 5.9 Risks are that the council will be unable to recruit appropriately, few tenders are received and tender prices are high. Alternatively there could be a very high competitive level of interest which is to the council's advantage although the short listing process more time consuming.

## Corporate / Citywide Implications:

- 5.10 As contained in the body of the report, promoting the Downland Initiative strategy, regeneration of the City, value for money and a sustainable economy.

## **6. EVALUATION OF ANY ALTERNATIVE OPTION(S):**

- 6.1 Return management of Urban portfolio to the Property Estates team.** This would bring the properties under direct internal control and reduce some of the communication and transactions that occur between the management company, the Estates team and Finance officers. However, it would lose all the key benefits of employing an external advisor identified above. In addition, as TUPE may apply it is not clear how many staff would transfer from Cluttons although the information we have indicates that at least 9 full time staff are employed in managing the portfolio including 2 based in New England House. From a comparison of the cost of the Cluttons contract and bringing 9.5(anticipated) staff in house it is apparent that in-sourcing this function would be more costly however a detailed analysis has not been done. The need for separation of the strategic and core management functions is important and cannot be overstated. Whilst both functions could take place in house we would have none of the benefits identified in 3.8 above accruing from outsourcing core management. In addition Finance staff within Cluttons' head office issue rent demands, collect the rent, arrears and provide other financial services which if passed to the council would create significant demands on the council's Finance team. Legal input on lease transactions and other Landlord & Tenant requirements would need in-house legal commitment that currently is not available.
- 6.2 Return the management of the Agricultural properties to the Property Estates team.** This option is outlined in paragraphs 3.10-3.12 above.
- 6.3 Outsource all of the Estates team work to an external management organisation.** In practice it is unlikely to be possible or desirable to outsource everything to the external consultancy company. It will remain necessary to retain an internal contact to liaise with the external organisations, ensure the strategic priorities of the council and City are met and monitor performance. It is vital to retain the strategic and property functions in house to maintain an overview and clear sense of direction for the property portfolio. In addition it is advantageous to retain sensitive and high value, low management, properties in house to retain close control and reduce costs.

## **7. REASONS FOR REPORT RECOMMENDATIONS**

- 7.1** To review the service delivery options for the major part of the council's commercial (urban and agricultural) portfolio to enable Cabinet to take an informed decision on the future provision of these services. The management and delivery of this service through a mixed economy has benefits for the council in terms of customer service, expertise, skills, capacity, value for money and efficiencies. This in turn allows the in house team to monitor the process and provide strategic and other property advice including the more sensitive issues in connection with the commercial and the operational properties of the council. Furthermore this split of functions allows the council to take advantage of the other benefits identified in 3.8 whilst retaining professional expertise in house to provide property advice to all services within the council on land and property

related issues. This is a constantly evolving area with fresh initiatives, such as the Localism Bill and the emerging Downland Strategy. The advantages and disadvantages of bringing the Downland estate management function in-house have been set out and need to be balanced against the council's policies and objectives.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Commercial Portfolio – Property Mix & Income Generation
2. Proposed Timetable

### **Documents in Members' Rooms**

None

### **Background Documents**

None