

Cabinet – 20 March 2019

Appointment of an Enhanced Managing Agent for the Council's Commercial Investment Portfolio

Portfolio: Councillor Andrew: Regeneration

Related portfolios: Councillor Mike Bird Leader

Service: Regeneration & Development: Economy & Environment

Wards: St Matthews

Key decision: Yes

Forward plan: Yes

1. Summary

- 1.1 In July 2017 Cabinet approved the acquisition of the Saddlers Shopping Centre by the Council and on 8 September 2017 the Council became the landlord of the property. As reported to Cabinet through the due diligence reports received from the Council's external advisors, a number of current and extant contracts are/ were in place to assist in the management and operation of the Shopping Centre including that of the incumbent managing agent. Cabinet resolved to acquire the Centre with the knowledge that further procurement exercises would be necessary to secure specialist expertise to manage the Shopping Centre into the future. In addition, the Council has been undertaking a lesser management agent role for The Sister Dora Buildings for the Council's tenants Primark and MidCounties Co-Op since the decision to invest in this development in April 2013 the Sister Dora Buildings and the 50 unit Saddlers Shopping Centre require the Council to provide a suite of management activities to our tenants and customers including managing the service charges, rent collection, and lease agreements.
- 1.2 This report sets out the tendering exercise that has been undertaken to procure an Enhanced Managing Agent (EMA) for the Shopping Centre and the Sister Dora Buildings to provide the Council with the strategic and day-to-day advice it requires to successfully manage these retail properties in the Council's commercial property portfolio. In view of the responsibilities the Council has for these investment properties it has also been deemed appropriate to include in the scope of services for this contract award, pricing to be used on a call-off basis for other managing agent services that the Council may require in the future should Cabinet and Council resolve to acquire other commercial investment property.
- 1.3 As set out in the Council's Contract Rules a contract award that exceeds £500,000 in value requires a Cabinet resolution and thus this is a key decision.

- 1.4 This report should be read in conjunction with a private report entitled 'Appointment of an Enhanced Managing Agent (EMA) for the Council's Commercial Investment Portfolio' to be presented at the same Cabinet Meeting 20 March 2019; this report contains commercially sensitive information concerning the procurement of EMA and the outcomes of the tender evaluation.

2. Recommendations

- 2.1 That Cabinet approve, in accordance with the information contained in the accompanying private report, the contract award for the Appointment of an Enhanced Managing Agent for the Council's Commercial Investment Portfolio Contract to Avison Young (formerly GVA Grimley Limited). The contract will start on 1 May 2019 until 31 March 2024 with an option to extend for a further period of one year (depending on performance).
- 2.2 That Cabinet delegate authority to the Executive Director for the Economy and Environment, in consultation with the Portfolio Holder for Regeneration, the Executive Director Transformation and Resources/ Head of Legal and Democratic Services to finalise the contract documents to ensure satisfactory completion prior to sealing and signing of the contracts, deeds or other related documents for the Appointment of an Enhanced Managing Agent for the Council's Commercial Investment Portfolio Contract.

3. Report detail

- 3.1 In July 2017 Cabinet approved the acquisition of the Saddlers Shopping Centre following a two stage due diligence process to understand the investment return and regeneration value of purchasing this strategically located property asset in Walsall Town Centre. Following the resolutions of Council to approve the purchase on 8 September 2017 the Council became the landlord of the property, having acquired the long-term ground leasehold interest in the property.
- 3.2 In April 2013 Cabinet approved the investment in the re-development of the Sister Dora Buildings having secured pre-lets with retailers Primark and Mid-Counties Co-Op. In entering into a lease with the two tenants the Council took on responsibility for the setting and collecting a service charge to provide the management of communal goods and servicing areas at the property, the collection of rents, and other landlord responsibilities.
- 3.3. In the case of both these assets, the management of these properties requires specialist skills, and in the case of the Saddlers Shopping Centre, it requires a day-to-day intensive and dedicated management team who have responsibility for enacting a range services on the Council's behalf to our tenants and customers, and overseeing the role of our service providers. In view of the responsibilities the Council has for these investment properties it has also been deemed appropriate to include in the scope of services for this contract award, pricing to be used on a call- off basis for other managing agent services that the Council may require in the future should Cabinet and Council resolve to acquire other commercial investment property.

- 3.4 As reported to Cabinet in July 2017 a number of current and extant contracts are/were in place to assist in the management and operation of the Shopping Centre including an extant contract with the incumbent managing agent. Cabinet resolved to acquire the Centre with the knowledge that further procurement exercises would be necessary to secure specialist expertise to manage the Centre into the future. Under his delegations, the Executive Director Economy and Environment agreed to enter into an interim appointment with the incumbent managing agent to ensure business continuity whilst a procurement exercise was undertaken to appoint an enhanced managing agent. In relation to the contracts with those service providers who support facilities management activity all of which were procured by the previous Shopping Centre's landlord and were either novated to the Council on the original terms or the Council is holding-over on extant contracts to ensure 'business as usual' in full knowledge that these arrangements need to be re-procured.
- 3.5 The 'Aim' of this Cabinet report is to explain the procurement process that has been undertaken to appoint an EMA and provide Members with information about the scope of services and the evaluation process that has been undertaken to recommend the contract award.

Procurement Advisor

- 3.6 Officers established a task and finish group to review the scope of services needed and related procurement, legal and facilities management considerations for the appointment of a new EMA, through this group it was been resolved that the Council did not have the expertise to develop the specification of the managing agent role and would require additional resource to both prepare this and run the procurement process. This appointment of an external advisor enabled the Council to identify what we needed to 'know' about the range of services we required, and what the procurement options were to 'decide' which procurement route the Council should take. The Procurement Team advised on the appointment of the external consultant. This process identified Arcadis LLP as a consultant who had the necessary expertise and whom had provided recent asset management advice to the Council to aid an overall review of the Council's asset management function. Arcadis LLP were instructed to act as the Council's procurement advisor; providing specialist property and facilities management advice as well as procurement options. Arcadis LLP were appointed through the Crown Commercial Services (CCS) Framework and were therefore precluded from bidding for the EMA role.

Scope of Services for the Enhanced Managing Agent (EMA)

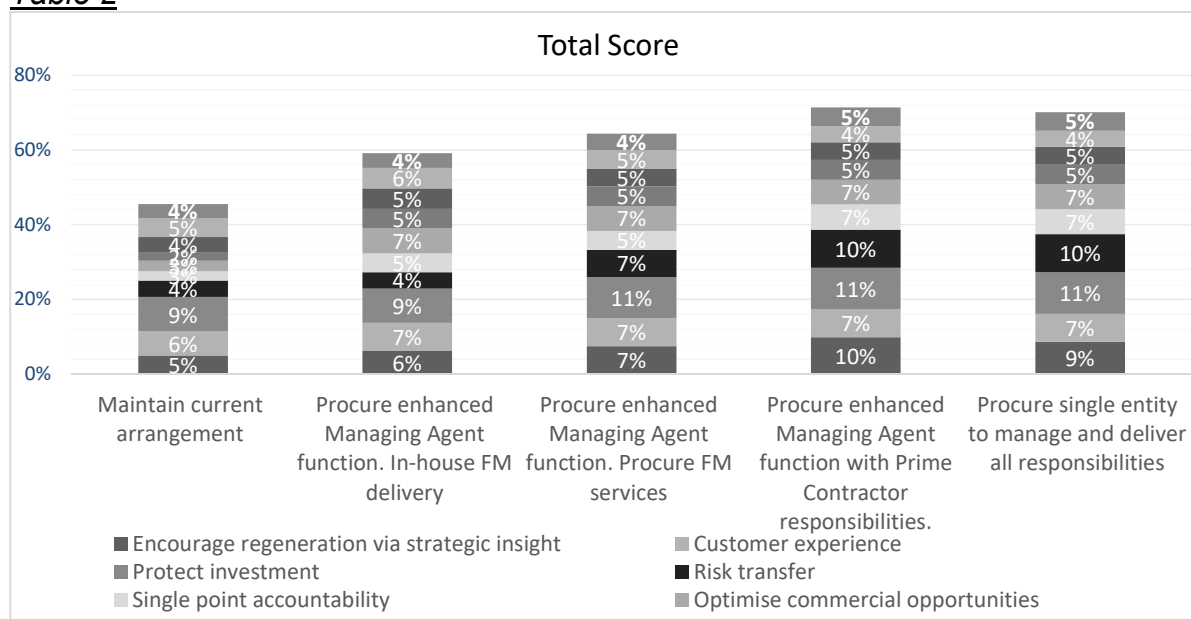
- 3.7 On appointment Arcadis LLP worked with the Regeneration & Development and Procurement teams to develop the procurement strategy based upon the Council's EMA requirements. The scope of services has been primarily formed around the EMA requirements for the Saddlers Shopping Centre whilst recognising the role will extend to the Sister Dora Buildings and possible other commercial property should these services be needed. This process commenced with a review of the existing arrangements, providers and contracts to enable us to 'know' what services needed to be re-procured and 'decide' what procurement and scope of services needed to be commissioned. Tables 1 and 2 represent the outcomes from early workshops to scope the procurement strategy and identifying the Council's objectives for the EMA's role for the Saddlers Shopping Centre. Aligned to that was the options for how the objectives could be achieved through different procurement routes. Scoring was applied and weighted. It should be noted that the

scope of services for the Sister Dora Buildings was understood from the outset and was unchanged throughout the procurement process, with the process sought a fixed price annual management fee. In consideration of all these factors 'Option 4- Procure Enhanced Managing Agent function with Prime Contractor responsibilities' was deemed the best way for the Council to 'respond' and identify its preferred strategy.

Table 1

			Option 1	Option 2	Option 3	Option 4	Option 5
Objectives	Includes	Ranking agreed (at meeting 20.04.2018)	Maintain current arrangement	Procure enhanced Managing Agent function. In-house FM delivery	Procure enhanced Managing Agent function. Procure FM services	Procure enhanced Managing Agent function with Prime Contractor responsibilities.	Procure single entity to manage and deliver all responsibilities
Encourage regeneration via strategic insight	Optimise retail interest, market awareness, adopting best practice	8	4	5	6	8	7
Customer experience	Aesthetics, cleanliness, safety, minimal voids etc	7	6	5	7	7	7
Protect investment	Advice on forward maintenance / life cycle / strategic initiatives (energy efficiency / spend to save etc).	10	5	5	6	6	6
Risk transfer	Operational / financial / H&S	9	3	3	5	7	7
Single point accountability	Reduced Council involvement / more effective interface	5	3	6	6	8	8
Optimise commercial opportunities	Service delivery efficiency, cost certainty, maximise rental income	6	3	7	7	7	7
Protect reputation	Avoid adverse publicity	4	3	7	7	7	7
Social value	Local employment opportunities, SME engagement	3	6	8	7	7	7
Financial transparency		2	8	9	8	7	7
Effective communications	With tenants and public	1	7	7	8	9	9

Table 2



3.9 'Option 4' was envisaged to provide the Council with a managing agent who would taking on responsibility for the management of the Shopping Centre, provide the Council with the necessary strategic advice to protect and enhance its' investment, and act as the prime contractor for all Facilities Management services. This model

would provide a single point of contractual responsibility and enable greater scope for risk transfer. The next stage of the procurement strategy was to identify the procurement route and it decided that the use of an OJEU compliant framework was most appropriate as it would comply with the Council's Contract Rules and provided an expedient route to market. The Crown Commercial Services (CCS) Framework 'RM3816 Estates Professional Services – Lot 1 National' was selected as it provided access to a good range and calibre of providers. The final element of the procurement strategy was to undertake formal 'soft market testing' with all the providers to test the appetite for the EMA with Prime Contractor responsibilities approach; overall positive feedback was received that included a number of the providers confirming their understanding of the approach and willingness to participate in the tendering exercise based on this specification and scope of services. The soft market testing also enabled us to identify those providers who were not proposing to submit a tender response.

Tender Process and Evaluation

- 3.10 The tendering process went live via the Council's procurement portal on 30 July 2018 with a tender closing date of 5 October 2018. Through the tendering period and the Council's response to the clarification questions other bidders decided to no longer participate and on tender close two submissions were received. As part of their advisory role to the Council, Arcadis LLP worked with the Council to form the tender evaluation criteria and also formed part of the evaluation panel with representatives from Regeneration and Development and Procurement. The tender evaluation criteria can be found in Figure 1 below.

Figure 1.

Evaluation Criteria	
Weighted Price Criteria:	
The evaluation of this section will be against information included in the pricing schedule	
Criteria	Percentage
Price	30%
Total	30%
Weighted Non-Price Criteria: The evaluation of this section will be against information included in the Non-Price Criteria Questionnaire	
Criteria	Percentage
Social Value	5%
Proposed Service Delivery Plans	50%
3 references of working on contracts of similar nature in the last three years	10%
Proposed quality assurance and management procedures for delivering high-quality services	5%
Total	70%

The returned tenders were evaluated during October 2018 however it became apparent that neither of the bids met the full specification that the Council had published and therefore, following a clarification with each of the bidders neither bid could be accepted as compliant.

Second Tender Process and Evaluation

3.11

Scoring System		
Score	Score Classification	Scoring Definition
4	Excellent	<ul style="list-style-type: none"> • Response meets the specification requirements • Significant level of evidence that specification objectives and requirements have been met • Significant added value and innovation evident
3	Good	<ul style="list-style-type: none"> • Response meets the specification requirements • Good level of evidence that specification objectives and requirements have been met • Limited added value and/or some innovation evident
2	Satisfactory	<ul style="list-style-type: none"> • Response meets the specification requirements • Adequate, basic level of evidence that specification objectives and requirements have been met • No added value evident
1	Poor	<ul style="list-style-type: none"> • Response does not meet some of the specification requirements • Limited level of evidence that specification objectives and requirements have been met • No added value evident
0	Fail	<ul style="list-style-type: none"> • Response does not meet any of the relevant specification requirements • No evidence that specification objectives and requirements have been met • No added value evident

As the two tenders returned were non-compliant then it was necessary to 'Review' the procurement strategy and the requirements for the EMA role-informed by the evaluation and clarification information from the first tendering exercise. It was decided that the best course of action was to undertake a second tendering exercise, utilising the same OJEU compliant framework but with an amended scope of services to exclude the prime contractor responsibilities for facilities management. This scope would retain the managing agent role and still seek the services needed by the Council through the EMA's strategic advice but without the requirement for the EMA to take contractual responsibility for all facilities management providers (thus the second tendering process followed Option 3 in Table 1). Facilities management services for the Saddlers Shopping Centre would instead need to be commissioned by the Council under alternative contractual arrangements (see paragraph 3.13). It was also deemed necessary to amend the evaluation process and a revised tender evaluation process can be found at Figure 2 which used the same scoring system as shown in Figure 1.

Figure 2

Weighted Price Criteria:

The evaluation of this section will be against information included in the pricing schedule

Criteria	Percentage
Price	30%
Total	30%

Weighted Non-Price Criteria:

The evaluation of this section will be against information included in the Non-Price Criteria Questionnaire

Criteria	Percentage
Social Value	5%
Proposed Service Delivery Plans Comprising:	
Management Team – Structure, experience & qualifications	15%
Overall Approach to Service Delivery	15%
Delivering Specific Services	10%
Mobilisation Plan	10%
3 references of working on contracts of similar nature in the last three years	10%
Proposed quality assurance and management procedures for delivering high-quality services	5%

This second tendering exercise commenced on 14 December 2018 with tenders returned by 15 January 2019. By tender close date 29 January 2019 3 submissions were returned. The same evaluation panel convened and the outcomes of their evaluation can be found in the private report to this same Cabinet meeting.

Next Steps

- 3.12 In preparing their tender submissions the Council sought from each bidder information on how they intended to mobilise the new contact as there will be a lead in period.
- 3.13 As the procurement outcomes have resulted only in the appointment of EMA and not the contractual responsibilities to provide facilities management then a review has commenced to explore the options for how these services may be procured; such services will include cleaning, security, car park systems, and commercialisation (the provider of concessionary stands and promotional areas in the Malls). Looking ahead the contractual responsibility for these facilities management arrangements will be through the Council and not the EMA however the EMA through their contract with the Council will provide support towards future procurement of these services, and can be asked to supervise their service delivery. At the time of writing this report it has not been possible to recommend to Cabinet what a future procurement strategy for facilities management of the Shopping Centre should be, and subject to the outcomes of the review and the contract award levels then the appropriate Scheme of Delegations will be used to enter into any future contractual arrangements. Until such time that these services can be procured, then those contracts that the Council is holding over on will need to continue.
- 3.14 The EMA role will provide the Council with the necessary strategic advice it requires to protect and enhance its investment asset whilst recognising the challenging retail sector market at this time. This strategic advice will extend to a targeted letting approach for void units and property reconfiguration to support new lettings and use opportunities. As the preferred provider has a national letting agency capability it has been recognised, and is considered to be best practice elsewhere, that having a second letting agent working jointly to secure tenants and

advise on rent reviews and terms with one of those agents having specific and significant presence in the local and regional retail market is important. The current letting agent, which fulfils the local / regional expertise role is acting under terms novated from the previous property owner. It is normal practice for letting agents to be appointed directly by the building owner, and not as sub-agents appointed by either the managing agent or the strategic adviser. Accordingly, a separate procurement process will be required to formally appoint a local / regional joint agent to act with the preferred provider's retail agency function. Furthermore, whilst the EMA role provides for the ability for lease advisory services to be provided by the preferred bidder through a call off arrangement, it may be appropriate to consider the appointment of alternative advisers for this work which would require a separate procurement process.

4. Council Corporate Plan priorities

4.1 As set out in the Corporate Plan 2018-2021, the Council's stated purpose is 'to create an environment that provides opportunities for all individuals and communities to fulfil their potential' and will achieve this by focusing on five priorities. The ownership of real estate in Walsall Town Centre and elsewhere in the Borough enables the Council to provide services for our communities, enables us to support local businesses, and in the case of our commercial investment portfolio, enables the Council to control assets that have either regenerative value or which deliver a financial return to the Council. The continued successful management of the Council's commercial investment portfolio will enable it to meet our corporate objectives;

- *Priority: Economic growth for all people, communities and businesses.*
- *Outcome: Our town and district centres offer a distinctive and vibrant mix of retail, leisure, business, community and cultural opportunities, and new housing.*

5. Risk management

5.1 Appointing an EMA with responsibility for the portfolio of properties currently in scope will carry risk relating to potential under performance of the role which in turn could have a direct impact on the Council's financial and reputational position. This risk has been mitigated through the careful consideration of the procurement strategy, the objectives that were set out at the outset, and the weighting given to these two considerations. The contractual obligations and key performance indicators drafted into the contract will enable the Council to have mechanisms to manage performance. Governance will be put in place for the management of the EMA and monthly performance management reporting of the assets throughout the life of the contract will be required.

5.2 As the original scope of the EMA had to be amended in recognition of the markets response to the tendering exercise (not accepting responsibility for the prime contractor functions for facilities management) then the current extant or holding over contractual arrangements for the management of the Saddlers Shopping Centre will continue to be a risk to the Council. This will remain until such time that these services can be re-procured and new contracts put in place. This risk is being

mitigated through the options review of facilities management for the Shopping Centre which will lead to the agreement of a procurement strategy for these services. The Council through the incumbent managing agent, the new EMA, and through its existing governance for the management of the Shopping Centre will continue to monitor this situation to foresee any problems and in line with the Council's Contract Rules and Scheme of Delegations will take the necessary steps to manage this.

- 5.3 Under the RICS Service Charges in commercial property (1st edition) guidelines the Landlord (the Council) has responsibility to demonstrate Best Value for all costs incurred through the service charge including the appointment of the EMA. There is a limited risk that through the appointment of the new EMA that tenants will feel that the new EMA does not represent Value for Money however the approach to tendering and indeed this Cabinet report can provide transparency to the approach taken. As a contributor to the service charge for the Saddlers Shopping Centre, the Council itself needs to be satisfied that the approach provides Best Value.

6. Financial implications

- 6.1 As can be seen in Figure 2, 30% of the scoring criteria for the EMA was based upon an evaluation of cost; bidders were asked to submit fixed priced items and hourly rates for specific services in order to provide a comparison of costs between bidders. Further information on the evaluation of costs can be found in the private report to this same Cabinet meeting.
- 6.2 The appointment of the EMA will be funded through a range of budgets determined by the way in which the properties are currently accounted for. The total cost of the fixed fee elements of the contract over 5 years is £1,396,370.00 with the service charge for each property being used to pay for these services.

7. Legal implications

- 7.1 The EMA has been procured from the CCS Framework so the terms of appointment are predetermined by the CCS Framework. However these terms are structured in way so that certain terms can be varied by the parties to take account of specific contractual circumstances. Prior to the notification of the Council's preferred bidder and the commencement of contract negotiations it is not possible to understand what terms the preferred bidder will seek to vary. It may be necessary to seek the advice of Legal Services and our procurement advisors on the contract negotiations at that stage, and this advice will be shared with the Executive Director and Head of Legal and Democratic Services ahead of his approval to award the contract under the delegations afforded to them under this Cabinet's decision and the Council's Scheme of Delegations.

8. Procurement Implications/Social Value

- 8.1 As this report aims to provide an explanation of the procurement process that has been followed to appoint the EMA then all procurement considerations have been set out elsewhere in this report.

9. Property implications

- 9.1 As this report aims to provide an explanation of the procurement process that has been followed to appoint the EMA for the management and enhancement of the Council's commercial investment portfolio then all property considerations have been set out elsewhere in this report. The EMA procurement strategy has sought to select a preferred bidder who has the necessary skills and expertise to manage these Council assets, and who has been able to demonstrate they have the knowledge and experience to work with the Council to protect and enhance the investment it has made to these properties.

10. Health and wellbeing implications

- 10.1 None directly arising from this report however as set out in paragraph 4.1 the ownership of property in the Town and District Centres has wider social and economic benefits than just an economic return as these premises provide important community and social facilities that support resident's health and general wellbeing. As important assets in the Town Centre the Sister Dora Buildings and the Saddlers Shopping Centre these premises contribute to the vitality of the Town Centre. Supporting the vitality of the Town Centre is a key priority for the Council as recognised by Walsall Plan (which includes the theme of 'Improving the environment of our Walsall Town Centre'), the Walsall Town Centre Area Action Plan, and the emerging Walsall Town Centre Masterplan.

11. Staffing implications

- 11.1 The importance of the EMA role is to provide the necessary support and specialist skills that are not available within the Council to manage these assets. Whilst the client for the EMA will be the Regeneration and Development Team the EMA will also be expected to work closely with other service areas to successfully manage the properties whilst also being accountable for the services they deliver. They will also help the Council manage its capacity and resources. The procurement exercise has been led by staff from Regeneration and Development in collaboration with Integrated Facilities Management, Finance, and Procurement.

12. Reducing inequalities

- 12.1 As the outset of the procurement strategy advice was taken as to whether an Equalities Impact Assessment (EqIA) was necessary and it was concluded that for the appointment of the EMA that was not required. Advice was given to keep under

review the equalities considerations of any policy or service change recommended by the appointed EMA and at that point in time screen these for an EqIA.

13. Consultation

- 13.1 No external consultation has taken place as the specification and scope of services has been determined using expert advice. The scope of services of the EMA and the procurement strategy has been developed in consultation with relevant teams (as set out in 11.1) and with the Head of Finance, Head of Regeneration and Development, Head of Procurement and the Executive Directors for Economy & Environment and Resources & Transformation. The intention to procure an EMA has also been discussed with the Portfolio Holder for Regeneration.

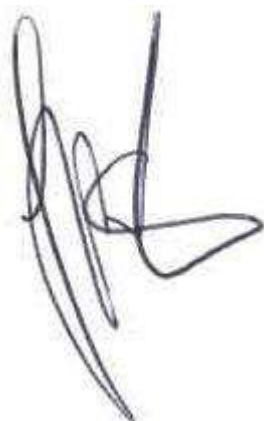
Background papers

1. Cabinet Report 24 April 2013 entitled 'Redevelopment of Old Square Shopping Centre'.
2. Cabinet Report 24 April 2013 entitled 'Redevelopment of the Old Square - supplementary report'
3. Cabinet Report 21 June 2017 entitled 'Retail development opportunity – Walsall'
4. Cabinet Report 26 July 2017 entitled 'Retail development and investment opportunity'

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20 March 2019



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20 March 2019