

REPORT OF THE DEPUTY CHIEF EXECUTIVE

A. Contract for the services of a Capital Programme Delivery Manager for major capital projects.

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To enter into an arrangement with Essex County Council (ECC) for the use of procurement framework 'CO0096 Temporary and Permanent Worker Supply Chain DPS', on a trial basis for up to a total value of £50,000.

Through that arrangement with ECC to benefit from the services of a Capital Delivery Programme Manager from 7 December 2024 to 28 February 2025. These services will programme manage capital delivery, primarily the Levelling Up Fund capital schemes in Clacton and Capital Regeneration Projects in Dovercourt.

To fund the contract from the Project Delivery Unit budget up to a maximum of £50,000.

Cabinet will consider a report on the 20 December about the Levelling Up Fund and Capital Regeneration projects. Cabinet will be asked to continue the projects from planning submission to tender documentation stage. That will report will include the requirement for continued capital delivery resource to manage the projects.

EXECUTIVE SUMMARY

Background to decisions to date

It was announced on 19 January 2023 that the Council's bid to Round 2 of the Government's Levelling Up Fund (LUF) for Clacton Town Centre, the 'Clacton Civic Quarter', was successful and was awarded £19,958,224. In addition, on 15 March 2023 it was announced that a £6.65m bid for projects in Dovercourt Town Centre was approved, under Government's Capital Regeneration Scheme.

The five schemes are comprised of the following: Clacton Hub (LUF); Carnarvon Terrace (LUF); Kingsway Improvements (CRP); Homes in Dovercourt (CRP); Learning and Library Project (CRP)

The Council's two directly delivered capital schemes funded via the Levelling Up Fund and Capital Regeneration Projects, Carnarvon Terrace and Homes for Dovercourt, are delivered on the Council's side through the services of a Capital Delivery Programme Manager. This delivery approach was set out and agreed by Cabinet in its report of October 2023, replacing the June 2023 proposal for ECC to programme manage the projects on TDC's behalf.

Services to date

The Council initially went out to recruit a Capital Delivery Programme Manager on a fixed term contract in March 2023. This recruitment process was not successful in securing a candidate.

As a result, the Council went out to open recruitment for a contractor via agencies in March

2023 for three days per week. The council interviewed a number of contractors and chose the individual who worked via Vivid Resourcing. The Council entered into a contract with Vivid Resourcing for his services.

However, the contractor ended his work for the Council in July 2023.

The contract with Vivid Resourcing required that the Agency provide a replacement contractor. The Council interviewed contractors on a five day per week basis in July 2023 provided by Vivid Resourcing and chose the current incumbent Mr. Sarin, who operates through Vivid via his company Epelstow Ltd. An exemption to procurement was published on 28/07/23. The Council entered into a new contract with Vivid Resourcing for a start date of 7 August 2023 for Mr Sarin's services, for five months to December 2023.

Cabinet also approved in October 2023 the necessary exemptions from the Council's Procurement Procedure Rules in order to enable the Corporate Director (Place and Economy) to enter into an agreement with the relevant Employment Agency to extend the engagement of the Capital Programme Manager.

On the 7 November 2023 the Corporate Director for Place and Economy took the decision to extend the engagement of the Capital Programme Manager, for the Levelling Up and Capital Regeneration Projects and to enter into an agreement with Vivid Resourcing for a period of 12 months, commencing on 9 December 2023 and ending on 6 December 2024.

Proposed course of action: To enter into an arrangement with Essex County Council for the use of framework contract CO0096 Temporary and Permanent Worker Supply Chain DPS, for up to a value of £50,000, on a trial basis. Through the arrangement with ECC to benefit from the services of the Capital Delivery Programme Manager from 7 December to 28 February 2025.

Funding source: The funding for this work will be allocated from the Project Delivery Unit budget. At its meeting in July 2024 the Cabinet agreed to increase its capacity by allocating funding to a Project Delivery Unit. At its meeting on 15 November 2024, the Cabinet approved a delegation to the Chief Executive in consultation with the Portfolio Holder for Economic Growth, Regeneration and Tourism to agree further expenditure where capacity is procured from external bodies / organisations / individuals as an alternative to recruitment from the Project Delivery Unit Budget.

IR35: An on-line HMRC assessment has been completed drawing on detailed information on the financial and practical arrangements of the work, which concludes that the role sits outside IR35, and as such the Capital Delivery Programme Manager is a contractor not an employee.

Procurement

There are strong arguments to exempt this contract from procurement rules, given the scale and scope of the work in train with the contractor, which would stall if a full procurement took place immediately, and that the extension will enable that procurement to take place. Further, government funding deadlines put the projects at risk if they delay and fall outside the funding timeframe. The contractor has built up significant project knowledge and is 'inflight' with delivery.

Entering into an agreement with Essex County Council on a trial basis enables us to test the use of a framework contract for workers offering services to the TDC. The framework also

enables us to access providers through a pre approved procurement route.

Investment levels: While the Capital Delivery Programme Manager is a contractor not a staff member and operates through a company without the Council's benefits or employment protections, it is noted that the role is one of the highest people costs to the organisation. This scale of investment is required due to the technical skills required to manage the multi-million pound projects, the fixed-term nature of the work, and the level of financial risk to the organisation if the projects fail or overspend. It is based on learning from previous projects where less has been invested on the client side of delivery, leading to challenges in project control.

Next steps: A Cabinet Report in December 2024 will set out in detail the process for project delivery for the LUF and CRP schemes, taking them to the tender stage. It will set out the procurement approach for the Capital Delivery Programme Manager after the 28 February 2025.

RECOMMENDATION(S)

It is recommended that the Council:

- (a) allocates up to up to £50,000 from the Project Delivery Unit budget to cover the costs of the services of a Capital Delivery Programme Manager;
- (b) Enters into an arrangement with Essex County Council on a trial basis for the use of the Framework Agreement: Temporary and Permanent Worker Supply Chain Dynamic Purchasing System (DPS), for a maximum of £50,000;
- (c) Requests an exemption to procurement rules to enter into the arrangement with Essex County Council, as a trusted public sector provider with a Framework tailored to the Essex market.
- (d) Subject to (b) requests ECC to procure the services of a Capital Delivery Programme Manager from 6 December 2024 to 28 February 2025, through the Temporary and Permanent Worker Supply Chain DPS at Essex County Council.

REASON(S) FOR THE RECOMMENDATION(S)

Cabinet approved at its meeting on 6 October 2023 that the Council would manage the Levelling Up Fund and Capital Regeneration Partnership projects directly allowing the Council to retain control and effectively manage the associated risks. Delivery was to take place under the oversight of a Capital Delivery Programme Manager.

These recommendations enable the Council to continue to implement the will of Cabinet and continue to progress these priority projects for the Council.

ALTERNATIVE OPTIONS CONSIDERED

Go out to a full tender. This would take time, leading to a gap in oversight of delivery until a new contractor was in place. It would also likely cost a similar amount to the current arrangement.

Employ directly. This would be the best option if it were deliverable, but it is very hard to recruit high quality professionals to fixed term posts in Tendering on the salary structure. We

have recently failed to recruit to the Head of the Project Delivery Unit, which is a related role.

Pause until planning is awarded. However, the scheme designs need to be continued to get to a detailed cost plan and RIBA Stage 3, and we need to develop the tender documentation. This would cause delay in the process. Government require us to progress the projects at pace.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

A key highlight priority for the Council for 2024/5 is to implement the Levelling Up Fund and Capital Regeneration Projects taking these through design and planning. This investment is to deliver this priority. The design work will continue with the investment in this role.

OUTCOME OF CONSULTATION AND ENGAGEMENT (including with the relevant Overview and Scrutiny Committee and other stakeholders where the item concerns proposals relating to the Budget and Policy Framework)

The Portfolio Holder for Economic Growth, Regeneration and Tourism has been consulted on this proposal and agrees to the approach.

The Portfolio Holder for Finance and Governance has been consulted on this proposal and agrees to this approach.

The Section 151 Officer and Monitoring Officer have been consulted on this report.

LEGAL REQUIREMENTS (including legislation & constitutional powers)

Is the recommendation a Key Decision (see the criteria stated here)	NO	If Yes, indicate which by which criteria it is a Key Decision	<input type="checkbox"/> Significant effect on two or more wards <input type="checkbox"/> Involves £100,000 expenditure/income <input type="checkbox"/> Is otherwise significant for the service budget
		And when was the proposed decision published in the Notice of forthcoming decisions for the Council (must be 28 days at the latest prior to the meeting date)	N/A

IR35

Procurement Rules determine whether a worker is an employee, either for TDC or an agency, or is a self-employed contractor. An IR35 assessment was undertaken in August 2023 and it was deemed that the Off Payroll rules did not apply which put the Capital Delivery Manager outside IR35. He was not an employee of TDC, or Vivid.

An on-line HMRC assessment was completed in November 2024 drawing on detailed information on the financial and practical arrangements of the work to February 2024, which concludes that the role sits outside IR35, and as such the Capital Delivery Programme Manager is a contractor not an employee.

Relationship with ECC

The proposal is to trial the use of the Essex County Council framework for the procurement of the services of the Capital Delivery contractor.

ECC has established a Dynamic Purchasing System (“DPS”) that allows it to quickly place job roles with external agency worker providers within set role rate bands and with set percentage mark-ups paid by ECC. This arrangement has the benefit of allowing access to providers through a route that is compliant with the Public Contracts Regulations 2015 (PCR15), is flexible to allow additional providers to the DPS on application and provides consistency and visibility of rates and mark-ups.

When establishing the DPS, ECC built in the flexibility to allow it to source placements for other local authorities (although those local authorities cannot directly access the DPS themselves).

The PCR 2015 Regulations provide for the use of framework agreements and dynamic purchasing systems to facilitate procurement, such as the one created by ECC. ECC and TDC each being a Contracting Authority for the purposes of the Public Contracts Regulations 2015 (as amended) are entering into the arrangement in relation to the performance by each of them of certain public functions common to each of them. As such TDC and ECC are allowed this public to public cooperation without the need for a procurement process.

<input type="checkbox"/>	The Monitoring Officer confirms they have been made aware of the above and any additional comments from them are below:
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FINANCE AND OTHER RESOURCE IMPLICATIONS

Funding source: The funding for this contract will be allocated from the Project Delivery Unit budget. At its meeting in July 2024 the Cabinet agreed to increase its capacity by allocating funding to a Project Delivery Unit. At its meeting on 15 November 2024, the Cabinet approved a delegation to the Chief Executive in consultation with the Portfolio Holder for Economic Growth, Regeneration and Tourism to agree further expenditure where capacity is procured from external bodies / organisations / individuals as an alternative to recruitment from the Project Delivery Unit Budget

Procurement: The Council constitution states that where the total value of the contract, or procurement, is estimated to be below £50,000 it is an officer decision.

There are strong arguments to exempt this contract from procurement rules, given the scale and scope of the work in train with the contractor, which would stall if a full procurement took place, and that the three month extension will enable that procurement to take place. There is government funding deadlines which put the whole project at risk if it delays.

However, the use of a framework provides for a regularised public sector procurement route, which is important, given public sector financial limits to exemptions to procurement.

Cabinet will receive a report in December 2024 which will set out the process of delivering the Levelling Up Fund and Capital Regeneration schemes from planning submission through to Tender.

The Section 151 Officer confirms they have been made aware of the above and any additional comments from them are below:

USE OF RESOURCES AND VALUE FOR MONEY

The following are submitted in respect of the indicated use of resources and value for money indicators:

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	There are substantial financial risks associated with overseeing the delivery of tens of millions of pounds worth of capital schemes, and this investment in a highly experienced contractor provides the capacity within the client side of the organisation to mitigate the risks.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks.	The Capital Delivery Programme Manager maintains a comprehensive risk register for the schemes and for the programme as a whole, and provides regular updates to the programme board to enable informed decisions to be made.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	The Council is drawing on previous experience of capital delivery schemes to invest in a Capital Delivery Programme Manager to increase the oversight of delivery.

MILESTONES AND DELIVERY

Publish this decision and the exemption to procurement after 22nd November and call-in period from 15 November Cabinet.

Seek Essex County Council to award a placement for a Capital Delivery Programme Manager for Mr Sarin's services with Vivid Resourcing via their Framework contract, before 6 December 2024.

Take a report to Cabinet in December 2024 on the approach to continued programme delivery, including the Capital Delivery Programme Manager role.

ASSOCIATED RISKS AND MITIGATION

Programme risks.

The programme risks for the capital schemes delivered by TDC and through Essex County Council are monitored by the Capital Delivery Programme Manager and reported monthly to a programme board.

Delivery and Budget

Two of the key risks for the programme are delivery on time and keeping within budget. Having a Capital Delivery Manager helps to keep track of the programme, and keep the programme on track, and on budget. Having a skilled professional operating on the Council's behalf enables the appropriate challenge to the process from the wider recruited consultant team.

Single Point of Failure. The approach to recruiting a Capital Delivery Manager creates a key point through which the programme and projects are managed. This could create a "single point of failure". The development of the Project Delivery Unit means that there is a wider group of people working on project delivery engaged on oversight of the schemes. The programme board and the Regeneration Board also create reporting mechanisms to oversee project delivery. Recruiting through an agency has also meant that when a consultant has left it has been possible to recruit a new consultant very rapidly.

Cost levels:

While the Capital Delivery Programme Manager is a contractor not a staff member and operates through a company without the Council's benefits or employment protections, it is noted that the role is one of the highest people costs to the organisation. This scale of investment is required due to the technical skills required to manage the multi-million pound projects, the fixed-term nature of the work, and the level of financial risk to the organisation if the projects fail or overspend. It is based on learning from previous projects where less has been invested on the client side of delivery, leading to challenges in project control.

EQUALITY IMPLICATIONS

The Council has chosen the contractors recruited through the consultancy arrangement in a fair and transparent way, interviewing consultants as it would a member of staff.

SOCIAL VALUE CONSIDERATIONS

The consultant teams recruited by the Capital Delivery Programme Manager to deliver the capital schemes have offered a range of social value additions to their bids.

The projects themselves offer huge social value, which is why they have been funded by Government, who recognise the social benefits of renewed skills and library services, carparking including Electric vehicles, new public realm and social housing.

IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO

The Capital Delivery Programme Manager understands the building requirements and options and opportunities for reducing carbon emissions. The LUF and CRP schemes delivered by Tendring have high environmental credentials.

OTHER RELEVANT CONSIDERATIONS OR IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder

The capital delivery programme manager has ensured that the schemes are delivered with the input of secure by design to reduce anti

	social behaviours and crime.
Health Inequalities	Investing in quality public services and public realm in some of the areas of the district with high health needs will help to reduce health inequalities.
Subsidy Control (the requirements of the Subsidy Control Act 2022 and the related Statutory Guidance)	The original contract with Vivid Resourcing was carried out through an open call to agencies and so overcame any subsidy control issues. The recruitment comes under the public sector procurement threshold.
Area or Ward affected	None by the contract extension. The schemes delivered are in Clacton Town Centre and Dovercourt Town Centre, and so impact on residents across the District who visit the two town centres.

Previous decisions.

March 2023

[Decision - Allocation of LUF Capacity Fund to secure resources required](#)

July 2023

[Decision - PROCUREMENT OF INTERIM CAPITAL PROGRAMME MANAGER \(LUF/CRP PROJECTS\)](#)

October 2023 Cabinet Report

<https://tdcdemocracy.tendringdc.gov.uk/documents/s71531/230927%20LUF-CRP%20Cabinet%20Report%206%20Oct%202023.pdf>

November 2023

[Decision - Agreement for extending the engagement of the Capital Programme Manager](#)

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