

AGENDA ITEM: 18

Pages 147 – 153

Meeting	Cabinet Resources Committee
Date	4 th April 2012
Subject	Extension of Term Maintenance Contracts
Report of	Cabinet Member for Resources and Performance
Summary	To extend the existing Term Maintenance Contracts for building, mechanical, electrical, lifts and water hygiene beyond the contracted dates for a period of nine months.

Officer Contributors	Martyn Carter, Procurement Manager (Commercial Services) Martin Wilkinson, Building Compliance Surveyor (mech) (Commercial Services)
Status (public or exempt)	Public
Wards affected	All
Enclosures	None
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in (if appropriate)	Not applicable

Contact for further information: Martin Wilkinson, Building Compliance Surveyor (Mech) (Commercial Services), 020 8359 4563, martin.wilkinson@barnet.gov.uk. or Martyn Carter (Commercial Services), 020 8359 7267, martyn.carter@barnet.gov.uk

1. RECOMMENDATIONS

- 1.1 That the Committee authorise a waiver of Contract Procedure Rules to allow extension of the following Term Maintenance Contracts for nine months with the following Contractors:**

Kirkman and Jourdain Ltd. The three year value of this contract is £1,348,670 and the anticipated spend for the nine month extension is £337,167

D Long Construction Ltd. The three year value of this contract is £3,349,173 and the anticipated spend for the nine month extension is £837,292

Oakray Ltd, The three year value of the Mechanical Maintenance Contract with this company is £560,595 and the anticipated spend for the nine month extension is £140,148

Oakray Ltd. The three year value of the Electrical Maintenance Contract with this company is £401,727 and the anticipated spend for the nine month extension is £100,431

RGE Services Ltd. The three year value of this contract is £227,157 and the anticipated spend for the nine month extension is £56,789

T&D Barrs Ltd. The three year value of this contract is £244,914 and the anticipated spend for the nine month extension is £61,228

Clearwater Technology Ltd. The three year value of this contract is £576,165 and the anticipated spend for the nine month extension is £144,041

Industrial Lifts Services Ltd. The three year value of this contract is £133,359 and the anticipated spend for the nine month extension is £33,339

Initial Ltd. The three year value of this contract is £105,000 and the anticipated spend for the nine month extension is £26,250

Extension of contracts shall enable both cyclical and responsive maintenance works to be undertaken throughout the Council's non-housing operational buildings from 1st April 2012 until 31st December 2012.

- 1.2 To waive the Council's Contract Procedure Rule 5.6.1 as the additional expenditure incurred as a result of the extension will exceed 10% of the initial contract value.**
- 1.3 To waive the Council's Contract Procedure Rule 5.6.2 as the original contract period has been extended before**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 DPR Serial No.395 (ET056) of the Director of Environment & Transport dated 2nd November 2007 approved the establishment of a Planned Building Maintenance Contract for Minor/Planned Works.**

2.2 Cabinet Resources Committee Report of the Cabinet Member for Resources and Performance dated 2nd March 2011 approving the Extension of Term Maintenance Contracts

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

3.1 The Corporate Plan 2011-2013 has as one of its priorities 'Better services with less money' with some of its key strategic objectives to 'explore new ways of bundling and commissioning services to generate better outcomes for less money' and to 'ensure that 100 percent of the 50 largest contracts, by spend, are under formal contract.'

3.2 The Council's objectives regarding use of property include the following:

- More efficient and strategic use of property;
- More effective use of property; and
- More efficient and strategic use of public sector systems

This involves the continued use of a number of specialist contractors to ensure high standards of maintenance and repair within Council buildings.

4. RISK MANAGEMENT ISSUES

4.1 A risk assessment has been carried out and the main issues have been summarised in the following table:

Risk	Early Warning Mechanisms/ Hazards	Residual Risk		Consequences / Mitigating Actions
		Likelihood	Impact	
Failure to have a new Contract in place	Existing Contracts expire on in April 2012	High	High	Loss of essential service necessary to meet legislative requirements, enable preventative maintenance and support service delivery/ it is proposed to extend the existing Contracts
Discovery of asbestos in concealed areas	Asbestos Surveys undertaken for all corporate buildings and reports kept at each site	Low	Medium	Delay and additional cost of removal if found / Asbestos survey reports have been passed to all Premises Managers.

Contractor liquidation/insolvency	Lack of performance. Essential maintenance work not undertaken	Low	High	Delay and additional costs/ Financial check prior to Contract award/ Regular monitoring of contracts & performance indicators.
Health & Safety – working in an operational building	Regular site inspection/construction sites	Low	Medium /High	Injury/Experienced contractors, segregation of working areas
Contractors working with vulnerable people	All Contractors to be CRB checked	Low	Medium /High	Delays whilst checks are being undertaken/All operatives should already be CRB checked as existing contracts are in place.
Financial risk of not having a contract in place	Existing Contracts expire on in April 2012	High	High	Additional cost of having to do work piecemeal/ Ensure contract terms and conditions in place

4.2 The various issues have been considered and are unlikely to raise significant levels of public concern or give rise to policy considerations.

5. EQUALITIES AND DIVERSITY ISSUES

5.1 The Equality Act 2010 requires public bodies, when making strategic decisions such as deciding priorities and setting objectives, to consider how their decisions might help to reduce the inequalities associated with socio-economic disadvantage. Such inequalities could include inequalities in education, health, housing, crime rates, or other matters associated with socio-economic disadvantage. It is for public bodies subject to the duty to determine which socio-economic inequalities they are in a position to influence.

5.2 The proposed works will enhance the Borough's reputation as a good place to live and work and will assist in ensuring that all Council buildings meet statutory legal and safety obligations. The works will also ensure suitability for service delivery.

5.2 The successful Contractors indicated, in their earlier Pre Qualification Questionnaires (PQQ's) that they will support the Council in meeting its public obligations to promote race, equality and disability equality whilst undertaking work on behalf of the Council.

- 5.3 The Planned Building Maintenance Contract had been procured using the Council's procurement process which sets out to the contractors their responsibility in supporting the Council's service delivery.
- 5.4 As part of the tendering process, advertisements were placed in the Barnet local press inviting interest from local contractors. Generally, the successful contractors have some form of training schemes running within their organisations.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

- 6.1 The annual expenditure for the five disciplines based on the last three financial years is as follows:-

Discipline	Total Annual Expenditure	No of Contracts
Building	£ 919,568	3
Mechanical	£ 268,503	2
Electrical	£ 209,628	2
Water Treatment	£ 192,055	1
Lifts	£ 44,453	1

The ongoing expenditure will be monitored via the Council's ordering system (SAP) and this forms the basis of one of the Council's KPI's.

- 6.2 Council Officers from Commercial Services have held discussions with the present Term Contractors with a view to retaining them for a further nine months and they have agreed to the extension. The option of requesting discounts for the extension period was explored in order to make savings but the contractors have already held their prices for two years. They are not able to reduce prices further.
- 6.3 The extension of the term contracts will result in the establishment of a robust and transparent method of selecting contracting services advocated in the Council's Procurement Strategy. The contracts will provide a call off facility for use by premises managers and will facilitate maintenance and repair in all Council non-housing operational buildings.
- 6.4 The Council will ensure that appropriate and timely building maintenance is implemented thereby ensuring that all buildings are operated safely, efficiently and more sustainably, reducing avoidable energy and water consumption and associated carbon emissions.
- 6.5 There are no staffing or IT implications.
- 6.6 Any financial implications will be managed within the existing Commercial Directorate.

7. LEGAL ISSUES

- 7.1 The Public Contracts Regulations 2006, apply to contracts for works, services and supplies which are over particular financial thresholds. Contracting authorities are required to advertise works and supplies contracts, including Part A service contracts which are above the threshold. In addition, in order to offer equal opportunity in line with the EU treaty principles of non-discrimination, equal treatment, transparency,

proportionality and mutual recognition, contracting authorities are encouraged to advertise before awarding contracts. The contract value for some of the contracts are above the threshold set for service contracts but based on the contents of this report the relevant EU procurement process was complied with in the award of the contracts.

- 7.2 The Council should however, for those contracts with the value below the relevant threshold consider the rule relating to aggregation as set out in Regulation 8(19) of the Public Contracts Regulations 2006 that a contracting authority should not enter into separate contracts nor exercise a choice under a valuation method with the intention of avoiding the application of the Regulations to those contracts.
- 7.3 The contract extensions will be on the terms and conditions of the original contracts unless other terms and conditions of contract are approved by the Assistant Director – Legal.

8. CONSTITUTIONAL POWERS

- 8.1 Section 5.8 of the Contract Procedure Rules details that the rules may only be waived on the decision of a Cabinet Committee and only where that Committee is satisfied, after considering a written report by the appropriate officer, that the waiver is justified because:

- 5.8.1 the nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of Contract Procedure Rules is justifiable; or
- 5.8.2 the contract is for works, supplies or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or
- 5.8.3 the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or English Law); or
- 5.8.4 there are other circumstances which are genuinely exceptional

- 8.2 Table 5-2 of the Contract Procedure Rules (Acceptance thresholds for contract extensions and variations) states that for contract extensions greater than £156,442 authority must be sought from Cabinet Committee.

9. BACKGROUND INFORMATION

- 9.1 The existing contracts were tendered in 2006 with contracts starting in April 2007. The contract was for a three year period with the option to extend for a further year at the Authority's sole discretion. The initial option to extend the contract for one year was authorised in 2010. Subsequently, a second extension was authorised in 2011.
- 9.2 The current contracts cover a number of services operating within all of the Council's Corporate building stock and within those schools that sign up to the Councils Building Maintenance Service. The contracts cover both cyclical and responsive maintenance works.
- 9.3 The contract awards were as follows:

Kirkman & Jourdain Ltd., D Long Construction Ltd.,
Oakray Ltd. – Mechanical and Electrical services North of the Borough

T&D Barrs Ltd. – Mechanical services South of the Borough
RGE Services Ltd. – Electrical services South of the Borough
Clearwater Technology Ltd.– Water Hygiene Borough wide
Industrial Lift Services Ltd. – Lifts Borough wide

- 9.4 A tender process for the new contracts commenced during 2011. A contract notice to advertise the tender was published in the Official Journal of the European Union but withdrawn several weeks later. This was necessary because it became evident that additional information was required for the notice to be compliant with procurement regulations. It was also evident that following advertisement, there were additional service categories to be added to the tender notice which should enable improved economies of scale for the Council. Tender advertisement is planned for April 2012 in order to re-commence the tender. The tender process will take nine months to complete when combined with subsequent reporting and contract implementation periods. The extension is required in order to maintain contract compliance during the procurement process.
- 9.5 In accordance with Contract Procedure Rules as noted in paragraph 9.1 above, there has already been a contract extension and therefore this matter must be referred to the relevant Cabinet Committee for authorisation as stated in paragraph 8.1 above.

10. LIST OF BACKGROUND PAPERS

- 10.1 None.

Legal – PD
CFO – JH/MC