

AGENDA ITEM: 20 Pages 159 - 167

Meeting	Cabinet Resources Committee
Date	4 April 2012
Subject	Environment Planning and Regeneration Contracts
Report of	Cabinet Member for Resources and Performance
Summary	The report seeks: (i) waiver of, relevant, rules within the Council's Contract Procedure Rules to enable regularisation of contractual arrangements within Environment Planning and Regeneration; (ii) authority to regularise contracts; and (iii) authority to extend an Environment Planning and Regeneration Framework.

Officer Contributors	Lynn Bishop, Assistant Director of Environment Planning and Regeneration Mark Rawlings, Business support Officer, Environment Planning and Regeneration Charlene Witter, Procurement Officer, Commercial Services
Status (public or exempt)	Public
Wards affected	ALL
Enclosures	Appendices 1 and 2 – details of contracts
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in	Not applicable
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1. RECOMMENDATION

1.1 That the Committee authorise a waiver of Contract Procedure Rules as necessary and authorise

1.1.2 The continuation of the Greenwich Leisure Contract in its current form without completion of the management agreement and lease pending the assignment of the Copthall stadium under lease to Saracens.

1.1.3 The continuation of arrangements for works with J'O Leary & Sons for allotment maintenance until superseded by the new minor works contract.

1.1.4 The continuation of arrangements for works and services with the listed vendors until superseded by new contracts:

Bush Wheeler Services

DF Keane

Gemco

Palmerston

Iris Gardening Services

Iris Play Inspections

Spaldings/Bell Brush

RM Countryside

1.1.5 The continuation of arrangements for supplies and services with Rigby Taylor for greenspace materials until superseded by the new minor works and goods contract.

1.1.6 Regularisation and continuation of appointments for the consultants and legal advisors for the relevant regeneration schemes:

AECOM - Dollis Valley

CBRE - Mill Hill

CBRE - Brent X & Cricklewood

CBRE - Dollis Valley

DLA Piper

DLA Piper

Eversheds

Paul McDermott

Turner & Townsend

Urban Practitioners

Nabarro

1.1.7 Continued spend against JC Decaux, the provider of Borough street furniture, for a period of 12 months with effect from 1st April 2012.

1.1.8 Continued spend against Castrum, provider of the tenancy database, until regularisation of the existing contractual arrangement.

1.1.9 Extension of the existing framework for the parking bailiff contractors for one month until the 30th April with an option to end for a further month, pending completion of the One Barnet parking outsourcing

1.1.10 Continued spend against Appia, highways asset management consultants, until 30th April 2012.

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Audit Committee at its meetings on 16th June 2011 and 6th September 2011 reviewed and agreed the Procurement Controls and Monitoring Plan produced following the comprehensive review of the Council's contract monitoring arrangements.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 Regularisation of and extension to the Environment Planning and Regeneration (EPR) Contracts are sought to ensure that EPR does not hinder or impede the Council's 'One Barnet' objectives. Authorisations are being sought to enable officers to secure that there are contracts in place to cover the period between now and the commencement of new arrangements with any new service provider.
- 3.2 The regularisation of and extension of contracts will, going forward, support the Council's Corporate Plan objective of: 'Better services with less money' – through efficient, compliant procurement and contract management including reduction of administration costs associated with placements.

4. RISK MANAGEMENT ISSUES

- 4.1 If the contracts, identified in this report, are not regularised and extended where necessary, the Council will lose the ability to create and provide a better, more efficient service and looking over the long term, the potential to use these partnerships to deliver services to others. The remaining estimated time for the Development and Regulatory Services (DRS) phase one procurement process is 10 months to Contract award.
- 4.2 Unless the option to regularise and extend contracts is exercised the council will need to carry out costly tendering processes before January 2013, resulting in arrangements that may not deliver best value for money.
- 4.3 Some of the savings identified in 2012-13 budgets have been based on the re-negotiation of existing contracts. If waivers are not granted then there is a risk that predicted savings may not be achieved.
- 4.4 There is a risk of challenge within the context of European procurement regulations, with respect to any contract with a lifetime value which exceeds the, relevant, European threshold and which may not have been tendered in accordance with European procurement rules. Officers are continuing to interrogate historical records to determine the process(es) which was/were utilised in these cases, prior to selection of the contractor.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 In providing the Services, the Contractor shall, to the same extent as if it were a public authority within the meaning of the Equality Act 2010 (or any European equivalent),

comply with the 2010 Act together with all applicable amendments, regulations and Codes of Practice or any future or other legislation which concerns discrimination in employment and service delivery (the Equalities Provisions) and shall in particular comply with the public sector equality duty under Section 149.

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

6.1 The anticipated 2012/13 spend relating to these contracts is tabulated below and are funded within the existing EPR budget provision and also project budget provision via Principal Development Agreements or the capital programme.

Current Supplier	Anticipated 2012/13 spend
Bush Wheeler Services	£88,000
DF Keane	£40,000
Gemco	£38,000
Palmerston	£30,000
Iris	£40,000
Iris	£40,000
J O'Leary and Son	£50,000
Rigby Taylor	£35,000
Spaldings/Bell Brush	£40,000
RM Countryside	£300,000
AECOM - Dollis Valley	£45,000
CBRE - Mill Hill	£210,248
CBRE - Brent X & Cricklewood	£45,000
CBRE - Dollis Valley	£25,000
DLA Piper	£30,000
DLA Piper	£29,750
Eversheds	£40,657
Paul McDermott	£21,200
Turner & Townsend	£14,000
Urban Practitioners	£44,903
Nabarro	£152,036
Castrum	£48,000
JC Decaux	£75,701
Appia	£75,000
JBW, CCS, Jacobs and Equita	£0

6.2 There are no issues related to Staffing and Property

6.3 There are less than 10 months remaining before the part outsourcing of the EPR service as part of the DRS 'One Barnet' Project, leaving a short period of time to address and implement major procurement projects.

7. LEGAL ISSUES

- 7.1 In the event that the lifetime values of the contracts, dealt with within this report, exceed the, relevant, European Threshold, the Public Contracts Regulations 2006 (as amended) will apply. Any non-compliance with the Regulations carries a risk of legal challenge and the imposition of sanctions if successful.
- 7.2 The Treaty provisions of equal treatment, fairness and non-discrimination must be complied with, by the council, in carrying out its functions and in exercising its powers.
- 7.3 With respect to the council's own Contract Procedure Rules, the Cabinet Committee has power to waive any one of more of those Rules if satisfied that waiver is justified on any one or more of the grounds set out in Section 8, below.

8. CONSTITUTIONAL POWERS

- 8.1 The Constitution, Part 3, Section 3.6 sets out the functions of the Committee, including the power, set out in contract procedure Rule 5.5 and Table 5-1, to Authorise and Accept contracts.
 - 8.2.1 Section 5.8 of the Contract Procedure Rules enables a Cabinet Committee to waive the requirements of the Contract Procedure Rules if satisfied, after considering a written report by the appropriate officer, that the waiver is justified because:
 - 8.2.2 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
 - 8.2.3 the contract is for works, supplies or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or
 - 8.2.4 the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or English Law); or
 - 8.2.5 there are other circumstances which are genuinely exceptional.
 - 8.2.6 Waiver of Contract Procedure Rules is being sought, herein, on the basis of exceptional circumstances, in view of the time which it would take to carry out a full procurement process; and the impending externalisation of DRS to a private partner.

9. BACKGROUND INFORMATION

- 9.1 Historically, the procurement and management of contracts for the EPR contracts detailed in this report were owned by EPR and procured with assistance from Commercial Services and the Legal department. These contracts have been managed effectively in line with Corporate Procurement guidelines in order to provide an efficient service. As the Directorate enters a period of significant change, it is not prudent to vary suppliers that are operating effectively as this introduces new risk with regards to the delivery of the projects, services and regeneration schemes. Project and service continuity would be disrupted with valuable time, money and resources lost ensuring future providers are adequately briefed and are capable of providing and delivering work to the required standard.
- 9.2 As the Council is seeking to procure a new partner through DRS, it would be inappropriate to re-procure contracts at this stage as best value could not be achieved by

changing suppliers at such a critical stage of DRS delivery. The background for each contractual arrangement where EPR are requesting a waiver of Contract Procedure Rules is listed below and on subsequent appendices.

9.2.1 **Copthall Stadium**

The current management arrangement in place with Greenwich Leisure Ltd (GLL) for the Stadium delivers management of the leisure function for all activities undertaken at the Stadium. This current arrangement although firmly in place, in practice, does not conform to compliant contract as neither the lease, nor the management agreement - both of which were prepared and ready for execution – were, in the event, completed. The decision was taken not to complete the lease and contract in light of the, then, discussions which were taking place with another, prospective, partner, with the co-operation of Greenwich Leisure Ltd.

Discussions are advanced with an alternative, prospective, partner to develop this asset and then to undertake the management of the longer term activities and function of this site, for the long term. It is felt that the focus of resources therefore would be better placed on delivering the longer term outcomes of the new contract and lease for delivery.

Therefore the current contract with GLL will remain technically non-compliant until the lease and contract with Saracens supersede it, hence authority is sought to continue the contractual relationship, with Greenwich Leisure Ltd, without completion of the lease and management agreement.

Contract start date 1st April 2010

Contract end date 31st December 2017

Contract value £2.249 million

9.2.2 **BT Redcare**

Please see other report on this agenda detailing the Borough's CCTV requirement.

9.2.3 **Greenspaces contracts** (Appendix 1)

There are nine functional contracts which provide support to the existing greenspaces staff as well as enable and support greenspaces work. The contracts include works and supplies and services elements. The compliancy of these contracts has been prioritised to ensure that those that are high risk or of significant seasonal impact are addressed accordingly.

Considering current resources and taking account of the knowledge gained when dealing with the high priority contracts, procurement processes are underway to deliver compliance of these contracts by May 2012.

Approval is sought to continue these arrangements with individual quotations exercises as projects arise whilst the appropriate procurement arrangements are put in place to manage the longer term aggregation of the values of these contracts.

9.2.4 **Environment, Planning and Regeneration Contracts** (Appendix 2)

The fifteen contracts detailed in Appendix 2 are currently in use by the directorate to supply services and support the ongoing activities and service provision.

The regeneration schemes are at a critical phase of delivery and a waiver is sought in order to continue with all these arrangements. Replacement of these providers at such a critical point would severely disrupt the Council's ability to deliver these schemes and would also have an impact on service delivery. These arrangements are to be regularised by 14th April 2012.

The parking bailiff framework Service Level Agreement requires an extension until the outsourcing of parking is complete on the 1st May 2012. The framework has been extended previously and therefore a waiver is sought to further extend the framework for one month to protect the Council against non payment of penalty charge notices.

The street furniture contract with JC Decaux requires clarification over the contract end date as the document quotes two dates. The documentation is being reviewed by Legal Services

A waiver is sought to continue with the Highways Asset Management consultant, Appia, and to regularise the contract in accordance with the Contract Procedure Rules.

The current arrangement with Castrum cannot be evidenced as a fully compliant executed contract cannot be evidenced. Work is progressing in identifying a suitable supplier and technology platform to replace the current system. In order to continue the current level of service and accurately record tenancy data, a waiver is sought to continue the current arrangement until 14th April 2012.

Each supplier identified has a specific plan of action to regularise as soon as is feasible. Monitoring of spend and activity is ongoing to ensure that thresholds are not breached and to mitigate the possibility of scrutiny and challenge.

10 LIST OF BACKGROUND PAPERS

10.1 None.

Current Supplier	Description of Works/Services	Contract Type	Contract Value
Bush Wheeler Services	Countryside Maintenance	Direct Contract	£88,000
DF Keane	Building Maintenance	Direct Contract	£40,000
Gemco	Emergency Repairs	Direct Contract	£38,000
Palmerston	Equipment Repair	Direct Contract	£30,000
Iris	Gardening Services	Framework	£40,000
Iris	Play area inspection		£40,000
J O'Leary and Son	Allotment Maintenance	Direct Contract	£50,000
Rigby Taylor	Purchase of Materials	ESPO Framework	£35,000
Spaldings/Bell Brush	Purchase of Materials	Framework	£40,000
RM Countryside	Maintenance, repairs, fabrication and works	Framework	£300,000

Appendix 2

Current Supplier	Service	Description Of Service Provided	Contract Type	Value	Expected Compliance Date
AECOM - Dollis Valley	Regeneration	Specialist technical advice during development partner selection	HCA Framework	£45,000	14/04/2012
CBRE - Mill Hill	Regeneration	Specialist technical advice		£210,248	14/04/2012
CBRE - Brent X & Cricklewood	Regeneration	Advice for principal development negotiations		£45,000	14/04/2012
CBRE - Dollis Valley	Regeneration	Specialist technical advice during development partner selection	HCA Framework	£25,000	14/04/2012
DLA Piper	Regeneration	Planning advice & drafting of the S106	Legal Framework	£30,000	14/04/2012
DLA Piper	Regeneration	Legal advice	Legal Framework	£29,750	14/04/2012
Eversheds	Regeneration	Legal advice on PDA		£40,657	14/04/2012
Paul McDermott	Regeneration	Legal Advice on planning	Legal Framework	£21,200	14/04/2012
Turner & Townsend	Regeneration	Independent monitoring of scheme cost plan	HCA Framework	£14,000	14/04/2012
Urban Practitioners	Regeneration	Finchley Church End town centre strategy		£44,903	14/04/2012
Nabarro	Regeneration	Legal advice on PDA and CPO	Direct Contract	£152,036	14/04/2012
Castrum	Housing	Housing tenancy database	Direct Contract	£48,000	14/04/2012
JC Decaux	Highways	Provision and maintenance of borough street furniture	Direct Contract	75701 pa	06/04/2012
JBW, CCS, Jacobs and Equita	Parking	Recovery of debts for unpaid penalty charge notices	SLA	£0	one month extension to expire 1st May 2012