
Meeting	Cabinet Resources Committee
Date	24 June 2013
Subject	Extension of contracts to cover the transition period to DRS, Extension of contracts/continuation of Streetscene services until formalised through procurement and a forward plan of procurement activity for Streetscene 2013/14
Report of	Deputy Leader of the Council / Cabinet Member for Resources and Performance
Summary	<p>This report seeks authority for the extension of contracts/continued use of services identified by Development & Regulatory Services (DRS), as necessary to maintain delivery of business as usual during transition of services to the Council's DRS partner until 31 March 2014. This is required for existing arrangements which are due to expire for which transition arrangement have been delayed while the competitive dialogue is concluded.</p> <p>This report also seeks waiver of Corporate Procurement Rules for Streetscene, to allow time to establish contracts and extensions whilst maintaining business as usual until 31 March 2014.</p> <p>This report also sets out the detail of planned procurement activity for Streetscene for financial year 2013/14 for approval.</p>

Officer Contributors	Reeta Shah, Business Support Officer, Streetscene Rimonit Chriqui, Business Support officer, DRS Ian Harrison, Corporate Procurement
Status (public or exempt)	Public
Wards Affected	All
Key Decision	Yes
Reason for urgency / exemption from call-in	Not applicable
Function of	Executive
Enclosures	<p>Appendix A – Contracts for extension during transition arrangements to DRS Partner (Table 1).</p> <p>Appendix B – Streetscene contracts and service arrangements for extension or continuation until formalised through the corporate procurement process</p> <p>Appendix C – Prospective Streetscene contracts for procurement in financial year 2013/14</p>
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1. RECOMMENDATIONS

1.1 That the Contract Procedure Rules relating to extensions and variations be waived to allow:

1.2 The 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
Eversheds
Paul McDermott
Turner & Townsend
Urban Practitioners
Renessi
Paul Winter & Co
Nabarro

1.3 The continuation of arrangements for services to the Hendon Cemetery and crematorium as detailed in Appendix A, table 1, until transition to new DRS provider.

1.4 To authorise time extension for the contracts listed in Appendix B, Table 1, until superseded by new contract arrangements.

1.5 To authorise the continued use of the two contractors listed in Appendix B, Table 2 until superseded by contract.

1.6 To authorise the purchase of bespoke park and street furniture for the purpose of design continuity, until the agreements are formalised.

1.7 That approval be given for Officers to proceed with the Streetscene contract procurement activity for the 2013/14 financial year as set out in Appendix C of this report, subject to budget availability.

2. RELEVANT PREVIOUS DECISIONS

2.1 The Cabinet Resources Committee Report Agenda item 20, 4th April 2012 authorised a waiver from Contract Procedure Rules to regularise contractual arrangements within Environmental, Planning and Regeneration Services.

2.2 The Cabinet Resources Committee Report Agenda Item 12, 20th June 2012 authorised procurement activity during financial year 12/13 and future activity in 2013/14.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

Council's 'One Barnet' Programme objectives. Therefore, Streetscene needs to secure that there are compliant and appropriate arrangements in place to ensure business continuity and best value until regularisation and contracts can be achieved.

- 3.2 The authorisations set out in the Recommendations in Section 1 (1.2 to 1.3) are sought in order to ensure that DRS Services do not hinder or impede the Council's 'One Barnet' Programme objectives. Therefore, DRS needs to secure that there are compliant and appropriate arrangements in place to cover the period between now and the commencement of new arrangements with the new service provider.

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.
- 4.2 Unless the option to regularise and extend contracts is exercised the council will need to carry out prompt and costly tendering processes, resulting in arrangements that may not deliver best value for money.
- 4.3 Some of the savings identified in 2013-14 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 to prevent accumulation of aggregated spend that could breach the procurement thresholds.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 Pursuant to the Equality Act 2010, the council and all other organisations exercising public functions on its behalf must have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; advance equality of opportunity between those with a protected characteristic and those without; promote good relations between those with a protected characteristic and those without. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. It also covers marriage and civil partnership with regard to eliminating discrimination. Private contractors providing public services on behalf of the council must also comply with this duty.
- 5.2 With respect to procurement for services, having 'due regard' means: (i) consciously thinking about the three aims as part of the decision-making process; (ii) that an incomplete or erroneous appreciation of the duties will

mean that due regard has not been given to them; and (iii) that the duty must be exercised in substance, with rigour and with an open mind.

- 5.3 The proposed service contract extensions will enhance the Borough's reputation as a good place to live and work and will assist in delivering business continuity and a first class service to its community.

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

- 6.1 Appendix A Table 1 identifies the services which require extension to accommodate the delayed transition to DRS Partner arrangements, to allow for business continuity.
- 6.2 The anticipated spend for 2013/14 related to these contracts is tabulated below and will be funded from the existing DRS budget provision and also project budget provision via Principal Development Agreements (either existing and proposed) or the Capital programme.

Service Area	Anticipated spend 2013/14
Planning, Housing & Regeneration	£1,475,078
Hendon Crematorium	£54,000
Highways	£26,538
Total	£1,555,616

- 6.3 The anticipated spend in 2013/14 for Streetscene as shown in Appendix B, Tables 1-3, will be £1,080,986 to be spent across 16 contractors, and will be funded through the existing budget provision, project budget provision and the Capital programme:
- 6.4 There are less than 5 months remaining before the outsourcing of the DRS Project, leaving a short period of time to address and implement major procurement projects.
- 6.5 The Streetscene team have also identified the services in Appendix C as future procurement requirements for the financial year of 2013/14, for prospective projects and improved service delivery, costs of which will be contained within the available budgets.

7. LEGAL ISSUES

- 7.1 The EU procurement regime, implemented in the UK by the Public Contracts Regulations 2006, (the Procurement Rules) applies to contracts for works, services and supplies. The Procurement Rules as apply to services differentiate between Part A services and Part B services. Part A services that are above the relevant thresholds are subject to the full tendering regime. Only limited parts of the Regulations apply in the case of Part B services contracts and do not apply to service concessions or contracts that are below the relevant thresholds (the current threshold is £173,934 for services and supplies contracts). Such contracts are nonetheless caught by general Treaty principles of non-discrimination on grounds of nationality, equal treatment, and transparency. This means that the contracting authority is expected to ask

itself whether there is a market for these services in other member states and if so what form of appropriate notification and advertisement should apply before an award of contract.

Therefore, provided that an inter-state element cannot be shown, the contract need not be advertised. For high value contracts, it is easier to show an inter-state element. However, if an inter-state element cannot be shown, it is expected that the Council's own standing Orders and financial regulations would expect some form of tendering to apply to such contracts or at least an exemption to be sought to standing Orders if not followed.

- 7.2 With respect to the extension of contracts, in a decided case, the court considered the difficult question of when a contract amendment that was agreed between the parties during its term is so "material" as to amount to a new contract that should have been re-procured. The court indicated that a material change was one which demonstrated "the intention of the parties to renegotiate the essential terms of that contract". The court then gave three specific examples of changes that it would consider to be material. The third example was: "when it changes the economic balance of the contract in favour of the contractor in a manner which was not provided for in the terms of the initial contract.
- 7.3 As the majority of the contracts to be extended are Part B services, the main consideration would be the general Treaty principles of non-discrimination on grounds of nationality, equal treatment, and transparency.

8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/ non-Key Decision)

- 8.1 Council Constitution, Part 3, Responsibility for Functions – Section 4.6 sets out the functions of the Cabinet Resources Committee which includes to agree exceptions to standing orders.
- 8.2 Contract procedure Rules (CPR), paragraph 14.2 provides that:
- "14.2 Contracts may only be extended or varied if all of the following conditions have been met:
- the initial contract was based on a Contract Procedure Rules compliant competitive tender or quotation process;
 - the value of the extension or variation added to the value of the original contract does not exceed the original Authorisation threshold as defined in Appendix 1, Table A;
 - the extension or variation has an approved budget allocation;
 - the extension or variation is in accordance with the terms and conditions of the existing contract;
 - if the initial contract was subject to EU tender procedure, that the extension option was declared within the OJEU notice and the original

Acceptance (Delegated Powers Report/Cabinet Resources Committee Report) ; and

- the contract has not been extended before”;

CPR 14.3 provides that: “In the event that any of the conditions at 14.1 or 14.2 cannot be met, then either a waiver must be sought in accordance with Section 15 (Waivers) or a new procurement commenced”.

CPR 14.4 provides that: “ Where a variation or extension moves the total value of the Contract into a higher threshold, then either a waiver must be sought in accordance with Section 15 (Waivers) or a new procurement commenced”.

CPR 14.5 provides that: “ Any variation or extension that has the effect of raising the contract value above the relevant OJEU threshold is not allowed as this would contravene English law”.

15.1 Contract Procedure Rules, paragraph 15.1, provides that: “In the event that the application of these rules prevents or inhibits the delivery or continuity of service, Directors or Assistant Directors, Lead Commissioners and Heads of Service may apply for a waiver. All applications for a waiver of these Contract Procedure Rules must be submitted to Cabinet Resources Committee specifically identifying the reason for which a waiver is sought, including justification and risk”.

8.4 The Council Constitution, Contract Procedure Rules – Appendix I, Table A details the Acceptance thresholds in relation to contract extensions and variations.

8.5 **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 DRS transition arrangements will not be concluded prior to the end of contract dates for existing contracts highlighted in Appendix A, Table 1..

9.2 As a result of 9.1 DRS has identified existing services/contracts as recorded in Appendix A, Table 1, confirming ongoing requirement to deliver business as usual.

9.3 To establish a framework of contracts to deliver the Streetscene services, time is required to ensure the procurement process offers best value and a seamless transition for the service.

- Appendix B, Table 1 shows contracts which require extension of time to facilitate service delivery
- Appendix B, Table 2 depicts two arrangements which need to continue to ensure service delivery.
- Appendix B, Table 3, depicts contractors which deliver design continuity for street and park furniture in order to maintain the existing design scheme.

9.4 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

Cleared by Central Procurement (Officer's initials)	LM
Cleared by Finance (Officer's initials)	MM
Cleared by Legal (Officer's initials)	PJ

11. **APPENDIX A** Contracts for extension during transition arrangements to DRS Partner

Table One: DRS

Contractor	Description	Value
Renassi	Work finder on Grahame Park	£50,000
Vaisala	Weather forecasting for winter maintenance services	£26,538
PEP	Provision of independent tenant advice for residents	£30,000
Paul Winter & co	Legal advice on planning application Cophall Stadium from Saracens (stage 2)	£39,250
Paul Winter & co	Legal advice on planning application Cophall Stadium from Saracens (stage 1)	£25,000
Turner & Townsend	Independent monitoring of scheme cost plan.	£140,000
Urban practitioners	Finchley Church End Town Centre Strategy	£44,903
District Valuers Office	Valuation and viability advice on Mill Hill	£46,000
Climate energy	Supply of thermal energy	£359,500
Middlesex University	Memorandum of Understanding	£40,000
West Hendon Planning Consultants	Planning consultants to advise on planning application for West Hendon Estate regeneration	£135,425
Trowers & Hamlins	Grahame Park Legal work	£45,000
Trowers & Hamlins	Granville Road Legal work	£500,000
Trowers & Hamlins	Dollis Valley Legal work	£20,000
Simmonds	Window Cleaners	£8,000
Fibrous	Urns and crematorium/cemetery accessories	£5,000
Machine Mart	Parts and tools for machinery	1,000
Pondscape	Maintenance of pond and fishes at crematorium	£1,500
Spalding	Maintenance of pond and fishes at crematorium	£5,000
Thompson	Gardening - turf	£1,500
Finchley Nurseries	Gardening - roses soil	£1,500
JG Shelton	Maintenance to our cremators	£10,000

Olympia	Metal Urns	£1,000
W.J. Dardry	Weekly flowers	£500
BWT	Water coolers	£5,000
Bartletts	Keys and locks maintenance	£500
Pitney Bowes	Franking machine	£1,500
ICCM	Cemetery and crematorium training	£2,000
Roger Grady	Engraving of plaques for Hendon cemetery	£5,000
Anglia Sign Casting	Plaques for crematorium grounds	£5,000
		£1,555,616

Appendix B: Streetscene

Table 1: Extension of Time to allow adequate procurement in line with CPR

Contractor	Description	Value
Pay point	Collection of cash payment service	0
Verrus Ltd	Provision of merchant number facility	19,000
Skills Training	Operational training	128,629
ASD Metal services	Sign supply	48,775
Brunzl Greenhams Plc	Supply of Protective equipment	90,000
Instamac Group plc	Asphalt supply	33,000
Pama Sign	Vinyl and paint sign shop	34,582
SMP	Supply and install play equipment	500,000
		853,986

Table 2: Continued use until formalised through contract

Contractor	Description	Value
J O'Leary & Sons	Minor allotment repair works	40,000
Kent County Council	Petrol for hand held tools	15,000
		55,000

Table 3: Bespoke product supply, in line with existing furniture for design continuity

Contractor	Description	Value
Glasdon	Supply of bins and barrows	12,000
Wicksteed leisure Ltd	Supply/Maintenance of outdoor sports/play equipment	50,000
Hags Play Ltd		
Trevor isles	Supply of litter and dog bins	25,000
Earth anchors	Supply of Dog bins and picnic tables	25,000
Tailor-made castings	Supply of Lionhead and RN6 benches	60,000
		172,000

Appendix C: Streetscene procurement forward plan

Contract Title	Contract Description	Estimated Contract Value (whole life cost)	Contract Owner
Hazardous Waste	Collection & Disposal of Hazardous Waste	£116,175	Dave Ward
Play Equipment – Supply and Installation including landscaping works 2011-13	Supply, design, installation and repairs of play areas, multi-use games areas and other equipment	£ 5,000,000	Jenny Warren
Landscaping – architect and design services	Design of landscape and architect services for open spaces/play areas	£60,000	Jenny Warren
Supply and installation of outdoor gym equipment and measured routes	Outdoor gym equipment & Marked and measured routes	£500,000	Matthew Gunyon
Voluntary groups support and co-ordination	Provision of support to develop Friends and resident groups to undertake activities/improvements to their local environment	£50,000	Matthew Gunyon
Expert Consultant Services	Draw from a framework of consultants to aid specific grant application and project delivery	£75,000	Matthew Gunyon
Hard surfacing works	Road, footway, court surfaces - Repairs and installation	£2,000,000	Jenny Warren
Pond renovation	Renovation of Highlands Gardens Pond	£50,000	Jenny Warren
Bookings & Lettings Management System	New bookings and lettings system	£40,000	Jenny Warren
Minor Electrical works	Electrical repairs and maintenance	£80,000	Jenny Warren
Minor Maintenance works	Building repairs, maintenance and other works	£100,000	Jenny Warren
Maintenance and fencing works & Allotment maintenance	Installation and repairs of fencing, bollards. Allotment maintenance works	£50,000	Jenny Warren

Metal Fabrication - Installation and repairs	Metal Fabrication works - Installation and repairs	£170,000	Jenny Warren
Maintenance and supply of 2 stroke and pedestrian machinery	Maintenance and supply of 2 stroke and pedestrian machinery	£100,000	Martin Goodwin
Grounds maintenance materials and chemicals	Supply of materials and chemicals	£150,000	Martin Goodwin
Hand tools, supplies and equipment	Supply of Hand tools, supplies and equipment	£170,000	Dave Ward
Road sweeper brush supplies	Supply of sweeper brushes	£50,000	Dave Ward
Supply of marking paints and sundries	Supply of Marking Paints and sundries for sports Pitches	£50,000	Martin Goodwin
Supply of bins and barrows	Supply of bins and barrows	£100,000	Dave Ward
Supply of Litter pickers	Supply of Litter pickers	£20,000	Dave Ward
Plants, bulbs, grounds maintenance goods and materials	Supply of plants, bulbs, grounds maintenance goods and materials	£170,000	Martin Goodwin
Gardening & Maintenance services inc installation and repairs	Gardening & Maintenance services inc installation and repairs	£160,000	Jenny Warren
Supply of park benches	Supply of park benches	£80,000	Jenny Warren
Supply of park litterbins	Supply of park litterbins	£150,000	Jenny Warren
Maintenance irrigation systems	Maintenance and repair of sprinklers and irrigation systems	£30,000	Jenny Warren
Pavement surface cleaning	Clean surfaces esp. pavement s of grime, chewing gum etc	£175,000	Dave Ward
Supply of play bark	Supply of play bark	£40,000	Martin Goodwin
Supply of mulch	Supply of mulch	£175,000	Martin Goodwin
Supply of Asphalt	Supply and delivery of hot Asphalt	£47,000	Simon Pitcher
Supply of sacks/containers	Supply of various use collection sacks and containers	£52,000	Jason Armitage
Provision of Vehicle technology/support	Provision of Vehicle technology/support	£48,000	Jason Armitage

Flats food waste bin housing	Food waste bins for housing flats	£410,000	Jason Armitage
Impact protection vehicle	Impact protection vehicle and associated costs	£90,000	Jason Armitage
Training	Health & Safety training for Streetscene service	£130,000	Jason Armitage/Jenny Warren
	Total	£10,558,175	