
Meeting	Cabinet Resources Committee
Date	17 December 2012
Subject	Extension of Term Maintenance Contracts
Report of	Deputy Leader of the Council / Cabinet Member for Resources and Performance
Summary	To extend the existing Term Maintenance Contracts for building, mechanical, electrical, lifts, fire fighting equipment and water hygiene beyond the contracted dates for a period of three months.

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

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1. RECOMMENDATIONS

- 1.1 That the Committee authorise a waiver of Contract Procedure Rules 5.6.1.2 as the initial contracts have been extended before.**
- 1.2 To allow extension of the following Term Maintenance Contracts for a further three months with the following Contractors:-**

Kirkman and Jourdain Ltd. The extended value of this Building Maintenance contract with this company is £528,149 and the anticipated spend for the three month extension is £22,963

D Long Construction Ltd. The extended value of this Building Maintenance contract with this company is £708,722 and the anticipated spend for the three month extension is £30,814

Oakray Ltd, The extended value of the Mechanical Maintenance contract with this company is £1,074,474 and the anticipated spend for the three month extension is £46,716

T&D Barrs Ltd. The extended value of the Mechanical Maintenance contract with this company is £469,419 and the anticipated spend for the three month extension is £20,410

Oakray Ltd. The extended value of the Electrical Maintenance Contract with this company is £769,977 and the anticipated spend for the three month extension is £33,477

RGE Services Ltd. The extended value of the Electrical Maintenance contract with this company is £435,384 and the anticipated spend for the three month extension is £18,930

Clearwater Technology Ltd. The extended value of the Water Treatment contract with this company is £1,104,316 and the anticipated spend for the three month extension is £48,014

Industrial Lifts Services Ltd. The extended value of the Lift Maintenance contract with this company is £255,605 and the anticipated spend for the three month extension is £11,113

Rentokil Initial Fire Services Ltd. The extended value of the Fire Fighting Equipment Maintenance contract with this company is £198,864 and the anticipated spend for the three month extension is £8,646

Extension of the above contracts will enable both cyclical and responsive maintenance works to be undertaken throughout the Council's non-housing operational buildings from 1st January 2013 until 31st March 2013.

2. RELEVANT PREVIOUS DECISIONS

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

Contract for Minor/Planned Works for a period of three years with a 12 month extension under the terms of original contract to the 31st March 2011.

2.2 Cabinet Resources Committee Report of the Cabinet Member for Resources and Performance dated 2nd March 2011 approved the Extension of Term Maintenance Contracts for a period of 12 months to 31st March 2012. (Decision item 13)

2.3 Cabinet Resources Committee Report of the Cabinet Member for Resources and Performance dated 4th April 2012 approved the Extension of Term Maintenance Contracts for a period of 9 months to 31st December 2012. (Decision item 18)

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

3.1 The Corporate Plan 2012-2013 has as one of its priorities 'Better services with less money' with some of its key strategic objectives 'in the context of the significant economic challenges we face, our aim is to protect services whilst saving money – ensuring that the borough continues to prosper and that residents continue to receive quality services.'

3.2 The Corporate Plan 2012-13 commits the Council to delivering 'Better services with less money'. A key principle of the medium term financial strategy is to continually review the use of Council assets so as to reduce the cost of accommodation year on year and to obtain best consideration for any surplus assets to maximise funds for capital investment and/or the repayment of capital debt.

3.3 The Council's Estates Strategy 2011-2015 commits the Council to 'providing sustainable, value for money solutions, to enabling high quality service delivery and community activity, at every stage of the property and assets life cycle.'

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 extend present Contracts	Existing Contracts expire on in December 2012	High	High	Council will be in breach of its statutory, regulatory and corporate duties – damage to reputation, financial loss, loss of service and loss of life/ / it is proposed to extend the existing maintenance contracts for 3 months

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 are 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 in December 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.
- 5.3 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 equalities obligations whilst undertaking work on behalf of the Council.
- 5.4 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.
- 5.5 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 total expenditure to date for each Contractor is set out in the table below:-

Name of Contract	Discipline	Duration of Extension	Contract End Date	Total Contract Spend
Kirkman & Jourdain Ltd.	Building	2.75 years	31 st December 2012	£528,149
D Long Construction Ltd.	Building	2.75 years	31 st December 2012	£708,722
Oakray Ltd.	Mechanical & Electrical	2.75 years	31 st December 2012	£1,844,451
T&D Barrs Ltd.	Mechanical	2.75 years	31 st December 2012	£469,419
RGE Services Ltd.	Electrical	2.75 years	31 st December 2012	£435,384
Clearwater Technology Ltd.	Water Treatment	2.75 years	31 st December 2012	£1,104,316
Industrial Lifts Services Ltd.	Lifts	2.75 years	31 st December 2012	£255,605
Rentokil Initial Fire Services Ltd.	Fire Fighting Equipment	2.75 years	31 st December 2012	£198,864

The ongoing expenditure will be monitored via the Council's ordering system (SAP) and this forms the basis of one of the Council's key performance indicators (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 three 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 their 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 Funding for this currently exists within service area premises maintenance budgets.

7. LEGAL ISSUES

- 7.1 The Public Contracts Regulations 2006 (the "Regulations"), apply to contracts for works, services and supplies which are over particular financial thresholds. Contracting authorities are required to advertise in OJEU for works and supplies contracts, including Part A service contracts which are above the threshold. In addition, in order to offer equal opportunities 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 any contracts.

The contract value for these works contracts for the extension period is below the threshold set for works contracts in the Regulations. Therefore there was no requirement to advertise the contracts in Official Journal of the European Union.

If the Committee waives CPR 5.6.1, the contracts can be extended.

The contract extensions will be on the terms and conditions of the original contracts.

- 7.2 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, which came into force on 10 September 2012, require that all prospective decisions which are key (involving expenditure or savings over £500,000 or being significant in terms of the effect on two or more wards) or subject to an exempt report must be included on an Advanced Notification of Executive Decisions which must be published a minimum of 28 days in advance of the decision being taken. The decision to extend term maintenance contracts was not included on Advanced Notification of Executive Decisions published on 14 November 2012. Council procedures require that where has not been possible to meet the publication requirements, agreement must be obtained from the Chairman of the Business Management Overview and Scrutiny Committee, and a notice published explaining why the decision is urgent. The Chairman of the Business Management Overview and Scrutiny Committee has considered the request and has given his approval that the report can proceed to the Cabinet Resources Committee for decision. A notice has been published on the Council's website detailing the reason for urgency.

8. CONSTITUTIONAL POWERS

- 8.1 Council Constitution, Contract Procedure Rules, Section 5.6 details the acceptance parameters for contract additions, extensions and variations. The Acceptance thresholds for contract additions, extensions and variations are set out in Table 5-2 (which stipulates

that the Cabinet Resources Committee must accept contract extensions greater than £173,934). Section 5.6 also stipulates that contract extensions and variations are, also, subject to the following:

- 5.6.1.1 The initial contract was based on a competitive tender or quotations;
- 5.6.1.2 the initial contract has not been extended before; and
- 5.6.1.3 the value of the extension is less than half the cost of the existing contract without the extension and has a budget allocation having had regard to the following:
 - i) If initial contract was subject to EU tender procedure that the extension option was declared within the OJEU notice; acceptance report (Delegated Powers Report/Cabinet Resources Committee Report) and the contract includes extension clauses
 - ii) If initial contract value was subject to sub EU threshold procedure (Barnet tender/ quotation process) the extension does not take the value past EU threshold

As the requirements of rule 5.6.1.2 have not been met, a waiver of Contract Procedure Rules is required.

8.2 Council Constitution, Contract Procedure Rules, Section 5.8 details that the rules may only be waived on the decision of a Cabinet Resources Committee and only where that Committee is satisfied, after considering a written report by the appropriate officer, that a 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

Details of the exceptional circumstances which require a waiver of the Contract Procedure Rules are set out in Section 9 below.

9. BACKGROUND INFORMATION

9.1 The original tender for carrying out works was advertised as a three year contract in 2006 with an option to extend for a further year at the Authority's sole discretion. Works under the various Contracts commenced in 2007 following approval for a three year period to 31st March 2010. Subsequently, the option to extend for a further year was taken up under the terms of the original contract following satisfactory performance. A further request to extend the Contracts for a year was granted by Cabinet Resources Committee (CRC) in March 2011 and Contractors were able to carry out works to 31st March 2012. It was necessary to extend the contract for a further nine months to December 2012 following CRC approval.

9.2 The current contracts cover a number of services operating within the Council's Corporate

building stock and to those schools that sign up to the Councils Building Maintenance Traded Service. The contracts cover both cyclical and responsive maintenance works.

9.3 The contract awards are as follows:

Kirkman & Jourdain Ltd., D Long Construction Ltd., - General building works borough wide
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
Rentokil Initial Fire Services Ltd. – Fire fighting equipment borough wide

9.4 A tender process seeking new contracts commenced in 2012 and a contract notice to advertise the works was published in the Official Journal of the European Union. The tender process has since been terminated for the reason stated below in 9.5.

9.5 During the dialogue process with both NSCSO (New Support and Customer Services Organisation) bidders, it became evident that it would be of greater benefit to the retained Council if the new provider should assume responsibility for carrying out all planned and maintenance works after handover; consequently, the tender process was terminated. The three month extension is required in order to ensure that the Council meets all its statutory and safety obligations until handover.

9.6 In accordance with Contract Procedure Rules as noted in paragraph 9.1 above, there has already been a contract extension previously and therefore this matter must be referred to the relevant Cabinet Resources Committee for authorisation as stated in paragraph 8.1 above.

10. LIST OF BACKGROUND PAPERS

10.1 None.

Cleared by Finance (Officer's initials)	MC/JH
Cleared by Legal (Officer's initials)	SD