



## London Borough of Enfield

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<b>Report Title</b>	<i>Appointment of a contractor for the Measured Term Contract For Repair, Maintenance and Small Value Works Projects for Council Non-Housing Properties</i>
<b>Report to</b>	<i>Cabinet Member for Finance and Procurement Executive Director Resources Department Director of Property</i>
<b>Date of Report</b>	<i>15<sup>th</sup> November 2023</i>
<b>Cabinet Member</b>	<i>Cllr Tim Leaver</i>
<b>Executive Director / Director</b>	<i>Fay Hammond/Nick Denny</i>
<b>Report Author</b>	<i>Andrea Evans. <a href="mailto:andrea.evans@enfield.gov.uk">andrea.evans@enfield.gov.uk</a></i>
<b>Ward(s) affected</b>	<i>All</i>
<b>Key Decision Number</b>	<i>KD5684</i>
<b>Classification</b>	<b><i>Part 1 Public (and Part 2 Private)</i></b>
<b>Reason for exemption</b>	<i>Information relating to the financial or business affairs of any particular person (including the authority holding that information).</i>

### Purpose of Report

1. This report seeks approval to award the Measured Term Contract for

Repair, Maintenance and Small Value Works Projects for Council Non-Housing Properties to commence in December 2023 for an initial term up to December 2025 with provision to extend for two further two-year, or four one-year extensions. This decision is based on the lowest risk to the Council at the point in time. The replacement Measure Term Contract is deemed as works under the 2015 Public Contract Regulations.

### **Recommendations**

- Approve the award of contract of Bidder A for the Measured Term Contract For Repair, Maintenance and Small Value Works Projects for Council Non-Housing Properties. for an initial two year term up to December 2025 with the provision to extend for two further two-year extensions or four one-year extensions
- To delegate authority to Director of Property to approve further extensions to the contract

### **Background and Options**

2. The Council has an obligation to ensure that its extensive portfolio of corporate buildings is maintained in a safe condition, remain operational and retain capital value. This includes provision of a responsive reactive maintenance service for building fabric and mechanical and electrical failures. The mechanical and electrical services plant and equipment must be maintained in accordance with associated statutory legislation. This forms a substantial part of the Corporate Landlord responsibilities.

The existing Measured Term Contract expired on 7<sup>th</sup> April 2023, however, subject to a separate authority decision, this contract was extended for a further period of five months or up to the value of £200k, which will enable continuation of a responsive repair service for works up to the value of £500 per order. This enabled the Council to maintain an operational estate during the procurement of the replacement contract and is currently being delivered by the incumbent Measured Term Contract Provider for building and mechanical and electrical Services, SW Bruce & Co. Ltd.

### **Scope of Works**

3. The works will comprise Responsive Maintenance and Minor Building Works to include works up to the maximum value of £125,000 under a Measured Term Contract using the JCT MTC 2016 Form of Contract. The contract will compliment the Planned Preventative Maintenance (PPM) and Compliance contract currently in place with Wates Property Services Ltd.

The estimated value of the contract is approximately £2,200,000 per annum.

The works to be included in the scope are of building fabric repairs and responsive maintenance and M&E repairs.

The scope also provides for minor works, inclusive of building fabric and M&E works, programmes up to a works value band, set at £125,000, for non-housing properties.

Improvements from lessons learned on the current contract have been incorporated into the Contract. The key change: is the decrease of the maximum order value for minor works projects to £125,000. Works above that threshold will be delivered by either Frameworks or open competition ensuring competitiveness.

## **Ordering and Payments**

4. Monthly account payment in lieu of payment against individual orders, which should be more efficient to manage and afford the opportunity to make summary adjustments for performance management.

The contracts will include performance management measures, which are set out in formal Key Performance Indicators. Service credits are applied to the payment structure and used to drive performance.

The Reactive Maintenance orders will continue to be via the Council's existing Asset Management System (currently Concerto). The contractors will upload their documents directly on this system, including worksheets, statutory compliance certificates and asset update information.

The pricing in the Measured Term Contracts is based on tendered percentage adjustments to the National Schedule of Rates, for which pricing updates are published annually and contractors Overheads & Profit.

Routine Maintenance of the Council's non-housing property portfolio will be met from the revenue budget provision for repair & maintenance on non-housing property portfolio, which is funded from the Repairs and Maintenance Reserve and includes the annual R&M budget contributions to the reserve. The revenue budget for Reactive Maintenance is CS0274.

Maintenance that meets the definition of capital expenditure will be met from the budget allocation within the Corporate Condition Programme or other capital budgets (as per the approved/agreed arrangements).

The 2023-24 capital budget for the Corporate Condition Programme is £2.3m, which will not be affected by procurement of replacement Measured Term Contracts.

## **Procurement Process**

5. A Prior Information Notice (PIN) was issued on 3 March 2023. The PIN was used to engage market interest in the contract. Providers were requested to return a market engagement questionnaire to inform the procurement process. The process provided some valuable feedback that was used in the tender documents.

The Contract Notice was issued on Find a Tender on 3 August 2023. The procurement was by means of an Open Tender process.

Tenders were issued via the London Tenders Portal (LTP)/Proactis (reference – DN656985) to the open market. The document pack included the tender documents and a 'Minimum Standards Questionnaire' which ensured bidders were suitably competent and experienced in delivering repairs and maintenance works. Eight organisations responded by 4 September 2023.

## **Tender Evaluation**

6. The tenders were evaluated based on a quality/cost split of 40/60.

The tender return was evaluated by officers from the Council's Construction Maintenance and Facilities Management Team (CMFM). The evaluation process was overseen and moderated by Procurement Services. The evaluation panel was briefed on the tender evaluation process. See Confidential Appendix for scores.

It is considered that appointment of Bidder A to provide Repair, Maintenance and Small Value Works Projects for Council Non-Housing Properties has been robustly assessed with due regard to their technical competency and with due regard to ensuring that the Council obtains best value from their works and that their appointment ensures that the Council's extensive portfolio of corporate buildings are maintained in a safe condition, remain operational and retain capital value.

## **Preferred Option and Reasons for Preferred Option**

7. The contract is the replacement of an existing contract for similar work. The Council cannot source this in house and, as it is a necessary requirement for the Council to carry out repairs and maintenance on its buildings, the provider is outsourced.

The following procurement routes were considered:

- a) Call off from a suitable existing framework agreement
- b) PCR Open (one stage) Tender process
- c) PCR Restricted (two stage) Tender process

Using an existing framework agreement can save time and money. However, this option was discounted in order to give the opportunity for local SMEs to tender.

The open process was chosen as it minimises the timescales of the procurement process.

## **Relevance to Council Plans and Strategies**

8. The contract will support the following objectives from the Council Plan:

- **Clean and green places**

Maintaining the corporate, public buildings and education portfolio in a safe, fit for purpose, and compliant state provides opportunities for the Council's asset to meet a future outcome for residents to live in a carbon neutral borough and meet decarbonisation pledges.

- **Thriving children and young people**

Maintaining the corporate, public buildings and education portfolio in a safe, fit for purpose, and compliant state supports the Council's future outcome for children and young people do well at all levels of learning.

- **Strong, healthy and safe communities**

Maintaining the corporate, public buildings and education portfolio in a safe, fit for purpose, and compliant state will enable Council services to be delivered effectively and efficiently for those people who live, work or travel in the entire borough supporting accessible and responsive services and a future outcome for residents to live happy, healthy and safe lives.

## **Financial Implications**

### **Summary**

1. This report is requesting approval to award the measured term contract for repair, maintenance and small value works projects for Council non-housing, to Bidder A for, initially 2 years, with the provision to extend for a further 2 years and a further 4 years.
2. The estimated annual value of the contract is £3.5m which will be split between works that are capital and revenue in nature.

3. The drawdown of works through the contract is based on a schedule of rates that have been evaluated through the procurement process to ensure the Council achieves value for money. There is no guaranteed expenditure on this contract.
4. Works commissioned through this contract will be funded from existing revenue and capital budgets.
5. A financial assessment was performed on each bidder as part of the procurement process. The purpose of the financial assessment is to assess the bidder's financial capacity to perform the contract. The financial assessment follows the guidance set out in the governments commercial function. The guidance note "Assessing and monitoring the economic and financial standing of bidders and suppliers" sets out a range of financial metrics and ratios to assess organisations.
6. The assessment is based on a standardised set of metrics and ratios, which were reviewed to ensure they were related and proportionate to the contract. The assessment was performed by qualified accountants within the Councils finance team.

### **Revenue Budget Impact**

7. The estimated value of the works commissioned through this contract that will be charged to revenue is £2.2m, for which there is an existing reactive maintenance facilities management budget.
8. No other impact on revenue budget.

### **Capital budget impact**

9. Works charged to capital will be dependent on projects having approval via the capital finance governance procedures. There is currently £2m a year within the capital programme for the corporate condition programme. This budget is funded through borrowing.
10. In addition, some of the capital works will be charged to the school's capital programme which currently has a allocation of approx. £5m a year from the Department of Education for capital works to school buildings. These works will be funded from grant.
11. Within the 10-year capital programme there is a budget allocation for the capital works that will be commissioned through this contract.

### **Borrowing Impact**

12. The value of the capital works funded through this contract are currently unknown. Should the full £2m of the corporate condition programme budget be used to commission works through this contract, this would attract annual financing costs of £124k a year, assuming a rate of 5.5% over 40 years.

### **Tax Implications**

13. The council will reclaim all VAT on expenditure through its regular submissions for input VAT. No other known tax implications.

### **Accounting Treatment**

14. Costs will be accounted for in compliance with the Councils capitalisation policy. Any costs that cannot be capitalised will be charged to the revenue budget.
15. All costs commissioned through the contract that are identified as capital in nature will be charged to the capital programme budget. Works that enhance, extend the useful economic life, or create a new non-current asset will be considered for capitalisation.

### **Legal Implications**

*Prepared by CP based on version of report circulated 26.10.23*

1. The Council has a duty under both common law and legislation including the Occupiers' Liability Acts 1957 and 1984, Health and Safety at Work etc Act 1974 and the Management of Health and Safety at Work Regulations 1999 to take such care as is reasonable in all the circumstances to ensure that individuals do not suffer injury on its premises and that it does all that is reasonably practicable to ensure the health and safety of individuals on its premises. In addition, section 111 of the Local Government Act 1972 enables local authorities to do anything which facilitates or is conducive or incidental to the discharge of their functions. The recommendations in this report are in accordance with those duties and powers.
2. The value of the contract exceeds the relevant EU procurement threshold and triggers the requirements of the Public Contracts Regulations 2015. As set out elsewhere in this report, a robust procurement process was carried out in compliance with those Regulations and with the oversight of Council Procurement Officers.
3. The contract with the successful contractor (the JCT MTC 2016 Form of Contract) has been prepared by construction specialists at an external law firm, and due to the value will need to be sealed as a Deed by Legal Services.
4. As stated elsewhere in this report, due to the value of the contract being over £1 million, under the Council's Contract Procedure Rules the Supplier must be required to provide 'sufficient security' (e.g. a performance bond or parent company guarantee). Evidence of the form

of security required, or why no security was required, must be stored and retained on the E-Tendering Portal for audit purposes. Where the Supplier cannot provide such security, but the Council has no acceptable alternative provider or has decided to accept the level of risk, then the Executive Director of Resources must approve the financial risk prior to any award. The relevant Authority Report must set out the reason why it is proposed that the contract should be awarded despite absence of security and what measures are to be taken to manage this risk.

As the contract value exceeds £500,000, this is a Key Decision and the Council must comply with the Key Decision procedure.

### **Equalities Implications**

5. An Equalities Impact Assessment is not required in relation to this report, because the impacts of the proposals are either neutral or positive for residents or employees with any specific protected characteristic

### **Environmental and Climate Change Implications**

6. Sustainability and climate change considerations were built in tender evaluation criteria. Bidders were required to set out the practical approaches they will take to deliver best practice standards of sustainability and help achieve the key environmental sustainability outcomes for LBE: Carbon positive (beyond net zero carbon emissions), Climate resilient, Radical increase in biodiversity, Zero waste & circular economy by design.

### **Public Health Implications**

7. There are no direct public health implications except that the effective maintenance of the Council's buildings will contribute to the Council's ability to deliver services to the public and help ensure that the properties covered by the contracts will be safe for all members of the public and staff to use.

Failure to maintain the corporate estate to meet statutory standards and the requirements set out in the Health and Safety at Work Act 1974 would increase risk to public health.

### **Property Implications**

8. Reactive and Responsive Maintenance contracts are necessary to ensure that the Council's corporate buildings (non-housing) are maintained in a compliant safe condition, remain operational and retain capital value. This includes ensuring that testing, inspection and



certification following works on mechanical and electrical services plant and equipment, to evidence compliance with all associated Statutory Legislation, which forms a substantial part of the Corporate Landlord responsibilities.

## **Other Implications**

### **9. Performance Management Implications**

- Poor performance of the Measured Term Contractors. This will be managed via Key Performance Indicators within the terms of the contract; the ultimate sanction would be enacting a break clause contained in the terms and conditions, which requires 13 weeks' notice.
- The contractor's payments will link to the Key Performance Indicators; deductions are made as a percentage of the point of invoicing which can be claimed back at agreed intervals based on evidencing of KPI's being achieved.

### **10. Health and Safety Implications**

- The Corporate Manslaughter and Corporate Homicide Act 2007 means that companies and organisations can be found guilty of corporate manslaughter as a result of serious management failures resulting in a gross breach of a duty of care.
- The failure to have in place Reactive Works and Minor Repairs contracts would increase the risk of the Council not fulfilling its legal obligation to maintain its property in a safe condition. The Measured Term Contractors have in place satisfactory health and safety policies and procedures.

### **11. Procurement Implications**

The procurement was undertaken using the London Tenders Portal (ref DN656985) in accordance with the Councils Contract Procedure Rules (CPR's) and the Public Contracts Regulations (2015).

The Contract Notice was published on 3 August 2023 on the 'Find a Tender' portal under an Open procedure.

Procurement Services were involved in the procurement and the process was carried out fairly and transparently.

The award of the contract, including evidence of authority to procure and the uploading of executed contracts must be undertaken on the

London Tenders Portal including future management of the contract. The award of contract must be promoted to the Councils Contract Register.

As the contract is over £1,000,000 the supplier must be required to provide sufficient security in accordance with Clause 7 (Financial Security) of the Councils Contract Procedure Rules. Evidence of the form of security required, or why no security was required including approval from the Executive Director of Resources, must be stored and retained on the E-Tendering Portal for audit purposes.

All contracts over £100,000 must have a nominated contract manager in the London Tenders Portal. Contracts over £500,000 must show evidence of contract management of KPI's to ensure VFM throughout the lifetime of the contract.

The awarded contract must be published on Find a Tender and Contracts Finder to comply with the Government's transparency requirements.

*Comments by Samantha Rose, Senior Procurement Manager. Date: 20 October 2023*

## 12. **KEY RISKS**

The key risks relate to:

- Failure to undertake Corporate Landlord responsibilities to evidence compliance with all associated Statutory Legislation required under the Corporate Manslaughter and Corporate Homicide Act 2007. The procurement of replacement Measured Term Contracts will reduce this risk significantly by maintaining the service.
- Failure to undertake repairs and maintenance to its property portfolio leading the closure of buildings and/or unsafe working environments. The procurement of replacement Measured Term Contracts will reduce this risk significantly by maintaining the service.
- Legal challenge to the extension of the Measured Term Contracts beyond 7th April 2023. This can be mitigated by evidencing that a compliant contract is being procured.

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## **Appendices**

Equalities Impact Assessment

## **Background Papers**

None