

# MUNICIPAL YEAR 2012/13 REPORT NO. 157

**MEETING TITLE AND DATE:**  
**CABINET**  
**13th February 2013**

**REPORT OF:**  
 Director - Environment

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**Agenda – Part: 1**

**Item: 12**

**Subject: Approval of Tender for Measured Term Contract Responsive Maintenance, Planned Preventative Maintenance and Minor Works (Non Housing)- Mechanical and Electrical Services**  
**KD No: 3605**  
**Wards: All**

**Cabinet Member consulted: Councillor Bond**

## 1. EXECUTIVE SUMMARY

- 1.1 This report details a procurement process recently undertaken in order to obtain competitive tenders for undertaking responsive maintenance, planned preventative maintenance and minor works to the Council's non housing property portfolio. The undertaking of these works are necessary in order to ensure that the Council's corporate buildings are maintained in a safe and fit for purpose condition, that they maintain their capital value and the mechanical and electrical services plant and equipment within them are tested and inspected in accordance with associated statutory legislation.
- 1.2 The above works are split into two lots: Lot 1 Building and Lot 2 Mechanical and Electrical. This report concerns the procurement of Lot 2 Mechanical and Electrical. A further report on this agenda KD 3604 concerns the procurement of Lot 1 Building.
- 1.3 This report details the outcome of the procurement process for Lot 2 Mechanical and Electrical and makes recommendations for tender award.
- 1.4 The recommended contract is for an initial period of two years with an option for three one year extension clauses and subject to Cabinet approval is due to commence on 1<sup>st</sup> April 2013. The current contract provisions it is to replace are due to expire on 31<sup>st</sup> March 2013.

## 2. RECOMMENDATIONS

To award the contract for Lot 2 Mechanical and Electrical as detailed in recommendations to part 2 of this report.

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### 3. BACKGROUND

- 3.1 The Council's corporate property portfolio comprises circa 950 properties, excluding schools and social housing.
- 3.2 The Council has an obligation to ensure that its corporate buildings are maintained in a safe and fit for purpose condition; that they maintain their capital value and the mechanical and electrical services plant and equipment within them are tested and inspected in accordance with associated statutory legislation.
- 3.3 In order to do this the Council undertakes Planned Maintenance, Planned Preventative Maintenance (PPM) and Responsive Maintenance (day to day repairs) via various measured term contracts. These include contracts for building repairs, mechanical and electrical services repairs, minor improvements, water testing, lift servicing, electrical testing, boiler servicing, fire alarms etc.
- 3.4 These contracts are mainly funded from the Corporate Repairs and Maintenance Fund (Revenue). The spend on the contracts is governed by demand and budget availability.
- 3.5 As the contracts approach their expiry a process has been put into place to re-tender the contracts as well as to make arrangements for any current contracts to be extended as necessary to meet the timetable for their renewal. At the same time the opportunity has been taken to review how to best procure the replacement contracts.
- 3.6 This report concerns the procurement of a new borough wide Measured Term Contract Mechanical and Electrical to undertake Planned Preventive Maintenance, Responsive Maintenance and Minor Works to Mechanical and Electrical Services. A similar procurement process has also been undertaken for a Measured Term Contract Building which is the subject to a further report on this agenda KD 3604. The new Measured Term Contract Mechanical and Electrical is programmed to commence on 1<sup>st</sup> April 2013. The existing contracts are due to expire on 31<sup>st</sup> March 2013.

### 4. PROCUREMENT STRATEGY

- 4.1 In order to facilitate the renewal of contracts a medium term procurement strategy was developed by Architectural Services in conjunction with Corporate Procurement and Legal Services.
- 4.2 This strategy was agreed at Strategic Procurement Board on 29th September 2011.
- 4.3 The key objectives in the strategy are:
- To reduce single tendering wherever possible in order to increase competition and drive down costs.

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- To avoid including within the measured term contracts those specialists services that would involve a long sub contract supply chain and with it a series of mark ups and therefore additional costs. Examples are lifts, fire alarms and air conditioning.
- The need to amalgamate contracts to increase economies of scale and reduce costs.
- To reduce the need and the associated costs of carrying out frequent procurement for minor works projects up to £100,000.
- To set contract lengths not too short so that they can provide economies of scale and avoid the costs of too frequent procurement but not too long to allow the Council to be able to review the service provision, consider new ways of working, new ways of procurement or further amalgamation of contracts

4.4 The proposal for the Mechanical and Electrical works is to reduce the current two area-based measured term contracts to one borough wide M&E contract as detailed below. The contract will use the JCT Measured Term Contract 2011 terms & conditions and the National Schedule of Rates Mechanical and Electrical Services.

<b>Measured Term Contract</b>	<b>Approximate Annual Value</b>	<b>Contract Situation</b>
(Proposed Lot 2) Mechanical & Electrical Maintenance Contract for Responsive Repairs Planned Preventative Maintenance and Minor Works	Total £1.2m Responsive Maintenance £700,000 PPM £230,000 (see below) Minor Works £270,000	Currently two area contracts expiring 31st March 2013 - single borough wide "M&E Services Measured Term contract". Contract to include Boiler Maintenance, Fixed Electrical Testing, Portable Appliance Testing and Water Monitoring.

4.5 The M&E contract will include the formerly separate contracts for boiler maintenance, electrical testing, portable appliance testing and water monitoring with a bespoke Schedule of Rates.

4.6 The contract will also include provision for contracting minor improvement works up to an individual value of £100k with a progressive discount mechanism linked to the National Schedule of Rates. This will provide a streamlined procurement mechanism particularly useful for urgent projects, whilst still delivering value for money within the context of a larger contract. It would in addition provide performance management mechanisms that would not be possible within individual low value contracts.

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- 4.7 The contract will also require the contractor to receive orders via the Council's proposed new Asset Management System "Atrium" , and to upload order details directly on a contractor portal on this system, including worksheets, compliance certificates, and pre-invoices. This development will not only improve record keeping but also result in a streamlining of the Council's administrative and technical processes.
- 4.8 The contract includes performance management measures, including monthly reporting, quarterly progress meetings, and the monitoring of Key Performance Indicators (KPIs) and community benefit obligations. The monthly progress meetings will also address forthcoming works allowing co-ordination of this contract with any other major contracts the Council may be embarking on such as the works to the 10<sup>th</sup> Floor of the Civic Centre.
- 4.9 The contract has been set at an initial period of two years with three optional one year extension clauses. It is consider that any period shorter than two years would cause real difficulties (and costs) to a contractor in terms of dealing with TUPE and the necessary investment to take on board the IT and enhanced KPI requirements within the contracts. A contract period less than two years is unlikely to benefit from the advantages of economies of scale and would increase the annual cost. Bearing in mind the cost to procure EU compliant contracts and should the Council upon any review conclude that the contract continues to provide the best value in the longer term provision has been made for it to operate for up to five years by the inclusion of extension clauses totalling three years.
- 4.10 Three one year extension clauses rather than a single extension period were chosen in order to provide the maximum flexibility to the Council concerning when the decision needs to be made to re-tender the works. This will allow the Council to more easily align the re-tender with other initiatives that may present themselves in the medium to longer term.

## 5. TENDER PROCESS

- 5.1 The value of these measured term contracts in this procurement exceeds the EU threshold for services and is governed by EU Procurement Law and the Public Contracts Regulations 2006.
- 5.2 Accordingly a Contract Notice ("OJEU Notice") was placed in the Official Journal of the European Union on 29<sup>th</sup> June 2012 requesting interested contractors to apply electronically via the London Tenders portal by submitting a Pre-Qualification Questionnaire (PQQ) for evaluation in order to be short listed and be invited to tender for one or both of the measured term contracts (Lots 1 and/or 2). An advert was also placed on the Council's web site. By the closing date of 31 July 2012, 22 submissions had been received for Lot 1 Building and 27 for LOT 2 M&E.

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- 5.3 The OJEU Notice made it clear that following evaluation of the submitted PQQs, it is the Council's intention to restrict the number of organisations to be invited to tender to a maximum of six contractors for each Lot with those six scoring the highest number of points on the evaluation criteria being invited to tender.
- 5.4 The PQQ detailed the evaluation criteria split into Financial, Health and Safety, Equality and Diversity and Technical Capacity.
- 5.5 An assessment of each contractor's submission was made by officers using the evaluation criteria leading to the short listing of six contractors for each lot as detailed in part 2 of this report; the approval to the short list being an operational decision made by the Director of Environment on 6<sup>th</sup> November 2012.
- 5.6 The tender award is to be on the basis of the lowest price submitted provided the bid is compliant. A quality price model whereby a higher price could be accepted if the bid was of a higher quality has not been adopted on the basis that the Council has set within the tender documents the standards to be met and all of the short listed contractors have passed the standards required to undertake the works as part of the PQQ process.
- 5.7 Tenders were issued on 9<sup>th</sup> November for return on 17<sup>th</sup> December 2012. Details of the tenders received are provided in part 2 of this report.
- 5.8 This assessment has concluded that for Lot 2 Mechanical and Electrical, the tender from Contractor A, as detailed in part 2 report, is the bid that represents the best value to the Council and should be accepted.

## 6. ALTERNATIVE OPTIONS CONSIDERED

- 6.1 Corporate Procurement has advised that there are no existing frameworks either nationally or locally that could readily be adopted as a short or long term solution.
- 6.2 Whilst Enfield Homes operate measured term contracts for repairs and maintenance these were not considered suitable as they were compiled utilising the National Housing Schedule of Rates which are not suited to non housing properties where the proposed National Schedule of Rates is more appropriate. In addition to add in corporate buildings would be a major variation to the Housing Contracts which would be contrary to the Public Procurement Regulations 2006 and EU directives as corporate buildings did not form part of the original OJEU Notice for the contracts.
- 6.3 The provision of these services could be undertaken via other facilities management type contracts. The timescales to procure such contracts are such that this is not possible in the short term to consider this as an option. The contract length has however been restricted to an initial period of two years in order to allow this and other options to be considered in the future.

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## **7. REASONS FOR RECOMMENDATIONS**

The Council has a legal obligation to ensure that its corporate buildings are maintained in a safe and fit for purpose condition. The current contracts that undertake this work are due to expire on 31<sup>st</sup> March 2013. It is therefore very important that a new contract is put into place from 1<sup>st</sup> April 2013. This report details the procurement process undertaken in order to arrive at the recommendation for the new contract. The contractor recommended for tender award provided the lowest cost bid to the Council.

## **8. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES, AND OTHER DEPARTMENTS**

### **8.1 Financial Implications**

8.1.1 The costs of responsive mechanical and electrical services and planned preventative maintenance (PPM) will be met from the revenue budget provision for repair & maintenance on non-housing property portfolio. The costs of minor works that meet the definition of capital expenditure will be met from the budget allocation within Building Improvement Programme.

8.1.2 Please refer to part 2 report for further comments.

### **8.2 Legal Implications**

8.2.1 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, 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 gives a local authority power to do any thing which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. The Services procured under this contract will ensure compliance with the Council's duties and if these duties are not complied with, the Council may be at risk of legal action under the Health and Safety Offences Act 2008 and the Corporate Manslaughter and Homicide Act 2007. The Council may enter into the Contract pursuant to section 1 of the Local Government (Contracts) Act 1997.

8.2.2 The value of the contract is above the EU threshold and as such must be tendered in accordance with the Public Contract Regulations 2006 ("PCR 2006"), the Councils Constitution, in particular the Contract Procedure Rules ("CPR"), and the EU principles of transparency, equal treatment, proportionality and non discrimination ("EU Principles). The client has confirmed that that procurement was carried out in accordance with the PCR 2006, the CPR and EU Principles.

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8.2.3 The Contract must be in a form approved by Assistant Director of Legal Services.

### 8.3 Procurement Implications

The Corporate Procurement team has been regularly consulted. This proposed measured term contract forms part of the procurement strategy for repairs and maintenance as agreed at Strategic Procurement Board and the procurement is in accord with the Council's procedures.

### 8.4 Property Implications

The contract to be let is fundamental to the Council's delivery of its day-to-day reactive repairs and planned maintenance responsibilities to its corporate portfolio, thus ensuring the continued operation of buildings and the services delivered from them.

## 9. KEY RISKS

9.1 The key risks in terms of the procurement relate to:

- The appointment of an inappropriate contractor in terms of their capacity or capability to undertake the Contract. This risk has been addressed by the short listing process which has assessed and ranked the applicants financial and technical capacity.
- That a contractor challenges the process in terms that they were not short listed or awarded the contract. This has been addressed by adopting an objective and transparent process by which to rank the applicants and assess the tenders. The process adopted has been subject to consultation and advice from Legal Services and Counsel.

9.2. The report details several risks that would be addressed by the recommended contract including:

- Help ensure corporate buildings are maintained in a safe and fit for purpose condition;
- To reduce single tendering wherever possible; and
- To avoid including specialist services such as lifts.

9.3 Similarly a number of opportunities are detailed including:

- Amalgamating contracts to achieve economies of scale; and
- Reducing the need to carry out frequent procurement for minor works projects up to £100,000.

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## **10. EQUALITIES IMPACT IMPLICATIONS**

Corporate advice has been sought in regard to equalities and an agreement has been reached that, on this occasion, an equalities impact assessment is not necessary. The establishment of this contract will contribute to ensuring the continuing safe use of all Council buildings by all members of the community.

## **11. IMPACT ON COUNCIL PRIORITIES**

### **11.1 Fairness for All**

Approval of the new contract will help ensure that the properties covered by the contracts will be safe for all members of the public and staff to use.

### **11.2 Growth and Sustainability**

None.

### **11.2 Strong Communities**

Please refer to Part 2 report

## **12. PERFORMANCE MANAGEMENT IMPLICATIONS**

12.1 The Contractors recommended to be invited to tender have been short listed on the basis of a rigorous assessment of their financial and technical capabilities with the top six ranked selected for each contract.

12.2 The contract contains a requirement for the contractor to provide monthly and quarterly reports on their performance linked against a series of KPIs which will be assessed and managed by Architectural Services as the Contract Administrator. These KPIs have also been set with year on year improvements in terms of the targets to be achieved. Should the Contractor fail to meet a target or targets they are required to introduce an improvement plan to address the under performance.

12.3 The contractor's payments are not directly linked to the KPIs and a proportion of their income would not be deducted if they fail to meet the targets. This is because the Council requires the contract to meet a standard rather than accept a lower standard but be compensated by a financial deduction. Should the standards not be met, the Council can seek redress by employing an alternative contractor and deducting any extra cost from the Contractor's account. The Council can also make the decision, should performance not be satisfactory, to reduce the amount of work ordered through the contract particularly with reference to minor works until such time as the performance meets the standard.

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### 13. HEALTH AND SAFETY IMPLICATIONS

The failure to have in place an effective contract from 1<sup>st</sup> April would increase the risk of the Council not fulfilling its legal obligation to maintain its property in a safe condition. The recommended contractor has in place satisfactory health and safety policies and procedures.

### 14. PUBLIC HEALTH IMPLICATIONS

There are no direct public health implications except the effective maintenance of the Council's buildings through this proposed contract 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.

### Background Papers

None.

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