

## MUNICIPAL YEAR 2017/2018 REPORT NO.

### ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

### OPERATIONAL DECISION OF:

Executive Director –  
Regeneration and  
Environment

<b>Agenda – Part: 1</b>	<b>KD Num: 4671</b>
<b>Subject: Extension of Measured Term Contracts for Corporate (Non-Housing) Maintenance – Building / Mechanical &amp; Electrical Services</b>	
<b>Wards: All Wards</b>	

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### 1. EXECUTIVE SUMMARY

1.1 This report seeks approval for a further one year extension of the two existing Corporate Maintenance Measured Term Contracts for Responsive Maintenance, Planned Preventative Maintenance and Minor improvement works.

The two existing Measured Term Contracts are:

- Building - Kirkman & Jourdain Ltd,
- Mechanical and Electrical Services - Munns Ltd

1.2 These Hard FM 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 testing, inspection and certification of 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.

1.3 These contracts commenced on 8th April 2013 for an initial period of two years and they have been extended for three further single year extensions as was permitted under the original OJEU notice.

1.4 The Council has been exploring, and continues to explore, alternative options for Hard FM delivery. Whilst this review continues, the service must be maintained, which means the existing contract must be extended further.

1.5 An operational Decision has already been taken for an Interim one month extension of the two existing Corporate Maintenance Measured Term Contracts to 7th May 2018.

## **2. RECOMMENDATIONS**

That the Executive Director of Regeneration and Environment approves:

- 2.1 Nominal one-year extension of the 2013 Measured Term Contract - Building with Kirkman & Jourdain Ltd from 8th May 2018 until 7th April 2019 based on the same terms and conditions.
- 2.2 Nominal one year extension of the 2013 Measured Term Contract - Mechanical and Electrical with Munns Ltd from 8th May 2018 until 7th April 2019 based on the same terms and conditions, which includes a further index linked increase of 4.29% for 2018/19 on the Planned Preventative Maintenance Schedule of Rates.

## **3. BACKGROUND**

- 3.1 The Council has an obligation to ensure that its corporate buildings are maintained in a safe condition, remain operational and retain capital value. The mechanical and electrical services plant and equipment must be tested and inspected in accordance with associated statutory legislation. This forms a substantial part of the Corporate Landlord responsibilities.
- 3.2 In order to achieve this, the Council must undertake Reactive / Responsive Maintenance, Planned Preventative Maintenance (PPM) and Planned Capital Maintenance, which is predominantly delivered via two main measured term contracts, one for Building fabric and the second for Mechanical and Electrical engineering services. The Measured Term Contracts also include provision for undertaking Minor improvement works up to an order value of £100,000 with a progressive discount that increases with the value of the order.
- 3.3 The current Measured Term Contracts were tendered in compliance with EU procurement regulations during 2012 and, following Cabinet approval on 13th February 2013, contracts were awarded as follows:
  - Lot One: Building - Kirkman & Jourdain Ltd
  - Lot Two: Mechanical and Electrical Services - Munns Ltd
- 3.4 The OJEU notice for the procurement stated an initial term of two years with a further three years in increments of one year. The contracts commenced on 8<sup>th</sup> April 2013 and have been extended three times as permitted under the OJEU notice; both Measured Term Contracts expire on 7<sup>th</sup> April 2018.
- 3.5 The Council has been exploring, and continues to explore, alternative options for Hard FM delivery. Whilst this review continues, the service must be maintained, which means the existing contract must be

extended further as an interim measure to ensure that the Council maintains its Statutory Compliance and continuity on Repairs and Maintenance. Under these circumstances, extension of the current arrangements is considered the most appropriate interim measure but this will need to be kept under review.

- 3.6 Should the Council decide before 7th April 2019 that it no longer wishes to continue with either of the Measured Term Contracts, the Council can 'determine' (end) the contract by enacting a break clause contained in the terms and conditions, which requires 13 weeks' notice.
- 3.7 The Measured Term Contracts are based on tendered percentage adjustments to the National Schedule of Rates, for which pricing updates are published annually. The exception to this is Planned Preventative Maintenance, which is based on a bespoke Schedule of Rates with an annual adjustment based on the Building Cost Information Service Indices.
- 3.8 Kirkman & Jourdain Ltd has confirmed that, subject to the necessary Council approvals, they would agree to a one year extension to their Measured Term Contract – Building without amendment to the terms and conditions and tendered rates.
- 3.9 Munns Ltd has confirmed that, subject to the necessary Council approvals, they would agree to a one year extension to their Measured Term Contract – Mechanical and Electrical Services without amendment to the terms and conditions and tendered rates the uplift to the Schedule of Rates for Planned Preventative Maintenance works as detailed in Part 4 of the Contract Documents for total uplift of 17.13% to the originally tendered rates (2013-15), which includes +4.29% for the proposed one year extension in 2018/19 all based on BCIS indices as set out in the contract.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 The Council has been exploring, and continues to explore, alternative options for Hard FM delivery. Whilst this review continues, the service must be maintained, which means the existing contract must be extended further.
- 4.2 The provision of these services could be undertaken by negotiation with other similar providers or via facilities management type framework call off contracts but neither could be procured in time to maintain service delivery for 8th May 2018.

#### **5. REASONS FOR RECOMMENDATIONS**

- 5.1 The Council has a legal obligation to ensure that its corporate buildings are maintained in a safe and fit for purpose condition and extension of the existing Measured Term Contracts provides the only viable option.

- 5.2 As stated in 3.6 above, the Measured Term Contracts contain a break clause, which means that the Council can give 13 weeks' notice to end the contract should the Council decide on an alternative option for Hard FM delivery.

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

### **6.1 Financial Implications**

- 6.1.1 This report seeks to approve the Extension of Measured Term Contracts for Corporate (Non-Housing) Maintenance – Building / Mechanical & Electrical Services.

- 6.1.2 The annual cost of this contract will be funded from the revenue budget for Reactive / Responsive Maintenance and Planned Preventative Maintenance (PPM) is £1.2m.

- 6.1.3 The capital budget for the Building Improvement Programme (Corporate Planned Maintenance) is £1.5m, which will not be affected by extension of the Measured Term Contracts.

- 6.1.4 The budgets for any minor improvement works undertaken using the Measured Term Contracts will be provided by the client service.

### **6.2 Legal Implications**

- 6.2.1 The Council has the power under section 1(1) of the Localism Act 2011 to do anything that individuals generally may do provided it is not prohibited by legislation and subject to Public Law principles. There is no express prohibition, restriction or limitation contained in a statute against use of the power in this way.

- 6.2.2 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. Section 111 of the Local Government Act 1972, enables local authorities to do anything, which facilitate or are conducive or incidental to the discharge of their functions. The proposed contract extensions are in accordance with this power.

- 6.2.3 Officers have confirmed that the contracts with both Contractors were tendered in accordance with EU Regulations and EU principles of transparency, equal treatment, proportionality and non-discrimination.

6.2.4 The contracts signed with the Contractors were for 2 years and allowed for the extension of the contract term for up to another 3 years. However, as the Measured Term Contracts have been in place for 5 years, expiring on 7th April 2018, further extension will be outside the scope of the original procurement. The resultant risk to the Council is legal challenge. If a challenge is made, the Council could be liable to pay damages and financial penalties, and the contracts could be declared ineffective and set aside. The risk of a procurement challenge is mitigated by the fact that the proposed contract extension is intended to be an interim measure while a full procurement process is completed. Further, the risk of a procurement challenge will need to be weighed against the significant risks for the Council highlighted in this Report in the event that the contracts are not extended.

### **6.3 Property Implications**

Hard FM 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 testing, inspection and certification of 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.

### **6.4 Corporate Procurement Implications**

Both Measured Term Contracts were originally procured in accordance with EU regulations. It is noted that the requested extension is outside the scope of the original procurement. However, it is noted that a replacement contract is in the process of procurement which mitigates potential risks to the Council.

## **7. KEY RISKS**

The key risks relate to:

- 7.1 Failure to undertake Hard FM Corporate Landlord responsibilities to evidence compliance with all associated Statutory Legislation required under the Corporate Manslaughter and Corporate Homicide Act 2007. The extension of these contracts will reduce this risk significantly by maintaining the service.
- 7.2 Failure to undertake repairs and maintenance to its property portfolio leading the closure of buildings and/or unsafe working environments. The extension of these contracts will reduce this risk significantly by maintaining the service.
- 7.3 Legal challenge to the extension of the Measured Term Contracts beyond 7th April 2018. This can be mitigated by evidencing that a

compliant contract is being procured; ideally, an OJEU Notice should be issued for replacement contracts prior to 7th April 2018.

- 7.4 Change in Council strategy for delivery of Hard FM. This is currently under review; the Measured Term Contracts contain a break clause, which means that the Council can give 13 weeks' notice to end the contract should the Council decide on an alternative option for Hard FM delivery.

## **8. IMPACT ON COUNCIL PRIORITIES**

### **8.1 Fairness for All**

Properly maintaining the corporate buildings will enable Council services to operate effectively for those people who live, work or travel in the entire borough.

### **8.2 Growth and Sustainability**

Properly maintaining the corporate buildings will enable Council services to support growth. Not properly maintaining the corporate buildings is unsustainable.

### **8.3 Strong Communities**

Properly maintaining the corporate buildings will enable Council services to operate effectively for those people who live, work or travel in area.

## **9. EQUALITY IMPACT IMPLICATIONS**

An equalities impact assessment/analysis is not considered necessary for this contract procurement. The establishment of these contracts will contribute to ensuring the continuing safe use of all Council buildings by all members of the community.

## **10. PERFORMANCE MANAGEMENT IMPLICATIONS**

Poor performance of the Measured Term Contractors 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.

## **11. HEALTH AND SAFETY IMPLICATIONS**

- 11.1 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.

- 11.2 The failure to have in place Hard FM contracts from 8<sup>th</sup> April 2018 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.

## **12. PUBLIC HEALTH IMPLICATIONS**

There are no direct public health implications except the effective maintenance of the Council's buildings through these proposed contracts 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**

- a) None

