

MUNICIPAL YEAR 2018/2019 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

PORTFOLIO DECISION OF:

Cllr Oykenor Cabinet Member for Property and Assets

REPORT OF:

Executive Director Place

Agenda – Part: 1

KD Num: 4670

Subject: Contract Awards for Corporate Maintenance Measured Term Contracts (Non-Housing) - General Building and Mechanical & Electrical Services

Wards: All

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1. EXECUTIVE SUMMARY

- 1.1. This report seeks approval to award replacement Corporate Maintenance Contracts to commence 8th April 2019 for an initial term up to 31st March 2021 with an option for two further one year extensions. There are two existing Measured Term Contracts; General Building and Mechanical & Electrical Services; both expire on 7th April 2019.
- 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. Improvements will be made to the previous Measured Term Contract specifications based on lessons learnt to improve the efficiency and effectiveness of service delivery.

2. RECOMMENDATIONS

- 2.1 To award the Measured Term Contract for Lot 1 General Building as detailed in recommendations to part 2 of this report.
- 2.2 To award the Measured Term Contract for Lot 2 Mechanical and Electrical as detailed in recommendations to part 2 of this report.

3. BACKGROUND

- 3.1 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. 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 Maintenance, Planned Preventative Maintenance (PPM) and Planned Capital Maintenance. The former is predominantly delivered via two Measured Term Contracts, for Building fabric and for Mechanical and Electrical engineering services. These Measured Term Contracts also include provision for undertaking Minor improvement works with a progressive discount that reduces the rates with the value of the order.
- 3.3 The existing Measured Term Contracts expire on 7th April 2019:
- General Building - Kirkman & Jourdain Ltd,
 - Mechanical and Electrical Services - Munns Ltd
- 3.4 The replacement Measured Term Contracts will be similar:
- Lot 1 General Building - Reactive Maintenance, some Planned Capital Maintenance, Minor improvement works up to £200k
 - Lot 2 Mechanical & Electrical Services - Reactive Maintenance, Planned Preventative Maintenance (PPM), some Planned Capital Maintenance, Minor improvement works up to £50k
 - Both contracts will continue to incorporate the JCT Measured Term Contract Terms & Conditions with pricing via the National Schedule of Rates except for PPM, which has a bespoke Schedule of Rates.
- 3.5 Improvements have been made to the previous Measured Term Contract specifications, based on lessons learnt, to improve the efficiency and effectiveness of service delivery; the key changes are as follows:
- Lot 1: General Building
 - To increase the maximum order value for minor projects up to £200,000 based on the effectiveness of the existing contract; this will increase the capability for the Council to carry out higher value works at short notice; this will still feature the progressive discount that increases with the value of the order.
 - Lot 2: Mechanical and Electrical Services

- To incorporate further Planned Preventative Maintenance (PPM) installations that are currently tendered separately, this should increase economies of scale and reduce costs. The maximum order value for minor projects to be reduced to £50,000 to deal with emergencies only; this will still feature the progressive discount that increases with the value of the order.
 - Both Lot 1 and Lot 2: Payment
 - 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, including monthly reporting, quarterly progress meetings, and measurement of performance by Key Performance Indicators. This will include social value outcomes relating to the local Economy, Skills and employment, Communities and Environment equivalent to at least £50,000 per annum for each contract.
- 3.6 The OJEU notice for the new procurement states a Contract duration of 2 years with 2 possible extensions of 1 year each (1+1); with the extensions, the maximum possible contract duration is 4 years.
- 3.7 The procurement of replacement Measured Term Contracts should not compromise any future alternative options for Hard FM delivery. Should the Council decide 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.
- 3.8 The Reactive Maintenance, Planned Preventative Maintenance (PPM) orders will continue to be via the Council's existing Asset Management System (Atrium). The contractors will upload their documents directly on this system, including worksheets, statutory compliance certificates and asset update information. The contracts will include reference to migrating data to another Management System should the current Atrium system become redundant during the contract period.
- 3.9 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. The exception to this is Planned Preventative Maintenance; if the contract is extended Schedule of Rates will be uplifted in line with the BCIS Local Authority Maintenance Cost Index (as published by The Building Cost Information Service of the Royal Institution of Chartered Surveyors).
- 3.10 The value of these contracts exceeds the EU threshold for 'Services' and procurement is governed by LBE Contracts Procedure Rules and Public

Contract Regulations 2015. The Restricted Procedure has been used as there was a genuine need to pre-qualify bidders based on the evidence from pre-procurement market engagement that the number of potential bidders could be very large. Accordingly, an OJEU notice was published seeking expressions of interest requiring submission of a Pre-Qualification Standard Selection Questionnaire (SQ), which was then evaluated to determine a short list of the most suitable contractors. Those contractors were subsequently invited to tender for one of the Measured Term contracts (Lots 1 or 2) via the London Tenders portal.

- 3.11 The Invitation to Tender set out the evaluation criteria for contract award, which was on the basis of 60% Price and 40% Quality. Price was based on tendered percentage adjustments to the National Schedule of Rates. For Lot 2 Mechanical and Electrical Services, that also included pricing of a bespoke Schedule of Rates for Planned Preventative Maintenance (PPM). An evaluation model was used to arrive at a notional contract sum. To evaluate Quality, tenderers were required to respond to specific questions on service delivery that will become obligations under the contract; these statements were scored by a team of evaluators and moderated where scores diverged. The Price and Quality elements were entered into the evaluation model to rank the tenderers and determine which contractors should be recommended for contract award.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Officers had explored alternative options for Hard FM delivery including outsourcing via a Total FM arrangement; this is no longer being pursued. The option to deliver these maintenance contracts in-house under a direct labour arrangement has not been able to be delivered in the timescale.
- 4.2 The provision of these services could be undertaken by negotiation with other similar providers but that would not be procurement compliant. A facilities management type framework call off contract was considered and the most suitable was ESPO; that was unlikely to be successful as feedback indicated that a minimum 2 year contract would be required and due to the use of the NEC3 terms and conditions there would not be the flexibility of a break clause to end the contract early.

5. REASONS FOR RECOMMENDATIONS

- 5.1 Without these corporate maintenance contracts in place the Council would be at risk of not fulfilling its legal obligation to maintain its property in a safe condition and closure of corporate buildings.
- 5.2 The recommendations for contract award result from an EU compliant procurement process and represent best value for the Council.

6. COMMENTS FROM OTHER DEPARTMENTS

6.1 Financial Implications

- 6.1.1 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 and Planned Preventative Maintenance (PPM) is £1.2m
- 6.1.2 Maintenance that meets the definition of capital expenditure will be met from the budget allocation within the Building Improvement Programme or other capital budgets (as per the approved/agreed arrangements).
- 6.1.3 The capital budget for the Building Improvement Programme (Corporate Planned Maintenance) is £1.5m, which will not be affected by procurement of replacement Measured Term Contracts.
- 6.1.4 The budgets for any minor improvement works undertaken using the Measured Term Contracts will be provided by the relevant client service. These projects would be funded through individual client budgets – annual spend variable, estimated for this procurement as £650k but potentially in excess of £1m.

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 the way anticipated in this report.
- 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 award of replacement Measured Term Contracts is in accordance with this power.
- 6.2.3 The proposed value of each contract is above the EU threshold. Each contract must therefore be tendered in accordance with the Public Contract Regulations 2015, the Council's Constitution (in particular the Contract Procedure Rules (the "CPRs")), and the EU principles of

transparency, equal treatment, proportionality and non-discrimination (“EU Principles”). The conduct of the procurement process is described in detail in Part 2 of this report. Officers, who were assisted throughout the process by the Council’s internal legal and procurement teams, have confirmed that the procurement was carried out in a fair, transparent, non-discriminatory and proportionate manner.

- 6.2.4 The Public Services (Social Value) Act 2012 (the “PS(SV)A”) requires local authorities to consider at the pre-procurement stage of any services contract to which the Public Contracts Regulations 2015 apply (i) how what is to be procured may improve the economic, social and environmental well-being of their area and (ii) how the local authority may act with a view to securing that improvement in conducting the process of procurement. Bidders were evaluated on their proposed delivery of social value, which will continue to be monitored throughout the lifetime of the contracts (see section 8.2 of this report).
- 6.2.5 As the anticipated contract values each exceed £250,000, this is a Key Decision and the Council must comply with the Key Decision procedure.
- 6.2.7 Instructing officers should be mindful of the requirement to obtain sufficient security from the chosen contractor in accordance with the Council’s CPRs.
- 6.2.8 The Council must be mindful that TUPE may apply to the service provision change, and appropriate steps should be taken to protect the Council’s interests.
- 6.2.9 Throughout the engagement of the chosen contractors, the Council must comply with its obligations of obtaining best value, under the Local Government Act 1999.

6.3 Property Implications

- 6.3.1 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 Procurement Implications

- 6.4.1 The value of the tendered contract is above the EU threshold and as such has been tendered in accordance with the Public Contract Regulations 2015, the Council’s Constitution (in particular the Contract Procedure Rules (the “CPRs”)), and the EU principles of transparency, equal treatment, proportionality and non-discrimination (“EU Principles”). The process was compliant with EU principles. The P&C

Hub was involved in the procurement and the process was carried out fairly and transparently.

- 6.4.2 With regard to security, a bond for a Measured Term Contract will not be provided for the following reasons:
- 6.4.3 The JCT Measured Term Contract is not a lump sum contract and the value is not guaranteed over the term of the contract. Individual "orders" are raised as and when required, all of which are less than the £250,000 threshold set under Contract Procedure Rule 1.18, therefore, no security is required.
- 6.4.4 Payment will be on the basis of a monthly account in arrears, so the Council will only pay for works carried out and can withhold any monies where the Contractor has not performed.
- 6.4.5 The JCT Measured Term Contract includes a Break Clause; if a Contractor was unable to perform, they have the right to issue a break notice. After the break notice has been issued, the Council would be unable to recover re-tender costs of going to an alternative Contractor for the full duration of the Contract.

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 procurement of replacement Measured Term 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 procurement of replacement Measured Term Contracts will reduce this risk significantly by maintaining the service.
- 7.3 Legal challenge to the award of the Measured Term Contracts. This can be mitigated by evidencing that a compliant contract has been procured.
- 7.4 Failure to procure the replacement Measured Term Contracts by 8th April will result in further extension to the existing contract; this can be mitigated by evidencing that a compliant contract is being procured.
- 7.5 Change in Council strategy for delivery of Hard FM; 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 – CREATING A LIFETIME OF OPPORTUNITIES IN ENFIELD

8.1 Good homes in well-connected neighbourhoods

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

8.2 Sustain strong and healthy communities

8.2.1 These new Measured Term Contracts contain community benefit provisions that provide Social Value outcomes equivalent to at least £50,000 per annum.

8.3 Build our local economy to create a thriving place

8.3.1 Properly maintaining the corporate buildings will enable Council services to support economic growth.

9 EQUALITIES IMPACT IMPLICATIONS

Corporate advice has been sought in regard to equalities and an agreement has been reached that an equalities impact assessment is neither relevant nor proportionate for the approval of this report. The establishment of these contracts will contribute to ensuring the continuing safe use of all Council buildings by all members of the community. It should however be noted that the any contracts awarded should include a duty on the successful applicant to assist us with meeting our obligations under the Equalities Act 2010.

10 PERFORMANCE AND DATA IMPLICATIONS

10.1 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.

10.2 The contractor's payments will linked to the Key Performance Indicators; if targets are not met, a defined deduction will be made to the relevant monthly payment, which will include failure to deliver Social Value outcomes.

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 corporate maintenance 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.

12 HR IMPLICATIONS

None.

13 PUBLIC HEALTH IMPLICATIONS

13.1 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.

13.2 It would be useful if all maintenance considered how to reduce the Council's carbon footprint given that climate change has been described as the greatest threat to health of the 21st century.

Background Papers

None.

