

## London Borough of Enfield

### Director Decision

not before 24 February 2022

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**Subject:** Mechanical & Electrical Maintenance Services for Corporate Properties (non-housing)  
**Cabinet Member:** Cllr Mary Maguire  
**Executive Director:** Sarah Cary  
**Key Decision:** KD 5431

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### Purpose of Report

1. To advise that the incumbent supplier of mechanical & electrical maintenance services for corporate properties (non-housing) served notice on 16 December 2021 that it will cease the provision of services on 7 April 2022.
2. To advise that the incumbent supplier was procured in accordance with the Public Contracts Regulations (PCR's) 2015 using an OJEU notice that opened competition to the whole market and required a procurement process with an 8-months duration.
3. To advise that a replacement supplier must be procured and commence the provision of the services by no later than 8 April 2022.
4. To enable a compliant procurement to be undertaken, it is proposed to procure these services via the Fusion21 framework, an existing framework procured in accordance with the Public Contracts Regulations 2015.
5. To advise that the continuity of mechanical & electrical maintenance services for corporate properties (non-housing) is essential for the Council to meet its legal duty to ensure buildings are maintained in a safe condition and without risk to health and safety as required by the Health and Safety at Work Act 1974 and associated secondary legislation.

### Proposal(s)

6. To agree an annual price of £1.5m represents Value for Money based on the previous tender outcome after adjustment for inflation and a scope. (explained in detail in paras 19-22)
7. To agree that a replacement supplier (or suppliers) of mechanical & electrical maintenance services be procured via the Fusion 21 framework, and that the Council enter into a call off contract with the successful supplier/s.
8. To delegate authority to the **Director of Environment & Operational Services** to procure and award a contract for a 4-year term to a replacement supplier, or multiple suppliers if separation of the services is beneficial to the Council, of mechanical & electrical maintenance services for corporate properties (non-housing) in accordance with the Public Contracts Regulations 2015 and the Council's Contract Procedure Rules if the tender outcome is **no greater than £1.5m per annum**; or:

9. To delegate authority to the **Director of Environment & Operational Services** to procure and award a contract for a 1-year term to a replacement supplier, or multiple suppliers if separation of the services is beneficial to the Council, of mechanical & electrical maintenance services for corporate properties (non-housing) in accordance with the Public Contracts Regulations 2015 and the Council's Contract Procedure Rules if the tender outcome is **greater than £1.5m per annum and less than £1.8m**; or:
10. To delegate authority to the **Director of Environment & Operational Services, in consultation with the Executive Director Resources** to procure and award a contract for a 1-year term to a replacement supplier, or multiple suppliers if separation of the services is beneficial to the Council, of mechanical & electrical maintenance services for corporate properties (non-housing) in accordance with the Public Contracts Regulations 2015 and the Council's Contract Procedure Rules if the tender outcome is **greater than £1.8m**.

### **Reason for Proposal(s)**

11. The purpose of the mechanical & electrical maintenance services for corporate properties (non-housing) is threefold: (i) to provide statutory safety inspections and risk assessments; (ii) to provide planned preventative maintenance; and (iii) to provide reactive investigations, minor repairs and adjustments necessary to ensure the operational continuity of buildings.
12. The Council has a duty to ensure its buildings are maintained in a safe condition and without risk to health and safety as required by S2(e) of the Health and Safety at Work Act 1974 and as directed by the many secondary legislation relating to individual building systems such as legionella, fire, asbestos, electricity, lifting equipment and so on, all generically known as Mechanical & Electrical services.
13. Failure by the Council to meet this duty would present an increased risk of injury or death to employees and the public and could result in criminal prosecution, fines and imprisonment. The Council would also be at risk of claims for personal injury and associated costs.

### **Relevance to the Council Plan**

14. The mechanical & electrical maintenance services for corporate properties (non-housing) supports the delivery of the Council Plan by:
  - Delivering our services from fewer and better equipped buildings that are energy efficient, well-maintained, supported with the right technology and in the right locations, for the benefit of our communities.
  - Ensuring our buildings will be welcoming, accessible and inclusive places, where residents can access all the support they need in one place, and where our staff feel happy to work.
  - Working in partnership with the private sector for the benefit of all Enfield residents and make sure our supply chain is robust and fit for purpose to support service delivery.

- Making sure all our buildings are accessible to all residents and for anyone with a disability and bring the right services together under one roof so that residents can easily access a network of services.

## Background

15. The incumbent supplier was appointed in April 2019 following a procurement in accordance with the Public Contracts Regulations (PCR's) 2015. This was a two-stage process whereby Stage One required the publication of an OJEU notice to the whole market to which interested suppliers responded and were required to complete a Selection Questionnaire from which the client shortlisted five suppliers. This was followed by Stage Two where those five suppliers were invited to tender which was evaluated for price and quality by the client and an award made. The duration of the procurement process was 8-months which is normal for this route.
16. The incumbent supplier was awarded a two-year contract from 8 April 2019 to 7 April 2021 with the option to extend the contract period, by fixed terms of one-year, for a maximum of further two years. The annual price for each of the first two years was £1.34m.
17. The contract includes a Break Clause that enables either party to determine (end) the contract by serving 13-weeks' notice. The incumbent supplier enacted this clause on 16 December 2021 and advised that it does not intend to extend beyond 7 April 2022.
18. The reason stated by the incumbent supplier for ending the contract is that it is "loss making/break-even" and not commercially tenable.
19. A review of the tender report for the selection of the incumbent supplier shows that their price was the lowest tender and was 10.1% below the average of all the tenders received, a significant difference that could indicate an abnormally low tender and may have contributed to the low profitability and ultimate failure.

Tenderer (2019):	Price (annual):	Variance to average:
#1	£1,622,149	+8.8%
#2	£1,464,715	-1.8%
#3	£1,537,814	+3.1%
#4 (Incumbent)	£1,340,341	-10.1%
Average	£1,491,255	

20. For the reassurance of the Council, the current market price for the replacement mechanical & electrical maintenance services for corporate properties (non-housing) has been calculated using the average of all the received tenders (see para 17) from the previous EU Restricted Procedure which tested the whole market.

Average annual tender (2019)	Inflation Index:	Index (April 2019-March 2022):	Adjusted average annual tender (2022):
£1,491,255	BCIS	7.32%	£1,600,414
	RPIX	6.00%	£1,580,730
	Average		£1,590,572

21. The new specification for the replacement mechanical & electrical maintenance services for corporate properties (non-housing) will be identical to the previous tender but with one exception aimed at increasing competition and access for local

SMEs; the maximum value of minor works that can be directly awarded from the contract will be reduced from £50,000 to £10,000. This change will reduce the contract spend by approximately £240,000 per annum, based on the current contract.

22. The implications of Brexit on the construction and building maintenance market has also been considered. The impact is twofold, firstly that products and materials imported from the EU have increased in cost and are sometimes delayed, secondly that the supply of labour has been reduced by the UK immigration scheme. These implications cannot be definitively priced but the industry estimates this is an additional 10% of the contract sum.
23. It is concluded that, based on the 2019 tender with adjustments for inflation, scope reduction and Brexit, that an annual price in the range £1.35m to £1.5m would objectively represent Value for Money for this tender.

Current market adjusted price (para 19)	£1,590,572
Adjustment for omission of works (para 20)	-£240,000
Subtotal	£1,350,572
Adjustment for Brexit (para 21)	£135,057
Total	£1,485,629

24. The re-procurement and mobilisation of the replacement mechanical & electrical maintenance services for corporate properties (non-housing) must be completed by 7 April 2022 in order to ensure the continuity of those services and therefore the Council's compliance with its duties defined by the Health and Safety at Work Act 1974.
25. Due to the short notice given by the incumbent contractor and the time available to complete the re-procurement and associated Governance procedures dictates the use of an existing framework already procured in compliance with Public Contracts Regulations 2015 will be the most appropriate method.
26. The Fusion21 framework was selected because the Council is already a registered user and has used it successfully in the past. Fusion21 is a social enterprise that specialises in efficient public-sector procurement and has social value at its core.
27. The selected framework is the Workplace & Facilities, Lot 6, Building Engineering Services (M&E) which includes installation and maintenance of mechanical/electrical installations and building fabric. It includes planned preventative maintenance, reactive maintenance (e.g. remedial works, call outs). Planned repairs and improvements (e.g. lifecycle works, minor works, alterations). Consultancy & Advice.
28. The framework was procured in accordance with the Public Contracts Regulations (PCR's) 2015. It used an open competitive process to pre-qualify the suppliers and defined the scope of works and services, pricing mechanism and rates. Once in place the framework allows a Direct Award to the top-ranked supplier.
29. The tendering process is expected to conclude by 4 March 2022 and will require an immediate contract award in order to achieve the required mobilisation of services ahead of a contract start on 8 April 2022. This leaves insufficient time to include the contract award sum in this KD paper (KD 5431) therefore conditional award thresholds have been used for this paper's Proposals.
30. If the tendered annual price is less than £1.5m it is recommended that a contract be awarded for a fixed period of 4-years.

31. If the tendered annual price is greater than £1.5m and less than £1.8m it is recommended that a contract be awarded for a fixed period of 1-year only and an open procurement procedure commenced. This will allow the whole market to compete for the contract and would definitively show the current market price for these services however this may exceed the estimate calculated herein and the tender received from the framework procurement process.

### **Main Considerations for the Council**

32. The Council has an extensive portfolio of corporate buildings (non-housing) that it uses for the administration and delivery of front-line services to the residents of Enfield. The business continuity of those front-line services, and the health and safety of staff and visitors within, depends on the effective and timely maintenance and repair of those corporate buildings.

### **Safeguarding Implications**

33. There are no specific safeguarding issues related to this report.

### **Public Health Implications**

34. There are no specific public health issues related to this report.

### **Equalities Impact of the Proposal**

35. There are no equalities issues related to this report.

### **Environmental and Climate Change Considerations**

36. The operational use of the Council's corporate buildings accounted for approximately 49% of Scope 1 and 2 carbon emissions in 2019/20. The level of emissions from a building is dependent on its performance requirements, its size and the selection of the technologies used. Effective routine preventative maintenance can reduce emissions by addressing related issues.

### **Risks that may arise if the proposed decision and related work is not taken**

37. Should relevant statutory functions not be complied with, there is an increased possibility of legal action with associated financial penalties and/or imprisonment.
38. A lack of maintenance and repair of buildings would reduce their environmental performance and increase the level of carbon emissions produced.
39. The mechanical & electrical maintenance services for corporate properties (non-housing) supports operational continuity by reducing the likelihood of major failure of buildings and reduces the total maintenance costs over time.

### **Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

40. There are no risks associated with the proposed decision.

### **Procurement Implications**

41. A business case approving the route to market was presented and approved by Procurement Services.
42. Due diligence and approval of the Fusion 21 Framework, Workplace & Facilities, Lot 6, Building Engineering Services (M&E), was undertaken by Procurement Services. Social Value is included within the Framework.
43. The proposed procurement must be undertaken using London Tenders Portal (reference DN595341)
44. The award of the contracts, including evidence of authority to award, promoting to the Council's Contract Register, and the uploading of executed contracts must be undertaken on the LTP, including future management of the contract.
45. In accordance with the Councils CPR's the service must ensure that a Contract Manager is nominated and allocated to the procurement once uploaded onto the LTP, and that the monitoring requirements are adhered to.
46. The awarded contracts must be promoted to Contracts Finder to comply with the Government's transparency requirements.
47. Due to the nature of the value of the contract CPR's Section 7. Financial Risk requires that the Supplier must be required to provide sufficient security. 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. If no security is to be requested, authorisation to waive this must be sought from the Executive Director of Resources.

## Financial Implications

48. Expenditure for mechanical & electrical maintenance services for corporate properties (non-housing) is accounted within the R&M budget, CS0274, which also has to meet the substantial expenditure relating to fabric maintenance services for corporate properties (non-housing). The historic trend is for expenditure to significantly exceed the budget, and the excess is covered from the R&M reserve budgets.

	2018/19	2019/20	2020/21	2021/22
R&M budget	£1208k	£1438k	£1305k	£1421k
R&M outturn	£1307k	£1794k	£1303k *1	£1680k *2
Variance	£99k	£356k	(£2k)	£259k

\*1 Many buildings closed due to Covid-19

\*2 Forecast expenditure

## Legal Implications

49. 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.

50. 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 procurement and award of replacement Measured Term Contracts is in accordance with this power.
51. The use of a framework is a complaint route to award, provided that the Council's procurement officers have carried out due diligence on the framework in question, and officers follow the terms and conditions of the framework in procuring and awarding the call-off contract.
52. Instructing officers should be mindful of the requirement to obtain sufficient security from the chosen contractor in accordance with the Council's Contract Procedure Rules.
53. The Council must also be mindful that TUPE may apply to the service provision change, and appropriate steps should be taken to protect the Council's interests.
54. Throughout the engagement of the chosen contractor, the Council must comply with its obligations of obtaining best value under the Local Government Act 1999.
55. As the anticipated contract value exceeds £500,000, this is a Key Decision and the Council must comply with the Key Decision procedure.

### **Workforce Implications**

56. As identified above, TUPE may apply to the service provision change. At this stage, as a new contractor has yet to be appointed, employer liability information has been provided to the Council for staff currently in scope for a TUPE transfer. Consultation with the affected individuals will take place with the new provider. However, or if a new provider cannot be appointed through this process, and the service was to be carried out 'in house' pending appointment of a new provider, the Council will need to consult with affected individuals and meet TUPE obligations.

### **Property Implications**

57. Without the continuity of a supplier to provide mechanical & electrical maintenance services for corporate properties, corporate properties would rapidly become unsafe places for staff to work, and Council services would be forced to rely on business continuity plans to remain operative. As such the proposals in this report have highly significant property implications if they are unable to be delivered.

### **Other Implications**

58. There are no other implications.

### **Options Considered**

59. Do nothing - It would be unlawful to cease provision of the mechanical & electrical maintenance services for corporate properties (non-housing). Rejected.

60. Attempt to renegotiate the contract value and / or terms with the incumbent supplier – this would be a breach of the EU / Public Contracts Regulations 2015 as it would materially alter the contract awarded and be anti-competitive. It would also likely decrease the Value For Money to the Council. Rejected.

## **Conclusions**

61. It is essential that the recommendation is approved.

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**Appendices** None

## **Background Papers**

The following documents have been relied on in the preparation of this report: