

CABINET

17 JANUARY 2012

Title: Term Contract for Asbestos Removal and Management in Council Properties	
Report of the Cabinet Member for Finance and Education	
Open Report	For Decision
Wards Affected: All	Key Decision: No
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Accountable Divisional Director: Sue Lees, Divisional Director of Assets & Commercial Services	
Accountable Director: Tracie Evans, Corporate Director of Finance and Resources	
Summary: This report asks the Cabinet for approval to enter into a procurement exercise for the award of a new Term Contract for Asbestos Removal and Management in Council Properties over a three year term covering the period from 20 May 2012 to 19 May 2015 with the option of a two year extension subject to satisfactory performance of the appointed contractor to 19 May 2017. This contract is for removal and re-instatement works and will include construction projects where known asbestos has been identified. This contract will work in tandem with the contract for Asbestos Analysis and Surveying in Council properties which is also due for re-tender.	
Recommendation(s) The Cabinet is recommended to: (i) Approve the procurement of a Term Contract for Asbestos Removal and Management in Council Properties on the terms detailed in the report; (ii) Indicate whether the Cabinet wishes to be further informed or consulted on the progress of the procurement and the award of the contract, or whether it is content for the commissioning Chief Officer to award the contract to the successful Contractor; and (iii) Authorise the Corporate Director of Finance and Resources to effect the extension clause within the contract for up to a period of two years, subject to satisfactory performance by the contractor during the initial term of the Contract.	
Reason(s) The procurement and award of a new Asbestos Removal and Management in Council Properties contract will help the Council meet its statutory obligations and manage asbestos in its properties responsibly. The procurement exercise will lead to the award of a new Term Contract which will provide the Council with a responsible, safe and cost-effective asbestos management programme including analysis, surveying and monitoring for its properties, thus assisting the Council in	

achieving its Community Priorities of “Safe”, “Clean” and “Healthy” as well as aiding the development of a well run organisation.

1. Introduction and Background

- 1.1 The Council has a statutory responsibility to comply with the Control of Asbestos Regulations 2006 and the Health and Safety at Work Act 1974.
- 1.2 At its meeting on 18 December 2007 (Minute 101), Cabinet agreed to the procurement of a new four-year term contract for Asbestos Removal and Management in Non-domestic Council Properties and subsequently the current term contract was tendered and awarded to Silverdell UK Ltd in 2008. The current contract with Silverdell UK Ltd started on 20 May 2008 and is due to expire on 19 May 2012.
- 1.3 To ensure that a contract is in place following the expiry of the current contract, it is considered advisable to re-tender through a new term contract. The use of a term contract will remove the need to tender for each job and mitigate the administrative work involved in this process.

2. Proposal and Issues

- 2.1 Tenders will be sought through a full European Restricted Procedure following an advertisement in the OJEU. The OJEU Notice is intended to be issued soon after the Cabinet decision on 17 January 2012.
- 2.2 The contract will be awarded through a scoring matrix on the basis of 40% price and 60% quality.
- 2.3 It is proposed that this contract will be let as a JCT Measured Term Contract 2011, which is appropriate for use:
 - By Employers who have a regular flow of maintenance and minor works, including improvements, to be carried out by a single contractor over a specified period of time and under a single contract;
 - Where the work is to be instructed from time to time and measured and valued on the basis of an agreed schedule of rates; and
 - Where a Contract Administrator and Quantity Surveyor are to administer the conditions. These roles are performed by the Environmental & Compliance Officers within the Council’s Energy, Environmental & Compliance Team.
- 2.4 It is anticipated that the new contract will commence 20 May 2012 for a period of three years with the option to extend it for a further two years subject to satisfactory performance of the appointed contractor. The contract has an estimated value of approximately £1,850,000 over the full five-year term. However, the inclusion of HRA properties will not be effected until 1 May 2013 when the existing repairs and maintenance contract ends.
- 2.5 In order to provide a safe environment for the community, visitors, staff, and contractors, which satisfies both legislative and customer requirements, it is essential that all asbestos material is managed or removed. Failure to provide this requirement could result in unsafe assets and buildings, with the potential of causing ill health to the community, visitors, staff, and contractors, which could

result in criminal prosecution of Officers and Councillors under Health and Safety legislation.

- 2.6 The contract will work on a “call off” basis from a priced Schedule of Rates for the duration of the contract and wherever possible work will be planned using the corporate asbestos risk register and the relevant database for housing properties. This will ensure the Council enjoys the benefits of economies of scale. The “call off” arrangements do not commit the Council to guaranteed payments to the contractor by way of any stand-by arrangements, but will ensure continued supply of important services during the four year contract.
- 2.7 The applicants will be assessed on their economic and financial standing, health and safety standards, technical capability, prices and references, as well as a qualitative assessment of performance targets and method statements on a range of criteria relevant to the contract.
- 2.8 Applicants who are able to demonstrate that they are licensed by the Health and Safety Executive and have policies and methods in place to measure quality and performance and are able to provide this information to the Council will be considered as suitable tenderers.
- 2.9 The successful contractor will be expected to maintain a full audit trail electronically of the work undertaken on behalf of the Council and this data must be accessible to LBBD Officers without additional data capture. The contractor will also be expected to work with the Council during the contract term to enhance the electronic data exchange to meet our ICT aspirations.

3. Options Appraisal

3.1 Option 1

Tender for a three year (with the option of a two year extension subject to satisfactory performance) year term contract – This is the preferred option as it gives the benefits listed in Section 2 of this report.

3.2 Option 2

To undertake tenders / quotations for each individual project – This is not considered cost effective, both in terms of procedural costs of tendering and by offering no long term commitment to a specific contractor. This would also create delays and additional costs where emergency action is required.

3.3 Option 3

No work – Should the decision be made not to undertake Asbestos Removal and Management the Council will not be compliant with The Health & Safety at Work Act 1974 and the Control of Asbestos Regulations 2006. Failure to undertake removal when it has been identified as in a poor condition, susceptible to disturbance or exposure, or non removal prior to refurbishment works; may not under the Control of Asbestos Regulations (2006) permit safe release of the building for further use. This option has therefore been disregarded as unsuitable.

4. Consultation

- 4.1 Formal consultation with leaseholders will form part of the procurement process as any works undertaken to communal areas of HRA properties is included in service charges.

5. Financial Implications

Implications completed by: Jo Moore, Finance Group Manager

- 5.1 Where capital works are to be undertaken in a building where asbestos is known to exist, then the cost of its removal is budgeted for and subsequently charged to that specific capital project.
- 5.2 Where works are undertaken which lead to unplanned ad-hoc asbestos removal the associated costs are usually charged to a specific budget in the Council's Capital Programme which, in the current financial year, there is total approved provision of £120,000 for non-domestic properties and £150,000 for domestic properties.
- 5.3 As the proposed contract represents a continuation of existing arrangements for asbestos removal and management in council properties, then the financial implications for the Council are unlikely to change unless the prices submitted by the successful tenderer and/or the annual industry index adjustments are significantly different.
- 5.4 The precise contract value will depend on the amount and urgency of the work that is placed with the successful contractor, but is also dependent on client budgets. However, the estimated contract value is approximately £1,000,000 for non-domestic properties and £600,000 for domestic properties.

Projected contract expenditure (non-domestic)						TOTAL
	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	
TOTAL	£250,000	£250,000	£250,000	£250,000	£250,000	£1,250,000

Projected contract expenditure (domestic)						TOTAL
	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	
TOTAL	£Zero	£150,000	£150,000	£150,000	£150,000	£600,000

Projected contract expenditure (total)						TOTAL
	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	
TOTAL	£250,000	£400,000	£400,000	£400,000	£400,000	£1,850,000

- 5.5 Provision will need to be made within capital budgets and projects to carry out the necessary removals on asbestos in Council buildings (domestic and non-domestic) containing asbestos, including schools. There will be no guarantee that the contractor will receive the full contract value.
- 5.6 The contract relates to planned and reactive asbestos removal works and will be based on priced schedules of rates items plus an element of unspecified work where estimates have been used for materials and hourly attendance rates. Industry agreed adjustments will be applied to the priced schedule of rates annually where necessary.

- 5.7 The contract will be let on a call off basis only. The contract is expected to reduce the overall cost of maintaining the Council's domestic properties, schools, operational and public buildings by the ongoing reduction of asbestos in buildings which will reduce the general cost of maintenance and management.
- 5.8 The Children's Service Department has been advised that whilst schools are encouraged to use this contract (under best value principles), the Department cannot insist that they do. Should schools decide not to use this contract and make their own arrangements for asbestos management and removal they will be required legally to undertake the same Health & Safety assessment of potential contractors and to formally monitor their work once contracted, complying at all times with current legislation.

6. Legal Implications

Implications completed by: Eldred Taylor-Camara, Legal Group Manager

- 6.1 The Council is required to comply with the Health & Safety at Work Act 1974 and the Control of Asbestos Regulations 2006.
- 6.2 This report is seeking Cabinet's approval to re-tender a contract for the provision of asbestos removal and re-instatement works in Council owned properties for a period of three years with an option to extend it for a further two years subject to satisfactory performance of the appointed contractor. The current contract will expire on 19 May 2012. This contract is to be tendered in conjunction with the contract for Asbestos Analysis and Surveying Services.
- 6.3 Consideration has been given as to whether this contract should be classified as works or services for the purposes of the Public Contract Regulations 2006 (as amended). In light of the Commission Regulation (EC) No 213/2008 it has been decided that it should be tendered as a contract for services.
- 6.4 The value of the contract exceeds the EU threshold for services; therefore, there is a legal requirement to tender the contract in the EU.
- 6.5 Furthermore, the Council's Contract Rules (Contract Rule 3.6) require the strategy for the procurement of contracts of above £400,000 in value to be submitted to Cabinet for approval prior to procurement of such contracts.
- 6.6 As the value of the proposed contract is in excess of £400,000, the proposed strategy for the procurement of the contract has been set out in Paragraph 2 of this report, for approval by Cabinet.
- 6.7 It is proposed that the asbestos removal and re-instatement services contract will be tendered in the EU, using the Restricted Procedure - a two-stage tendering procedure which allows a procuring authority to shortlist the service providers to be invited to tender from a list of those who have expressed an interest in the contract, by undertaking a Pre-qualification exercise.
- 6.8 This strategy complies with the EU public procurement rules as contained in the Public Contracts Regulations, 2006.

- 6.9 The report is furthermore seeking a decision pursuant to Council Contract Rule 3.6.4, as to whether or not Cabinet should be kept informed on the progress of the procurement or would wish to be involved in the award of the contract, or whether it is content for the commissioning Chief Officer to award the contract to the successful Contractor.
- 6.10 Under Contract Rule 13.3, a commissioning Chief Officer acting in consultation with the Council's Section 151 Officer has the power to award a contract of this value, in the absence of direction to the contrary from Cabinet.
- 6.11 The Legal Practice confirms that there is no legal reason preventing Cabinet from approving the recommendations of this report. It is, however, expected that the Legal Practice will be consulted in the planning and preparation of the terms and conditions that will be applicable to this contract.

7. Other Implications

7.1 Risk Management

Current Risks

- 1) Works carried out may not meet the appropriate health and safety standards or current legislation.
- 2) Urgent works may not be properly procured or delayed by procurement processes.
- 3) Closure of buildings due to risk of exposure to asbestos.
- 4) The Council may be at risk of litigation if building users and or visitors are exposed to asbestos.

How these risks are managed

- 1) By utilising the corporate asbestos management plan and asbestos risk register for the management and timing of necessary works reduces the risk of building closure, delays to works and risk of exposure.
- 2) The use of the proposed contract will facilitate the long-term planning of the majority of this work in line with the corporate asbestos risk register and will negate possible delays and costs incurred by the use of a separate quotation process. However, there will remain a minimum of urgent work found necessary during other major works. This work will also be undertaken through the utilisation of this contract.
- 3) Officers will administer the contract to pre-agreed service level agreements, strictly monitoring the performance levels of the contractor.
- 4) Should the Term Contract option not be pursued, Officers would be required to seek competitive tenders for all works. This is likely to be in the region of 100 to 150 individual quotations / tenders per financial year which would not be considered cost effective or practical in an emergency situation.

7.2 Staffing Issues

There are no TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006) implications or risks arising from this contract in relation to non-domestic buildings. However, when the R&M contract expires in April 2013 then there will be a potential situation where TUPE will apply.

7.3 Safeguarding Children

The contractor shall take all reasonable precautions to prevent injury to children by implementation of measures set out in Guidance notes H.S.G 151 issued by H.S.E. All operatives and contractual staff working in schools and public buildings will have been CRB checked which will be on file and will be part of their Barking and Dagenham contractor's identification card, which will display their specific CRB number and expiry date.

7.4 Health Issues

The contractor shall comply with current HSE Control of Asbestos Regulations 2006 when carrying out works in all public buildings and school areas.

7.5 Property / Asset Issues

No specific implications, other than improving the general condition of our estate.

Background Papers Used in the Preparation of the Report:

- Cabinet Report and Minute 101, 18 December 2007.

List of appendices: None