

## CABINET

22 May 2012

<b>Title:</b> Term Contract for Building Maintenance in Public and School Buildings	
<b>Report of the Cabinet Member for Finance and Education</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> None	<b>Key Decision:</b> No
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<b>Accountable Divisional Director:</b> N/A	
<b>Accountable Director:</b> Tracie Evans, Corporate Director of Finance and Resources	
<b>Summary:</b>  This report asks the Cabinet for approval to enter into a procurement exercise for the award of a new Term Contract for Building Maintenance in Public and School buildings and Housing properties (where required) over a three year term covering the period from 3 September 2013 to 2 September 2016, with the possibility of up to a two year extension subject to satisfactory performance of the appointed contractor.  This contract will be used to: <ul style="list-style-type: none"><li>• Provide a day-to-day reactive repairs and planned maintenance service to all non domestic Council buildings and schools as necessary.</li><li>• Provide the facility of a minor works service to all public and school buildings</li><li>• Provide extra capacity where required to support the new in-house Housing repairs and maintenance service provider following the expiry of the current contract.</li></ul> Whilst the Council undertakes its full tender exercise the proposal is to access Braintree District Council's Framework Agreement (the 'Framework') for a period of 15 months commencing on 11 June 2012. The Framework is accessible to the Council and is compliant with EU Procurement Legislation. The Framework allows the Council to contract with its incumbent provider on the basis of the tendered Schedule of Rates which are deemed to offer best value. This will also ensure continuity of service supply.	
<b>Recommendation(s)</b>  The Cabinet is recommended to: <ul style="list-style-type: none"><li>(i) Approve the procurement of a new three-year Term Contract for Building Maintenance in Public and School buildings and Housing properties (where required) commencing 3 September 2013, with the possibility of up to a two year extension subject to satisfactory performance of the appointed contractor, on the terms detailed in the</li></ul>	

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) Agree that for the interim period, the Council access Braintree District Council's current Framework Agreement to ensure continuity of service supply, and authorise the Corporate Director of Finance and Resources, in consultation with the Divisional Director of Legal and Democratic Services, to enter into the contract on behalf of the Council with the preferred provider in accordance with the framework terms and conditions.

### **Reason(s)**

To assist the Council in achieving its Policy House priorities of "Improve Value for Money across all services" and "Make better use of our resources and assets" 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 Health and Safety at Work Act 1974 and relevant Building Regulations requirements. The previous term contract for building maintenance and repairs which was awarded to Kirkman & Jourdain Ltd, has expired following the utilisation of the extension period allowed under the provision within the contract.
- 1.2 The previous contract let to Kirkman & Jourdain Ltd was a combination of reactive and small works with a maximum individual order value of £50,000. The contract provided a 24 hour building repair and maintenance service to schools, operational and public buildings, with a pre-priced schedule of rates, which enabled users of the contract to control budgets.
- 1.3 Officers have undertaken a lengthy options appraisal including the intrinsic value of a Building Maintenance Term Contract (BMTC) itself and other potential methods of procurement. The various options appraisals including the need for this contract in its current form have been investigated within this process and are detailed in section three of this report.
- 1.4 The use of the Framework will allow the Council sufficient time to ensure that a full tender process is conducted to ensure the Council receives a value for money service for in respect of all of its' requirements.

### **Housing Repairs 2013**

- 1.5 The Cabinet agreed on 20 March 2012 to new arrangements for the management and delivery of the Repairs and Maintenance Services, including the procurement of additional contractors to provide support to the new (yet to be formed) in-house direct service.

- 1.6 Following an assessment of the service requirements it is proposed that the repair services are included when the Council accesses the Braintree Framework. Similarly the repair services will also be incorporated when Asset and Commercial Services fully re-tenders the building maintenance service by way of the measured term contract as set out in the main report. This will ensure that the contractor awarded the measured term contract will be able to undertake the necessary repairs to domestic properties.
- 1.7 The details of the procurement approach are as contained in the report being submitted to CMT and Cabinet.

## **2. Proposal and Issues**

- 2.1 To mitigate the Council's Commercial and Financial risk, Corporate Procurement has advised that the Council utilise Braintree District Council's responsive Repair & Maintenance Services Framework Agreement as a compliant route to market for the interim period whilst the Council conducts a full tender exercise for the new contract, which is scheduled to commence on 3 September 2013. The Framework is a call off 4 year agreement which commenced on 14 June 2010. This will enable the authority to maintain continuity of supply. This ensures the Council will receive a cost beneficial service, without the need to transition its' requirements, which could lead to avoidable operational issues. The Framework is not seen as a long term solution.
- 2.2 In terms of the full retender for commencement of the Term Contract in 2013 tenders will be sought through a full European Restricted Procedure following an advertisement in the Official Journal of the European Union (OJEU).
- 2.3 The contract will be awarded through a scoring matrix on the basis of 40% price and 60% quality.
- 2.4 It is proposed that this contract will be let as a Joint Contract Tribunal (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 Building Services Officers within the Council's Building Services Team.
- 2.5 It is anticipated that the new contract will commence on 3 September 2013 for a period of three years with the possibility of two, one year extensions at an estimated value of approximately £3,000,000 over the initial three year period to £5,000,000 for the full five year period (including the possible two, one year extensions).
- 2.6 The estimated contract value comprises a combination of small works and major upgrades, up to a maximum single order value of £50,000, and planned service costs based on a priced schedule of rates. The precise contract value will depend

upon the value of work that is placed with the successful contractor but is also dependent upon client budgets.

- 2.7 In order to achieve some of its Policy House priorities of “Improve Value for Money across all services “and “Make better use of our resources and assets” it is essential for the council that all buildings are maintained and kept in a state of good repair. Failure to meet 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.
- 2.8 The contract will work on an order basis for Council’s schools, operational and public buildings, utilising a priced Schedule of Rates for the duration of the contract. The order 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 contract term.
- 2.9 It is expected that the contract will be used to meet all of the Council’s day to day repairs, planned maintenance and minor 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. This will give the Council the benefits of economies of scale whilst improving maintenance efficiency and enabling the council to standardise equipment used. All planned maintenance works will be carried out at regular pre-determined intervals in conjunction with regular service plans as generated by the Council.
- 2.10 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.
- 2.11 Applicants who 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.
- 2.12 The successful contractor will be expected to maintain a full electronic audit trail of the work undertaken on behalf of the Council and this data must be accessible to LBBD officers, without additional data capture, utilising the Council’s asset management database (K2) or via a web portal to an equivalent acceptable solution provided by the successful tenderer. 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.
- 2.13 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 Building Maintenance works 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.

## **Housing Repairs 2013**

- 2.14 The new direct service for undertaking repairs and maintenance to HRA properties will be formed and become operational from 1 May 2013.
- 2.15 The creation of this Direct Labour Organisation (DLO) will be expected to undertake all day to day repairs, refurbishment of voids and gas servicing.
- 2.16 It is envisaged and expected that the DLO will be capable of dealing with all volumes of work and have sufficient capacity to complete works to targets. However, a risk assessment would duly highlight that other than the DLO there would be no alternative options to get repairs completed, this arrangement will provide an alternative option to complete repairs.
- 2.17 It is difficult at this stage to accurately predict the level or value of repairs work that will not be processed through the DLO. This impacts on the ability of the Council to secure value for money for repairs as a discrete service.
- 2.18 It is therefore proposed that by including the potential repair works in the use of the Braintree Framework and the subsequent procurement of the building maintenance term contract, this will save both time and money whilst still ensuring that the necessary legal framework is in place to secure a service contractor in a legally compliant manner.
- 2.19 Both the Braintree Framework and the measured term contract will allow greater flexibility for the Housing Service as they will not require a commitment to guaranteed work volumes.
- 2.20 The use of either the Braintree Framework or the term contract will only be triggered when the work volumes increase above the capacity of the DLO.
- 2.21 This arrangement may also potentially be used if the performance of the DLO is significantly below target and the council wishes to intervene to ensure good services were delivered to tenants.

### **3. Options Appraisal**

#### **3.1 Option 1**

Use of the Framework for a period of 15 months and full tender for a three year term contract with the possibility of two, one year extensions with a preferred service provider - 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 option 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 and would not be appropriate for reactive maintenance works.

### 3.3 Option 3

To combine this contract with the East London Buying Solutions building maintenance term contract - this option was thoroughly investigated at a number of combined meetings with other authorities such as Newham, Havering and Tower Hamlets. A number of utilisation obstacles needed to be overcome to achieve a solution that satisfied all clients and although many of them were overcome, some base fundamental elements around contract standing orders were proving to be a sticking point, including minimum single order value that exceeds LBBB standing orders, It was felt that the protracted time period had already progressed beyond our cut off point and it would be more secure for the authority to undertake its own contract and revisit this option once its existing members had established an acceptable solution and had a proven contract in position in 2015.

### 3.4 Option 4

To buy into an existing OGC framework contract – Again this option was thoroughly investigated but proved fruitless due to the various combination packages that were available not being satisfactory to suit the requirements of the authority. All other solutions investigated appeared to compromise the Borough's service level provision in some way or another hence the decision to recommend option 1 as documented.

### 3.5 Option 5

Do nothing – This option was considered at length but due to an immense amount of orders that were required on a daily basis and a diminishing lack of resources a return to a contract format will prove less onerous to manage going forward. The Council's insurance policy will be potentially compromised if we do not undertake the work. The Council also has a statutory duty to comply with the Health and Safety at Work Act 1974 and relevant Building Regulations requirements, removing the 'does nothing' approach as an option. This option will also make the Council non-compliant with EU Procurement rules.

### 3.6 Option 6

To establish an in-house maintenance team to carry out all repairs and maintenance - this option would need to be considered along with the possibility of combining with the Mechanical and Electrical Term Contracts which have recently been retendered. Therefore, this option is not viable at this point in time but can be revisited once these contracts are retendered again and the opportunity exists to align the end dates of all three contracts.

## **4. Consultation**

- 4.1 The proposals within this report have been discussed with all relevant officers across the Council.

## 5. Financial Implications

Implications completed by: Jo Moore, Finance Group Manager

- 5.1 The precise contract value will depend on the amount and urgency of the work that is placed with the successful contractor and is also dependent on funds available in client budgets. The estimated contract value is approximately £3,000,000 over the initial three year period (September 2012 to September 2015) to £5,000,000 for the full five year period (including the possible two, one year extensions).

Projected contract expenditure							TOTAL
	Sept 2012- Mar 2013	Apr 2013- Mar 2014	Apr 2014- Mar 2015	Apr 2015- Mar 2016	Apr 2016- Mar 2017	April 2017- Sept 2017	Full Term
TOTAL	£500,000	£1,000,000	£1,000,000	£1,000,000	£1,000,000	£500,000	£5,000,000

- 5.2 The estimates shown in the table above are based on the actual level of spend incurred with the existing service provider in the 2010/11 financial year. All of this expenditure was met from the capital and revenue budgets of the Council's public buildings and schools.
- 5.3 There will be no guarantee given that the contractor will receive the full contract value.
- 5.4 Part of the work included under this contract will be met from day to day revenue maintenance budgets (£300,000 in 2011/12). However, it is also highly likely that the successful contractor will be required to undertake some larger scale projects in Council public buildings and schools (£700,000 in 2011/12). The value of this work will not exceed £50,000 for any individual job. Although the likely total value of these projects will depend on client demand and, therefore, cannot be accurately quantified, where works of this nature are to be undertaken, funds will be available within the Council's capital programme or project related revenue budgets.

## 6. Legal Implications

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

- 6.1 The Council is required to comply with the Health and Safety at Work Act 1974, and current Building Regulations.
- 6.2 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. The details of the strategy are therefore set out in section 2 of this report.
- 6.3 This report is seeking Cabinet's approval to access the Braintree District Council Framework Agreement for a period of 15 months. The value of the contract exceeds the EU threshold for services; therefore, the Council will be accessing and using the Framework which is open to all local authorities in the UK and was established following a fully EU compliant tender process.

- 6.4 This report is also seeking approval to re-tender the contract for the provision of Building Maintenance in Non-Domestic Properties for a period of three years from September 2013 with an option to extend it for a further two, one year extension periods subject to satisfactory performance by the appointed contractor.
- 6.5 The value of the contract exceeds the EU threshold for services; therefore, there is a legal requirement to tender the contract in the EU.
- 6.6 It is proposed that the Building Maintenance in Non-Domestic Properties 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.
- 6.7 This strategy complies with the EU public procurement rules as contained in the Public Contracts Regulations 2006 (as amended).
- 6.8 The report is also seeking a decision pursuant to Council Contract Rule 3.6.4 as to whether it is content for the commissioning Chief Officer to award the contract to the successful Contractor. 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.
- 6.9 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 review the proposed form of contract to be issued in the full re-tender exercise and be involved in the planning and preparation of the terms and conditions that will be applicable to that 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 building legislation.
- 2) Urgent works may not be properly procured or may be delayed by procurement processes
- 3) Service & performance levels of contractors will be difficult to monitor with no formal contractual agreements in place with contractors.

#### How these risks are managed

- 1) The contract will be managed in accordance with the Health and Safety at Work Act 1974 and current building legislation and all works will be carried out in line with this.
- 2) The use of the proposed contract will facilitate the planning of works where possible and will negate possible delays and costs incurred by the use of a separate quotation process. It will also provide the ability to undertake necessary reactive repairs without delay as and when they arise.
- 3) Building Service 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 1400 to 1600 individual quotations / tenders per financial year which would not be considered cost effective or practical, especially in a reactive repair situation.

## 7.2 **Contractual Issues**

No specific implications except the potential TUPE issues explained in 7.3 below.

## 7.3 **Staffing Issues**

There may be TUPE implications associated with this contract as staff employed by the current contractor may be required to transfer to the new contractor should a new contractor be successful following the tender process. However, this does not affect any Council employees. Relevant HR and legal advice will be sought in relation to this matter prior to tendering, and any such issues will be appropriately raised and covered within the tender documentation if so required.

## 7.4 **Customer Impact**

The contract covers a number of aspects with a potential to impact on customers daily use and requirements:

- Security – Provides continuous security - 24 hr facility to buildings or particular areas of buildings for emergency boarding up & maintenance repairs,
- Safety – Provides the facility to restrict access to dangerous areas hence a potential Health & Safety implication.
- Efficiency – Provides the ability for small projects to be completed with haste to ensure the customers continuous service.

## 7.5 **Safeguarding Children**

The contractor shall take all reasonable precautions to prevent injury to children by implementation of measures set out in Guidance notes Health & Safety Guidance Publication 151 issued by Health and Safety Executive. All operatives and contractual staff working in schools and public buildings will have been CRB checked (and in the case of those who will come into direct contact with children, enhanced CRB checks will be undertaken) 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.

## 7.6 **Crime and Disorder Issues**

This contract will maintain and keep the assets as mentioned in 7.4 in full operational order that can assist in the reduction of crime and disorder to our public, staff and customers in our buildings throughout the borough.

A safe and secure facility can enable the customer to control & restrict access to property that contains the public, staff, customers, and valuable equipment and assist in the prevention of crime and disorder being carried out in close proximity to or upon our building users. By maintaining a secure building visually it can assist as a deterrent to casual criminals or people with damaging or public disorder intent.

## **7.7 Property / Asset Issues**

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 corporate buildings are maintained and secured in accordance with their relevant regulations. Failure to comply with this requirement could result in unsafe assets and buildings.

### **Background Papers Used in the Preparation of the Report:**

Cabinet report and minute 47, 25 June 2002  
Cabinet report and minute 360, 22 March 2005

### **List of appendices:**

None