

## CABINET

24 JULY 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>  <p>This report presents proposals 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) consisting of a framework of local based small businesses utilising local based labour. The contract would be for a two year term covering the period from 3 September 2013 to 2 September 2015, with the possibility of extending on a yearly basis up to a maximum of two years subject to satisfactory performance of the appointed contractors. The Elevate Procurement team will support local tenderers using the business services provided by the Barking Enterprise Centre, Trade Local and the Chamber of Commerce.</p> <p>This contract will be used to:</p> <ul style="list-style-type: none"><li>• Provide a day-to-day reactive repairs 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 following the expiry of the current contract.</li></ul> <p>Whilst the Council undertakes its full tender exercise, it is also proposed to access Braintree District Council's Framework Agreement (the 'Framework') for a maximum period of 15 months commencing on 6 August 2012. All endeavours will be made to bring forward the aforementioned start date for the new term contract in order to minimise this period possible to a period as short as eight months depending on procurement timescales. The Framework is accessible to the Council and is compliant with EU Procurement Legislation. The Framework allows the Council to contract on the basis of the tendered Schedule of Rates which is deemed to offer best value and will realise savings to the Council on the current schedule of rates in the region of 15% (£45,000 in 2013/14). This will also ensure continuity of service supply.</p>	

**Recommendation(s)**

The Cabinet is recommended to:

- (i) Approve the procurement of a new two-year Term Contract divided into Building Lots for Building Maintenance in Public and School buildings and Housing properties (where required) commencing 3 September 2013 with the possibility of extending on a yearly basis up to a maximum of two years subject to satisfactory performance of the appointed contractors (Option 1), 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 Corporate Director of Finance and Resources, in consultation with the Divisional Director of Legal and Democratic Services, to award the contract on behalf of the Council to the successful bidder following completion of the procurement exercise set out in this report; and
- (iii) Agree that for the interim period (a maximum of 15 months), the Council access and select a provider from Braintree District Council's current Framework Agreement to ensure continuity of service supply pending completion of the procurement and award of the new term contract.

**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.

This report is being brought to Cabinet because 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.

**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 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 the building maintenance service is fully re-tendered by way of the measured term contract divided into Building Lots as set out in the main report. This will ensure that the contractors awarded a Lot within the framework of the measured term contract will be able to undertake the necessary repairs to domestic properties if and where required.
- 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 have 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 divided into Building Lots 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 50% price and 50% quality.
- 2.4 It is anticipated that the new contract will commence on 3 September 2013 for a period of two years with the possibility of extending on a yearly basis up to a maximum of two years at an estimated value of approximately £600,000 over the initial two year period to £1,200,000 for the full four year period (including the possible two year extension).

- 2.6 The estimated contract value comprises minor repairs & small works up to a maximum single order value of £50,000, with 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 contractors in the allotted categories 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 to the lowest tenderer in an allotted category dependent upon the client’s requirement for the Council’s schools, and 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. If the allotted category winner cannot respond to the works order request for any reason then the framework cascade system will go to the next lowest tenderer in the category until the works order is placed.
- 2.9 It is expected that the contract will be used to meet all of the Council’s day to day repairs and minor works, and will be based on priced schedules of rates items plus an element of unspecified work where estimates or mini tenders 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.
- 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 each Lot within 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 contractors 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 LBBB 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 tenderers. The contractors 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 within each Lot 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 service contractors in a legally compliant manner.
- 2.19 Both the Braintree Framework and the measured term contract framework 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 framework will only be triggered when the work volumes increase above the capacity or technical ability 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 maximum period of 15 months and full tender for a two year term contract framework with the possibility of extending on a yearly basis up to a maximum of two years with preferred service providers subject to their satisfactory performance on the terms detailed in this report - 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 LBBD 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 the Housing DLO has bedded in and these contracts are due to be retendered again.

#### **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 type of work that is carried out under the framework agreement or placed with the new contractor (following the tender exercise). The existing contractor has undertaken revenue maintenance works on public (civic and other e.g. libraries) buildings and some schools. The estimated contract value is approximately £300,000 per annum which is based on average (rounded) historical costs over the past few years and has been contained within existing revenue budgets or school buy-backs
- 5.2 This expenditure relates solely to revenue expenditure and related capital contracts will be reviewed separately.
- 5.3 The framework agreement estimates a 15% saving from the current level of expenditure. However, no data is currently available to substantiate this saving.
- 5.4 This report relates to the interim framework agreement prior to a full tender review in 2013. Hence, the interim framework of direct rates and charges has not been compared in comparison to existing or alternative arrangements.

#### **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 and it is thus necessary to put in place a contract to ensure its buildings are properly repaired and maintained.
- 6.2 This report is seeking Cabinet approval to re-tender the contract for the provision of Building Maintenance in Non-Domestic Properties for a period of two years from September 2013 with an option to extend it for a further two year period subject to satisfactory performance by the appointed contractor.
- 6.3 The value of the contract exceeds the EU threshold for services; therefore, there is a legal requirement to tender the contract in the EU. It is proposed that the Building Maintenance 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.
- 6.4 This strategy complies with the EU public procurement rules as contained in the Public Contracts Regulations 2006 (as amended).

- 6.5 This report is also seeking Cabinet's approval to access the Braintree District Council Framework Agreement to award an interim contract for building maintenance to a selected provider for a period of up to 15 months pending completion of the procurement and award of the term contract. The Braintree Framework, is open to all local authorities in the UK and was established following a fully EU compliant tender process.
- 6.6 The report is also seeking a decision pursuant to Council Contract Rule 3.6.4 as to whether Cabinet is content for the commissioning Chief Officer to award the term 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.
- 6.7 The Legal Practice confirms that the procurement strategy set out in this report complies with UK and EU law. It is 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