

**Extension to 'Contract 1'; 3no. Planned Works Contracts to Hackney Council Housing**

**CONTRACT AWARD**

**Key Decision No: NH Q66**

**CPC MEETING DATE (2020/21)**

**11 May 2020**

**CLASSIFICATION:**

**Part-Exempt**

**WARD(S) AFFECTED**

**All Wards**

**CABINET MEMBER**

**Cllr McKenzie**

**Housing Services**

**KEY DECISION**

**Yes**

**REASON**

**Spending or Savings**

**GROUP DIRECTOR**

**Ajman Ali, Acting Group Director Neighbourhoods & Housing**

## **1. CABINET MEMBER'S INTRODUCTION**

- 1.1 The Council is passionate about its housing stock, and committed to the aims and principles of social housing. It is both a privilege and a duty to repair and maintain the Council's homes and estates, where more than 30,000 tenants and leaseholders live and are their beating heart.
- 1.2 Last year we published a long term vision for our homes, in a new Housing Asset Management Strategy, and began work to procure new contracts to deliver that work, which would deliver on the ambitions of that document as well as the Council's wider objectives in making Hackney fairer, safer and more sustainable.
- 1.3 This procurement work has been unavoidably affected by the global coronavirus pandemic. While the ambitions remain, the Council has had to urgently respond to the risk of not having suitable contracts in place to maintain our homes to the required standard. This report recommends a decision to extend current contract arrangements to mitigate that risk.
- 1.4 This will ensure that the Council can continue to maintain homes so they are safe, secure and decent.

## **2. GROUP DIRECTOR'S INTRODUCTION**

- 2.1 The Council is facing an unprecedented challenge from the current Covid-19 outbreak; while frontline staff work to support residents directly affected by the lockdown, others are working to ensure that we continue to fulfill our core responsibilities. An important responsibility is the maintenance of our housing stock; ensuring that residents remain safe and secure and our homes are decent.
- 2.2 This report summarises the reasons for awarding a contract extension on the Council's current 'Contract 1' main framework involving construction maintenance works to the Council's housing stock. The exceptional circumstances brought about by the Covid-19 outbreak has initiated significant disruption not only to current programmes but also planned procurement work on replacement contracts. The planned procurement work is to put in place long term contracts of up to 10 years. Securing prices for such works requires market conditions to be relatively stable. The current market, and that for the immediately foreseeable future, will be quite uncertain. This extension will enable the Council to continue capital delivery while allowing for a delay in reprocurement work, until market conditions return to a suitable stable position.

### **3. RECOMMENDATION(S)**

The Cabinet Procurement Committee is recommended to:

- 3.1 Approve a one year extension, effective from 31 August 2020, to the existing contracts under the 'Contract 1' framework for Decent Homes, Planned and Responsive Maintenance Works to Hackney Council housing. These include contracts with three service providers; two of which have Project Partnering Contract (PPC) forms of contract, and one of which has both a PPC and Term Partnering Contract (TPC) form of contract.

### **4. RELATED DECISIONS**

- 4.1 June 2019: The Procurement Strategy report approval of a suite of capital contracts for planned works to Hackney the Council's housing stock. The contracts cover planned internal, external, fire safety, mechanical and electrical works to Hackney Council homes. This procurement exercise is, in part, a replacement to Contract 1 which is the subject of this current business case.

<http://mginternet.hackney.gov.uk/mgIssueHistoryHome.aspx?IId=37259&optionId=0>

- 4.2 25 March 2019: Cabinet approval of the Housing Asset Management Strategy 2019-2027. This provides an overarching framework for investment decision-making across the Council's homes and estates. It sets out the ambitions that Hackney has for the quality of its homes and the priorities that will be established to ensure that the limited available resources are directed at the greatest need.

<http://mginternet.hackney.gov.uk/ieListDocuments.aspx?CIId=111&MID=4332#AI32478>

- 4.3 June 2015: Approval by Cabinet Procurement Committee at its June 2015 meeting to award the TPC and/or PPC contracts for lots 2, 3, 4, 5, 6, 8 and 9 for an initial five year term, with an option for the Council to terminate at year 3 and an option of extending the contracts for a further two years at year 5, and a further two years at year 7, up to a maximum of nine year contract terms. The relevant minutes along with the full report can be downloaded from the attached:

<http://mginternet.hackney.gov.uk/ieListDocuments.aspx?CIId=113&MID=3392#AI22646>

- 4.4 30 March 2015: Cabinet Procurement Committee Approval to award a four year framework agreement to three Main Constructors for a period of up to four years was taken by the Cabinet Procurement Committee on 30th

March 2015. The relevant minutes along with the full report can be downloaded from the attached:

<http://mginternet.hackney.gov.uk/ieDecisionDetails.aspx?Id=332>

## **5. OPTIONS APPRAISAL AND BUSINESS CASE (REASONS FOR DECISION)**

- 5.1.1 'Contract 1' is a framework contract let in 2015, and includes three main contractors. Each contractor has a PPC (Project Partnering Contract) form of contract for planned maintenance works to Hackney Council housing. One of the contractors has an additional TPC (Term Partnering Contract) for reactive works which form a back-up service to the Council's DLO for works such as voids, asbestos removal, dry riser maintenance and communal boiler maintenance. The CPC papers relating to the award of 'Contract 1' are listed in Section 4: Related Decisions.

This report has a recommendation to extend all contracts under the 'Contract 1' framework, by a period of one year effective from August 2020, for the reasons set out in the following paragraphs.

- 5.1.2 The contracts (PPC and TPC forms) let under Contract 1 are due to expire in August 2020, and the Council has arrangements in place to procure replacement contracts to continue the delivery of the services. These replacement contracts were the subject of a CPC Business Case approved in June 2019 and listed in Section 4 of this report. As of March 2020, the coronavirus pandemic response has significantly disrupted these plans. The disruption will cause significant delays to the procurement work, largely as market conditions are seriously affected and it is unclear when they will return to a stable condition such that public contracts can be let and still demonstrate value for money.

- 5.1.3 The lockdown has meant that all current pre-construction projects are on hold or progressing at a much reduced pace, and the remaining works planned to be let under the 'Contract 1' framework will more than likely not be ready for issue by August. Without an extension, there would be a gap in capital works delivery from now until possibly late 2022, and this has significant impacts on the capacity of the Council to ensure that homes are maintained to the required standards.

The lockdown has also had significant disruptions to the Council's DLO operations, for which one contract under the 'Contract 1' framework acts as a back-up. This part of the contract includes essential asbestos and fire safety systems maintenance works, and it is considered prudent to ensure

that the 'back-up contractors' remain in place to ensure that these essential responsive services are fully resourced.

- 5.1.4 The impact on the programme for the current procurement work is set out in Table 1 below. This work includes the procurement of 5no. term contracts and a framework contract divided into 2no. lots. This is behind the originally planned programme for the work; that programme was highly ambitious and the team have been affected by unexpected resource limitations. However, significant progress has been made, and prior to the lockdown announcement the team were planning a rolling sequence of tendering exercises starting in July 2020 and continuing through to March 2021.

The phasing of the tendering processes for the different contracts is necessary as each evaluation exercise is officer resource intensive and it is critical that adequate time and resource is given to the evaluation process. Therefore, that same sequencing of issuing contracts for tender will have to remain in any amended programme.

- 5.1.5 It is difficult at present to estimate the duration of instability in the market; this issue is identified and mitigated within the risk register, however, it is expected that this pandemic will cause at least six months of serious disruption in which time, industry has limited sight of what long term recovery will be like, and during which time it will not be reasonably possible to obtain pricing which will be reliably sustainable for the long term contracts planned. Estimates are that this period of uncertainty could readily last up to one year, and given the scale of these contracts, this amount of time has been allowed for as possible delay.

- 5.1.6 The current programme anticipates letting the smaller specialist M&E contracts first, and later the planned external framework contracts. This will continue. This is as the existing planned electrical contract already expired in March 2019 and these works are already subject to interim arrangements and remain a priority. However, strategically it is likely that these contracts, offering more discreet scopes of works, are those for which tendering can resume sooner.

The table below sets out the current programme dates, and an initial estimate of a revised programme, noting this will depend on market conditions. The initial estimate is to forecast a 6 month delay to tendering starting on any contracts and the main framework incurring a 9 month delay. This places the period where the Council will be securing prices between January and July 2021. The impacts on the programme will be subject to ongoing review with an aim to minimise delays to the procurement while ensuring that a successful procurement exercise can be undertaken.

The gap between the tender period and contract award is to allow for leasehold consultation and formal approval of contract award by CPC.

Table 1. Potential Impact on Procurement Programme

	<b>Contract</b>	<b>Current Programme</b> Tender Period and Contract Award (CA) Dates	<b>Revised Programme</b> Tender Period and Contract Award (CA) Dates
i	Lot 1 & 2 Framework for Planned External Works	Tender: Oct '20 - Mar '21 CA: Sep '21	Tender: Jul '21 - Dec '22 CA: Jun '22
ii	Term Contract Planned Internal Works	Tender: Aug '20 - Oct '20 CA: Jan '21	Tender: Feb '21 - Apr '21 CA: Jul '21
iii	Term Contract Communal Electrical Supply	Tender: Sep '20 - Dec '20 CA: May '21	Tender: Apr '21 - Jun '21 CA: Nov '21
iv	Term Contract Fire Safety Systems to Large Blocks	Tender: Jul '20 - Sep '20 CA: Mar '21	Tender: Jan '21 - Mar '21 CA: Sep '21
v	Term Contract Fire Safety Systems to Street Properties	Tender: Jul '20 - Sep '20 CA: Mar '21	Tender: Jan '21 - Mar '21 CA: Sep '21
vi	Term Contract Communal Boilers	Tender: Sep '20 - Dec '20 CA: May '21	Tender: Apr '21 - Jun '21 CA: Nov '21

5.1.7 In testing the legality of this extension decision, the Council has had regard to the following: Regulation 72 of the Public Contracts Regulations 2015, Cabinet Office Procurement Policy Note and the provisions of the Landlord and Tenant Act 1985.

5.1.8 The impact of the decision would be to extend the duration of the current contracts by one year, and to increase the maximum value by up to an additional 50%; this is further set out in Section 5.4.1 Preferred Option.

5.1.9 Regulation 72 (1) (c) of the Public Contract Regulations 2015 (PCR 2015) permits variations to contracts where the circumstances satisfy the three key conditions:

*(i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;*

*(ii) the modification does not alter the overall nature of the contract;*

*(iii) any increase in price does not exceed 50% of the value of the original contract or framework agreement.*

This extension forms a contract variation which meets the requirements of this clause. In particular, the need for the variation has been brought about by the global coronavirus pandemic, and the unprecedented lockdown within the UK and most of Europe, causing significant suspension of and disruption to the construction industry and supply chain. This is not a foreseeable event. This situation has been formally recognised by the Cabinet Office as 'exceptional circumstances' and is further discussed in 5.1.10 below.

The planned works under this contract include maintenance and repair work to Hackney Council housing. The value of the contract was advertised at £150m.

5.1.10 The grounds for the extension also rely on the provisions of the Cabinet Office Information Note PPN 01/20 issued in March 2020, and entitled 'Procurement Policy Note - Responding to Covid-19'. The note recognises the exceptional circumstances due to the Covid-19 outbreak, and authorities may need to procure with extreme urgency; it identifies local authorities as within this scope. Point 6 of this note identifies several potentially necessary urgent procurement responses which are permitted under Section 32 of the Public Contracts Regulations (PCR) 2015, and of specific interest to this report includes 'extending or modifying a contract during its term'.

In further detail on this circumstance the note directs procuring authorities to the provisions of Regulation 72 of the PCR 2015 which are covered in point 5.1.9 above.

5.1.11 The Cabinet Office advice does not refer to legislation regarding leaseholders and service charges. Hackney Council undertook a consultation exercise with leaseholders prior to awarding these contracts, in line with the requirements of Schedule 2 of the Landlord and Tenant Act 1985 (as amended) relating to the setting up of Qualifying Long Term Agreements.

The notices issued by Hackney Council in consulting on letting these contracts, specifically refer to the contract duration as being a maximum of five years. This extension would exceed that duration.

The time available until the contract ends in August 2020, does not allow the council to bring a case to First Tier Tribunal (FtT) for dispensation from consulting on this extension period. However, legal advice suggests this should not adversely impact on our ability to raise and collect leaseholder service charges. This is more fully discussed in Appendix 1.

5.1.12 It has not been possible to carry out leaseholder consultation on this extension as staffing resources are affected by Covid-19 and the current lockdown circumstances will not allow leaseholders to fully access documentation that they have a right to inspect and to properly engage in the arrangements.

5.1.13 The contracts for extension were procured in 2014 as part of competitive tendering exercise carried out in line with the requirements of the PCR. It was advertised in OJEU, and evaluated on a Most Economically Advantageous Tender (MEAT) basis, giving value to cost and quality proposals. The tendering exercise resulted in three contractors being appointed to the framework. Since 2016, an annual inflation indexation has been applied to the contract as set out in the contract terms.

5.1.14 The works carried out to date under this contract have included significant kitchen and bathroom replacement works, planned external repairs and component renewals (notably windows and roofs), and, more recently, it has also included significant fire safety remedial works including external wall insulation replacement. The total value of works committed up to 29 April 2020 is c.£191m.

5.1.15 A further market testing review has been carried out by an external specialist firm. Based on this and the original procurement exercise, the council is satisfied that the contract continues to offer value for money, and the works carried out during the extension period will not be higher than could otherwise reasonably be expected.

5.1.16 While leaseholders and tenants have not been formally consulted on this extension, it is essential that the delivery of work under these contracts meets both the Council's needs and expectations of residents. The Housing Asset Management Strategy 2019-2027 sets out the Council's objectives and embedding resident consultation and engagement at every stage of projects which are carried out under the Council's long term contracts; these will be applied to projects which are undertaken during the contract extension period. This will ensure that projects are prepared,



scoped and delivered in a consistent manner, and that residents will be appropriately consulted with and are kept reliably updated during them.

5.1.17 Further works let under this contract extension will be allocated in line with the capital delivery plan in Section 5 of the Housing Asset Management Strategy 2019-2027. This has identified three key work streams for capital works, of which two (planned internal and planned external works) are currently covered by Contract 1. These work streams are external works to blocks and estate grounds, internal works to tenants homes, and specialist mechanical and electrical works. The basis of this approach is to ensure that works can be delivered in a more holistic fashion and the benefits of this are detailed in Section 5.1 of the Housing Asset Management Strategy 2019-2027.

5.1.18 The key deliverables for this contract extension are:

- Ensuring contracts remain in place for construction services to ensure the Council can invest in homes to fulfill its legal obligations as a landlord;
- Ensuring that the council can continue to deliver essential works, and allow the procurement work to be delayed until the market has returned to a sufficient level of stability to allow a long term tendering exercise to be carried out.
- Ensure that works are delivered within the capacity of the Housing Revenue Account (HRA) Business Plan.
- Provision of a cost efficient, quality driven related works across the entire housing stock, which are focussed on the greatest investment need, and meet all relevant technical standards;
- Ensuring the contractors continue to perform against the agreed KPIs and continue to deliver social value benefits.
- Ensuring compliance with the Council Standing Orders, Regulatory Procedures, and the Council's Corporate Policy;

## **5.2 BENEFITS REALISATION / LESSONS LEARNED**

5.2.1 The proposal involves extending an existing contract with minimal changes to contract terms so there is limited capacity to alter terms. Additionally the urgent nature of this decision has meant that a formal lessons learnt review has not been carried out.

5.2.2 The contracts will continue to be managed and monitored by Property and Asset Management. They have implemented a range of enhanced contract management and governance procedures in the past two years which focus on five key aspects to contract management: internal governance, payments, processes, project management and clerk of works inspections.

These procedures and ongoing developments will be applied to this contract extension. These are as reported to the Audit Committee in April 2019.

- 5.2.3 A board of senior officers, including the Cabinet Member for Housing, called Capital Monitoring Board, will approve all works, in the form of Sectional Commencement Agreements (SCAs), let under this contract extension in line with the procedures used currently.

### **5.3 Strategic Context**

- 5.3.1 The capital works programme is important to meeting the Mayor's priorities for a fairer, safer and more sustainable borough. Sitting under these priorities is the Mayor's vision that everyone in Hackney has a good quality and stable home, and the commitment to ensuring the Council continues to invest in and make best use of its housing stock to provide the homes, blocks and estates in which people want to live and are proud of.
- 5.3.2 The Council has recently introduced a new Housing Asset Management Strategy 2019-2027. The strategy sets out long-term objectives for investing in our homes and estates, and the ambitions that Hackney has for the quality of its homes and the related priorities to ensure that the limited available resources are directed at the greatest need. This investment includes fire safety and energy-efficiency measures that are essential to providing homes that are safe, decent, and fuel-efficient for our residents. Works let under this contract extension will be aligned with the objectives of this strategy. The implementation of this strategy is included in the HRA business plan on capital investment, and any further works will be let in the context of that plan.
- 5.3.3 The Landlord and Tenant Act 1987 places a legal duty on the Council for the repair and maintenance of the Council's homes and estates. The extension of the current contracts will enable the council to continue to deliver on this responsibility.
- 5.3.4 Since the lifting of the Housing Revenue Account debt cap in October 2018, the investment in the stock can be managed holistically and the Housing Asset Management Strategy 2019-2027 / Housing Revenue Account Business Plan allocates budgets for each area of investment in the year of assessment, and therefore enabling the continuous investment plans over the 30 years of the Housing Revenue Account Business Plan. This Business Plan illustrates the Housing Asset Management Strategy 2019-2027 investment is financially sustainable over the longer term, but does require on-going revenue savings which will be approved as part of the budget setting each year. However, this must be kept under regular

review to take account of both local and national policy / legal changes and adjusted as necessary.

## **5.4 Preferred Option**

5.4.1 The preferred option involves a contract variation which would have the effect of:

- extending the existing contracts under Contract 1 by a period of one year
- increasing the maximum value of Contract 1 by 50%

This is to minimise disruption to essential capital works delivery which has been caused by the coronavirus pandemic, for the reasons set out in Section 5.1.

There are three service providers in contract; each is engaged via a PPC form of contract, and one has an additional TPC form of contract. All of these are subject to the extension.

The PPC contracts cover planned internal, external and fire safety works, while the TPC contract covers works such as voids, asbestos removal, communal boiler repairs and maintenance and dry riser servicing.

## **5.5 ALTERNATIVE OPTIONS (CONSIDERED AND REJECTED)**

5.5.1 The key considerations for possible approaches were to ensure the continuity of the capital programme, ensure all works can be recharged to leaseholders, to ensure all relevant procurement legislation is adhered to, to continue to secure value for money for works, and to ensure that any options can be implemented within the limited timescales. A series of options were considered and tested against the above criteria.

### **Option 1 - Don't Extend Contract 1**

5.5.2 Contract 1 is due to end on 31 August 2020; this is the last date under which projects can be let. A 'do nothing' option in this situation is to retain the current end date, and accept a period of no capital delivery between Contract 1 and the procurement of the new contracts.

5.5.3 The capital delivery team have been preparing for this end date, and to ensure continuity from this date to the award of the new contracts, have secured additional surveying resources to ensure that the the 20/21 planned programme, approved in the January 2020 Cabinet Budget Report

can be issued as works orders by that date. There is a current pipeline of work on Contract 1 of almost £60m, of which about £40m still have to go through a Section 20 consultation process with leaseholders. These notices will need to be issued by the end of May 2020 to allow sufficient time to consult, and award the project.

The Capital Monitoring Board has decided that while the coronavirus lockdown is in place, no new SCAs should be issued and that starting Section 20 consultations should be avoided. At the time of writing the lockdown is to last until at least 7 May. Therefore, it is likely that should the contract end date remain as 31 August 2020, the only projects that could be issued are those which have already cleared Section 20, or which do not require Section 20. This will reduce the value of investment in the capital programme in the next 12-18 months by about £40m. Projects let on the contracts would be expected to complete by summer 2021.

- 5.5.4 The tendering exercise to procure a replacement framework for Contract 1 will need to be delayed until market conditions return to a sufficiently stable state to allow the council to demonstrate value for money, and ensure that robust suitability checks can be carried out on tenderers. This is likely to require delaying the tendering process until mid to late 2021. Following the tendering process, it will take about six months to complete the required leaseholder consultation processes and obtain CPC approval of contract award, and it would typically take the contractor three months to mobilise a team to start a project of this scale. This means that the new contracts will likely not be operational until summer 2022. This is as set out in Table 1.

No contract extension will mean that there would be no capital works delivery for a full year. This presents risks to the council's ability to effectively maintain its properties, as well as internal risks such as effective staff retention.

- 5.5.5 The risks to continuity of the capital programme, and most notably, key fire safety works, meant that this option was rejected.

### **Option 2 – Use an External Framework as Interim Measure**

- 5.5.6 This option involves allowing Contract 1 to expire on 31 August 2020, and letting any projects possible via that contract until then, noting the limitations set out in 5.5.3 above. However, rather than accept a long period of inactivity in capital delivery, an option to use an external framework was examined.

- 5.5.10 The Council has mechanisms to make use of several frameworks let by external organisations, and is able to tender works over these or call off

works by direct award. They are tendered in accordance with public procurement rules, and can be demonstrated to satisfy value for money. There are frameworks which are suited to the scope of works which is required.

5.5.11 The key limitation in using such frameworks is that the works cannot necessarily be let to include leaseholders, as the Council did not carry out the necessary consultation prior to the frameworks being let. The cost impact is approximately 30% of the cost of any project, in line with the overall proportion of leaseholders in the council's stock. Given the estimate in 5.5.x of a remaining pipeline of £60m, most of which will not be let under Contract, the loss of leaseholder recharge for this option is up to £20m. This is too significant a loss, and would impact on the Council's wider ability to effectively maintain homes.

5.5.12 Where necessary the Council may elect to pursue this route for the delivery non-rechargeable works. This would be subject to the relevant decision making process at the time. There is limited work which falls into this category, though and it would be inadequate as a general replacement for maintenance works. As a result this option, as a main course of action, was rejected.

### **Option 3 – Insourcing the Works to the DLO**

5.5.13 The option of in-sourcing the planned works was examined, however, the scale of the work, both in value and in type, and the timescales involved, means that it is not possible to restructure the DLO in time to carry out this work.

5.5.14 In the business case report (NH P78) to CPC in June 2019, a detailed analysis was undertaken of the capacity to grow the DLO's capital works delivery. Key opportunities for work in this area were identified, and the proposed contract divisions for the new contracts to replace Contract 1 have been developed to support this medium and long term DLO growth. The key opportunities were in planned internal works including voids, kitchens, bathrooms and electrical work.

In order to deliver on this, the DLO will require stable sustainable growth to develop resources and the necessary skill sets. A short term move away from the strategy set out in June 2019, would likely undermine the long term DLO growth plan.

For that reason this option was rejected, and work to grow the DLO will continue as per the report of June 2019.

## **Option 4 - Extend Contract 1**

5.5.15 The preferred option involves extending the existing Contract 1 by 12 months. These contractors have already carried out extensive pre-contract work on the pipeline projects, including surveys and costing, and will be best placed to carry out this work once the current lockdown ends.

The capital delivery team have a good working relationship with contractors, and are very experienced on the current contract terms. Equally the current contractors are familiar with the borough and our requirements as a client. This option will allow an optimal return to business as usual, and maximise the Council's ability to deliver essential capital works from now until the new contracts are in place.

5.5.16 The current contracts were tendered competitively in 2015, and have inflation clauses which adjust pricing in line with industry inflation on an annual basis. This inflationary adjustment can be carried forward for the extension year. In addition, the council has undertaken a market testing of the prices under Contract 1 to satisfy itself that it continues to offer VFM.

## **5.6 Success Criteria/Key Drivers/Indicators**

The success criteria / key drivers / indicators for this contract extension exercise are:

- Continuity of capital works delivery from August 2020 to August 2021
- Demonstrating that the works let under this extension offer value for money, and have been delivered to the required standard.
- Ensuring that contractors continue to perform against the contract KPIs (ref to list in 7.5.1) and that they continue to deliver social value to the local community;
- Ensuring our homes are maintained to the required standards;
- Compliance with statutory requirements to ensure resident safety i.e. fire risk assessments, Housing Health and Safety Rating System, gas and electrical safety, asbestos and legionella;

## **5.7 Whole Life Costing/Budgets**

5.7.1 The capital programme for housing covers the investment in HRA stock and assets managed by Housing Services and set out in this document,

along with the investment in HRA hostels and housing grants managed by Housing Needs and Private Sector Housing.

5.7.2 The works which would be let under this contract have already been budgeted for in the 20/21 Council budget; budgets are set in line with the provisions of the HRA business plan. An extension of one year would allow some additional works to be let as part of the 21/22 capital programme; budget setting for this would be carried out also in the context of the HRA business plan and form part of the annual Council budget setting process. Variations to the required investment for projects, based on specific works requirements, is subject to internal board approval.

5.7.3 The cost profile of an area/zone is made up of its components over their estimated lives, with an assessment of the need of each zone when it is programmed to be included. From this, the prioritised works will be collated into a programme, consulted on and delivered.

## **5.8 Policy Context**

5.8.1 Decisions on the works let under this contract extension will be aligned with the Housing Asset Management Strategy 2019-2027.

## **5.9 Consultation/Stakeholders**

5.9.1 Hackney currently has over 8000 leasehold and 1300 freehold properties with service charges. These properties represent 29% of Hackney's housing stock

5.9.2 The urgent nature of this decision, and current limitations on our ability to host consultation meetings or organise large mail outs, has meant that stakeholder consultation has not been carried out.

5.9.3 The statutory consultation process Hackney will need to be undertaken with leaseholders before putting a new long term agreement in place. This involves writing to leaseholders on at least two occasions and giving them the opportunity to make observations on the plans and to attend the Council's offices to view relevant documentation. Restrictions associated with the Covid-19 lockdown prevent much of this work from being undertaken and affects leaseholders ability to fully engage with officers, including inspecting documentation and potentially gathering sufficient information to submit written observations.

5.9.4 The Council will continue to consult with all tenants and leaseholders during the development of projects, and their delivery. The Council is currently working to enhance consultation processes, and that work will continue throughout the extension period.

5.9.10 In addition, once lockdown restrictions are lifted sufficiently to allow gatherings, the council will engage with stakeholders on the general delivery plan of works intended during the extension period; such stakeholders will include members.

## 5.10 Risk Assessment/Management

5.10.1 The key risks associated with this decision and actions to mitigate these are set out in the table below:

Table 2. Key risks identified

Risk	Likeli- hood	Im- pact	Ove- rall	Action to avoid or mitigate risk
	L - Low; M – Medium; H - High			
The contractors will not accept an extension on similar terms, or cannot deliver works to similar terms	L	H	M	Contractors have been notified of this potential decision, and have initially responded positively. Further negotiations will be required, and regular core group meetings to progress these, to ensure concerns are addressed will be essential.
Unusual inflation affects contract pricing.	H	M	M	The Council remains under no obligation to issue works during this extension; where exceptionally high inflation occurs, to seriously affect the council's financial position, works can be reprioritised within financial limits.



Challenge to leaseholder recharge consultation process.	M	M	M	Legal advice has been taken and acted upon which suggests that the Council has grounds to proceed with extending the contracts and, if necessary, at a later stage making the case to the First Tier Tribunal (FtT) for taking this step and recharging leaseholders for their share of costs.
Challenge to the extension award	L	M	M	The Council has followed the recommendations of the Cabinet Office Information Note PPN 01/20, and the provisions of Regulation 72 1C on contract variations.
The business case is rejected	M	M	M	Ensure the business case is comprehensive, non-ambiguous, and adequately supported by external expert advice.
Contractors accept extension but are unable to remobilise after lockdown to deliver adequate capacity	L	H	M	This will need to be monitored as an ongoing and evolving risk, as the duration of the lockdown is unclear at present. Once the lockdown remains short term, the risk remains low; regular checks on the contractors financial positions are carried out as a matter of due diligence. In such a circumstance, where reduced works are available, the council will need to carefully prioritise schemes.
The procurement work to replace Contract 1 is delayed even further than currently anticipated.	M	H	M	The strategic team leading the procurement will monitor this as an ongoing risk, and will need to respond accordingly.  This will significantly depend on how the industry return to BAU materialises.

Failure by contractors to comply with contractual obligations	M	H	H	The existing contract provisions will be retained to ensure quality and consistency of work. The contract includes KPIs to allow performance monitoring. The Council are able to terminate the contracts should the contractors repeatedly perform below standards.
Overrun budget	M	M	M	Work programmes, budgets and orders given to the contractors are continuously managed and formally monitored.
Lack of contract management resources within Property and Asset Management	M	H	M	This option does not place additional demands on the contract management team. Recruitment is difficult in the current circumstance so staff retention will be a priority.

### **5.11 Market Testing (Lessons Learnt/Benchmarking)**

5.11.1 A report has been commissioned by an external specialist to test that Contract 1 still offers value for money. Based on this and the original procurement exercise, the council is satisfied that the contract continues to offer value for money, and the works carried out during the extension period will not be higher than could otherwise reasonably be expected.

5.11.2 Inflationary adjustments will be applied to the extension period in line with current contract clauses.

### **5.12 Savings**

5.12.1 There are no direct savings to be achieved from the works delivered under this extension. All investment will be in line with the provisions of the AMS and HRA Business Plan.

## **6. SUSTAINABILITY ISSUES**

6.1 The terms of the existing contract include provision for sustainability in a number of ways. These will be continued, and where possible enhanced, in line with the Council's wider sustainability strategies.

6.2 Current provisions include delivery of works to improve the energy efficiency of homes, especially through window and roof renewals, site operations management, e.g. waste and vehicles, and contribution to community social value.

## **6.1 Equality Impact Assessment and Equality Issues**

6.1.1 As part of the original procurement process all contractors have been required to demonstrate that they comply with the Equality Act 2010. Contractors also are required to demonstrate the following, and these terms will continue into the extension period.

- that they operate an active equal opportunities policy that achieves targets that encourages an ethnically diverse workforce;
- consideration for local employment, including disadvantaged people (people that face additional barriers in the labour market i.e. long term unemployed, etc.), supporting young people to access and get started in the world of work;
- the London Living Wage (LLW) will be paid to employees, as a minimum;

6.1.2 Maximising the accessibility of homes, buildings and estates to those with limited mobility, including elderly residents, parents with small children, as well as residents with particular needs is a key consideration of all major planned maintenance work schemes, in line with the Housing Asset Management Strategy 2019-2027. This includes a range of works at the level of the property, block and estate, from designing and installing kitchens, bathrooms, front doors that are DDA (Disability Discrimination Act) compliant, to access ramps and canopies at block main entrance, to dropped kerbs for estates paths etc.

## **6.2 Environmental Issues**

6.2.1 There is an obligation on all contractors to comply at all times with the Environmental Protection Act 1990 and other relevant legislation, as well as the Environmental policies of the Council. For example, ensuring that all vehicles minimise emissions.

## **6.3 Economic Issues**

6.3.1 The current contractors have KPIs requiring them (Refer to Section 7.5.1) to report on local labour and apprenticeship opportunities. These will be extended into any extension.

## **7. PROPOSED PROCUREMENT ARRANGEMENTS**

### **7.1 Procurement Route and EU Implications**

7.1.1 This is a contract extension decision and will not be subject to a procurement process.

7.1.2 The grounds for this decision are in line with Regulation 72 (1) c of the Public Procurement Regulations as described in more detail in Section 5.1.9, and Sections 9 and 10.

### **7.2 Resources, Project Management and Key Milestones**

7.2.1 The award of this contract extension will be overseen by the strategic team, who are leading on the wider reprocurement work; this includes representatives from housing, legal, procurement and finance.

7.2.2 The work to develop works orders (SCAs) to let under the extension and to manage the works on site, will be done in line with current contract management procedures by staff in the Property and Asset Management team.

Table 3. Key milestones

<b>Key Milestones</b>	<b>Month</b>
CPC Meeting and Approval	May 2020
Issue OJEU Notice on Extension	June/July 2020
Negotiate contract extension with contractors	June/July 2020
Issue new PPC/TPC contract agreements	August 2020
Extension ends (last date for issuing SCA works orders)	August 2021

7.2.3 The contracts will be managed by the capital delivery teams in Property and Asset Management; staff are already in post.

### **7.3 Contract Documents: Anticipated contract type**

7.3.1 The contracts for extension are a combination of PPC contracts for planned works, and one TPC contract for responsive works. These are design and build forms of contract. The terms of the contract are to remain

as the existing contract terms, with additional allowance for inflationary adjustment for the extension period.

## **7.4 Contract Management**

- 7.4.1 The contracts will continue to be managed and monitored by Property and Asset Management. They have implemented a range of enhanced contract management and governance procedures in the past two years which focus on five key aspects to contract management: internal governance, payments, processes, project management and clerk of works inspections. These procedures and ongoing developments will be applied to this contract extension. These are as reported to Audit Committee in April 2019.
- 7.4.2 The Housing Capital Monitoring Board, chaired by the Group Director Neighbourhoods and Housing and supported by the Director, Neighbourhoods and Housing Finance, will approve all works, in the form of SCAs, let under this contract extension in line with the procedures used currently.
- 7.4.3 On all projects Hackney Council will continue to use clerks of works to inspect and sign off that the quality of the works is in line with the specifications. There are three specialisms; building clerks, mechanical clerks and electrical clerks. The team operates a schedule of required inspections to all external and internal works.
- 7.4.4 The proposed extension will have the same contract terms as the current PPC, with revised end dates (to August 31 2021) and allowing for an additional year of indexation. The current clauses for non-performance will remain valid; these include provisions for termination of the contract, and reduction in work by the client in the event of poor performance. There are no penalty clauses, in line with contract law. There are no identified liquidated or ascertained damages.

## **7.5 Key Performance Indicators**

- 7.5.1 The current contract management performance indicators will be continued for use in the extension period:

KPI 1a Resident Satisfaction - Product and Overall Services  
KPI 1b Response Rate Resident Satisfaction Questionnaires  
KPI 2a Predictability Cost - Project Section  
KPI 2b Predictability Time - Project Section  
KPI 2c Predictability Time - Unit  
KPI 3 Partnership Relationship Satisfaction 360 Review

KPI 4 Quality and Defects Handover Inspections  
KPI 5 Safety - Main Contractor  
KPI 6 Environmental Impact - Construction Process - Waste Management  
KPI 7 Local Labour and Apprenticeships  
KPI 8 Agree Final Account - Client

In line with current contract provisions performance against the KPIs will inform the amount of additional work awarded.

## **8. COMMENTS OF THE GROUP DIRECTOR FINANCE AND CORPORATE RESOURCES**

- 8.1 The contract extensions allow the continued investment in the housing stock which has been profiled in the HRA business plan included in the Asset Management Strategy, agreed by Cabinet. Failure to deliver the investment in the stock could result in increased reactive maintenance cost and potential disrepair claims.
- 8.2 The contract extension is on the same terms and therefore the unit costs will be similar. A market testing review carried out by an external expert has concluded that the contract will continue to deliver good value for money for the Council.
- 8.3 The annual programme of works is in development following property surveys and assessments and therefore the value of the extension will be based on the programme or required works that can be done within the financial parameters set within the Asset Management Strategy.

## **9 COMMENTS OF THE DIRECTOR, LEGAL & GOVERNANCE SERVICES**

- 9.1 This report seeks authority to vary the four following contracts as permitted by Contract Standing Order 4:
- London Borough of Hackney (1) and Engie Regeneration Limited (2)(PPC)
  - London Borough of Hackney (1) and Mullaley & Company Limited (2)(PPC)
  - London Borough of Hackney (1) and Wates Construction Limited (2)(PPC &TPC)(2 contracts)
- 9.2 All four current contracts run from 1st April 2019 to 31st August 2020 and are let under a Framework Agreement whose total estimated maximum value in 2014 was £150m.

9.3 The proposed variation is to extend the contracts by one year to 31<sup>st</sup> August 2021 and to increase the total maximum value by 50% (£75m) from £150m to £225m. It should be noted that, as set out in the body of this report at paragraph 5.1.14 the amount committed under the 2014 Framework Agreement up to 29<sup>th</sup> April 2020 is circa £191m.

9.4 The proposed variations will be carried out pursuant to and in compliance with Regulation 72(1)(c) of the Public Contracts Regulations 2015 which states:

*72.—(1) Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Part in any of the following cases:—*

*(c) where all of the following conditions are fulfilled:—*

*(i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;*

*(ii) the modification does not alter the overall nature of the contract;*

*(iii) any increase in price does not exceed 50% of the value of the original contract or framework agreement.*

9.5 A formal notice of the Regulation 72 variations will need to be published in the Official Journal of the European Union (OJEU).

9.6 In the event that officers need to spend over the revised £225m limit during the extension period to 31<sup>st</sup> August 2021 then in addition to the necessary financial authority advice must be taken from Legal Services to ensure compliance with the Public Contracts Regulations 2015 and the Council's Contract Standing Orders (CSOs) and in particular CSO 4.6(b) which states that any contract variation is subject to:

*the proposed variation not extending the time period or varying the scope or value of a contract so that the proposed changes breach or may breach EU procurement thresholds or regulations, in which case the Director or Group Director shall obtain written authorisation from the Director, Legal to proceed with the variation.*

9.7 Officers have secured external written legal advice from Trowers & Hamlins Solicitors covering implications of the proposed variations as regards the Section 20 consultation provisions of the Landlord and Tenant Act 1985. The said written legal advice is subject to legal professional privilege and it is in the public interest that the advice be exempt from disclosure (Schedule 12A of the Local Government Act 1972, as amended). The written legal advice appears at the exempt Appendix hereto.

9.8 Legal Services will assist officers in the preparation and execution of the necessary Deeds of Variation to the contracts.

## **10. COMMENTS OF THE PROCUREMENT CATEGORY LEAD**

- 10.1 As the value of Contract 1 (the subject of this report) was £150m the original procurement was subject to the Public Contract Regulations 2015 (PCR).
- 10.2 Regulation 72, ground (c) of the PCR provides for: the modification of contracts during their term where the need for a modification has been brought about by circumstances which a diligent Council could not have foreseen; the modification does not alter the overall nature of the contract and any increase in price does not exceed 50% of the value of the original framework agreement.
- 10.3 Cabinet Office Procurement Policy Note - Responding to COVID-19 Information Note PPN 01/20 (March 2020) refers, where a requirement is absolutely necessary, to Regulation 72 for extending contracts, subject to the satisfaction of the conditions attached to the grounds, to address the unforeseeable circumstances. The justification must demonstrate that the decision to extend a contract was related to COVID 19 outbreak. The modification must also be the subject of the publication of an OJEU Notice. The duration and/or scope of the extension should also be limited pending a procurement for “longer-term/ wider scope requirements alongside it”.
- 10.4 The value of this extension will be limited to an additional £75m spend, bringing the total framework maximum value for call off to £225m.

## **APPENDICES**

Appendix 1: Legal Advice on Section 20

## **BACKGROUND PAPERS**

Report on Contract 1 Value for money assessment



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