

MINUTES OF A MEETING OF THE CABINET PROCUREMENT COMMITTEE

MONDAY, 11TH MAY, 2020

Chair	Deputy Mayor Rebecca Rennison in the Chair
Councillors Present:	Councillors Deputy Mayor Anntoinette Bramble, Cllr Jon Burke and Cllr Caroline Selman
Apologies:	Nil apologies
Officers in Attendance	Mr Rotimi Ajilore – Head of Procurement Ms Sinead Burke - Head of Property and Asset Management, Neighbourhoods and Housing Ms Zainab Jalal – Category Lead Social Care Ms Karen Tait-Lane - Category Lead – Construction & Environment Ms Judith Hughes – Category Lead - Corporate Mr Patrick Rodger - Senior Lawyer - Procurement - Legal & Governance Ms Anisah Halili - Lawyer – Procurement - Legal & Governance Mr Clive Sheldon - Lawyer – Procurement - Legal & Governance Mr Clifford Hart – Senior Governance Services Officer – Legal & Governance

1 APOLOGIES FOR ABSENCE

There were no apologies for absence.

NOTED

2 Urgent Business

There were no items of urgent business.

NOTED

3 DECLARATIONS OF INTEREST - Members to declare as appropriate

There were no declarations of interests.

NOTED

4 NOTICE OF INTENTION TO CONDUCT BUSINESS IN PRIVATE, ANY REPRESENTATION RECEIVED AND THE RESPONSE TO ANY SUCH REPRESENTATIONS

There were no representations received.

NOTED

5 DEPUTATIONS/PETITIONS/QUESTIONS

There were no deputations, petitions or questions.

NOTED

6 Contract 1 Extension request - Key Decision No. NH Q 66

The Chair asked for an introduction of the report before the meeting.

The Head of Property and Asset Management – Ms Sinead Burke advised the meeting that the report before the Committee recommended the extending of a current contract, known as ‘Contract 1’ by one year owing to exceptional circumstances caused by the coronavirus lockdown, as permitted by Regulation 72 1-C of the Public Contracts Regulations.

Ms Burke informed the meeting that the contract was a framework used to deliver planned and responsive maintenance works to the council’s housing stock. There were three service providers with each having a Project Partnering Contract (or PPC) for planned works, and one having a Term Partnering Contract (TPC) for responsive works. All contracts were currently due to end on 31 August 2020, and this meant that that was the last date on which instructions to start new projects could be issued. Ms Burke went to explain that the PPC contracts were used to deliver planned external maintenance works including window and roof renewals, planned internal works including kitchen and bathroom renewals and capital fire safety projects, for example the council’s front entrance door replacement programme. The TPC contract was used for works such as void renovations, asbestos removal and boiler maintenance. All these works were within Hackney’s responsibility as a landlord to undertake to ensure that homes are maintained to the appropriate standards. Ms Burke advised that this was therefore important that the council was able to ensure the continuity of contracts for those services.

Ms Burke further commented that the current lockdown had had two significant impacts on service delivery, which had necessitated the extension request.

Firstly current programmes were highly disrupted with most projects paused on site, as while construction works generally continued, these works tended to involve access to people’s homes, which was not considered appropriate at this time. The council had also elected to pause issuing new Section 20 notices to leaseholders during lockdown unless absolutely necessary which meant that new projects would be delayed in starting, and with no extension, there was limited prospect that new projects could be started under the current contract. Secondly, the lockdown had disrupted procurement work for replacement contracts to this framework. The business case for those was approved by Cabinet Procurement Committee in June 2019, and work was well underway on the necessary tender documentation. A suite of contracts were due to be issued to tender from Summer 2020.

Ms Burke further advised that operationally there had been some disruption as key staff were diverted to planning the Council’s coronavirus response, but equally the Council was mindful that the construction market was likely to undergo a short term period of significant disruption, which would make it unsuitable to procure prices for long term contracts. Ms Burke commented that ideally, in order to be confident about value for money, it was preferable to tender within a stable market.

In reference to Regulation 72-1 of the Public Contracts Regulations which set out the reasons for making variations to public contracts, Ms Burke commented the report before the

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Committee cited the third reason, paragraph C, which was applicable to variations required whereby the need for modification had been brought about by circumstances which a diligent contracting authority could not have foreseen. Ms Burke highlighted the March 2020 Central Government's Cabinet Office issued Information Note PPN 01/20 entitled 'Procurement Policy Note - Responding to Covid-19'. This note clearly identified the current circumstances as being unforeseen exceptional circumstances, and noted that for existing contracts, variation via Regulation 72-1C was a possible course of action.

Ms Burke further advised that there were limitations stated in this Regulation which were that the contract value could not be more than 50% higher than originally, and that the nature of the works could not be altered. The limitations would be applied as part of the variation. The council had sought independent legal advice on the capacity to recharge leaseholders during the contract extension period as detailed in exempt Appendix 1 of the report. The council had also commissioned an independent review of the value for money offered by Contract 1 and officers were satisfied that it continued to do so, and that the works carried out during the extension period would not be higher than could otherwise reasonably be expected. The proposal was that the same contract and performance terms which were currently in place, would be applied to the contract extension period.

Ms Burke concluded that in terms of the contract extension period Ms Burke advised that the one year extension period would be from 1 September 2020 to 31 August 2021. During this time the council would be able to issue new orders of works. As these were often significant projects, actual construction work would continue until spring 2022, with some latest projects perhaps completing in the summer. While the level of disruption to the construction market, was as yet unknown, an extension of one year would allow the council to continue with essential works, while planning an appropriate time to issue the tender documentation for new contracts.

The Chair thanked Ms Burke for her detailed and informative introduction, and asked if there were any questions or points of clarification from the Committee.

Councillor Selman sought clarification on the current situation's impact on the overall programme, and also the value limit.

In response Ms Burke advised that the estimated impact on the procurement set out in the report was very much that - an estimate. As noted, officers would continue to work to get ready to go out to procurement as close as possible to the original plan, though due to operational constraints some delays would be inevitable. It was noted that previously there had been some gap from this contract to the next though this was not as bad as it seemed since the dates the contracts end were the last dates when new projects could start so there would be some work for 6-9 months afterwards.

With regard to the Value Limit Ms Burke advised that it was thought that an extension to Contract 1 would be of significant benefit in enabling continuity of capital works, however, depending on the delay in procurement, some additional procurement would need to be done to fully make up the required investment, as referred to in Option 2 in the report. The use of external frameworks as an option to contract extension was looked at, and whilst it was noted that it was not as suitable as a main option due to lack of ability to recharge leaseholders, it was an available option for non-rechargeable works such as replacing kitchens or bathrooms. Any decision to use alternative procurement routes would be subject to the relevant procedures (via Cabinet Procurement Committee or otherwise).

Deputy Mayor Bramble sought clarification on the impact of not approving the decision.

Ms Burke responded that that the impact of not making a decision would be that the Council would likely not make any new works on current contracts, due to the pause in Section 20 processes at the current time, and officers were unable to raise orders of works without completing the necessary S20 process. This would mean reduced capital investment until the

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new contracts were in place, with fire safety investment being a key concern. If the recommendations were agreed then works would be prioritised within the available value, and officers would continue to develop new tender documents ready for when the tendering process was ready to proceed, with close y monitor the procurement programme against investment need and the national situation with the lockdown and recovery from it.

The Chair sought clarification in respect of Additional Fire Safety Works.

Ms Burke advised that the additional fire safety works carried out on the project, which were not originally planned when it was tendered were the installation of a new sprinkler system, replacement of external wall insulation at 6 tower blocks, installation of almost 400 new dry risers, and the front entrance door programme, and that the initial phase included works to over 3,500 homes.

There being no further questions the Chair thanked Ms Burke for her responses.

On a **MOTION** by the Chair it was:

RESOLVED

That approval be given to 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 which 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.

REASONS FOR DECISION

'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.

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.

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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.

The impact on the programme for the current procurement work is set out in Table 1 below. This work includes the procurement of 5 no. term contracts and a framework contract divided into 2 no. 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.

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

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

	Contract	Current Programme Tender Period and Contract Award (CA) Dates	Revised Programme 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

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.

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.

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 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.

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.

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.

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.

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.

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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.

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.

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.

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.

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;

ALTERNATIVE OPTIONS (CONSIDERED AND REJECTED)

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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

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.

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.

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.

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

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

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set out in above. However, rather than accept a long period of inactivity in capital delivery, an option to use an external framework was examined.

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.

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.

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

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.

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

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

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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.

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.

7 EXCLUSION OF THE PUBLIC AND PRESS

The Chair advised that as there had been no request by Members to discuss the exempt appendix to the report before the Committee there would be no requirement to exclude the public and press and the exempt appendix would be noted as circulated.

NOTED

SUMMARY OF EXEMPT/CONFIDENTIAL PROCEEDINGS

8 Contract 1 Extension request - Key Decision No. NH Q 66

AGREED – to note and agree the exempt appendix 1 in respect of unrestricted agenda item 6.

Duration of the meeting: 18:00 – 18:35hrs

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