

UNRESTRICTED MINUTES OF A MEETING OF THE CABINET PROCUREMENT COMMITTEE

MONDAY, 8TH JUNE, 2020

Chair Councillor Deputy Mayor Rebecca Rennison in the Chair

Councillors Present: Councillors Deputy Mayor Anntoinette Bramble, Cllr Jon Burke and Cllr Caroline Selman

Apologies: Nil.

Officers in Attendance

Mr Rotimi Ajilore – Head of Procurement
Mr Chris Pritchard - Director of Strategic Property Services, Finance & Corporate Resources
Ms Karon West Clarke - Head of Corporate Property & Asset Management, Finance & Corporate Resources
Mr Nick Grimwade - Interim Maintenance Contracts Manager
Ms Dawn Cafferty – 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
Mr Clive Sheldon - Lawyer – Procurement - Legal & Governance
Mr Clifford Hart – Senior Governance Services Officer – Legal & Governance

External Consultants for agenda item 7:

Graham Forrester – Arcadis Ltd
Rob Watson – Arcadis Ltd

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 none.

NOTED

6 To consider the unrestricted minutes of the Cabinet Procurement Committee held on 11 March, and 11 May (Special)

RESOLVED

That the unrestricted minutes of the Cabinet Procurement Committee held on 11 March 2020, and 11 May 2020 (Special) be confirmed as an accurate record of the proceedings.

7 Procurement of interim 18 month contract for provision of statutory, testing, inspection, repair and maintenance services - Key Decision No. FCR Q65 - TO FOLLOW

The Chair advised the Committee that the reasons for lateness in considering the report were due to final negotiations with the proposed contractor being undertaken in the context of competing demands on officer time in responding to the operational demands of the COVID 19 pandemic.

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

The Director of Strategic Property Services, Finance & Corporate Resources – Mr Chris Pritchard thanked the Committee for accepting the report late in the day. He advised that the programme was quite challenging, but the COVID 19 virus interrupted the flow of negotiation meetings with the contractor to some extent as client team members were personally affected, and senior offices indirectly affected as they had to make time in the working day to take part in the Council's responses. As a result officers had been unable to prevent that from delaying the report, even with analysis, some negotiation, drafting, editing and revisions being carried on late in to evenings.

Mr Pritchard went to to advise that the report before the Committee was indeed written in the context of the long term. The Council was preparing to move towards a new mixed economy of in-house service provision and external private sector provision, where in the past there had been a reliance almost exclusively on private sector providers to maintain the Council's corporate estate. It was the case that an interim arrangement would enable officers to undertake some informed planning of how to take the first steps towards this, with a new scope for the next phase of the delivery.

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Mr Pritchard commented that these ambitions were being dovetailed into the long term strategy for corporate maintenance that commenced in 2014. It recognised at that time that the Council had limited asset data and needed to improve this while strengthening internal and external accountabilities for statutory compliance. The report noted how the Measured Term Contract had delivered those objectives and how the proposal to adopt a new approach via the NEC3 form would help it take advantage of the efficiencies and benefits available to mature organisations, with strong data and experienced internal staff.

Mr Pritchard concluded that in summary this interim phase was the prelude to a full procurement for a partially insourced arrangement, coupled with much more efficient contractual and client management arrangements, set up in a way to appeal to a broad spread of high quality providers in the market.

The Chair thanked Mr Pritchard for his introduction. In asking if there were any comments from Members or points of clarification the Chair commented on the fact that though the existing contract was being extended for a further eighteen months she stressed that there could not be any further extensions and that whilst it was accepted by members that the extension was necessary it was with some reluctance. The Chair added that it was expected that officer would be working to be able to present the new proposed contract ready for approval before the conclusion of the eighteen month extension addressing both elements of the new contract for an in-house and external provision of services. The Chair asked that there be regular six monthly update reports to the Committee detailing progress with the proposed new contracts and any issues that may be arising in order that these may be addressed and solutions found. The Chair commented further that there had been reports given with similar contracts and she asked that officers liaise closely with the Head of Procurement – Mr Ajilore to ensure the updates were furnished in a similar style. In response Mr Pritchard advised that the updates would be built in to the programme of project work for the new contracts /scheduled work. Mr Ajilore confirmed that officers would be able to report on progress using previously reported updates, and guidance would be available to that end.

In response to a further point of clarification by the Chair with regard to the hybrid nature of the proposed new contracts and the challenges of addressing the split of both an external contract and insourced provision, Mr Pritchard advised that during the next eighteen months officers would be working on the issues of a hybrid contract, and using both external expertise, and the work done by other internal services who had drawn up contract work of a similar nature encompassing both internal and external provision. In order to ensure that a robust assessment was carried out of what was deliverable in the proposed contracts, Mr Pritchard further commented that officers would in the next six months be carrying out assessments of insourcing examples/models to ensure that all avenues were explored.

There being no further points of clarification from the Committee, on a **MOTION** by the Chair, and having sought verbal agreement to the proposed **MOTION** from the Committee - Deputy Mayor Bramble, Councillor Burke, and Councillor Selman, it was :

RESOLVED

- i. That approval be given to the awarding of the contract for the Interim Provision of Statutory Testing, Inspection, Repair & Maintenance Services to Contractor A, being the incumbent, under new terms and conditions as the appointed Contractor, for a period of eighteen months commencing 22nd June 2020; and
- ii. That the Council's planning activity to inform the scope of a new mixed economy of insourced and externally sourced services, and progress the changes to internal arrangements as set out above be noted.

RELATED DECISIONS

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Report to Cabinet Procurement Committee 18th July 2017, for the procurement of an additional contractor to provide statutory testing, repair and maintenance services to the Council.

Report to Hackney Procurement Board Meeting 11 February 2014 – RP2, Business Case. Permission to go to tender, noting the move away from delivery of the service by 2 smaller specialist firms to one main contractor and 20 January 2015 CPC – Award Report.

REASONS FOR DECISION/ OPTIONS APPRAISAL.

The purpose of this report is to provide CPC with the reasons behind the need to undertake an eighteen month interim contract, by direct award, prior to the procurement of a new competitively tendered contract to commence December 2021.

The Council has a statutory duty to keep its estate in a health and safety compliant state. This interim contract is required immediately, to sustain an uninterrupted delivery of statutory testing and repairs.

In 2014, when it reviewed its corporate building maintenance arrangements and established a new long term strategy, the Council anticipated executing that strategy in 2 principal stages, starting with the procurement of the MTC which allowed procurement of critical services with the limited asset data available, followed by the procurement of services on a more user friendly, efficient and up to date contract form with informed risk pricing in a practical fixed price component.

The introduction of a short interim contract between the two, via a direct appointment was brought about by a combination of factors:

- The disruption in the market following the collapse of Carillion, and the need for the Council to avoid procuring a long term contractual commitment in such uncertain conditions;
- The need to commit to new “normals” in the post Carillion world including minimum 5 year contract terms;
- The need to accommodate the Council’s agenda to insource more of its contracted services, and allow time for focussed work on scoping this insourcing potential ahead of the next formal procurement;
- In the context of a disrupted market, the need to mitigate the possibility of a poor or failed procurement, and;
- Also in the context of a disrupted market, pilot the new form of contract, establish a body of internal experience in managing it, and establish revised and improved, centralised internal funding arrangements in advance of the new “mixed economy” of insourced delivery and externally sourced elements;
- The COVID 19 pandemic has made more acute officers’ preference to pilot the new arrangements with a known partner whose most senior management is already conversant with the Council's estate, stakeholder context and its particular challenges.

The period of the execution of the MTC has delivered the outcomes required of it to facilitate moving to the next stage, including the establishment of comprehensive asset data, well established in-house contract management knowledge, and a much more comprehensive understanding of end-user requirements.

However, in addition to the reasons for inserting an interim stage as set out above, there is the very practical reality that if such a short term contract as the proposed interim arrangement were competed, no responsible organisation could sensibly and economically bid for it. A new contractor has to invest substantially at the beginning of a contract with a new client, and to under invest is to set up the organisation for future failure in service standards.

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So the interim contract will adopt the new contract form proposed for the next procurement and will be executed with the locally experienced incumbent service provider. The adoption of the new contract form is a fundamental component in the road to more efficient and user friendly services.

Ahead of moving into a new 5 year contract, the Council needs to have taken some key steps in preparation, particularly in its ability to manage the contract effectively. That involves moving the end users of the Council as well as the managing team to a new contractual culture and structure, most likely involving a material element of insourced services, at the operational core of which is the centralisation of maintenance budgets, and how works are ordered, committed to, and paid for.

For the client management team meanwhile, the MTC has been very demanding in its administration, as it has also been for the Contractor's staff, and this has resulted in a significant backlog in the valuation of variable tasks, and a very high cost of administration for both client and contractor. The MTC included a high level of auditing and valuation of individual tasks. Under the proposed new arrangement a large proportion of the expenditure will be within the fixed price element. Officers anticipate that in excess of 80% by volume of reactive and remedial tasks will fall within the fixed price threshold and will therefore not require audit or individual valuation, although the contract allows for audit which ratchets up if performance weakens sufficiently. This, in turn, will free a significant proportion of the LBH contract management team's time to concentrate on proactive management of the services and the estate rather than retrospectively dealing with the valuation of tasks.

The use of the NEC3 Term Service Contract is recommended by the UK Government for all public sector service contracts and is well understood by the sector market.

Furthermore, the market has shifted since 2017, and contractors in the sector have no appetite for a short-term contract based upon the JCT MTC and a nationally published schedule of rates.

The service delivery requirements have been based on the objectives needed to operate a comprehensive repairs, maintenance and estates statutory compliance service; and also to improve on the limitations found in the MTC by implementing a new form of contract:

- a) Providing a single point responsibility for the management and coordination of all building, mechanical and electrical repairs and maintenance services, simplifying and improving accountability, visibility of cost, performance, condition and compliance;
- b) The optimum use of available technology to maintain and update plant asset information, to centralise work management, billing and payment processes and rationalise the excessive amount of orders currently being raised and audited;
- c) A contract structure that has a high level of defined fixed deliverables (particularly more sites in scope) from the start of the contract and a clear definition of any variable deliverables with structured costs;
- d) Contractor profit at risk variable on measured performance via Low Service Damages, which could reduce their charges as part of a monthly monitoring process;
- e) A contract, which aids the effective management of landlord/ tenant relations by distinguishing statutory compliance requirements (legal requirements to test and inspect) and any other form of maintenance that can be varied by budget holders' prerogative. Under the new contract, the deliverables of statutory compliance testing and inspection are brought into scope as part of the fixed cost.

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The contract will be based upon the NEC3 Term Service Contract 2013 with LBH specific amended clauses and insurance risk requirements incorporated within the main terms.

The benefits arising from this approach are set out in further detail in section 8 (Savings) below. This will contribute significantly to the achievement of Value for Money by more appropriate use of available resources.

ALTERNATIVE OPTIONS (CONSIDERED AND REJECTED)

The following parameters have been considered prior to the decision that a direct award should be progressed with the rejection of the additional following options:

Options considered and rejected for the provision of works:

- a) Existing Frameworks – The appointment of a Contractor via an existing framework on a direct award basis could only be made on the basis of the framework standard terms, conditions, payment mechanism, performance measures and service specifications. This is considered not to offer the required flexibility or bespoke features necessary for the proposed LBH service.
- b) In-house or by Hackney Housing – The Direct Labour Organisation (DLO) management team were approached and they considered that their current technical capabilities (residential rather than commercial trade accreditations and skill sets) and capacity and the restrictive nature of their current base accommodation would preclude them from considering taking on the wider estate related services for a period of 4 – 5 years. At present, the Corporate Property and Asset Management team does not have the capacity or trade management experience to manage a separate and dedicated DLO for the corporate Property Groups. This is an area that needs to be explored at pace in the next year.

8 ANY OTHER UNRESTRICTED BUSINESS THE CHAIR CONSIDERS TO BE URGENT

There were no unrestricted items of urgent business.

NOTED

9 DATE OF FUTURE MEETINGS

NOTED – meetings of the Cabinet Procurement Committee commencing at 5.00pm for the remainder of the Municipal Year 2020/21 as follows:

6 July 2020
7 September 2020
5 October 2020
9 November 2020
7 December 2020
18 January 2021
8 March 2021
12 April 2021
10 May 2021

10 EXCLUSION OF THE PUBLIC AND PRESS

RESOLVED

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THAT the press and public be excluded from the proceedings of the Cabinet Procurement Committee during consideration of Exempt items 11-13 on the agenda on the grounds that it is likely, in the view of the nature of the business to be transacted, that were members of the public to be present, there would be disclosure of exempt information as defined in paragraph 3 of Schedule 12A to the Local Government Act 1972 as amended.

SUMMARY OF EXEMPT PROCEEDINGS

- 11** Procurement of interim 18 month contract for provision of statutory, testing, inspection, repair and maintenance services - Key Decision No. FCR Q65 - TO FOLLOW

AGREED AND NOTED the exempt Appendix 1 in relation to agenda item 7 in the unrestricted part of the agenda.

- 12** ANY OTHER EXEMPT BUSINESS THE CHAIR CONSIDERS TO BE URGENT

Nil.

NOTED

- 13** To consider the exempt minutes of meetings of the Cabinet Procurement Committee held on 11 March 2020, and 11 May 2020 (Special)

AGREED the exempt minutes of the meetings of Cabinet Procurement Committee held on 11 March 2020, and 11 May 2020 (special).

Duration of the meeting: 17:00hrs – 17.20hrs

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