

Item No.: 13	Classification: Open	Date: 14/02/2006
To	Executive	
Report title	Variation Decision – Gateway 3 Extension of the main and backup Building Repairs and Maintenance Contract 2000, the Repairs and Maintenance Out of Hours Contract and the R&M Quantity Surveying Services Contract	
Ward(s) or groups affected	All	
From	Strategic Director of Housing	

RECOMMENDATIONS

1. That Executive approval is given for a further extension of the main and back up Building Repairs and Maintenance contract, the Repairs and Maintenance Out of Hours Contract and the Repairs and Maintenance Quantity Surveying Services Contract for up to 9 months as from 1 March 2006.

BACKGROUND INFORMATION

2. The council's Contract Review Board met on the 1 February 2006 to consider this strategy and comments from this board have been highlighted in the report.
3. The procurement strategy for the tendering of the Repairs and Maintenance and Out of Hours contracts (Gateway 1) was approved by the Executive in April 2005.
4. At the same time a Gateway 3 report was approved for the extension of the Repairs and Maintenance and Out of Hours contracts, including the Post Contract Consultancy Services (PCSC) were extended by 11 months using Deed Variations. The expiry of the first extension period is the 28 February 2006. To continue with a repairs service after this date and to provide additional time for the procurement of the new contract it will be necessary to further extend the contracts in question.
5. The previous extension period was necessary to facilitate the procurement process of the new contract, however due to delays in the short listing and invitation to tender stages it has become necessary to seek a further extension.
6. The original intention was to tender a full partnering Repairs contract as from 1 April 05 when the second extension to the Repairs and Maintenance Contracts expires, however with the Housing Best Value Review and Housing Repairs Call Centre bedding in, it was determined that it would be prudent to extend the existing contracts rather than to let new contracts.
7. Further extensions will offer value for money as a continuation of the existing service because it is already part of an agreed contractual process where financial provisions are linked to Building Price Index increases against competitive rates of tender determined in 2000.
8. The Post Contract Consultant with Potter Raper Partnership has again assessed the prevailing market for more recently tendered R & M contracts in similar London Boroughs and has confirmed that these rates are very competitive. The value for money will be continually monitored and financially appraised throughout the extension period.

9. The Out of Hours contract is being extended for identical reasons with a similar analysis of prevailing prices, which is again considered to represent value for money.
10. The Post Contract Consultancy Service (PCCS), which covers all contracts will be extended on a similar uplift basis from 2000 prices and deemed to remain very competitive. The additional impetus for retaining the same PCCS is to ensure consistency in the preparation of final accounts, because they were instrumental in the design of the existing contracts and because of the vast bank of knowledge built up regarding the terms and application of the existing contracts over that period.

Key Aspects Of Proposed Extension

11. The nature of the proposed extension is for time and value.
12. The Building R & M contract was awarded in 2000 for an initial period of 3 years. The contract provided a specific extension duration of 2 years up to 2005.
13. The Out of Hours contract was awarded in 2000 for an initial period of 3 years. The contract provided a specific extension duration of 2 years to 2005.
14. The PCCS contract was awarded for an initial period of 3 years. The contract provided for a specific extension duration of 2 years to 2005.
15. The table below details previous extensions to the contracts utilising both extension options and the additional extension via Deed Variations.

Period of extensions agreed	Indicative value of extensions
1 st April 03 – 31 st March 04	£21m for R&M £575k for OOH £158k for PCCS
1 st April 04 – 31 st March 05	£21m for R&M £575k for OOH £158k for Post QS
1 st April 05 – 28 February 06	£15m for R&M £430k for OOH £119k for PCCS

16. The appointed contractors have operated in Areas as detailed below.

Contractor	Areas
Southwark Building Services	Borough & Bankside Bermondsey Rotherhithe (Area split with Botes) Walworth Nunhead & Peckham (Area split with Botes) Browning EMB
Botes Building Ltd	Rotherhithe (Area split with SBS) Camberwell (Area split with Morrison) Nunhead & Peckham (Area split with SBS) Dulwich
Morrison (aka AWG)	Camberwell (Area split with Botes) Housing Access Unit
Salisburys	Peckham

17. The Repairs and Maintenance Out of Hours contractors are Southwark Building Services and Salisburys. The back-up arrangements are with Southwark Building Services, Salisburys and Morrison.
18. A further extension as of 1 March 2006 is required for a number of reasons:
 - Delays in the procurement resulted from the additional time needed to re-submit the Gateway 1 report to the Executive. The original report submitted in February 05 was not approved. Executive required further information concerning the consultation process used to develop the procurement strategy. A further report was submitted and subsequently approved in April 05. The impact to the procurement timetable was that all of the planned stages had to be re-scheduled, which put back the first stage of the procurement by 3 months.
 - The shortlisting process took much longer than planned. Housing received an initial 65 expressions of interest from which 33 applications were returned. The level of applications returned was much higher than expected. Additional time and resource was necessary to undertake the vetting process, which was carried out in conjunction with Southwark Procurement. Due to resource issues, the Equal Opportunities assessments were outsourced to Exor Sinclair.
 - A number of candidates failed to supply all the information requested for the short listing process. Additional time was granted as part of this process, for candidates to submit those missing items in order that full assessments could be completed. The Health and Safety assessments took far longer than expected again due to candidates omitted to supply all the required information. The impact to the procurement timetable was an overall delay of 4 months in total.
 - Given the nature and size of the new contract, the procurement process was always going to be complex. The complexity has lengthened the process whereby additional input from Legal Services and Leaseholder Management Unit was necessary.
19. All contracts are monitored in terms of performance and tenant satisfaction, and benchmarking of the different contractors has taken place through regular Performance Meetings and a number of service improvements have been identified. This process will continue throughout the extension period.
20. The service will be further improved, as within the new Housing Management structure, Responsive Repairs Managers are in place at a local level to manage the contract on a day to day basis. Quality audits produced by the Post QS service of Potter Raper are issued to each Repairs Manager on a monthly basis for this purpose.

Alternative Options Considered

21. There are no alternative options available, which will ensure continuation of service whilst the contracts are being re-tendered.
22. Risks in relation to this approach have been mitigated via consultation with the current contractors. This risk of contractors not accepting the extension is therefore considered to be low. Incumbent contractors have confirmed their willingness to accept a further extension on the same terms and conditions.
23. However if difficulties did arise and one of the contractors formally declines the offer to further extend, a new long term arrangement will be required, or a in-house arrangement

made. The latter will have implications for leaseholders in terms of the Commonhold & Leasehold Reform Act and recharges – see Legal Concurrent.

KEY ISSUES FOR CONSIDERATION

Effect of proposed extension on those affected

24. It may be necessary to restrict work orders issued to Southwark Building Services in respect to Qualifying Works, where a service charge of £250 or more may be incurred to individual leaseholders. Although the occurrence of works over £250 per leaseholder is rare, the contingency is that the back-up contractor will be used in such an event.
25. Section 20 consultation would still be necessary following schedule 3 of the regulations. This requires a notice of intention to be served on all affected leaseholders, giving details of the work required, justifying the need for the work and giving details of the cost of the work from the back up contractor. The process gives leaseholders 30 days to make written observations, all of which must receive a substantive response before the works order can be raised.. The Borough Solicitor concurrent below covers the possible effects resulting from the Commonhold and Leasehold Reform Act 2002 (CLRA) as a result of extending the contracts.

Community Impact Assessment

26. The existing Repair and Maintenance contracts cover the Borough as shown in paragraph 14 above. The contracts are for day to day repairs and maintenance works covering all of the Housing stock.
27. In September 2005 the Corporate Consultation Unit produced an Equalities Impact Assessment on the housing repairs service. In summary the report identified a number of service areas which fell short of tenant expectations, i.e. the repair reporting process, the quality of repairs carried out and process for complaints.
28. The recommendations of the report have been incorporated into the Repairs Improvement Plan. Improvements or revision to service areas will be guided through the process of the Repairs Panel following the Improvement Plan. The new contract has addressed service areas where the specification needed reinforcing. The Gateway 2 report will highlight the amendments made.

Consultation

29. As part of the re-tendering process of the Repairs and Maintenance contract, consultation with Resident representatives on the extension was raised as a contingency issue at the last workshop (6 August 05) when it was realised that the short listing process would delay the second stage of the procurement.
30. The position concerning leaseholders is that there are no specific requirements under the Commonhold & Leasehold Reform Act 2002 in relation to formal notification of this extension to leaseholders, however leaseholders have been served with a Notice of Intention for the new contract, and will have the ability to comment.
31. All contractors for both the R&M Building Contract and R&M Out of Hours Contract and the Post QS were informally approached regarding an extension of their respective R&M contracts under the same contract terms and conditions and all provisionally accepted.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Borough Solicitor

32. This report seeks the Executive's approval to the extension of the contracts detailed in paragraph 1 for a period of up to 9 months from 1st March 2006. Contract Standing Order 8.4(F1) requires that where the value of the variation is more than 15% of the tender value then the decision is reserved to the Executive. In considering these extensions the Executive is referred to the following implications:
33. The contracts proposed to be extended are all contracts originally tendered in accordance with the relevant EU Regulations, and therefore may only be extended to the extent those Regulations permit. Regulation 10(2)(g) of the Public Works Regulations 1991 and 10(2)(h) of the Public Services Regulations 1993 permit the Council to allow a contractor to carry out additional works/services if through unforeseen circumstances they were not included in the original contract, and they cannot for technical or economic reasons be undertaken separately without great inconvenience to the Council. These provisions may only be relied upon where the value of the extension is less than 50% of the value of the original contract. Whilst paragraph 14 of this report confirms previous extensions agreed to the contract, the extensions relating to 1st April 2003- 31st March 2005 were detailed as options in the contract and their value is therefore included as part of the original contract price. This proposed extension therefore falls below the 50% requirement.
34. Paragraph 17 confirms why additional time is now required to complete the procurement process and let the new R & M contract. The Executive is advised that when relying on grounds for negotiation such as those under Regulations 10(2)(g) and (h) there is always a risk of challenge on the basis that the Council does not have grounds to justify negotiating in these circumstances. However in view of the limited period of the extension and fact that the Council is in the process of tendering for the new R & M contract the risk of challenge is reduced.
35. The Executive must also have consideration of the possible effects resulting from the Commonhold and Leasehold Reform Act 2002 (CLRA) and the subsequent Regulations. Unless these are fully complied with the Council's ability to recharge costs to leaseholders is limited. When advising on the previous extension to this contract, Counsel's opinion was sought on the consequences of extending these contracts and the impact on reclaiming service charges. For the contracts held by external providers Counsel's view was that a limited extension (which did not otherwise change the terms of the contract) would not amount to the creation of a new contract and would therefore be a continuation of the existing R & M contracts. Therefore any work carried out under them will be subject to the more limited consultation requirements under Schedule 3 to the Consultation Regulations, with which the Council can comply. Counsel's view at that time was that the proposed extension of these contracts should not therefore affect the Council's ability to reclaim service charges for relevant costs and there is minimal risk of challenge. However the Executive is advised that as this would be the second extension of this contract since the CLRA regulations came into effect there is an increased risk (albeit still considered minimal) of such extensions amounting to the creation of a new contract, and thereby reducing the Council's ability to recharge costs to leaseholders.
36. For the 'contracts' held by Southwark Building Services (which are not contracts in the legal sense being internal agreements) the position on CLRA is different. Southwark Building Services 'contracts' do not fall under the definition of 'Agreement' and therefore can be extended by the Council without further reference to CLRA. However any single works order

under this 'contract' which exceeded a cost of £250 threshold to any one leaseholder would be subject to the full consultation process under Schedule 4 (which involves nomination of contractors and a full tendering procedure). The Council is not in a position to comply with these requirements and paragraph 23 of this report therefore proposes to restrict orders to be given to Southwark Building Services to those below the threshold if they affect properties where service charges are to be reclaimed. This minimises any risk of challenge or inability to reclaim costs.

37. Whilst this concurrent identifies risks associated with these contract extensions, it is the view of the Borough Solicitor that these risks are unavoidable, as it would not be possible to relet an interim contract to cover the period after 28 February which would satisfy either the EU tendering or the CLRA requirements. Officers are aware of, and are continuing to take steps to manage, these risks.

Director of Finance

Finance Concurrent (0079 TJ)

38. The existing contract will be competitive based on the professional advice we have received from the quantity surveyors advising us on this contract (Potter Raper).
39. This is because the current contract has inflation adjustments based on the local authority maintenance index. In the new contract, contractors are expected to base their bids on the private sector maintenance index.
40. The outcome of the bidding process is unknown and it is therefore not possible to determine what the difference would be between continuing the existing contract and new one. However, given the facts above it is very likely that new rates will be in excess of the rates in the current contract. Consequently, extending the existing contract should not adversely affect the financial position of the Housing Revenue Account.

Head of Procurement

41. In view of this, and as per the legal comments that this extension is allowed for under the Council's Contract Standing Orders and EU regulations, it would seem sensible to extend these contracts for the time suggested in order to allow continued provision under contract, while the re-letting tender process is carried out. Ensuring continued robust monitoring of Value of Money and performance is important. It is also paramount that this further extension allows sufficient time to complete the remainder of the tender process, to avoid any re-occurrence

KEY POINT SUMMARY

- This procurement followed is a strategic approach
- EU Regulations did apply to the procurement of this contract
- This contracts are for works and services

BACKGROUND PAPERS

Background Papers	Held At	Contact
Contract files	Investment Strategy, 9 Larcom Street	Mark Pearson 51200

APPENDICES

Appendix number	Title of appendix
1	Revised Procurement Timetable

AUDIT TRAIL

Lead Officer	Rachel Sharpe, Head of Strategy and Regeneration		
Report Author	Mark Pearson, Principal Commissioning Officer (A)		
Version	Final		
Dated	23/01/06		
Key Decision?	Yes	If yes, date appeared on forward plan	December 05
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER			
Officer Title	Comments Sought	Comments included	
Legal: Borough Solicitor & Secretary	Yes	Yes	
Chief Finance Officer	Yes	Yes	
Head of Procurement	Yes	Yes	
Executive Member	No	No	
Date final report sent to Constitutional Support Services	3/01/06		