

Item No.	Classification: Open	Date: 18 September 2019	Meeting Name: Cabinet Member for Housing Management and Modernisation
Report title:		Gateway 3 – Extension of the Kier Facilities management contract	
Ward(s) or groups affected:		None	
From:		Head of Corporate Facilities Management	

RECOMMENDATIONS

1. That the cabinet member for housing management and modernisation approves the contract extension to the consolidated facilities management (FM) contract with Kier Facilities Services Ltd (Kier) for a period of up to 10 months, from 1 June 2020 to 31 March 2021, at an estimated total cost of £3.7m.
2. That the cabinet member for housing management and modernisation notes that from the start date 14 June 2016 to 31 March 2021 the estimated total contract value will be £18.5m.
3. That the cabinet member for housing management and modernisation notes a break clause will be sought as part of the variation to allow for an earlier end to the contract as further detailed in paragraph 13.

BACKGROUND INFORMATION

4. Following a competitive procurement exercise using the Government Procurement Service (GPS) RM1056 Solutions Framework, a contract was awarded to Kier Facilities Services Limited otherwise known as Kier FM in March 2016 for the estimated sum of £32m (£8m annually) over 4 years, to provide consolidated HFM services across the non-housing estate. The contract started on 14 June 2016 for a contract period of 4 years with an option to extend for a further 2 years. This report seeks to obtain approval to extend the contract for up to ten months to co-terminate the services alongside the consolidated facilities management contract with Interserve and to allow Corporate Facilities Management (CFM) to conclude the procurement process for the new facilities management contracts, with an estimated start date of 1 April 2021.
5. The current contract provides the following integrated hard FM services to a total of 51 properties across the non-housing estate:
 - Planned preventative building maintenance, primarily routine and scheduled maintenance activity to building services and fabric
 - Reactive building repairs and maintenance, e.g. repairs to building failure such as broken glass, door furniture etc.
 - Compliance with statutory regulation to meet all statutory and regulatory requirements relating to the building's fabric, plant and equipment
 - Maintenance of building related mechanical equipment to maintain all such equipment in good working order
 - Provision of spares and consumables to include lighting tubes, plant lubricants, engineering parts, etc.

6. The current contract allows for project works i.e. refurbishment and alterations consisting of works above £10,000 and up to £450,000 required by the council to alter or improve the working environment and activities which fall outside the repairs and maintenance regime.
7. Kier delivers the corporate compliance programme (CCP) to properties that are currently supported by Interserve Facilities Management. The programme consists: fire risk assessments, water risk assessments, asbestos inspections, display of energy certificates, period electrical inspection and testing and F-Gas Regulation works.
8. Task orders have been raised at a further 39 non-residential sites where departments use various elements of corporate compliance and planned preventative maintenance works.
9. Kier FM also provide a 24/7 365-day help desk where all requests for FM related services including Interserve's are logged, monitored and subsequent work orders issued.

KEY ISSUES FOR CONSIDERATION

Key aspects of proposed variation

10. The estimated value of this proposed contract extension is £3.7m, which, combined with the projected contract spend of £14.8m from 14 June 2016 to 31 May 2020 is estimated to be £18.5m.
11. The nature of the services for this additional period will remain the same as those listed in paragraphs 5 to 9.

Reasons for contract extension

12. The reason for seeking a ten-month extension is to allow sufficient time to complete the procurement process and to mobilise the new facilities management contracts, estimated to start 1 April 2021.
13. The extension is detailed as ten months however this is very much up to ten months and all reasonable steps will be taken to complete the procurement process and award by January 2021. As part of the variation the council will be requesting the inclusion of a break clause, and will also incorporate some minor operational changes.
14. CFM plan to co-terminate this contract with the consolidated facilities management contract, currently provided by Interserve. This will ensure a smooth transition from the current suppliers to the successful suppliers. Approval to extend the consolidated FM contract with Interserve to 31 March 2021 is being sought through a separate Gateway 3 approval.
15. The incumbent providers will have the opportunity to bid for the new contracts as they have both been awarded a place on the Crown Commercial Services (CCS) framework agreement (that will be used to re-procure the facilities management contracts). If Interserve or Kier are successful, there will still be a requirement for the current contracts to co-terminate as CFM are changing their delivery model, by bringing some of their services in house, and by having a separate contract for hard FM and for soft FM.

16. Kier's performance has been on the increase since July 2017, with significant progress with corporate compliance reports, which is now at 100% completion. Other significant steps in progress are the help desk key performance indicators (KPIs) with the performance increasing 15% in the last 12 months to 90%.
17. There was a period when performance levels across the contract dipped however this has since been addressed by Kier management who have increased the number of operatives working on the contract at no further cost to the council. The current performance of Kier remains satisfactory.

Future proposals for this service

18. Options and timeline for the procurement and delivery of the new facilities management contracts was included in a separate GW1 report, approved by Cabinet in December 2018. The recommendations for contract award will be presented to Cabinet via a GW2 report in September 2020, and subject to approval, the new contracts are estimated to commence 01 April 2021.

Alternative options considered

19. Do Nothing. This is not an option as the services provided by the contractor are required to ensure statutory property compliance and required levels of property service.
20. Let a New Contract. The market would not be interested in a short term contract of up to 10 months.
21. Extension of Existing Contract. As this is a short term extension of a maximum of up to 10 months and is to allow the procurement of the new service to be completed then there were no alternative options which were considered appropriate.

Identified risks for the variation

Risk No.	Risk Identified	Risk level	Mitigation
R1	Procurement process for CFM 2020 is delayed.	Medium	CFM will control and monitor the process throughout
R2	Kier FM cease trading, goes into administration or liquidation.	Medium	<ol style="list-style-type: none"> 1. Use of early warning mechanisms in NEC3 contract, which is applicable to both parties. 2. Contract monitoring. 3. Crown Commercial Services (CCS) would be available to assist the council by novating these services to another supplier on the framework. 4. Credit check carried out on 01/08/19 confirmed current status as secure (scoring 77 out of 100)
R3	Key performance indicators (KPI) performance declines.	Medium	Regular monitoring by CFM contracts team.

Policy implications

22. A key element of the corporate plan that the FM strategy supports is 'transforming public services'. This requires sound resource management of the council's property assets, how they are utilised and their effective and efficient procurement and delivery of FM services are integral to the sound management of the council's property assets.
23. The medium term resources strategy aligns financial priorities with the management of assets and the associated resources with which the council delivers its services. A modern FM service platform and an informed CFM client function will significantly support the council's medium and long term objectives providing flexibility and opportunities for efficiency savings.
24. The theme of 'valuing the environment' will be increasingly supported through the delivery of an improved FM service delivery platform and effective strategic management of FM. Supported policies include 'Southwark Cleaner Safer' and the 'Sustainable Community Strategy'. Other key corporate objectives are indirectly supported through improving working environments, improving customer facilities and enabling more effective service delivery.

Contract management and monitoring

25. The Head of CFM will continue to be the responsible person for the contract as the service manager. This is supported by the contract management team, technical team, and workplace teams as per paragraph 26.
26. The existing management and monitoring that we currently have in place includes:
 - Monitoring budget spend and compiling monthly spend profile reports
 - Checking invoices for accuracy
 - Providing robust single point of contact for end users
 - Proactively responding to complaint and service improvement requests
 - Monthly contractor performance monitoring meetings, six monthly service reviews and the annual performance review
 - Ensuring contractor monthly reports are received in a timely manner.
27. After the award of the new contract the existing contract would continue to be monitored as appropriate, managing the exit strategy and handover of information as appropriate as detailed at the end of paragraph 13.
28. Performance of the contract will continue to be measured and reported by means of a suite of key performance indicators (KPIs) covering management of the contract and customer services as well as both hard and soft FM service delivery.
29. CFM conduct regular site inspections and visits in order to measure and monitor the quality of the service provided and feedback from end users is actively sought.
30. As the estimated value exceeds the relevant EU threshold, CFM will prepare a six-monthly monitoring report to the relevant DCRB.

31. As the contract also relates to a strategic procurement CFM will prepare an annual monitoring report to CCRB.

Community impact statement

32. This contract has a direct impact on the occupants of all the buildings covered by this contract, as well as all council staff, service users Southwark residents, visitors and the council's elected members.
33. It will continue to provide a healthy and safe working environment which will seek to ensure that no elements of the council's equality agenda are negatively impacted.

Social value considerations

34. The Public Services (Social Value) Act 2012 requires that the council considers, before commencing a procurement process, how wider social, economic and environmental benefits that may improve the well being of the local area can be secured. The social value considerations included in the tender (as outlined in the Gateway 1 report) are set out in the following paragraphs in relation to the tender responses, evaluation and commitments to be delivered under the proposed contract.

Economic considerations

35. Kier comply with their contractual obligation to engage at least one apprentice in relation to the service at all times during the service period.

Social considerations

36. The contract was tendered on the basis that London Living Wage (LLW) would apply to all contractor staff that work on the contract both directly employed by the contractor and sub contracted to them. A specific LLW service delivery plan was included in the quality evaluation and Kier FM's commitment to LLW was confirmed through the clarification process both in terms of price and scope. The contractor has continued to undertake ongoing LLW monitoring and reporting arrangements.
37. The council can exclude companies who break the law by blacklisting or have not put into place genuine actions concerning past black listing activities. The council can require "self cleaning" which enables a potential contractor to show that it has or will take measures to put right its earlier wrongdoing and to prevent them from re-occurring and to provide evidence that the measures taken by the economic operator are sufficient to demonstrate it has:
- "owned up": clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities.
 - "cleaned up": taken concrete technical, organisational and personal measures that are appropriate to prevent further criminal offences or misconduct, and
 - "paid up": paid or undertaken to pay compensation in respect of any damage caused.
38. The council has requested the necessary information from Kier (using the council's standard documentation in relation to blacklisting) and they have

confirmed that they are not in breach of the requirements under Regulations 3(1) of the Employment Relations Act 1999 (Blacklisting) Regulations 2010. The contract conditions also include an express condition requiring compliance with the Blacklisting Regulations and include a provision to allow the contract to be terminated for breach of these requirements.

Environmental/sustainability considerations

39. Kier are required to provide services that support, and do not compromise, Southwark's green building targets, sustainability policy and Fairtrade status.

Financial implications

40. The contract will continue to be funded from existing CFM and departmental budgets and therefore there are no new financial implications arising from the proposed variation to extend the term of the contract for a period of ten months to 31 March 2021 as the existing contract will be maintained as is.
41. As noted at paragraph 23 to 29 CFM existing management and monitoring arrangements will remain in place, including specifically: -
- Monitoring budget spend and compiling monthly spend profiles, and
 - Checking invoicing for accuracy
42. The total estimated expenditure over the proposed extension is estimated at £3.7m being based on the 2018-19 actual total spend figures for the year adjusted by an estimate for inflation.
43. The total forecast contract value up to June 2020 is £14.8m which when combined with the estimated contract extension cost of £3.7m will bring the total estimated contract value at 31 March 2021 to £18.5m.
44. The contract has a fixed lump sum price Cost Stream 1 (CS1). There are additional cost streams for above and outside of contract spend, these are:
Cost Stream 2A (CS2A) - works above the financial threshold limit (FTL) of £500
Cost Stream 2B (CS2B) - works outside of the contract scope
Cost Stream 2BS (CS2BS) – all ad hoc security works/requests
Cost Stream 2C (CS2C) – project and task orders

The council's anticipated annual expenditure for all cost streams is £4.46m, as detailed below:

• CS 1	£0.83m
• CS 2A	£0.04m
• CS 2B	£0.11m
• CS 2BS	£1.43m
• CS 2C	£2.05m
Total	£4.46m

Legal implications

45. Please see the comments from the director of law and democracy in paragraph 51.

Consultation

46. All internal departmental stakeholders have been consulted.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance and Governance

47. This report requires comment from the strategic director of finance and governance due to its value being above relevant European Union thresholds. As the report sets out, the proposed contract extension will be funded from existing departmental budgets within Housing and Modernisation, principally those relating to Corporate Facilities Management. Departmental intentions with regard to the management and procurement of future FM contracts are noted, and are factored into the relevant budget monitoring exercises.

Head of Procurement

48. This report seeks the approval of the cabinet member for housing management and modernisation for the contract extension for the consolidated facilities management contract with Kier Facilities Services Ltd for a period of up to 10 months. This extension provision lasts from 1 June 2020 to 31 March 2021 and the estimated total cost of £3.7m.
49. Paragraphs 12 to 15 confirm the background to the extension and the current performance of the contract is set out in paragraphs 16 and 17.
50. The report details the contract management and monitoring of the contract in paragraphs 25-31. Paragraph 36 confirms that the contract pays London Living Wage (LLW), whilst blacklisting is dealt with in paragraphs 37 and 38.

Director of Law and Democracy

51. This report seeks the approval of the cabinet member for housing management and modernisation to the contract extension for the FM contract with Kier for a period of up to 10 months, as further detailed in paragraphs 1-3. As the value of the extension falls between £2-4m then the decision is reserved to the relevant individual decision maker, after consideration of the report by CCRB.
52. The original appointment was subject to the full application of the EU procurement regulations, and therefore it is necessary to ensure that any variation or extension to that appointment is permitted under those regulations. Regulation 72 of the Public Contract Regulations 2015 permits modifications to be made to contracts during their term in certain circumstances. This includes at Regulation 72(1)(a) where the modification has been provided for in the initial procurement documents in clear, precise and unequivocal review clauses. As noted in paragraph 4, the contract includes an option for the council to extend the term for any period up to a maximum of 2 years, and the requirements of Regulation 72 are therefore met. This report sets out at paragraphs 12-14 the reasons and justification for this extension.

53. The cabinet member's attention is drawn to the Public Sector Equality duty (PSED General Duty) under the Equality Act 2010, and when making decisions to have regard to the need to (a) eliminate discrimination, harassment, victimisation or other prohibited conduct, (b) to advance equality of opportunity and (c) foster good relations between persons who share a relevant protected characteristic and those who do not share it. The relevant characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion, religion or belief, sex and sexual orientation. The duty also applies to marriage and civil partnership but only in relation to (a). The cabinet member is specifically referred to the community impact statement at paragraphs 32-33, setting out the consideration that has been given to equalities issues which should be considered when approving the recommendations in this report.
54. Contract Standing Order 2.3 requires that no steps are taken to vary a contract unless the expenditure involved has been approved. Paragraphs 40-44 confirm the financial implications of this variation.

BACKGROUND PAPERS

Background Papers	Held At	Contact
Gateway 3 – Variation Decision Extension to the Consolidated Facilities Management Contract September 2017	CFM, 160 Tooley Street	Ray Hoosen

APPENDICES

No	Title
N/a	

AUDIT TRAIL

Lead Officer	Paul Symington, Head of Corporate Facilities	
Report Author	Maureen McBain , FM2020 Project Manager	
Version	Final	
Dated	18 September 2019	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Head of Procurement	Yes	Yes
Director of Law and Democracy	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team		18 September 2019