

<b>Item No.</b> 12.	<b>Classification:</b> Open	<b>Date:</b> 16 June 2020	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Gateway 3 Housing Major Works Contracts	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Councillor Kieron Williams, Housing Management and Modernisation	

## **FOREWORD – COUNCILLOR KIERON WILLIAMS, CABINET MEMBER FOR HOUSING MANAGEMENT AND MODERNISATION**

The COVID-19 crisis has forced local authorities to make unexpected changes to the way we work across the board – and the way we service our major works and estates maintenance contracts are no different.

In Southwark, three of these contracts are due to come to an end this year, but in order to ensure a comprehensive and competitive procurement process to take place during and after the pandemic, we are proposing that the current contracts are extended to 2022. This is to ensure we can continue to provide necessary repairs and maintenance for residents of our estates and council homes throughout this period.

Since 2010, these three partnerships have served us well, enabling the rollout of our Warm, Dry and Safe and QHIP schemes and allowing our partners to develop a good understanding and intuitional knowledge of the needs of our estates and communities. This has resulted in tenant satisfaction levels in 2019/20 of over 96%. Additionally, they achieved excellent scores in terms of apprentices and training opportunities (provided employment/ training for 30 local people), and cleaner, greener, safer (10/10 for achieving FORS accreditation).

## **RECOMMENDATIONS**

1. That cabinet approves the variation of Contract area 3, Camberwell and Peckham contract to Engie Regeneration Ltd (formerly Keepmoat Regeneration (Apollo) Ltd) (Engie), to extend the term of the contract for a period of two years from 14 June 2020 at an estimated maximum cost of £50m per annum, making a revised contract value of £550m for twelve years.
2. That cabinet approves the variation of Contract area 4, Nunhead, Peckham Rye and Dulwich contract to A&E Elkins Ltd (A&E Elkins) to extend the term of the contract for a period of two years from 14 June 2020 at an estimated maximum cost of £25m per annum, making a revised contract value of £290m for twelve years.
3. That cabinet approves the variation of Contract area 5, Borough-wide street properties, temporary accommodation and major voids contract to Saltash Enterprises Ltd (Saltash) for a period of two years from 14 June 2020 at an estimated maximum cost of £15m per annum, making a revised contract value of £90m for twelve years.

## BACKGROUND INFORMATION

- On 26 March 2010, the Executive approved the award of five partnering contracts for major works for a period of five years with the option to extend for a further five years, subject to appropriate reviews of value for money and performance, although no reference was made as to the number of extensions that could be incorporated within this five years. Reserve contractor arrangements were also approved.
- The contract areas were as follows:

<b>Contract</b>
Contract area 1 – Borough and Bankside
Contract area 2 – Bermondsey and Rotherhithe
Contract area 3 – Camberwell and Peckham
Contract area 4 – Nunhead, Peckham Rye and Dulwich
Contract area 5 – Borough-wide street properties, temporary accommodation and major voids

- Two contracts were ended in 2012 and 2013. The reserve contractor arrangements were therefore put in place for the majority of the programmes to cover contract areas 1 and 2 - A&E Elkins took over the majority of programmes for contract area 1 with the remainder of the work being individually tendered and Engie took over all the programmes for contract area 2. It is worth noting that from 16 February 2016 contract areas 1 and 2 are dealt with under the council's major works constructor framework (the framework).
- A Gateway (GW) 3 report was approved on 16 July 2015 to extend contract areas 3, 4 and 5 for three years and for A&E Elkins and Engie to be reserve contractors for contract areas 1 and 2. A subsequent GW3 report was approved on 19 September 2017 to exercise the option to extend contract areas 3, 4 and 5 for two years giving an expiry date of 13 June 2020.
- This GW3 report is now seeking approval for a two year extension to all 3 contracts to guarantee service continuity by ensuring the council has extra resources available in addition to the framework during the Covid-19 situation, and to help cover any potential delays in completing the new procurement and to monitor performance. The contractors are happy to receive a shorter notice period than would usually be given under their contracts.

## KEY ISSUES FOR CONSIDERATION

### Key Aspects of Proposed Variation

- The nature of this proposed variation is to extend each contract for a further two years. The revised completion date will be 13 June 2022. The reason for the extension is to help cover delays in completing the new procurement. As a landlord, the council needs to have as many resources as possible available to ensure work continuation during and post Covid-19. The partnering contracts cover areas 3 to 5 of the borough, and the current contractors are familiar with these areas as these contracts have been in place for 10 years.
- An advantage of the partnering contracts is that they enable a quick process to get contractors on site, allowing the council to take fast action in issuing urgent

orders to the contractors for example, works on Ledbury Estate. One specific advantage of the partnering contracts, especially during Covid-19, is that orders for work can be made quickly and efficiently, as a wide range of works both internal and external are covered in the partnering contract. Design decisions are made by each contractor initially and then confirmed by the professional technical services advisors jointly and speedily without the need for further tendering. The council has been working with these current contractors for 10 years now which has meant the contractors understand the requirements of the council's extensive and varied stock and health, safety and other requirements, particularly during the Covid-19 period. This effective working relationship is especially important given the current strain on the construction industry, uncertainty on how long the impact of Covid-19 will last and the potential of a second wave of Covid-19 and therefore provides a strong degree of resilience to the council during Covid-19. This will be particularly true during the winter period when the construction industry is likely to be under even more strain. The contractors are already working with suppliers and sub-contractors to prepare them for dealing with Covid-19 and post the Covid-19 period and having a range of available contractors to work with the council to deal with resourcing issues in advance is a great benefit.

11. The partnering contracts also include a number of other benefits. These include training opportunities for the local community, community initiatives provided for by the contractors, and some unseen hidden goodwill benefits such as having a contractor nearby if issues arise after the end of the usual defects periods. The three current contractors already have in place, or are preparing risk assessments for the various types of works in the partnering contracts, for contracts which they currently have onsite or which they are preparing to go back onto site. This level of preparation will be a strong advantage to the council during and post the Covid-19 period.
12. The council has a major works framework in place, which consists of Lot 1 for contracts up to £3.5m which has 6 framework contractors and Lot 2 which is for schemes over £3.5m and also has 6 framework contractors. These frameworks expire in February 2021 and are used in the north of the borough. The major works framework process requires a mini competition amongst the framework contractors, with an evaluation on each tender submission and approval sought before the contractors are able to start on-site. This framework will therefore allow the council flexibility in future procurement options for the next two years to ensure consistent quality and value for money, before the new contracts are put in place. The council is also considering the use of an outside framework, such as South East Consortium, as this would provide a variety of procurement options. This may be utilised should works be delayed or prevented, due to labour shortage as a result of Covid-19, which may be exacerbated by self isolating contractors, furlough of staff, shortage of supplies, or it not being financially viable for companies to stay afloat.
13. The council is procuring new contracts as detailed in paragraphs 21 and 22 below.
14. The estimated value of this proposed variation to the Engie contract is £100m, combined with the actual value of the approved initial 5 year contract term of £225m, and previous contract extension values of £225m, this brings the estimated total to £550m.

15. The estimated value of this proposed variation to the A&E Elkins contract is £50m, combined with the actual value of the approved initial 5 year contract term at £120m, and previous contract extension values of £120m, this brings the estimated total to £290m.
16. The estimated value of this proposed variation to the Saltash contract is £30m, combined with the actual value of the approved initial 5 year contract term of £30m, and previous contract extension values of £30m, this brings the estimated total to £90m.
17. This gives a total estimated variation at a maximum per annum of £90m per year between the three partnering contractors. It is unlikely that this full variation figure will be used, but given the current uncertainties with Covid-19 and the construction industry, it is felt that it is best to extend the contracts for this amount to allow for both known works, and also unforeseen eventualities which may occur due to Covid-19, or for other health and safety reasons, for example, fire safety or structural works.

### **Reasons for Variation**

18. These partnering contracts have greatly contributed in helping the council deliver its Warm, Dry and Safe (WDS) programme and Quality Homes Investment Programme (QHIP). Price harmonisation and use of supply chains has also continued to allow for continuity of materials and value for money in the contracts and bench marking will be used with the 'call-off' contracts let under the framework that was put in place to continue to ensure this remains the case.
19. Currently, all three contractors are performing well and their Key Performance Indicator (KPI) scores are very good and have been for some years. KPIs are measured across a range of areas, including contractors' performance on time for both internal and external works, value for money, and resident satisfaction. Between 2014/15 to date, all three contractors consistently achieved resident satisfaction percentages of more than 90%, across a total of more than 9500 survey returns. All three contractors had tenant satisfaction levels in 2019/20 of over 96%. As well as tenant satisfaction being over 96% on average they also achieved excellent scores in terms of apprentices and training opportunities in 2019/20 (provided employment/ training for 30 local people), and cleaner, greener, safer (10/10 for achieving FORS accreditation). Since 2014/15, the three contractors have provided more than 300 employment opportunities for local people as they are expected to provide one year's apprenticeship or equivalent for each £1m worth of expenditure. Each year, the contractors have met their KPI for internal works, more often than not installing kitchens, bathrooms and electrics below target time across more than 9000 jobs.
20. The framework was set up on 16 February 2016 and runs in parallel with the partnering contracts providing further capacity and acting as additional security should issues arise with any partnering contractor. The partnering contracts enable the council to deliver works quicker and the KPI scores show how effective the contractors are in performance.

### **Future Proposals for this Service**

21. It is anticipated that the new major works contracts will be in place by February 2022 to cover the whole of the borough. An extension to June 2022 is being

sought for the partnering contracts, as this will enable the existing contractors to assist potential new contractors whilst they mobilise, particularly if there are different contractors who are new to these areas. It also allows some flexibility in the event that there are delays with the new procurement. Should the new contracts be in place sooner than June 2022, these contracts can be terminated in accordance with the termination provision in the contracts unless the need arises that the council needs to issue urgent orders to these contractors to ensure works are delivered.

22. The new procurement process is currently underway and a significant amount of work has been done already on preparing documentation such as specifications and example projects. Given the current situation with Covid-19, there will need to be some soft market testing carried out in order to evaluate the viability of the market before tenders can go out as most companies and local authorities will begin procuring on a larger scale much later this year which could result in fewer tender submissions being received for this new procurement. A GW1 report is being prepared for cabinet in the near future, to update the proposals for the types of contract to be let, and the procurement process. At this time, it is difficult to give exact timescales because of the need to deal with current and urgent Covid-19 related issues and it is anticipated that the procurement will take at least 18 months to procure. It is considered prudent to ensure that the council, as a landlord, has as many resources available to assist it to ensure work continuation during and post Covid-19 whilst new contracts are procured and operational.

**Alternative Options Considered**

23. This is covered in paragraphs 9-12.

**Identified risks for the Variation**

24. The table below identifies the risks associated with this extension, the likelihood of occurrence and the control in place to mitigate the risks.

<b>R/N</b>	<b>Risk Identification</b>	<b>Likelihood</b>	<b>Risk Control</b>
R1	Contractors do not want to extend the contracts and/or are unable to deal with new workload	Low	All three companies have confirmed their readiness and capability to deliver the contract extension. There will be monitoring reports to DCRB and CCRB as part of the contract management and monitoring of these contracts on a yearly basis.
R2	Decline in contractors performance	Low	The performance of the three contractors is monitored but in the unlikely event of their performance falling below the standard required, the 'termination at will' clause will be used if required.
R3	Contractors go in to administration or liquidation.	Low	The framework means that there are additional resources available to be used to reduce any delay times should such a situation occur. Financial checks will also be carried

R/N	Risk Identification	Likelihood	Risk Control
			out on the contractors to ensure they are still financially viable.
R4	Procurement for new contracts doesn't meet timetable	Medium	This is the reason for a 24 month extension beyond the current date, and the termination clauses may be operated in the event that the new contracts are in place before 13 June 2022.
R5	Possible risk of procurement challenge	Low	<p>Given the need for the council to have as many resources available, as a landlord, to assist it to ensure work continuation during and post Covid-19 whilst new contracts are procured and operational, Regulation 72(1) (c) of the Public Contracts Regulations 2015 (EU regulations) will be relied upon for this variation.</p> <p>This regulation will require a notice to be published in OJEU.</p>
R6	Possible risk of non-recovery of leaseholder service charges	Medium	<p>Home ownership will serve additional section 20 notices, as the council is required to consult on long term agreements.</p> <p>All leaseholders in the areas of the borough affected will be written to inviting observations, and a decision will then be made if an application needs to be made to the First Tier Tribunal for dispensation. Works packages will not be ordered which involve potential leaseholder charges until this matter is fully confirmed.</p>
R7	Covid-19 implications	Medium	<p>If any new packages of works are ordered whilst Covid-19 is still a challenge, packages will be let to ensure that there is no possibility for claims by contractors, for example, for additional preliminaries costs due to delays on contracts. Standard Covid-19 implications which apply to all construction works, such as social distancing, will be covered by specific risk assessments on each site.</p> <p>The council is working with contractors to determine the best way they can achieve training targets with students not physically able to</p>

R/N	Risk Identification	Likelihood	Risk Control
			attend college during the Covid-19 period.

### Policy implications

25. These contracts help deliver on one of the council's key Fairer Future commitments by providing quality kitchens and bathrooms to all residents.

### Contract management and monitoring

26. The performance of the contractors continues to be monitored by the investment team. Each project manager in the investment team or other departmental officers using these contracts provide a quarterly monitor on the performance of each contractor they use and there are specific KPIs in the contract in the areas of time, cost and quality. KPIs are produced for all firms on a quarterly basis and these show that all are performing very well, as set out above. One additional benefit of partnering is that, in practice, the contractors will also deal with issues that arise after the 12 month defects liability period when each scheme has ended. These contracts, whilst they are predominately design and build contracts, have all their design and works proposals examined and checked by either one of the council's lead designers or by one of the council's two technical services firms.
27. Spend and performance on all contracts is monitored by the Head of Investment and monitored regularly as part of Housing and Modernisation's key KPI's. There will be monitoring reports to DCRB and CCRB as part of the contract management and monitoring of these contracts on a yearly basis. Concerns were expressed by some leaseholders in particular as regards value for money obtained through these contracts. A report was therefore commissioned by an independent quantity surveyor in October 2014 which confirmed that the prices obtained through the current contracts match those that can be obtained through individual tendering and bench marking will continue. The price harmonisation and supply chain will continue for the proposed two year extension.

### Community impact statement

28. Having a consistent set of contractors working in the borough improves the quality of service and ensures consistent and comprehensive work within the community. The contractors all provide training and apprenticeship opportunities as well as sponsoring many community initiatives and schemes. All three contractors have specific targets related to apprentices and training whereby they have to provide one apprentice or training equivalent for each £1m of work undertaken. In addition, they support a whole variety of community initiatives such as communal garden schemes, sports schemes, cycling learning and repairs, events for elderly residents, and Christmas parties.

### Social Value considerations

29. 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 delivered are set out below.

### **Economic considerations**

30. There are no specific economic considerations to this report.

### **Social considerations**

31. Engie, A&E Elkins and Saltash employees and those of their subcontractors are paid in accordance with the London Living Wage and have equalities policies that conform to the council's standards. The application of these policies is reviewed for compliance as part of the contracts' annual review. Each of them is required to employ apprentices and provide training and employment opportunities for Southwark residents. They are required to employ one year of apprenticeship or equivalent employment and training opportunities for each one million pounds of expenditure. The contractors are currently reviewing how the current covid-19 situation impacts this requirement. It is anticipated that online training and training onsite should be able to cover the majority of appropriate training requirements. As per paragraph 24, this will be monitored. They must comply with the requirements of the Employment Relations Act 1999 (Blacklists) Regulations 2010 ("the Blacklists Regulations) and shall ensure that it will not during the Term/Contract Period/provision of the Works be a party to or concur in any discriminatory employment practice which could be construed as blacklisting or boycotting any person who has sought employment with the contractors in breach of the Blacklists Regulations.

### **Environmental/Sustainability considerations**

32. There are no specific environmental or sustainability considerations at this stage.

### **Financial Implications**

33. The report recommends the extension of the three major works partnering contracts to Engie, A&E Elkins Limited and Saltash Enterprises Limited for two years from 14 June 2020 to 13 June 2022. The estimated value of these contracts over two years is £180m, and will help deliver the QHIP programme. The delivery of this programme and the housing investment programme as a whole is subject to the availability of resources to fund it.

### **Investment Implications**

34. The value of these contracts will be charged directly to the respective projects.

### **Legal Implications**

35. Please see the comments from the Director of Law and Democracy.

### **Consultation**

36. There was extensive consultation with leaseholders as part of the statutory process. In addition a tenants and a resident's representative were on the final tender evaluation panel as part of the original evaluation process.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Strategic Director of Finance and Governance**

37. This reports seeks Cabinet approval to extend the three housing major works contracts with Engie Regeneration Ltd, A&E Elkins Ltd and Saltash Enterprises Ltd for a further period of two years from June 2020 for the reasons set out in paragraphs 8 to 12 of this report. There are risks associated with further extending these contracts, which are set out, together with mitigating action, in paragraph 24.
38. As outlined in the financial implications section of this report, the value of works to be awarded during the extension period is estimated at £180m. This is subject to the availability of resources to fund the Housing Investment Programme and the programming of major works, both of which may be adversely affected by the impact of COVID 19.

### **Head of Procurement**

39. This report is seeking cabinet approval to extend three major works partnering contracts for a 2 year period from 14 June 2020.
40. The report summarises the context and rationale for these contract extensions explaining that new contracts are currently being prepared and are timetabled to be in place in February 2022. Extending these contracts should allow for continuity whilst this procurement exercise is conducted.
41. The report confirms that the performance to date of the three contractors on this contract has been good. There are management and monitoring arrangements in place which should go some way to ensuring that the required level of contract performance is maintained in these final two years. It would appear that there is no reason why the council should not continue with these arrangements for the recommended extension period.
42. The report also confirms that officers will closely monitor the impact of the Covid 19 pandemic in relation to ensure that construction works are conducted in the safest possible way in accordance with regularly updated government guidance.

### **Director of Law and Democracy**

43. This report seeks the cabinet's approval to 3 major works contracts which are being performed by Engie (contract area 3), A&E Elkins (contract area 4) and Saltash (contract area 5). This report sets out the extent of the extension and the reason why an extension of 2 years is necessary. As the values of the proposed variations exceed £15m, this is a strategic procurement under contract standing orders and approval is therefore reserved to cabinet.
44. The nature of this variation is such that it is subject to the tendering requirements of the Public Contracts Regulations 2015 (PCR 2015). Regulation 72(1)(c) of PCR 2015 permits contracts to be modified, where the need has been brought about by circumstances which a diligent contracting authority 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 contract. The justifications for relying on regulation 72 are noted in paragraphs 9 to 12.

Paragraph 21 of this report confirms that a new procurement exercise for this contract is anticipated to commence in September 2020 with the aim for new contracts to be in place from February 2022.

45. Cabinet is advised that when relying on any ground for exemption from the requirements of PCR 2015, there is a potential risk of challenge on the basis that the council does not have sufficient grounds to justify negotiations in these circumstances. However, given the Covid-19 pandemic is an unrepresented situation that could not be foreseen, soft market testing needs carrying out to test the viability of the market before procuring new contracts and the uncertainty around the viability of the construction industry coupled with the need, as a landlord, to ensure it has as many resources available as possible, it is considered that the risk is low.
46. CSO 2.3 requires that a variation decision may only be made if the expenditure involved has been approved. Paragraph 33 of this report confirms the financial implications of these variations.

#### **Director of Exchequer (for housing contracts only)**

47. The current partnering contract is a qualifying long term agreement (QLTA) under the terms of the Commonhold and Leasehold Reform Act 2002. This means that notices were served prior to entering into the agreement under Section 20 of the Landlord and Tenant Act 1985, which complied with the requirements of schedule 2 of the regulations. The schedule 2 requirements were for a 2 stage consultation process on the terms of the agreement and an OJEU compliant tendering process on the contract rates.
48. This secured the council's ability to recover service charge costs on packages of work to be let under the agreement without further tendering and requiring a shorter Section 20 consultation process under schedule 3 of the regulations on each package.
49. Where a QLTA is not in place landlords are required to consult leaseholders on packages of work under schedule 4 of the regulations. This is a two stage consultation process which requires that leaseholders are given the opportunity to nominate a contractor to tender for the package of work, and that competitive quotes for the work are obtained from at least two contractors, including any nominated contractor.
50. The Section 20 notices served on the partnering agreement identified a term of five years with an option to extend for a further 5 years. This term has now expired. Since the QLTA is no longer valid, service charges arising from packages let under the agreement will not be secure unless the council complies with Section 20 or obtains dispensation on the requirements from the First Tier Property Tribunal. Compliance with Section 20 on the proposal to extend is not possible since there will be no opportunity for leaseholders to nominate contractors or for the council to undertake a tendering process. The alternative route of schedule 4 – tendering individual packages either in the market or through the framework – are not considered to be viable in the current environment.
51. In order to ensure that the council's financial interests are protected, notices will be served on all leaseholders in the areas of the borough where the extended agreements are proposed. The notices will set out the council's proposal to

extend the QLTA, and the terms under which it is doing so. An application will be made to the First- tier Property Tribunal for dispensation from the full requirements of Section20 on the extension.

52. If dispensation is granted the council will be able to service charge costs arising from packages let under the agreement subject to the service of notices under schedule 3 of the regulations on those leaseholders affected by that package of work.
53. If dispensation is not granted it will not be possible to secure the service charge costs unless the work is separately tendered and the relevant statutory consultation is carried out under schedule 4, or notice is served under schedule 3 and dispensation is granted through the Tribunal on each package of work.

## BACKGROUND PAPERS

Background Papers	Held At	Contact
Gateway 2 'open' report - Housing Major Works Contracts – approved 26 March 2010	160 Tooley Street	Everton Roberts, 0207 525 7221
<a href="http://moderngov.southwark.gov.uk/documents/g3262/Public%20reports%20pack%20Friday%2026-Mar-2010%2012.30%20Executive.pdf?T=10">http://moderngov.southwark.gov.uk/documents/g3262/Public%20reports%20pack%20Friday%2026-Mar-2010%2012.30%20Executive.pdf?T=10</a> (pages 3-22)		
Gateway 3 'open' report – Extension Approval Housing Major Works Contracts 16 July 1015	160 Tooley Street	Everton Roberts, 0207 525 7221
<a href="http://moderngov.southwark.gov.uk/documents/s55697/Record%20of%20Decision.pdf">http://moderngov.southwark.gov.uk/documents/s55697/Record%20of%20Decision.pdf</a>		
Gateway 3 'open' report – Extension Approval Housing Major Works Contracts 19 September 2017	160 Tooley Street	Everton Roberts, 0207 525 7221
<a href="http://moderngov.southwark.gov.uk/documents/s70970/Report%20Gateway%203%20Variation%20Decision%20-%20Housing%20Major%20Works%20Contracts.pdf">http://moderngov.southwark.gov.uk/documents/s70970/Report%20Gateway%203%20Variation%20Decision%20-%20Housing%20Major%20Works%20Contracts.pdf</a>		

## APPENDICES

No	Title
None	None

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Kieron Williams, Housing Management and Modernisation	
<b>Lead Officer</b>	Michael Scorer, Strategic Director of Housing and Modernisation	
<b>Report Author</b>	David Hodgson, Director of Asset Management	
<b>Version</b>	Final	
<b>Dated</b>	4 June 2020	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Finance and Governance	Yes	Yes
Head of Procurement	Yes	Yes
Director of Law and Democracy	Yes	Yes
Director of Exchequer (for housing contracts only)	Yes	Yes
Cabinet Member	Yes	Yes
<b>Contract Review Boards</b>		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
<b>Cabinet Member</b>	Yes	Yes
<b>Date final report sent to Constitutional Team</b>		4 June 2020