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|------------------------------------|--------------------------------|--|---|
| <b>Item No.</b>                    | <b>Classification:</b><br>Open | <b>Date:</b><br>20 September 2022  | <b>Decision Taker:</b><br>Strategic Director of<br>Finance and Governance |
| <b>Report title:</b>               |                                | <b>Gateway 3 – Variation Decision</b><br>Responsive Repair and Maintenance - Fire<br>Protection Chargeable Contracts (North & South) |   |
| <b>Ward(s) or groups affected:</b> |                                | All  |   |
| <b>From:</b>                       |                                | Strategic Director of Housing and Modernisation  |   |

## RECOMMENDATION

1. That the Strategic Director of Finance and Governance approves the variation of the Fire Protection Chargeable contracts to PRB Estates Ltd to extend the term of the contracts for a period of ten months from 1 October 2022 to 31 July 2023 at an estimated additional cost of £1.383m making a total revised estimated contract value of £4.71m.

## BACKGROUND INFORMATION

2. A Gateway (GW) 2 report was approved on 29 June 2018 to award two fire protection chargeable contracts.
3. Contract A (north of the borough) was awarded to CLC Contractors Ltd (CLC) for a period of three years commencing on 1 October 2018 at an estimated annual sum of £500k making a total estimated contract value of £1.5m. This Contract A expired on 30 September 2021.
4. Contract B (south of the borough) was awarded to PRB Estates Ltd (PRB) for a period of three years commencing on 1 October 2018 at an estimated annual sum of £500k making a total estimated contract value of £1.5m.
5. The contracts undertake work to the communal areas of the social housing estate and therefore are chargeable to home owners.
6. By way of a GW3 report dated 16 September 2021, PRB Contract B was extended and included the backup for Contract A at its tendered rates for a one-year period. This extension was required to ensure service continuity, as due to lack of resources and the Covid-19 pandemic affecting the construction industry; it was not possible to carry out a new longer-term procurement exercise.
7. CLC Contract was not extended at this time due to performance and being unable to deliver the works at its tendered rates. PRB have been acting as back up to the north of the borough.
8. The scope of the contracts provide the following work streams:
  - a. Passive and active fire protection, including all/any associated works
  - b. Windows, doors, frames, linings and casings
  - c. Associated sundry building works
  - d. Scaffolding, mobile towers, hydraulic lifts and working platforms to facilitate the works and
  - e. Repair all external associated repairs.

9. PRB now provide all of the works across the borough as noted at paragraph 7 above.
10. The prices were fixed until 1 April 2020 and the contract contains a general maintenance index adjustment that is calculated and applied annually thereafter.
11. The actual expenditure to date against the Approved Expenditure is shown below in tables to illustrate the financial year and contract year expenditures.

| <b>Contract A - North</b>   |            |                      |                              |
|---|------------|----------------------|------------------------------|
| Financial Period  |            | Approved Expenditure | Total Expenditure Contract A |
| 01/10/2018  | 31/03/2019 | £250k                | £28k                         |
| 01/04/2019  | 31/03/2020 | £500k                | £195k                        |
| 01/04/2020  | 31/03/2021 | £500k                | £376k                        |
| 01/04/2021  | 31/03/2022 | £250k                | £557k                        |
| 01/04/2022  | 31/07/2022 | £0k                  | £442k                        |
| <b>Totals Actual</b>  |            | <b>£1.5m</b>         | <b>£1.599m</b>               |
| Projected expenditure to 30/09/2022   |            |                      |                              |
| 01/08/2022  | 30/09/2022 | £175k                |                              |
| Projected Expenditure for Proposed Extension Period   |            |                      |                              |
| 01/10/2022  | 31/07/2023 | £876k                |                              |
| <b>Total of the Actual and Projected Expenditure for the period 01/10/2018 to 30/09/2022 and the Proposed Extension</b> |            |                      | <b>£2.65m</b>                |

| <b>Contract B - South</b>                           |            |                      |                              |
|---|------------|----------------------|------------------------------|
| Financial Period                                    |            | Approved Expenditure | Total Expenditure Contract B |
| 01/10/2018  | 31/03/2019 | £250k                | £82k                         |
| 01/04/2019  | 31/03/2020 | £500k                | £364k                        |
| 01/04/2020  | 31/03/2021 | £500k                | £353k                        |
| 01/04/2021  | 31/03/2022 | £250k                | £410k                        |
| 01/04/2022  | 31/07/2022 | £0k                  | £245k                        |
| <b>Totals Actual</b>                                |            | <b>£1.5m</b>         | <b>£1.454m</b>               |
| Projected expenditure to 30/09/2022                 |            |                      |                              |
| 01/08/2022  | 30/09/2022 | £101k                |                              |
| Projected Expenditure for Proposed Extension Period |            |                      |                              |

|   |            |                |
|---|------------|----------------|
| 01/10/2022  | 31/07/2023 | £507k          |
| <b>Total of the Actual and Projected Expenditure for the period 01/10/2018 to 30/09/2022 and the Proposed Extension</b> |            | <b>£2.062m</b> |

12. The estimated annual expenditure in the original gateway approval was based on the anticipated demand for fire protection works. The actual expenditure on the contract is driven by demand. The number of task actions ordered through the fire protection contracts has been less than initially estimated.
13. Contract A (back-up at Contract B tendered rates) currently has expenditure of around £88k per month. Taking into account previous spend on this contract (£1.598m), anticipated spend until October 2022 (£175k) and a ten-month extension at current expenditure (£876k) will provide a total revised estimated contract value of £2.65m.
14. Contract B currently has expenditure of around £51k per month. Taking into account previous spend on this contract (£1.454m), anticipated spend until October 2022 (£101k) and a ten-month extension at current expenditure (£507k) will provide a total revised estimated contract value of £2.062m.
15. This report is seeking the Strategic Director of Finance and Governance to approve the extension to the term of both contracts with PRB for a period of ten months, Contract A on PRB's backup tendered rates and Contract B on PRB's tendered rates, to 31 July 2023 to ensure service continuity across the borough whilst a new longer-term procurement exercise is completed and new contracts are put in place.

## **KEY ISSUES FOR CONSIDERATION**

### **Key Aspects of Proposed Variation**

16. The nature of the proposed variation is to extend the term of Contract B, and acting as backup for the north of the borough (Contract A) with PRB for a period of ten months. The revised completion date will therefore be 31 July 2023.

### **Reasons for Variation**

17. This variation will ensure and enable the council to maintain continuity of the responsive and planned fire protection works contract, pending completion of its re-procurement exercise in May 2023, of which further details are outlined in paragraph 21 of this report.
18. The reason for the extension is that as a social landlord, it is essential that the council meets its obligations to ensure it has the capability to deliver fire protection works across the borough to manage its housing stock; to ensure resident and other user health and safety; and to reduce financial and reputational risks.
19. PRB are demonstrating good levels of performance in terms of quality of work evidenced on work orders. The contract also continues to provide a value for money service with rates consistent with the market.

20. Notice was given to PRB of this proposed variation and they provisionally agreed. The extension will be affected through a deed of variation.

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

21. A new procurement process for these works is currently underway. On 19 July 2021, the Strategic Director of Housing and Modernisation approved a GW1 report for the procurement of two new Fire Protection Chargeable Contracts. The Find a Tender Service (FTS) Contract Notice was published on 19 May 2022 with 11 PQQ submissions being received on or before 21 June 2022. The 11 PQQ submissions received are being evaluated and it is anticipated that the new Responsive and Planned Maintenance, Fire Protection Chargeable Contracts will be in place by July 2023. An extension to 31 July 2023 is being sought to ensure continuity in providing fire protection works across the borough to the existing contracts whilst the procurement exercise is completed and new contracts are awarded.

### **Alternative Options Considered**

22. The following alternative options to these extensions were considered by the asset management team:
- a. Do nothing - not viable for the reasons set out in paragraph 17 above.
  - b. Bring the service back in-house – not viable as the council lacks the resources (qualified and accredited experienced personnel) to be able to deliver the service.
  - c. Tender new contracts – this is currently underway as set out in paragraph 20.
  - d. Extend the existing contracts to 31 July 2023 – this is being proposed to ensure continuity in providing fire protection works across the borough to the existing contracts whilst the procurement exercise is completed and new contracts are awarded.

### **Identified risks for the Variation**

23. The table below identifies the specific risks associated with these contracts, the likelihood of occurrence and the controls in place to mitigate the risks.

| <b>R/N</b> | <b>Risk</b>  | <b>Likelihood</b> | <b>Risk Control</b>   |
|------------|--|-------------------|---|
| R1         | PRB ceases trading, goes into administration/liquidation | Low               | Please see financial check in paragraph 52 below.<br>PRB are being paid based on a monthly valuation dependent on the quantity of work claimed. If PRB should cease trading, they would only be paid for the work they have completed.<br>These monthly claims and payments help mitigate the risks involved of |

|    |   |        |   |
|----|---|--------|---|
|    |   |        | company failure.<br>PRB are monitored for any change in trading status via alerts from Companies House and industry information.  |
| R2 | PRB are unable to fulfil the requirements of the contract e.g. poor performance, leading to the need to terminate the contract. | Low    | If PRB fail then the council's works approved list will be used to distribute the works whilst new contracts are procured. Alternatively, an external framework may be accessed.  |
| R3 | Covid-19 pandemic risks   | Low    | PRB and the council developed an effective working procedure to ensure that PRB is able to operate safely on site, in their operational functions and comply with social distancing measures.   |
| R4 | Brexit implications:  | Low    | Contract managers and quantity surveyors liaise with PRB regarding their supply chains in respect of tariffs, administration costs and budgetary impacts.<br>Contract managers liaise with PRB to ensure that measures are taken to ensure continuous component supply where they are obtained from outside the UK. |
| R5 | Inflation   | Medium | The contract terms includes Building Material Indices and individual exceptional cases will be reviewed on their own merit.   |
| R6 | Possible risk of procurement challenge  | Low    | The council will ensure compliance with the procurement rules.  |

### **Policy framework implications**

24. The extension to these contracts will assist the council to continue to contribute to the council's Fairer Future Promise of quality affordable homes, improving housing standards and revitalising neighbourhoods.

### **Contract management and monitoring**

25. The council's contract register publishes the details of all contracts over £5,000 in value to meet the obligations of the Local Government Transparency Code. The Report Author must ensure that all appropriate details of this procurement are added to the contract register via the eProcurement System.
26. The contract will continue to be managed by a repairs team contract manager with dedicated officers who carry out daily joint inspection to

ensure quality and compliance with the contracts and specifications.

27. The contract manager continues to be assisted by a quantity surveyor from the commercial team to ensure financial integrity, compliance and performance management in regards to measuring key performance indicators (KPIs), carrying out credit checks and continuing with monthly valuations and progress meetings.
28. The contracts are subject to KPIs based on the time to complete work orders.
29. The table below shows the KPIs set for the contracts:

| No. | Key Performance Indicator (KPI)   | Minimum Target Percentage % | Council's Aspirational Target Objective % |
|-----|---|-----------------------------|---|
| 1   | Right first time  | 90%                         | 95%                                       |
| 2   | Percentage of Priority code 1 and 3 orders completed within the stipulated periods  | 95%                         | 98%                                       |
| 3   | Average Completion Days for all non-priority orders (15 days, aspirational 10 days) | 95%                         | 98%                                       |

30. Due to the Covid-19 pandemic, since March 2020, it has not been possible to publish performance data against these indicators.
31. Both the pandemic and Brexit have combined to delay the manufacture of timber goods and their delivery within and from outside the UK. This has impacted on the supply of timber goods used extensively in the fire protection works and an increased time to complete work orders.
32. PRB are producing works of a high standard. During the proposed extension period the existing contract management will continue to ensure work orders are completed to the existing high quality and also within stipulated timeframes.
33. Officers will also continue to produce an annual performance report for the Housing and Modernisation's Departmental Contracts Review Board in line with the council's Contracts Standing Orders.

**Community, equalities (including socio-economic) and health impacts**  
**Community impact statement**

34. PRB has provided work experience blocks to local schools and technical surveying experience to the council's technical inspectors to improve the quality of repairs ordering.
35. This report is seeking approval for a ten-month extension and there may be insufficient time available for PRB to provide employment and apprenticeship opportunities to the local community.

36. PRB have undertaken a number of Continuing Professional Development (CPD) events with council officers to improve specifications and scoping of fire protection work.

### **Equalities (including socio-economic) impact statement**

37. The Asset Management's Equality Impact Assessment (EqIA) undertaken in March 2022 deemed the potential impact of fire protection works on people with protected characteristics to be neutral and there has been no change.
38. The works are selected based on the condition of the assets to ensure that they are maintained and provide good homes to all residents equally.

### **Health impact statement**

39. This extension will not have a direct impact on residents' health but will ensure safety of buildings to protect residents and council employees.

### **Climate change implications**

40. Materials will provide thermal insulation such as fire doors thus reducing heat loss.

### **Social Value considerations**

41. 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.

### **Economic considerations**

42. The full cost to the council and the life span of the contract is set out in paragraphs 10 and 11 of this report.

### **Social considerations**

43. PRB have confirmed that all relevant staff continues to be paid in excess of the minimum London Living Wage (LLW) hourly rate and comply with council policies relating to GDPR, Blacklisting, Modern Slavery, Health & Safety and Equalities.

### **Environmental/Sustainability considerations**

44. PRB have a number of hybrid vehicles to deliver responsive fire protection works across the borough. Where possible, works have been planned and carried out in grouped localities to reduce the number of journeys, utilise public transport and fuel expended.

45. The contracts contain requirements to recycle materials to reduce impact on landfill sites.

**Financial Implications**

46. The total value of the contract is £4.71m.
47. The total combined revenue and estimated capital spend for the variation is made up as follows:
- a. Revenue £188k
  - b. Capital £1.195m
  - c. Total: £1.383m
48. The revenue budget for 2022/23 is £545k.

| <b>Actual and projected expenditure against revenue</b> |       |
|---|-------|
| Revenue Budget 2022/23                                  | £545k |
| 01/04/2022 - 31/07/2022 Actual Expenditure              | £75k  |
| 01/08/2022 – 30/09/2022 Projected Expenditure           | £38k  |
| 01/10/2022 – 31/03/2023 Projection for extension        | £113k |
| Total Expenditure Revenue Forecast                      | £226k |
|   |       |
| Provisional Revenue Budget 2023/24                      | £545k |
| 01/04/2023 – 31/07/2023                                 | £75k  |

49. There is also a £3m allocation for capitalisation of repairs from which around 90% of fire protection works are funded. This requested variation will be met by the existing revenue budget and capital resources.
50. The contracts will be extended using the same prices as originally tendered. Any changes in spend will be dependent upon the quantity of work ordered through these contracts.
51. The level of activity is anticipated to be maintained at previous levels and spend will be distributed across the two contracts geographically.
52. A Bureau van Dijk (BvD) FAME financial check was carried out for PRB on 19 April 2022 with the following results:



|                              | <b>PRB Estates Ltd</b>    |
|------------------------------|---------------------------|
| <b>Credit Score</b>          | Secure                    |
| <b>Turnover</b>              | Turnover for 2021<br>£2.2 |
| <b>Likelihood of failure</b> | Low                       |

53. The asset management procurement team (AMPT) contracts compliance officer monitors changes to the financial status via alerts from BvD FAME and Companies House.

### **Legal Implications**

54. Please see supplementary advice from the Director of Law and Governance.

### **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

#### **Strategic Director of Finance and Governance (H&M 22/079)**

55. The Strategic Director of Finance and Governance notes the contents of this report, in particular the financial implications section. As stated within the report, this contract variation can be contained within existing budgets. There are no direct financial implications from the approval of this contract variation, as the chargeable rates for works will remain the same.

### **Head of Procurement**

56. This report seeks the approval of the Strategic Director of Finance and Governance approves the variation of the Fire Protection Chargeable contracts to PRB Estates Ltd to extend the term of the contracts for ten months from 1 October 2022 to 31 July 2023. The estimated additional cost for this period is £1.383m, making a total revised estimated contract value of £4.71m.
57. The proposed variation is set out in paragraph 16, with the rationale behind with in paragraphs 17-20 as the arrangements for the future service beyond this extension is detailed in paragraph 21.
58. The risks are detailed in the table under para. 23, with the plans for the management and monitoring of the contract are in paras. 25-33.
59. The contract pays London Living Wage and the social value offering is set out in paragraphs 41-45. The Community, Equalities and Health Impact statements in relation to the extension are detailed in paragraphs 34-39 with Climate Change information in paragraph 40.

## **Director of Law and Governance**


60. This report seeks the approval of the Strategic Director of Finance and Governance to the extension of the Fire Protection Chargeable Contracts to PRB Estates Ltd for a period of ten months from 1 October 2022 to 31 July 2023 at an estimated additional cost of £1.383m making a total revised estimated contract value of £4.71m.
61. This report sets out the extent of the variation and the reasons why the variation is necessary. As the value of the proposed variation is £1m or more but below £10 million, the decision to approve the variation is reserved to the Strategic Director of Finance and Governance after consideration by the CCRB of this report.
62. The procurement of these contracts were not subject to the tendering requirements of the Public Contract Regulations 2015 (PCR15) due to their value, and the extension values also fall below the PCR15 threshold.
63. The contracts are being extended for a short period to allow a new longer term procurement exercise to be carried out as outlined in paragraph 21 of this report, and accordingly the risk of challenge to these variations are considered low.
64. Contract Standing Order 2.3 requires that no steps be taken to vary a contract unless the expenditure involved has been included in approved estimates, or is otherwise approved by the council. Paragraphs 46 to 51 confirms the financial implications of these variations.

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

65. The current Responsive Repair and Maintenance – Fire Protection contracts are qualifying long term agreements that we entered into in 2018 for a three year term. In October 2021 we served Section 20 consultation notices on leaseholders extending the contracts for an additional 12 months to take them to October 2022. We also served the first stage consultation notices for the new contracts in August 2021.
66. The further extension of the contract, as a result of delays in procurement, is on the same terms as the original extension. It recognises the need for continuity of service and the competitive costs that result from the extension of the original contract, which will result in lower charges to leaseholders.
67. Although day to day repairs will be carried out under this extension, pre-planned large items of work should be subject to tender/quotes. In these circumstances the consultation requirement is that we serve an initial Notice of Intention prior to inviting quotes and a further Notice of Proposal that makes the quotes available to leaseholders.

**PART A – TO BE COMPLETED FOR ALL DELEGATED DECISIONS**

Under the powers delegated to me in accordance with the council’s Contract Standing Orders, I authorise action in accordance with the recommendation(s) contained in the above report (and as otherwise recorded in Part B below).

Signature .....  ..... Date 29 September 2022

Designation Strategic Director of Finance and Governance

**PART B – TO BE COMPLETED BY THE DECISION TAKER FOR:**

- 1) All key decisions taken by officers
- 2) Any non-key decisions that are sufficiently important and/or sensitive that a reasonable member of the public would reasonably expect it to be publicly available (see ‘FOR DELEGATED DECISIONS’ section of the guidance).

|  |
|--|
| <b>1. DECISION(S)</b>                            |
| As set out in the recommendations of the report. |

|                                |
|--------------------------------|
| <b>2. REASONS FOR DECISION</b> |
| As set out in the report.      |

|   |
|---|
| <b>3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED BY THE OFFICER WHEN MAKING THE DECISION</b> |
| As set out in the report.   |

|  |
|--|
| <b>4. ANY CONFLICT OF INTEREST DECLARED BY ANY CABINET MEMBER WHO IS CONSULTED BY THE OFFICER WHICH RELATES TO THIS DECISION *</b> |
| As set out in the report.  |

\* Contract standing order 6.6.1 states that for contract Variations with an Estimated Contract Value of £100,000 or more, the lead contract officer (LCO) must consult with the relevant cabinet member before the decision is implemented.

**5. NOTE OF ANY DISPENSATION GRANTED BY THE MONITORING OFFICER, IN RESPECT OF ANY DECLARED CONFLICT OF INTEREST**

*If a decision taker or cabinet member is unsure as to whether there is a conflict of interest, they should contact the legal governance team for advice.*

As set out in the report.

**6. DECLARATION ON CONFLICTS OF INTERESTS**

**I declare that I was informed of no conflicts of interests.\***

or

~~**I declare that I was informed of the conflicts of interests set out in Part B4.\***~~

(\* - Please delete as appropriate)

**7. CONSIDERATION GIVEN TO WHETHER, AS A NON-KEY DECISION, THIS SHOULD BE FORWARDED TO THE CONSTITUTIONAL TEAM FOR PUBLICATION IN ACCORDANCE WITH REGULATION 13(4)\***

*The decision taker should consider whether although a non-key decision, the decision is sufficiently important and/or sensitive that a reasonable member of the public would reasonably expect it to be publicly available. Where there is any doubt, having considered the importance and/or sensitivity of a decision, it should be deemed that Regulation 13(4) would apply.*

**I consider that the decision be made available for publication under Regulation 13(4).\***

or

~~**I do not consider that the decision be made available for publication under Regulation 13(4).\***~~

(\* - Please delete as appropriate)

\* Under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, the council is required to put in place a scheme for recording and publishing some officer executive decisions. This process is sometimes referred to as "Regulation 13(4)".

## BACKGROUND PAPERS

| Background Papers   | Held At                                     | Contact                    |
|---|---|----------------------------|
| <b>Gateway 2 - Contract Award Approval</b> Responsive Repair and Maintenance Fire Protection Chargeable Contracts (North & South) | Housing and Modernisation, Asset Management | Gavin Duncumb<br>Ext 50685 |
| <b>Gateway 3 – Variation Decision</b> Responsive Repair and Maintenance Fire Protection Chargeable Contracts (North & South)      | Housing and Modernisation, Asset Management | Gavin Duncumb<br>Ext 50685 |

## APPENDICES

| No         | Title       |
|------------|-------------|
| Appendix 1 | EqlA report |

## AUDIT TRAIL

|   |   |                          |
|---|---|--------------------------|
| <b>Lead Officer</b>   | Dave Hodgson, Director of Asset Management (AM) |                          |
| <b>Report Author</b>  | Reuben Humphries, AM Procurement Manager        |                          |
| <b>Version</b>  | Final   |                          |
| <b>Dated</b>  | 20 September 2022                               |                          |
| <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 Governance  | 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> |     | 30 September 2022 |