

Decision Taker:	Strategic Director of Children and Adult Services
Date:	24 May 2024
Report title:	Gateway 3 – Variation Decision Asbestos Consultancy Services Contract A – surveying and bulk sampling and Contract B – air sampling and monitoring
Ward(s) or groups affected:	All
Classification:	Open
Reason for lateness (if applicable):	Not applicable
From:	Asset Management Commercial Manager

1. That the Strategic Director of Children and Adult Services formalises his prior approval to the variation of the Asbestos Consultancy Services Contract A, surveying and bulk sampling to Pennington Choices Ltd to extend the term of the contract for a period of 16 months from 1 January 2024 to 30 April 2025 (as further detailed in paragraph 15) at an estimated additional cost of £276.5k making a total revised estimated contract value of £1.861.5m.
2. That the Strategic Director of Children and Adult Services formalises his prior approval to the variation of the Asbestos Consultancy Services Contract B, air sampling and monitoring to Armstrong York Asbestos Environmental Ltd to extend the term of the contract for a period 16 months from 1 January 2024 to 30 April 2025 (as further detailed in paragraph 15) at an estimated additional cost of £46.5k making a total revised estimated contract value of £370.5k.

BACKGROUND INFORMATION

3. A Gateway (GW) 2 report was approved on 30 September 2016 to award the Asbestos Consultancy Services:
4. Contract A for surveying and bulk sampling to Pennington Choices Ltd (Pennington) for an estimated annual sum of £1.2m for an initial period of four years commencing on 1 January 2017 with the option to extend for a further two years making a total estimated value of £7.2m; and
5. Contract B for air sampling and monitoring to Armstrong York Asbestos Environmental Ltd (Armstrong York) for an estimated annual sum of £274k for an initial period of four years commencing on 1 January 2017 with the option to extend for a further two years making a total estimated value of £1.64m.
6. By way of two GW3 reports dated 10 November 2020 and 5 January 2023, the contracts were extended until 31 December 2023 exercising the option in the contract to extend for a further two years. These extensions were required to ensure service continuity.
7. The scope of the contracts encompass the following work streams:

- Contract A: surveying and bulk sampling of the councils residential and other premises for suspected asbestos containing materials.
 - Contract B: air sampling and monitoring after asbestos removal to ensure airborne asbestos fibres are absent before the area is occupied.
8. These contracts serve voids, day-to-day repairs and kitchen and bathroom replacements for the asset management team.
9. Both contracts contain a Consumer Price Index (CPI) adjustment that is due each January.
10. The actual expenditure to date against the original GW2 approval is shown below in tables to illustrate the financial year and contract year expenditures.
11. Contract spend in financial years:

Contract A – surveying and bulk sampling – Pennington					
Financial Period		Original Gateway Approval	Total Expenditure	Breakdown of actual expenditure	
				Revenue	Capital
01/01/2017	31/03/2017	£50k	£44k	£44k	£0
01/04/2017	31/03/2018	£325k	£232k	£232k	£0
01/04/2018	31/03/2019	£325k	£258k	£258k	£0
01/04/2019	31/03/2020	£325k	£247k	£247k	£0
01/04/2020	31/03/2021	£325k	£173k	£173k	£0
01/04/2021	31/03/2022	£325k	£255k	£255k	£0
01/04/2022	31/03/2023	£325k	£281k	£281k	£0
01/04/2023	31/09/2023*	£325k	£58k	£58k	£0
Totals Actual		£2.32m	£1.54m	£1.54m	£0
Projected Expenditure to					
01/10/2023	31/12/2023	£45k			
Projected Expenditure for Proposed Extension Period					
01/01/2024	30/04/2025	£276.5k			
Total of the Actual and Projected Expenditure for period 01/06/2018 to 30/09/2023 and the Proposed Extension		£1.861.5m			

Contract B – Air Sampling and Monitoring – Armstrong York					
Financial Period		Original Gateway Approval	Total Expenditure	Breakdown of actual expenditure	
				Revenue	Capital
01/01/2017	31/03/2017	£20k	£18k	£18k	£0
01/04/2017	31/03/2018	£100k	£59k	£59k	£0
01/04/2018	31/03/2019	£100k	£56k	£56k	£0
01/04/2019	31/03/2020	£100k	£47k	£47k	£0
01/04/2020	31/03/2021	£100k	£17k	£17k	£0
01/04/2021	31/03/2022	£100k	£87k	£87k	£0
01/04/2022	31/03/2023	£100k	£28k	£28k	£0
01/04/2023	31/09/2023*	£100k	£9k	£9k	£0
Totals Actual		£720k	£321k	£321k	£0
Projected Expenditure to					
01/10/2023	31/12/2023	£3k			
Projected Expenditure for Proposed Extension Period					
01/01/2024	30/04/2025	£46.5k			
Total of the Actual and Projected Expenditure for period 01/06/2018 to 30/09/2023 and the Proposed Extension		£370.5k			

12. The estimated annual expenditure based on the actual expenditure in preceding years and the level of activity has declined. Major improvements to data held in the asset register and the asbestos register have reduced the demand for the services.
13. Pennington currently has expenditure of around £22.5k per month. Taking into account previous spend on this contract (£1.54m), anticipated spend until 31 December 2023 (£45k) and a new 16 month extension at current expenditure (£276.5k) will provide a total revised estimated contract value of £1.861.5m.
14. Armstrong York currently has expenditure of around £1.5k per month. Taking into account previous spend on this contract (£321k), anticipated spend until 31 December 2023 (£3k) and a new 16 month extension at current expenditure (£46.5k) will provide a total revised estimated contract value of £370.5k.
15. This report is seeking the Strategic Director to formalise his prior approval to the extension to the term of the contract by 16 months to 30 April 2025 to ensure service continuity to meet the legislative requirements of the Control of Asbestos Regulations 2012, specifically

Regulation 4 the Duty to Manage, to allow the day to day management of repairs and minor works carried out to residential properties, communal areas and operational buildings owned by the council. The separation of the contracts ensures compliance with the council's Management of Asbestos Policy - "Consultants may not supervise or undertake monitoring of any work for which they completed the survey and risk assessment."

KEY ISSUES FOR CONSIDERATION

Key Aspects of Proposed Variation

16. The nature of the proposed variations is to extend the term of the contracts with Pennington and Armstrong York for a further period of 16 months. The revised expiry date will therefore be 30 April 2025.

Reasons for Variation

17. This variation will ensure and enable the council to maintain continuity to access to asbestos consultancy services (surveying and bulk sampling, and air sampling and monitoring) to comply with the relevant law; manage its housing stock; resident and other user safety; and to reduce financial and reputational risks.
18. Both contracts are demonstrating high levels of performance against the contract key performance indicators (KPIs), as detailed in paragraph 28 below, and continue to provide a value for money service.
19. A variation to the current contracts was provisionally agreed in October 2023, subject to GW approval, with Pennington and Armstrong York that will form part of their contracts, which will be executed through a deed of variation.
20. The contract has a current end date of 31 December 2023 unless the extension provision is implemented. Once implementable, the contracts will continue from their current end date until 30 April 2025. Timetable for new procurement is detailed as follows:
 - GW1 – 26 March 2024
 - Issue Standard Selection Questionnaire (SQ) – 14 May 2024
 - SQ Return – 18 June 2024
 - SQ Evaluation – 19 June 2024 – 31 July 2024
 - Issue Invitation to Tender (ITT) – 15 August 2024
 - Tender return – 12 September 2024
 - Tender Evaluation – September 2024 – October 2024
 - Council approval decision – October 2024 – December 2024
 - Contract award – January 2025
 - Mobilisation/TUPE – January 2025 – April 2025

Future Proposals for this Service

21. For the new procurement process, the Find a Tender Service (FTS) Contract Notice is anticipated to be published on 14 May 2024 with a SQ submission deadline of 18 June 2024. The SQ submissions when received will be evaluated and the ITT Tender Documents is anticipated to be published to the shortlisted applicants on 15 August 2024 with an anticipated date in April 2025 for the asbestos consultancy contracts to be in place. An extension to 30 April 2025 is being sought to ensure continuity in providing surveying and bulk sampling and air sampling and monitoring across the borough to the existing contracts whilst the procurement exercise is undertaken, and a new contract awarded.

Alternative Options Considered

22. At this stage of the contract, three other options were considered but rejected for the following reasons:

23. Do nothing - not viable for the reasons set out in paragraph 17 above.

24. Bring the work back in-house – not viable as the council lacks the resources (qualified and experienced personnel and equipment) to be able to deliver the work.

25. Competitively tender a new contract – not viable for this extension as there is a risk that this would increase prices in line with those seen across the industry therefore reducing value for money currently achieved from the current contracts. Furthermore, given Pennington and AY are performing very well and providing a quality service, calling off from a third party framework or carrying out a procurement exercise process was deemed not to be appropriate at this stage given the economic uncertainty due to Covid-19 and price rises due to Brexit, as this could have a further detrimental impact on value for money of these contracts.

26. External Framework – this is currently viable as South East Consortium's (SEC) current Asbestos Inspections framework commenced on 18 August 2020 and expires on 17 August 2024. Confirmation received from SEC that this framework is being re-procured the council will have the option to use if in place in time. London Housing Consortium (LHC) AS2 Asbestos Services framework expired in May 2022. LHC confirmed that they will not be re-procuring another Asbestos Services framework.

27. As a procurement exercise is anticipated to be undertaken in May 2024 to procure two new contracts and the new contracts will be in place by April 2025, extending the existing contract to 30 April 2025 is proposed to ensure continuity in providing asbestos consultancy services across the borough.

Identified risks for the Variation

28. The table below identifies the specific risks associated with the contract, the likelihood of occurrence and the controls in place to mitigate the risks:

R/N	Risk	Likelihood	Risk Control
R1	Pennington and/or Armstrong York become insolvent leaving works incomplete.	Low	Please see financial checks in paragraph 53 below. Pennington and Armstrong York become are paid on the basis of a monthly valuation dependent on the quantity of work claimed. Should they become insolvent, they would only be paid for the work they complete. The monthly claims and payments help mitigate the risks involved in company failure. Pennington and Armstrong York will continue to be regularly monitored.
R2	Pennington and/or Armstrong York unable to fulfil the requirements of the contract e.g. poor performance, leading to the need to terminate the contract.	Low	If Pennington and/or Armstrong York fails, then the council would procure alternative work provision on an interim basis whilst it reprocess a longer term contract. The Alcumus SafeContractor approved list of contractors would be used to distribute the works required.
R3	Risk of disruption to supply chain following UK's departure from the European Union (EU).	Low	Contract Managers and Quantity Surveyors liaise with Pennington and Armstrong York regarding their supply chain in respect of tariffs, administration costs and budgetary impacts. Contract Managers also liaise with Pennington and Armstrong York to ensure that measures are taken to ensure continuous component supply where they are obtained from the EU.
R4	Inflation	Medium	The contract terms includes Building Material Indices and individual exceptional cases will be reviewed on their own merit.
R5	Possible risk of procurement challenge	Low	Given this is a short term interim extension and a new procurement exercise will be undertaken where interested parties can bid coupled with the need for the council to ensure and maintain continuity of the asbestos consultancy services, as a social landlord, the risk of procurement challenge is low.

Policy Framework implications

29. The extension to these contracts will assist the council to continue to contribute to the council's Fairer Future Promise of a place to call home and a greener borough.
30. The extension to these contracts will enable the council to ensure that the council fulfils its obligations as a landlord and employer under the Health and Safety at Work Act 1974, the Control of Asbestos Regulations 2012.

Contract management and monitoring

31. 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.
32. Both contracts will continue to be managed by a team of dedicated asbestos inspectors who carry out daily joint inspection to ensure quality and compliance with the contracts and specifications. Monthly contract meetings are held with each company to review performance, address any issues, and advise of any changes. Meetings minutes are taken with action points identified and shared with relevant persons.
33. Annual performance reviews continue to be carried out in line with the council's Contract Standing Orders (CSOs).
34. The tables below shows the key performance indicators (KPIs) for both the contracts:

Contract A – Surveying and bulk sampling – Pennington					
KPI		Min Target %	Council's Aspirational Objective %	2021/22	2022/23
1	Percentage of urgent Orders commenced during that month and completed within the stipulated time periods in each Order	95%	100%	95.86	98.64
2	Percentage of Priority Code 2, 3 and 4 Orders completed within the stipulated time periods.	95%	98%	N/A	N/A
3	Percentage of Orders where a report, in accordance with the contract documents, has been received within	95%	100%	N/A	N/A

	the specified time periods Notice) has not been issued within the calendar month				
4	Number of Orders that have not been completed within the stipulated time periods.	20no	10no	N/A	N/A
5	Response to queries or complaints from Residents and Authority officers to meet the Authority's Complaints Policy (as contained in Appendix "A") i.e. within 5 days.	98%	100%	100%	100%

Contract B – Air Sampling and Monitoring – Armstrong York					
KPI		Min Target %	Council's Aspirational Objective %	2021/22	2022/23
1	Percentage of urgent Orders commenced during that month and completed within the stipulated time periods in each Order	95%	100%	93.15%	95.92%
2	Percentage of Priority Code 2, 3 and 4 Orders completed within the stipulated time periods.	95%	98%	N/A	N/A
3	Percentage of Orders where a report, in accordance with the contract documents, has been received within the specified time periods Notice) has not been issued within the calendar month	95%	100%	100%	100%
4	Number of Orders that have not been completed within the stipulated time periods.	20no	10no	0	0
5	Response to queries or complaints from Residents and Authority officers to meet the Authority's Complaints Policy (as contained in Appendix "A") i.e. within 5 days.	98%	100%	100%	100%

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

35. Both contracts will be of low impact to residents as the majority of surveys are carried out to properties prior to refurbishments. Any surveys undertaken will be under controlled conditions, which will mean restricted access in areas where samples are being obtained and/or air sampling and monitoring is being carried out.

36. Pennington and Armstrong York confirmed that they are able to continue to meet the requirements of the Fairer Future Procurement Framework and this will be reported as part of the ongoing annual performance review.

Equalities (including socio-economic) impact statement

37. The bulk of these services is delivered to void properties and it is essential to ensure timescales are kept to a minimum to ensure properties are re-let promptly reducing the pressure on housing waiting lists.

Health impact statement

38. Access to the surveying and bulk sampling, and air sampling and monitoring contracts, as a landlord, will ensure that the council fulfils its obligations as a landlord and employer under the Health and Safety at Work Act 1974, the Control of Asbestos Regulations 2012 and meets the requirements of the council's Management of Asbestos Policy.

Climate change implications

39. Pennington's are a leading consultant in measuring carbon reduction and implementing carbon zero plans.

40. Pennington's have achieved PAS2060 (carbon neutrality) whilst Armstrong York are working to obtain this accreditation.

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 wellbeing 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 Implications

42. The full cost to the council and the life span of the contract are set out in paragraphs 4 - 5 of this report. London Living Wage (LLW) is paid under these contracts.

Social considerations

43. Both Pennington and Armstrong York confirmed that all relevant staff continue to be paid the minimum LLW hourly rate and comply with council policies relating to GDPR, Blacklisting, Modern Slavery, Health and Safety and Equalities and will continue to be required to demonstrate that they operate an Equal Opportunities Policy, comply with the provisions of the Equalities Legislation, the Employment Relations Act 1999 (Blacklists) Regulations 2010 and the Prevent Duty under section 26 of the Counter-Terrorism and Security Act 2015.
44. Pennington's confirmed that they provided an apprentice opportunity for a trainee surveyor on the contract. Both Pennington and Armstrong York confirmed that they have provided work experience for two students.
45. Technical trainees for both companies require post-secondary science or engineering qualifications or relevant work experience, and thus the career paths are not open to school-leavers.
46. Whilst Pennington and Armstrong York offered work placement opportunities for local young persons who are not in education, employment or training, this proved unachievable as both companies' administration and laboratory facilities are based outside of London in Warrington and Essex.
47. For this proposed extension period there may be insufficient time available for both Pennington and Armstrong York to provide employment and apprenticeship opportunities.

Environmental/Sustainability considerations

48. Both Pennington and Armstrong York use hybrid vehicles with the minimisation of journeys needed. Surveyors are based regionally to help minimise journey times and be able to respond to emergencies. Both Pennington and Armstrong York maintain fleets of modern vehicles and use ERP IT systems to manage call responses and reduce journey times.
49. Both Pennington and Armstrong York provide waste consignments to ensure materials containing asbestos are disposed of at controlled sites and not fly-tipped.

Financial implications

50. The contract value including and excluding VAT is:

	Contract A Pennington	Contract B Armstrong York	Total
Original total cost	£1.482m	£0.312m	£1.794m
Total value of any previous variations	£0.103m	£0.012m	£0.115m
Value of proposed variation	£0.276.5m	£0.046.5m	£0.323m

Revised total cost	£1.861.5m	£0.370.5m	£2.232m
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51. The revenue budget for 2023/2024 is £387,500.

52. 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 this contract.

53. Bureau van Dijk (BvD) FAME financial checks were carried out on Pennington and Armstrong York on 5 December 2023 with the following results:

	Pennington	Armstrong York
Credit Score	Secure	Secure
Likelihood of failure	Low	Low

54. The AM Contract Compliance Officer will continue to monitor changes to the financial status of both contractors via alerts from BvD FAME and Companies House. No significant alerts noted at present for either Pennington or Armstrong York.

Legal Implications

55. Please see the supplementary advice from the Assistant Chief Executive –Governance and Assurance below.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance (H&M 23/079)

56. This report seeks approval from the Strategic Director of Housing for the extension of the Asbestos consultancy services contracts as outlined in this report. Following the award of the contracts, the actual cost will be determined by both the overall priorities of the council's asset management programme and the resources available to fund it.

Head of Procurement

57. This report seeks approval from the Strategic Director of Housing to vary the Asbestos Consultancy Service Contract A – surveying and bulk sampling and Contract B – air sampling and monitoring for a period of 16 months from 1 January 2024 to 30 April 2025 with Pennington Choices Ltd (contract A) at a cost of £276.5k and Armstrong York Asbestos Environmental Ltd (contract B) at a cost of £46.5k making the total contract value £2.232.

58. The Strategic Director of Housing notes the reasons for the variation are detailed in paragraphs 17 to 19, the risks are detailed in paragraph 28, management and monitoring of the contract are detailed in paragraphs 31 to 34, the impact on equalities, health and climate change are detailed in paragraphs 36 to 41, there is NO confirmation with regard to the payment of London Living Wage and there are NO additional social value commitments with regard to this variation.

Assistance Chief Executive – Governance and Assurance

59. This report seeks the approval of the Strategic Director of Housing to a variation of the Asbestos Consultancy Services Contract A (surveying and bulk sampling) being performed by Pennington Choices Ltd and the Asbestos Consultancy Services Contract B (air sampling and monitoring) being performed by Armstrong York Asbestos Environmental Ltd by extending the duration of the contracts for a period of 16 months from 1 January 2024 for the sums set out in paragraphs 1 and 2 of this report.

60. The reasons for the variation are outlined in paragraphs 17 to 20 of this report.

61. The contracts were procured in accordance with the Public Contracts Regulations (PCR) 2015 and as such it is necessary to ensure that any variation of these contracts are permitted by the PCR 2015. Regulation 72 of the PCR 2015 permits modifications to be made to contracts during their term, in certain circumstances. This includes under regulation 72(1)(e), where the modification, irrespective of their value, is not substantial within the meaning of regulation 72(8). Having considered the circumstances noted in regulation 72(8) that notes those modifications which are considered substantial, it is felt that Contract A and Contract B can be varied under this provision. The two contracts are being extended for a short period to allow a new longer term procurement exercise to be carried out as outlined in paragraphs 20, 21 and 27 of this report, and accordingly the risk of challenge to these extensions are considered low.

62. The council's Contracts Standing Order 2.3 requires that no steps are taken to vary a contract unless the expenditure involved has been included in approved revenue or capital estimates or is otherwise approved by the council. Paragraphs 50 to 52 of this report confirm how the proposed additional expenditure will be resourced.

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	 David Quirke-Thornton
Date	23 May 2024
Designation	Strategic Director for Children and Adults

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).

1. DECISION(S)

As set out in the recommendations of the report.

2. REASONS FOR DECISION

As set out in the report.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED BY THE OFFICER WHEN MAKING THE DECISION

None

4. ANY CONFLICT OF INTEREST DECLARED BY ANY CABINET MEMBER WHO IS CONSULTED BY THE OFFICER WHICH RELATES TO THIS DECISION

None

* 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.


None

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.*~~

Signature: 
David Quirke-Thornton

Date: 23 May 2024

Designation: Strategic Director for Children and Adults

(* - Please delete as appropriate)

BACKGROUND PAPERS

Background Papers	Held At	Contact
None		

APPENDICES

No	Title
None	

AUDIT TRAIL

Lead Officer	Dave Hodgson - Director of Asset Management
Report Author	Sarah Buchanan – Asset Management Procurement Manager
Version	Final
Dated	23 May 2024
Key Decision?	Yes

CONSULTATION WITH OTHER OFFICERS/DIRECTORATES/CABINET MEMBER

Officer Title	Comments Sought	Comments included
Strategic Director of Finance	Yes	Yes
Head of Procurement	Yes	Yes
Assistant Chief Executive – Governance and Assurance	Yes	Yes

Director of Exchequer (for Housing contracts only)	No	No
Cabinet Member	Yes	Yes
Contract Review Boards		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team		24 May 2024