

Meeting name:	Strategic Director of Housing
Date:	8 November 2024
Report title:	Gateway 3 – Variation Decision Communal Ventilation Replacement Works
Ward(s) or groups affected:	All
Classification:	Open
Reason for lateness (if applicable):	Not applicable
From:	Head of Engineering

RECOMMENDATIONS

1. That the Strategic Director of Housing approves the variation of the communal ventilation replacement contract to Ductclean (UK) Ltd to extend the term of the contract for an additional period of nine months from 1 November 2024 to 31 July 2025 (as further detailed in paragraph 9 below) at an estimated additional cost of £726k making a total revised estimated contract value of £3.992m.

BACKGROUND INFORMATION

2. A Gateway (GW) 2 report was approved on 12 September 2016 by the then Strategic Director of Housing and Modernisation to award the communal ventilation replacement contract to Ductclean (UK) Ltd trading as DCUK FM for a period of five years commencing on 1 November 2016 at an estimated annual sum of £385k with the option to extend for a further three years (in increments at the council's discretion) making a total estimated contract value of £3.080m.
3. By way of two GW3 reports dated 12 May 2021 and 1 November 2023 this contract was extended until 31 October 2024 exercising the full three-year option to extend to ensure service continuity.
4. The scope of this contract encompasses the following work streams:
 - replacement of communal ventilation plant.
 - refurbishment of ductwork and grills to improve fire safety; and
 - annual maintenance service checks and cleaning planned preventative maintenance (PPM) to ensure operation and provide a means to extract moisture and odours from kitchen and bathroom areas.

5. This contract contains a Building Maintenance Indices (BMI) adjustment that is due each April.
6. The actual expenditure to date against the original GW approval is shown below in a table to illustrate the financial year expenditure.
7. Contract spend in financial years:

DCUK FM – Communal Ventilation Replacement Contract					
Financial Period		Original Gateway Approval	Total Expenditure	Revenue Spend	Capital Spend
01/11/2016	31/03/2017	£160k	£352k	£125k	£227k
01/04/2017	31/03/2018	£385k	£352k	£43k	£309k
01/04/2018	31/03/2019	£385k	£365k	£70k	£295k
01/04/2019	31/03/2020	£385k	£92k	£57k	£35k
01/04/2020	31/03/2021	£385k	£385k	£127k	£258k
01/04/2021	31/03/2022	£385k	£410k	£69k	£341
01/04/2022	31/03/2023	£385k	£702k	£91k	£611k
01/04/2023	31/03/2024	£385k	£533k	£46k	£487k
01/04/2024	31/08/2024	£160k	£68k	£13k	£55k
Totals Actual ^{1*}		£3.015m	£3.259m	£0.41m	£2.618m
Projected expenditure until end of current extension Period					
01/09/2024	31/10/2024	£7k	£7k	£7k	£0k
Total Projected		£7k	£7k	£7k	£0k
Projected expenditure for Proposed Extension Period ^{2*}					
01/11/2024	31/07/2025	£726k			
Total of the Actual & Projected Expenditure for the period 01/11/2016 to 31/10/2024 and the Proposed Extension			£3.992m		

NOTE: 1* - Additional capital funding was provided previously. The extension period has additional capital funding due to the need to ensure in-scope assets are compliant with the new Building Safety requirements.

8. In the original GW approval, the estimated annual expenditure was based on the anticipated demand for communal ventilation replacement work. The initial overspend was due to greater demand on obsolete equipment and legal disrepair cases. Budget re-profiling in 2019/2020 was required due to increase in financial pressures on the quality homes improvement programme.
9. The contract currently has revenue expenditure of around £3.5k per month, however the contract will be used in 2024 to 2025 to deliver building safety improvements to reduce fire spread at an additional cost of £695k. Therefore, anticipated spend for the contract is £726k.
10. Considering DCUK FM's previous spend (£3.259m), anticipated spend until October 2024 (£7k) and the nine-month extension (£726k), this will provide a total revised estimated contract

value of £3.992m. The value of this extension as a percentage is estimated to be 23% of the initial approved contract value.

11. This report is seeking the Strategic Director of Housing's approval to a further nine-month extension to the term of this contract from 1 November 2024 to 31 July 2025 to ensure service continuity and compliance whilst a longer-term procurement exercise is carried out to help cover any potential delays in completing the new procurement exercise at the conclusion of this requested extension.

KEY ISSUES FOR CONSIDERATION

Key Aspects of Proposed Variation

12. The nature of this proposed variation is to extend the term of the contract with DCUK FM for a further period of nine months, which has proven necessary to extend beyond the initially planned period. The revised expiry date will therefore be 31 July 2025.

Reasons for Variation

13. The reason for the extension (as noted in paragraph 12 above) is that, as a social housing provider, it is essential that the council meets its statutory obligations under the Landlord and Tenant Act 1985 to ensure it has the capacity to continue to deliver communal ventilation repair works across the borough; to manage its housing stock; to ensure residents and other user's health and safety; and to reduce financial and reputational risks pending completion of its new procurement exercise in March 2025.

14. DCUK FM is demonstrating good levels of performance as detailed in paragraphs 30 and 32 below and continues to provide a value for money service.

15. As noted in paragraph 2 above, DCUK FM agreed in principle to forego the annual BMI rise that was due to it in April 2024, which, subject to approval to this report, will form part of their contract effected through a deed of variation.

16. Subject to approval to this proposed variation to extend the term of this contract with DCUK FM, the anticipated intentional timetable for the new procurement exercise is detailed below as follows:

- Issue Invitation to Tender (ITT) – October 2024
- ITT return – November 2024
- ITT Evaluation – November 2024
- Notice of Proposal (NOP) – December 2024 to February 2025
- Council approval decision – March 2025
- Contract Award – April 2025
- Mobilisation/TUPE – April 2025 to July 2025
- Contract Start – August 2025

Future Proposals for this Service

17. A GW1 report was approved by the Strategic Director of Children and Adult Services covering the role of the Strategic Director of Housing on 29 November 2023 to undertake a competitive tender procurement exercise for one communal ventilation replacement contract.
18. The anticipated intentional timetable for the new procurement exercise is detailed in paragraph 17 above.

Alternative Options Considered

19. Due to the result of inflationary increases across the market due to events such as the war in Eastern Europe (Russia and Ukraine conflict), the impacts of Brexit and the global cost of living crisis coupled with the experience of DCUK FM and a schedule of rates and technical specification included in their contract to deliver this work, only three options were considered and rejected for the following reasons:
20. **Do nothing:** not viable for the reasons set out in paragraphs 10 and 14 above.
21. **Bring the work back in-house:** it is not viable for Southwark Repairs to be able to carry out this work due to lack of resources (qualified and experienced personnel and equipment).
22. **Tender a new contract:** this will commence shortly as detailed in paragraph 17 above.
23. As a procurement exercise is anticipated to be undertaken in October 2024 to procure one new contract and this new contract will be in place by August 2025, extending the existing contract to 31 July 2025 is the most effective proposal to ensure continuity in providing communal ventilation replacement works across the borough.

Identified risks for the Variation

24. 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	DCUK FM become insolvent leaving works incomplete.	Low	Please see financial check in paragraph 53 below. DCUK FM is paid based on a monthly valuation dependent on the quantity of work claimed. Should DCUK FM become insolvent, they would only be paid for the work they complete. The monthly claims and payments help mitigate the risks involved of company failure. DCUK FM will continue to be regularly monitored. As DCUK FM now have an immediate parent company, an executed Parent Company Guarantee will be obtained alongside the deed of variation.

R2	DCUK FM is unable to fulfil the requirements of the contract e.g., poor performance, leading to the need to terminate the contract.	Low	Paragraph 32 confirms that DCUK FM is exceeding KPIs in most areas. If DCUK FM fails, then the council would procure alternative work provision on an interim basis whilst it procures a longer-term contract. The Alcumus Safe Contractor platform of approved list of contractors would be used to distribute the work required. Alternatively, an external framework may be accessed.
R3	Possible risk of procurement challenge	Low	Given this is a short-term interim extension whilst a new procurement exercise is undertaken where interested parties can bid coupled with the need for the council to ensure and maintain continuity of work, as a social housing provider, the risk of procurement challenge is considered low.
R4	Market conditions	Medium	Given the current market conditions are still affecting labour shortages and price inflation, extending DCUK FM's existing contract on their tendered rates demonstrates best value as the risk would be to go out to the market where prices would be more expensive for this extension period. DCUK FM will continue to be monitored to ensure that they continue to deliver whilst one new contract is procured.
R5	Possible risk of Section 20 (s20) challenge	Low	There are s20 implications in relation to this extension as the contract has been extended beyond its originally agreed term forming a new contract for consultation purposes. However, the council's mitigation in respect of this is that as the new contract for consultation purposes is for a period of less than twelve months and the terms are not prejudicial to leaseholders since this extension will be at the original tendered rates, under these circumstances, the new contract is not a qualifying agreement to which s20 applies.

Procurement project plan (Key decision)

25.

Activity	Completed by/Complete by
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DCRB Review Gateway 3:	04/10/2024
Brief relevant cabinet member (over £100k)	21/10/2024
Notification of forthcoming decision	30/10/2024
Approval of Gateway 3 Report	31/10/2024
End of Scrutiny Call-in period and notification of implementation of Gateway 3 decision	08/11/2024
Contract Variation Enacted	11/11/2024
Amend Contract Register	11/11/2024
Contract amendment start	18/11/2024
Publication of variation notice on Find a Tender Service	19/11/2024
Contract expiry date	17/08/2025

Policy implications

26. The extension to this contract will assist the council to continue to contribute to the council's Southwark 2030 Delivery Plan 2024 to 2026 of decent homes for all.

27. The extension to this contract will enable the council to continue to meet its legal obligations as a social housing provider under the Landlord and Tenant Act 1985 ensuring it has arrangements in place to maintain its council housing buildings and carry out the scope of works.

Contract management and monitoring

28. 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.

29. The contract will continue to be managed by the asset management (AM) engineering contract manager with dedicated officers who will continue to monitor DCUK FM' performance monthly via a combination of performance data, work in progress and daily joint inspections to ensure quality and compliance with the contract and specifications.

30. Annual performance reviews will continue to be carried out in line with the council's Contract Standing Orders.

31. The table below shows the KPIs based on the time to complete work orders, set for the contract:

KPI's		Minimum Target %	Council's Aspiration Objective %	DCUK FM's Actuals %
1.	Percentage of Orders for which an appointment can be made and is kept by the Contractor.	90%	95%	98%
2.	Percentage of Priority Code 1, 2 and 3 Orders completed within the stipulated time periods.	95%	98%	99%
3.	Adherence to programme for PPM for communal ventilation.	95%	98%	100%
4.	Recruitment and continued appointment of an apprentice.	100%	100%	100%
5.	Providing asset registers within stipulated timescales as per the Contract Documents.	95%	100%	96%

32. The AM engineering contract manager continues to and will continue to be assisted by a commercial team quantity surveyor to ensure financial integrity, compliance, and performance management with regards to measuring the existing KPIs, carrying out credit checks and continuing with monthly valuations and progress meetings.

33. DCUK FM's performance has been good in terms of quality of work evidenced on their work orders and against the KPIs set out in paragraph 32 above.

34. During the proposed extension period, the AM engineering contract manager will continue to ensure work orders are completed to the existing high quality and within stipulated timeframes.

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

Community impact statement

35. The contract is of low impact to tenants, homeowners and other stakeholders as these works will be done both internally and externally.

36. DCUK FM confirmed that it can continue to meet the Fairer Future Procurement Framework requirements and this will continue to be reported as part of the ongoing annual performance review.

Equalities (including socio-economic) impact statement

37. The Equality Needs & Impact Analysis (ENIA) (Appendix 1 attached) deemed the potential impact of communal ventilation works on people with protected characteristics to be neutral and there has been no change.

38. The work is selected based on the condition of the assets to ensure that they are maintained and provide good homes and a safe environment to residents.

Health impact statement

39. This extension will continue to maintain and repair communal ventilation goods as an essential requirement for the health of residents by providing them a warm, dry, and safe environment in which to thrive.

Climate change implications

40. This extension will continue to, where necessary, include improved insulation to assets to reduce heat wastage.

Social Value considerations

41. The Public Services (Social Value) Act 2012 requires that the council consider, 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 considerations

42. The full cost to the council and the life span of the contract is set out in paragraph 1 of this report. London Living Wage (LLW) continues to be paid under these contracts of this report.

Social considerations

43. DCUK FM confirmed that all relevant staff continue to be paid in excess of the minimum LLW hourly rate and complies 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. DCUK FM was required to employ one apprentice for the duration of the initial term of the contract and one apprentice if the contract was extended.

45. DCUK FM employed one mechanical ventilation apprentice for the initial term of the contract who is now qualified and remains at DCUK FM. In addition, DCUK FM provided their staff with career development opportunities. An electrical apprentice was employed by DCUK FM when the contract was initially extended in 2022.

46. As the proposal for an additional extension is only for a nine-month period, there may be insufficient time available for DCUK FM to provide an apprenticeship opportunity to the local community for this nine-month period.

Environmental/Sustainability considerations

47. Communal ventilation fans are low energy type and help to reduce the council's carbon emissions.
48. The use of low emission vehicles and planning of journeys is being adhered to by DCUK FM within its contract.
49. All disposals will be in accordance with the Waste Electrical and Electronic Equipment Directive (WEEE Directive).

Financial implications

50. The contract value excluding VAT is:

	Cost excluding VAT
Original total cost	£1.956m
Total value of any previous variations	£1.312m
Value of proposed variation	£0.726m
Revised total cost	£3.994m

51. The proposed variation cost would be met by the existing budgets. The pricing would continue to use the existing price structure in the original contract, which would remain unchanged for the proposed nine-month extension. The level of activity is anticipated to be increased due to the additional building safety works spend.

	2024/25 (5 months)	2025/26 (4 months)	Totals
Revenue GG222	£0.018m	£0.014m	£0.032m
Capital H-3113-0017	£0.695m	£0m	£0.695m

52. The Bureau van Dijk (BvD) FAME financial check carried out on DCUK FM on 23 August 2024 showed that they had a secure credit score and risk banding.
53. The AM Contract Compliance Officer will continue to monitor changes to the financial status of DCUK FM via alerts from BvD FAME and Companies House. No significant alerts were noted for DCUK FM.

Legal Implications

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

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Resources REF: (H&M 060)

55. This report seeks approval from the Strategic Director of Housing to approve the variation to extend the term of the Communal Ventilation contract to Ductclean (UK) for a period of nine months from 1 November 2024 at an estimated additional sum of £726k making a total revised estimated contract value of £3.992m.

56. Following the extension of the contract, 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 (draft subject to report being split into open and closed versions)

57. This report seeks approval from the Strategic Director of Housing to vary the communal ventilation replacement contract with Ductclean (UK) Ltd for nine months from 1 November 2024 to 31 July 2025 at a cost of £726k making a total contract value of £3.992m.

58. The Strategic Director of Housing notes the reasons for the variation are detailed in paragraphs 13 to 17, the future of the service is detailed in paragraphs 18 to 19, the risks are detailed in paragraph 25, the management and monitoring of the contract is detailed in paragraphs 29 to 35, the impact on equalities, health and climate change are detailed in paragraphs 38 to 41, confirmation of the payment of London Living Wage is detailed in paragraph 43, there are NO new social value commitments.

Assistance Chief Executive – Governance and Assurance REF: (Con/CD/161024)

59. This report seeks the approval of the Strategic Director of Housing to the variation of the communal ventilation replacement contract to Ductclean (UK) Ltd to extend the term of the contract for an additional period of nine months from 1 November 2024 to 31 July 2025 at an estimated additional cost of £726k making a total revised estimated contract value of £3.992m.

60. The Strategic Director of Housing is also requested to note that the annual Building Maintenance Indices (BMI) rise, which was due in April 2024, has not been applied to this contract as agreed in principle with Ductclean (UK) Ltd and that this will be affected through a deed of variation.

61. The key aspects of the proposed variation and the reasons for the variation are outlined in paragraphs 13 to 17 of this report.

62. The procurement of the original contract was not subject to the tendering requirements of the Public Contract Regulations 2015 (PCR15) due to their value, and this extension value also falls below the PCR15 threshold. The contract is being extended for a short period to allow for

completion of the re-procurement exercise as outlined in paragraph 12 of this report, and accordingly the risk of challenge from an aggrieved supplier is mitigated.

63. 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 51 to 54 confirms the financial implications of this variation.

Director of Exchequer (for Housing contracts only)

64. This extension goes beyond the term of the original contract which was consulted on with leaseholders under Section 20 Landlord and Tenant Act 1985 prior to award.

65. The advice received in other circumstances where a contract has been extended beyond the originally agreed term is that the extension forms a new contract for consultation purposes. The new contract created for Communal Ventilation is for a period of less than twelve months and under these circumstances is not a qualifying agreement to which S20 applies.

66. With regard to the impact on leaseholders it is noted that the extension is considered to deliver good value to the council and that value will be passed on to leaseholders in the service charges. Homeownership Services have begun the process of consultation on the new contracts. The first stage of the Section 20 process commenced in March 2024 with the service of Notice of intention.

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 7/11/2024

Designation Hakeem Osinaike, Strategic Director of Housing

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

As set out in the report.

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

Not applicable to this 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.

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.***~~

(* - 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
Gateway 1 – Procurement Strategy Approval Communal Ventilation Replacement dated 17 February 2016	Housing, Asset Management 160 Tooley Street	Christopher Gregory 0207 525 1803
Gateway 2 – Contract Award Approval Communal Ventilation Replacement dated 12 September 2016	Housing, Asset Management 160 Tooley Street	Christopher Gregory 0207 525 1803
Gateway 3 – Contract Variation Decision Communal Ventilation Replacement dated 12 May 2021	Housing, Asset Management 160 Tooley Street	Christopher Gregory Ext 51803
Link: (Decision - Gateway 3 Contract Variation: Communal Ventilation - Southwark Council)		
Gateway 3 – Contract Variation Decision Communal Ventilation Replacement dated 1 November 2023	Housing, Asset Management 160 Tooley Street	Christopher Gregory Ext 51803
Link: (Decision - Gateway 3 - Variation Approval: Communal ventilation repairs and replacements - Southwark Council)		
Gateway 1 – Procurement Strategy Approval Communal Ventilation Replacement dated 1 November 2023	Housing, Asset Management 160 Tooley Street	Christopher Gregory Ext 51803

APPENDICES

No	Title
Appendix 1	Equality Needs & Impact Analysis

AUDIT TRAIL

Lead Officer	Simon Holmes, Head of Engineering, Housing	
Report Author	Christopher Gregory, Procurement Manager	
Version	Final	
Dated	25 October 2024	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS/DIRECTORATES/CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Resources	Yes	Yes
Head of Procurement	Yes	Yes
Assistant Chief Executive – Governance and Assurance	Yes	Yes
Director of Exchequer (for Housing contracts only)	Yes	Yes
Cabinet Member	Yes	Yes
Contract Review Boards		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	No	No
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team		7 November 2024