

Item No.	Classification: Open	Date: 8 August 2018	Meeting Name: Strategic Director of Finance and Governance
Report title:		Gateway 3 – Variation Decision Asbestos Removal Contracts A & B	
Ward(s) or groups affected:		All	
From:		Head of Engineering	

RECOMMENDATION(S)

1. That the strategic director of finance and governance approves the variation of the first Asbestos Removal contract (Contract A) to Franklyn Shaw Associates Ltd to extend the term of the contract for a period of two years from 15 December 2018 at an estimated cost of £2.28m (£1.14m per annum).
2. That the strategic director of finance and governance approves the variation of the second Asbestos Removal contract (Contract B) to Ductclean (UK) Ltd to extend the term of the contract for a period of two years from 15 December 2018 at an estimated cost of £2.18m (£1.09m per annum).

BACKGROUND INFORMATION

3. On 17 October 2014 the cabinet member for housing approved the award of two Asbestos Removal Contracts; Contract A for north of the borough, and Contract B for south of the borough.
4. Contract A was awarded to Franklyn Shaw Associates Ltd (Franklyn Shaw) for a period of four years at an estimated annual value of £1m with the provision to extend by a further two years (in 1+1 yearly increments) making a total estimated contract value of £6.03m.
5. Contract B was awarded to Ductclean (UK) Ltd (Ductclean) for a period of four years at an estimated annual value of £1m with the provision to extend by a further two years (in 1+1 yearly increments) making a total estimated contract value of £5.07m.
6. Each contract provides the following work streams:
 - Removal of asbestos.
 - Encapsulation of asbestos materials and making safe.
 - Some reinstatement works on an ad hoc basis.
 - Emergency Response that covers a 24/7, 52 weeks a year asbestos removal service.
7. The actual expenditure up to the end of June 2018 shown below includes this;

Franklyn Shaw Estimated & Actual Expenditure 15/12/14 ~ 30/06/18
Contract A (north of the borough) Asbestos Removal Contract

Period	Estimated Expenditure	Actual Expenditure
15/12/14~ 31/03/15	£290,323*	£402,581
01/04/15~ 31/03/16	£1,000,000	£1,312,130
01/04/16~ 31/03/17	£1,000,000	£977,240
01/04/17 ~ 31/03/18	£1,000,000	£1,125,434
01/04/18 ~ 30/06/18	£250,000	£287,847
Total	£3,540,323	£4,105,233

*Pro-rata: Based on the annual estimated spend of £1m per annum, and the pro-rata periods, the contract is approximately £451k over the approved spend. This is due in part to an increase of void spend, to make stock available for reuse.

Ductclean Estimated & Actual Expenditure 15/12/14 ~ 31/06/18		
Contract B (south of the borough) Asbestos Removal Contract		
Period	Estimated Expenditure	Actual Expenditure
15/12/14~ 31/03/15	£316,875*	£495,1723
01/04/15~ 31/03/16	£845,000	£858,702
01/04/16~ 31/03/17	£845,000	£743,079
01/04/17 ~ 31/03/18	£845,000	£1,191,966
01/04/18 ~ 31/06/18	£211,250	£272,190
Total	£3,063,125	£3,561,110

*Pro-rata: Based on the annual estimated spend of £845k per annum, and the pro rata periods, the contract is approximately £87k over the approved spend. This is due in part to an increase of void spend, to make stock available for reuse.

8. It is proposed to seek approval to utilise the 2 year extension provisions for each contract as discussed with the strategic director of finance and governance and strategic director of housing and modernisation on 28th March 2018 and 4 April 2018 respectively, and as recommended in the Annual Performance Review report presented to CCRB on 26 April 2018.

KEY ISSUES FOR CONSIDERATION

Key Aspects of Proposed Variation

9. The nature of the proposed variations is to exercise the option in the contracts with Franklyn Shaw and Ductclean to be extended for a period of 2 years. The revised completion date will therefore be 14 December 2020. The reason for the extensions is to;
 - Ensure that the council has access to asbestos removal contracts and complies with the law.
 - Manage the council's housing stock to ensure resident and other user safety
 - Reduce financial and reputational risks to the council
10. The estimated value of the proposed variation to the Franklyn Shaw contract is £2.28m as a projection based on current expenditure. The estimated value of the initial contract term composed of actual expenditure as set out in paragraph 5 and estimated expenditure for the remaining period based on current expenditure is £4.67m and the combined total estimated value for contract A is £6.95m. The value of this extension as a percentage of the initial term is estimated to be 48%.
11. The estimated value of the proposed variation to the Ductclean contract is £2.18m as a projection based on current expenditure. The estimated value of the initial contract term composed of actual expenditure as set out in paragraph 5 and estimated expenditure for the remaining period based on current expenditure is £ £4.1m and the combined total estimated value for contract B is £6.3m. The value of this extension as a percentage of the initial term is estimated to be 53%.

Reasons for Variation

12. The council is required to have access to an asbestos removal service in order to be able to respond to demand as a social housing landlord.
13. Should these contracts not be extended, asset management would need to commence re-procuring the contracts immediately.
14. Both contracts are demonstrating high levels of performance against KPI's.
15. Both contractors have agreed to waive the contractual entitlement to Building Maintenance Information (BMI) increases, for the first 2 years, in service costs and to fix their prices, and thus the contracts represent continuing value for money.

Future Proposals for this Service

16. Asset management will commence re-procuring these contracts from May 2019.

Alternative Options Considered

17. The alternative available options are determined by the legal requirement for the council to have arrangements in place to manage asbestos in its premises.
18. The following options were considered;

Option	Impact
Do nothing	Allowing the contracts to lapse would require that asset management utilises contractors on Exor on a job by job basis. This would expose the council and residents to unacceptable risks, the potential of lower service delivery standards and increased costs.
Re-procure contracts	The current contracts offer value for money, and it is unlikely that following a procurement that future contracts would offer the same advantageous prices.
Bring in-House	Southwark Building Services (SBS) does not have the facilities nor the specialist expertise to be able to provide these works.

Identified risks for the Variation

19. The following risks were identified.

R/N	Risk Identification	Likelihood	Risk Control
R1	Ductclean and/or Franklyn Shaw go into liquidation, administration or cease trading.	Low	Mint credit check reports are obtained and the company performance monitored through the contract. The two separate contracts provide back-up facilities to each other.
R2	Either Ductclean or Franklyn Shaw have their Asbestos License revoked.	Low	The two separate contracts provide back-up facilities to each other.
R3	Either contractors performance declines	Low	Active performance management in place and overseen by Contract Manager, supported by Commercial Team. A performance bond is in place for each of these contracts.

Policy implications

20. The provision of the asbestos removal works is required in order that the council fulfils its duties and obligations as a landlord and employer and ensuring that premises are fit for habitation.

Contract management and monitoring

21. The service has a team of dedicated competent asbestos compliance officers who carry out daily joint inspections to ensure quality and compliance with the contract specifications.
22. The compliance operations manager and the asbestos coordinator manage the contract and are responsible for authorising works, inspecting quality and monitoring the performance of the contractors. One of the engineering and compliance quantity surveyors manages the commercial aspects of the two

contracts. The engineering and compliance quantity surveyor reviews the monthly valuations and select jobs that require post inspections to ensure quality and financial accuracy. Monthly meetings are undertaken and recorded.

23. Works orders are raised and managed through iWorld, where all information relating to orders is contained. Ductclean and Franklyn Shaw are required to provide 10% post-inspections that are rigorously audited by one of the asbestos inspectors.
24. The delivery of in house repairs from October 2018 will allow for end to end processes to be reviewed to drive efficiencies in void turn around times. Workshops for this are being programmed in July and August 2018.
25. The table below shows the Key Performance Indicator (KPI) for the contracts.

No.	Contract KPIs	Minimum Target Percentage %	June 2017 to June 2018	
			Franklyn Shaw	Ductclean
1.	Percentage of Urgent Orders commenced during that month and completed within the stipulated time periods in each Order	95	No urgent orders raised	No urgent orders raised
2.	Percentage of Priority Code 2, 3 and 4 Orders completed within the stipulated time periods.	95	98.27%	97.21%
3.	Response to queries or complaints from Residents, Stakeholders and Council Officers to meet the Council's Corporate Complaints Policy i.e. within 5 days.	100	100%	100%

26. These KPIs are monitored and appropriate action is taken as necessary under the contracts. Target percentages are reviewed during the contract periods.
27. Asbestos licenses are checked at regular intervals. Franklyn Shaw's asbestos license is valid until 21 September 2018. Ductclean's asbestos license is valid until 27 July 2019. The Health and Safety Executive (HSE) issues and monitors licences under the Control of Asbestos Regulations 2012. Licences are issued for up to three years. It is a requirement of the contracts that the contractors hold current standard asbestos removal licenses.
28. Asset management conduct annual compliance checks to ensure the following;
 - Currency of insurances & professional certification

- London Living Wage
- Potential TUPE liabilities
- Use of sub-contractors
- Any change in status regarding declarations made in PQQ such as company status and ownership.

Community Impact Statement

29. The contract will have a high community impact as it contributes to the safety and risk management strategy to safeguard the residents and to create a safe environment for all premises users, and further the council's objectives for safer communities.

Social Value considerations

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

Economic considerations

31. The full cost to the council and the life span of the contracts are set out in paragraphs 1 and 2 of this report.
32. Ductclean operates an accredited training centre at its head office in Welwyn Garden City that provides training to council staff free for asbestos awareness.
33. In 2016 Franklyn Shaw implemented the HSE requirement for licensed asbestos removal contractors to apply a NVQ system for evidenced continuous professional development for all. They also provide free asbestos awareness training to council staff.

Social considerations

34. Franklyn Shaw employees and those of its 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 is reviewed for compliance as part of the contracts annual review. Franklyn Shaw employs 22 people in various roles for this contract and is based in Stanstead Abbots, Hertfordshire.
35. Ductclean employees are paid in accordance with the London Living Wage and have equalities policies that conform to the council's standards. The application of these is reviewed for compliance as part of the contracts annual review. Ductclean employs 162 people and does not use sub contractors for this contract. It is based in Welwyn Garden City.
36. Due to the nature of asbestos removal work, the contracts do not require Ductclean or Franklyn Shaw to provide work experience or apprenticeships.

Environmental/Sustainability considerations

37. A waste consignment note will be requested from the contractors to ensure materials containing asbestos are disposed of in controlled conditions to an

approved site. Regular on the spot audits will be undertaken by the asbestos coordinator.

38. The use of sustainable materials to the appropriate British Standards will be required to ensure fire integrity for re-instatement works.
39. The use of low emission vehicles and planning of journeys will be encouraged within the contracts.

Financial Implications

40. The Asbestos Removal contracts are estimated to cost £2.23m per annum for two years, based on historic spend patterns, whereas the current annual budget is £1.60m. These are demand led contracts and heavily dependent on the level of void turnover which has led to budget pressure in this area in the past. However, budgets are closely monitored throughout the year and should the volume of works exceed the budget allocation it will be managed within the wider Asset Management budget for 2018-19.

Investment Implications (Housing Contracts only)

41. None

Legal Implications

42. Please see the comments from the director of law and democracy.

Consultation

43. Residents and other stakeholders are consulted when works occur to ensure their safety and lessen the impact of works.

Other implications or issues

44. None

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance and Governance (H&M18/024)

45. The Strategic Director of Finance and Governance notes the recommendations in this report for the two year extension of the Asbestos Removal contracts with effect from 15 December 2018 and the potential budget pressure, which will be contained in the current year and addressed as part of 2019-20 HRA budget setting.

Head of Procurement

46. This report is seeking approval to extend two asbestos removal contracts for a period of 24 months from 15 December 2018.
47. The existing contracts allow for two 12 month extensions, however, the contract is demand led and for reasons set out in the report there has been an increase in spend to that originally estimated for this contract.
48. The report explains that the contracts are required to enable the council to meet its obligations as a landlord and employer to comply with the control of asbestos regulations and internal policies.
49. During this extension period new contracts shall be procured from May 2019 which sufficient time for a competitive tender process to be carried out.

50. The Housing and Modernisation department reports that performance to date has exceeded agreed targets and the council is satisfied that the contracts are providing continued value for money. There are management and monitoring arrangements in place which should help to ensure that this level of contract performance is maintained throughout the extension period.

Director of Law and Democracy

51. This report seeks the strategic director of finance and governance's approval to the extension of 2 asbestos removal contracts which are being performed by Franklyn Shaw and Ductclean.
52. The nature of this variation is such that it is subject to the Public Contracts Regulations 2015 (PCR15). Regulation 72(1)(a) of PCR15 allow the council to vary the current contracts as this option was provided for in the initial procurement documents and does not alter the overall nature of the contracts. Paragraph 14 of this report confirms that a new procurement for these contracts will commence from May 2019.
53. As the decision to approve these variations fall within the circumstances noted in contract standing orders (CSO) 6.6.3(c), the decision is reserved to the strategic director of finance and governance after consideration by the CCRB of the report. CSO 2.3 requires that a variation decision may only be made if the expenditure involved has been approved. Paragraph 38 confirms the financial implications of this variation.

Director of Exchequer (for housing contracts only)

54. Section 20 notices of proposal were served on leaseholders under schedule 2 on the 3rd July 2014. The consultation stated the contract length at 4 years with the option to extend to up to 6 years. This extension has therefore been correctly consulted on and there are no Section 20 leaseholder consultation issues with the extension.

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.

Signature



Date 8.8.18

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 which are sufficiently important and/or sensitive that a reasonable member of the public would reasonably expect it to be publicly available.

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

None.

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.

Not applicable.

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)

BACKGROUND PAPERS

Background Papers	Held At	Contact
Gateway 1 Report – Asbestos Removal 12 November 2013	Housing and Modernisation, Asset Management Tooley Street	Rod Davies Ext: 55097
Link: G:\Asset Management\Engineering & Compliance\Engineering Procurement\Asbestos Removal\Gateways\Gateway 1\GW1 Report.pdf		
Gateway 2 Report – Asbestos Removal – 8 October 2014	Housing and Modernisation, Asset Management Tooley Street	Rod Davies Ext: 55097
Link: G:\Asset Management\Engineering & Compliance\Engineering Procurement\Asbestos Removal\Gateways\Gateway 2\GW2 Report.pdf		
Annual Contract Performance Report: – Asbestos Removal 2017 - Ductclean	Housing and Modernisation, Asset Management Tooley Street	Rod Davies Ext: 55097
Link: G:\Asset Management\Engineering & Compliance\Engineering Procurement\06 CONTRACTS MGMT\DUCTCLEAN (UK) LIMITED\APR Ductclean March 2017 CCRB final.docx		
Annual Contract Performance Report: – Asbestos Removal 2017 – Franklyn Shaw	Housing and Modernisation, Asset Management Tooley Street	Rod Davies Ext: 55097
Link: G:\Asset Management\Engineering & Compliance\Engineering Procurement\06 CONTRACTS MGMT\FRANKLYN SHAW ASSOCIATES LIMITED\APR Franklyn Shaw Feb 2017 DCRB Final.docx		
Annual Contract Performance Report: – Asbestos Removal 2018 - Ductclean	Housing and Modernisation, Asset Management Tooley Street	Rod Davies Ext: 55097
Link: G:\Asset Management\Engineering & Compliance\Engineering Procurement\06 CONTRACTS MGMT\DUCTCLEAN (UK) LIMITED\APR Ductclean DCRB 16 April 2018.docx		
Annual Contract Performance Report: – Asbestos Removal 2018 – Franklyn Shaw	Housing and Modernisation, Asset Management Tooley Street	Rod Davies Ext: 55097
Link: G:\Asset Management\Engineering & Compliance\Engineering Procurement\06 CONTRACTS MGMT\FRANKLYN SHAW ASSOCIATES LIMITED\APR Franklyn Shaw DCRB 16 April 2018.docx		

APPENDICES

No	Title
Appendix 1	Nil

AUDIT TRAIL

Lead Officer	Tony Hunter, Head of Engineering	
Report Author	Rod Davies, Procurement Manager	
Version	Final	
Dated	31 July 2018	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
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	No	No
Contract Review Boards		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional/Community Councils/Scrutiny Team		8 August 2018