

Item No.	Classification: Open	Date: 20 April 2021	Meeting Name: Strategic Director of Housing and Modernisation
Report title:		Gateway 3 – Variation Decision Quality Auditing of Mechanical Services	
Ward(s) or groups affected:		All	
From:		Director of Asset Management	

RECOMMENDATIONS

1. That the Strategic Director of Housing and Modernisation formalises his prior approval for the variation of the quality auditing of mechanical services contract to Gas Advisory Services Ltd (trading as Phoenix Consultancy Management) (PCM) to extend the term of the contract for a period of five years from 4 January 2021 at an estimated additional cost of £185k per annum making a total estimated extension cost of £925k and estimated contract value of £1.85m for 10 years.
2. That the Strategic Director of Housing and Modernisation notes the shortening of the written notice period provision to be given to PCM from 3 months to one month for this variation.

BACKGROUND INFORMATION

3. A Gateway 2 report was approved on 21 September 2015 to award the quality auditing of mechanical services (QAMS) contract to PCM for a period of five years with the option to extend up to a maximum of a further five years (in increments at the council's discretion).
4. The scope of the contract encompasses the following services:
 - Quality audits of individual boiler installations and district heating plant.
 - Quality audits of gas servicing systems and processes.
 - Quality audits of testing regimes on cold water storage tanks and temperature monitoring.
 - Pre installation quality control audits.
 - Work in progress quality control auditing.
 - Internal systems auditing to ensure current legislation are complied with.
 - Booster sets for high rise buildings.
 - Leaseholder gas servicing record certificate audits and review.
5. This service provides independent verification of orders placed through the council's two heating and water contracts whilst ensuring that the council receives value for money, meets the requirements of its statutory obligations and carries out a programmed audit of the works in the new heating and water contracts. It also provides audit checks of all leasehold gas safety certificates, provides advice to the specialist housing services team and provides an independent audit service for major works schemes.
6. The contract was for an initial period of five years from 4 January 2016. The annual cost was estimated at £185k plus the option to extend up to a

maximum of a further five years making a total estimated contract value of £1.85m. The prices were fixed for the initial five year term with a Consumer Price Index being applied annually thereafter. This contract runs in conjunction with two heating and water contracts which expire on 31 March 2021.

7. The contract contains a break clause to terminate the contract with no consideration of any loss or expense at any time.
8. The actual expenditure to date against the original Gateway 2 approval is shown below in tables to illustrate the financial year and contract year expenditures.

Contract Spend in Financial Years			
Period		Original Gateway Approval	Actual Expenditure
04/01/2016	31/03/2016	£46,000	£23,476
01/04/2016	31/03/2017	£185,000	£179,443
01/04/2017	31/03/2018	£185,000	£206,806
01/04/2018	31/03/2019	£185,000	£210,145
01/04/2019	31/03/2020	£185,000	£195,746
01/04/2020	31/12/2020	£139,000	£137,774
Totals		£925,000	£953,389

Contract Spend in Contractual Years			
Period		Original Gateway Approval	Actual Expenditure
04/01/2016	03/01/2017	£185,000	£140,457
04/01/2017	03/01/2018	£185,000	£190,004
04/01/2018	03/01/2019	£185,000	£199,222
04/01/2019	03/01/2020	£185,000	£226,885
04/01/2020	03/01/2021	£185,000	£192,422
Totals		£925,000	£948,990

9. The reflected overspends above are due to additional quoted ad hoc reports requested in relation to specific enquiries along with additional to regular reports that are in addition to the original contract specification.
10. The figures above include COVID-19 suppliers' relief payments made in April 2020 of £4,589.16 and in May 2020 of £3,404.67.
11. PCM is monitored and managed financially via the asset management quantity surveyors.
12. This report is formalising the Strategic Director's prior approval for a five year extension to 3 January 2026 to ensure the contract continues to support the two heating and water contracts as approved by the Strategic Director on 18 December 2020 following discussions with the Head of Engineering and Compliance and the Commercial Manager.

KEY ISSUES FOR CONSIDERATION

Key Aspects of Proposed Variation

13. The nature of the proposed variation is to exercise the option in the contract with PCM to extend the term for a period of five years. The revised completion date will therefore be 3 January 2026.
14. The estimated value of the proposed variation to the contract is £925K combined with the actual expenditure to the end of the initial five year term bringing the estimated total to £1.874m. The value of this extension as a percentage against the initial term is estimated to be 103% of the initial approved contract value.

Reasons for Variation

15. The reasons for the extension is:
 - This contract supports the management of the two heating and water contracts through the delivery of quality inspections as detailed above in paragraph 4, and ensures fit for purpose and value for money services are delivered; and
 - As asset management will require assistance with the technical specification and statutory compliance of the heating and water contracts, a Gateway 0 report will be prepared in 2022/2023 setting out the strategic options and PCM will be key in assisting asset management to develop the options.
16. The services delivered through this contract enable the council to meet its obligations as a social housing landlord.
17. The contract demonstrates high levels of performance against the key performance indicators (KPIs) set and continues to provide a value for money service.
18. For various reasons with not progressing this report to approval stage, it was not possible to give PCM 3 months written notice to extend the contract (in accordance with clause 3.1 of the contract) and the necessary approval is

being sought in this report to shorten the notice period at paragraph 2. PCM was aware of the council's intention to extend the contract and confirmed its agreement to receive one month's written notice for this variation. This extension will be affected through a deed of variation.

Future Proposals for this Service

19. A Gateway 0 report will be prepared and presented in 2022/2023 setting out the strategic options for the future direction of service delivery for heating and water and will also include independent audits.

Alternative Options Considered

20. The following alternative options to this extension were considered:

No.	Option	Impact
1	Do Nothing	This option is not available as the council must extend the initial five year term because the service is required to assist managing the heating and water contracts and the council would be exposed to risk if the service was not available.
2	Bring the service back in-house	The council does not currently have the expertise in-house and it would require significant investment to create an effective service delivery team. An in-house team would not have the objectivity of an external auditor.
3	Procure a new contract	The contract currently provides value for money and there are no identifiable benefits to re-procuring the contract. There are significant resource and operational constraints due to the continuing Covid-19 crisis and procuring a new contract that would meet the council's needs is unlikely to be achievable.
4	Joint procurement with neighbouring borough	This contract is designed to specifically support the two heating and water contracts and based on the council's specific needs.
5	Utilise the five year extension provision	This is a viable option and the recommended option for this report.

Identified risks for the Variation

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

R/N	Risk Identification	Likelihood	Risk Control
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R1	PCM is unable to fulfil the requirements of the contract e.g. poor performance, leading to the need to terminate the contract.	Low	The council would procure alternative service provision on an interim basis while it re-procures a term contract.
R2	PCM ceases trading, goes into administration or liquidation.	Low	The financial stability of PCM is continuously monitored throughout the contract through the contract management process. A financial credit check was carried out on PCM on 15 February 2021. The council's credit score threshold is 41. PCM scored a 75 BvD FAME score and the likelihood of failure was rated at 1.8%. The council would procure alternative service provision on an interim basis while it re-procures a term contract.
R3	Covid-19 pandemic risks	Low	PCM and the council developed an effective working procedure to allow audits to be carried out safely and comply with social distancing measures. The detail is set out in paragraphs 22 to 25. PCM is monitored for any change in trading status via alerts from Companies House and industry information.
R4	Brexit implications	Low	This contract provides a service that does not involve the use of materials, plant, or components sourced from within the European Union.

Covid-19 implications

22. On 17 March 2020 PCM wrote to the council advising of their approach to working in a Covid-19 environment.
23. On 23 March 2020 in compliance with Government guidelines, PCM shut down all inspections and only two senior members of their staff continued to provide assistance virtually working from home.

24. On 11 May 2020 the commercial district inspections resumed visiting unoccupied communal sites as deemed low risk.
25. On 28 May 2020, PCM provided risk assessments and working procedures (domestic gas inspections) and were vetted by council officers prior to re-arranging the appointment. On 8 June 2020 the domestic gas inspection team started to visit individual dwellings.

Policy implications

26. This service provides independent audits of all contractors carrying out heating and water works for asset management and will enable it to monitor quality and compliance with current legislation and policies.

Contract management and monitoring

27. Council officers will continue to monitor this contract through monthly progress meetings and measure performance against a range of KPIs detailed below:

	KPI	Minimum Target %	Council's Aspiration Objective %	Actual Performance
1	Percentage of Priority Code 2, 3 and 4 orders completed within the stipulated time periods.	95%	98%	98%
2	Response to queries or complaints from residents and Council Officers to meet the council's Corporate Complaints Policy i.e. within 5 days.	98%	100%	100%

28. Officers will continue to review all applications for payment, monitor and administer defaults and carry out the recovery of costs for poor performance. PCM does not use sub-contractors on this contract. These are reported via annual performance reviews.
29. Council officers will monitor PCM for any change in trading status via alerts from Companies House and industry information. PCM's professional certifications are accessible online and are checked periodically for current status. Insurance certificates are provided to the council upon renewal and checked for compliance.
30. 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.

Community Impact Statement

31. This contract audits work carried out by the two heating and water contractors in the council's housing properties to ensure that work is to standard and residents' safety and well-being is assured, and that the heating and water contracts provide value for money. This is particularly relevant to vulnerable residents for whom the loss of heating services could have an adverse impact on their health and well-being.
32. PCM currently employ two apprentices in administrative roles and have provided work-experience opportunities to students.

Social Value considerations

33. 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.

Economic considerations

34. The full cost to the council and the life span of the contract is set out in paragraph 7 of this report.

Social considerations

35. PCM has confirmed that all relevant staff continues to be paid in excess of the minimum London Living Wage hourly rate. PCM has its own equality policies and are fully aware of and compliant with the council's policies and standards.
36. This contract does not require apprenticeships to be provided due to the value of the contract. However, PCM continues to employ 2 apprentices in administrative roles. PCM normally provides work experience opportunities for students at their Dartford offices but in 2020 this was not possible due to the Covid-19 pandemic.
37. Council officers will identify themes, outcomes and measures within the Fairer Future Procurement Framework that can be developed with PCM covering the following areas;
- local people in employment;
 - opportunities for disadvantaged people;
 - improved skills;
 - improved employability of young people;
 - carbon reduction and safeguarding the natural environment.

38. PCM has 41 employees employed in various roles. Paragraph 25 provides the detail of the furlough period for domestic inspectors. Other employees were not furloughed.

Environmental/Sustainability considerations

39. The contract encouraged the use of low emission vehicles and the planning of journeys to help reduce the environmental impact and to use public transport where possible. Covid-19 had no significant impacts on travel as inspectors travelled alone in either their own vehicles or on public transport.

40. Auditing includes calculation of assets CO2 output which allows the council to measure its impact on the environment.

Financial Implications

41. The total cost of the contract for the Quality Auditing of Mechanical Services is at an estimated annual cost of £185k, which will be covered by the HRA heating budget, which is currently £8.8m p.a. and covers the responsive repairs element of the contract and any ad hoc work.

42. The costs incurred are based on the volumes of activity under the contract. The unit costs charged under the contract are unchanged by this contract extension.

43. The historic spend patterns shown are slightly higher than the current annual budget. However, these audits will only be carried out when deemed necessary and where issues are found these will be rectified at the cost of the contractor as well as the audit fee being recovered. These 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.

44. The cost of auditing the gas safety certificates from leaseholders will form part of the overheads cost for the communal heating service and be recoverable as part of service charges.

Legal Implications

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

Consultation

46. PCM liaise with the two heating and water contractors (OCO Ltd and Smith & Byford Ltd) as required.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance and Governance (FIN1247)

47. The Strategic Director of Finance and Governance notes the contents of the report and advises that there are no additional budgetary implications.

Head of Procurement

48. This report seeks to formalise the prior approval of the Strategic Director of Housing and Modernisation for the variation of the quality auditing of mechanical services contract to Gas Advisory Services Ltd (trading as Phoenix Consultancy Management) (PCM) to extend the term of the contract for a period of five years from 4 January 2021. The estimated additional cost is £185k per annum, making a total estimated extension cost of £925k and estimated contract value of £1.85m for 10 years.
49. The report asks that the Strategic Director of Housing and Modernisation notes the shortening of the written notice period provision to be given to PCM from 3 months to one month for the period of this variation.
50. The details of the Contract Management and Monitoring are set out in paragraphs 27-30 of the report.
51. Paragraph 35 confirms that London Living Wage is paid under the contract, with other area of social value set out in paragraphs 36-40.

Director of Law and Governance

52. This report seeks the Strategic Director of Housing and Modernisation to formalise his prior approval to extend the quality auditing of mechanical services contract which is being performed by Gas Advisory Services Ltd (trading as Phoenix Consultancy Management) and to shorten the notice period provision from 3 months to 1 months notice. This report sets out the extent of the extension and the reasons why an extension of 5 years is necessary. As the value of this variation is less than £1m, the decision to approve this extension is reserved to the relevant chief officer (or under his delegated authority).
53. The nature of this variation is such that it is subject to the tendering requirements of the Public Contracts Regulations 2015 (PCR 2015) (as amended by Public Procurement (Amendment etc.) (EU Exit) Regulations 2020). Regulation 72(1)(a) of PCR 2015 allows the council to vary the current contract as this option was provided for in the initial procurement documents and does not alter the overall nature of the contract. Paragraph 19 of this report confirms that a Gateway 0 report will be prepared and presented in 2022/2023 to consider future options for the delivery of this service.
54. CSO 2.3 requires that a variation decision may only be made if the expenditure involved has been approved. Paragraphs 40 to 42 of this report confirm the financial implications of these variations.

Director of Exchequer (for housing contracts only)

55. As identified in the GW1, statutory consultation under section 20 of the Landlord & tenant Act 1985 (as amended) was not needed for this contract

as the anticipated expenditure was considerably less than £100 per annum. The contract included the option for this extension and no section 20 consultation is needed at this stage.

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).



10 May 2021

Signature Date.....

Michael Scorer, Strategic Director of Housing and Modernisation

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

N/a

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.

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
GW1 report – Quality Auditing of Mechanical Services	Housing & Modernisation, Asset Management	Gavin Duncumb X50685
Link: \\bsth-hou-ns1\housing_shared\Asset Management\Engineering & Compliance\Engineering Procurement\Quality Audit Mech Serv PROCUREMENT\Gateways\GW1\GW1 Quality Auditing of Mechanical Services.pdf		
GW2 report – Quality Auditing of Mechanical Services	Housing & Modernisation, Asset Management	Gavin Duncumb X50685
Link: G:\Asset Management\Engineering & Compliance\Engineering Procurement\Quality Audit Mech Serv PROCUREMENT\Gateways\GW2\GW2 OPEN - Quality Auditing of Mechanical Services - 20151012.pdf		
APR – dated 24 Feb 2020	Housing & Modernisation, Asset Management	Gavin Duncumb X50685

APPENDICES

No	Title
N/a	None

AUDIT TRAIL

Lead Officer	Dave Hodgson, Director of Asset Management	
Report Author	Rod Davies, Procurement Manager	
Version	Final	
Dated	20 April 2021	
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 Governance	Yes	Yes
Director of Exchequer (for housing contracts only)	Yes	Yes
Cabinet Member	n/a	n/a
Date final report sent to Constitutional Team		10 May 2021