

Cabinet 21 October 2020	 TOWER HAMLETS
Report of Ann Sutcliffe, Corporate Director, Place	Classification: Unrestricted
Extension of contract H3190: Housing Repairs and Maintenance and Gas Servicing and Repair	

Lead Member	Cllr Sirajul Islam: Statutory Deputy Mayor
Originating Officer(s)	Karen Swift: Divisional Director, Housing and Regeneration
Wards affected	All Wards
Key Decision?	Yes
Forward Plan Notice Published	22 September 2020
Reason for Key Decision	Financial Threshold and Impact on Wards
Strategic Plan Priority / Outcome	A borough that our residents are proud of and love to live in. People live in safer neighbourhoods and anti-social behaviour is tackled.

Reasons for urgency:

The report was not published five clear days in advance of the meeting. This is due to the additional time required to review the report and its appendices and the need to bring the report forward to an earlier than planned meeting. As the existing contract expires in March 2021 any extension needs to have as much time as possible to enable continuing services to be planned and resourced for by the contractor. Reducing preparation time for the extension potentially reduces the ability of the contractor to guarantee a smooth transition into extension. If the decision is not taken there is a potential risk to the continuation of services.

Executive Summary

LBTH has a contract in place for the maintenance of its housing stock, which delivers statutory responsive repairs and servicing (incl. gas, fire, water) and all associated communal plant room repairs and servicing. The contract expires on 31st March 2021. On 10 July 2019 (Tollgate 1 process), the Council approved a plan to procure 4 individual contracts for the provision of this service from April 2021.

Whilst there has been some delay with publishing the tenders to the market at the beginning of the year, it was the Covid-19 outbreak (uncertain market conditions, furloughed staff within the contractor environment and the necessary re-prioritisation of projects) that made it impossible for the four new contracts to be procured and mobilised by the time the current contract expires. New contracts are now planned to

be concluded by end of November 2021. In response to this, it is necessary to extend the existing contract for 8 months. This extension will include the option for an earlier exit for all the four elements as new contracts come on stream.

This contract extension is not automatically compliant with the requirements of leasehold consultation. As such it requires a change in practice/operating procedures when undertaking works to communal areas. Revised procedures have been put in place to manage this risk.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Extend the existing contract H3190 for housing repairs, maintenance, and gas servicing and repair for 8 months from 1st April 2021 to 30th November 2021 with an option to exit any of the four service elements earlier; the value of the contract extension is estimated to be up to £10M (the total contract value over ten years is around £160M) – this is not a requirement for additional funds; this is budgeted for within existing budgets for 2021/22
2. Note the risk and mitigation actions in relation to leasehold recharging that will be in place (Appendix B).

1 REASONS FOR THE DECISIONS

- 1.1 Mears Ltd provides repairs and maintenance services to all Council housing stock. These services include statutory repair obligations to residents in council housing. The contract is due to expire on March 31st, 2021. This single contract is planned to be replaced by 4 new contracts originally due in April 2021 but delayed primarily due to the disruption caused by the Covid-19 pandemic. An extension of the existing contract for a period of 8 months is required to maintain repairs services to the housing stock. The contract extension will retain all existing contractual and service provisions, so there will be no change in the service delivered.

2 ALTERNATIVE OPTIONS

- 2.1 Due to the scale of operations across the borough and the required upfront mobilisation costs in relation to the services, options are very limited.
- 2.2 Procure a short-term open market contract for 8 months - this option would not stimulate market interest as this type of contracts normally warrant long durations (10 years). The upfront costs present significant commercial risk to companies who are not likely to express interest. Corresponding operational disruption in changing suppliers for the short term would likely to cause a significant downturn in performance.
- 2.3 Procure new short-term contracts via an existing third-party framework. For

3 of the 4 services provided it would require extensive leasehold consultation across the borough and would present the same commercial challenges as above.

- 2.4 Extend the existing Mears contract – This option provides the best opportunity for services continuity with the least amount of disruption and a high degree of cost certainty. There are some risks with the recovery of leasehold income however Tower Hamlets Homes have undertaken a risk-based approach to those works which fall within the scope of leasehold charges. See Appendix B (Leaseholder re-charging risk mitigation).

3 DETAILS OF THE REPORT

3.1 BACKGROUND

- 3.1.1 In 2011 LBTH tendered two requirements, namely 'Housing repairs and maintenance' and 'Domestic gas servicing and repairs'. One procurement process with separate lots was run and since Mears Ltd won both lots, one contract was awarded, covering both requirements (contract ID H3190). The contract went live on 1 April 2011 for the initial period of 5 years with an option to extend it for further periods of up to 5 years. The annual value estimates in the official OJEU contract notice were £11M - £20M for 'Housing repairs' and £1.5M - £4M for 'Gas servicing and repairs'. The total contract value over the 10-year period was estimated at £125M - £240M.
- 3.1.2 In 2015, LBTH issued a Variation to Contract H3190 by which the 'Mechanical and electrical servicing and repairs', with the estimated annual value of £1.8M, was added to the original contract. This variation was originally for 2 years, till 31 March 2017. This would go beyond the end date of the original contract (the initial 5-year contract term was due to expire on 31 March 2016.). However, the original contract was then also extended for a period of one year, therefore aligning both termination dates to 31 March 2017. Contract H3190 (now also including the M&E variation) was then extended again for a further period of 4 years till the end of March 2021, which is the current final contract expiry date - all contractually provided options for extension have been utilised.

3.2 Re-Procurement of Contract H3190

- 3.2.1 In Q3 of 2018, THH on behalf of LBTH, started preparatory work for the re-procurement of the services in scope of contract H3190. Following extensive work with the relevant resident groups and business areas as well as approvals of the relevant Council governance bodies, the composition, scope and contract lengths have been agreed as follows:
- a) The Repairs, Maintenance and Minor planned works Term contract (5+3+2 years)
 - b) Domestic gas and Minor planned works Term contract (5+3+2 years)

- c) Communal Mechanical Plant (Repairs, Maintenance, Servicing and Minor planned works) Term contract (5+2+2 years)
- d) Fire Safety (Repairs, Maintenance, Servicing and Minor planned works) Term contract (3+2 years)

3.2.2 While the new delivery model envisages four individual contracts, it should be noted that the fire safety requirement is included in the current main Housing repairs contract. Therefore, these four services are all currently covered by the existing contract H3109.

3.2.3 The procurement process including all the relevant governance procedures was due to be concluded by the end of September 2020. Statutory leaseholder consultation would follow and complete the overall process by the end of November 2020. This would then allow 4 months to mobilise the contracts for their go live date of 1 April 2021.

3.3 Project Progress – before Covid-19

3.3.1 Prior to the Covid-19 outbreak there was an 8-week delay with the project. The delay was caused by:

- a) Resources – THH have experienced issues with securing the right project resources in terms of providing the necessary technical and service delivery input for the preparation of tender documents; this has now been resolved.
- b) Counsel opinion in relation to Regulation 33 of PCR 2015 – Complexity in relation to long term contracts required counsel advice in conjunction with the Council's legal team.

3.4 COVID-19

3.4.1 The Covid-19 pandemic is unprecedented and has had significant impact on business, people and governments across the World. It has required organisations to adapt their business operations, which included reprioritising and focusing on essential tasks only. In view of this, the Project team has experienced three main issues impacting on the delivery of the re-procurement of the responsive repairs service:

- a) Pandemic impact - Both, THH and LBTH had to respond to the urgency of the pandemic by re-prioritising projects and ensuring a swift transition to remote working. The focus of the initial response was health and safety of staff and residents as well as ensuring continuity of service for residents.
- b) Market conditions – Many, if not all, businesses have themselves been dealing with the consequences of the pandemic. Many had to furlough staff. This means they were less likely to be able to respond to new business opportunities, or to respond to them in a way that delivers the best outcomes for LBTH. While it is feasible, that some businesses

would be able to submit a proposal, it is very likely that competition would be negatively affected, in terms of numbers as well as adverse price proposals.

- c) THH also received external advice (Browne Jacobson LLP) confirming existing contracts can be extended: “THH will in most circumstances have the grounds to directly award a contract to a provider or make an extension to an existing contract to deal with the immediate impact of the Pandemic.”
- d) Service specification – Covid-19 has changed the shape and/or scope of the services of the responsive contracts. While some of these changes are temporary, it is likely others will be in place over a longer period. This means additional/new service standards to be established and to ensure they are reflected correctly in the relevant procurement documentation for new contracts. Furthermore, the required (new) standards have a direct impact on the cost of the service. It is therefore important to ensure we approach the market for these long-term contracts at a time, when the worst uncertainty has been eliminated. Otherwise we may risk paying a premium price over the entire duration of the contracts.

3.5 Revised Plan for the Re-procurement of Responsive Repairs Service

3.5.1 In view of the project progress to date and the pandemic impact the Project team has identified the following approach as the best way forward:

- a) focus on working with the existing supplier (Mears) to maintain continuity of service and continue to adapt the service offer as required to respond to the pandemic,
- b) extend the existing contract for additional 8 months but with an option to exit any of the four service elements earlier; the value of the contract extension is estimated to be up to £10M (the total contract value over ten years is around £160M) – this is not a requirement for additional funds; this is budgeted for within existing budgets for 2021/22,
- c) resumed (now underway) re-procurement of the four contracts now the initial impact of the pandemic has settled, and resources can be re-directed back to the project (August/September 2020); high-level revised timeline for all four procurements is attached in Appendix A,
- d) stagger the procurements in a way that will see the new contracts starting between July and December 2021.

3.6 Grounds for the Revised Strategy

3.6.1 Contract extension: Regulation 72 of The Public Contracts Regulations 2015 provides legal basis for the required contract extension.

3.6.2 Performance of existing supplier: Mears performance remains satisfactory.

A. Pre-pandemic:

- Emergency orders completed in target (across all Mears workstreams) >99%
- Non-emergency orders completed in target >98%
- Gas servicing – 100%

B. During/post-pandemic

- Emergency orders completed in target – still delivered above target (98.7% to July)
- Non-emergency orders completed in target – still delivered above target (99.3% to July)
- Gas servicing – still achieved 99.9% compliance, despite hugely challenging circumstances
- During the pandemic, Mears continued to provide services in line with the government guidance and provided additional support to THH caretaking team delivering food parcels to our residents and putting up posters to aid communication with residents during lockdown

3.6.3 Existing supplier's view of proposed approach: Informal discussions with Mears have taken place and they have indicated they would be willing and able to continue with the delivery of the service and then (demobilise) disengage to the new contracts in a planned incremental manner.

3.6.4 In addition, THH sought improvement from Mears in a few specific areas at the end of 2019 and an Action Plan was agreed in early 2020, to ensure adequate focus on these. Swift action and marked improvements were noted in some, including voids turnaround, before we entered lockdown in March. Although lockdown did compound the situation due to furlough etc, Mears have been responsive in addressing this. Further targeted action has also been agreed in recent weeks around overdue jobs and the impact of resulting chase-up calls on THH's Housing Service Centre as well as on residents. This is being closely monitored by the Director of Asset Management, who has met with Mears Regional Directors to ensure ownership.

3.7 RISKS

3.7.1 Pandemic impact – With the pandemic ongoing, Covid-19 remains a risk that will continue to be monitored and managed. Therefore, in the event of a further Covid-19 lockdown or similar disruptive event, officers may be forced to seek a further extension beyond 8 months.

3.7.2 Brexit – The transition period of the UK leaving the EU is scheduled to end on 1 January 2021. It is not anticipated this will have any immediate significant

impact on the procurement process required to procure new contracts so the risk of this impacting on the process is minimal.

3.7.3 Leaseholder re-charging – risk of not being able to recover all the moneys from leaseholders. Continuation of the Repairs service provision beyond the intended Mears contract end date on 31 March 2021 can be accommodated with the relevant procurement legislation. However, the proposed contract extension is not automatically compliant with the requirements of leasehold consultation. The contract will limit recovery of costs to £250 (per block/estate) for all works under the contract. As such, this will require a change in practice/operating procedures when undertaking works to communal areas. The potential value of leasehold charges over an 8-month period is between £0.38M and £0.6M. Robust processes and controls have been put in place to manage this risk as follows:

- a) Emergency, urgent, or essential works which are not immediately compliant will be undertaken and a retrospective application to the FTT for s20 dispensation will be made if required.
- b) non-urgent planned works will be delayed or other contractors from the better neighbourhoods framework will be used.
- c) Each individual works order will be scrutinised prior to issuing to contractor(s)
- d) Estimates for planned works will be included in service charges estimates prior to the year commencing.

4 EQUALITIES IMPLICATIONS

4.1 The report seeks an extension of an existing repairs contract. Therefore, there are no equalities implications within this report as demonstrated by the attached impact assessment appendix c.

5 OTHER STATUTORY IMPLICATIONS

5.1 Best Value Implications: see section 3.6.2 of this report. In addition, the terms of the existing contract will continue to operate, to maintain short-term continuity of service during the period of extension. These were market tested at the time of contract procurement and offer ongoing best value until new contracts are in place.

5.2 Consultations: the existing contract was widely consulted on at the time of original procurement. However, this contract extension is not automatically compliant with the requirements of leasehold consultation. As such it requires a change in practice/operating procedures when undertaking works to communal areas. Revised procedures have been put in place to manage this risk.

5.3 Risk Management: refer to section 3.7 of the report and appendix B.

5.4 Safeguarding: The Contractor is required to follow safeguarding protocols.

5.5 Data Protection / Privacy Impact Assessment: GDPR and information sharing arrangements will continue during the period of extension. The Contractor has contractually signed up to LBTH standard data protect policy and there are no implications.

6 COMMENTS OF THE CHIEF FINANCE OFFICER

6.1 The report is seeking an extension of the existing repairs and maintenance contract with Mears for a period of eight months to allow for a competitive tender to be undertaken to re-let these contracts. The extension is being requested due to delays in re-tendering as a result of COVID-19 and to ensure service continuity over this period.

6.2 Annual costs incurred for repairs and maintenance vary year on year, being dependent on the works completed. The total contract value over the past ten years has been in the region of £160m, an average cost of £16m per annum. It is estimated that the cost of the eight-month contract extension will be approximately £10m. These costs are revenue in nature and will be contained within the HRA.

6.3 There is existing budgetary provision within the HRA for repairs and maintenance, in line with the existing contract provision. This budget will be available to fund the cost of the contract extension.

6.4 At present the cost of any contract extension is unknown. Should the costs exceed the budget provision then the overspend must be contained within the HRA and mitigating savings identified to meet this cost. Likewise, any saving against budget resulting from the contract extension will be retained for the benefit of the HRA.

7 COMMENTS OF LEGAL SERVICES

7.1 This report is seeking approval to extend the existing contract for 8 months at an additional cost of £10M, because the commencement of the re-procurement for the services was delayed due to the Covid-19 pandemic.

7.2 This contract is regulated by the Public Contracts Regulation 2015. Any modification during its term must be in accordance with the Regulation.

7.3 The extension of this contract is justified under Regulation 72 (1) (c) of the Public Contracts Regulations 2015, for the following reasons that (a) the need for the modification was brought about by the pandemic which was not foreseeable to the authority; (b) the modification does not alter the overall nature of the existing contract; and the increase in the price which is £10M does not exceed 50% of the original tendered value of the contract price of £160M. Therefore, the extension to this contract wholly complies with the relevant procurement law

- 7.4 The contract will continue throughout the extension in accordance with the original tender submission and be monitored in accordance with the terms by THH and the Council. Therefore, the contract throughout the extension period should continue to satisfy the Council's Best Value Legal Duty.
- 7.5 In order to reclaim the costs of works under the extension the Council via THH would have to consult with leaseholders in accordance with S.20 of the Landlord and Tenant Act 1985. However, a cost benefit analysis shows that the cost of undertaking such a further consultation exercise for the short extension period outweighs the potential reclamation of expenditure by the Council.
- 7.6 Therefore, the cost of works under the extension will be managed by the following factors:
- 7.1.6 Under the Landlord and Tenant Act 1985 the Council would be entitled to reclaim up to £250 per affected leaseholder without consultation and
 - 7.2.6 The works may be mainly managed in such a way as to restrict unreclaimable expenditure and
 - 7.3.6 In the event of unforeseeable and unmitigatable significant expenditure the Council could consider achieving retrospective approval for recharging although this in itself may be expensive and a further cost benefit analysis would need to be undertaken before proceeding down this route and
 - 7.4.6 Throughout the extension period newly procured and consulted upon replacement contracts (in particular in respect of heating) will be mobilised under which the Council may recharge the cost of the works
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Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

- Appendix A – Responsive repairs Project Plan – revised
- Appendix B – Leaseholder re-charging risk mitigation
- Appendix C - Impact Assessment

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- NONE.

Officer contact details for documents: N/A