

Cabinet Decision	
6 September 2016	
Report of: Aman Dalvi, Corporate Director, Development and Renewal	Classification: Unrestricted
Procurement of Cleaning and Associated Services Contract	

Lead Member	Councillor David Edgar, Cabinet Member for Resources
Originating Officer(s)	Samantha Raishbrook, Interim Head of Facilities Management
Wards affected	All Wards
Key Decision?	Yes
Community Plan Theme	One Tower Hamlets

Executive Summary

This report sets out the proposed contracting approach for the re-procurement of the cleaning and associated services contracts to serve the council's future requirements. These arrangements take into consideration the wide scope of daily, specialist and reactive cleaning services that are required. Services are required across a diverse property portfolio that requires a standard output specification whilst still delivering services tailored to meet individual stakeholder needs.

The contracting approach seeks to secure a service provider who will enter into a sustainable partnership with the council. The service provider will need to be able to adapt the scale of their services in line with the council's asset management strategy as the number of properties will vary over the life of the contract. The service provider will need to continue to provide a consistent management approach and structure. The contractual relationship will need to span the planning, implementation and move phases of the civic centre project; including the as yet unscoped short-term/temporary accommodation requirements and arrangements that may be needed during the project.

This report also seeks a short extension to the existing contract of two months in order to undertake a compliant procurement exercise and effectively mobilise the service.

Recommendations:

The Mayor in Cabinet is recommended to:

1. authorise the re-procurement and subsequent awarding of a cleaning and associated services contract for a term of five years with the option to extend for a further year based on service provision, subject to best value considerations being satisfied
2. authorise a two month extension to the existing contract arrangement to enable the re-procured contract to commence on 3 July 2017.
3. note that funding for the procurement exercise is through the General Fund revenue accounts across the various Council services
4. delegate authority to the Corporate Director of Development and Renewal following consultation with the Lead Member to enter into all necessary agreements to give effect to the decisions in recommendations 1 and 2
5. authorise the Service Head – Legal Services after consultation with the Corporate Director of Development and Renewal to execute and enter into all necessary agreements

1. REASONS FOR THE DECISIONS

- 1.1 Tower Hamlets is both an employer and a service provider. As an employer, the council's Corporate Property & Capital Delivery Service provides accommodation for over 5,000 employees across a number of administrative buildings. As a provider of services the Corporate Property & Capital Delivery Service supports a range of departments and stakeholders who operate from the council's estate.
- 1.2 The council has a statutory requirement to provide a safe clean working environment for employees, a commitment to maintain its assets and an obligation to stakeholders to provide cleaning services for buildings for which the Corporate Property & Capital Delivery Service is responsible. These cleaning services are needed to be adaptive to different forms of building use and service provision, as well as being able to respond to changes in such provision.
- 1.3 The project to reprocure the new contract is slightly delayed due to a lack of available resources being available at the required time. While the development of the new specification has now commenced, the time now available to publish, evaluate, award and mobilise this service will require a short-term contract extension of two months to 29 June 2017.

2. ALTERNATIVE OPTIONS

- 2.1 The council could require each department to individually procure and manage a cleaning and associated services contract for the buildings and facilities they occupy and use. However, this would likely result in increased overall costs with a lack of accountability for services with an increased risk of compliance failures due to a lack of management control. It will also fail to secure the economies of scale that could be achieved with one overall council-wide contract.

3. DETAILS OF REPORT

3.1 Background

- 3.2 The current contract was awarded to Wetton Ltd on 30 April 2012 for a three-year period with the possibility of two one-year extensions. Both of those options for an extension were exercised by the council and the contract is now due to come to an end on 29 April 2017. This report seeks a further short-term

extension of two months to 2 July 2017 in order that new contractual arrangements can be put in place while service provision is maintained. The cost of the extension is estimated to be approximately £0.363m, 90% of which is to be met from the Corporate Landlord budget and further 10% is to be recharged directly to services. The estimated spend over the life of this contract is £7.2m.

3.3 The contract is broken down into five lots, these include

- Administrative sites
- Children's Centres
- Libraries and Idea Stores
- Window Cleaning
- Sanitary Services

3.4 The profile of fixed spend over the life of the contract and estimated spend over the short-term extension are as follows:

Period	Fixed spend	No. of sites	No. of sites added	No. of sites omitted
Year 1 30/04/2012 - 31/03/2013	£1,329,049	76	12	8
Year 2 01/04/2013 - 31/03/2014	£1,291,817	78	6	4
Year 3 01/04/2014 - 01/03/2015	£1,390,170	82	4	0
Year 4 01/04/2015 - 31/03/2016	£1,388,443	83	1	0
Year 5 01/04/2016 - 31/03/2017	£1,452,625 (estimated)	87	6	2
Contract Extension 01/04/2017 – 28/06/2017	£363,156 (estimated)	87	0	0
TOTAL	£7,215,260			

3.5 The contract has a schedule of rates to include additional work and specialist cleaning ie. graffiti removal or reactive biohazard cleans which are categorised as variable spend.

- 3.6 The profile of variable spend over the life of the contract and that projected for the remainder of the term and the short extension are as follows:

Period	Variable spend amount
Year 1	£7,902
Year 2	£9,407
Year 3	£16,247
Year 4	£27,428
Year 5	£21,000 (Estimated)
Extension	£1,000 (Estimated)
Total	£82,984

- 3.7 The value of these works has increased the total contract value to £7.2 million over the life of the contract.

- 3.8 In addition to fixed and variable costs each site currently has an ability to order additional consumable items. This is unregulated spend which is mainly cleaning consumables. This spend is in addition to the above and is recorded over the past five years (and projected for the remainder of the contract term and short extension) as follows:

Period	Consumables spend amount
Year 1	£190,100
Year 2	£198,040
Year 3	£213,930
Year 4	£227,270
Year 5	£235,000 (Estimated)
Extension	£40,000 (Estimated)
Total	£1,104,340

- 3.9 Additional spend on cleaning services within the council which has been contracted outwith the main contract is also identified as follows:

Period	Variable spend amount
Year 5	£258,075 (Estimated)
Extension	£43,010 (Estimated)
Total	£301,085

- 3.10 This additional annual spend is based on actual monthly recharges on Agresso which have been estimated to year end.

3.11 Contracting Approach

- 3.12 There is a requirement to re-procure the existing contract for cleaning and associated services. This contract is an ongoing requirement and related to arrangements that have been reviewed/consolidated for some years.
- 3.13 There is a requirement to award the contract on the expiry of the existing contract with an anticipated start date of 3 July 2017. The new contract is expected to be awarded for a 5-year term with the option for a one-year extension based on successful delivery of a number of key performance indicators. The indicative value of the new contract is expected to be approximately £11.1 million based on consolidating all existing fixed, variable, unregulated and consumable spend identified.
- 3.14 The contractor will provide daily cleaning services to the council's portfolio of over 80 buildings, with buildings added and removed from the contract based on changes to the council's estate. Due to the move to the council's new civic centre (circa 2021), there is a requirement for the contract to incorporate mechanisms that mitigate as many risks as possible associated with the delivery of services throughout the planning, implementing and move phases of the project.
- 3.15 The value of this contract is anticipated to be approximately £11.1 million. In accordance with council procedures, a contract of this size and complexity would require a well established, robust service provider with a strong supply chain and turnover in excess of £20 million. There do not appear to be any such companies registered, located or based in the borough.
- 3.16 The contract will be tendered in accordance with EU procurement regulations in the form of a restricted tender in two stages. The first stage will be pre-qualification questionnaires that allow the production of a short list of four to six bidders who will then be invited to tender. These tenders will be evaluated on criteria designed to identify the most economically advantageous offer based on a combination of the quality of the vendor's solution (60%) and price (40%).
- 3.17 The scope of services will be driven by the requirements of the council's service area. In order to ensure that this contract is fit for purpose a high level of stakeholder engagement will take place to ensure that requirements are captured and described accurately as outputs within the specification.
- 3.18 The contract will provide for an annual renegotiation based on the requirement to pay the London Living Wage (LLW) and an annual index-linked increase. The annual index has not yet been identified but could be limited to increases in council budgets or related to an external index such as the Consumer Price

Index (CPI). The LLW is announced in October each year and employers have six months within which to implement the increase. Annual increases will be applied from April each year.

- 3.19 The contract will cover a period of high activity in relation to changes in property use, disposals and the inclusion of additional properties – particularly, but not limited to, the new civic centre. The variation clause will need to provide for flexibility by incorporating a standard variation clause to add/remove properties and services at short notice.
- 3.20 The pricing model must be able to provide a cost which is directly attributable to each building while remaining robust enough to ensure that the management and supervisory elements of the contract are adequately apportioned.
- 3.21 A performance measurement model is to be developed to meet the council's expectations for service and value. Performance Indicators (PIs) and Key Performance Indicators (KPIs) will be developed in consultation with key stakeholders and will be relied on in determining when the one-year contract extension option is exercised.
- 3.22 The contract will provide for a schedule of rates to include additional work and emergency responses.
- 3.23 **Goods and Services to be Procured**
- 3.24 The scope of requirement is expected to cover but not be limited to;
 - Daily Office Cleaning
 - Reactive Cleaning Service
 - Emergency Response
 - Graffiti Removal
 - Bio Hazard – Body Spills
 - Periodic and Specialist Cleaning
 - Stone and Marble Cleaning
 - Carpet Cleaning
 - Internal and External Window Cleaning
 - Feminine Hygiene
 - Air Fresheners
 - Clinical Waste and Disposal
 - Consumables

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 It is a requirement of the Council's constitution that "The contracting strategy and/or award of any contract for goods or services with an estimated value exceeding £250,000, and any contract for capital works with an estimated value exceeding £5,000,000, shall be approved by Cabinet in accordance with the Procurement Procedures".
- 4.3 The current contract for the cleaning of the Council's various property assets commenced on 30th April 2012, and with the two one-year extensions options being agreed, the contract ends on 29th April 2017. It is proposed that a two month extension to 2 July 2017 is approved in order that all procurement timescales can be met.
- 4.4 The contract will be let in accordance with all relevant procurement procedures. The indicative value of the contract over the five years plus possible one-year extension period is £11.1 million based on the consolidation of the various items of cleaning expenditure (see paragraph 3.15). The contract will include a standard variation clause which will enable buildings to be added or removed as necessary – this flexibility is important during the review of property assets that will be necessary as part of the council's relocation to the new civic centre in Whitechapel.
- 4.5 The approved budgets for cleaning services are held within existing General Fund revenue accounts across the various council services. The cost of £363k arising from this extension will be met from the existing service provision. In addition, elements are charged to the Housing Revenue Account (via a service level agreement with Tower Hamlets Homes) and various trading accounts. On completion of the procurement process the existing budgetary provision will need to be reviewed to ensure that it reflects the new rates, and that any growth or savings that arise are incorporated into the Council's medium term financial plan; however given the need for the Council to deliver significant savings over the MTFS period (2017 – 2020) it is imperative that this key contract contributes to those savings requirements. Flexible terms to allow for changes in the scope of the buildings covered over the course of the contract; actions to limit price indexation allowances as much as possible and robust procurement to ensure that initial rates deliver value for money are all important considerations
- 4.6 It is also important that specific consideration is given to scoping the contract such that it can contribute to the Council's MTFS savings targets and included in the package of proposals considered by the Council through the current budget setting process.

5. LEGAL COMMENTS

- 5.1 This report concerns a proposal to initiate a competitive tendering exercise for cleaning services and extend the current contract to enable the procurement timescales to be completed (the Services).

- 5.2 The Council has power to enter into a contract for a third party to deliver the Services which arises by virtue of section 111 of the Local Government Act 1972, providing the power enabling the Council to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. Under section 1 of the Localism Act 2011, the Council has the power 'to do anything that an individual may do' 'for the benefit of the authority, its area or persons resident or present in its area'. The Council may be satisfied that it has the enabling power(s) to initiate a procurement exercise for the Services and award any subsequent contracts pursuant to that competition.
- 5.3 The subject matter of the Services falls within the description of Part 2 of the Public Contracts Regulations 2015 (Regulations) and the estimated value of the contract (circa, £11,100.000) exceeds the relevant threshold contained in the Regulations. In view of this the Council is required to fully comply with the Regulations and to subject the contract to a level of competition to ensure compliance with the principles of transparency and equal treatment. In addition, the Council would be required to place an advert in the Official Journal of the European Union (OJEU) together with a further notice in the OJEU when a contract is awarded, amongst other things.
- 5.4 The Council's procurement procedures (Procedures) require that for this type and value of procurement, the "tollgate" process is followed and it would appear from the information provided that those relevant requirements have been complied with to date.
- 5.5 The current contract for the Services requires a three month extension to enable the procurement exercise to be concluded and as such, would likely be regarded as a 'direct contract award' which could expose the Council to legal proceedings in respect of that illegality. In particular, a claim might be brought by an organisation claiming damages in respect of the lost opportunity and an application to have any direct award contract annulled. A decision of the Council not to procure the Services may also lead to allegations that the Council is failing to comply with European law in relation to public procurement, particularly principles such as equal treatment and transparency and non-discrimination under the Treaty on the Functioning of the European Union. This may expose the Council to scrutiny from the Cabinet Office and further, to the imposition of financial penalties by the European Commission. If the Council decided not to procure the Services and engage a different contractor to carry out work to satisfy its statutory duties, this would also likely be regarded as a direct contract award and expose the Council to the risks highlighted in this paragraph.
- 5.6 Directly awarding the contract would require a specific waiver of the Council's Procedures and the Council should be satisfied that one of the grounds for waiving them under section 12 of the Procedures is acceptable. The ground which could be relied upon is 12.1(a) of the Procedures which states that a waiver is permissible where "the nature of the market for the works to be carried out or the supplies or services to be provided has been

investigated and has demonstrated that only a single source of supply is available, or it is otherwise clearly in the Council's interest to do so”.

5.7 Reasons are provided in the report as to why it may be considered appropriate to deviate from the Council's Procedures, which may be summarised as follows:

- the Council has conducted preparatory work and intends to conduct public procurement as quickly as possible from the date of any Cabinet approval;
- the Council is obligated to continue to provide services in accordance with its statutory functions and it would be undesirable for no or significantly disrupted services to be provided until the new procurement has been completed and may in certain circumstances lead to the Council breaching other statutory obligations;
- it would be disproportionate and unviable to conduct a competition for three months' worth of Services provision; and
- it is arguably in the Council's best interests to extend the current contract so as to align the timescales for the award of a new contract under the intended procurement exercise.

5.8 There is a risk of challenge to the proposed contract awards for alleged non-compliance with the duties outlined in 5.5 and 5.7 above. The risk is lessened as the Council has, arguably, a pragmatic reason for requiring the short term contract and has some basis, by reason of the preparatory steps taken, that it is not the Council's long term intention to avoid competition. The Council should note that a 'new' contract is awarded to the organisation in an attempt to limit the measure of potential damages payable for the duration proposed and the contract ought to be aligned with the award of contracts under the intended procurement exercise.

5.9 The Council is required by the Public Services (Social Value) Act 2012 to consider how its procurement activities might secure the improvement of the economic, social and environmental well-being of Tower Hamlets. At the time of awarding any contracts when the procurement exercise is concluded, the Council should be satisfied that due regard has been given to these duties.

5.10 The Council has an obligation as a best value authority under section 3 of the Local Government Act 1999 to “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.” Compliance by the Council with its own Procedures in tendering for the Services and complying with the requirements of the Regulations should assist to satisfy these requirements. However, the Council would also need to be satisfied that entering into a contract at the conclusion of the procurement exercise would represent best value.

5.11 When considering its approach to contracting, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good

relations between persons who share a protected characteristic and those who do not (the public sector equality duty). Officers are expected to continuously consider, at every stage, the way in which procurements conducted and contracts awarded satisfy the requirements of the public sector equality duty. This includes, where appropriate, completing an equality impact assessment which should be proportionate to the function in question and its potential impacts.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 The services included within the scope of the contract will be universally provided across various types of properties throughout the borough. The current contract for the provision of cleaning and associated services has allowed service areas to purchase on a 'wants', rather than 'needs' basis. This has resulted in enhanced service levels in some parts of the council's estate and subsequently, increased costs. The service specifications for the new contracts will be delivered according to the needs of the service area and therefore a consistent service level will be set. This service specification will account for different types of services that may be delivered from the buildings, recognising that, for example, libraries, offices and children's centres will require slightly different cleaning services.
- 6.2 In selecting a contractor to deliver the contract, consideration will be given to the community benefits that they may offer. This information will be sought as part of the Invitation to Tender document. These could include:
- a. Potential to encourage apprenticeship schemes;
 - b. Employment of a local workforce;
 - c. Positively encouraging tender submissions from suppliers with good records for training and skills development;
 - d. Payment of London Living Wage (LLW);
 - e. Adding stimulus to the local economy, e.g. by way of a local supply chain;
 - f. The attraction of local SMEs by the provision of sub-contractors, for example, Window Cleaning and Sanitary Services. The contract terms will state that the profit margins on these services are to be shared appropriately with those sub-contractors.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 At the time the current contract was awarded in 2012 individual council departments held responsibility for the specification of their own cleaning requirements. This led to a wide variety of specifications and performance monitoring systems being put in place. This multitude of arrangements were centralised, but not harmonised, when the council consolidated its property

and facilities management service. This consolidated model was implemented in October 2015.

- 7.2 This procurement exercise provides an opportunity to benchmark services, ensure that the council's spend is effectively managed and that the new service provides ongoing value for money. The contract strategy is to standardise service provision and management, capturing the requirements of key stakeholders and the delivery plans for their service areas. A service provision with effective KPIs will achieve a standardised service allowing the Council to maximise economies of scale through a centralised management function. This will be an output based specification designed to meet the requirement of a diverse property portfolio. The application of defined cleaning standards to differing areas should encourage a better and more accurate pricing model.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.2 The council's extensive activities generate a need for the provision of cleaning and associated services. This procurement exercise seeks to identify a service provider with a proven record of sustainable achievements who can demonstrate that their own environmental policies mirror those of the council. In seeking a partner to deliver these services consideration will be given to the major environmental impacts as follows:
- a. Waste, with an objective to measure baseline recycling and set targets for improvements. The council is a waste producer and ensuring a greater quantity of waste is recycled as opposed to being disposed of as residual waste contributes to the council's efforts to mitigate the impacts of climate change.
 - b. Energy and water – actively target reductions in use of energy and water.
 - c. Chemicals – the selection and use of environmentally friendly and biodegradable products
 - d. Vehicles - through the re-procurement of the cleaning and associated services contract the council will ensure the appointed contractor contributes to the council's sustainability agenda by ensuring the contractor's vehicle fleet meets the latest emissions limits specifications.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 The top five risks are identified as:
- a. Failure to award the proposed contract for a period of five years (with the option for a one year extension): In the event of not

awarding a contract covering the timescales leading up to and spanning the planning and implementation of the Civic Centre move project an additional procurement exercise would need to be carried out in 2020 which is considered to be too close to the delivery of the project.

- b. Lack of suitable contractors responding to the tender: To minimise the risk of this occurring the council will hold a supplier briefing to engage suitably sized organisations and encourage the appropriate size and type of supplier to respond.
- c. Challenge to the procurement process causing delay and reputational damage: To minimise the risk the procurement process will be overseen and supported by the corporate procurement team and with the appropriate legal advice.
- d. Procurement time line not met: In the event of not meeting the time objective and to minimise risk the incumbent contractor could be extended for the required period.
- e. TUPE: Plan to mitigate risk by ensuring that staff numbers remain below the actual number needed – currently 135 vacancies with circa 135 staff. This means a small number of casual staffing is used to provide cover.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 Part of the successful contractor's role will be to deal with graffiti removal on council buildings. Graffiti can give the impression of an area being run down and poorly looked after, potentially leading to further crime and disorder.
- 10.2 There are no other immediate crime and disorder implications arising from this report.

11. SAFEGUARDING IMPLICATIONS

- 11.1 Where cleaning contractors are required to clean children's centres or other buildings where there are children, young people or vulnerable adults, the appropriate safeguarding measures will be put in place. This could include cleaning only taking place during non-operational hours, constant supervision and/or ensuring sufficient checks (e.g. DBS) have taken place. The council's Safeguarding Team will be consulted to ensure this is properly reflected in the contractor's working practices.
- 11.2 There are no other immediate safeguarding implications arising from this report.

Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

- None

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

- None

Officer contact details for documents:

- Ann Sutcliffe, Service Head, Corporate Property & Capital Delivery (020 7364 4077)