

Report for: Cabinet 5th December 2023

Title: Provisional Award of Operation and Maintenance contracts for localised communal heating systems.

Report authorised by : David Joyce – Director of Placemaking & Housing.

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Ward(s) affected: All

**Report for Key/
Non-Key Decision:** Key Decision

1. Describe the issue under consideration.

- 1.1. The Council owns and operates several localised, Decentralised Energy Networks (DENs), also known as ‘communal heating or district heating’ systems, within the housing portfolio. This portfolio is expanding as many of the developments in the Council’s housebuilding programme include DENs.
- 1.2. At High Road West (HRW), there is a commitment to the Council’s development partner for the Council to set up an Energy Services Company (ESCO) to own the new DEN serving HRW (assuming the development proceeds as planned);
- 1.3. There is also a potential larger borough-wide DEN to be owned by the Council via an ESCO¹. A full business case for this project is currently in development. The project remains subject to a future Cabinet decision on whether to proceed or not.
- 1.4. Separate contracts will be needed for the respective Council and ESCO portfolios (because the ESCO would be a Council-owned company, legally separate from the Council). This report therefore proposes the provisional award of two similar contracts (one for the portfolio of HRA DENs and one that could be used for the ESCO DENs).
- 1.5. The Council needs to take steps to keep pace with the technological progress and develop the management of the potential expansion in new DENs by the Council. This is critical to ensuring consistent high standards of service for all users, managing resident energy bills, decarbonisation and to ensure compliance with regulations and planning conditions that require the Council to publish performance data on any new DENs.

¹ Note it is anticipated LBH would have a single ESCO and that ESCO would have a single DEN. However, the DEN in question might be limited to HRW or it might include HRW *and* the wider area.

- 1.6. DENs require specialised Operation & Maintenance contractors to ensure they operate reliably and efficiently and in accordance with the relevant regulations. The two proposed contracts take account of the additional complexity of new vs. older DENs and the forthcoming regulatory regime for DENs. They both have a 5+5-year duration and are designed to improve customer service and reliability, increase value for money and incentivise good operation of the systems through the transfer of risk to the operator.

2. Cabinet Member Introduction

- 2.1. Haringey Council requires the support of specialist contractors to deliver operational maintenance and repairs to communal heating systems (also known as localised, decentralised energy networks) programmes. These programmes are critical to the comfort and safety of residents, supporting Haringey in ensuring it meets its duties to provide safe and decent homes for its tenants.
- 2.2. Maintenance of these systems requires a high level of competency and specialist knowledge as well as access to specialist parts and supply chain. Quality and consistency in service provision is a priority, however the market for provision of this comprehensive service is currently limited.
- 2.3. The current arrangements rely on a number of different providers operating under ad-hoc arrangements which are vulnerable to changes in provision and performance as a result of having no long-term contract and/or commitment in place.
- 2.4. Council cannot allow this service to fail due to lack of suitable contracts and competent resources, which at this time must be outsourced. By ensuring there is a suitable long-term supplier in place, we will demonstrate our commitment to improving the quality of housing that we provide.

3. Recommendations

- 3.1 Cabinet is asked to –
- note the contents of Appendix A Exempt Report, and
 - approve the preliminary award of the main (Housing) call-off contract to Contractor A for the operation and maintenance of existing and future DENs servicing HRA properties, subject to S20 for a maximum value of £10.2m for a 5-year, plus 5-year contract term, (Contract 1) and
 - approve the preliminary award of a second call-off contract, also to Contractor A, **that would remain dormant**, and will only become active if the Council decides to create an Energy Services Company, ESCo, (Contract 2) (see also 4.6 and 6.11 below) but is for maximum value of £10.6m and would co-terminate with contract 1 at the end of its term. Contract 2 will remain dormant subject to any future Cabinet decision whether or not to set up an ESCo. If the ESCo were set up, Contract 2

would be available to be Novated by the Council to the ESCo and then activated.

- delegate authority to the Director of Placemaking & Housing, in consultation with the Head of Legal Services, to finalise and award both of the contracts following completion of the Section 20 process for contract 1.

4. Reasons for decision

- 4.1 The Council requires operation and maintenance contracts for its portfolios of current and future heating systems provided through DENs. The proposed contracts represent good value for money (VFM) and are expected to generate savings when compared to the current arrangements/practices (further information on this is provided in the exempt report).
- 4.2 Awarding both contracts simultaneously locks in the current rates which provide surety of cost and allows for reliable cost projection in relation to future development commitments such as those at High Road West, where there is already a level of commitment to create an ESCo. This company would then have access to the O&M contract that this report seeks award for.
- 4.3 Having two similar contracts with Contractor A, allows the Council to offer the same standards to its residents as a future Council ESCo will offer to residents in private blocks as and where applicable.
- 4.4 Some of the Council's existing heating systems within the scope of this contract include leaseholders. The procurement process for contract 1 will therefore comply with s20 of the Landlord and Tenant Act. This requires that leaseholders are consulted on the provisional outcome of a procurement prior to final contract award.
- 4.5 **If** the Council sets up an ESCo (either, for HRW, as a result of the development moving forward as expected and the Council's commitments in the Development Agreement, or, for the borough-wide DEN, subject to a full business case submission and Cabinet decision), following any novation of contract 2, the ESCo will manage the (previously dormant) call-off contract with Contractor A, covering the portfolio of DEN infrastructure owned/managed by the ESCo. Contract 1 between the Council and Contractor A for O&M in all HRA blocks will continue covering the scope of existing and any future DEN infrastructure owned/managed by the Council. There are efficiencies in the approach taken to procure two 'sister' contracts.
- 4.6 Entering the ESCo contract prior to either a decision regarding the full business case for the DEN projects or confirmation that the development at HRW will move forward does not incur costs as there are no contractual commitments from doing so. For example, the contract does not make any commitment to a minimum volume of work; and it does not grant exclusivity to Contractor A for maintenance of new DENs. This was made clear throughout the procurement process. Therefore, the Council can enter into

Contract 2 in order to secure the time-limited tender for its potential future ESCo without taking on any liabilities (Contract 2 can effectively be left dormant until it is needed). This is beneficial as it means the Council will know exactly what costs and terms could apply to the potential future ESCo's operations making the business case assessment more credible. It also means the Council will have contracts in place to allow it to deliver on its commitments at HRW / to deliver the proposed borough-wide DEN should a decision be taken to proceed with this project.

4.7 The current O&M arrangements for the Council's modern DEN hardware has developed over time, in an ad hoc way in response to the short-term need where there have been limited systems to maintain, and the timing of handovers have been sporadic. They provide a stop gap solution until they come to an end, starting with Rosa Luxemburg in December 2023 and then following on with Walter Tull House and subject to performance Broadwater Farm. The Council therefore needs to put in place longer term provisions for these services.

5. Alternative options considered.

- 5.1. An on-going contract to ensure the safe maintenance and provision of heating and hot water to residents is essential. Therefore, 'do nothing' is not an option.
- 5.2. The option to contract on a site-by-site basis for new heating systems would require significant ongoing management and staff time, to procure and manage individual contracts, as significant growth is expected during the contract term. This would be less efficient and less attractive to suppliers and therefore not provide value for money.
- 5.3. The option of shorter-term contracts would not return the same levels of improvement in value for money as longer-term contracts and would be less efficient from a procurement and management perspective. A longer-term contract also allows for greater risk transfer to the provider.
- 5.4. The option to enter contracts longer than 5 + 5 years restrict the Council's ability to take advantage of a considerable evolution in technology, skills and service provider market for operation and maintenance services over the next decade. Therefore A 5-year contract with an option for a 5-year extension is considered a suitable compromise.
- 5.5. The option to include all (i.e., older sites) was considered, however there would be limited benefit due to:
- Many of the KPIs in the contract relate to features which are not present in older systems, and
 - The risk transfer to the service provider is limited where the Council cannot evidence the condition of the systems or provide commissioning records, and

- 5.5.1 Where older systems undergo major refurbishment, it will be possible to bring them into the contract scope.
- 5.6. Not entering into Contract 1 could result in significant disruption to residents whilst the Council extends and implements a range of ad-hoc short-term contracts or undertakes an additional separate procurement for the interim period. This would take additional time and resources and the current costs for these ad hoc contracts are higher than those within Contract 1. Not entering into Contract 2 will mean the Council would a) potentially be unprepared to fulfil its responsibilities at HRW and b) need to assess the business case for the potential future ESCo without a clear understanding of the terms and costs that company might face for O&M. However, entering into Contract 2 does not create any liabilities for the Council or prejudice the decision on whether or not to proceed with setting up an ESCo, If the ESCo does not materialise, Contract 2 can simply be left dormant until it expires.
- 5.7. An option to procure a turnkey design, build, operate and maintain contract for the wider DEN infrastructure was considered and rejected due to a lack of competition in the market for such a contract. Instead, separate design and build, and operation and maintenance (O&M) contracts will be required, with the option to transfer the schemes on to these contracts at the end of defects.
- 5.8. An option to procure a turnkey design, build, operate and maintain contract for the energy infrastructure at High Road West was considered and rejected due to the earlier stage of development of the High Road West scheme at the time the procurement was launched and because most of the infrastructure at High Road West will be designed and built by the Council's development partner. Therefore, High Road West has been included within the scope of the potential future ESCo O&M contract.
- 5.9. The options for ESCo contracts on a site-by-site basis, and shorter/longer contracts were also considered and rejected for the same reasons set out in 5.2 above.

6. Background information

- 6.1. The Council has three relatively new or upgraded systems serving approximately 1050 homes located at
- Broadwater Farm (BWF)
 - Rosa Luxemburg Apartments (RLA)
 - Walter Tull House (WTH)
- 6.2. The current O&M arrangements begin to expire in December 2023 at RLA, followed by BWF in March 2024, and then WTH, 1-year after handover which is expected in November 2024. The most urgent is BWF and whilst options have been explored and are possible to extend with current arrangements, this is not ideal as we would need to put additional new contracts in place for 3 providers with current O&M responsibilities split for infrastructure, Heat

Interface Units (HIUs) and ancillary equipment such as radiators, pipework and valves inside the flats.

- 6.3. In addition, the regeneration at Broadwater Farm, and new homes at Chocolate Factory, Brunel Walk, Ashley Road North will have DENs adding a further 750 homes to the portfolio requiring O&M within the next 2 to 3 years. Further sites at High Road West and potential acquisitions at Clarendon Square would increase the number of homes served by such systems to more than 2,500 by the end of the decade.
- 6.4. The award of the O&M contract to one supplier would provide the following benefits:
 - Ensure continuity of service
 - Deliver VFM reducing costs for users
 - Reduce management requirement on the Council and generate savings in officer time.
 - Enable a single point of contact with the Customer Service and Billing contractor (Sycous, the primary point of contact for residents on DENs) to ensure an improved, joined-up service response.
 - Ensure robust handover and sign off process for new systems being added to contract.
 - Ensure compliance with minimum standards from impending legislation and be more responsive to customers' needs.
- 6.5. Implementation of the contract(s) would provide a more strategic approach to delivering the above outputs; considering both the short-term and long-term service to residents.
- 6.6. The approach to date has been reactive and ad-hoc with short (1-2yr) contracts on a site-by-site basis, often last minute, as previous arrangements have expired. These contracts have frequently been extended which does not ensure Value for Money and is not good procurement practice. Some aspects of the service as is currently the case at BWF have shared/split responsibility for different parts of a site is split between >1 contractor. This creates potential gaps, delays, and confusion as e.g., system efficiency and reliability is interdependent on both the main plant and the equipment within dwellings.
- 6.7. Short term contracts have highlighted that there is no opportunity / incentive on repairing systems with a longer-term view, this means the Council is at risk of paying more for short term fixes over the life of the system.
- 6.8. Modern communal systems are very different to earlier, 1970s era systems, due in part to their added complexity but also newer systems, which should be in good efficient working order, often experience teething problems. This means there are issues with the historic contracts as they do not:
 - include requirements to monitor performance data of systems or provide minimum standards of service, (over and above our general repair target times e.g., response times for repairs), guaranteed minimum levels of

system performance and system efficiency (these are required for forthcoming legislation)

- put any responsibility on service provider to take liability for newer systems that will be coming on-stream as set out in 6.3 above.

6.9. An alternative approach for the long-term is to aggregate the requirements into a single longer-term contract that can be adapted to include new sites as they are handed over to the Council. This will create scale and leverage VFM and make it easier to include the sorts of contract terms discussed above which are difficult to negotiate on multiple short-term contracts and where multiple small contracts with slightly different requirements will be burdensome to manage. This was the approach taken with the 2021-23 procurement which resulted in Contractor A being the recommended supplier.

6.10. The following sets out the timeline for the procurement of the contract and steps taken to date.

- February 2019 – Procurement strategy scoped
- Late 2019 – HRA agree resources for procurement
- Jan 2020 – Contract purchased from BD Energy to be adapted to LBH needs
- June 2020 – Initial section 20 consultation (Notice of Intent)
- April 2021 – Contract Notice Issued
- September 2021 – Invitations to Submit Initial Tenders issued
- December 2021 – Deadline for Initial Tenders
- January 2022 – Initial scoring and decision to move to negotiation stage
- January 2022 – Negotiation stage started
- December 2022 – Invitation to Submit Final Tender issued
- January 2023 – Final Tender submitted
- February 2023 – Scoring of final tenders
- March 2023 – Initial report recommending award to Contractor A

6.11. The creation of the future ESCo (and subsequent activation of contract 2) is dependent on either a) HRW proceeding as expected or b) future Cabinet decisions on large scale and/or area-wide DEN schemes proceeding. Even then, any future ESCo created by the Council would have to agree to use the contract. Even if the ESCo did use the contract, they would still have some flexibility to change its O&M arrangements as the contracts are not granting any exclusivity over future O&M activity.

6.12. These hardware operation and maintenance contracts do not cover the billing of customers and income generation which are catered for under separate contractual arrangements.

7. Contribution to the Corporate Delivery Plan 2022-2024 High level Strategic outcomes?

7.1. This project will help to theme 5 of the Corporate delivery Plan A borough where everyone has a safe, sustainable, stable, and affordable home.

8. Carbon and Climate Change

8.1. The two contracts which are the subject of this report are for the operation and maintenance of several large existing energy systems as well as new systems as they come online.

8.2. Both contracts have identical provisions which will reduce carbon emissions/energy use through.

- reviewing the design of systems under construction / ensuring systems are designed and built to minimise energy use and are working properly prior to handover; and
- setting minimum energy performance requirements for systems once handed over.
- proper maintenance of the energy systems will ensure systems remain in good working order and prolong their life which will tend to reduce lifecycle embodied carbon.

8.3. For example, design review / handover provisions include confirming systems are:

- carefully sized to meet the required demand to minimise wastage
- fully insulated and operate at low temperatures to minimise wastage/overheating.
- commissioned and operating in accordance with the design intent prior to handover.

and minimum energy performance requirements for systems in operation include:

- the efficient operation of heat generation plant
- the efficient operation of heat distribution networks
- operation of low carbon heating plant to provide the maximum share of heat possible.

8.4. All of the above also work to minimise the capital cost, operating cost and replacement costs of systems. They are also aligned with anticipated regulation of the heating sector where system efficiency and operating costs will come under increased scrutiny with the regulator empowered to investigate inefficient/expensive systems.

8.5. No such provisions exist in the Council's current contracts and so this represents a significant improvement in the approach to operation and maintenance which will benefit residents and the environment.

9. Statutory Officers comments (Director of Finance (procurement), Head of Legal and Governance, Equalities)

9.1. Finance

- 9.1.1. The Council's housing service currently operates several DEN systems. The proposed contract will initially cover two of the existing DEN systems. Other sites will be added in the future.
- 9.1.2. It is anticipated that as the contract would cover a lot of DEN sites, there would be economies of scale.
- 9.1.3. The operation and maintenance costs of the old DEN system are captured in the HRA budget/MTFS but that for the proposed systems are yet to be built into the budget/MTFS.
- 9.1.4. These costs cannot be recharged to tenants as these works are part of landlord's stock maintenance responsibility.
- 9.1.5. Leaseholders will contribute their proportion of the cost, although this will likely be minimal as most of the blocks are largely tenanted and some of the costs cannot be recharged to leaseholders.
- 9.1.6. The second contract is dependent on the Council setting up an ESCo. This would be addressed in the Full Business Case for the Council's 'area-wide' DEN projects which would, subject to agreement, activate the option to novate the contract. LBH is currently committed to setting up an ESCO for HRW should the development come to fruition.
- 9.1.7. Finance comments continue in paragraphs 8.1.7 to 8.1.10 of the exempt report.

9.2. Procurement

- 9.2.1. Strategic Procurement note the content of this report. Strategic Procurement have been engaged throughout the procurement process. The procurement followed a negotiated procedure with prior call for competition. This involved.
- a pre-qualification process,
 - invitation to submit initial tenders,
 - a negotiation period where the Council discussed potential changes to the contract/prices with contractors to seek to improve VFM; and
 - an invitation to submit final tenders.

Procurement process and evaluation

- 9.2.2. The procurement was conducted using the Council's e-tendering system (HPCS)
- 9.2.3. Procurement comments continue in paragraphs 8.2.5 to 8.2.10 of the exempt report.

- 9.2.4. The procurement has been conducted in line with the Council's Contract Standing Orders and the UCR 2016.
- 9.2.5. Procurement endorse the recommendation within the report.
- 9.3. **Head of Legal & Governance** [Oliver Higgins - Principal Lawyer & Robin Levett – Senior Lawyer]
- 9.3.1. The Head of Legal and Governance (Monitoring Officer) has been consulted in drafting this report.
- 9.3.2. The contracts which this report relates to have been procured in accordance with the Utilities Contracts Regulations 2016 using the negotiated procedure with prior call for competition.
- 9.3.3. Pursuant to Contract Standing Order 9.07.1(d) Cabinet has authority to approve the recommendations in the report.
- 9.3.4. The terms of the Council's standard right to buy lease permit recovery of a proportion of the cost of these works from leaseholders, subject to compliance with the consultation requirements set out in the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations") (together "the provisions").
- 9.3.5. The proposed contract is a Qualifying Long-Term Agreement ("QLTA") for provision of services requiring Public Notice within the meaning of those provisions. A 2-stage consultation process is required under Schedule 2 to the Regulations ("Sch2"). Failure to comply has the effect that no more than £100pa may be recharged to the leaseholder(s) of each flat.
- 9.3.6. Until there are leaseholders of any building to which the agreement relates, no consultation is required in relation to that building. Any qualifying works carried out in relation to that building will require separate consultation.
- 9.3.7. Sch2 requires service of a Notice of Intention ("NoI") prior to Public Notice being given, inviting observations from leaseholders within a period of no less than 30 days. The tender documentation must have regard to any observations given.
- 9.3.8. Before the contract is finally awarded a Notice of Proposal must be served, again inviting observations within a period of no less than 30 days. Regard must be had to any observations made in deciding whether to award the contract as proposed.
- 9.3.9. The Head of Legal and Governance (Monitoring Officer) sees no legal reasons preventing Cabinet from approving the recommendations in the report.

9.4. **Equality**

- 9.4.1. This recommendation to Cabinet to approve provisional award of the contract to allow s20 consultation with leaseholders does not have significant equalities issues.
- 9.4.2. Any further Cabinet, Cabinet Member or Delegated Authority decisions relating to the contract award will need to consider equality issues but are unlikely to require detailed Equality Impact Assessments.
- 9.4.3. The Council has a Public Sector Equality Duty (PSED) under the Equality Act (2010) to have due regard to the need to:
- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
 - Advance equality of opportunity between people who share those protected characteristics and people who do not
 - Foster good relations between people who share those characteristics and people who do not.
- 9.4.4. The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, Page 10 of 12 religion/faith, sex and sexual orientation. Marriage and civil partnership status apply to the first part of the duty. In the discharge of its functions, the Council also considers the impact on those who experience socioeconomic disadvantage with regards to the three duties of the PSED.
- 9.4.5. The decision in question is regarding the provisional award of a DEN operation and maintenance contract to Contractor A so that s20 consultation with lease holders can take place.
- 9.4.6. The Council's growing DEN portfolio is focussed around BWF, Tottenham Hale, Wood Green, and North Tottenham. It follows that those most affected by the decision will be the residents of these areas. Haringey Ward Profiles indicate that these areas tend to have younger populations with higher proportions of residents coming from BAME communities.
- 9.4.7. The DEN operation and maintenance contract is expected to ensure better functioning of the heating systems in terms of reliability and efficiency. This should ensure households are kept warm and help to control energy costs. It is noted that if there is an interruption to the heating service, the contract requires the service provider to prioritise reinstating heat for vulnerable residents which is likely to include a significant proportion of people with protected characteristics. There is currently no indication that this decision will have any adverse effects for any individual or group who share protected characteristics.
- 9.4.8. As such this recommendation to Cabinet to approve provisional award of the contract to allow s20 consultation with leaseholders does not have significant equalities issues.

- 9.4.9. Any further Cabinet, Cabinet Member or Delegated Authority decisions relating to the contract award will need to consider equality issues and if required will be subject to detailed Equality Impact Assessments.
- 9.4.10. As an organisation carrying out a public function on behalf of a public body, Contractor A, will be obliged to have due regard for the need to achieve the three aims of the Public Sector Equality Duty as stated above. Appropriate contract management arrangements will be established to ensure that the delivery of the service does not result in any preventable or disproportionate inequality.

10. Use of Appendices

Appendix A – Exempt Report. Not for publication.

11. Background papers

There are no background documents.