



**Haringey** Council

## REPORT TEMPLATE

Agenda item:

**[No.]**

**Procurement Committee**

**On TBA**

Report Title: **Renewal of the existing Gas Equipment Maintenance Contract for the Operational Building Portfolio**

Forward Plan reference number (if applicable): **[add reference]**

Report of: **Julie Parker, Director of Corporate Resources**

Wards(s) affected: **All**

Report for: **Non Key Decision**

### **1. Purpose (That is, the decision required)**

1.1 To seek Cabinet Procurement Committee approval to renew the existing gas equipment maintenance contract for a period of twelve months.

### **2. Introduction by Cabinet Member (if necessary)**

2.1 It is important that the Council has in place a gas maintenance contract to ensure it meets its obligations under relevant legislation and directives. It is therefore of necessity that this contract is extended to meet this obligation as recommended in the report.

### **3. Recommendations**

3.1 That approval be granted for a 12 months extension to the Purdy Contracts Ltd gas equipment maintenance contract ("the Purdy contract") in respect of the Council's operational buildings from 1<sup>st</sup> April 2008.

Report Authorised by: **Dinesh Kotecha, Head of Corporate Property Services**

Contact Officer: **John Barnett Project Manager**

#### **4. Chief Financial Officer Comments**

- 4.1 The Chief Financial Officer has been consulted over the contents of this report and notes that financial provision exists within Property services to fund the contract at the proposed level.
- 4.2 As the report discusses, there is an element of risk in extending this contract for a further year however as discussed in section 13 the benefits to the council of the extension coupled with an assessment of the likelihood of any challenge suggest that this option provides best value and greatest efficiency to the council overall.

#### **5. Head of Legal Services Comments**

- 5.1 This report is seeking approval for the extension of the Purdy contract by 12 months. Because the original Purdy contract was tendered under EU rules, it may only be extended if the extension is permitted under EU rules. The extension must also be authorised in accordance with Contract Standing Orders (CSO).
- 5.2 The original contract was for 3 years and provided an option for one extension of 2 years to 31/3/08 which has been exercised. Under applicable EU procurement rules, it is generally not permitted simply to negotiate a new agreement with an existing provider beyond any period of extension provided for when the original contract was tendered. This may only be done exceptionally in defined cases.
- 5.3 The only applicable exception is provided for by the Public Contracts Regulations 2006 (PCR Regns) reg. 14(1)(d). This allows the Council, as a Contracting Authority, to negotiate a contract renewal without advertising a new tender process provided certain conditions are met – see paragraph. 13.7 and 13.8 of the report.
- 5.4 Legal Services have advised the client service that reliance on this exception is subject to an element of risk. However, it is felt that given the relatively short period of extension and the need to ensure continuity of essential services, the risk of extending the Purdy contract is, in all the circumstances, acceptable.
- 5.5 Under CSO, the approval of the extension ,cannot be done by a Director because it does not meet the conditions under which a Director has power to approve an extension under CSO 13.01(a) or 13.03. Members have power to approve extensions which the Director cannot under CSO 13.02.
- 5.6 Subject to the element of risk referred to at paragraphs 5.4 above, there is nothing preventing Members from approving the recommendation at paragraph 3.1 of the report.

## **6. Head of Procurement Comments**

- 6.1 The forward procurement strategy is clearly set out with the aim to appoint a Managing Agent and through whom gas maintenance services and other services would be provided.
- 6.2 The procurement of a short-term gas maintenance contract is unlikely to represent value for money and would not be in the Council's overall best interests.
- 6.3 It is recommended that risk evaluation, options appraisal and contingency plans are prepared by Property Services in regards to service delivery and contracts to ensure compliance with relevant Legislation and Directives in the unlikely event of a Managing Agent failing to be appointed.

## **7. Local Government (Access to Information) Act 1985**

### **7.1 Background Documentation:**

- 7.1.1 The following background papers were used in the preparation of this report:

Procurement Committee report on Reactive and Planned Maintenance Contracts for the Operational Building Portfolio managed by Corporate Property Services approved on the 27<sup>th</sup> November 2007.

### **7.2 Exempt Information**

This report contains exempt and non-exempt information. Exempt information is contained in Appendix B and is not for publication. The exempt information is exempt under the following category (identified in the amended Schedule 12A of the Local Government Act 1972):

(3) Information relating to financial or business affairs of any particular person (including the authority holding that information)...

## **8. Strategic Implications**

- 8.1 The Gas Safety (Installation and Use) Regulations 1998 place duties on gas consumers to only use competent people to work on their gas installation (i.e. Registered with CORGI the Council for Registered Gas Installers). To date this work has been carried out by Purdy managed by Homes for Haringey acting as the Council's Agent under the express terms of the contract.
- 8.2 Failure to extend this contract would result in the Council having to secure the services of potentially unapproved CORGI contractors at short notice to carry gas maintenance and repairs to mitigate the loss of heating services, which would be problematic and not cost effective.
- 8.3 To carry out a re-tender for a short-term gas maintenance contract would also not represent value for money and divert resources from the development and delivery of the long term maintenance strategy.

## **9. Financial Implications**

- 9.1 Funding for this contract is held within the Corporate Management of Property budget F43000.

## **10. Legal Implications**

- 10.1 See comments of the Head of Legal Services at paragraph. 5 above.

## **11. Equalities Implications**

- 11.1 Equalities implications are fully considered in all aspects of the procurement processes and procedures.

## **12. Consultation**

- 12.1 The project team comprises members of the Construction Procurement Group, Legal Services and Corporate Property Services.
- 12.2 Homes for Haringey, Engineering Team have supported this proposal and are fully aware of this proposal to try and secure the extension to the Purdy contract.

## **13. Background**

- 13.1 In November 2007 the Cabinet Procurement Committee approved the policy of appointing a Managing Agent to coordinate and manage the delivery of planned and reactive maintenance services across the operational building portfolio.
- 13.2 Since this time a project has been mobilised to implement this policy and interim arrangements are being developed to facilitate a seamless transfer of maintenance responsibilities.
- 13.3 In conjunction with the Construction Procurement Group, adverts have been placed to secure Expressions of Interest for the Managing Agent role and the process of prequalification will shortly be taking place. The programme currently projects the award of contract taking place by October 2008.
- 13.4 To facilitate the transition from the 1<sup>st</sup> April 2008 through to the appointment of the Managing Agent and beyond, interim arrangements are being put in place as outlined in the paper approved in November 2007. These are:-
- 13.4.1 Extending the Inspace Maintain contract to provide reactive maintenance support, until the Managing Agent is fully on board.
- 13.4.2 Continuing with Homes for Haringey for a further 12 months providing the planned maintenance support, to provide a transitional period for the Managing Agent to take over full responsibility for both of these contracts.
- 13.5 During these discussions it has been identified that the contract for the maintenance of gas equipment currently provided through Purdy and managed through Homes for Haringey expires on the 31<sup>st</sup> March 2008. The original contract was

tendered under EU rules and only provided an option for one extension. This option has already been exercised and the extension expires at the end of March 2008.

- 13.6 At this stage the Council would suffer major inconvenience and expense if the Council could not continue the Purdy contract and had to undertake a new tendering process to replace Purdy before the new contract for a Managing Agent contract is procured and mobilised. A further 12 months extension to the Purdy contract is considered necessary in this context.
- 13.7 Advice has been sought from Legal Services as to whether such an extension is permissible. This identifies that the Council may extend the Purdy contract provided that certain conditions have been met. These are that due to “unforeseen circumstances” Purdy’s further services have become necessary and these services cannot for economic reasons be provided separately from those under the original contract without “great inconvenience”.
- 13.8 In addition, the extension would only be permissible if the price of the additional services would not exceed 50% of the value of the services under the original contract. Since the extension is to be for only 12 months compared with the original 3 years of the Purdy contract, this would be the case.
- 13.9 The Head of Property Services is of the view that as a result of the comprehensive review that has been undertaken on the provision of the building maintenance and the fact that during the course of this review an interim arrangement has been identified as necessary to achieve the long term solution, the recommended extension of the Purdy contract sought is in fact necessary.
- 13.10 It is noted that Legal Services has advised that there is an element of risk involved in taking this approach since what qualifies as “unforeseen circumstances” and “great inconvenience” would be given a narrow interpretation by a court if there were a challenge to the grant of the extension.
- 13.11 However, it is felt that since the Council has started the tender process to secure the long term solution for the delivery of the full reactive and planned maintenance the risk involved in the proposed course of short term action is justified.

## **14. Conclusion**

- 14.1 In order to ensure a seamless implementation of the proposed long term building maintenance strategy, interim arrangements are essential while the Managing Agent contractor is put in place.
- 14.2 During the process of implementing these arrangements it has been identified that the current contract with Purdy for the maintenance of gas fired equipment terminates on the 31<sup>st</sup> March 2008.
- 14.3 It is necessary to continue with the Purdy contract for another 12 months to avoid the great inconvenience and expense of tendering for a new contract while the Managing Agent contract is procured and mobilised.
- 14.4 Based on the advice from Legal Services this is permissible providing the conditions within paragraphs. 13.7 and 13.8 of this report are met.

14.5 The Head of Corporate Property Services is satisfied that these conditions are met on this project and recommends that the Cabinet Procurement Committee approves the proposed extension of the Purdy gas equipment maintenance contract for a further twelve months.

**15. Use of Appendices / Tables / Photographs**

15.1 Appendix B: Exempt information