

CABINET MEETING: 27 JULY 2017

**COMMISSIONING OF A NEW FRAMEWORK FOR MAINTENANCE
OF THE COUNCIL'S PROPERTY ESTATE**

REPORT OF THE DIRECTOR OF ECONOMIC DEVELOPMENT

AGENDA ITEM: 9

**PORTFOLIO: INVESTMENT AND DEVELOPMENT (COUNCILLOR RUSSELL
GOODWAY)**

Appendix 1 to this report is exempt from publication pursuant to the provisions of Schedule 12A Part 4 paragraph 16 of the Local Government Act 1972

Reason for this Report

1. To seek Cabinet approval to commission a new building maintenance framework for the Council's property estate (non-domestic buildings).
2. To seek Cabinet approval to put in place interim arrangements following the expiry of the existing framework whilst the new framework is procured.

Background

3. The current building maintenance framework has been in place since 2013 and expired at the end of June 2017. The framework consists of five lots: two covering domestic buildings maintenance (Lots 1 and 3); two covering non-domestic buildings maintenance (Lots 2 and 4); and one (Lot 5) for works to deliver disabled adaptations. The annual value of the framework is £25.7 million with the non-domestic building maintenance elements being approximately £11m.
4. In 2016/17, approximately 95% of all non-domestic maintenance jobs had a value of £2000 or less (with a total cumulative value of approximately £2.4m) and only 53 jobs had a value greater than £30,000 (totalling approximately £6.94m).
5. Works have been awarded in two ways through the framework:
 - Cascade – where work is awarded to the Rank 1 provider in each lot first and then subsequently to lower ranked providers based on a schedule of rates. This approach is triggered when the capacity of the first ranked provider has been reached.

- Mini Competition between providers of the appropriate lot. This approach is used for larger scale domestic and non-domestic works over £30k in value (£36k for disabled adaptations major works under Lot 5)
6. The procurement process to establish the framework placed no restrictions on the number of lots that any one provider could be awarded. This allowed the same provider to be successful in becoming the number one provider on 3 of the lots within the framework.
 7. Following a review of the building maintenance framework and future requirements, it was decided to progress different approaches and timescales for the frameworks for domestic buildings; and for non-domestic buildings. On 21 November 2016, Cabinet approved this strategy and provided authority to progress with the procurement of a new framework for housing repairs and maintenance and disabled adaptations. Cabinet also noted that the recommissioning strategy for the non-domestic building works would be subject to a further Cabinet report. This report relates to the strategy for recommissioning the non-domestic building works.

Issues

8. As stated in the report approved by Cabinet on 21st November 2016, the main objective in the development of the first generation of the building maintenance framework was to address a range of significant difficulties with the previous approach to the supply and management of building maintenance and improvement works. There were previously over 800 separate suppliers for these works with significant non-compliant spend and a lack of co-ordination of similar activity creating missed opportunities to aggregate spend where appropriate. The framework did address these issues with a significant reduction in the number of contractors, a reduction in non-compliant spend, and a greater co-ordination and aggregation of spend achieved.
9. However, there have also been some issues and lessons learned through the practical application of the current framework. An independent review undertaken by Construction Excellence Wales as well as feedback from Council managers using the framework identified areas for consideration which were set out in the previous Cabinet report. A further detailed review has recently been undertaken by the Council's Commercial and Collaboration Service. The main issues identified through these reviews are summarised as follows:

Sub-contracting

10. There has been a high level of subcontracting (including sub-subcontracting) which has raised concerns of increased risk to the Council in respect of health and safety, insurance and also financial control. In addition, the use of subcontractors has increased the cost to the Council through mark-ups on subcontractor costs applied by the main contractor where the Schedule of Rates has not been used. Where the Schedule of Rates has been used as was originally intended, the use of sub-contractors has not resulted in additional price increases. It is therefore necessary that

the pricing mechanism incorporated into the new framework is capable of being applied to the pricing of both responsive and planned works.

Materials

11. The Council has also suffered additional costs through mark-ups on materials. To reduce these mark-ups, it is intended that the new framework requires that materials, plant and labour costs (as well as overheads and profit) be separated, thereby improving the transparency of costs which should reduce the mark-up costs currently being applied to materials under the framework.

The Cascade Approach

12. As with the domestic building situation, in some cases, the cascade approach has not dealt effectively with peaks and troughs of work volume. There has been too much reliance on the Rank 1 contractor, meaning that the Rank 2 and 3 contractors are not adequately resourced to react quickly when the Rank 1 contractor is at full capacity. Changing the structure of the next framework and the forward planning of work is expected to improve contractor management and safety on site.

Contractor Management

13. There are opportunities to improve the management of the framework and the performance of the contractors and to achieve continuous improvement through a number of means. These include: mechanisms for measuring performance and addressing poor performance; using appropriate technology to 'enable' improvements in performance management, and ensuring that the Council has the requisite contract management capacity and skills, including strengthening the current teams operating the contract to fully centralise commissioning, contractor performance and on site supervision.

Statutory Obligations

14. The statutory obligations testing work, and the remedial works required as identified by the testing, has been delivered through Lot 4 (non-domestic mechanical and electrical works). This approach has largely been reactive. In order to better manage the associated compliance risks there is a need for a more proactive approach to be adopted. The recent purchase and installation of the RAMIS compliance management system is an important 'enabler' for improving performance in this area, in particular, the development of a forward plan to ensure compliance. In addition the Council is considering the establishment of an internal Statutory Obligations team together with the establishment of separate contractual arrangements specifically for the delivery of statutory obligations testing and remedial works to deliver further improvements.

Reactive Rather than Planned Preventative Maintenance

15. The maintenance work issued and delivered through the framework has largely been reactive in nature. The Council has limited resources to deal

with the significant maintenance backlog. To ensure the Council maximises impact of its spend it is essential that the Council improves knowledge of the work that is required; is able to prioritise this work; and commissions accordingly through the framework. To assist with this, condition surveys of a significant proportion of the Council's non-domestic building stock have been commissioned. The output from these surveys will inform a programme of prioritised works which will be included within the tender documents for the new framework.

Balance of Work Between In-house Teams and Framework Contractors

16. At present, whilst the majority of work is externalised through the framework, some work (circa 12%) is completed by the in-house team. An analysis of productivity and overheads relating to the Building Services in-house team has been completed and shows that the service delivery costs are relatively high. However, the analysis also showed that opportunities exist to improve the efficiency of the in-house team through: the amendment of some working practices; provision of greater volumes of work and resourcing the right areas e.g. electrical, plumbing and carpentry to meet demand (with a level of multi-skilled posts where appropriate); and the use of scheduling and mobile technology. This forms a key part of the proposed way forward identified later in this report and will increase the number of internal employees and apprenticeships.

Value for Money

17. There has been a perception from some stakeholders that the first framework has not delivered value for money. The proposed improvements identified above will assist in improving the value for money delivered under the new framework. Replacement of the current uncapped liability imposed on the contractors with an appropriate capped liability will further assist in reducing costs. Additionally, the Schedule of Rates (SoR) currently incorporated into the framework is being reviewed and adjustments will be made as required to ensure that the SoR used under the new framework meets with the Council's requirements. It will also be necessary to ensure that the Council's Building Maintenance team has the capacity and skills to use the SoR as intended. Other opportunities for improving value for money include increasing the standardisation of specifications and materials.

Proposal

18. It is recommended that the Council's future non-domestic building maintenance work be delivered through two parallel mechanisms:
 - An improved in-house Building Maintenance team, and
 - An improved external Building Maintenance framework.
19. The target outcomes from this twin-track approach are as follows:
 - To deliver an efficient and effective non-domestic building maintenance service through both in-house and external contractors, that delivers high quality and value for money customer focused services;

- To provide a high level of statutory obligations compliance across the Council's non-domestic building assets;
- To increase the amount of building maintenance work completed by in-house teams (once efficiency has been improved through the amendment of some working practices and the use of technology);
- To reduce overall costs to the Council through: the use of technology; reducing sub-contractor mark ups by reducing the amount of works awarded on a cost plus basis by improving the pricing mechanism and ensuring Schedule of Rates are suitable for both responsive and planned works; reducing material mark-up's by increasing cost transparency by requiring materials and labour costs to be separated; standardising the materials specified, and improving processes and capacity for estimating, commissioning, managing and supervising the completion of work;
- To improve the quality of management and performance information in respect of the delivery of the non-domestic building maintenance services;
- To improve the quality and frequency of progress reporting to customers and other stakeholders;
- To support the Council's Open Doors Charter and Sustainable Policy (maximizing access to opportunities to SMEs and the local supply chain).
- To support the Council's Community Benefits agenda by maximizing tender opportunities to local providers, as well as opportunities to provide training and skills development to the local workforce.
- To support the Council's commitment to reducing the Carbon Footprint.

In-House Team

20. An action plan has been developed and is being implemented to improve the effectiveness and efficiency of the in-house team. Once this has been implemented, the in-house team will be able to better compete with the external market, on both cost and quality of service delivery. The in-house team will then be grown through the in-sourcing of work that the Council currently commissions through external contractors. The target is to undertake as much of the emergency, routine and urgent work as possible in-house. This would result in a significant growth of the in-house building services team over the next few years, with this being achieved in an incremental and sustainable way.

New Building Maintenance Framework

21. The remainder of this report sets out the current proposed arrangements in respect of the new building maintenance framework. Further work is required to finalise the Council's requirements and therefore the proposals presented in this report are indicative and subject to change.
22. As part of this, detailed analysis of the previous framework is being undertaken, in particular to inform the the partitioning of works into lots, to understand the optimum the threshold values for each lot, the number of contractors to be appointed in each lot and how the call-off arrangements will work including reponse times.

23. The table below provides an overview of external spend in 2016/17 under Lots 2 and 4 of the previous framework.

	Emergency Works	Minor Works	M&E	Specialist Works	Statutory Obligations	Works Over £30k
Estimated No of Jobs:	3947	51	83	2891 (under £2k) 238 (over £2k)	3806 (under £2k) 93 (over £2k)	46
Estimated Value of Jobs:	£642k	£375k	£636k	£584k (under £2k) £1.516m (over £2k)	£836k (under £2k) £401k (over £2k)	£6.479m

24. The new arrangements will be further informed by the outcome of the Fabric and Mechanical and Electrical Condition Surveys currently being undertaken and further assessments of any known outstanding works (such as electrical improvements noted on inspections, outside of urgent works) and other audits. This will help ensure more work is planned rather than reactive.
25. A key change from the previous arrangement is to move away from two lots: one for General Building and one for Mechanical and Electrical, and to establish a number of smaller, more specialist lots. It is intended that this categorisation will assist in the delivery of efficiencies, improved performance and hence increased value by allowing contractors to focus on their areas of specialism. It is proposed that the new arrangements will also provide better opportunities for local SMEs.
26. Initial analysis suggests that the Council should aim to deliver a greater proportion of small works (with a value of less than £2000) in-house. The intention is also to competitively tender larger works on a job by job basis in accordance with the Council's Contract Standing Orders and Procurement Rules. Based on last year's spend it is currently proposed that all works over £30,000 will be tendered. However, this figure may increase to £50,000 depending on the likely number of individual procurements that will be required once details of the condition surveys are received.
27. The new frameworks will therefore only relate to works under the final agreed threshold for large works. It is currently proposed that the works will be arranged as follows, although again, this is subject to change following final analysis and receipt of condition survey information:

Emergency and Responsive Works

- Emergency and responsive works (of value less than £2,000);
- Target time: 2 hours to site; 24 hours to fix for emergencies and 5 working days for routine works;
- Pricing – hourly rates to 'make safe' and then schedule of rates for any remedial works or responsive works;

Minor Works

- Works of value between £2,000 and £30,000;
- Target time: on site within 28 days;
- Pricing – schedule of rates based on works specification prepared;

Mechanical and Electrical Works

- Works of value between £2,000 and £30,000;
- Target time: on site within 28 days;
- Pricing – schedule of rates based on works specification prepared;

Specialist Works

- For specialist works such as roofing, asbestos removal, etc;
- Target time: on site within 5 days;
- Pricing – up to £5000 schedule of rates based on works specification prepared; Over £5,000, minor works tender

Statutory Obligations

- For the undertaking of statutory obligations compliance testing work and completion of small scale remedial works. Significant remedial works would be undertaken under the Mechanical and Electrical Works Lot or subject to competitive tender.
- Target time: on site within 5 days of scheduled date identified in the Forward Plan;
- Pricing – schedule of rates.

28. In addition to the proposed amendments to the structure of the framework outlined above, it will be particularly important that the Council's framework management team has the required capability and capacity to estimate, commission, manage and supervise the completion of work as intended. It will also be crucial to develop the in-house delivery team. The required changes are being progressed through consultation with Unions and employees to ensure they are in place ahead of the commencement of the new framework.
29. In the short term it is recognised that schools may wish to procure minor works outside the building maintenance framework. In such situations, it is suggested that schools be encouraged to procure the minor works in accordance with the Council's Contract Standing Orders and Procedures using contractors identified under the Council's management that are experienced and competent in the areas of work required. In the meantime property services and corporate health and safety will support schools with vetting their proposed contractors.
30. In order to ensure adequate provision whilst the in-house team is being improved and expanded it is proposed that a new arrangement will also be put in place to deal with jobs under £2,000. One option would be to establish a Dynamic Purchasing System (DPS). A DPS allows contractors to be pre-qualify to do works for the Council and then jobs would be awarded through

a mini-competition to those companies that have pre-qualified. An approach of this nature will provide schools with approved contractors where they wish to award small jobs directly and should also provide better opportunities for local SMEs.

Proposed Timeline

32. The proposed timeline for the procurement of the new framework is set out below:

- Cabinet meeting - July 2017
- OJEU Contract Notice - October 2017
- PQQ Stage - October 2017
- ITT Stage - November 2017
- ODR (Award) - January 2018
- Contract Award - February 2018
- Implement/Mobilise - March 2018
- Contract Start - April 2018

Interim Arrangements

33. In November 2016 Cabinet agreed to the proposal to establish two new frameworks that would deal with domestic and non-domestic maintenance separately. The rationale for this approach was driven by the very different nature of works required for fairly standardised housing maintenance jobs and materials and often very individual/specialist works to buildings that make up the Council's wider estate. In order to ensure the new framework for the non-domestic estate delivers a range of improvements it became clear that the procurement process would take longer than originally anticipated and would require interim arrangements to be put into place.

34. The key reasons for requiring more time were as follows:

- a. It was deemed essential to commission a comprehensive programme of condition surveys (across the Council's estate) so that up to date information on the future maintenance requirements and priorities could be incorporated into tender documents. These surveys have been commissioned, but will take time to conclude.
- b. The Council has begun to implement a new approach to property management and maintenance that will bring together all property related activity (relating to the non-domestic estate) under one new 'Corporate Landlord' service. This will significantly improve co-ordination between the various parts of the Council involved in commissioning works and should improve prioritisation and planning. Significant time has been required to conclude this process, which is still on-going.
- c. In recent months capacity to take forward the procurement process has been severely restricted by an unforeseen requirement to focus efforts on ensuring statutory compliance of the Council's estate. This has been an intensive period of work and has effectively delayed the Council's ability to take forward the procurement process.

35. In terms of dealing with the requirement for interim arrangements, a strategy was discussed with the Council's Commissioning and Procurement Service and the Council's Legal Service. Initially, the preferred approach which seemed to present the least risk route in terms of legal and contractual compliance was to explore the use of a nationally let framework which the Council could rely upon. However, following careful consideration of the level of work required to prepare tender documentation to facilitate a mini competition under such a framework (for example the National Procurement Services, NPS) it was felt that developing detailed requirements for this process would divert attention from the job of procuring the new non-domestic framework. There was also concern that a mini competition for an interim arrangement would fail to secure sufficient market interest given issues of contractor mobilisation etc.
36. Instead of procuring the interim requirements through a national framework, it is now proposed to procure works with a value of under £30,000 per job through a direct award with the relevant ranked number one contractors from the recently expired building maintenance frameworks. This will, where practicable, exclude specialist services which can be procured via existing collaborative frameworks. All jobs with a value of over £30,000 will be tendered on a job-by-job basis. It is intended that the interim arrangements will need to be in place for a maximum of 9 months. This will enable the new framework to be procured and activated by April 2018 and as such the value of spend under the direct award arrangements will be limited to the remaining months of this financial year. By following the approach outlined above and given that the Council has already commissioned works in the first quarter of this financial year, it is anticipated that the value of any direct award will be significantly less than the works EU threshold of £4.106m. This approach will ensure that spend under the direct award will remain compliant with the UK Public Contract Regulations 2015.
37. Legal advice regarding this proposal way forward has been obtained and this is enclosed in confidential Appendix 2.
38. Further to the above, this report seeks Cabinet approval to begin the process of procuring the new non-domestic framework with immediate effect to ensure the interim arrangements are in place for a maximum of 9 months.

Reason for Recommendations

39. To ensure that the Council has appropriate arrangements in place for the maintenance of its non-domestic building assets.

Legal Implications

40. The Legal Implications are attached as Appendix 1 which is exempt from publication pursuant to the provisions of Schedule 12A Part 4 paragraph 16 of the Local Government Act 1972

Financial Implications

41. As illustrated by the Table in paragraph 23 above the expenditure that falls under the proposed Building Maintenance frameworks is significant. The procurement should therefore ensure that the outcomes required by the council from these services are met whilst ensuring they are affordable. This will recognise the limited financial resources, both capital and revenue, available for these works, and the current and continuing pressures on these budgets. The significance of asset management and in particular the ability to efficiently use the information currently becoming available through the condition surveys to prioritise work has been emphasised in the report.
42. The resources required for the Directorate to develop these proposals for the new building maintenance framework so that they are in an appropriate form to take to market by for example working up specifications and engagement with the market will need to be identified.
43. One of the objectives highlighted in the report is to improve the performance of the in-house Building Maintenance team and some high level proposals such as the use of technology are referred to in the report. To ensure value for money is obtained it is essential that these proposals are supported by robust business cases that allow a thorough analysis of the benefits and the costs – both implementation and lifecycle – associated with these improvement initiatives.
44. A strengthening of the Contract Management role, both in terms of capacity and skills, to deliver benefits from the proposed new frameworks is highlighted on a number of occasions in the report. There will be resource implications for the council in developing the contract management function and again the costs associated with this strengthening will need to be considered alongside the benefits.
45. One of the potential benefits arising from the new frameworks will be delivered by a re-assessment of the risk allocation between the council and its framework partners for example by reducing the obligation for the contractors to hold uncapped liability. As this assessment is developed it will need to consider the additional risks that will pass back to the Council and how these can be mitigated.

Human Resources Implications

46. There are a number of HR implications for this report which will need to be worked through as the process develops. There may be HR implications for the in-house team as they are developed in the future but any implications are likely to benefit the current employees.
47. There may be TUPE implications for the in-sourcing of work which the Council will need to take into consideration as part of the process. Also there may be third party TUPE implications as part of the retendering of the contracts which, although the Council will need to manage as part of the procurement process, there will be no liability for the Council and any decisions will be for the outgoing and incoming contractors to make.

RECOMMENDATIONS

Cabinet is recommended to:

- 1) Note the content of this report;
- 2) Approve the proposed commissioning strategy for the Non Domestic Building Maintenance Framework;
- 3) Delegate authority to the Director of Economic Development, in consultation with the Cabinet Member for Investment and Development, the Section 151 Officer and the Director of Governance and Legal Services, to deal with all aspects of the procurement relating to the Non Domestic Building Maintenance Framework, including setting the contract evaluation criteria and the award of contracts.
- 4) Delegate authority to the Director of Economic Development in consultation with the Cabinet Member for Investment and Development, the Section 151 Officer and the Director of Governance and Legal Services, to make the interim contractual arrangements necessary for the continuation of service until the new contracts are in place.

NEIL HANRATTY

Director of Economic Development
21 July 2017

The following appendix is attached:

Appendix 1: Exempt Legal Implications

The following Background Papers have been taken into account:

Cabinet Report 21st November 2016: Report of the Corporate Director Communities Housing and Customer Service – Commissioning of the Replacement Building Maintenance Services Framework