

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

**INVESTMENT AND DEVELOPMENT (COUNCILLOR RUSELL
GOODWAY)**

AGENDA ITEM:15

Reason for this Report

1. The purpose of this report is to obtain approval from Cabinet for the procurement of the third generation of non-domestic building maintenance framework. The estimated annual value of the proposed framework, based on non-domestic building maintenance spend during the 2021/22 financial period is £7.7m (and circa £30.8 million over its potential 4 year term). Further details are contained in the table in paragraph 13 below.
2. The report recommends that Cabinet:
 - I. Note the content of the report;
 - II. Approve the procurement proposals as detailed in this report for the third generation of non-domestic building maintenance frameworks, and
 - III. Delegate authority to the Director of Economic Development, in consultation with the Cabinet Member for Investment and Development, the Section 151 Officer and Director of Governance and Legal Services, to deal with all aspects of the procurement of the non-domestic building maintenance frameworks, including finalising the scope of the contracts including the evaluation criteria, the award of the contracts, and all other ancillary matters.
3. The reason for these recommendations is to ensure that the Council has appropriate arrangements in place for the maintenance of its non-domestic building assets.

Background

4. The current building maintenance frameworks (second generation) have been in place since 2019 and are due to end on 31st March 2023. They

comprise 5 lots as follows:

Framework A:

- Lot A1 - Statutory obligations and remedial works;
- Lot A2 - 24/7 Emergency, responsive and minor planned maintenance works up to £20,000 (North Cardiff);
- Lot A3 - 24/7 Emergency, responsive and minor planned maintenance works up to £20,000 (South Cardiff);
- Lot A4 - Planned maintenance works of value £20,000 - £100,000;

Framework B

- Lot B1 - Roofing maintenance works up to £100,000.

5. The implementation of the second generation of frameworks has provided a positive step forward in respect to the maintenance of the Council's non-domestic buildings. The improvements delivered over the first generation of frameworks include:

- improved resilience/competition through area-based contractors;
- the establishment of specialist contracts for statutory obligations testing and roofing;
- improved contract and performance management, and
- the removal of multi-layer sub-contracting

6. In the 2021/22 financial period, approximately £5m was spent through the frameworks. Most of the maintenance work undertaken is relatively small value. For example, in 2021/22, 99% of jobs were of value £60,000 or less with 92% of value £2000 or less.

Issues

7. The second generation of non-domestic building maintenance frameworks have effectively been subject to a process of continuous review through the quarterly strategic meetings that have been held with the main contractors (one of the improvements made following the first generation of frameworks). These meetings provided a good foundation for the review the current contract provisions in preparation for determining the proposed arrangements for the third generation of non-domestic building maintenance frameworks. This review has included:

- an analysis of spend under the various framework lots;
- identification of future maintenance budgets, particularly in respect of Education in relation to the increase in investment in the schools estate;
- a review of customer feedback;
- a review of contractor performance criteria;
- a review of relatively recent audit reports in respect of contract management;

- consultation with Housing officers regarding the Council framework for the maintenance of its domestic buildings, and also feedback from the current framework contractors obtained through meetings led by the Council's Commissioning and Procurement Team.
8. From this review, it has been concluded that the second generation of frameworks have generally been successful and provided an effective way of procuring maintenance work on the Council's non domestic building estate. However, it is recommended that some amendments be made to the next frameworks, as set out below:
- Lot A1 - Statutory obligations – under the current arrangements, a single contractor was appointed to undertake the statutory obligations work. This work comprises the undertaking of a range of cyclical testing, typically of mechanical and electrical equipment, generally on an annual basis and the undertaking of remedial works where this need is identified through the testing. In respect to the cyclic testing of gas boilers, feedback from customers, particularly schools, is that there is a higher level of confidence with the internal DLO gas engineers than with some of those provided through the framework. This has been particularly evident through feedback received following school boiler breakdowns, of which there have been many over the past few winter seasons. Therefore, although the cost of undertaking this work internally is likely to be more expensive, for service quality and customer satisfaction issues, it is recommended that the statutory obligations testing of gas boilers be insourced into the Council's internal DLO. This will also boost the Council's resilience in respect of undertaking the most important statutory obligations testing of which gas boilers is one. Any TUPE Implications will be addressed as part of the procurement process;
 - Lots A2 and A3 - Area based contracts – one of the improvements implemented under the second generation of frameworks was the establishment of two area based contracts, one for North Cardiff and one for South Cardiff, with a single Contractor appointed to each. Under these contracts, in addition to providing a 24/7/365 emergency response to non-domestic buildings in each area, the contractors were appointed to undertake both responsive and minor planned work on a direct award basis up to a value of £20,000. In the light of feedback received through the above mentioned review, the trend in the need to be able to undertake maintenance works at short notice, and the projected increase in workflow particularly in respect of the schools estate, it is recommended that the upper financial threshold for the area based contracts for responsive and minor planned work be increased from £20,000 to £60,000. It is also recommended that some of the responsive gas boiler maintenance be insourced for the DLO to undertake for the reasons previously explained. Any TUPE implications will be addressed as part of the procurement process;

- Lot A4 - Planned maintenance works of value £20,000 - £100,000 – 8 contractors were appointed to this Lot with the intention of work within the stated threshold values being subject to tender. Under the next Framework, for the same reasons as reported above, it is recommended that the lower threshold be increased to £60,000. It is also recommended that the higher threshold be raised to £300,000 with the number of contractors appointed reduced to 4. This will both increase the attractiveness of this Lot to the market when the Framework is tendered and help reduce lead in times for work in the £100,000 - £300,000 range compared with work that is tendered on the open market. The other amendment proposed is that if a job of value between £60,000 - £100,000 is of an urgent nature, a direct award may be made on a cascade basis, that is, the job would be first offered to the highest ranked contractor in this Lot. If this contractor is unable to proceed with the job, it would then be offered to the second ranked contractor, and so on;
 - Lot B1 – roofing works of value up to £100,000 – a single contractor was appointed to this Lot. In the light of feedback received through the above mentioned review, the trend in the need to be able to undertake roof maintenance and replacement works at short notice, and the envisaged programme of roof work over the next few years, it is recommended that the upper financial threshold for the roofing work Lot be increased to £300,000.
9. When procuring the current frameworks (second generation), the duration of contracts was set at 3 years with the option of extending for a further year (maximum of 4 years). For the third generation of frameworks, to improve flexibility, it is proposed that the duration of contracts be set at 2 years with the option of extending for two further 1 year periods (maximum of 4 years).

High level tender evaluation criteria

10. Given that value for money, quality and social value are important considerations, the evaluation of tenders will involve a detailed consideration of these aspects. It is provisionally proposed that the weighting of the evaluation criteria be as follows with these being finalised in conjunction with the completion of the tender documentation:
- Cost – 50%
 - Quality – 40%
 - Social value – 10%
11. As part of the quality evaluation, bidders will be required to provide responses to a number of questions, setting out how they will meet the service standards required. The Council will then specifically evaluate the bidders' responses against each quality requirement to determine the likelihood of them being achieved.

12. The quality evaluation questions will link with the requirements of the service specifications. These will include requirements in relation to:

- Service response times;
- Workforce management including the management of sub-contractors;
- Access to Council buildings and management of maintenance works within these;
- Customer care including effective complaint resolution, and
- Management of health and safety.

Summary of Proposals

13. In summary, it is recommended that the third generation of non domestic building frameworks be structured as follows:

Lot Ref:	Description	Indicative Annual Value based on 21/22 Framework Spend	Indicative Cumulative Spend Over Future 4 year Framework Period based on 21/22 Framework Spend	No. of Contractors to be Appointed	Work Award Mechanism	Duration of Framework Contract
1	Statutory obligations and remedial works	c£0.9m	£3.6m	1	Direct award	2 years with option to extend by two further 1 year periods (i.e. max. of 4 years)
2	24/7 Emergency, responsive and minor planned maintenance works up to £60,000 (North Cardiff)	c£0.8m	£3.2m	1	Direct award	2 years with option to extend by two further 1 year periods (i.e. max. of 4 years)
3	24/7 Emergency, responsive and minor planned maintenance works up to £60,000 (South Cardiff);	c£2.6m	£10.4m	1	Direct award	2 years with option to extend by two further 1 year periods (i.e. max. of 4 years)
4	Planned maintenance	c£1.9m	£7.6m	4	£60k - £100k –	2 years with option to

	works of value £60,000 - £300,000				direct award via cascade approach where work is of an urgent nature. If not urgent, award following tender. £100k - £300k tender	extend by two further 1 year periods (i.e. max. of 4 years)
5	Roofing maintenance and renewal works up to £300,000	c£1.5m	£6m	1	Direct Award	2 years with option to extend by two further 1 year periods (i.e. max. of 4 years)

14. With the upper threshold for Lot 4 being increased to £300,000, it is intended that maintenance work of value greater than £300,000 will be procured on the open market or other national frameworks. Currently, this threshold is £100,000.

Timeline

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

- Cabinet meeting – July 2022
- Find a Tender Service Notice– August 2022
- PQQ Stage – August to October 2022
- Tender period and evaluation – October to December 2022
- Officer Decision Report – December 2022
- Contract Award – January 2023
- Contractor mobilisation – January to March 2023
- Contract start – April 2023

Reason for Recommendations

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

Financial Implications

17. The report sets out the procurement proposals for the new framework for maintenance of the Council's non domestic property estate. The table in paragraph 13 above sets out the significant level of expenditure for this framework. It is essential that the procurement process ensures that the outcomes required by the Council from related services are met whilst ensuring that they are affordable.

18. The financial resources available are limited both for capital and revenue works and there is continuing pressure on those budgets. This highlights the importance of asset management and the prioritisation of works through available condition survey data.
19. The provisional recommended evaluation criteria weighting is a 50:40:10 split of cost, quality and social value. The decision maker should ensure that consideration is given to the basis for this split, future arrangements for compliance and performance monitoring and any anticipated impact compared to the existing framework.
20. In addition, the decision maker should seek to ensure that consideration is given to the proposed pricing mechanism and cost evaluation to be set out in the service specification and scope of contracts. This should continue to ensure value for money and protect any risk allocation between the Council and framework partners.
21. The report identifies a proposed increase to the identified insourced work allocation. Resources must be sufficient to meet demand and outcomes efficiently and effectively and to ensure that value for money is achieved, these improvement initiatives should be supported by robust business cases which can be analysed in terms of future benefits and costs.
22. The report also references the potential for TUPE to apply to the proposed changes. The financial implications of any decisions in this regard are to be determined and must be managed within available resources.

Legal Implications

23. The report details proposals to procure the Third Generation of Frameworks for Non-Domestic Building Maintenance Works in Cardiff.
24. The report also seeks delegation from Cabinet to the Director of Economic Development to deal with all aspects of recommissioning the said framework including finalising the scope of the contracts, the setting of evaluation criteria, the award of the contracts and to deal with all other ancillary matters.
25. Legal services are instructed that the estimated value of the works and/or services to be awarded under the proposed frameworks is circa £7.7million per annum and circa £30.8 million over its potential 4 year term. Details of the (proposed) various frameworks and/or lots are contained in paragraph 13 of the report.
26. Legal Services are instructed that the proposed Frameworks are to be advertised to the market via the Find a Tender Services (FTS). Given the value of the frameworks, the full rigour of the Public Contracts Regulations 2015 (as amended) applies. Legal advice should be sought as regards the procurement process and in relation to the drafting of the terms and conditions of the contracts/Framework Agreement.

27. Advice should be sought in relation to any employment law issues, in particular TUPE implications as mentioned in paragraph 8 of the report.
28. The decision maker will need to be satisfied that the proposed contract award represents best value in terms of meeting the council's overall requirements for this project.
29. All decisions must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. standing orders and financial regulations; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

Equalities Impact Assessment/public duties

30. The Council has to satisfy its public sector duties under the Equality Act 2010 (including specific Welsh public sector duties) – the Public Sector Equality Duties (PSED). These duties require the Council to have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of 'protected characteristics'. The 'Protected characteristics' are: • Age • Gender reassignment • Sex • Race – including ethnic or national origin, colour or nationality • Disability • Pregnancy and maternity • Marriage and civil partnership • Sexual orientation • Religion or belief – including lack of belief.
31. Consideration should be given to the requirements to carry out Equality Impact Assessments ('EIA') so that the decision maker may understand the potential impacts of the proposals in terms of equality. This will assist the decision maker to ensure that it is making proportionate and rational decisions having due regard to the public sector equality duty.
32. Where a decision is likely to result in a detrimental impact on any group sharing a Protected Characteristic, consideration must be given to possible ways to mitigate the harm. If the harm cannot be avoided, the decision maker must balance the detrimental impact against the strength of the legitimate public need to pursue the recommended approach. The decision maker must be satisfied that having regard to all the relevant circumstances and the PSED, the proposals can be justified, and that all reasonable efforts have been made to mitigate the harm.

Well Being of Future Generations (Wales) Act 2015

33. The Well-Being of Future Generations (Wales) Act 2015 ('the Act') places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.

34. In discharging its duties under the Act, the Council has set and published well being objectives designed to maximise its contribution to achieving the national well being goals. The well being objectives are set out in Cardiff's Corporate Plan 2022-25. When exercising its functions, the Council is required to take all reasonable steps to meet its well being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.
35. The well being duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:
- Look to the long term
 - Focus on prevention by understanding the root causes of problems
 - Deliver an integrated approach to achieving the 7 national well-being goals
 - Work in collaboration with others to find shared sustainable solutions
 - Involve people from all sections of the community in the decisions which affect them
 - The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below: <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

HR Implications

36. There are legal obligations contained within the Welsh Government Code of Practice on Workforce Matters 2014 (the Code), and Transfer of Undertakings (Protection of Employment) Regulations 2006 (amended 2014 and commonly known as TUPE).
37. In circumstances where the Council currently provides the services, the legal obligations ensure that transferring local authority employees retain their current terms and conditions including continuity of service, and protected pension rights after a TUPE transfer has taken place. In addition The Code in simple terms means that any new employees carrying out the service which has been transferred are treated no less favourably than those that were employed by the Council/school and this includes being able to access a pension scheme which meets the auto-enrolment pension standards. In effect it prevents a 'two-tier' situation where TUPE transferred employees are on better terms and conditions than those who join the service after the transfer. Therefore, it is imperative that advice is sought from HR people Services at the earliest opportunity when consideration is given to outsourcing or retendering of contracts.

38. It is a requirement that compliance with the Code **must** to be included in any contractual arrangement put in place when a service and employees are transferred from the Council or schools to another entity.
39. The Council is required to report annually to the Welsh Government on contracts entered into under this Code, along with contracts where the Code has not applied. Again, this also applies in the case of retendering.

Property Implications

40. The Cabinet Report sets out the key property implication details. From a strategic perspective, in December 2021 Cardiff Council agreed a new property Corporate Property Strategy 2021-26. Modernisation is identified in the strategy as a key objective, specifically the commissioning of all planned priority 1 works on an annual basis and ensuring buildings are compliant and safe to use including effective statutory maintenance. The 3rd Generation Framework will be critical in ensuring the Council is able to meet these objectives, facilitating the commissioning of works to modernise the retained estate.

RECOMMENDATIONS

Cabinet is recommended to:

1. Note the content of the report;
2. Approve the procurement proposals as detailed in this report for the third generation of non-domestic building maintenance frameworks as set out in the report, and
3. Delegate authority to the Director of Economic Development, in consultation with the Cabinet Member for Investment and Development, the Section 151 Officer and Director of Governance and Legal Services, to deal with all aspects of the procurement of the non-domestic building maintenance framework, including finalising the scope of the contracts and the evaluation criteria, and the award of the contracts, and all other ancillary matters.

SENIOR RESPONSIBLE OFFICER	Neil Hanratty Director of Economic Development
	8 July 2022