

19/64
TO BE MADE



Havering
LONDON BOROUGH

Notice of KEY Executive Decision

Subject Heading:	Award a New L8 Legionella Water Hygiene Contract
Cabinet Member:	Cllr. Roger Ramsay- Lead Member for OneSource
SLT Lead:	Jane West- Chief Operating Officer
Report Author and contact details:	Ian Saxby – Head of Technical Services Telephone: 01708 433529 Email: ian.saxby@onesource.co.uk
Policy context:	It is a legal requirement for building owners/ operators to comply with ACOP(Approved Code of Practice) L8; the management of water hygiene Requirement to provide buildings for staff, customers and stakeholders that comply with statutory legislation including the Health and Safety at Work Act
Financial summary:	This is a call off contract for inspection, monitoring and maintenance and as such will be funded primarily from revenue budgets for the maintenance of buildings. Cost for the 5 year period, based on historical data is £2,085,495 (£417,099pa) including remedial works/projects
Reason decision is Key	Expenditure could be in excess of £500,000 throughout its contract term of 5 years.
Date notice given of intended decision:	September 2019
Relevant OSC:	Children & Learning Overview and Scrutiny Committee
Is it an urgent decision?	No
Is this decision exempt from being called-in?	No

The subject matter of this report deals with the following Council Objectives

Communities making Havering
Places making Havering
Opportunities making Havering
Connections making Havering

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

1. That the Cabinet member approves a waiver of the standard tendering requirements of the Council's Contract Procedure Rules ("CPR") (CPR 8 Checkpoint Procedure). Utilising: 14.6.6 *Best Interests of the Council* - where it is in the best interests of the Council or the Borough for a provision in these Rules to be waived to enable contract procurement to be rapidly progressed while still complying with European procurement rules."
2. That the Cabinet Member approves the appointment of **HSL Compliance Ltd**, as contractor of a five year (3 + 2) term maintenance contract for Water Hygiene inspections and remedial works, following a compliant competitive tendering exercise being completed in accordance ESPO Framework (Reference Number 198) procedures and CPR 20 (Corporate and Framework Agreements).

AUTHORITY UNDER WHICH DECISION IS MADE

- 2.5 The following Functions may be delegated to individual Cabinet members by the Leader.

Each individual Cabinet member, as appropriate, may be delegated one or more of the following functions, within the portfolio allocated to him or her by the Leader. If a Cabinet member is unable to act, the Leader may act on his or her behalf, or may authorise another Cabinet member to do so. Matters delegated to individual Cabinet members under this section give them individual decision making powers. Where any paragraph refers to 'in conjunction with' or 'in consultation with' the decision remains that of the individual Cabinet member.

- (g) To approve an exception to the Contracts Procedure Rules set out in Part 4 of this constitution, in accordance with Rule 14(1) of those Rules.
- (h) To award contracts, agree extensions of contract terms and awards/extensions of Consortia contracts of a value above £5,000,000 and up to £10,000,000 and contracts where external funding is guaranteed and there is no longer term financial commitment to the Council. (*Note: Pension Committee has powers to invite tenders and award contracts for investment matters within their terms of reference*)

STATEMENT OF THE REASONS FOR THE DECISION

It is a legal requirement for building owners/ operators to comply with ACOP L8; the management of water hygiene. This imposes a duty to monitor at weekly, monthly and six monthly periods, to carry out and update water risk assessments and to effect any repairs/ replacement to ensure that installations are compliant.

Haverling Council currently ensures compliance via a corporate contract entered in to in 2018 and extended for a period of one year. Technical Services monitor this duty in 112 corporate buildings on behalf of Facilities Management and 59 schools as part of an optional service level agreement.

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This framework is compliant with UK/EU procurement legislation. Suppliers listed on the framework were assessed during the procurement process for their financial stability, track record, experience and technical & professional ability. The new contract incorporates improvements to the operation and monitoring processes and includes schedules of rates to enable repairs/ replacements to be carried out efficiently and economically.

They will be supported by other members of the Technical services and procurement teams.

Also included is the Head of Facilities Management and Education Asset Management Team as end user advisors.

The contract will be the current JCT Measured Term Contract.

Checkpoint 2 was approved on 14th February 2019. It has been revised in accordance with the programme delay and resubmitted.

PROCUREMENT TIMETABLE

This procurement was intended to follow the time-line below:

Stage	Date(s)and time(s)
Checkpoint 2 approval	14 th February 2019
Expected date of award of Contract(s)	30 th October 2019
Add to Contract Register	31 st October 2019
TUPE Consultation period (if applicable)	N/a
Place award notice in official Journal of European Union (OJEU)	N/a
Contract commencement	11 th November 2019
Initial Contract completion date	10 th November 2022
Contract completion date – (if extension(s) exercised)	10 th November 2024

A competitive tendering exercise has been completed in accordance with LBH and ESPO (framework provider) requirements utilising a framework comprising 8 qualified companies, 5 companies including the incumbent supplier submitted compliant tenders.

All five contractors returned tenders and these were assessed by a panel of officers from Technical Services and the strategicx procurement unit on a 30/70 quality / price basis as follows:

	Technical 30%	Cost 70%	Total Score	Ranking
Contractor A	19.68	41.480	61.16	4
HSL Compliance Ltd	26.80	70.00	96.80	1
Contractor C	19.60	42.58	62.18	3
Contractor D	19.20	31.40	50.6	5
Contractor E	23.60	40.29	63.89	2

The above shows the results of the tender evaluation, carried out in accordance with the framework's and the Council's Contract Procedure Rules. As such, the evaluation reverted to the CPR's 70% cost/ 30% quality (technical) rather than the 60/40 initially proposed.

All tenders were evaluated on cost (amount of tender sum) and quality on the responses given to five specific qualitative questions by a team of procurement and technical specialists.

Implementation - Contract Award

The tender submitted by HSL Compliance Ltd in the notional sum of £417,099 per annum (based on the terms and conditions and estimated remedial works arising) is the best value for LBH and it is recommended that the current corporate supplier, HSL Compliance Ltd. be appointed for a 3 year period with an optional 2 year extension based on the results in the table above.

The new contract incorporates improvements to the operation and monitoring processes and includes schedules of rates to enable repairs/ replacements to be carried out efficiently and economically.

Key issues

There is a legal obligation on employers to assess their water systems for potential risks of harbouring and distributing Legionella as well as other water born bacteria. It is clear as this procurement process was undertaken and developed, Technical Services staff noted that an opportunity to make savings on the current water hygiene contract with the incumbent contractor HSL became apparent by utilising a previous tender undertaken by an ESPO (Leicestershire County Council, Lincolnshire County Council, Cambridgeshire County Council, Norfolk County Council, Warwickshire County Council, and Peterborough City Council) created by a combination of councils. Suppliers listed on the framework were assessed during the procurement process for their financial stability, track record, experience and technical & professional ability.

These savings represent as much as 30% on the schedule of rates LBH are currently utilising on its previous contract with HSL for Water Hygiene services. In the process of engaging the ESPO and compiling a compliant tender to the frameworks requirement and maximise the potential savings for the Borough it appears that although the process of Checkpoint procedures were carried out with procurement Technical Services cannot evidence an ED requesting permission to go to tender to an SLT member. Technical Services believe that with staff leaving for various reasons, restructuring etc. this has unfortunately been overlooked until recently because of the contractors continued engagement on the original contract at the original prices.

Technical Services would now like to award this contract officially utilising the 14.6.6 exception above, the reasons for this request is also detailed in item 2 below.

Responsibility for the maintenance of buildings either owned and/or used by the Council rests primarily with Asset Management and individual schools governing bodies and is L8 compliance is both regulatory and essential.

Compliance requires inspections and monitoring to be carried out by competent persons in line with statutory legislation. This is achieved by a series of maintenance term contracts corporately procured to achieve best value. This is one of this "suite" of contracts.

Havering Council currently ensures compliance via a corporate contract entered in to in 2018 and extended for a period of one year. Technical Services monitor this duty in 112 corporate buildings on behalf of Facilities Management and 59 schools as part of an optional "buy in" service level agreement to this "call off" type contract.

This contract fits into the following Borough vision "We will work to achieve a clean, safe environment for all. This will be secured through working with residents to improve our award-winning parks and continuing to invest in our housing stock, ensuring decent, safe and high

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standard properties. Our residents will have access to vibrant culture and leisure facilities, as well as thriving town centres”

Resource implications

Responsibility for the maintenance of buildings either owned and/or used by the Council rests primarily with Asset Management and individual schools governing bodies.

Compliance requires inspections and monitoring to be carried out by competent persons in line with statutory legislation. This is achieved by a series of maintenance term contracts corporately procured by Technical Services to achieve best value. This is one of this “suite” of contracts.

Havering Council currently ensures compliance via a corporate contract entered into in 2018 and extended for a period of one year. Technical Services monitor this duty in 112 corporate buildings on behalf of Facilities Management and 59 schools as part of an optional service level agreement.

Technical Services will monitor and manage this contract without any additional resource to its current establishment, efficiency gains in its asset management system Tech Forge and improvements to its in house procedures will be adopted to aid in secure compliant contract management. FM and schools will access the contract via traded services “buy in” arrangement offered via a Tech Services SLA to a pre agreed fee rate and utilise the contract on a “call off” basis.

Financial

As with most capital schemes, there is a risk that the scheme could overspend due to issues arising during the build process, this risk is mitigated via a contract administration procedure as set out within the JCT Measured Term Contract 2016 (with Amendments) that provides constant monitoring and final cost forecasting. Any issues arising can be funded from the client contingency sum. There exists a risk of delays as with any major building project, but this will be mitigated by a scrutinised critical path programme issued to the Contract Administrator and all the shareholders and reviewed against the on-site progress at weekly and ad hoc meetings.

As with all contracts, there is a risk to contractor delivery/continued operation. However, the contractor selection process has partly mitigated this risk, along with careful project management in the future.

Below are listed the main financial implications of, and risks relating to, the proposed decision.

- Implementing the award.
- Schools opting out.

The process lessons learnt will enable subsequent Measured Term Contracts to be expedited.

The above shows the results of the tender evaluation, carried out in accordance with the framework's and the Council's Contract Procedure Rules. As such, the evaluation reverted to the CPR's 70% cost/ 30% quality(technical) rather than the 60/40 initially proposed. LBH Legal were concerned that had the ESPO agreed or not to this change in terms and conditions and Technical Services can confirm that authority to undertake this change was requested of the ESPO and they have agreed our alteration under this basis and Technical Services confirmed that all tenderers were advised of this alteration and the ESPO were

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happy for us to proceed.

All tenders were evaluated on cost (amount of tender sum) and quality on the responses given to five specific qualitative questions by a team of procurement and technical specialists.

Implementation - Contract Award

The tender submitted by HSL Compliance Ltd in the notional sum of £417,099 per annum (based on the terms and conditions and estimated remedial works arising) is recommended for approval for a five year period.

OTHER OPTIONS CONSIDERED AND REJECTED

The option to tender the works via construction line was considered but was rejected as there was a suitable established framework agreement available and it was considered better value for money to adopt the chosen route. Also, as the contract value is above the EU Threshold, this option would not be suitable.

A further option of undertaken an OJEU compliant tender process was considered, but was rejected as there was a suitable established framework agreement available and it was considered better value for money to adopt the chosen route.

PRE-DECISION CONSULTATION

Consultation has taken place with a number of relevant key stakeholders. In addition to this, consultation has taken place with the finance, legal and the Strategic Procurement Unit.

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: Ian Saxby

Designation: Head of Technical Services

Signature:

Date: 17.09.2019



Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

1. The Council has a duty as **building owners/ operators** to ensure the quality of water supplied to its residents, and in particular to take appropriate measures to control conditions that might give rise to development of Legionella bacteria in systems that could cause Legionnaires Disease. This requirement is contained in the revised Approved Code of Practice (ACOP) and guidance "Legionnaires' disease: The control of legionella bacteria in water systems" otherwise known as L8.
2. The estimated value of this contract is £2,085,495 (i.e. £417,099/annum), which falls below the EU threshold for Works contracts and therefore any procurement route or award of contract is not subject to the full requirements of the Public Contracts Regulations 2015 (the "EU Regulations"). Further, the estimated value of the contract is such that it is not considered to be of cross border interest.
3. For the purposes of the Council's Procedure Rules ("**CPR**") and Financial Regulations, the estimated value of this contract is such that it is classed below EU threshold value Works Contract.
4. CPR 13 provides for Works contracts below the EU threshold (currently **£4,551,413** can be awarded after tenders in accordance with CPRs using Constructionline.
5. The Council must procure these contracts in accordance with the Public Contracts Regulations 2015 ("**PCR 2015**") and the CPR. The use of a valid Framework Agreement is allowable under CPR 20, and will also be in accordance with those permitted under regulation 33 of the PCR 2015.
6. The CPRs provides that subject to any requirements in the European Procurement legislation for below threshold contracts, an individual Cabinet member may agree an exemption from the CPRs, where there are justifiable reasons under CPR 6, 8 and 24.

"CPR 14 (Waivers)

Exceptions to competitive requirements

14.3 Exceptions to the competition requirements may be made only if all relevant law is complied with and one of the following circumstances applies:

- i. the contract falls within one of the exceptions listed in this Rule;
AND
 - a. the Competition Financial Thresholds Exceptions, is fully and properly completed and signed by the relevant Member of SLT;
AND
 - b. the person awarding the contract can demonstrate that the contract represents the best value that can be obtained in the circumstances.
 - ii. an individual Cabinet member has approved the waiving of the application of these rules, as permitted by Rule (a) above;
 - iii. the contract is solely for the employment of Temporary Agency Workers or interim managers (but not consultants);
- iv. joint purchasing with or through another public body provided that the public body awarding the contract can demonstrate that the arrangements comply with European procurement, best value and other applicable legislation.

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- v. the instructing of counsel by the Director of Legal and Governance;
- vi. they are allowed by some other specific provision in these Rules.

14.4 The exceptions are:

- 14.6.1 *Genuine emergency* - unforeseen events likely to cause immediate danger to people or property such as bombing or flooding;
 - 14.6.2 *Specialist services/supplies* - available only from one supplier in the European Union – for example, specialist niche consultants or supplies;
 - 14.6.3 *For reasons of compatibility* - with existing services/products – for example, equipment that needs parts from its own manufacturer;
 - 14.6.4 *Urgency NOT of the Council's own making* - the urgency must be unforeseen, for example, a current supplier ceases to operate, or a contract is terminated for poor performance. Urgency caused by previous delay by the Council or a requirement to implement a strategy or project urgently will not justify an exception under this exception;
 - 14.6.5 *Exceptions permitted under European procurement rules* - where the contract is subject to the full application of the European procurement rules and there are specific exceptions which shall be complied with;
 - 14.6.6 *Best Interests of the Council* - where it is in the best interests of the Council or the Borough for a provision in these Rules to be waived to enable contract procurement to be rapidly progressed while still complying with European procurement rules.”
- 7. The Cabinet member should therefore satisfy themselves that there are “good operational and/or financial reasons” for waiving the CPR and is referred to Officers comments within the body of the report.
 - 8. For the reasons detailed above, it is not considered that waiving CPR would constitute a breach of domestic and EU legislation.
 - 9. The Cabinet member will be aware of the Public Sector Equality Duty (PSED) set out in section 149 of the Equality Act 2010. At each stage, in exercising its function (and in its decision making processes) the council must have due regard to the need to:
 - a) eliminate discrimination, harassment, victimisation or other prohibited conduct;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it;
 - c) foster good relations between person who share a relevant protected characteristic and those who do not share it.
- The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 10. The Legal and Governance officers are available to assist the client department in finalising the terms and conditions of the proposed contract between the parties.

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FINANCIAL IMPLICATIONS AND RISKS

As with most capital schemes, there is a risk that the scheme could overspend due to issues arising during the build process, this risk is mitigated via a contract administration procedure as set out within the JCT Measured Term Contract that provides constant monitoring and final cost forecasting. Any issues arising can be funded from the client contingency sum. There exists a risk of delays as with any major building project, but this will be mitigated by a scrutinised critical path programme issued to the Contract Administrator and all the shareholders and reviewed against the on-site progress at weekly and ad hoc meetings.

As with all contracts there is a risk to contractor delivery/continued operation. However the contractor selection process has partly mitigated this risk, along with careful project management in the future.

Note here the financial implications of, and risks relating to, the proposed decision.

- Implementing the award.
- Schools opting out.

The process lessons learnt will enable subsequent Measured Term Contracts to be expedited.

**HUMAN RESOURCES IMPLICATIONS AND RISKS
(AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)**

There are no implications associated with this decision.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

These proposals do not have any equalities and social impact implications and risks.

BACKGROUND PAPERS

None

Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Proposal NOT agreed because

Details of decision maker

Signed

Name:

Cabinet Portfolio held:

CMT Member title:

Head of Service title

Other manager title:

Date:

Lodging this notice

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Democratic Services Officer in Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on 25/9/2019

Signed 