



## Notice of KEY Executive Decision containing exempt information

This Executive Decision Report is part exempt and Appendix A is not available for public inspection as it contains or relates to exempt information within the meaning of paragraph 3 of Schedule 12A to the Local Government Act 1972.

It is exempt because it refers to: Information relating to the financial or business affairs of any particular person (including the authority holding that information); and the public interest in maintaining the exemption outweighs the public interest in disclosing the information

<b>Subject Heading:</b>	Award of Asbestos Analytical Contract
<b>Decision Maker:</b>	Dave McNamara, s151 Officer
<b>Cabinet Member:</b>	Councillor Ray Morgan, Leader of the Council
<b>SLT Lead:</b>	Dave McNamara
<b>Report Author and contact details:</b>	Sue Wilks, Head of Health and Safety 01708 432903  sue.wilks@onesource.co.uk
<b>Policy context:</b>	High customer satisfaction. Commission goods and services in a way that provides the best value for money and ensures compliance with the Asbestos Regulations
<b>Financial summary:</b>	The approximate anticipated total value of the contract to be procured over the four-year duration is c.£150,000 p.a. with an estimated spend of £600,000 over the life of the contract (4 years) for analytical works. This will depend on actual requirements that arise during the course of the contract. Funding for analytical (surveying) is budgeted within the capital programme to ensure Council

### Key Executive Decision

	buildings and community schools have up to date information.
<b>Reason decision is Key</b>	Expenditure of £500,000 or more
<b>Date notice given of intended decision:</b>	28th March 2023
<b>Relevant OSC:</b>	Overview & Scrutiny Board
<b>Is it an urgent decision?</b>	Permission has been sought and given by Cllr. O'Sullivan to waive call in for this decision due to the urgency to appoint an Analytical Contractor. We require the contract to commence as soon as possible to allow the programme of re-surveys to commence.
<b>Is this decision exempt from being called-in?</b>	Yes, call in has been waived due to the urgency

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

People - Things that matter for residents

Place - A great place to live, work and enjoy x

Resources - A well run Council that delivers for People and Place.

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### Part A – Report seeking decision

#### **DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION**

This paper seeks authorisation to make a direct award to Thames Laboratories for a contract for analytical asbestos services for a period of 4 years at an overall approximate value of £600,000. The value is subject to change depending on the number of orders placed throughout the life of the contract. The contract is to carry out all analytical processes (including air testing, surveying, bulk-sampling & analysis as required by LBH). The contract will allow for surveys, air testing etc. across corporate premises on behalf of Havering Council ('the Council').

#### **AUTHORITY UNDER WHICH DECISION IS MADE**

Paragraph 3.3 of Part 3 of the London Borough of Havering's Constitution  
(Powers of Members of the Senior Leadership Team)  
(Contract powers)  
(b) To award all contracts with a total contract value of between £500,000 and £5,000,000 other than contracts covered by Contract procedure  
Rule 16.3

#### **STATEMENT OF THE REASONS FOR THE DECISION**

The Council procured a contract for an asbestos analytical and remedial contract in 2022. A mini competition was conducted via the LHC AS2 Asbestos Removals and Remediation Framework and a contract for asbestos analytical works was awarded to Armstrong York in June 2022.

Armstrong York were unable to meet the Council's requirements and a decision was made to terminate the contract in March 2023. The Council gave notice to terminate the above Contract, in accordance with the terms of the Contract.

The Council intends to utilise the LHC Framework AS2 to make a direct award to Thames Laboratories. The framework has 13 separate regional lots all assessed individually and include suppliers who have demonstrated the competence and experience to undertake services or works within that region. 46 suppliers submitted tenders, post evaluation, 28 companies have been appointed onto the framework as they have offered the best value for money. The framework expires on 31<sup>st</sup> May 2023, therefore the contract needs to be awarded prior to that date. Direct awards are permitted under the terms of the framework. Thames Laboratories are ranked first for quality on the framework, which gives the Council confidence that they will be able to deliver the service effectively.

Due to the nature of the contract and the legislation that applies (The Control of Asbestos Regulations 2012) it is important that we carry out the resurveys of Council buildings as soon as possible. A direct award will enable us to commence our resurvey programme from May 2023 and guarantee our Summer Works Programme.

The Asbestos Analytical form of contract will be based on the JCT Measured Term Contract 2016 with Havering Amendments.

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### **OTHER OPTIONS CONSIDERED AND REJECTED**

- That Havering conduct a stand-alone procurement process for asbestos works. This was rejected as this would require at least three months to be added to the procurement timetable and would require more internal resources to manage the process. Most of the additional work was done by LHC in setting up its Framework.
- That Housing and Corporate buildings collaborate on a joint procurement exercise. However due to the structure of the Framework, domestic and corporate premises are managed across different 'Worksteams'. Even if we had collaborated, the procurements would have had to be run separately as two different tenders.
- That Havering collaborate with London Borough of Newham – Newham has called off from the Fusion 21 framework for its corporate Asbestos services. This was rejected as the contracts in Newham were already being procured at the time of tendering for our own requirement.
- Do Nothing. This was rejected as we have a statutory obligation to monitor asbestos containing materials that are found on our premises. There is a statutory obligation to provide this information.

### **PRE-DECISION CONSULTATION**

None

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

Name: Sue Wilks

Designation: Head of Health and Safety

Signature:

Date: 13/4/23

## Part B - Assessment of implications and risks

### LEGAL IMPLICATIONS AND RISKS

The Control of Asbestos Regulations 2012 places a duty on the Council to ensure that a suitable and sufficient assessment is carried out as to whether asbestos is or is liable to be present in the premises. The Council also has a duty under Health and Safety at Work Act and associated legislation pertaining to the management and safe removal of the hazardous material in its premises.

The Council has a general power of competence under section 1 of the Localism Act 2011 to do anything that an individual generally may do subject to other statutory provisions limiting or restricting its use. The recommendations to award the contract is compatible with this statutory power.

The proposed value of the contract is below the relevant threshold for Works contracts as stipulated in the Public Contracts Regulations 2015 (as amended) and therefore is not subject to the full rigours of the Regulations. However the proposed contract award is compliant with the Regulations and the Council's Contracts Procedure Rules.

### FINANCIAL IMPLICATIONS AND RISKS

The approximate anticipated total value of the contract to be procured over the four-year duration is c.£150,000 p.a. with an estimated spend of £600,000 over the life of the contract (4 years) for analytical works. This will depend on actual requirements that arise during the course of the contract.

The funding for analytical (surveying) is budgeted within capital (in accordance with IAS 16) to ensure the council buildings and community schools have up to date information. The budget/funding falls across three main areas:

- £100k asbestos survey budget within the Health & Safety capital programme for re-survey/management survey work (there is the potential to supplement this from underspends vired from other H&S capital budgets if the need arises);
- Schools building and maintenance capital budgets which have been put aside to meet the cost of education refurbishment and demolition asbestos surveys; and
- Recharging costs directly to schools where surveys are required as a result of work initiated by the school;

Funding for individual schemes will be agreed prior to any orders being raised under the contract.

The contract is a framework agreement with no commitment as to the level of services to be purchased. As such there is no risk to any penalty clause costs arising through the contract should Havering make any changes to services which impact on its requirement or asbestos removal /surveys.

Financial and reputational risks will arise if this work is not carried out.

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

There are no specific Human Resources implications associated with this decision.

### **EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS**

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have 'due regard' to:

- (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) Foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex/gender, and sexual orientation.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

**Key Executive Decision**

**HEALTH AND WELLBEING IMPLICATIONS AND RISKS**

Having a robust arrangement and competent contractor in place to carry out analytical works such as surveys and air testing is key to ensuring that our buildings are safe and asbestos is managed in accordance with the stringent Asbestos Regulations.

**ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS AND RISKS**

Services within this contract ensure the testing of materials to identify whether they contain asbestos and therefore contribute to managing environmental risks associated with proposed works to buildings

**BACKGROUND PAPERS**

**APPENDICES**

**Appendix A - Exempt**

**Key Executive Decision**

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**Key Executive Decision**

**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

*Delete as applicable*

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 Democratic Services, in the Town Hall.

**For use by Committee Administration**

This notice was lodged with me on \_\_\_\_\_

Signed \_\_\_\_\_