

Notice of Non-key Executive Decision

Subject Heading:	Renewal of Term Maintenance Contract for Water Hygiene Services for Corporate Buildings and Schools
Decision Maker:	Neil Stubbings - Strategic Director of Place
Cabinet Member:	Councillor Ray Morgan - Leader of the Council
SLT Lead:	Neil Stubbings – Strategic Director of Place
Report Author and contact details:	Ian Saxby – Head of Capital Delivery & Corporate Estates Telephone: 01708 433529 Email: ian.saxby@onesource.co.uk
Policy context:	It is a legal requirement for building owners/ operators to comply with ACOP 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 etc. Act 1974
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, both Corporate and individual schools that join the SLA provided by Technical Services. Cost for the 5 year period, based on historical data is £1,500,000 (£300,000pa) including remedial works/projects
Relevant OSC:	Overview and Scrutiny Board
Is this decision exempt from being called-in?	Yes, it is a Non Key decision

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

People – Things that matter for residents	<input type="checkbox"/>
Place – A great place to live, work and enjoy	<input type="checkbox"/>
Resources – A well run Council that delivers for People and Place	<input checked="" type="checkbox"/>

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

This report seeks approval to commence a tendering process for a Term Maintenance Contract for Water Hygiene Services for Public Buildings and Schools. It is a legal requirement for building owners/ operators to comply with ACOP 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

For the reasons detailed in this report the Member of SLT is asked to authorise the procurement of Term Maintenance Contract for Water Hygiene Services at the estimated cost of £1.5m over a duration of 5 years. The initial contract term will be 3 years with an option to extend for a further 2 years.

Responsibility for the maintenance of buildings either owned and/or used by the Council rests primarily with the Council 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 to achieve best value.

There is an existing contract in place and both periodic monitoring, testing and reactive repairs are carried out on a regular basis with regards to strategic planning and financial control. This must continue as our statutory obligations are being maintained on a regular basis.

AUTHORITY UNDER WHICH DECISION IS MADE

3.3 Powers of Members of the Senior Leadership Team

Members of the Senior Leadership Team (SLT) have delegated authority to act as follows within the assigned service service/portfolio of responsibilities, subject to the general provisions and limitations set out in section 3.1 above.

General powers

(a) To take any steps necessary for proper management and administration of allocated portfolios.

Contract powers

(a) To approve commencement of a tendering process for all contracts above a total contract value £500,000.

STATEMENT OF THE REASONS FOR THE DECISION

Responsibility for the maintenance of buildings either owned and/or used by the Council rests primarily with the Council 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 to achieve best value.

There is an existing contract in place and both periodic testing and reactive repairs are carried out on a programmed basis, with regards to strategic planning and financial control.

This must be allowed to continue as our statutory obligations continue on a regular basis.

The likely total cost is estimated to be in the order of £1,500,000 for the five years.

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- ii. This proposed contract is considered to be a Works contract under Schedule 2 of the Public Contracts Regulations 2015 and the estimate value is below the EU threshold which would require a full tender exercise.
- iii. In compliance with the Council’s Contract Procedure Rules (“CPRs”), Contractors will be selected using a Fusion 21 Framework Contract for Water Hygiene services (Lot 4). Submissions will be evaluated by technical and procurement staff.
- iv. The project team is led jointly by the Mechanical and Electrical Manager within Technical services and the Procurement Specialist. They will be supported by other members of the Technical services and procurement teams. Also included the Compliance Manager and Education Asset Management Team as end user advisors.
- v. The new contract will operate as one co-ordinated contract that will ensure both efficiencies in terms of operation/ monitoring and capital procurement of improvements.
- vi. Project risk assessment.
 - Insufficient interest from the market
 - Schools may choose to opt out from the service
- vii. The contract will be the current JCT Measured Term Contract 2016 with the Council’s supplemental conditions.
- viii. GRG1 (Gateway Review Group) approved was received on 13th April 2023 and all revisions and resubmitted timelines have been included.

Procurement Timetable

The proposed procurement timetable for this project is as detailed below:

Stage	date(s)and time(s)
Issue of Invitation to Tender	1 st September 2023
Last date for Clarification questions	16 th September 2023
Response to Clarification questions	17 th September 2023
Submission of Tenders	1 st November 2023
Evaluation of Tenders	15 th November 2023
GRG2 approval	10 th January 2023
ED2 approval	20 th January 2023
O/S call in?	Yes
Notification of result of evaluation	23 rd March 2024
Standstill period	7 th April 2024
Expected date of award of Contract(s)	15 th April 2024
Add to Contract Register	16 th April 2024
Initial Contract completion date	31 st April 2027
Final Completion date if extensions are implemented?	31 st April 2029
Contract commencement	1 st May 2024

Resource implications

Responsibility for the maintenance of buildings either owned and/or used by the Council rests primarily with the Council 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.

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Having Council currently ensures compliance via an ad hoc 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.

OTHER OPTIONS CONSIDERED AND REJECTED

1. To combine this contract with the Housing Services Water Hygiene contract – this option was discussed with officers within the Housing Service, but was rejected due to the timing to facilitate contracts in all areas and the specific requirements within each area. In addition to this, there were Section 20 Leaseholder issues that would need to be dealt with prior to the procurement exercise being carried out, which were not possible to resolve within the required timescales. However, it was agreed that the new contract would be written to include the option for it to be used by housing should the need arise and that the housing water hygiene contract should include an option for it to be used for schools and corporate buildings as a backup should the need arise.
2. To do nothing - This option was rejected as it would leave the council at risk of prosecution from the HSE as being in breach of ACOP L8 Water Regulations.

PRE-DECISION CONSULTATION

None.

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

Name: Ian Saxby

Designation: Head of Capital Delivery & Corporate Estates

Signature: Ian Saxby

Date: 4th July 2023

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

1. It is a legal requirement for building owners/ operators to comply with ACOP L8 regulations respectively and the requirement to provide buildings for staff, customers and stakeholders that comply with statutory legislation including the Health and Safety at Work etc. Act 1974.
2. The Council has power to procure the contract under Section 111 of the Local Government Act 1972 which, permits the Council to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.
3. Additionally, the Council also has a general power of competence under Section 1 of the Localism Act 2011 to do anything an individual can do, subject to any statutory constraints on the Council’s powers. None of the constraints on the Council’s s.1 power are engaged by this decision.
4. The contract is a mix of services and works with circa £1.3m of the contract encompassing works. The estimated value of this contract is £1,500,000 (i.e. £300,000/annum), which falls below the 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 “PCR 2015”).

FINANCIAL IMPLICATIONS AND RISKS

The cost of this procurement exercise will be met from existing budgets within Technical Services utilising the following budget code - A44900.

The work is being covered by current budgets and will be funded from the existing relevant maintenance budget.

Term Contract	Term (Years)	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Term Total
<i>Water Hygiene Works- Term maintenance Contract</i>	5	£300,000	£600,000	£900,000	£1,200,000	£1,500,000	£1,500,000

As with most revenue schemes, there is a risk that the scheme could overspend due to issues arising during the repair 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 also any extensive repairs outside of client's budgets will likely undergo a capital bid process by the client in the following financial year. There exists a risk of delays as with any major repair/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.

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This will be a call off contract, primarily funded by FM and Schools where they choose to buy in from pre costed schedule of rates, however as a corporate provision contract it is hoped it will appeal to building duty holders with statutory obligations. The cost is likely to be like the costs currently paid however the cost of managing and monitoring the contracts is also likely to reduce due to internal improvements with data management in these areas.

The current spend on this contract is split into two areas:

1. Statutory Monitoring, Servicing & Maintenance – Based on system type and duration between tests.
2. Reactive repairs – Based on the amount of system failures (call outs) and needed repairs following statutory visits. This is a particularly difficult figure to predict as it is constrained by the clients building budget restrictions however based on historical spend 80%/20% reactive repairs to servicing costs are a likely outcome.

The contract is expected to come in at a similar value to current usage dependent upon market forces and current cost of living implications and the size of clients building budgets within FM and Schools remaining stable. The spend on this contract should remain containable dependent upon client's own budget management and not Technical Services control as this contract is supplied on a "call off" basis only.

This contract is unlikely to produce any direct savings to client's budgets as it provides necessary statutory compliance and an ongoing process throughout its term. However, consistent servicing and maintenance can produce long term savings of between 15 & 20% on failure/repair costs. There is also a potential saving in procurement costs of tendering & retendering to the organisation as there is a comprehensive schedule of rates within the specification that can be utilised to cost works up to £100,000

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

There are no implications or risks anticipated to council staff as the employees involved in the delivery of the current service are employed directly by the existing Provider.

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, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

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. The action undertaken will include

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monitoring how the service meets the needs of all eligible users, including those from ethnic minority communities and the disabled. The Council will also ensure that potential providers have undertaken equality training and adhere to the Council's Fair to All Policy or their own equivalent.

HEALTH AND WELLBEING IMPLICATIONS AND RISKS

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 contract is written and designed to mitigate the councils' statutory obligations in respect of ACOP L8 HSG274. The regulation exists to outline how Landlords and Duty Holders must execute their obligations to prevent the rise of legionellosis (aka Legionella) and legionnaire's disease that is distributed primarily by the hot and cold-water services which run throughout all the buildings the council owns or manages.

Legionellosis cause flu like symptoms or can cause Pontiac fever, and like any disease that affects a major body organ in this case the lungs, is very dangerous and can be fatal to elderly, infirm or vulnerable persons particularly can impact the elderly or very young. By nature of its potential outcomes, it can have an impact on everyone's health and wellbeing if left to proliferate in our buildings water systems.

To mitigate the risks to our resident's, staff, schools and building users the council must provide:

1. Routine Monitoring of the water supplies at monthly intervals in our buildings, this includes temperature checks, regular flushing of outlets, tank inspections, descaling, regular servicing of various outlet types.
2. Risk Assessments – Carried out at 2 yearly intervals to identify and note any potential risks to the installed water services and produce a report highlighting any deviations for correction via a remedial works order.

There has been a Water Hygiene Services contract since 2018 and there has been no reported incidents of Legionella on the Borough during this period to date. Technical Services are seeking approval to continue with this work and maintain the health and wellbeing of our building users.

ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS AND RISKS

The Social Value Strategy will be used to assess the environmental impact and plans of those suppliers bidding for this contract. As a result, suppliers will be required to describe how they intend to minimise impact on the environment by:

- Ensuring that all waste is correctly recycled
- Utilising public transport
- Employing locally, wherever possible, to reduce the environmental impact of travelling to work Non-key Executive Decisions
- Employing digital solutions to reduce the need for manual recording and disposable materials.

BACKGROUND PAPERS

None

APPENDICIES

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

Delete as applicable

Proposal NOT agreed because

Details of decision maker

Signed



Name: Neil Stubbings

Cabinet Portfolio held:
CMT Member title:
Head of Service title
Other manager title:

Date: 17.08.23

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 _____