

Birmingham City Council

Report to Cabinet

16 January 2024



Subject: P0787_2023 Contract Award for the Provision of Repairs & Maintenance, Gas Servicing and Capital Improvement Works Programmes – Interim Contract 2024-2026

Report of: Paul Langford, Strategic Director of City Housing

Relevant Cabinet Member: Cllr Jayne Francis – Cabinet Member for Housing & Homelessness

Relevant O &S Chair(s): Cllr Mohammed Idrees – Homes, Overview and Scrutiny Committee
Cllr Jack Deakin - Finance and Resources, Overview and Scrutiny Committee

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 011849/2023		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, state which appendix is exempt, and provide exempt information paragraph number or reason if confidential: Commercially and reputationally sensitive information. Exempt information Schedule 12A to the Local Government Act 1972 (as amended). Paragraph 3. Information relating to the financial or business affairs of any particular person (including the authority holding the information)		

1 Executive Summary

- 1.1 In November 2022, Cabinet authorised the commencement of the procurement for the recommission of the Responsive Repair & Maintenance Services, Gas Servicing and Capital Improvement Work Programmes (including Major Adaptations to Council Housing Stock) regarding the Council's housing stock in all areas of Birmingham.
- 1.2 The procurement commenced in January 2023, but unfortunately had to be abandoned in August 2023 following receipt of tender submissions, when the commercial evaluation presented challenges due to the scale and scope of the works required.
- 1.3 This report provides details of the outcome of the negotiations for interim contracts to cover the period April 2024 - March 2026 which commenced following the decision to abandon the procurement.
- 1.4 This report is a vital component in City Housing Directorate's overarching recovery plan and will significantly aid the organisation in delivering on the expectations of the Regulator of Social Housing and Housing Ombudsman. Both regulatory bodies have notably highlighted the need to improve the quality of resident's homes. The strategic partnership developed with contractors are important as they act as the vehicle to honour the commitments set out to the Regulator and Ombudsman and improve overall resident satisfaction.
- 1.5 This report should be read in conjunction with the Housing Revenue Account (HRA) Business Plan and Asset Management Strategy 2024-2029. The three reports, read together demonstrate how the Council seeks to address stock quality across the city, particularly in relation to achieving compliance against Decent Homes Standards.
- 1.6 The report should also be read in conjunction with the Housing Strategy 2023-2028. The strategy was launched in January 2023 and one of the three strategic priorities is to ensure 'Neighbourhoods are enhanced, and the quality of existing homes are improved.' The contractual relationship with our partners is a vital mechanism to deliver on this strategic objective and within the strategy itself, the Council commits to undertaking the re-procurement process to support this.
- 1.7 This report sets out the Council's interim position to the delivery of the Repairs & Maintenance contracts. However, it must be noted that this report is supported by the immediate long-term procurement of Repairs & Maintenance contracts, to be mobilised in two years' time. These contracts are one of the mechanisms the Council will use to ensure compliance against Decent Homes Standards and honour commitments made to the Regulator of Social Housing and Housing Ombudsman.
- 1.8 The Repairs & Maintenance contracts are the largest contracts that the Council hold and represent one of the key partnership arrangements for the city. To ensure services are delivered effectively for our residents, the re-procurement

process must continue to be a corporate priority for all relevant Directorates and Elected Members.

- 1.9 The private report contains commercially / sensitive / confidential market information as a result of the evaluation of tenders and subsequent negotiations which could impact on future procurement activity if it were to be made public.

2 Recommendations

That Cabinet:

- 2.1 Approves the award of contracts for the provision of Responsive Repair & Maintenance Services, Gas Servicing and Capital Improvement Work Programmes (including Major Adaptations to Council Housing Stock) regarding the Council's housing stock in all areas of Birmingham, as follows:
- To Equans Regeneration Limited for the North, West and East areas of the city for a two-year period commencing 1st April 2024 for the value of £259.7m up to a maximum of £371.3m to include standalone¹ projects.
 - To Fortem Solutions Limited for the South area of the city for a two-year period commencing 1st April 2024 for the value of £163.3m up to a maximum of £231.7m to include standalone projects.
- 2.2 Retrospectively approves the commencement of negotiations with the incumbent contractors (Equans and Fortem) in accordance with the Procurement and Contract Governance Rules, which states '*when negotiating contracts without competition with a value above £500K revenue and with a value above £1m capital, authorisation to commence the procurement activity is obtained through consultation with Cabinet Member(s) and relevant Scrutiny Chair(s) prior to Cabinet Inclusion on Forward Plan, Formal Cabinet Report including the Procurement Strategy*'.
- 2.3 Authorises the City Solicitor and Monitoring Officer (or their delegate) to negotiate, execute and complete all necessary legal documents to give effect to the above recommendation.

3 Background

- 3.1 The current contracts for the provision of Responsive Repair & Maintenance Services, expire on the 31st of March 2024.
- 3.2 On the 8th November 2022 Cabinet authorised the commencement of a procurement to secure new contracts for the value of £1.4billion for the duration of 10 years.

¹ More information about standalone projects can be found in paragraph 9.3.4.

- 3.3 A procurement process was undertaken to select Contractors for the requirement which was conducted in accordance with the Public Contracts Regulations 2015 (PCR2015), under the Competitive Procedure with Negotiation process.
- 3.4 The Council was seeking to appoint two Contractors, one for each geographical area, which were split as follows:
- Lot 1: North, West and East
 - Lot 2: South
- 3.5 The procurement commenced on the 16th of January 2023 inviting expressions of interest from suitably qualified and experienced organisations.
- 3.6 The first stage of the procurement process required interested suppliers to complete the Selection Questionnaire (SQ) outlining their experience and capability to perform the contract. The Selection Questionnaire assessment report was signed off by Project Board on the 3rd of April 2023 with a recommendation to shortlist applicants to proceed to the next stage of the procurement process.
- 3.7 The Invitation to Submit Initial Tenders (ISIT) stage of the procurement commenced on the 6th of April 2023 when the Council issued the ISIT document pack to the shortlisted tenderers with a submission deadline of the 19th May 2023.
- 3.8 The award of contract was to be based on the award criteria set out in the ISIT document pack. The criteria consisted of a combination of quality, social value and price.
- 3.9 The evaluation of submissions was undertaken by officers in City Housing, drawing in resource from other areas of the Council as applicable, along with representatives from Ark Consultancy Ltd and tenants and supported by Corporate Procurement Services.
- 3.10 Following the conclusion of the evaluation, Project Board were presented with the high-level considerations and impact of the commercial submissions received.
- 3.11 As a result of the work which the Council has carried out since the tender was published regarding the Capital Programme, there is a significant increase in the volume and values of works required.
- 3.12 Legal advice was taken to explore to what degree any amendments could be made to the structure of the procurement whilst still being compliant with the procurement regulations. Not relating to the procurement procedure, itself, but in terms of how the contract is structured in terms of risk and the opportunity to reduce price.
- 3.13 Project Board held an extraordinary meeting on the 20th of July 2023 to review the options and determine the recommendations. The agreed recommendations from Project Board were:
- (i) To abort the procurement.
 - (ii) To enter into negotiations to determine the commercial terms for any direct award of contract with the incumbent contractors, noting that any

recommendation to award contracts to the incumbent contractors will require Cabinet authorisation.

4 Negotiations

4.1 A negotiation strategy to support the interim contract negotiations was constructed and agreed with internal Council colleagues in September 2023. The strategy was broken down into nine key areas to ensure all aspects of the service were considered, these areas were:

- Overall approach to the contract
- Reduction in Price per Property (PPP) – the pricing used for the repairs service.
- Reduction in Price per Void (PPV) – the pricing used for the empty homes service.
- Reduction in Price per Gas/Heating (PPGH) – the pricing used for the gas/heating servicing and repairs service.
- Reduction in Price per Element (PPE) – the pricing used for capital investment elements, e.g., kitchen, bathroom, gas boiler, etc.
- Materials Supply – product selection and value for money exercise to ensure the Council realises economies of scale.
- Improved Customer Satisfaction (KPIs'/Service Delivery) – focussed on servicing continuity, reliability, and consistency for customers.
- Appointments – consideration of alternative appointment slots, enabling operational delivery and customer expectations to be better managed/improved.
- Social Value – ensuring this remains at the heart of the contract regarding investment in local employment, apprenticeships/traineeships, and community projects.

4.2 A set of objectives were then formed for presentation to the Project Board and the two incumbent contractors, and subsequently approved. The objectives focussed on ensuring customer focused service delivery and positioning the Council to be able to describe how Value for Money based outcome from the negotiations have been achieved.

- The new tendered contract forms the baseline for negotiations.
- Ensure service continuity and improvement in resident services.
- Create a more balanced approach towards risk.
- Increased planned programme throughput.
- New approach for materials supply.
- Successful delivery of the planned programme.
- Achieve reductions to tendered costs.
- Reduce/eliminate commercial claims during the interim period.
- Generate improved VFM, ability to benchmark costs and optimise the Council pound.
- Develop working relationships and culture.
- Collaborate to deliver consistent and reliably effective services.
- Perceptual change for elected members

- 4.3 A staged approach to the negotiations with contractors was agreed as part of the strategy, providing appropriate oversight and input from all parties to deliver the objectives:
- Stage 1 - orientation meeting to agree the project plan, objectives and key tasks.
 - Stage 2 - progression of the project plan, key tasks and risk management
 - Stage 3 - presentation of contractor's proposals and appropriate challenge/scrutiny
 - Stage 4 - finalisation of contractor's proposals following further dialogue with the Council between meetings.
- 4.4 Several meetings took place between each stage with relevant parties to work through each area of the negotiation strategy to identify and agree conditions, inclusions, exclusions, and caps on expenditure to the contract documents and specifications.
- 4.5 The specifications have been re-engineered to reflect a more equitable approach towards Repairs & Maintenance and Planned Works, enabling contractors to reduce their rates/costs. In addition, a value engineering approach was taken to the rate analysis to identify any inefficiencies which were included in the submission and agree a revised approach or processes which would deliver the same or better service for the same rate.
- 4.6 This exercise has been well supported by the substantial capital investment the Council plans to undertake to the housing stock. The Council has also been working with the materials supply chain, via two materials central purchasing organisations, along with the contractors to expose future materials pricing based on the Council's requirements helped by the significant forward programme volumes to be purchased.

5 Outcome of Negotiations

Commercial

- 5.1 The tendered prices as part of the Housing, Repairs and Maintenance (HRM) Contract 2024, have been used as the starting point for negotiations with contractors. The Council has worked with contractors to understand the rates tendered and to reduce them via the contract/specifications and value engineering described in paragraph 4.5.

Customer Service

- 5.2 The original tender included long term technological and operational solutions which would benefit from contractor investment over the 10-year contract period. The negotiations have challenged the contractors to identify improvement areas which can be achieved without long term investment, through value engineering and process efficiency as well as changes in ways of working and improved

communications over the 2-year contract period. We will also capture learning from the interim contract to feed into the future arrangements.

- 5.3 The negotiations have also focussed on ensuring improvements in customer outcomes through the contractual service delivery model which include taking account of feedback from customers through the Tenant Satisfaction Measures (TSMs), recommendations from the Housing Ombudsman from the Paragraph 49 report of December 2022 and lessons learnt from continuous improvement throughout the current contract.
- 5.4 An improved set of Key Performance indicators (KPI) has been included as part of the negotiations focussing on:
- **Right First Time** which will ensure customers can have routine non-complex repairs carried out at the first visit and reduce the need for follow up appointments and thereby inconvenience to the customer.
 - **Recalls** which will focus on any completed repair which has had to be recalled by the customer should the issue re-occur within defined timescales or not completed satisfactorily
 - **Work In Progress Overdue** which will measure the amount of work outstanding over a period beyond the original target.
- 5.5 The inclusion of the above KPI's will enable the Council to directly measure improvements in waiting times for repairs to be completed and the number of times a customer may have had to contact the Council for the same issue.
- 5.6 Joint operational workshops between the contractors and the Council prior to the contract start are planned to ensure agreed understanding on a day-to-day basis of requirements and standards. For example, our voids standard and the process for handover and rectifications to ensure our operational focus is around the outcomes for customers.
- 5.7 Formal Contract Management reviews will take place at 6-month intervals for the interim contract duration to ensure the service and any additional outcomes are regularly monitored and reported.

6 Options considered and Recommended Proposal

- 6.1 Re-procure a new long-term contract – this is not recommended as the lesson learned from the abandoned procurement is that a review of the service requirements is required before commencing a new procurement for a long-term contract. There is insufficient time to undertake this review and conduct the procurement activity to secure a new contact in time for April 2024.
- 6.2 Further competition under an external framework/DPS – the same issues apply here as in re-procuring a new long-term contract (para 6.1), i.e., time to review the requirements and conduct the procurement.

- 6.3 Extend the existing contracts - The existing contracts do not contain an express provision allowing for further extension or the specific modifications that the Council may require for the two-year period. A modification is therefore only permissible if a 'safe harbour' under PCR2015 Reg. 72 applies. However, given the values involved, it would not be suitable to make use of Reg 72 for the interim period.
- 6.4 Enter into negotiations and make a direct award using PCR2015 Reg 32(2)(b) - Where the services can only be supplied by one economic operator because "competition is absent for technical reasons". This is the recommended option as it enables negotiations to take place in the time allowed before the existing contracts expire to ensure service continuity. There is insufficient time to conduct the service and review and then procure new contracts before the current contracts expire in March 2024.
- 6.5 Do nothing – This is not an option as the Council has a statutory obligation to carry out the repairs and maintenance of its housing stock and providing a responsive repairs and maintenance service to our tenants is one of our key priorities as a Landlord. The Council does not have the internal skills and resources to carry out the delivery of the works and services required although contractor staff would be eligible for a TUPE (Transfer of Undertakings (Protection of Employment)) transfer to the Council.

7 Consultation

- 7.1 Officers from City Housing, Procurement and Ark Consultancy LLP have been engaged in the development of this report.
- 7.2 Project Board members which consist of Senior Officers and Heads of Service were consulted regarding this report.
- 7.3 Cabinet members have received regular verbal updates in regards the status of the project.
- 7.4 Officers from Finance, Corporate Procurement Services and Legal and Governance have been consulted as part of the preparation of this report.
- 7.5 A S20. Notice of Intentions has been issued to tenants. Further Section 20 notices will be issued in accordance with the legislation.

8 Risk Management

- 8.1 At this stage there is one main risk:
- (i) that contracts will not be in place to commence from the 1st of April 2024 to continue service delivery. This report seeks to resolve that issue through authorising the award of contracts.
- 8.2 The impact of not appointing contractors will be a failure to comply with the statutory obligation to carry out the repairs and maintenance of its housing stock.

- 8.3 A risk register is being maintained in relation to this work to ensure the Council had visibility of the associated risks and has considered the likelihood and impact of risks identified. Control measures were put in place to mitigate the risk, where possible, in turn reducing the overall risk score where possible.

9 Compliance Issues:

- 9.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 9.1.1 The recommended decision is consistent with the Council's vision and priorities as set out in the Birmingham City Corporate Plan for 2022-26.

A BOLD PROSPEROUS BIRMINGHAM

#1 Support inclusive economic growth

#2 Tackle unemployment

A BOLD SAFE BIRMINGHAM

#11 Increase affordable, safe, green housing.

A BOLD GREEN BIRMINGHAM

#19 Continue on the Route to Net Zero

- 9.1.2 **Birmingham Business Charter for Social Responsibility (BBC4SR)**

Compliance with the BBC4SR and Living Wage is a mandatory requirement that will form part of the conditions of the contracts. The contractors have each provided an action plan for the two-year interim period which complies with the city's corporate requirements. The action plan will be implemented and monitored during the contract period.

9.2 Legal Implications

- 9.2.1 The proposed allocation of work is consistent with the effective management of the Council's housing stock under Part II Housing Act 1985.
- 9.2.2 The current contracts for the Provision of Responsive Repairs & Maintenance Services, Gas Servicing and Capital Improvement Work Programmes (including Major Adaptations to Council Housing Stock) expire on 31st March 2024. In light of abandoning the procurement, a compliant route to award contracts is required as an interim measure whilst new contracts are tendered.
- 9.2.3 The value of this commission is above the threshold for which the Public Contract Regulations 2015 apply. The Council will rely on Reg 32(2)(b) of PCR15 in awarding these contracts. The negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases: (b) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons: (ii) competition is absent for technical reasons.
- 9.2.4 Whilst the value of this commission is above the threshold for the PCR2015, the likelihood of any challenge to this decision appears to be medium/low risk.

9.3 Financial Implications

- 9.3.1 The total maximum value of the contracts is up to £603m for the two-year interim period, which is funded in the HRA business plan.
- 9.3.2 This contract is primarily HRA funded and updated contract values will need to be included in the HRA Business Planning process that is currently underway. In addition, there will be a pressure in the General Fund City Housing budget in relation to the Temporary Accommodation element of the contract. The General Fund pressure will be factored into the next Medium Term Financial Plan.
- 9.3.3 When the Council commenced the procurement in January 2023, it was predicated on an annual contract value of £140,000,000, which did not include additional major refurbishment projects, known as 'standalone projects'. This figure consisted of both revenue and capital spend. The contract value was split between the two areas as follows:

Estimated Annual Contract Values			
Funding Type	North, West and East	South	Total
Revenue	£37,328,571	£22,671,429	£60,000,000
Capital	£49,771,429	£30,228,571	£80,000,000
Total	£87,100,000	£52,900,000	£140,000,000

- 9.3.4 During the ISIT stage of the procurement, tenderers were required to submit their preliminary and overhead and profit % adjustments for future 'standalone projects' which will be undertaken via the contract. These adjustments enable us to understand costs and ensure Value for Money is being obtained through a structured approach towards pricing of these works.
- 9.3.5 Standalone projects relate to energy efficiency works in blocks of flats and other properties in an attempt to reduce fuel bills for customers, reduce the Council's carbon footprint and to ensure the quality of the housing stock is improved.
- 9.3.6 The tendered costs received, and their impact compared to the published contract values were significant, with a variance of circa +£92.1m (with major refurbishment projects, known as 'standalone projects' excluded).
- 9.3.7 The reasons for the revenue tendered costs being higher than expected are due to a number of factors as described in paragraphs 3.2 and 3.3 of Appendix 1. The maintenance and construction market has changed dramatically over the last 5 years, due to Brexit, Covid, the war in Ukraine, cost of living, energy crisis, etc, thus typically contractors are being more diligent in their risk profiling of public sector procurement opportunities.
- 9.3.8 Since the commencement of the procurement the Council undertook a piece of work focussed on its approach towards Strategic Asset Management and Investment Planning to understand and recognise the actual requirements of the housing stock to ensure its quality is improved to at least the Decent Homes Standard.

- 9.3.9 Modelling the impact of the tendered costs on the forward programme of capital investment identified that the contract value of £80m for capital investment was insufficient.
- 9.3.10 Therefore, with the reduction in costs being achieved through the negotiation, the revenue and capital expenditure profiled can be delivered through the HRA business plan for 2024-25.
- 9.3.11 There are no VAT issues from the recommendations in the paper. For the contract itself, different VAT rates will be applicable depending on the type of work carried out, but it is the responsibility of the contractor to apply the correct level of VAT to invoices, which the Council will then reclaim.

9.4 Procurement Implications

- 9.4.1 The intention is to direct award contracts under PCR2015 Reg. 32(2)(b) justified on the basis that the relevant services can only be provided for the interim period by the incumbent suppliers for technical reasons. There is risk in adopting this approach, however the Council seeks to minimise that risk:
- (a) Due to the time required for service review, re-procurement, mobilisation and exit/transition that no other supplier could meet the Council's requirements.
 - (b) The Council intends to conduct a new procurement during the interim period to secure new contracts to commence from the 1st of April 2026.
 - (c) The interim period has deliberately been kept to the shortest possible period of time to allow the service review and undertake the new procurement activity.
- 9.4.2 The level of risk would increase significantly if there were to be delays in running the new competition (or abandonment of that competition) resulting in a need for further contract extensions or direct awards.

9.5 Human Resources Implications

- 9.5.1 Officers of City Housing are leading the delivery of the interim contracts with support from other areas of the Council along with specialist technical, legal and project management resources as required.
- 9.5.2 There are no TUPE implications if the incumbent contractors are directly awarded interim contracts.
- 9.5.3 Contract management will be undertaken by Council staff.

9.6 Property Implications

- 9.6.1 If we continue with the incumbent contractors, then the existing depot arrangements will need to be considered from a corporate perspective and the impact that would have on the current arrangements.

9.7 Public Sector Equality Duty

- 9.7.1 In relation to the recommendations set out in this report, due regard has been paid to the requirements of the Equality Act 2010 and an Equality Assessment has been carried out which has shown that the recommendation will not have any adverse effects on service delivery.
- 9.7.2 The Equality Impact Assessment is attached at Appendix 2.

10 Appendices

10.1 Include:

- Appendix 1 – Exempt Appendix
- Appendix 2 - Equality Impact Assessment
- Appendix 3 - Environmental Assessment

11 Background Documents

11.1 Cabinet Report – Housing Repairs Maintenance and Investment 2024