

Committee Name and Date of Committee Meeting

Delegated Officer Decision – 09 April 2024

Report Title

Repairs and Maintenance Contract Modifications Post March 2025

Is this a Key Decision and has it been included on the Forward Plan?

No, but it has been included on the Forward Plan

Strategic Director Approving Submission of the Report

Ian Spicer, Strategic Director of Adult Care, Housing and Public Health

Report Author(s)

Andy Litchfield Commercial Manager, Housing Property Services, Adult Care, Housing and Public Health

Ward(s) Affected

Borough Wide

Report Summary

The ten year Repairs and Maintenance Contracts will come to the end of the initial 5-year term on the 31st March 2025. Built into the contracts are automatic extension rights for both Contractors subject to satisfactory KPI performance up to a maximum of 5 additional years (in 1 year increments).

Negotiations with service providers (Mears and Equans) have been undertaken to extend the contracts for two years from 1st April 2025 to the 31st March 2027 to enable the Council to continue to deliver critical services with a greater degree of certainty than the current contract provides. Certain modifications to the contract need to be agreed in order to facilitate this arrangement.

Recommendation

1. That the Strategic Director of Adult Care, Housing and Public Health agrees a set of modifications to the Repairs and Maintenance contracts with the Council's service providers, Mears and Equans.

List of Appendices Included

N/A

Background Papers

N/A

Consideration by any other Council Committee, Scrutiny or Advisory Panel

N/A

Council Approval Required

No

Exempt from the Press and Public

No

Repairs and Maintenance Contract Modifications Post March 2025

1. Background

- 1.1 The repairs and maintenance contracts are responsible for the delivery of repairs, maintenance, cyclical servicing and investment in Council housing revenue account assets.
- 1.2 The current contracts commenced on 1st April 2020 on an initial five-year term with an automatic extension right in one year terms up to a maximum of five additional years.
- 1.3 The initial term of the current contracts therefore come to an end on 31st March 2025 and a decision on extension needs to be made in advance to provide sufficient time to implement any significant changes.

2. Key Issues

- 2.1 Officers have reviewed contract performance and value for money against the contractual KPIs and benchmarking information available from other social landlords. Officers have also noted that the regulatory context for the delivery of repairs and maintenance services is undergoing a period of significant change, including new consumer standards, inspections, Awaab's Law, and potentially Decent Homes 2.
- 2.2 The contracts provide good performance including high levels of tenant satisfaction. They also offer good value for money compared with peers. However, the significant changes to housing regulation, and the increased demands on the service including from damp and mould, point to the need for a comprehensive review of the Council's repairs and maintenance arrangements leading to decisions by the Council about future delivery. In order to facilitate this, officers recommend that current contract arrangements are extended for two years to provide a period of certainty and stability.
- 2.3 Both contractors have requested contract modifications to continue their service provision for two years. This report seeks approval of the modifications. The key modifications are:
 - Adjustments to contractual planned works values to reflect actual values rather than the levels anticipated when the contracts were initially agreed.
 - Fixing the schedule of rates at 2024/25 rates to ensure greater certainty across financial years for the Council and contractors.
 - Ensuring the contractual baseline rates from 2025/26 remain viable for the contractors.

The full details of the contract modifications are not included in this public report due to commercial sensitivity.

3. Options Considered and Recommendation

3.1 Option 1: Agree to contract modifications

This would allow continuation of existing service provision with no expected impact on service delivery or standards. It would provide a period of stability and certainty during which the Council can consider all options for future delivery models.

3.2 Option 2: Do not agree to contract modifications

This would mean a succession of one-year extensions with little provision in the contracts for notice periods.

3.3 Option 1 is recommended to support service continuity.

4. Consultation on proposal

4.1 The Cabinet Member for Housing has been consulted on the proposal.

5. Timetable and Accountability for Implementing this Decision

5.1 Subject to approval, the proposed contract modifications have been drafted and agreed by Legal and ready to be implemented to come into effect 1st April 2025.

6. Financial and Procurement Advice and Implications

6.1 Following consultation with Procurement, the modifications to the contract terms, either individually or in their aggregate effect, are not deemed to be a substantial modification of the original contracts as per Regulation 72(1)(e) of the Public Contracts Regulations and this view is supported by research into case law on the various gateways in Regulation 72, most recently that of *James Waste Management LLP v Essex County Council [2023] EWHC 1157 (TCC)*.

6.2 Following consultation with Finance, the combined cost implication to the Council for Financial Year 2025/26 can be accommodated within the existing budget allocation.

7. Legal Advice and Implications

7.1 Contracts that are subject to compliance with the Public Contracts Regulations 2015 (as amended) may be modified without the need for a new procurement procedure if the conditions specified in Regulation 72 are met. Current caselaw has been researched to ensure that the method by which compliance with Regulation 72 was assessed as approved by the courts.

Legal both advised on this issue generally and participated in the practical application of the test for whether the changes taken individually and considered together substantially modified the original contract terms. This

analysis was carefully recorded in detail to meet the Council's obligations of procurement transparency.

Legal considers that the Council's decision to modify the contracts meets all the criteria for validity under Regulation 72 and that the records of the modification process will enable it to respond successfully to any challenge to its legality.

Legal has also assisted in drafting the variation note for each contract to ensure that it meets the requirements of validity set out in the relevant terms and conditions.

8. Human Resources Advice and Implications

8.1 The recommendations have no implications.

9. Implications for Children and Young People and Vulnerable Adults

9.1 The recommendations have no implications.

10. Equalities and Human Rights Advice and Implications

10.1 The recommendations have no implications.

11. Implications for CO2 Emissions and Climate Change

11.1 The recommendations have no implications.

12. Implications for Partners

12.1 The recommendations would ensure continuation of high service standards via incumbent Repairs and Maintenance Partners.

13. Risks and Mitigation

13.1 These are set out in the report.

14. Accountable Officers

14.1 James Clark, Assistant Director of Housing, Adult Care, Housing and Public Health.

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