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| <br><b>Brent</b>              | <b>Officer Key Decision</b>                           |
|  | <b>Report to the Operational Director<br/>Housing</b> |
| <b>AUTHORITY TO VARY AND EXTEND DOMESTIC &amp; COMMUNAL HEATING AND GAS SERVICES CONTRACT WITH OAKRAY LTD.</b> |   |

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| <b>Wards Affected:</b>  | All   |
| <b>Key or Non-Key Decision:</b>   | Key Decision  |
| <b>Open or Part/Fully Exempt:</b><br><small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small> | Open  |
| <b>No. of Appendices:</b>   | None  |
| <b>Background Papers:</b>   | None  |
| <b>Contact Officer(s):</b><br><small>(Name, Title, Contact Details)</small>   | Giuseppe Coia, Major Works and Refurbishments Manager<br>07776 665790<br><a href="mailto:Giuseppe.coia@Brent.gov.uk">Giuseppe.coia@Brent.gov.uk</a> |

## 1.0 Purpose of the Report

1.1 This report seeks approval for the Council to vary and extend a Domestic & Communal Heating and Gas Services Contract with Oakray Ltd. for the period of 12 months in accordance with Contract Standing Order 112.

## 2.0 Recommendation(s)

That the Operational Director Housing:

- 2.1 Approves the variation of the contract for Domestic & Communal Heating and Gas Services with Oakray Ltd. to permit the extension of the contract;
- 2.2 Approves the extension to the current contract as detailed in Recommendation 2.1 for a period of 12 months.

### **3.0 Detail**

- 3.1 The Council entered into a contract for Domestic & Communal Heating and Gas Services with Oakray Ltd. on 1 April 2013 (the "Contract"). The Contract was for a period of 5 years with the option to extend for a further 5 years. The Council exercised the option to extend the contract until the 31 March 2023.
- 3.2 Officers consider extending the Contract by 12 months will achieve best value for the Council and is reasonable in all the circumstances. The Contract does not currently contain provision allowing for extension and therefore Officers seek authority to vary the Contract to allow for its extension and also agreement to extension of the Contract by 12 months.
- 3.3 The contract with Oakray Ltd. has been in place for 10 years. Oakray has performed well during this period and is continuing to deliver services for the original contract prices increased by contractual indexation only.
- 3.4 The extension provisions in the existing contract have been used and therefore officers require a variation for the extension of 12 months.
- 3.5 The contract value for the 12 month extension period is estimated at £3,400,000. The original contract value was £34,000,000.
- 3.6 Domestic & Communal Heating and Gas Services are essential in order that residents where relevant, are provided with safe gas services, and heating and hot water.
- 3.7 As the Contract is due to expire on 31 March 2023, there is a need to put in place alternative contractual arrangements. Officers will shortly be commencing a new procurement process and be issuing a tender. The Council is required to carry out consultation pursuant to s20 of the Landlord & Tenant Act 1985 as amended and therefore the consultation process will be timetabled into the tender process for the new contract. Pending the procurement and award of a longer term contract, Officers are seeking to vary the existing Contract with Oakray to allow for its further extension outside the original permitted term of the contract and then to extend the contract by 12 months.
- 3.8 This extension and variation will result in a spend increase of 10% above the total contract value stated in the contract. Officers expect that the value of the extension will be contained within this 10% increase despite an estimated circa 5% indexation increase due in April 2023. This will provide value-for-money.

- 3.9 The Council does not have the technical expertise to provide the service in house. The Council considered options to procure a short term contract whilst arrangements were made to procure a longer term contract but concluded that extending the Contract would be a more cost effective and practical approach whilst longer term procurement options were pursued.
- 3.10 The service must continue to be delivered without any interruption due to the direct impact on residents and health and safety impact. This can only be achieved by continuing service delivery with the incumbent contractor.
- 3.11 Under section 3(b) of the table at paragraph 9.5 of Part 3 of the Constitution, Corporate Directors and Directors are able to extend contracts and agreements without the need for Cabinet approval:
- (a) provided that the extension would not be in breach of the Procurement Legislation.
  - (b) provided that the extension does not substantially alter the terms and conditions of the contract.
  - (c) provided that there is sufficient existing budgetary provision.
  - (d) provided that in the case of any variation (other than an extension):
    - (i) the total value of the variation is less than £1 million; and
    - (ii) if the total value of the variation is more than £50k it is not more than 50% of the original contract value (calculated over the life of the contract including any extensions or possible extensions and adjusted in accordance with any price review mechanism provided for in the contract).
  - (e) if the extension goes beyond the period of extension provided for in the contract (if any) or is otherwise not in accordance with the extension provisions in the contract:
    - (i) in the case of any contract, agreement, deed or other transaction with a life of not more than one year (including any possible extension provided for in the contract) the extension shall not exceed a period of six months; or
    - (ii) in the case of any contract, agreement, deed or other transaction with a life of more than one year (including any possible extension provided for in the contract) the extension shall not exceed a period of one year.

- (f) the relevant cabinet member shall be consulted prior to a decision within (d) (i) or (ii) and (e) (i) and (ii) above and may request that the decision instead be referred to them.

3.12 Subject to consultation with the Cabinet Member for Housing in accordance with paragraph 3.11 (f) above and the Cabinet Member for Housing not requesting the decision to vary and extend being referred to them, it is considered that delegated authority exists to vary and extend the contract as:

- (a) The total value of the contract over its lifetime of 10 years is £34,000,000.00 and as such is subject to the full application of the Public Contracts Regulations 2015 (“PCR 2015”). The value of the extension for one year will be £3,400,000. Regulation 72(5) of the PCR 2015 provides that contracts can be modified without the need for a further procurement where the value of the modification is below 15% of the initial works contract value and provided that the modification does not alter the overall nature of the contract. The contract will be varied to allow for an additional extension period. The value of this is 10% of the original works contract value. Therefore, the extension and variation of the contract would not breach Procurement Legislation.
- (b) The variation and extension of the contract will be under the same terms and conditions as the original Contract and therefore it will not substantially alter the terms and conditions.
- (c) There is sufficient budget for the extension.
- (d) The total value of the variation to permit the extension is £3,400,000 and is therefore less than 50% of the total contract value.
- (e) The recommended extension goes beyond the extension period allowed for within the contract, however, it is not more than 12 months.

#### **4.0 Financial Implications**

4.1 The value of the proposed variation and extension for 12 months is £3.4m. The cost of this variation and extension of the Contract will be funded from the Housing Revenue Account (HRA) budget allocation for planned maintenance and responsive repairs in 2023/24.

4.2 The responsive repairs works are a demand led responsive service, there is some risk of encountering overspend, which will require mitigating cost reductions to be identified to offset against any in-year budget pressures, should the need arise.

- 4.3 Recovery of costs through service charge from leaseholders will be impacted if an extended 12 month contract cannot be entered into, as regulations do not allow for leaseholder consultation on major works to be undertaken, without a contractual arrangement in place. This means without contract extension and leaseholder consultation, recovery of costs incurred by the Council will be limited to £100 per leaseholder for responsive repairs charges and £250 for planned building works. Under recovery of costs will reduce budget availability to undertake ongoing repairs and maintenance on Council stock.
- 4.4 Uncertainties in the current economic environment and cost inflationary uplifts in the construction industry could potentially impact future budgets, this will be managed as part of the budget setting and monitoring process.

## **5.0 Legal Implications**

- 5.1 Officers recommend the variation and extension of the Domestic & Communal Heating and Gas Services Contract with Oakray Ltd. by 12 months from 1<sup>st</sup> April 2023. The Contract is to be varied to allow for the additional extension period of 12 months.
- 5.2 The value of the original contract is such that it is subject to full application of the Public Contract Regulation 2015 (PCR 2015).
- 5.3 A contract may only be modified (to include an extension) without a new procurement procedure where this is done in accordance with Regulation 72 of the PCR 2015. Regulation 72 sets out various circumstances in which it is possible to extend a contract. Regulation 72(5)(b) permits modification to contract provided the value of the modification is less than 15% of the initial works contract value. As the value of the modification is less than 15%, it is considered that the Council is able to rely on Regulation 72(5)(b) of the PCR 2015 in varying and extending the contract.
- 5.4 Subject to consultation with the relevant cabinet member and the cabinet member not requesting the decision is referred to them, it is considered that the Operational Director Housing is authorised pursuant to Paragraphs 9.5 and 9.7 of Part 3 of the Constitution to vary and extend contracts subject to the conditions set out in paragraph 3.11 above. As set out in paragraph 3.12 above, none of these conditions preclude the Operational Director Housing agreeing the recommended variation and extension.
- 5.5 In accordance with Contract Standing Order 112, the Operational Director Housing should only agree to extend the contract if the extension will achieve best value and is reasonable in all the

circumstances. The Operational Director Housing is referred to Section 3 for further information.

## **6.0 Equality Implications**

6.1 The Council must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment and victimisation
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it,

pursuant to s149 Equality Act 2010. This is known as the Public Sector Equality Duty.

6.2 Under the Public Sector Equality Duty, having due regard involves the need to enquire into whether and how a proposed decision disproportionately affects people with a protected characteristic and the need to consider taking steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it. This includes removing or minimising disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic.

6.3 The Public Sector Equality Duty covers the following nine protected characteristics: age, disability, marriage and civil partnership, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

6.4 The proposals in this report have been subject to screening and Officers believe that there are no adverse equality implications.

## **7.0 Consultation with Ward Members and Stakeholders**

7.1 The Cabinet Member for Housing and relevant officers have been consulted prior to the decision being made.

## **8.0 Human Resources/Property Implications (if appropriate)**

8.1 This service is currently provided by an external contractor and there are no implications for Council staff arising from extending the contract.

**Report sign off:**

**Giuseppe Coia**  
Major Works and Refurbishments  
Manager