

	Decision of Cabinet Member for Housing, Homelessness and Renters Security
	Report from the Corporate Director, Resident Services
Authority to Vary and Extend a Contract in respect of the Lift Maintenance with Thyssenkrupp Aufzuge GmbH	

Wards Affected:	All
Key or Non-Key Decision:	Non-Key
No. of Appendices:	None
Background Papers¹:	None
Contact Officer(s): (Name, Title, Contact Details)	John Roche Contract Delivery & Quality Manager 020 8937 4949 john.roche1@brent.gov.uk

1.0 Purpose of the Report

1.1 This report requests individual Cabinet Member approval to vary and extend a contract in respect of lift maintenance with Thyssenkrupp Aufzuge GmbH in accordance with paragraph 13 of Part 3 of the Constitution. The report summarises the reasons for the request to vary and extend.

2.0 Recommendation(s)

That the Cabinet Member for Housing, Homelessness and Renters Security, having consulted with the Leader:

2.1 Approves the variation of the contract for lift maintenance with Thyssenkrupp Aufzuge GmbH to allow for a further extension of eight months as set out in paragraphs 3.3.

2.2 Approves the extension of the contract detailed in 2.1 above for a period of eight months from 30th July 2023.

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3.0 Detail

- 3.1 The Council entered into a contract for Lift Maintenance Services with Thyssenkrupp Aufzüge GmbH (“Thyssenkrupp”) on 30 July 2012 for a period of five years with the option to extend for a further five years (the “Contract”). The contract was varied and extended from 30 July 2022 for a period on 12 months.
- 3.2 Given that procurement of a replacement contract remains outstanding, Officers consider that the existing Contract should be varied and extended and have entered into discussions with Thyssenkrupp Aufzüge GmbH (“Thyssenkrupp”) (the “Contractor”) to vary the Contract to further extend it by 8 months until 31/03/2024.
- 3.3 Officers consider extending the Contract by 8 months will be cost-effective for the Council (as opposed to procuring a short-term contract whilst arrangements are made to procure a longer term contract) and is reasonable in all the circumstances. Extending the Contract by 8 months is necessary in order to ensure that the procurement and Section 20 leaseholder consultation processes are complied with prior to the Council entering into any new long term agreement for lift repair/maintenance services. An 8 month period of extension should be sufficient for these processes to be followed through, and the extended period will mean that there is no break in provision of lift maintenance services between the current and new long-term contracts.
- 3.4 As the contractor also maintains the Council’s mobility lift portfolio, it is imperative to maintain an uninterrupted service for all vulnerable tenants. The Council does not have any viable alternatives to cover a short term contract of this nature, to be in place prior to the current Contract expiry date. The contractor is familiar with the Council’s lift and mobility stock and continues to provide excellent service through the term of the Contract.
- 3.5 The Contract does not currently contain provision allowing for extension and therefore Officers seek authority to first vary the Contract to allow for its extension and also agreement to the extension of the Contract by 8 months.
- 3.6 The contractor is in agreement to extend the Contract. The Contract is subject to a 6.99% increase in line with BEAMA, with an estimated total cost for 2023/24 of £0.40m, after the contract extension to 31 March 2024.
- 3.7 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 it may well not be possible to let a contract of this nature on a short term basis and in any event, extending the Contract would be a more cost effective approach whilst longer term procurement options were pursued.

3.8 Under section 3(b) of the table at paragraph 9.5 of Part 3 of the Constitution, Corporate Directors may only vary and extend contracts and agreements provided that:

- (a) the extension would not be in breach of Procurement Legislation.
- (b) the extension does not substantially alter the terms and conditions of the contract.
- (c) there is sufficient existing budgetary provision.
- (d) 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.
- (e) provided that in the case of any variation (other than an extension):
 - (i) the total value of the variation is less than £1m; and
 - (ii) if the total value of the variation (and any previous variations agreed under this provision) 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).
- (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.

3.9 For the reason detailed in paragraph 3.8 (d) (ii) above, the Corporate Director does not have delegated powers to agree the extension of the Contract by a further eight months but pursuant to paragraph 13 of Part 3 of the Constitution, the Cabinet Member for Housing, Homelessness and Renters Security does, having consulted with the Leader, has delegated powers to:

3.9.1 Agree contract extension, variation or termination where the decision is excluded from officer delegated powers because:

- (a) 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; and
- (b) the contract, agreement, deed or other transaction has a life of not more than one year (including any possible extension provided for in the contract) and the extension exceeds a period of six months; or
- (c) the contract, agreement, deed or other transaction has a life of more than one year (including any possible extension provided for in the contract) and the extension exceeds a period of one year; or
- (d) in the case of any variation (other than an extension):
 - (i) the total value of the variation is £1 million or more; and
 - (ii) the total value of the variation is more than £50k and is 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)

3.9.2 Agree of other contract extensions, variations or terminations where the Cabinet Member requests that a decision be referred to them pursuant to Part 3 paragraph 9.5.

3.10 Subject to consultation with the Leader, the Cabinet Member for Housing, has delegated powers to agree the proposed variation and extension of the Contract.

4.0 Financial Implications

4.1 The value of the Contract is £4,360,000. The value of the proposed variation and extension is £245,000.

4.2 The cost of this variation and extension of the Contract will be funded from Housing Revenue Account for lift maintenance and repairs budget.

4.3 A budget allocation of £262,000 for 2023/24 has been made, including inflationary uplifts. Risk of overspends from demand led responsive repairs services will be monitored monthly and mitigating actions will need to be identified where required.

5.0 Legal Implications

5.1 Officers recommend the variation and extension of the Contract as set out in paragraph 3.0.

- 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 vary and extend a contract. Regulation 72 (1)(b) of the PCR 2015 provides that contracts can be modified without the need for a further procurement where additional works by the original contractor that have become necessary but were not included in the original procurement, where a change of contractor cannot be made for economical and technical reasons such as requirements for interchangeability or interoperability with existing equipment, services or installation procured under the initial procurement or it would cause sufficient inconvenience or duplication of costs and provided that any increase in price does not exceed 50% of the original contract value. As set out in paragraphs 3.3 and 3.4 a change of contractor for the short period of 8 months would cause sufficient inconvenience and would not be cost effective for the Council. The value of the proposed extension is £245,000 and would therefore not exceed 50% of the contract value. Therefore, the proposed extension and variation of the Contract would not breach Procurement Legislation.
- 5.4 As set out in paragraph 3.9, pursuant to paragraph 13 of Part 3 of the Constitution, the Cabinet Member for Housing, homelessness and Renters Security, subject to consultation with the Leader, has delegated powers to agree the proposed extension and variation.

6.0 Equality Implications

- 6.1 Pursuant to s149 Equality Act 2010 (the “Public Sector Equality Duty”), the Council must, in the exercise of its functions, have due regard to the need to:
- (a) eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act
 - (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,
- 6.2 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.
- 6.3 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.

6.4 There is no prescribed manner in which the council must exercise its public sector equality duty but having an adequate evidence base for its decision is necessary.

6.5 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 Relevant officers have been consulted prior to the decision being considered by the Cabinet Member for Housing, Homelessness and Renters Security.

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 the extension of the Contract.

9.0 Public Services (Social Value) Act 2012

9.1 The Council is under a duty pursuant to the Public Services (Social Value) Act 2012 (“the Social Value Act”) to consider how services being procured might improve the economic, social and environmental well-being of its area; how, in conducting the procurement process, the Council might act with a view to securing that improvement; and whether the Council should undertake consultation. Whilst this report concerns an extension to the Contract, Officers have nonetheless had regard to considerations contained in the Social Value Act in relation to the extension.

Report sign off:

Peter Gadsdon
Corporate Director of *Resident Services*