

11 January 2023		ITEM: 12
		Decision: 110635
Cabinet		
Contract Modification to Housing Repairs and Planned Maintenance Contract		
Wards and communities affected: All Wards	Key Decision: Key	
Report of: Councillor Luke Spillman, Cabinet Member for Housing		
Accountable Assistant Director: N/A		
Accountable Director: Ewelina Sorbjan, Interim Director of Housing		
This report is Public		

Executive Summary

This report sets out the recommendation for the Contract Modification to the Term Partnering Agreement for Responsive Repairs, Voids and Related Works awarded to Mears Ltd for the remaining term of the Contract to 28th Feb 2025. The Contract Modification request is to increase the value of the contract spend for the remaining contract term.

The requested increase to the value of contract spend is due to the following factors:

- Increased volumes of work
- Incorporation of new legislative changes (Building and Fire Safe safety)
- Inflationary Price Changes (beyond predicted levels)
- Additional works to Housing assets such as fire safety, voids and temporary accommodation and energy efficiency works.

1. Recommendation(s)

1.1 That Cabinet approve the increase to the contract value for the Term Partnering Agreement for Responsive Repairs, Voids and Related Works awarded to Mears Ltd by £22,828,000.00 for the remaining term of the Contract to 28th Feb 2025.

1.2 That Cabinet note that any financial commitment from the Housing Revenue Account (HRA) to match fund works from the Social Housing Decarbonisation Fund is subject to a separate formal decision and in consultation and approval from the s151 officer and new financial governance procedures.

2. Introduction and Background

- 2.1 The Council entered a Term Partnering Contract with Mears Ltd in 2014 for the delivery of the responsive repairs and planned maintenance works to its housing stock. The contract was awarded for an initial five-year term with an extension period of a further five-year period.
- 2.2 The Contract was extended after the initial five-year period in March 2020 and this will expire in 28th February 2025. This extension in Mar 2020 delivered a commercial benefit to the Council over the next 5-year contract term of approx. £523,677 based on discounted rates on certain scope items, service improvements, and continued social value commitments. No further extensions beyond this period are possible. The process for the delivery of the repairs and planned maintenance works from February 2025 will commence in 2023 and Cabinet will receive a report detailing and seeking approval for this process.
- 2.3 The contract is based on price per property (PPP) which equate to Mears attending on average 3 repairs per council housing property per year. The contract is an inclusion and exclusion contract; all inclusions are set within the price per property model. Exclusions are repairs that are required but are not within the contracted PPP model. These exclusion works are mainly complete renewals of various items within the property, such as new baths, toilets or asbestos removal. All exclusions are listed within the contract and are based on a national schedule of rates. The Contractor is entitled to an annual inflationary uplift to the contract price and this process is detailed in para 2.11 and para 2.12 of this report.
- 2.4 The contract spent for the full ten-year term (initial five years plus five-year extension) was set at £60,000,000. By the end of this current financial year the contract spend will reach £57.4m. For the first 3 years between 2014-2017 the contract was delivered in line with the initial tender values and job volumes. The number of repairs undertaken within the price per property model and the exclusion works prices outside of this model remained consistent.
- 2.5 Following Grenfell in June 2017 additional fire safety measures were added to the scope of works for the Repairs and Maintenance contract that were not part of the tendered price or scope. There was a need to implement enhanced fire detection programmes including upgrades to detection systems in communal areas, accelerated roll out of fire doors programmes and smoke and heat detection systems upgrades. From 2017 to the end of the contract this additional scope would have added an additional £3m to the contract value.
- 2.6 In addition, there have been a number of regulation changes regarding electrical standards in social rented sector (some of the main changes were contained in the 17th and 18th edition wiring regulations). Electrical works is

one of the highest volumes in the contract completing on average 1000 jobs per year outside of the Price per Property model. In total the electrical regulations standards which were added to the scope post tender award would have increased the contract value by £4m by the end of the contract.

- 2.7 In addition, the volume of void works and supporting the temporary accommodation program from 2017 has added additional contract spend that was not part of the initial contract award. The works for temporary accommodation are funded via the General Fund and works to void properties are funded via the HRA.
- 2.8 The forecasted spend for the remaining two years of the contract for 2023/24 is £8,654,000 and for 2024/25 is £9,174,000. In addition, the Council has submitted a bid to the Governments Social Housing Decarbonisation Fund initiative. This forms part of the HRA capital programme which will be considered by Cabinet in February 2023. Therefore, expenditure is forecasted to be £22,828,000 to the end of the term of the contract in February 2025. This is set out in the table below.

2023/24 Contract Value	£8,654,000
2024/25 Inflated Contract Value	£9,174,000
Social Housing Decarbonisation Fund	£5,000,000
Total forecast expenditure	£22,828,000

- 2.9 The SHDF bid was submitted prior to the s114 notice but whilst the Council was in intervention measures. The works will be implemented under the current Repairs & Planned Maintenance contract and be jointly funded by the Department of Business, Energy and Industrial Strategy (BEIS) and the Council (HRA) with a 50/50 apportionment. The requirement to match fund the SHDF grant is a condition imposed by BEIS. Should the Council be successful in its bid any decision to commit HRA to match fund the SHDF grant will be subject to consultation and approval from the s151 officer and will follow the newly introduced expenditure governance sign-off procedures. BEIS have been kept apprised of the Councils current financial position.
- 2.10 The cost is fully funded through the ringfenced Housing Revenue Account (HRA) draft expenditure for 2023/24, and future years funding through to 2025/26 years forms part of the HRA business plan.
- 2.11 The contract makes provision for price increases in line with indexation. For the first few years of the contract indexation remained steadily consistent at around 2%. However, construction industry prices have increased significantly in the past 3-4 years to between 15%-22%. Mears Ltd have managed to absorb some price increases within their business model and therefore contain their inflationary price increases to the Council. An Inflationary uplift to the contract value has been agreed at 6% for the current financial year. This 6% uplift has been applied to the remaining two years of the contract as represented in the table in para 7.1. The 6% that is quoted in this report is an estimation based on current sector indices and will be subject to commercial

negotiations with the contractor. Historically, under the Contractual Governance provisions, the Director of Housing is authorised to negotiate and agree the contractual indexation uplift. Any further and future inflationary uplift will be subject to consultation and approval from the s151 officer and will follow the newly introduced expenditure governance sign-off procedures. Please see para 2.12 for detailed explanation of the contractual indexation provision.

- 2.12 The contractual indexation provisions (clause 6.14 Price Adjustments after Year 1) is based on an annual application for an increase on the current years prices for the subsequent year and will be capped at 90% of the movement in the RPIX index (the Retail Price Index excluding mortgage interest payments published by the Office for National Statistics) for the 12 months of the current year. For example, if the index shows a 2% movement, then any increase in tendered pricing will be capped at 1.8%. As from 1st April 2016 and for subsequent years of the Term, the Service Provider may apply for an increase in their tendered pricing. This application must be made no earlier than the last month of the current year of the Term (1st April to 31st March). It will be for the Service Provider to make application for such increase and will take effect from the date of such application or the commencement of the next year (1st April) whichever is the later.
- 2.13 As of April 2022 the Building Cost Information Service (BCIS) which provides cost and price data for the UK construction industry had construction price indices at 12%. BCIS Private Sector Maintenance Cost Indices – General”, which is the cost index used to deal with fluctuations provisions under the Council’s Transforming Homes contract shows a 20.14% increase between Nov 2019 and Nov 2022.
- 2.14 As well industry price increases other factors have contributed to the contract spend to date. Regulations around electric and fire safety have been upgraded following Grenfell. Works of this nature have added a spend value of over £6m by the end of the contract term that was not provisioned for at the initial contract award. These works have been funded via the HRA.

3. Issues, Options and Analysis of Options

- 3.1 Options that have been considered are the re-profiling of the provision of repair works so that only safety compliance and emergency repair works are undertaken. This has been discounted as it will lead to deterioration of living standards for residents as well deterioration of properties. It will also mean the Council will not meet its landlord obligations under the Fitness for Human Habitation Act.
- 3.2 Another option that has been considered is to re-procure the contract ahead of the ending of the current contract term. This has been discounted as it will disrupt service continuity as it will take between 12-18 months to appoint an alternative contractor. There is twenty-five months before the end of the current contract term. If a re-procurement exercise is undertaken there is a

risk that the Council will be exposed to significantly higher contract price increases than that from the existing contractor.

4. Reasons for Recommendation

- 4.1 The recommendation of this report enables the Council to have price certainty for the delivery of the contract for the remaining term of the contract. Commercial reviews with Mears Ltd continue to ensure the contract delivers value for money under the PPP model.
- 4.2 The increase in Contract Value does not exceed the Public Procurement Regs 2015 contract variation spend limits and therefore is permissible under these regulations.
- 4.3 The performance of Mears Ltd in delivering the contract has been consistently high surpassing KPI target levels.
- 4.4 It is not intended to extend the term of the contract beyond the original 10-year term but to increase the value of work under the contract beyond the value that was assigned at procurement stage. The terms and conditions and the scope of the contract shall remain unchanged.

5. Consultation (including Overview and Scrutiny, if applicable)

- 5.1 The Cabinet Lead Member for Housing has been briefed and consulted on this report and its recommendations and supports this matter.

This matter has not been to the Housing Overview & Scrutiny as it relates to technical procurement and contractual points. No changes to the service offer to the residents are proposed, and this is not a request for a new contract procurement.

6. Impact on corporate policies, priorities, performance and community impact

- 6.1 The approval of the report recommendation will enable continuity of the delivery of the of the Council's Housing Asset Management Strategy aims and objectives. The ongoing maintenance and improvement of the Council's housing assets supports the Council's key priorities through the provision of quality housing and estates people are proud to live on.

7. Implications

7.1 Financial

Implications verified by: **Mike Jones**
Strategic Lead – Corporate Finance

The report is recommending an increase in the value of the contract for the remaining duration. All expenditure pertaining to the works will be contained within the ring-fenced housing revenue account.

The additional value of the contract represents expenditure which is included as part of the HRA business plan, and is included as part of the HRA budget report which will be considered by Cabinet on February 2023.

The core expenditure, and an allowance for a 6% uplift in both the 2023/24 and 2024/25 contract values form part of the budget setting strategy. The 2022/23 revenue repair and maintenance budget are detailed below:

Repairs and Maintenance	
PPP (Price per Property)	2,985
Contract - Exclusions	1,596
Contract - Voids	1,589
Site Overhead	1,161
Contact Centre	230
Default	190
MSP	159
Contingency	84
Double Glazing	79
Guttering	49
Fencing	32
Street Lighting	10
2022/23 Revised Budget	8,165
Uplift @ 6% 2023/24	490
Total 2023/24 Value	8,654

The report also highlights additional capital works in order to meet legislative carbon reduction requirements. In October 2022 the Council submitted a bid to Department for Business, Energy & Industrial Strategy for the Governments Social Housing Decarbonisation Fund (SHDF). The Council was successful in its application for the first wave of this fund in 2021/22 and the works from this wave one funding are in delivery. The application for Wave 2 SHDF funding is currently estimated with a gross value of £5m, with £2.5m being financed from BEIS grant funding. The requirement to match fund the SHDF grant is a condition imposed by BEIS.

The financing of the HRA capital programme is through a combination of revenue contributions to capital, and prudential borrowing. The SHDF grant bid allows the authority to commence with the required carbon reduction works and represents value for money if the grant bids is successful, as the authority will have a requirement to meet the legislative obligations in the future.

The HRA capital budget has been drafted on the basis that the grant funding is awarded and makes allowance to finance the match funding element. The formal decision has not yet been received on the assessment of the grant bid, and the HRA 2023/24 base budget will be considered by Cabinet in February 2023. Should the Council be successful in its bid any decision to commit HRA to match fund the SHDF grant will be subject to consultation and approval from the s151 officer and Commissioners.

7.2 Legal

Implications verified by: **Kevin Molloy**
Contracts Solicitor

Varying a public contract must be done in accordance with Regulation 72 of the Public Contracts Regulations 2015, which outlines the ways in which this can be done legally. Under regulation 72(1)(b) a variation will be compliant if it was for necessary additional works by the original contractor and where a change of contractor cannot be made for economic or technical reasons and would also cause significant inconvenience or substantial duplication of costs for the Council. Any increase in cost as a result of the variation must also not exceed 50% of the original contract price. If the above criteria are met, then this will put the Council in a strong position to defend the variation in the event of any challenge.

The issuing of a Section 114 notice by Thurrock Council means that any new spending - with the exception of protecting vulnerable people, statutory services and pre-existing commitments – must be reviewed on a case-by-case basis by a formal spending review panel.

Members should therefore be satisfied that the costs referred to above are both essential and come within pre-existing commitments.

7.3 Diversity and Equality

Implications verified by: **Rebecca Lee**
Team Leader, Community Development and Equalities

While there are no specific equality and diversity implications arising from the proposal to increase the value of the contract, there is a risk to the delivery of the repairs and maintenance contract if funds are not secured to meet the projected costs for 2023/24 and 2024/25. Should this be the case, there will be a deterioration of living standards for residents as well as the deterioration of properties. It will also mean the Council will not meet its landlord obligations under the Fitness for Human Habitation Act with implications for all protected groups with some, potentially, more disadvantaged than others including as a consequence of age and disability.

If the value of the contract is increased in line with the recommendations outlined in this report, council officers will work with the provider to explore opportunities to extend its existing social value offer to support a wider range of projects to benefit the social, economic and environmental wellbeing of local residents.

7.4 **Other implications** (where significant) – i.e. Staff, Health Inequalities, Sustainability, Crime and Disorder, and Impact on Looked After Children

Not Applicable

8. **Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright)

N/A

9. **Appendices to the report**

N/A

Report Author

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