

**Key Decision Report of the Corporate Director of Housing**

<b>Officer Key Decision</b>	<b>Date:</b> 25 <sup>th</sup> September 2020	<b>Wards:</b> All
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<b>Delete as appropriate</b>	<b>Exempt</b>	<b>Non exempt</b>
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Appendix 2 to this report is exempt and not for publication

**SUBJECT: Contract Award for Planned Preventative Maintenance for Communal Boilers****1. Synopsis**

- 1.1 This report seeks authority to award the abovementioned contract to GEM Environmental Building Services Ltd (GEM).
- 1.2 The contract is to deliver planned preventative maintenance and ongoing repairs and emergency call outs (including out of hours) to the Council's communal boiler plants and communal ventilation systems serving a number of Islington's housing estates for five years

**2. Recommendation**

- 2.1 To award the contract for Planned Preventative Maintenance for communal boilers to GEM Environmental Building Services Ltd for a period of five years. This decision has been delegated to the Corporate Director of Housing by the Council's Executive in April 2020.

**3. Date the decision is to be taken**

25<sup>th</sup> September 2020

**4. Background****4.1 Nature of the Service**

The service in question relates to the Council's communal boiler plants providing heating and hot water to a number of Islington's housing estates. In 2018 the Council

entered into a term partnering contract with Mitie for a maximum of 10 years. On 14 November 2019 the Council served notice that this contract would be terminated by the Service Provider on 14 May 2020. As the provision of this service is critical to Islington's residents whose homes are connected to these communal boilers, it is essential that another provider is appointed to take over this service.

In 2018 GEM Environmental Building Services Ltd (GEM) were a prospective bidder for the existing contract, but were unsuccessful, (their pricing was marginally more than Mitie's). Officers have approached this company and established that they are happy to enter into contract with Islington to perform this service at the prices quoted in their original tendered offer to the Council.

A Voluntary ex ante Transparency Notice (VEAT notice) was then placed in the Official Journal of the European Union advising that Islington Council was looking to enter into a direct award with GEM due to extreme urgency under the provisions set out in the Public Contracts Regulation 2015 – Regulation 32 (2) (c).

The timescale for the VEAT Notice has expired and no reservations or interest were received from the market so in accordance with the Regulations the Council is permitted to enter into a contract with GEM as the regulations have been adhered to in regards to advertisement of the VEAT Notice.

#### 4.2 **Estimated Value**

The funding for work required by this contract is already in place.

The value of this contract is circa £7.5m over a five year period. It will be let as a Term Partnering Arrangement.

GEM's schedule of rates pricing have been agreed in line with a previous submission for this contract.

There is no further scope to enter into negotiation to reduce cost or spend on GEM's original submission, without compromising essential service delivery.

#### 4.3 **Timetable**

The council must have a new provider in place as quickly as possible.

#### 4.4 **Options appraisal**

Option 1 - Appointment of a replacement service provider via a competitive tender has been considered but time restraints that would apply due to the value being over OJEU threshold would prevent this route from being viable.

Option 2 - An external framework option was considered, but due to Section 20 Notification and the need to accept and evaluate submissions this route was not viable due to time restraints.

Option 3 - Service of a Voluntary ex ante Transparency Notice (VEAT notice); this gives notice to possibly interested contractors that the Council is looking to award a contract to a named contractor, and invites contact from any competitor who would wish to tender for the work.

Of all the options assessed only option 3 allowed the council a compliant route to market in the tight timescales required to maintain urgent service delivery.

#### 4.5 **Key Considerations – References to social value and impact on staff**

The contract will include apprentices, and the employment of local labour and encourage local suppliers to be used. Paying the London Living wage will be a condition of the contract.

The contract and the schedule of rates have been designed to achieve value for money. Orders are to be completed within set periods of time, good customer liaison, prompt submission of paperwork, robust complaints system.

The contractor will ensure that all elements of the plant are well maintained and running efficiently so as to reduce energy consumption, reduce disruption to the service and end users and improve the life expectancy of the equipment, thus providing an economic, social and environmental sustainable services.

A small number of staff working for the current incumbent supplier will have TUPE rights.

#### 4.6 **Evaluation**

Tender returns have already been scored following historic tender submission and found to meet all minimum requirements.

The evaluation scores of GEM on both cost and quality are set out in the exempt appendix 2.

GEM have satisfied the minimum quality criteria scores set out in the invitation to tender.

#### 4.7 **Business Risks**

Failure to appoint a suitable Service Provider poses a significant business risk to the Council, in terms of not being able to deliver an essential service. Residents could be left without heating and/or hot water if a communal boiler breaks down and a repair contract is not in place.

Other suitable contractors could challenge the decision to appoint GEM Environmental Services Ltd without a formal tender exercise having been undertaken; the Council's risk of challenge has been reduced through mitigating against this risk by advertising the VEAT notice.

The Employment Relations Act 1999 (Blacklist) Regulations 2010 explicitly prohibit the compilation, use, sale or supply of blacklists containing details of trade union members and their activities. Following a motion to full Council on 26 March 2013, all tenderers will be required to complete an anti-blacklisting declaration. Where an organisation is unable to declare that they have never been blacklisted, they will be required to evidence that they have 'self-cleansed'. The Council will not award a contract to organisations found guilty of blacklisting unless they have demonstrated 'self-cleansing' and taken adequate measures to remedy past actions and prevent re-occurrences.

4.8 The following relevant information is required to be specifically approved by the Executive in accordance with rule 2.8 of the Procurement Rules:

<b>Relevant information</b>	<b>Information/section in report</b>
1. Nature of the service	Planned preventative maintenance and responsive repairs to communal boiler plant and communal ventilation systems.  See paragraph 4.1
2. Estimated value	The estimated value per year is £1.5m.  The agreement is proposed to run for a period of 5 years.  The total aggregated value is £7.5 million  See paragraph 4.2
3. Timetable	Approval is sought urgently in order to maintain essential services  See paragraph 4.3
4. Options appraisal for tender procedure including consideration of collaboration opportunities	Of all the options considered the only option that supported continuation of service delivery was option 3  See paragraph 4.4
5. Consideration of: Social benefit clauses; London Living Wage; Best value; TUPE, pensions and other staffing implications	Apprentices, local labour, local suppliers are covered in the contract.  See paragraph 4.5
6. Award criteria	GEM Environmental Building Services Ltd meet all minimum requirements for contract award, as previously assessed.  See table within the body of the report.  See paragraph 4.6
7. Any business risks associated with entering the contract	Possible challenge from other suitable service providers because the work is not being tendered.  See paragraph 4.7
8. Any other relevant financial, legal or other considerations.	See paragraphs 5.1-5.4

- 4.9 At a meeting of the executive on 30<sup>th</sup> April 2020 the procurement strategy for planned preventative maintenance for communal boilers was agreed.
- 4.10 It was also agreed to delegate authority to award the contract to the Corporate Director of Housing in consultation with the Executive Member for Housing and Development once we had completed leaseholder consultation.
- 4.11 No correspondence or queries were received from leaseholders following the statutory consultation.

## **5 Implications**

### **5.1 Financial implications**

The report sets out the procurement process that has been followed in order to arrive at the recommendation to appoint GEM to fulfil the 5-year communal boiler systems repairs & maintenance contract.

Continuity of service delivery is crucial & as the report indicates the contract must be mobilised by May 2020.

GEM's historic tender submission is the basis upon which the contract will be awarded, in terms of quality the report indicates (3.6) that their submission achieves the minimum quality standard & in terms of price the estimated contract value based on the inflated schedule of rates that formed the basis of the historic submission indicates an estimated annual contract cost of £1.5m per year (or £7.5m over 5 years).

The current annual budget for this service held within the HRA's repairs budget under Group Heating totals £1.7m (WEF 20-21 – code - RO33) & as such there is scope to allow for movement in demand.

### **5.2 Legal implications**

The council has an obligation to keep its communally heating installations for the supply of heating and hot water to its housing estates in repair and in good working order (Part 2 of the Housing Act 1985; section 11 of the Landlord and Tenant Act 1985; tenancy conditions and rtb lease). Accordingly, the council has power to enter into a communal heating maintenance and responsive repairs contract with Gem Environmental Services Limited as to ensure that the council meets its contractual and statutory repair and maintenance obligations (section 1 of the Local Government (Contracts) Act 1997).

The estimated value of the contract for planned preventative maintenance of communal boilers contract exceeded the financial threshold) for the full application of the Public Contracts Regulations 2015 and, therefore would normally have been advertised in OJEU and conducted in accordance with the requirements of the 2015 regulations relating to the open or restricted procedure .

However, under regulation 32(2)(c) of the Public Contracts Regulations 2015, a contracting authority is permitted to award a contract by direct negotiation without prior publication of a OJEU notice insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, where the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with.

At its meeting on 30 April 2020, the Executive considered a report setting out the circumstances justifying direct negotiation under clause 32(2)(c) and agreed to delegate to the Corporate Director of Housing authority to award a contract to Gem Environmental Services Limited by way of direct negotiation

Accordingly, the Corporate Director of Housing may award the contract to Gem Environmental Services Limited provided she is reasonably satisfied that their prices represent value for money for the council and as to their competence to undertake the required works .

The council has issued a VEAT notice in respect of this procurement (see above paragraph 4.41). Such notice mitigates but does not remove entirely the risk of challenge to the council's use of the direct negotiation procedure.

### 5.3 **Environmental Implications and contribution to achieving a net zero carbon Islington by 2030**

Whilst the use of gas boilers is not compatible with achieving Net Zero in the long-term, where these are in use, pre-planned maintenance and timely repairs will reduce gas usage and the associated CO2 emissions and potentially avoid the necessity for high emission temporary boilers in the case of complete breakdown. Any temporary boilers used should be of the lowest emission-type possible.

Repair and maintenance of communal boilers is likely to result in use of materials and the generation of waste. The supplier should have all necessary licences and ensure all documentation is correctly maintained for the carriage and disposal of all waste generated. Opportunities to re-use or recycle parts should be considered. An effective PPM schedule should minimise breakdowns and ensure that parts last longer, reducing the amount of waste generated.

There will be transport emissions and local air pollution associated with the provision of this service and where possible low or zero emission vehicles should be used. Even with zero emission vehicles, there will be extra vehicles on the road and this will add to congestion, increasing emissions from other vehicles. As a result, their PPMs and low urgency repairs should be carefully routed to ensure the minimum mileage. It is accepted that this would not be possible for emergency repairs.

### 5.4 **Resident Impact Assessment**

The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

A Resident Impact Assessment was completed on 19 March 2020 and is attached as appendix 1.

**6. Reasons for the decision: (summary)**

6.1 The reason for awarding this contract is contained paragraph 4.1

**7. Record of the decision:** (to be completed after 5 days on the website and re-sent to Democratic Services)

7.1 I have today decided to take the decision set out in section 2 of this report for the reasons set out above.

**Signed by**



**Corporate Director of Housing**

**Date:** 25/9/20

**Appendices**

Appendix 1 - Resident Impact Assessment

Appendix 2 - Costs and Quality Evaluation Scores for GEM - **EXEMPT**

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