

Report of Christopher Simpson, Chief Executive of Belle Isle Tenant Management Organisation

Report to Director of Environments & Housing

Date: 21st July 2014

Subject: REQUEST TO WAIVE CONTRACT PROCEDURE RULE 13.1 – HIGH VALUE PROCUREMENT (TENDERS) IN RESPECT OF BELLE ISLE TMO GAS SERVICE CONTRACT FOR PERIOD 1ST OCTOBER 2014 TO 31ST MARCH 2015

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s):	Middleton Park	
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:		
Appendix number:		

Summary of main issues

1. Belle Isle Tenant Management Organisation (BITMO), on behalf of Leeds City Council, has a legal obligation to undertake gas servicing and repairs to dwellings which are under their current management agreement.
2. An interim gas maintenance and servicing contract is in place with Sayes Service Ltd from 1st October 2013 and is due to expire on 30th September 2014. The re-procurement of this contract had commenced and proceeded to Pre-Qualification stage when a number of potential contractors identified a problem with sourcing documents that should have been available on the Council's electronic tendering system.
3. Having jointly considered the potential options and implications, BITMO senior officers and the Procurement Unit are recommending that the procurement process is re-started as soon as possible, but that a further interim contract is negotiated with the current service provider for a period of 6 months to maintain service continuity.
4. The primary reason for seeking to negotiate an additional 6 month contract is to avoid a shortened mobilisation period into a winter contract start and enable a more measured handover of the servicing arrangements from 1st April 2015.
5. This report seeks approval to a waiver of the Council's Contract Procedure Rules to negotiate an interim contract with Sayes Services Ltd for a period of 6 months from 30th September 2014 until

31st March 2015. The anticipated value of this extension is over £250,000 which requires a Key Decision from the Director of Environments & Housing.

Recommendations

6. The Director of Environments and Housing is recommended to
 - i. approve the waiver of Contracts Procedure Rule(s):No 9.2 'Over £100k – High Value Procurements'; and
 - ii. approve the Key Decision attached at **Appendix A** to enable negotiation and award of a contract to Sayes Service Ltd from 1st October 2014 until 31st March 2015 at an anticipated value of £275,000.

1 Purpose of this report

- 1.1.1 To provide detail of the requirement to negotiate and award a further 6 month short term contract with the incumbent gas service contractor to undertake gas service and maintenance repair work, and the installation of replacement boilers and heating systems to domestic properties managed by BITMO on behalf of Leeds City Council.

2 Background information

- 2.1.1 The provision of Gas Servicing and Repairs is a legal requirement that the Council and its appointed Management Organisations are obliged to undertake to ensure that each property has a valid Landlord Gas Safety Certificate (CP12).
- 2.1.2 BITMO manages a contract on behalf of Leeds City Council in the Belle Isle area of the City. Sayes Service Ltd are the incumbent contractor and deliver this particular service to the housing stock in order to comply with GSIUR 1998.
- 2.1.3 A waiver dated 15th August 2013 previously approved the appointment of Sayes Service Ltd to carry out this contract from 1st October 2013 to 30th September 2014 on a 1 year contract after the previous provider, Carillion Energy Services, served a 13 week notice to terminate the existing contract at that time.
- 2.1.4 Contract value

The current annual values attached to this contract are:

Service & Inspection Inc. all reactive works	£250,000
Installation – Reactive Capital Boiler Replacements	£125,000
Installation – Capital Investment Boiler Upgrades	£125,000
Installation – Capital Investment Full Heating Installations	£50,000
Total contract value	£550,000

3 Main issues

- 3.1.1 The procurement approach for the delivery of this service was recommended by the BITMO Board and Chief Officer in January 2014 and approved by the Director on 12th March 2014 in accordance with Council Contract Procedure Rules. The original procurement programme allowed sufficient time for tendering and mobilization of the new contract in line with the contract expiry date of 30th September 2014.
- 3.1.2 Following successful initial market sounding, a Pre-Qualification Questionnaire (PQQ) exercise was undertaken, and 19 tenderers who responded to that were automatically invited to participate. A notice was also issued on the Council's electronic tendering system Yortender at the same time to companies registered for this type of work.
- 3.1.3 During the PQQ completion period, a number of new tenderers advised that they had been unable to access the PQQ document. A week after the PQQ submission deadline had passed, another contractor identified that they had been unable to access the PQQ document, and would have completed it, had they had the opportunity. After further review it appears that a significant number of other contractors may have had similar issues in accessing the documents due to a failure to upload all the documents in line with procedures.
- 3.1.4 BITMO and the Council's Procurement Unit have reviewed the implications of proceeding with the current process in view of the reduced level of completion and the potential risk of legal challenge from potentially disadvantaged tenderers and concluded that the procurement process should be re-commenced to ensure value for money and that all interested parties can submit a PQQ and be considered for this contract.
- 3.1.5 Whilst the re-commencement of the procurement process would only add approximately 4 weeks to the overall procurement programme, it is officer's view that the timescale for contract award and mobilisation period for a contract with potential health and safety implications would have to be compromised if this was to align with the planned contract start date of 1st October 2014.
- 3.1.6 BITMO and the Council's Procurement Unit have considered the potential options available to resolve this situation and identified the following main options
- Use of an existing framework;
 - Use of another contractor currently operating in the BITMO or adjacent Council area;
 - An alternative commercial contract; and
 - Negotiating a further interim contract with the existing provider pending a full re-procurement exercise.
- 3.1.7 BITMO have discounted all but the final option for the reasons set out below
- BITMO wish to utilise JCT contracts whilst the majority of framework providers use NEC contracts
 - BITMO wish to promote the use of local SMEs and a number of the framework providers use only larger contractors, predominantly based outside the local area.
 - BITMO are concerned about the level of priority that is given by large contractors to the smaller scale contract offered by BITMO
 - a commercial contract might require TUPE and would need a sufficient mobilization period to commence the contract, which would present a difficulty in the existing situation
- 3.1.8 BITMO has identified that Sayes Service Ltd have been delivering a high quality and value-for-money service since they took on the contract from the previous provider by ensuring

- Ensuring that performance and KPI scores have improved significantly and now meet an acceptable standard;
- Delivering the service works at the same rate offered by the previous service provider;
- Maintaining client credibility with service users who were able to rely upon the service; and
- Ensuring that the capital works programme was completed within the necessary timescales.

3.1.9 BITMO and the Council's Procurement Unit have therefore determined that the best option to ensure continuity of service is to negotiate an additional interim contract with Sayes Service Ltd for a period of 6 months. If this approach is agreed, a waiver would be required from the Council's Contract Procedure Rules 9 to invite a single tender.

3.1.10 Whilst the re-procurement and contract award could be completed before the end of 2014, the six month period ensures that mobilisation of the new full contract would not take place in the winter months when

- boiler systems are in peak demand;
- the possibility of faults and difficulties with boiler and heating systems are most likely to occur;
- peak demand increases the risk of service failure as operatives are most likely to be in greatest demand; and
- a contractor may have insufficient time to prepare for the works.

3.1.11 The cost of negotiating an extension to the contract under a waiver for 6 months is estimated to be £275,000 and would therefore require a Key Decision to proceed.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 Appointing Sayes Service Ltd would not require any TUPE consultation to take place as they are the incumbent providers. As incumbent providers, they have a clear working knowledge of the housing stock and understand the requirements of BITMO. Furthermore, they are fully acquainted with the levels of service required and are already providing a satisfactory service to BITMO members, which has led to a strong working relationship.

4.1.2 No further consultation has taken place at this time.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 It is not anticipated that there will be any impact on equality, diversity, cohesion and integration as a result of awarding a new contract to Sayes Service Ltd. Existing policies and procedures are being observed and adhered to by Sayes Services Ltd, and their relationship with the area and BITMO members is strong.

4.3 Council Policies and City Priorities

4.3.1 BITMO, on behalf of Leeds City Council, has a legal obligation to undertake gas servicing and repairs to dwellings which are under their current management agreement.

4.4 Resources and Value for Money

- 4.4.1 It is anticipated that awarding a 6 month contract to Sayes Service Ltd will provide value for money and BITMO will attempt to negotiate for the contract works to be undertaken at existing contract rates, and as such, BITMO would maintain costs at their forecast level. Importantly, this would ensure the standard of service is maintained at current levels.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 The recommendations within this report constitute a Key Decision primarily due to the fact that the value of the negotiated contract to be delivered exceeds £250k per annum. The proposed Decision for an interim contract for 6 months needs to be put on the Council's forward plan.
- 4.5.2 The interim contract is required due to the short timescales to secure adequate provision of a service from 1st October 2014 and awarding a contract to Sayes Service Ltd will ensure service continuity. This is a proposed short term fixed arrangement and will be followed by a planned competitive procurement activity that is currently taking place, which will provide competitively procured opportunities of a greater value for other participants in the near future.
- 4.5.3 The original procurement for a gas maintenance and repairs contract to commence on 1st October 2014 has already been authorised via a previous DDN. That decision will need to be amended by Administrative Decision in due course, should these interim arrangements be approved.

4.6 Risk Management

- 4.6.1 The contract continues to be managed closely by both BITMO and Sayes Service Ltd to a satisfactory standard. Servicing continues to be monitored using LCC's PS-Team Project Management software to ensure the current programme remains 'on track' with the status of all properties known.
- 4.6.2 As identified in other sections of this report, not proceeding with Sayes Service Ltd for a further period of 6 months presents a significant risk in terms of a new service provider being able to mobilize within a short time period to then be able to provide a thorough service at a critical time of year for the works involved.

5 Conclusions

- 5.1 The proposed approach to negotiate an interim contract of 6 months with the existing service provider Sayes Services Ltd from 1st October 2014 – 31st March 2015 is considered the best option, prior to completing a new procurement exercise.
- 5.2 This award is for an interim period of 6 months, after which a competitively procured 5 year gas service and maintenance contract (with an option to extend for 2 years) will commence, for which procurement is already underway.

6 Recommendations

- 6.1 The Director of Environments and Housing is recommended to
- i. approve the waiver of Contracts Procedure Rule(s):No 9.2 'Over £100k – High Value Procurements'; and

- ii. approve the Key Decision attached at **Appendix A** to enable negotiation and award of a contract to Sayes Service Ltd from 1st October 2014 until 31st March 2015 at an anticipated value of £275,000.

7 Background documents

None