

Report of: Head of Housing Contracts, Property and Contracts

Report to: Director Environment and Housing

Date: 1st April 2015

Subject: Mears PLC and Leeds City Council Contract Amendments and Extension to Contract Durations.

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. The Council currently contracts with Mears PLC to deliver Responsive Repairs, Planned Maintenance and Gas Servicing and Repairs to approximately 37,000 homes in the South and South East and West and North West areas of the city.
2. The contracts commenced in April 2011 with an initial estimated value of £175 million and are anticipated to generate savings of £12.3 million over the period 2011-2016.
3. The Council now proposes to amend the Terms and Conditions under which the Contracts are managed and delivered, to align terms and conditions, reduce risk and incorporate changes following a detailed commercial review of the first four years of the contracts to facilitate more efficient Contract Management and deliver further contract savings and service benefits.
4. The Council also proposes to extend the contract durations for Responsive and Planned Maintenance, as permitted under the contract terms, for periods between two to four years. The proposed extensions were referred to in the City wide Housing Repairs and Maintenance Procurement Strategy approved at Executive Board in February 2015.
5. The amendments and extensions to contracts are forecast to generate further savings of £8.04 million over the period 2016 to 2020 bringing the total savings to £20.34 million over 9 years.

Recommendations

6. The Director Environment and Housing is recommended to approve the contract amendments detailed in the report and set out in detail at **Appendix A** and summarised as
 - Review and completion of the NEC Core Contracts for Gas Servicing and Repairs in West and South Leeds areas
 - Ensure consistency between the contracts
 - Update the contracts in compliance with the Annual Supplemental Agreements
 - Incorporate amendments to the documentation to reflect agreements reached between Mears and the Council via the Annual Supplemental Agreements
 - Amend the Performance Incentive deductions
 - Freeze the Price List at year 3 prices and no further inflationary uplift to be applied
 - Amend the Direct Fee and sub-contracting fee percentage to 6.09%
 - Review Contract Management Processes and Procedures to ensure compliance

7. The Director Environment and Housing is recommended to authorise the application of the Contract Extension Clause in the Head Agreements for the durations set out below
 - Housing Leeds West Planned ECC – 2 Year extension to 31 March 2018
 - Housing Leeds South Planned ECC – 2 Year extension to 31 March 2018
 - Housing Leeds South Responsive TSC – 3 Year extension to 31 March 2019
 - Housing Leeds West Responsive TSC – 4 Year extension to 31 March 2020

1 Purpose of this report

- 1.1 The report seeks approval for contract variations and associated costs and benefits accruing from these amendments.
- 1.2 The report seeks approval to implement extension clauses within the Mears contracts as a result of the commercial and value for money review undertaken of the contract arrangements covering the first five years of the contract.

2 Background information

- 2.1 The Council procured the Responsive Repairs, Planned Maintenance and Gas Servicing Contracts for the former West North West (WNW) and Aire Valley (AV) ALMO areas as a single procurement exercise in 2011. Six contracts were let, five to Morrison Facilities Services (MFS) and one, the Gas Service and Repair Contract in WNW, to Mears. The Contracts were let for five years with the option to extend for a further five years.
- 2.2 Mears bought MFS in November 2012 and the five MFS contracts were formally novated to Mears in 2013.
- 2.3 The anticipated value of the Contracts over the initial five year period is given in table 2-1 below.

Contract	Value
WNW Responsive Repairs and Planned Maintenance	£91.473m
AVH Responsive Repairs and Planned Maintenance	£65.599m
WNW Gas Servicing and Repair	£9.599m
AVH Gas Servicing and Repair	£8.422m
Total Contract Value 2011 - 2016	£175m

Table 2-1 Tendered Works Values

3 Proposed Contract amendments

- 3.1 The contracts with Mears allow for amendments to be introduced to improve the partnership and to ensure that changes to works, prices, incentives and processes and procedures can be incorporated into the documentation.
- 3.2 The Council has undertaken a comprehensive review of the six NEC Core Contracts and four Head Agreements and is proposing to amend some contract terms and conditions as summarised below:
 - Review and completion of the NEC Core Contracts for Gas Servicing and Repairs in West and South Leeds areas
 - Ensure consistency between the contracts
 - Update the contracts in compliance with the Annual Supplemental Agreements
 - Incorporate amendments to the documentation to reflect agreements reached between Mears and the Council via the Annual Supplemental Agreements

- Amend the Performance Incentive deductions
- Freeze the Price List at year 3 prices and no further inflationary uplift to be applied
- Amend the Direct Fee and sub-contracting fee percentage to 6.09%
- Review Contract Management Processes and Procedures to ensure compliance

3.3 Details of the proposed amendments are set out in detail in the schedule attached at **Appendix A** to this report.

3.4 The amendments will affect the application of the Key Performance Indicators, the Efficiency and Inflation adjustments to the Target Prices and the Contractor's Fee. The Impact of these changes is described in more detail below.

3.4.1 **Key Performance Indicators (KPIs)** - The KPIs have been reviewed to ensure they effectively promote and maintain a high level of service delivery in each contract area.

3.4.2 A review of the current KPI model has been undertaken and considered a variety of options, models and approaches. The review identified that the current Performance Incentive Scheme via the KPIs was not conducive to effective Contract Management and led to disputes between the parties due to differing interpretation and application.

3.4.3 The review concluded that a pass/fail KPI model would be most effective for calculating monthly retentions and deductions. It is further proposed that this model will be applied retrospectively from year 3 (2013-14) for the remainder of the contract term. This has been augmented by an increased focus on performance management and the establishment of a team within Property and Contracts that is dedicated to managing and improving performance with both Mears and all other internal and external service providers.

3.4.4 Amendment of the KPI regime will potentially result in the KPI performance deductions from Year Three onwards being reduced.

3.4.5 **Efficiency savings** - The Term Service Contract requires the application of a 4% efficiency saving to be applied to the price list on an annual basis together with an adjustment for inflation as based upon RICS BCIS indices. The BCIS inflation forecast for years 4 and 5 of the contract are 3.64% and 5% respectively.

3.4.6 The Efficiency Adjustment is a cumulative, year on year adjustment based upon 4% of the Target Cost of each rate within the year. The adjustment is applied to the individual contract rates within the Price List.

3.4.7 Inflation forecasts for years 4 and 5 suggest that the current efficiency plus inflation model is likely to be at best cost neutral and may result in an increase in the unit prices for the Council.

3.4.8 It is therefore proposed that the Council implement the following amendments:

- The Price List is fixed from 1st April 2013 until the end of the contract term.

- The efficiency and inflation adjustments will not be applied (This will have the result of saving the Council £50k assuming inflation predictions are realised).
- The prices for any extension for the Responsive Repairs and Planned Works contracts will be reduced by 2% From April 1st 2016 and fixed for the remainder of the contract terms. This will generate savings of £3.568m.

3.4.9 **Direct and sub-contract fee amendments** - The contract allows for a Direct Fee of 4.03% and a subcontracted fee of 12.5% to be added to the Defined Cost of sub-contracted works. The Council has not paid a subcontract fee for years 1 to 3 (2011-2014) of the Responsive Repairs Contract. Mears assess they are due £3.45 million in unpaid costs for this period.

3.4.10 In order to resolve this matter, the Council proposes to amend the Contract Terms and agree a combined fee of 6.09% (increasing the existing 4.03%), and for this to be effective from year 4 (2014-15) onwards. Implementing this change in the fee is anticipated to save the Council approximately £6 million in years 1 to 5 (2011-2016) of the contracts

3.4.11 The uplift will be applied to the NEC Contract works only. The overhead uplift in the Head Agreement will remain at 4.03%.

4 Contract savings /benefits achieved to date (2011-16)

4.1 The contracts were anticipated to deliver an overall saving of £5.65m over the first five years of the contract via an annual 4% reduction in the price and allowing for 2% inflation over the period.

4.2 The Council has undertaken a detailed commercial and financial review with Mears to identify the cashable (Contractual Rate) and non-cashable (Service Improvement) benefits achieved so far and anticipated to be achieved through to the end of the current contract period in April 2016.

4.3 The Contracts have achieved actual savings of £3.3m to the end of Year 3 (2014/15) as detailed in table 2-2 below.

Years 1 and 2 Capital Programme gain share	£1.573m
Year 3 Responsive Repairs including gain share	£1.021m
Year 3 Capital Programme gain share forecast	£0.710m
Total	£3.304m

Table 2-2 saving achieved

4.4 Further details are set out in **Appendix B** to this report and anticipate that the total savings will increase to £6.1 million by the end of Year 5 (April 2016).

4.5 In addition savings of £6.2million are anticipated as a result of amendments to the contractor fee (consistent application of sub-contract and direct fees at 6.09%) as laid out in the line Opportunity Cost Savings in **Appendix B**.

4.6 In total, the first 5 years of the contract is currently anticipated to secure £12.3 million in savings or efficiencies for the Council, compared to the £5.65 million originally forecast.

5 Contract performance and service improvements to date (2011-16)

5.1 Performance on the ALMO 2011 Contracts in South and West Leeds has improved significantly following the takeover of Morrison Facilities Services by Mears in 2013.

5.2 Performance falls below the Contract performance indicators in a number of areas and a number of service improvement plans have been introduced to address the problems. The result of those plans is summarised below

- i. **Responsive Repairs** - Performance has improved by between 15 and 25 percentage points on the three key indicators of Right First Time, Repairs Completed in Target and Appointments made and kept. Performance is equivalent to that achieved by Construction Services in West. Property and Contracts continue to work closely with Mears to improve performance further. Performance incentives are being applied.
- ii. **Voids repair** - Performance varies between 5 and 15.5 day averages against the 15 day target and between 18.5 and 29 days for the 20 day target with the average for April to December 2014 across West and South at 23.4 days. The voids KPI has been amended to better reflect the circumstances on the ground and to facilitate the drive to achieve the 30 day turnaround time.
- iii. **Customer Satisfaction** - Responsive Repairs and Gas satisfaction levels are currently between 98.6% and 100% as measured by the contract performance Indicators.

5.3 Mears has worked closely with the Council to develop and implement initiatives to provide employment opportunities and achieve the following added value benefits which are defined in the contract Benefits Realisation Plan

- 58 Apprenticeships to date
- 50 training and placement opportunities for NEETS
- 98% recycling of waste
- £100k per annum invested in Leeds third sector organisations and charities such as Groundwork and the Leeds Rugby Foundation
- Engaged with and contributed to Maximising Reuse of White Goods
- Reduced void times to support improvement to current 30 day key to key target

6 Proposed savings/benefits during the proposed contract extension period (2016-20)

6.1 Mears have identified opportunities for further cashable (Contractual Rate) and non-cashable (Service Improvement) benefits to the Council if they are granted

extensions to various contracts which are set out in detail in **Appendix B** and summarised in table 2-2 below.

Cashable Benefits (Summary 2016-2020)

Description	Value
2% reduction in rates for the duration of the extension period and gain share.	£3.56m
Increased Productivity	£0.6m
Total Cashable benefits to Council	£4.16m

Table 2-2 Anticipated savings 2016-2020

- 6.2 In addition, the amendment to the contractor fee is anticipated to deliver a further saving of £3.8m over the proposed contract extension periods as laid out in **Appendix B**; line Opportunity Cost Saving.
- 6.3 In total, the proposed extensions to elements of the existing contracts over the next 4 years are anticipated to secure £7.97 million in further savings or efficiencies for the Council.
- 6.4 Mears has proposed a series of Service Improvements that will be funded via their existing overhead with a total investment into the partnership of £3.17 million between 2016-2020.
- 6.5 There are five themes that Mears will focus on to enhance the service, improve the customer experience and support the community including an additional 50 apprenticeships and £1.6m invested in improving the Customer Experience. A detailed breakdown is enclosed within **Appendix B**.

7 Proposed contract extensions (April 2016- March 2020)

- 7.1 The original procurement exercise completed in 2011 allowed provision for extension of the contracts of up to 5 years.
- 7.2 Taking account of the savings delivered to date, those proposed over the next 3-4 years and the continued efforts to address and improve service performance, the Council has identified the following proposals for extending the different contract areas to enable these savings and efficiencies to be secured:

Housing Leeds West Planned ECC – 2 Year extension to 31 March 2018
 Housing Leeds South Planned ECC – 2 Year extension to 31 March 2018
 Housing Leeds South Responsive TSC – 3 Year extension to 31 March 2019
 Housing Leeds West Responsive TSC – 4 Year extension to 31 March 2020

Table 2-3 Proposed Contract Extensions

8 Corporate Considerations

8.1 Consultation and Engagement

- 8.1.1 The contract amendments and extension proposals have been reviewed and approved by the Chief Officer Property and Contracts and the Chief Officer Public

Private Partnerships and Procurement Unit. Consultation has been held with Director Environment and Housing and the Executive Member for Housing.

8.2 Equality and Diversity / Cohesion and Integration

8.2.1 The Impact Assessment is attached.

8.3 Council policies and City Priorities

8.3.1 The recommendations in this report are consistent with and support the Council's Best City to Live priorities by improving housing conditions and energy efficiency through investment in the stock.

8.3.2 The recommendations within this report also support the Best City for Children and Young People by creating Apprenticeship opportunities and Best City to Live by improving housing conditions with investment in the stock

8.4 Resources and value for money

8.4.1 The commercial and value for money review of the contracts has been undertaken jointly by the Housing Leeds Property & Contracts commercial team supported by the Public Private Partnerships and Procurement Unit commercial team.

8.4.2 The existing contracts have secured savings of £3.3 million to date, which are anticipated to rise to £6 million by the end of the current contract period in April 2016 and to further increase to £10 million by March 2020 if the proposed extension provisions set out in this report are approved. In addition the Contract will have provided a further £10m of Opportunity Cost Savings via the change to the fee percentage.

8.5 Legal Implications, Access to Information and Call In

8.5.1 The proposed contract amendments have been reviewed and confirmed by the Public Private Partnerships and Procurement Unit commercial team. There are no extant legal or commercial matters to prevent agreement between the Council and Mears.

8.5.2 The matters addressed in this report have been placed on the Forward Plan and the Notice Period has expired.

8.5.3 The Report is subject to Access to Information and Call In.

8.6 Risk Management

8.6.1 The following risks have been identified for review in conjunction with these proposals:

- **Risk of commercial dispute** – This risk has been mitigated by undertaking the commercial review and the proposed amendments to contract terms and conditions, reducing the risk of commercial dispute and wasted resource. The revised contract terms significantly reduce the risk of commercial dispute due

to differing interpretations of the contracts and inconsistencies within the contracts;

- **Failure to secure service improvements** – the extension provisions and commercial agreements set out in this report enable the Council and Mears to focus on further service improvements and developing and delivering an effective and efficient service. Significant improvements have been made in performance and further improvements are proposed; and
- **Procurement or contract failure** – the extension provisions in this report support the Council's approved Procurement Strategy and avoid the need to re-procure the whole of the Council's repairs and maintenance service in 2016 which would have significant impact on resources and our ability to effectively engage the market.

9 Conclusions

- 9.1 The contract has generated savings of £3.3 million to the end of year three (April 2011- March 2014). Further savings of £2.8 million are anticipated to the end of year 5 (March 2016). The amendment to the contractor fee will generate savings of £6.2 million in Years 1 to 5 (April 2011 – March 2016) bringing the total savings to £12.3 million for the original contract period.
- 9.2 The further reduction in the Price List for years 6 to 9 is anticipated to generate additional savings of £4.1 million. Further savings related to the amended contractor fee are anticipated to deliver savings of £3.8 million in years 6 to 9 (2016/17 – 2019/20). The total savings anticipated from the amendments to contract terms during the proposed contract extension period are £7.97 million.
- 9.3 In total, if all these savings are delivered, the Council will have generated savings of £20 million between the years 2011-2020.
- 9.4 Mears also propose to invest a further £3m in generating the Added Value Benefits for the Council including a commitment to employ an additional 50 apprentices if the proposed contract extensions are approved.
- 9.5 The commercial review undertaken by the Housing Leeds Property and Contracts Commercial Team supported by the Public Private Partnerships and Procurement Unit Commercial Team has concluded that these proposals offer value for money.
- 9.6 The savings targets and service improvements proposed by Mears will be monitored closely through robust contract management arrangements during the remainder of the contract period, with regular reports on progress through the Council's agreed governance procedures.

10 Recommendations

- 10.1 The Director of Environment and Housing is recommended to approve the contract amendments detailed in Appendix A and summarised below

- Review and completion of the NEC Core Contracts for Gas Servicing and Repairs in West and South Leeds areas
- Ensure consistency between the contracts
- Update the contracts in compliance with the Annual Supplemental Agreements
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10.2 The Director of Environment and Housing is recommended to authorise application of the Contract Extension Clause in the Head Agreements for the durations set out below

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- Housing Leeds South Responsive TSC – 3 Year extension to 31 March 2019
- Housing Leeds West Responsive TSC – 4 Year extension to 31 March 2020

11 Background documents¹

11.1 None

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.