

Report of: Asset Management and Regeneration

Report to: The Chief Officer Financial Services

Date: 20 August 2018

Subject: Proposed Contract Variation, Merrion House Refurbishment Works.

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s):	City & Hunslet	
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 type="checkbox"/> Yes	<input checked="" 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:		

SUMMARY OF MAIN ISSUES

1. The report seeks approval to vary the contract between the Merrion House Limited Liability Partnership (the LLP) and BAM Construction Ltd (BAM) to enable BAM to provide an Integrated Facilities Management service including mechanical and electrical services at Merrion House, for a period of one year from 12 February 2018 to 11 February 2019 inclusive. The report sets out the reasons for seeking approval to vary the contract between the LLP and BAM.

RECOMMENDATION

2. The Chief Officer Financial Services is requested to approve a variation to the scope of the contract between the Merrion House LLP and BAM Construction Ltd to enable BAM Construction Ltd to provide an Integrated Facilities Management service at Merrion House for the sum of £243,000, for a 12 month period from 12 February 2018 to 11 February 2019 inclusive.

1 Purpose of this report

- 1.1 The purpose of this report is to seek the Chief Officer Financial Services' approval to vary the scope of the contract between the LLP and BAM to enable BAM to provide an Integrated Facilities Management service including mechanical and electrical services at Merrion House for the sum of £243,000, for a period of 12 months from 12 February 2018 to 11 February 2019 inclusive.

2 Background information

- 2.2 The City Council's Executive Board at its meeting in July 2012 approved both the Heads of Terms provisionally agreed with Town Centre Securities (TCS) for the lease of the completed Merrion House development and, the Council acquiring a 50% share in the ownership of the Merrion House LLP, which would own the completed Merrion House development. The Agreement for Lease and all supporting documentation between the Council and the LLP was completed in October 2013.
- 2.3 Executive Board at its meeting in July 2012 was advised that TCS was of the view that the Council should enter into a Service Charge lease in order to ensure that the Council's maintenance/repairing obligations under the lease for its occupancy of Merrion House and, warranties were maintained on the principle components of the completed Merrion House development namely, the repair and maintenance of the external envelope and roofs and, mechanical and electrical items i.e. heating plant, fire protection plant, lifts etc. Executive Board was advised that there were clear financial benefits to the Council in discharging responsibility for the maintenance of the hard facilities elements of the building and, by dealing with such items via a service charge that the Council would minimise its dilapidation liability at lease expiry. It was agreed that delivery options for hard facilities management would be considered and implemented by the then Director of Resources under existing delegated authority.
- 2.4 The Chief Officer Financial Services should note that under the terms of the Limited Liability Partnership Agreement (that formed part of the supporting legal documentation agreed with the City Council and referred to in paragraph 2.2 above), the LLP is required to procure services in accordance with the principles of fair and open competition, value for money and, with reference to public sector accountability and procurement obligations. Against this background and, as the contract for the refurbishment works at Merrion House exceeded the EU threshold, the procurement of the contractor to undertake the refurbishment work was tendered in accordance with Public Contracts Regulations 2006.

3 Main issues

- 3.1 The LLP's Development Manager has recommended to the Board of the LLP that the LLP should vary the scope of its contract with BAM to incorporate the provision of an Integrated Facilities Management service, the cost of which would be recovered from the City Council via the payment of a service charge. Under the proposed variation, BAM would ensure that the building operates in the manner it is designed to and that the Council complies with all its obligations in terms of warranties and statutory obligations as defined under the terms of its lease of the property.
- 3.2 The proposed commencement date for the service to be provided by BAM would be 12 February 2018 and, would operate for 12 months to 11 February 2019. Thereafter, the LLP will competitively tender the commission in accordance with public sector procurement regulations after the initial 12 month term has expired.
- 3.3 Given the need to progress the appointment of the facilities management service in a timely manner to ensure the Council's maintenance/repairing obligations under its lease of the building from the LLP are adhered to and, given BAM's detailed knowledge (and that of its subcontractor supply chain) of the building and the installed

systems and plant used in the building, it is considered that BAM is able to provide a complete statutory and legislatively compliant maintenance service to all systems within the building with immediate effect. If the Chief Officer Financial Services is minded to approve the variation to the LLP's contract with BAM, it is proposed that a variation to BAM's contract will be issued by the LLP by way of an Employers Instruction in accordance with the terms of the JCT 2011 Design and Build contract to allow for the provision of such a facilities management service. Approval would allow BAM to appoint BAM FM as its subcontractor to deliver the facilities management service.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 The LLP Board has been consulted and is supportive of the recommendation contained in the report.

4.1.2 Civic Enterprise Leeds has been consulted and is supportive of the recommendation contained in the report

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 There is no expected impact on the protected equality characteristics and, therefore, it is not applicable for an EIA or screening form to be completed at this time.

4.3 Council Policies and City Priorities

4.3.1 The proposals contained in this report relating to the completed Merrion House development supports the Council's ambition to be the 'Best City Council in the UK' and fulfils its aspiration to make better use of its resources and, has enabled the Council to achieve savings through the rationalisation of its operational property portfolio.

4.4 Resources and Value for Money

4.4.1 The fee proposed by BAM to the LLP to provide the required facilities management service for the 12 month period of the commission is £243,000 (rounded) exclusive of VAT, which represents around 0.6% of the value of the contract between the LLP and BAM for the substantive refurbishment works at Merrion House. The Chief Officer Financial Services should note that all costs and fees associated with the LLP's appointment of the Facilities Management Company will be recovered in full via a service charge from the Council under the terms of its lease of Merrion House from the LLP.

4.4.2 Funding for the fees for the Facilities Management Company payable by the Council under the terms of its lease for Merrion House will be funded as part of the service charge payable to the LLP from the budget provision held by Resources and Housing.

4.5 Legal Implications, Access to Information and Call In

4.5.1 The Council's Procurement and Commercial Services has advised that under Contract Procedure Rules 21.5 to 21.10 it would be acceptable for the Council to advise the LLP to vary into BAM's contract the provision of a facilities management service on behalf of the City Council

- 4.5.2 The value of the proposed variation in the scope of BAM's contract is £243,000 (rounded), which represents around 0.6% of the original contract value for the substantive refurbishment works. As the value of the proposed variation is less than 15% of the original contract (and less than the current EU threshold for works contracts (£4,551,413)) and, does not alter the overall nature of the contract, it is considered that the proposed variation is fully compliant with Regulation 72 (5) of the Public Contracts Regulations 2015.
- 4.5.3 The proposal contained in the report constitutes a Significant Operational Decision and is not subject to Call In.

4.6 Risk Management

- 4.6.1 There is a risk that other potential suppliers of facilities management services may challenge the LLP's decision to appoint BAM without inviting competitive tenders for the commission. Whilst the risk cannot be completely mitigated, it is felt unlikely that other potential suppliers would challenge the decision given the specialist nature of elements of the proposed commission i.e. maintenance of the 2no. gas fired generators, the need for the commission to commence with immediate effect i.e. 12 February 2018 and, that the commission will only last for 12 months and that thereafter, the service will be competitively procured in accordance with Public Contracts Regulations 2015.

5 Recommendation

- 5.1 The Chief Officer Financial Services is requested to approve a variation to the scope of the contract between the Merrion House LLP and BAM Construction Ltd to enable BAM Construction Ltd to provide an Integrated Facilities Management service at Merrion House for the sum of £243,000, for a 12 month period from 12 February 2018 to 11 February 2019 inclusive.

6. Background documents

- 6.1 None.