

 Executive 29th June 2016		Agenda Item No. 8
Title	Use of delegated powers - Electrical Repair & Maintenance Contract	
For further information about this report please contact	Bill Hunt Deputy Chief Executive 01926 456014 bill.hunt@warwickdc.gov.uk	
Wards of the District directly affected	All	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?	No – other than Confidential Appendix Two which contains information and information by which individuals might be identified	
Date and meeting when issue was last considered and relevant minute number	Executive 11 th March 2015 –Minute 144	
Background Papers	Proposed Exemption from the Code of Procurement Practice – Executive, 11/3/15	

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	No
Included within the Forward Plan? (If yes include reference number)	Yes - 785
Equality Impact Assessment Undertaken	No

Officer/Councillor Approval		
Officer Approval	Date	Name
Deputy Chief Executive		Author
Head of Service		Andy Thompson, Mike Snow
CMT		Chris Elliott, Bill Hunt, Andy Jones
Section 151 Officer		Mike Snow
Monitoring Officer		Andy Jones
Finance		John Roberts
Portfolio Holder(s)		Cllr. Phillips, Cllr. Whiting
Consultation & Community Engagement		
Insert details of any consultation undertaken or proposed to be undertaken with regard to this report.		
Final Decision?	Yes	
Suggested next steps (if not final decision please set out below)		

1. **Summary**

- 1.1 This report informs members of the use of delegated powers to temporarily extend the electrical repair and maintenance contract by one month while the new contractor mobilised, examines the reasons for the delay that required the extension, the lessons learnt and the actions now required as a result.

2. **Recommendations**

- 2.1 That Executive note the exercise of the Chief Executive's delegated authority on 31st March 2016, under provision CE(4) of the Scheme of Delegation, following consultation with the Group Leaders, to agree an arrangement with the outgoing contractor to extend the electrical repair and maintenance contractor for one month until the incoming contractor had completed mobilisation and could assume full responsibility for the contract on 1st May 2016.
- 2.2 That Executive note the timeline for the re-procurement process set out at Appendix One and the contents of the Internal Audit report, commissioned by the Corporate Management Team to investigate the reasons for the delays that necessitated the contract extension, set out at the private and confidential Appendix Two.
- 2.3 That Executive note the Audit recommendations set out at Appendix Three, the summary of the main findings set out at paragraph 3.7 and the proposed additional actions set out at paragraphs 3.9 – 3.11 and confirm whether they wish any further management actions to be considered by the Corporate Management Team.

3. **Reasons for the Recommendations**

- 3.1 Provision CE(4) of the Scheme of Delegation contained within the Council's Constitution provides for the Chief Executive (and in their absence the Deputies) to have authority to: *'deal with urgent items that occur between meetings, in consultation with the relevant Deputy Chief Executives, Heads of Service (if available) and Group Leaders (or in their absence Deputy Group Leaders) subject to the matter being reported to the Executive at its next meeting'*.
- 3.2 The electrical repair and maintenance contract covers the responsive repairs and periodic safety inspections that allow the Council to discharge its statutory duties and health and safety responsibilities for its Housing Revenue Account (HRA) homes, leisure centres and all other corporate buildings. Executive approved an exemption from the Code of Procurement Practice in March 2015 to allow the contract to be extended for 12 months as resource constraints and competing work commitments within both the Housing & Property and Finance service areas had prevented re-procurement before the then contract expiry date of 31st March 2015.
- 3.3 That report asked Executive to note that *'an OJEU compliant procurement exercise has been commenced for the re-procurement of the electrical maintenance and repair contract, the programme for which allow [sic] for a new contract to commence on 31st March 2016'*. The report also stated that the *'Housing & Property Services and Financial Services teams have put in place actions to prevent – except in the most extraordinary of circumstances – such exemption requests being necessary in the future'*.

- 3.4 Despite these statements and the commencement of a procurement exercise which planned for the publication on 5th May 2015 of the necessary OJEU notice to allow the re-tendering process to commence, the notice was not published until 3rd November 2015 and the contract award was not made until 15th March 2016. This meant that the incoming contractor had insufficient time to mobilise for a 31st March contract start date requiring the need for the use of CE(4) of the Scheme of Delegation.
- 3.5 The exercise of the delegated authority enabled a suitable agreement to be negotiated with the outgoing contractor to provide for them to undertake all necessary works to ensure that the Council was meeting its statutory responsibilities until such time as the incoming contractor had fully mobilised. However, the need to use the powers to grant a contract extension was deeply concerning and the Corporate Management Team (CMT) initiated immediate investigatory action.
- 3.6 Through the Deputy Chief Executive (BH), they requested the Internal Audit team to undertake a fast-paced review of the procurement process to establish a timeline that would expose the reasons for the delay, that could be reported to Executive as part of the normal report automatically triggered by the use of CE(4). The timeline is set out at **Appendix One** and the full Internal Audit report is set out at **Appendix Two**. This appendix is private and confidential due to the nature of the information contained within it which could enable individuals to be readily identified.
- 3.7 A more detailed examination of the delays and the reasons for them is included in section 8 but, in summary, the main findings of the investigation are:
- The conduct and progress of this procurement process was in marked difference to others undertaken and successfully completed within the same period
 - There was a lack of ownership for, and responsibility taken within, the procurement process
 - There was a lack of understanding at a managerial level of the respective responsibilities at key stages in the process of the two service areas involved at key stages in the process
 - Communication between key staff within both service areas was poor
 - There was a lack of trust between some staff in the two service areas that fostered a defensive attitude that hindered communication, contributed to the lack of urgency to resolve issues, prevented effective corrective action being taken when delays occurred
 - Capacity and staffing issues within both service areas contributed to the delays but would not, of themselves, have prevented action being taken that would have enabled the contract to be let earlier and without the need for the extension
- 3.8 The recommendations arising from the Internal Audit investigation are set out at **Appendix Three** and the appropriate actions in response are already underway. CMT consider that there are two additional actions required but wish to seek Executive's view as to whether there are any other issues they should consider.
- 3.9 The first additional issue is the need to ensure that the Council's organisational culture supports it being a learning organisation. It is inevitable that from time to time problems, occasionally significant, will occur and whilst the role of managers is to minimise the likelihood and impact of any such event it is

equally important that they ensure all available learning is captured and understood and that appropriate actions are initiated.

- 3.10 Whilst, effective learning has been captured in this case, the defensive attitudes that characterised parts of the procurement process were still in evidence when the Deputy Chief Executive (BH) and the Audit and Risk Manager convened a meeting of key managers and staff from both service areas to discuss the draft Internal Audit report. CMT members have subsequently initiated discussions amongst the wider Senior Management Team to ensure that the appropriate learning environment is nurtured.
- 3.11 The second issue is that the basis for management decision-making in respect of the tender evaluation process is worthy of further examination than was possible within the limited remit of the initial investigation, including further consideration of any potential Code of Conduct issues. CMT have, therefore, through the Deputy Chief Executive (BH), initiated a further Internal Audit investigation. This will focus on the events in the period after the tenders were returned up to the point of the tender award, including the tender evaluation and will also consider the apparent lack of contingency planning for potential mobilisation issues given the slippage in the procurement timetable up to that point. CMT will then consider the outcomes of this investigation and determine if any further management action is required.

4. **Policy Framework**

- 4.1 The Scheme of Delegation, Code of Conduct and Code of Procurement Practice are contained within the Council's Constitution
- 4.2 The electrical repair and maintenance contract is a key service contract, enabling the delivery of services which assist the Council to meet its statutory responsibilities and ensure the electrical installations within all its assets are fit for purpose, directly contributing to the Council's unifying vision of making Warwick District a great place to live, work and visit.

5. **Budgetary Framework**

- 5.1 The typical annual value of the Electrical Repair & Maintenance Contract is c£1.3m, depending on the level of responsive repairs raised within any given period.
- 5.2 At the point that delegated authority was exercised to extend the contract the estimated maximum cost of the month's extension was assumed to be £100,000.
- 5.3 The final account from the outgoing contractor is now being finalised but the anticipated final outturn is likely to be c£51,000.
- 5.4 This level of expenditure can be accommodated within the agreed budget for the financial year without any anticipation of budget pressures later in the year.

6. **Risks**

- 6.1 The extension was awarded to mitigate the risk of the Council failing to meet its statutory safety responsibilities, but the decision raised a new risk of a potential procurement challenge to the extension award.

- 6.2 The extension period has now passed without a challenge materialising and this risk is now closed but the balance between these two risks re-inforces the need for officers to ensure that correct and timely procurement processes are undertaken.
- 6.3 The risk of the organisation not adopting the learning captured from the investigations to date will be mitigated by the leadership action initiated by the Corporate Management Team.
- 6.4 The risk of not fully understanding all the issues that require corrective action is mitigated by the additional investigations that have been instigated.

7. **Alternative Options considered**

- 7.1 In arriving at the decision to agree an extension officers considered and rejected the following alternative options:
- To commence the new contract with the successful tenderer from the original 1st April 2016 contract commencement date and accept that a reduced service would be in place while the full contract team and working processes were mobilised. This option was explored with the incoming contractor but was discounted once the legalities of the TUPE process had been explored and it had been confirmed that they would not be able to secure sufficient resource within the available timescale to provide a level of service that would enable the council to meet its statutory obligations.
 - To establish emergency service provisions using the contractual arrangements of other organisations while completing the mobilisation of the newly procured contract. This option was discounted because of the complexity and lack of available time needed to establish adequate agreements, supporting documentation and administration processes to support the ordering and control of works in the limited time period available.
- 7.2 The option of not initiating further investigatory action has been discounted by CMT given the potential significance of the issues now under investigation.

8. **Investigation Findings**

- 8.1 An initial procurement timetable was agreed in March 2015 which allowed for documents to be published on 5th May 2015. This deadline was missed and it is clear that there was a lack of ownership for the procurement process, a lack of clarity of the roles and responsibilities for the production of documents on the part of the officer initiating the procurement process and a feeling in both Finance and Housing & Property Services (H&PS) that one team was waiting for the other to make progress. Communication between officers was not decisive, the initiating officer did not appear to take ownership at the outset of the procurement process and neither team took ownership of the key tasks necessary, at varying points, to move the process forward and achieve the then procurement timetable in place at that point.
- 8.2 The technical specification documents were provided by H&PS on the 15th June 2015 and shortly after a new procurement timetable was produced in discussion with the then Procurement Manager, which provided for the tender documents to be published early in September 2015. However, during this period there were capacity issues within the procurement team arising from a chain of personnel changes, with the previous Procurement Officer having left earlier in the summer.

- 8.3 In order to alleviate the pressure on the Procurement Team, members have previously agreed the recruitment of an additional temporary three year Procurement Officer post. Unfortunately, despite extensive advertising of this position it has not yet proved possible to fill it. A more recent review of the team's resource requirements in conjunction with HR has determined that the appointment of an apprentice should prove advantageous. Efforts are currently being made to appoint an apprentice, working with local colleges.
- 8.4 A new permanent Procurement Officer began employment with the Council on 1st September 2015, and in recognition of the need for immediate progress was allocated the task of handling the procurement of the contract in question. However, the handover process proved less than satisfactory and they were unaware of the events leading up to that point or the proposed revised timetable.
- 8.5 This officer reviewed the technical documents they had inherited and recommended amendments despite them previously being agreed by other officers within the procurement team. A further delay of four weeks ensued while various discussions took place between the two service areas as to the content of the documents to be published, with the final version incorporating some of the changes recommended by the new Procurement Officer.
- 8.6 The tender documents were eventually published on 3rd November 2015 and tenders returned on 3rd December 2015. A further misunderstanding between H&PS and Finance about the location, availability and access to the returned tender documents resulted in the evaluation of the tenders being delayed by a further four weeks until the early New Year. Again, this delay was characterised by poor communication between the teams and the absence of any clear ownership or responsibility.
- 8.7 Subsequent to this early January scoring exercise it was identified that two scoring tables, each with different scoring criteria, had been included within the tender documents. Concerns had also been raised by the Procurement Team over the process and personnel used in this initial scoring exercise. A decision was eventually taken to re-evaluate the tenders using a different evaluation team, utilising the correct scoring mechanism, to address the various concerns that had been raised up to that point. However, the process that led to this decision was contentious, overly prolonged and typified the lack of trust that had developed between the two service areas. Although not covered in the initial investigation it is also notable that it appears that no contingency planning around potential delays to the contract start date was initiated at this point, an issue that requires further consideration.
- 8.8 Once the decision had been made the re-evaluation process was delivered speedily and professionally by the Building Surveying and Construction Manager and a Senior Building Surveyor allowing the Intent to Award notice to be published on the 4th March 2016 and the contract to be finally awarded to Dodd Group Limited on the 15th March 2016, following the completion of the mandatory standstill period. They immediately flagged their, entirely justified, concern that mobilisation for a contract start date of 1st April 2016 was impractical, starting the process that resulted in the exercise of the delegated powers.