

 Executive – 12 February 2014		Agenda Item No. <u>URGENT ITEM</u>
Title	Proposed exemption from the Code of Procurement Practice	
For further information about this report please contact	Sean McCabrey 01926 456440 sean.mccabrey@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Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?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	
Date and meeting when issue was last considered and relevant minute number		
Background Papers		

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)	No
Equality & Sustainability Impact Assessment Undertaken	No
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Officer/Councillor Approval		
Officer Approval	Date	Name
Deputy Chief Executive		Bill Hunt
Head of Service		n/a
CMT		Chris Elliott, Andrew Jones, Bill Hunt
Section 151 Officer		Mike Snow
Monitoring Officer		Andy Jones
Finance		Sue Simmonds
Portfolio Holder(s)		Cllr. Vincett
Consultation & Community Engagement		
n/a		
Final Decision?		Yes
Suggested next steps (if not final decision please set out below)		

1. SUMMARY

- 1.1 This report seeks an exemption from the Code of Procurement Practice in order to engage PTL Occupational Hygiene Consultants, to provide asbestos inspection reports and maintain appropriate records, on an interim basis until the outcomes of the current exercise to procure a contractor for this area of work is completed.

2. RECOMMENDATIONS

- 2.1 That Executive approve an exemption to the Code of Procurement Practice to allow PTL Occupational Hygiene Consultants (PTL) to be engaged on an interim basis, for a maximum period of 8 months, to undertake asbestos inspections for planned and responsive work and to ensure the Asbestos Register is updated and maintained.
- 2.2 That Executive notes that an OJEU compliant procurement exercise has been commenced to engage an asbestos surveying, monitoring and removal contractor which should enable the interim arrangements to be brought to an end on the timetable set out at Appendix One .

3. REASONS FOR THE RECOMMENDATION

- 3.1 The Council has a statutory duty to manage asbestos in the buildings it owns under the Control of Asbestos Regulations 2012 (CAR). In order to discharge this duty in respect of the HRA stock and other corporate buildings asbestos inspection reports are regularly required before responsive or planned maintenance can take place where the presence of asbestos is either suspected or has previously been confirmed.
- 3.2 Underpinning the CAR responsibilities are Health and Safety Executive (HSE) requirements for local authorities to maintain up to date registers of asbestos within their district.
- 3.3 The management changes within Housing & Property Services have delayed the tendering of the new comprehensive contract for asbestos management. A timetable for the procurement of this work, under the European OJEU regulations, is set out at Appendix One. This timetable anticipates that a new contract will be in place in 6 months.
- 3.4 The delay in tendering and the anticipated lead-time before a new contract will be in place has required the introduction of interim arrangements to ensure that the Council can discharge its responsibilities, as the previous contracts for asbestos inspections and removals have expired.
- 3.5 Whilst these interim arrangements, which involve procuring surveys via our principal repairs contractor Ian Williams for live projects and also allow asbestos inspections and works to be carried out, have proved successful they are less than ideal. In particular, having a generalist repairs contractor attempting to fulfil the requirement that each asbestos survey generates a 'live' update of the asbestos register, has proved problematic, highlighting the risk that without an experienced asbestos surveying company our records may not be fully accurate.

- 3.6 It is proposed that we minimise this risk by engaging a competent contractor to update our asbestos register, a requirement of the CAR 2012, for an interim period while the new contract is put in place. PTL have previously worked for the Council, their contract expiring in 2013, are familiar with our stock and systems and able to undertake the proposed work immediately.
- 3.7 A request for an exemption from the Code of Procurement Practice is therefore sought to allow PTL to be re-engaged in their previous role for a maximum period of 8 months. This timescale covers the OJEU tender period, allowing for any unanticipated slippage, and, potentially, a handover period to the new contractor if this is considered desirable. Alternatively, the contract arrangement could be terminated when the new contractor is appointed.

4. **POLICY FRAMEWORK**

- 4.1 The Control of Asbestos Regulations 2012 (CAR) came into force on 6 April 2012, updating previous asbestos regulations, to take account of the European Commission's view that the UK had not fully implemented the EU Directive on exposure to asbestos (Directive 2009/148/EC).
- 4.2 The Code of Procurement Practice is an integral element of the Council's policy framework. The Code provides for an exemption to be sought where:

'The Council has followed the procedures but the process has not resulted in a suitable supplier being engaged due to reasons beyond officers' normal control and defined responsibility resulting in an interim supplier being appointed to ensure continuity of service while the procurement process reviewed.'

5. **BUDGETARY FRAMEWORK**

- 5.1 The cost of the proposed works is anticipated to be c£60,000 for a maximum 8 month period, based on historic costs with PTL who have agreed to maintain the schedule of rate charges they used until the expiry of their previous contract if awarded this additional work.
- 5.2 These costs can be met from the allocated asbestos budget for the remainder of the current financial year and the 2014/15 budget.

6. **ALTERNATIVE OPTION(S) CONSIDERED**

- 6.1 The option of undertaking a procurement exercise for the proposed work using a Framework Agreement has been discounted because there is a risk that the council could be re-inspected at any time by the HSE without notice.
- 6.2 The option of maintaining the interim arrangements until the current tender exercise has been completed and been discounted because Ian Williams are only providing surveys on live jobs. For planned works, no surveys are being carried out which, if unaddressed for a further 6 months, will lead to an unacceptable backlog of work. It has also proved unsustainable for Ian Williams to resource a daily update of the asbestos register, which the proposed arrangement would address.
- 6.3 In either scenario, if the Council were subject to a HSE inspection and found to not have an adequate Asbestos Register or inappropriate inspection arrangements it could be held to be in contravention of Health & Safety

legislation. Under The Health and Safety (Fees) Regulations 2012, those who break health and safety laws are liable for recovery of HSE's related costs, including inspection, investigation and taking enforcement action.

Appendix 1

1	Publication of EU Contract Notice	Friday 07th February 2014
2	Release of Pre-Qualification Questionnaire Documents	Friday 07th February 2014
3	Last date for questions regarding the PQQ	Monday 3rd March 2014
4	Closing date for return of PQQ	Monday 10th March 2014
5	Shortlist for ITT (Minimum of 5 bidders)	Monday 31st March 2014
6	Release of Invitation to Tender Documents	Monday 07th April 2014
7	Last date for questions regarding the ITT	Monday 19th May 2014
8	Closing date for return of tenders	Monday 26th May 2014
9	Evaluation period and clarifications: Presentation & Interviews (if required)	Monday 26th May 2014 – Monday 23rd June 2014
10	Preferred bidder selected and intent to award letters released.	Tuesday 24th June 2014
11	Start of standstill period	Tuesday 24th June 2014
12	End of standstill period and award of contract	Friday 4th July 2014
13	Publication OJEU Award Notice	Friday 4th July 2014
14	Contract commencement	Monday 28th July 2014