

 Executive – 11th March 2015		Agenda Item No. 15
Title	Proposed exemption from the Code of Procurement Practice	
For further information about this report please contact	Andy Thompson	
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Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?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	24.02.15	Bill Hunt/Andy Jones
Head of Service	24.02.15	Andy Thompson/Mike Snow
CMT	24.02.15	Chris Elliott, Andrew Jones, Bill Hunt
Section 151 Officer	24.02.15	Mike Snow
Monitoring Officer	24.02.15	Andy Jones
Finance	24.02.15	Sue Simmonds
Portfolio Holder(s)	24.02.15	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 extend the arrangements for electrical maintenance and repair services provided by EM&I Derby Limited, until 31st March 2016 during which time the on-going re-procurement exercise will be completed and new contracts awarded and mobilised.

2. RECOMMENDATIONS

- 2.1 That Executive approves an exemption to the Code of Procurement Practice to extend the current contract for the provision of electrical maintenance and repair services to 31st March 2016.
- 2.2 That Executive notes 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 for a new contract to commence on 31st March 2016.
- 2.3 That Executive notes the comprehensive actions that have been put in place to improve the way procurement is taken forward in the future, with particular reference to Housing and Property Services.

3. REASONS FOR THE RECOMMENDATION

- 3.1 The Council has a statutory responsibility under the Landlord and Tenant Act 1985 to ensure that the electrical installations in a property are safe when a tenancy begins and remain safe for the duration of the tenancy. In order to discharge its duties in respect of the HRA stock and other corporate buildings, the council undertakes periodical electrical safety inspections and responsive repairs through its electrical maintenance and repairs contract.
- 3.2 The current contract is due to expire on 31st March 2015. This is clearly recorded in the Council's contract register but, despite this, attempts by officers in Housing & Property Services and Finance to plan and manage the timely re-procurement of the contract failed to progress as fast as anticipated or required, largely due to the evolving demands placed on both teams as a result of on-going commitments and new projects.
- 3.3 Officers from both service areas, including the heads of service have now agreed a realistic timetable for the re-procurement of the contract to address this unsatisfactory situation. This takes account of the current work commitments of each service area, the timescales for a compliant OJEU process and the practical implications of the extension period for the contractor, who will need to extend staff contracts, insurance policies and vehicle rental contracts. It is consequently recommended that the current contractual arrangements are extended for 12 months from 31st March 2015 to 31st March 2016.
- 3.4 The Housing and 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. These actions have been informed by the draft Council's Procurement Strategy, subject to a separate report elsewhere on this agenda, and include:

- Additional resources for the Procurement Team

- The re-design of the Asset Management team, which has included enhancing the resources available for day-to-day work, has been structured to allow managers to have a greater amount of time available for contract management
- The Housing and Property Services Contracts Register is included in the Priority Action Plan which is available to all members via the Intranet.
- The Contracts Register for Housing and Property Services includes an Early Warning System to help make sure that procurement processes are started in a timely way.
- The Housing and Property Services management team now review quarterly in detail the Contracts Register.
- Managers within the service as a whole are required to make sure that the Team Operational Plans include planned procurement activity.

3.5 In the medium term Housing and Property Services are:

- Working to move contracts to March/April anniversaries to bring procurement in line with financial management timelines. This will make it easier to manage not just procurement but also the financial management of the contracts themselves.
- Working to reduce the number of contracts by consolidating similar works into single contracts. This is to provide the opportunity to secure better pricing and allow for more efficient contract management.
- Considering longer term contracts where these will help achieve better pricing, allow for more sustainable and stable relationships to be developed between the Council, its contractors and its clients and allow for a more measured approach to managing procurement.

3.6 The relevant Housing and Property Services team and the Procurement Team have also met and agreed improved co-ordination and communication arrangements for future projects. This will ensure that a clear understanding of progress and resource and task dependencies across the teams is maintained and potential delays are identified and mitigated at the earliest possible opportunity.

4. **POLICY FRAMEWORK**

4.1 The electrical maintenance and repair contract is a key service contract. By undertaking periodical and responsive repair and maintenance works the council meets its statutory responsibilities and ensures its electrical installations 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 annual value of the contract is £1,300,000. No additional budget is required to support the extension which will be funded from the existing HRA and General Fund budgets for electrical maintenance and repair works.

6. **RISKS**

6.1 With specific regard to the extension of the electrical services contract, the Council could be challenged regarding the extension of the temporary arrangements by third parties. It is unlikely that such a challenge will be received given the value and duration of the proposed extension.

6.2 Officers consider the greatest risk in this area is the risk of failure to comply with the duties placed on the Council by several pieces of health and safety legislation. The possible impacts include:

- Unnecessary health and safety risk for employees, contractors, customers and the general public
- HSE investigation
- Prohibition and/or improvement notices
- Fines and/or prosecution
- Loss of confidence and reputational damage

The recommendations of this report are made directly to minimise this risk to the lowest possible level.

6.3 The risk of challenges during the procurement process could result in further delays to the re-procurement of the contract, while the Council will mitigate this risk as far as is practicable by administering clear documents and evaluation criteria it is not possible to control the actions of third parties in the process, it is considered that a twelve month extension allows a sensible amount of project float without affecting the mobilisation of a new contract to commence on 1st April 2016.

6.4 Finally there is a risk of further additional resource demands resulting in further delays to the procurement process. Heads of service and senior managers have resolved to ensure that this project is adequately resourced. Officers are confident that with the benefits of the recently approved restructure of the Asset Management Team beginning to become manifest, the prioritisation of procurement matters by the Housing and Property Services Management Team and the robust guidance provided by the draft Procurement Strategy this procurement will run to the timeline set out in this report.

7. ALTERNATIVE OPTION(S) CONSIDERED

7.1 The option of undertaking a procurement exercise for the proposed work using a Framework Agreement has been considered, but is not recommended due to the time it would take to procure temporary arrangement through a framework, train staff in the terms of the framework and mobilise the contractor. It should also be noted that the electrical maintenance and repairs contract has proven to be an efficient, effective contract for the Council and retaining its current processes is considered to be in the Council's best interests.

7.2 In either scenario, if the Council were subject to a Health & Safety Executive (HSE) inspection and found not to have adequate electrical safety arrangements in place, it could be held to be in contravention of Health & Safety legislation which carries risks of fines and/or persecutory action; 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.