

Delegated Decision Report

Decision below £250k



Subject:	Contract Extension of the Domestic Property Disability Adaptations Framework for the Provision of Level Access Showers and Shower over Baths
Decision maker: Senior Officer	Jayne Ratcliffe, Director of Adult Social Care
Decision maker: Cabinet Member	Councillor Barbara Brownridge – Cabinet Member for Health and Social Care
Decision date:	26 th November 2024
Report author:	Ayshia Akhtar – Commissioning Manager Older Age Adults
Ward (s):	All

Reason for decision

The Council has a multi contractor Framework Agreement in place for Domestic Property Disability Adaptations, which commenced on 1 December 2022 for an initial term of 2 years with the option to extend twice, each for an additional term of no more than 1 year. Under the Framework Agreement, the Council places orders for the provision of Level Access Showers and Shower over Baths, as and when required. The Framework Agreements were put in place to enable the Council to meet its duty to award a Disabled Facility Grant (DFG) to those who are eligible and to ensure the works funded by a DFG are completed to a high standard and in a timely manner.

The initial 2 year term of the Framework Agreement, which the Council has entered into with each of the 4 appointed contractors, will expire on 30 November 2024. The Framework Agreement provides that 28 days' written notice is required to be served on the Contractor in order to extend the initial term.

It is proposed that, subject to approval and to the appointed contractors agreeing to accept less than 28 days' written notice, the first available extension period is utilised and the term is extended to 30 November 2025. The cost of the extended term is within the capped total life of contract costs set at £2,260,000, as approved in the original Cabinet report for the procurement of Domestic Property Disability Adaptation Works requirements and as provided for in the advertised opportunity.

This paper seeks approval to extend each Framework Agreement, in accordance with clause 2.2 of the applicable terms and conditions, before the end of the initial term (30th November 2024) for a period of 12 months provided the appointed contractors agree to accept less than 28 days' written notice.

It should be noted that the spend to date **against the contract** from the DFG budget is £1,803,758.88 which leaves an outstanding **contract provision** of £456,241.12. This paper will be followed up with a Cabinet report seeking approval to increase the original budget to meet any additional funding that is required due to the under allocated funding approved in the original report. Approval will also be sought to amend each Framework Agreement, in accordance with the Contract Procedure Rules, to allow for the procurement of additional works. This will be subject to advice from the Commercial Procurement Unit and Legal Services.

For the upcoming contract year, it is essential that the permitted extension is approved and that extension letters are issued to the 4 appointed contractors and returned signed before 30th November 2024 to prevent the agreements from expiring.

The extension will allow continuity of essential provision providing Officers time to continue monitoring the success of this framework and consider procurement options for future contractual arrangements. Consideration will be given and built into the procurement pipeline in terms of future contracting, including consideration of joint approaches with neighbouring authorities.

Recommendation(s)

Option 1: To extend the Domestic Property Disability Adaptations Framework Agreements in place by utilising the first available 1-year extension period provided for in clause 2.2 of the applicable terms and conditions and the main body of each Framework Agreement.

Background

The Domestic Property Disability Adaptations Framework Agreement allows the Council to place orders for the provision of level access showers and shower over baths, as and when required and at a competitive price. This, in turn, assists the Council in meeting its statutory obligations linked to the assessment and award of DFGs.

The Framework Agreements make provision for orders to be offered to the appointed contractors using a rotation system; contractors have the opportunity to accept or decline orders based upon their capacity at the time.

The Framework Agreements commenced on 1st December 2022 and the expiry date of the initial term is 30th November 2024. The Framework Agreements include an option for the Council to extend the initial term for 2 further periods of 12 months (2+1+1) subject to the Council serving no less than 28 days' written notice. Therefore, any extension of the term would need to be subject to the contractors accepting less than 28 days' written notice.

There are 4 contractors appointed to the framework arrangement:

- Moffat and Riley Heating Services
- Wright Build Ltd.
- Structec Building And Maintenance Contractors
- UPS Building And Maintenance

Table 1 and Table 2 shows the number of completed Level Access Showers (LAS) and Shower Over Baths (SOB) from 2024 to date and 2023 – 2024 along with the total costings.

Completed Level Access Showers & Shower Over Baths

2024 - To date				
Contractors	LAS	SOB	Bathrm Alts	Costs
Moffat & Riley	28	2	1	£ 180,856.96
Structec	10	1	2	£ 85,404.54
UPS	27	3	0	£ 170,515.73
Wright Build	20	3	1	£ 144,575.88
Total	85	9	4	£ 581,353.11

Table 1

2023 - 2024				
Contractors	LAS	SOB	Bathrm Alts	Costs
Moffat & Riley	52	2	1	£ 322,654.94
Structec	37	6	12	£ 315,870.77
UPS	34	8	0	£ 232,086.21
Wright Build	49	5	3	£ 351,793.85
Total	172	21	16	£ 1,222,405.77

Table 2

Our vision for Adult Social Care in Oldham is to support individuals to live independently, healthy, safe and well. The service allows for that to happen and works to our target operating model in terms of prevention of moving into a residential setting.

Option(s) to be considered *(please give the reason(s) for recommendation(s))*

Option 1: To extend the term of each Domestic Property Disability Adaptations Framework Agreement by 1 year, as permitted by the terms and conditions of each Framework Agreement, to allow the continued provision of level access showers and shower over baths. This option would be subject to the contractors agreeing to accept less than 28 days' written notice from the Council and to the spend being limited to the remaining value of the advertised contract value.

This will allow the continued provision of level access showers and shower over baths. The quality of the workmanship from the existing four contractors on the framework has been satisfactory and a good working relationship has been developed between the Equipment and Adaptations Team and the contractors.

There is insufficient time to re-tender the opportunity prior to the expiry of the initial term but, in any event, to do so at this stage would be very disruptive to the continuity of work. It is particularly important to have continuity of this work to enable the Council to meet its statutory duty to assess and award DFG applications in line with legal timeframes. The Framework Agreements, which the Council has put in place, allow for the works required to meet each applicant's relevant needs are carried out and completed to a high standard and in a timely manner.

If approved, the Framework Agreements would expire on 30th November 2025, unless further extended by an additional year.

This is the preferred option, as this enables continuity of service provision and compliance with the Council's statutory duty to provide a DFG to those who qualify.

Call-off arrangements would continue up to the original advertised value of the opportunity, which is £2,260,000. It is inevitable that the spend over the extension period will exceed the remaining budget of £456,241.12 and, therefore, a Cabinet report will be submitted in due course seeking approval to increase the budget assigned and to modify the Framework Agreements in line with the Contract Procedure Rules, subject to advice from the Commercial Procurement Unit and Legal Services.

Option 2: To allow the Framework Agreements to come to an end on 30 November 2024 and to identify an alternative framework agreement led by another Local Authority, but this would take time to consider and identify a solution which ensures that the costs and operation of the alternative arrangement would not have a detrimental effect on the Council's financial budget and delivery of the service.

Option 3: To allow the Framework Agreements to come to an end on 30 November 2024 and re-tender the contract. This option is not recommended as the Local Authority has a statutory duty to authorise eligible applications within a legal timeframe of 6 months and re-tendering works at this stage could result in these timeframes not being met and in less competitive pricing.

Consultation *(include any conflict of interest declared by relevant Cabinet Member consulted)*

Consultation at this stage is not deemed necessary.

Risks

There are significant risks to the Council should we not extend the Framework Agreements as alternative options could increase the cost of providing bathing adaptations significantly and with a very limited budget this would not be favourable. There would also be a reputational risk to the Council due to judicial reviews should legal timeframes not be met due to delays caused by retendering of works to alternative providers.

There is also a risk of the providers not agreeing to extend given the notice period required, communications will take place with the providers in regard to this.

Spend to date is £1,803,758.88 and the awarded value of the original contract was £2.26M. This leaves an outstanding budget of £456,241.12 which is unlikely to cover the initial 12-month extension period. Consideration of additional budget allocation should be given now to ensure no disruption in continued service provision.

Implications

Financial	<p><u>Capital Implications</u></p> <p>The extension of the contract will continue to be financed by the Disabled Facilities Grant (DFG) capital budget.</p> <p>Contracts from the framework will need to be let with the remaining DFG budget in mind and to the maximum contract value of £2.26m. (Jit Kara – Senior Accountant)</p>
Legal	<p>As detailed in the comments from within the Commercial Procurement Unit, the initial term, which expires on 30 November 2024, can be varied to extend it by 2 additional periods of 1 year. This is subject to 28 days' written notice being served on each contractor. Therefore, whilst the term can be extended, consent from the contractors to serve less than 28 days' written notice will be needed.</p> <p>Further, the report author details that there is some, but not sufficient, budget left (of the advertised contract value) to meet the anticipated requirements over the entirety of the proposed 1 year extension. This does not mean the initial term cannot be extended, it simply means the extent to which the Council can place orders for works will be limited to the remaining budget, unless the Framework Agreements are varied to increase the value. This will be dealt with under a separate report.</p> <p>Clause 2 of the terms and conditions applicable to the Framework Agreements explicitly refers to each extension of the term as a variation. Therefore, in order to justify the extensions, we need to look to rule 17 of the Contract Procedure Rules (CPRs) which deals with modifications.</p> <p>Rule 17.1(a) allows for modification that are provided for in the</p>

	<p>original contract, subject to the relevant clauses: <i>(i) list the scope and nature of possible Modifications as well as the conditions under which they may be used, and (ii) do not provide for Modifications that would alter the overall nature of the Contract or the Call-Off Contract.</i></p> <p>In this matter, the available extensions to the term are explicitly dealt with and do not affect the overall nature of the Framework Agreements.</p> <p>Rule 17 will be considered in more detail regarding the additional framework value within the Cabinet report referenced by the report author.</p> <p>Sarah Orrell – Commercial & Procurement Solicitor</p>
Equality impact including implications for Children and Young People	No negative implications to Equality from the proposed option.
Other Procurement:	<p>The framework agreement commenced on 1st December 2022 and is due to expire on 30th November 2024 with the option to extend by two (2) periods of twelve (12) months beyond the initial term. The council may vary the expiry date by giving the contractors not less than twenty eight (28) days' notice prior to the expiry of the initial term.</p> <p>As there are less than twenty-eight days until the expiry of the initial term, it is recommended that as long as both parties agree to the extension and letters are issued and signed before 30th November 2024 the council can use still use the permitted extension option. If this is not done before 30th November 2024 the contract will expire and the extension option cannot be used.</p> <p>Furthermore, as detailed in this report the spend to date is £1,803,758.88 and the awarded value of the original contract was £2.26M. This leaves an outstanding budget of £456,241.12 which is unlikely to cover the initial 12-month extension period. A modification of the contract therefore needs to be considered.</p> <p>This is a below threshold works contract which was not awarded under PCR2015 and is therefore subject to the councils CPRs. Rule 17.1 states Subject to Rule 17.2 a Modification of a Contract which is not subject to the Procurement Regulations may be permitted if the following limited criteria apply:</p> <p>(c) (i)the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen; and (ii)the modification does not alter the overall nature of the contract.</p>


	<p>The commissioner should be satisfied that the above conditions apply and should seek approval for any additional funding that will be required to cover the extension periods.</p> <p>Rule 17.2 states that a Contract during its term shall be considered substantial for the purposes of Rule 17.1 where the Modification increases the contract value for Works by more than 15%.</p> <p>In line with the councils CPRs this contract could therefore be modified by a maximum of £339,000. Adding this to the outstanding budget of £456,241.12 would give a remaining budget of £795,241.12</p> <p>If the service want to consider both 12 month extensions and the total additional spend is likely to be greater than £795,241.12 for this period they will need to complete an exemption report seeking an exemption to the CPRs as long as the total contract value remains below the Works threshold of £5,372,609 including VAT.</p> <p>It is recommended that the first 12 month extension period is enacted whilst the service seeks approval for additional funding to prevent the contract expiring. As this is a framework agreement no works are guaranteed to the providers, so if the additional funding cannot be approved call-offs would cease once the budget envelope is used.</p> <p>Ankur Patel Interim Category Manager Commercial Procurement Unit</p>
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Has the relevant Legal Officer confirmed that the recommendations within this report are lawful and comply with the Council's Constitution?	Yes
Has the relevant Finance Officer confirmed that any expenditure referred to within this report is consistent with the Council's budget?	Yes
Are any of the recommendations within this report contrary to the Policy Framework of the Council?	No

Background Papers under Section 100D of the Local Government Act 1972: there are none.

Report author sign-off	Ayshia Akhtar
Role	Commissioning Manager Older Age Adults
Date of sign-off	21 st November 2024

Approval	
Officer approval sign-off	Jayne Ratcliffe 
Role	Director of Adult Social Care (DASS)
Date of sign-off	13 th December 2024

Approval	
Member(s) approval sign-off	Cllr Barbara Brownridge 
Role	Lead Member for Adults Health and Social Care
Date of sign-off	16.12.24