

Sandwell Metropolitan Borough Council

Action To Be Taken Under Delegated Powers Exemption from Procurement and Contract Procedure Rules

Recommendations for HVAC System at Roway Lane and Final Resolution of Litigation Case

1. Summary Statement

- 1.1. This exemption is being sought to retain the services of the current HVAC maintenance company during the final resolution of the litigation case against the landlord for defective design / construction of the heating, ventilation and air conditioning (HVAC) system installed in Roway Lane. Also, for the period in which the Council's HVAC legal expert's corrective actions and recommendations for current occupancy and building layout are considered and programme of works carried out.
- 1.2. Summary
- 1.3. An exemption is being sought to the Procurement and Contract Rules to enable the Council to fulfil its HVAC system maintenance obligations during the resolution of the litigation case costs and whilst the HVAC Legal Expert's recommendations are considered, a suitable contractor is appointed and corrective works are carried out.
- 1.4. To continue to use existing contractor Norvent to fulfil service and maintenance obligations including callout for breakdowns for a period of six months whilst the above matters are resolved.
- 1.5. This will minimise the risk of any complications arising from using the services of a new contractor who would be unfamiliar with the HVAC system at Roway Lane whilst the remedial works are carried out.
- 1.6. Services of HVAC maintenance contractor estimated to be £20,000.

- 1.7. The Procurement Services Manager has been consulted who advised that a six month extension would allow sufficient time for a procurement process to be undertaken.
- 1.8. In accordance with the Council's Procurement and Contract Procedure Rules (Rule 15.5), an exemption from any Rule may be endorsed by the Section 151 Officer where they are independent from the original decision making process, confirming that they are satisfied that the exemption is justified by special circumstances. The report must be approved by the Cabinet Member for Core Council Services.

2 Recommendation

- 2.1 That Norvent be retained as maintenance contractor whilst this matter is finally resolved with estimated costs of £20,000.
- 2.2 That the exemption is for a six month period to reflect the period of time granted by the Court for the latest Stay in proceedings, which is 31st January 2017 and to enable the Council to complete the corrective actions and recommendations as documented by the Council's appointed HVAC expert.
- 2.3 That any necessary exemptions be made to the Council's Procurement & Contract Procedure Rules to enable the course of action referred to in 2.1 and 2.2 above to proceed.

In accordance with the Council's Procurement and Contract Procedure Rules, I intend to take the action(s) recommended above.

I ~~do~~/do not have an interest to declare in this matter



Darren Carter
Interim Director of Resources

Date: 5-1-2017

I do/^{not}~~do not~~ have an interest to declare in this matter



Jan Britton
Chief Executive

Date: 9/1/17

I ~~do~~/do not have an interest to declare in this matter



Cllr. Trow
Cabinet Member for Core Council Services

Date: 5 JAN 2017

Contact Officers

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3 Procurement Implications

- 3.1 A further Stay in the Court proceedings has been granted until 31st January to enable the Council to resolve case costs. In addition the Council's HVAC legal expert has submitted findings, actions and recommendations for the heating, cooling and air supply capacities for the current building layout and occupancy.
- 3.2 To enable the Council to fulfil system maintenance obligations including callout for breakdowns until the HVAC dispute is fully resolved and the recommendations completed, an exemption is required to retain Norvent as maintenance contractor. This is to minimise the risk of any future complications and ensure the system continues to work efficiently whilst the remedial works are completed. Norvent have detailed knowledge of the system and will be able to assist the appointed contractor to carry out the remedial works. Therefore avoiding any delays or additional costs.
- 3.3 Once the required alterations have been made to the system a HVAC service & maintenance contract will be procured in accordance with the Council's current Procurement and Contract Rules.

4 Background Details

- 4.1 The HVAC system installed at Roway Lane provides heating, ventilation and air conditioning to offices throughout the building.
- 4.2 Ongoing issues have been experienced with the HVAC system since the building was handed over in October 2008. In addition since occupying the building the Council has carried out various alterations to the internal accommodation in order to maximise office accommodation and building occupancy.
- 4.3 Legal Services originally submitted a Particulars of Claim to the Court to meet the limitation date for this matter on 27th October 2014. Legal Services subsequently requested a stay in proceedings to resolve the matter amicably and avoid expensive Court costs. The Court granted this stay and subsequent extensions to enable works to be completed.

- 4.4 Following the initial Court submission all parties addressed their minds to the issues to progress the matter and despite unforeseen difficulties and delays which meant works did not progress as quickly as expected, works have finally been completed and the system balanced.
- 4.5 The Council's HVAC expert witnessed the balancing of the system on 20th July. At the conclusion of the witnessing all parties agreed a final check should be taken in the heating (winter) season to verify offices could attain the required temperatures. This check was carried out on 24th October and the Council's expert verified the HVAC system at Roway Lane was attaining its original design potential.
- 4.6 Subsequently, Legal Services have applied for a further stay in Court proceedings to resolve the Council's costs in this litigation case against the landlord. The Court approved the stay, which expires on 31st January 2017.
- 4.7 The case against the landlord is for the defective design / construction of the heating, ventilation and air conditioning (HVAC) system installed in Roway Lane in 2008. Since this date the Council has made alterations to the building to maximise office accommodation and building occupancy. Therefore the HVAC expert was asked to consider the capacity of the system in terms of the current building layout and occupancy.
- 4.8 The expert has submitted revised calculations for the heating, cooling and air supply capacities along with his findings and recommendations for the current use of the building. The required changes and adjustments to the system are Sandwell Council's responsibility. This information is to be analysed and issues to be addressed. A contractor will be sought in accordance with the Council's Procurement & Contract rules to carry out the required remedial works.
- 4.9 To enable the Council to fulfil its service & maintenance obligations whilst the litigation case is resolved and remedial works are completed an exemption is requested to continue to use the existing contractor.

- 4.10 The indicative value of anticipated work (servicing both minor and major, plus breakdown and repairs) during the six month period stated is estimated to be approximately £20'000.
- 4.11 Norvent was retained as maintenance contractor whilst the HVAC dispute was resolved, as they have detailed knowledge of the whole system. It is essential that Roway Lane has a maintenance contract in place for breakdowns and callouts especially during the winter season.
- 4.12 Appointing a new maintenance contractor before the remedial works are carried out may be risky as complications could arise. A new contractor will not be fully familiar with the system and the Council will also not have had time to measure their performance. In order for the Council to complete these works quickly and without complications.
- 4.13 Using Norvent until the recommended HVAC remedial works (for current occupancy and building layout) are carried out will minimise the risk of any future complications and ensure the system continues to work efficiently. Norvent will be able to provide the necessary support and guidance to the contractor appointed to carry out the remedial works, which will help avoid unnecessary delays or costs. During the previous HVAC works, we did experience some issues as a result of different contractors working on the HVAC system, where support or a quick response from Norvent was necessary to resolve issues to enable the works to continue.

5 Source Documents

- 5.1 Qoda Consulting findings, actions and recommendations for Sandwell Council, which fall outside the scope of the Litigation case, following alterations made to the building and increase in occupancy levels.

5.2 Court Order confirming the claim has been further stayed until 31st January to enable the Council to resolve case costs.

