

Sandwell Metropolitan Borough Council

**Exemption in accordance with Procurement and Contract
Procedure Rules**

Lift Maintenance Services

1. Summary Statement

1.1. Exemption being sought

1.2. An exemption is required for interim provision to be provided to deliver a lift maintenance service, including emergency breakdown provision, to all lifts/lifting aids within the Borough.

1.3. Summary

1.4. The Council currently has emergency provision in place with Deltron Lifts Limited and Dolphin Lifts Midlands Limited for a period of one month with the option to extend until the situation has been resolved and formal contracts are in place for the planned and reactive maintenance to lifts in high rise dwellings, Public Buildings/Schools and domestic residences.

1.5. The emergency provision was approved via a previous exemption of 27th September 2019.

1.6. Owing to further queries received during the current emergency provision, in consultation with Legal Services, it has been established that we are unable to form new contracts and that it would be in the Councils best interest to abandon the current procurement process that was being undertaken and re-procure the works.

1.7. In order to ensure continuity of services, interim arrangements are necessary to cover the period between expiry of the current emergency arrangement and commencement of the new contracts.

- 1.8. It is proposed to award an interim arrangement with Deltron Lifts Limited and Dolphin Lifts Midlands Limited for a period of five months, which will afford the Council sufficient time within which to re-procure the works.
- 1.9. The approximate value of the proposed five-month arrangement is £180,000.
- 1.10. A further EU compliant procurement will now commence and will run in parallel with the interim arrangement with a view to new contracts commencing in April 2020.
- 1.11. In accordance with the Council's Procurement & Contract Procedure Rules (Rule 15) an Exemption from any rule for a contract between £50,000 and £250,000 must be approved by the relevant Chief Officer and Chief Finance Officer (S151) following endorsement by the Procurement Services Manager. An Exemption request can only be approved by the Chief Finance Officer (S151) where they are independent from the original decision-making process. Where the exemption applies to a service that is the responsibility of the Chief Finance Officer then the exemption must be approved by the Chief Executive in his or her place.
- 1.12. The Procurement Services Manager has been consulted and their advice is to award an interim arrangement to both Deltron Lifts Limited and Dolphin Lifts Midlands Limited for a period of five months which will enable the works to be re-procured, awarded and commence in April 2020.

2 Recommendation

- 2.1 That an interim arrangement be awarded to Deltron Lifts Limited for Lots 1 and 2 works and to Dolphin Lifts Midlands Limited for Lot 3 works for a period of five months at a value of approximately £180,000 to deliver its lift maintenance service across various tenure to include emergency breakdown cover.
- 2.2 That any necessary exemptions be made under the Council's Procurement & Contract Procedure Rules to enable the course of action referred to in 2.1 above to proceed.

I confirm that the action(s) recommended above comply with the Council's Procurement and Contract Procedure Rules (Rule 15):

[Redacted]

Haley Macmichael
Procurement Services Manager
Date: 28 October 2019

In accordance with the Council's Procurement and Contract Procedure Rules (Rule 15), I approve the action(s) recommended above:

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

[Redacted]

Alan Caddick
Director – Housing and Communities
Date:

In accordance with the Council's Procurement and Contract Procedure Rules (Rule 15), I approve the action(s) recommended above:

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

[Redacted]

Darren Carter
Executive Director - Resources (S151 Officer)
Date: 4-11-2019

Contact Officers

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Name of Legal Officer where required

Jay Bola
Principal Solicitor
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3 Procurement Implications

- 3.1 A procurement process has been undertaken to procure lift maintenance services; Deltron Lifts Limited and Dolphin Lifts Midlands Limited offered the Council best value for money and have been awarded contracts for a period of 4 years.
- 3.2 Those contracts would have normally been executed on successful completion of a 10-day standstill period, which is required under the provisions of the Public Contract Regulations 2015.
- 3.3 The queries received from one of the suppliers that was unsuccessful in the tender process have caused several delays in proposed contract awards and in addition have now presented the Council with a risk of formal legal proceedings being tabled. Having consulted with Legal Services and in order to protect the interest of the Council, it was decided to abandon the current procurement process and re-procure the works.
- 3.4 In order to ensure continuity of services, interim arrangements are necessary to cover the period between expiry of the current emergency provision and commencement of the new contracts.
- 3.5 Deltron Lifts Limited and Dolphin Lifts Midlands Limited have been identified via the tender process as offering best value for money to the Council and each have agreed to offer interim cover at their tendered rates.
- 3.6 The Council's Procurement and Contract Procedure Rules section 15.8 allows for a procurement without further competition in circumstances where there is an emergency requirement.
- 3.7 The cost of this interim cover is below the thresholds set out in the Public Contracts Regulations 2015.

4 Legal and Statutory Implications

- 4.1 The Public Contracts Regulations 2015 do not apply as the cost of the interim cover is below EU thresholds. The Council's Procurement and Contract Procedure Rules section 15.8 allows for a procurement without further competition in circumstances where there is an emergency requirement.

5 Background Details

- 5.1 At its meeting of 28th August 2019, Cabinet approved the award of contracts to Deltron Lifts Limited (Lots 1 and 2) & Dolphin Lifts Midlands Limited (Lot 3).
- 5.2 Lot 1 includes the cyclical servicing, maintenance, breakdowns, repairs to all traction and hydraulic passenger/goods lifts in accordance with the installations as detailed within tender document and service and maintenance schedule. Lot 1 comprises 102 lifts and equipment to the high-rise flats sited within the six towns of the borough of Sandwell.
- 5.3 Lot 2 includes carrying out regular maintenance, service, breakdowns, repairs to passenger/ goods lifts, stair lifts platform lifts and other lifting aids sited within Public Buildings and Schools to be undertaken upon each installation on a monthly/Quarterly/Annual or six-monthly basis. Lot 2 comprises 157 lifts and equipment.
- 5.4 Lot 3 includes carrying out service, repair, maintenance, removal and reinstatement of powered lifting aids sited within council/private residential properties. Lot 3 comprises 1,153 powered lifts and equipment.
- 5.5 All Lots include provision for a 365-day, 24 hours emergency breakdown Service.
- 5.6 In accordance with the Public Contract Regulations 2015, all tendering contractors were contacted notifying them of the outcome of the procurement exercise, which includes the provision of a ten-day standstill period.

- 5.7 During the standstill period correspondence was received from the solicitors of the incumbent Contractor, Lift and Engineering Services Limited (LES), which posed various questions around the award of contract and requested an extension to the standstill period, which required a response.
- 5.8 The correspondence was reviewed by both the Procurement Services Manager and Legal Services and contained very little substance and was therefore responded to accordingly. The response included provision to re-issue contract award correspondence and confirmed that a new 10-day standstill period would commence.
- 5.9 As the current contracts expired on 30th September, before the new standstill period expires, this meant that as at 1st October the Council would have no contractual provision in place to manage the lifts/lifting aids to various tenure within the Borough.
- 5.10 Emergency provision was duly arranged with both Deltron Lifts Limited (Lots 1 and 2) and Dolphin Lifts Midlands Limited (Lot 3) for a period of one month with the option to extend until the situation had been resolved and formal contracts were in place.
- 5.11 During this period further correspondence was received from the solicitors of the incumbent Contractor, LES, which posed further questions around the award of contract.
- 5.12 The correspondence was reviewed by both the Procurement Services Manager and Legal Services and as a result of the potential risk that legal proceedings may pose to the Council, it was agreed that the procurement process be abandoned and that a further procurement exercise be undertaken.
- 5.13 In order to ensure continuity of services, interim provisions are necessary to cover the period between expiry of the emergency provision and the commencement of new contracts.

6 Alternative Options

- 6.1 Officers have approached both Deltron Lifts Limited and Dolphin Lifts Midlands Limited to establish if they'd be willing to undertake an interim arrangement for a period of five months until such time

that the situation has been resolved and permanent contracts are in place. This would be on the same terms and conditions as those tendered.

- 6.2 Both Deltron Lifts Limited and Dolphin Lifts Midlands Limited has confirmed that they would be willing to undertake the interim arrangement.
- 6.3 Should 6.2 have not been confirmed, alternative arrangements would have to have been sourced through framework arrangements currently available to the Council.

7 Source Documents

Cabinet 28th August 2019 - Lift Maintenance Services – Minute 107/19

Exemption Report 27th September 2019 – Lift Maintenance Services

