

## London Borough of Hammersmith & Fulham

**Report to:** Strategic Director of Economy

**Date:** June 2020

**Subject:** Amendment to Electrical Testing and Works Contract

**Report of:** Richard Buckley, Assistant Director of Property and Compliance, The Economy.

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### SUMMARY

A Cabinet Member Decision (CMD) on 14 March 2019 awarded an electrical services contract to McIntyre (Electrical) Limited. It authorised a budget of £625,000, for a contract period of fifteen months. However c£1.1m has been spent to date outside the original contract value, for reasons that the report fully sets out. In March 2019 Cabinet authorised to extend the contract until 31<sup>st</sup> July 2020, (an authorisation to extend *all* Interim Model contracts), but the authorised 25% contract value did not cover expenditure already spent in this contract. Hence the need for further authorisation based on a more thorough analysis of this contract and a more accurate forecast of future spend.

The contract expired on 17<sup>th</sup> April 2020. Accordingly, there is a need to extend it until all current orders are completed, which is anticipated to be around December 2020, allowing it to run in parallel with the new electrical testing and works contract that starts 1 August 2020. This is because current orders have been delayed and put on hold pending the lifting of the Covid-19 restrictions when it is safe to commence works again.

The report in that light seeks approval of the budget overspend identified and of further expenditure to a total contract value of £2,160,000, and for a further contract extension to 31<sup>st</sup> December 2020. This further extension will only be for current orders already placed and, other for emergency out of hours support until the 31<sup>st</sup> July, no new orders will be placed with the Contractor.

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### RECOMMENDATIONS

1. To note that Appendix C is not for publication on the basis that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information) as set out in paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended).
2. To ratify the increased value of the contract with McIntyre Electrical Services Limited, which exceeded the original approval by £842,455 by the end of March 2020.

3. Approve a modification to the Contract with McIntyre Electrical Services Limited for electrical testing and associated remedial works in relation to current orders (as set out in Appendix A and Appendix B) to be completed by no later than 31<sup>st</sup> December 2020. This represents a future spend of £692,545 and a resulting total contract value of £2,160,000.
4. To extend the Contract with McIntyre Electrical Limited as follows:
  - from 18<sup>th</sup> April to 31<sup>st</sup> July for all Council out of hours emergency works as and when they arise; and
  - from 18<sup>th</sup> April until such time as the Orders listed in Appendix A and Appendix B are completed or on 31<sup>st</sup> December whichever is the sooner in respect of the Orders already placed with the Contractor.

**Wards Affected:** All

#### H&F Priorities

Our Priorities	Summary of how this report aligns to the H&F Priorities
<ul style="list-style-type: none"> <li>• Building shared prosperity</li> </ul>	No impact.
<ul style="list-style-type: none"> <li>• Creating a compassionate council</li> </ul>	The contract for electrical testing and works has a significant impact on the safety of residents of the Councils housing stock. The purpose of the contract is to carry out periodic testing of electrical safety and to rectify any issues found. The contract is also key to rectifying electrical issues identified by Fire Risk Assessments.
<ul style="list-style-type: none"> <li>• Doing things with local residents, not to them</li> </ul>	Amending the contract so that McIntyre completes the work programme means less disruption for residents. Bringing in another contractor to complete the work might confuse residents with a new, unfamiliar company seeking access to their homes (which is generally something that residents ask us to avoid).
<ul style="list-style-type: none"> <li>• Being ruthlessly financially efficient</li> </ul>	It is in the Council's financial interests to amend the contract and have McIntyre complete the work programmes that are Work In Progress, rather than seek a new contractor to complete the work. Attendance

	and certificate fees have already been paid to McIntyre for the part of the incomplete work so using another contractor would risk double payment or require the Council to seek a repayment from McIntyre, which might require legal action.
<ul style="list-style-type: none"> <li>• Taking pride in H&amp;F</li> </ul>	Under this contract, some of the Council's electrical assets has been upgraded and modernised, for example through the installation of wireless bases.

### Legal Implications

This report recommends that the Council ratifies the increased contract value of £842,455 by the end of March 2020. Approval should have been obtained prior to this increase, but the services were considered to be a matter of urgency. Therefore, the recommendation is to note and ratify the increase in value that has already taken place.

This report also recommends that the Council approves a modification to the Contract to allow a future spend of £692,545 and an extension to the Contract. The Contract has a total value of £2,160,000 which is below the EU threshold for Works Contracts (which is £4,753,252). As such the Public Contracts Regulations 2015 do not apply in full and therefore the modifications proposed are not caught by the PCR.

The contract was procured through the Fusion 21 framework with an initial estimated value of approximately £625,000. This is considerably lower than the final contract and therefore the final contract value has not been exposed to competition. The decision maker will need to consider value for money considerations in light of this.

It should be noted that there is no contractual mechanism in the contract to extend the contract and accordingly this contract far exceeds the original contract procured. Any extension is by agreement between the parties.

As the contract far exceeds the original value it is important that the cost of the extension is contained, and the extension only covers completion of current orders and the emergency out of hours service. No new orders should be placed as this will increase the value of the works further. It should also be noted that a proportion of the extension period is as a direct result of the impact of Covid-19 on the service. This extension is for Covid related reasons and is being permitted in line with the Procurement Policy Notice 02 (PPN 02/20).

A deed of variation will be agreed with the Contractor to reflect the above, limit the extension and ensure that the extended period expires no later than 31<sup>st</sup> December 2020.

*Implications verified/completed by: Sally Stock, Partner, Sharpe Pritchard LLP, external legal advisers seconded to the Council, sstock@sharpepritchard.co.uk*

## FINANCIAL IMPLICATIONS

In March 2019, the Cabinet Member for Housing approved revenue spend up to £500,000 in 2019/20 and a further £125,000 in 2020/21 on the contract with McIntyre Electrical Limited.

The nature and total of actual costs to the end of March 2020 (including accruals) are set out in the table below. This shows that although the revenue budget has not been exceeded, the total spend including capitalised costs significantly exceeds the approved contract value of £500,000 for 2019/20. The reasons for the overspend are set out in paragraph 1.2.

<b>2019-20 Expenditure: McIntyre Electrical Ltd</b>	<b>Revenue</b>	<b>Capital</b>	<b>Total</b>
	<b>£000s</b>	<b>£000s</b>	<b>£000s</b>
Electrical Testing and works	239	682	921
Fire Risk Assessment works	225	322	547
<b>Total Spend</b>	<b>464</b>	<b>1,004</b>	<b>1,468</b>

This report requests retrospective approval for the spend incurred and approval that the contract value be increased to £2,160,000. This means a further spend of up to £692,000 during the nine months to 31<sup>st</sup> December 2020.

These additional costs will be funded from existing revenue and capital budgets within the Housing Revenue Account and Housing Capital Programme respectively.

Although section 4 of this report provides indicative figures on the nature of the spend, it is not possible to accurately state at this stage the exact revenue / capital split of the further spend of up to £692,000. However, based on the ratio of the costs of different types of spend to the end of March 2020, it is estimated that forecast revenue and capital spend could be £202,000 and £490,000 respectively.

The current approved revenue budget within the Housing Revenue Account for 2020/21 includes a provision of £500,000 for “electrical” repairs contractors. Based on the estimated revenue spend of £202,000, this budget should be sufficient to cover the costs of the contract with McIntyre Electrical Ltd.

However, there may be other procurements and other electrical works costs outside of this contract which may result in additional calls on the £500,000 budget or other budgets contained within the current £22.2m budget envelope available for the Long Term Repairs Model procurement. There is therefore a risk that overspends may arise during the year resulting in a call on the HRA General Reserve.

Within the Housing capital programme, these costs are expected to be funded from the Automated Fire Detection and Fire Risk Assessors programme budget for 2020/21 which are £900,000 and £500,000 respectively. These budgets will need to be closely monitored during the financial year as they are not exclusively for this contract.

As part of the procurement process, a credit report has been obtained for McIntyre as at 22<sup>nd</sup> April and the credit rating of 64 suggests a low risk to the Council. Finance officers have obtained a copy of the final accounts for McIntyre Electrical Ltd for the year ended 31<sup>st</sup> March 2019 and analysis of this document suggests a contract limit of £4.141m and turnover of £10.784m, both of which are sufficient for the value of the proposed contract.

Once this contract is in place, finance officers will work closely with the service to ensure costs are closely monitored and that the necessary action is taken to contain spend within the approved budget envelope. Controls have been put in place that ensure that payments are only made on production of electrical certificates and Finance officers will also take part in the final account process following expiry of the contract to ensure that the Council has received value for money.

*Implications completed by: Danny Rochford, Head of Finance (The Economy) 020 8753 4023.*

*Implications verified by: Emily Hill, Assistant Director, Finance.*

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#### **Background Papers Used in Preparing This Report - Published**

Cabinet report: 'Procuring and delivering a long-term Repairs and Maintenance model for Hammersmith and Fulham', 7<sup>th</sup> October 2019.

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## REASONS FOR DECISION

- 1 A Cabinet Member Decision (CMD) report of 14/03/2019 recommended that the Cabinet Member for Housing approve the Award of a term contract for Electrical Testing and Certification to McIntyre Electrical Limited for a period of 12 months from 17<sup>th</sup> April 2019, with provision for an extension of up to three months.
- 2 This CMD stated that the total cost of the contract would not exceed the estimated value of £625,000 for the full 15-month period.
- 3 At the end of March 2020 McIntyre had completed work worth a total of £1,467,455. The 15-month contract value of £625,000 had been exceeded in 7.5 months (the contract started in mid-April).
- 4 There are a number of reasons for the expenditure on the McIntyre contract being much higher than anticipated when the CMD was written in March 2019. In summary, there has been a much greater volume of additional tasks outside the scope of the original specification, than had been anticipated in the original CMD.
- 5 The original CMD paper did signal that there would be work that falls outside of the scope of the specification “as needed to comply with [the Council’s] landlord obligations and corporate commitments”. The value of this work was estimated at £139,050, but more than £1.1m has been spent on out of scope works to date.
- 6 The 18<sup>th</sup> edition electrical regulations came into force in January 2019. As new checks are done substantive works are often required, given the age of our stock. For example, in the last 12 months we have replaced over 595 consumer units (fuse box) with updated circuit breakers that activate in thousandths of a second to prevent electrocution or overheating.
- 7 The additional volume of out of scope work, and expenditure, has been for reasons of Fire Safety and fulfilling the Council’s landlord obligations. Further detail is provided below.

### **Electrical work resulting from Fire Risk Assessments**

- 8 After the contract commenced in April 2019, McIntyre were given the additional task of carrying out electrical work resulting from Fire Risk Assessments (FRAs). Electrical testing in line with the latest regulations (18<sup>th</sup> edition came into force January 2019) and installation and upgrade of emergency lighting was a major part of this work. This decision was taken to comply with the law and enhance the Fire Safety of our properties and to maximise the value of McIntyre’s visit to the property (reducing the need for further visits)
- 9 This was an additional ask outside the scope of the original specification and therefore not taken into account in the original CMD paper.
- 10 By the end of March 2020 McIntyre had carried out FRA work at a cost of £540,233.53.

### **Smoke and Heat Detector Replacement**

- 11 After the contract commenced in April 2019, McIntyre were given the additional task of replacing all smoke and heat detectors located in properties while they were carrying out the electrical testing, where the unit was identified to have a remaining life of less than one year. This decision was taken to ensure we remain legally compliant and protect our residents by enhancing the Fire Safety of our properties and to maximise the value of McIntyre's visit to the property (reducing the need for further visits).
- 12 This was an additional ask outside the scope of the original specification and therefore was not taken into account in the original CMD paper.
- 13 See Exempt Appendix C section 4.1 and 4.2 for further details of prices and costs.

### **Installation of wireless bases**

- 14 These units enable the non-hardwired detectors to communicate with the hard-wired detector in the flat.
- 15 See Exempt Appendix C section 5.1 for further details of prices and costs.

### **M&E specialist electrical work**

- 16 The post-Mitie contracts did not take into account communal electrical works beyond the customer's meter. This was a major omission as the Council's DLO has not been equipped to carry out many standard electrical works required in communal areas and has absolutely no Out of Hours capability. McIntyre stepped in to provide in-hours support to the DLO and out-of-hours cover in its entirety.
- 17 See Exempt Appendix C section 6.1 for further details of prices and costs.
- 18 These last 3 areas of work alone account for around £452,000\* of additional spend, and explain why the Electrical Testing spend, forecast to be £361,000 a year in the original CMD, stood at £927,222 at the end of March 2020. Combined with the £540,233 spent on FRA works, the total spend to date of £1,467,455 can thus be understood.

*\* There are other smaller areas of out of scope work that account for the remaining c£100,000.*

- 19 There is therefore a need to seek authorisation for additional expenditure to be spent on the McIntyre contract for the remainder of its duration. For reasons explained below, it is proposed to extend the contract to the end of December 2020.

## **PROPOSAL AND ISSUES**

### **Forecasting future spend**

- 20 See Exempt Appendix C section 1 for the factors that inform the estimate for future spend. This includes commercially sensitive information (prices) and so is exempt.
- 21 All of these factors mean that the Service estimate that a further £692,000 will be spent on the McIntyre contract. See Appendix C section 1.8 for a breakdown of this estimate.
- 22 This would take overall contract spend to £2,158,505.

### **Contract Extension and extension of time to complete the Orders**

- 23 See Exempt Appendix C section 2 for details of the time required to complete the outstanding order
- 24 There is estimated to be 4 months of work outstanding.
- 25 A new set of long term (5 year) contracts are currently being procured to replace the Interim Model contracts, including a contract for electrical works to replace the Macintyre contract. These long-term contracts are being procured to start on 1<sup>st</sup> August 2020.
- 26 The long-term electrical works contract will take over the FRA works from 1<sup>st</sup> August. They will also continue the electrical testing programme, testing properties due for testing after 1<sup>st</sup> August.
- 27 The proposal is to allow McIntyre until no later than December 31<sup>st</sup>, 2020 to complete all outstanding Orders. The service considers this to be sufficient time for McIntyre to complete the four months of work that is required, allowing for a 50% fall in productivity caused by the Covid 19 crisis.
- 28 There is already Cabinet authorisation to extend the McIntyre contract (as one of the Interim Model contracts) by three months to 31<sup>st</sup> July 2020. This authorisation envisaged that such an extension would require a 25% contract value increase, but as laid out in this paper, this was to underestimate the expenditure on this contract.

### **Proposal**

- 29 The proposal is to:
- authorise an extension of the McIntyre Contract, until 31<sup>st</sup> July 2020 for Emergency out of hours provision; and
  - authorise an extension of the contract to enable only those Orders as set out in Appendix A and Appendix B to this report to be completed such extension until the earlier of either the completion of the Orders or 31<sup>st</sup> December 2020; and
  - no further Orders to be placed with the Contractor;
  - to approve the additional spend of £1,535,000; and
  - finalise the above in a deed of variation to be entered into between McIntyre and the Council.



## **Lessons learned**

- 30 As laid out above, the works carried out by McIntyre far exceeded those envisaged by the original CMD.
- 31 This is primarily due to the change in electrical regulations requiring the upgrade of aged assets both inside flats and in the communal area (outside the expertise of the DLO), the identification that fire detection inside homes is near its end of life and emergency lighting and other FRA works were urgently needed to comply with the law, protect residents and the need to deliver on the Council's Fire Safety Plus policy. While the original CMD did envisage out of scope spend to fulfil "landlord obligations and corporate commitments", the extent of this was vastly underestimated. One reason for this was the very short time frame in which the post-Mitie contracts were procured.
- 32 The consequence of the overspend is that more than £500,000 of electrical works recommended by Fire Risk Assessments have been carried out and hundreds of new smoke and heat detectors have been installed. The safety of the Council's properties has certainly been enhanced. The installation of new wireless bases has modernised the Council's asset and reduced future repair expenditure. Having a service to cover the gaps in the DLO's capability (not least the lack of an Out of Hours capability) has meant that electrical shut downs on blocks have been addressed much more quickly, reducing resident inconvenience (and risk) and preventing complaints.
- 33 See Exempt Appendix C section 3 for more lessons.
- 34 The new electrical contract currently being procured is a much better reflection of what the service needs to fulfil its post-Grenfell obligations. The scope is more comprehensive, and the pricing schedule has been designed to subject all anticipated spend to price competition during the tender. The service is much better equipped to be able to forecast the annual spend on the new contract much more accurately and reflect this in the CMD that will award the contract.
- 35 There will also be greater focus on mobilising this contract well. A strong mobilisation that sets clear expectations about ways of working, and the payment process, will facilitate tighter control on future spending.
- 36 It was always acknowledged that setting up new contracts to replace Mitie in such a short time window involved a level of risk, but that the 'Interim Period' represented a chance to learn valuable lessons to ensure that the long-term contracts would deliver excellent services and value for money.

## **Equality Implications**

- 37 There are no direct negative implications for groups with protected characteristics, under the Equality Act 2010, related to the proposals outlined in this report.

*Implications verified/completed by: Fawad Bhatti, Policy & Strategy Officer  
Public Services Reform, Hammersmith & Fulham Council. Tel: 07500  
103617*

## **Risk Management Implications**

- 38 Proposals seek to address the issue of continuity of service during the COVID 19 outbreak and to avoid minimal disruption to residents during this period. Measures being implemented, as outlined in section 7.5, provide additional assurance that costs are in accordance with tendered prices. A procurement of the service is being undertaken to ensure that the Council achieves best value and the highest quality of service to maintain the safety of electrical systems which it is responsible for.

*Risk Management Implications verified by Michael Sloniowski, Risk Manager, 020 8753 2587*

## **Procurement Implications**

- 39 The electrical testing and work contract that had been awarded to McIntyre Electrical Services Ltd (McIntyre) expired on 17<sup>th</sup> April 2020. Any extension or modification should have been put in place before the contract expired. It is advised that the service area work closely with legal to ensure that the Council has the appropriate arrangement in place.
- 40 In accordance with Contract Standing Orders the following requirements would normally need to be met.

### Extension of contract

- 41 The Electrical testing and work contract is a below threshold contract. The author of the report has proposed that an extension of the McIntyre Contract is approved for the period of 17<sup>th</sup> April until 31<sup>st</sup> July 2020 for Emergency out of Hours provision. Also an extension for the rest of the contract to 31<sup>st</sup> December 2020 to ensure that a contract is in place through which the uncompleted orders can be paid (some of which have been part paid – Appendix A) and instructions can be placed.
- 42 This represents a future spend of £692,545 and a resulting total contract value of £2,160,000. For below threshold contract extensions, Contract Standing Orders (CSO) 25.1 states that they are treated in the same way as modifications under CSO 24.3. They are approved by the SLT Member in consultation with the Cabinet Member as the value of the proposed extension is 10% or more of the current contract value.

### Modification

- 43 The author of the report has proposed a modification to the Contract with McIntyre for electrical testing and associated remedial works is approved. This modification of the contract is to take into account the delays on the Orders and the impact of Covid-19.
- 44 For all High Value Works Contracts below the Works Threshold (currently £4,733,252) where the proposed change in value is modifying the current value by +/-10% or more, approval shall be sought from the relevant SLT Member in consultation with the relevant Cabinet Member in accordance with CSO 24.3.1.1. which states that the cumulative value of the modification

plus any other previous modifications do not increase the total contract value so that it exceeds the Relevant Thresholds.

*Implications completed by: Joanna Angelides, Procurement consultant, 0208 753 2586*

### **ICT Implications**

- 45 There are no IT implications arising from the proposal in this report.
- 46 A Privacy Impact Assessment was completed on Jan. 21, 2019, covering the Electrical Testing Contract. The McIntyre contract falls under this PIA however it is recommended that the PIA be reviewed by the service to ensure it remains an accurate reflection of data protection requirements.
- 47 If not already included in the contract with McIntyre, the extension should include H&F's data protection and processing schedule. This is compliant with the General Data Protection Regulation (GDPR). Suppliers are expected to have a GDPR policy in place and all staff are expected to have received GDPR training.

*Implications completed by Karen Barry, Strategic Relationship Manager, tel: 0208 753 3481.*

### **Consultation**

- 48 No external consultation was carried out during the original procurement of the electrical testing and works contract because of the very tight timeframes following the termination of the Mitie contract in October 2018. Leaseholder consultation is part of the procurement of the Long-Term contract (the contract that will start in August 2020). For the Long Term contract, the first part of the Leaseholder consultation was carried out from 13<sup>th</sup> September 2019 to 18<sup>th</sup> October 2019, presenting the suggested lot structure and approach to procurement. No issues were raised by leaseholders. The second part will take place in mid-May 2020, with leaseholders being advised of the award decision, and an opportunity to ask questions and provide feedback provided to them. The minimum time for this consultation is 35 working days.

### **List of Appendices**

Appendix A – Outstanding work programme: Tranche A properties

Appendix B – Outstanding work programme: Tranche B properties

Appendix C – Exempt element