## **EXECUTIVE DECISION NOTICE**

SERVICE AREA:	ADULT SERVICES
SUBJECT MATTER:	FRAMEWORK OF CONTRACTORS TO PROVIDE ADAPTATIONS FOR DISABLED PEOPLE - VARIATION TO CONTRACT TO INCREASE RATES
DECISION:	That it be DETERMINED that approval is given under Procurement Standing Orders 9.3.1 to increase the existing rates within the framework contract by 10%.
DECISION TAKER(S):	Councillor Eleanor Wills
DESIGNATION OF DECISION TAKER (S):	Executive Member for Adult Social Care and Health
DATE OF DECISION:	11 August 2021
REASON FOR DECISION:	<ol> <li>The contract has provision for the tendered rates to be amended during the contract;</li> <li>No previous rate rise has been agreed;</li> <li>The rates require review following the effects of the pandemic, Brexit and global shipping costs.</li> </ol>
ALTERNATIVE OPTIONS REJECTED (if any):	1. Not to increase the rates would probably result in contractors withdrawing from the contract leaving no choice but to abandon the contract. This would mean a return to individual quotes per scheme leading to increased delivery times. Quotes would be based on current prices so costs will still rise but it is not possible to determine by how much.
	2. Ignore requests for the suggested increase and offer a rate consistent with a single year rate. This would probably again lead to contractors withdrawing and leave no choice but to abandon the contract. A return to individual quotes per scheme would increase delivery times. Quotes would be based on current prices so costs will still rise but it is not possible to determine by how much.
	3. Retender the contract. This is a lengthy process and would not alleviate immediately the issues of the contract rates. Preparation for a new tender to be procured in 2022 is currently underway.
CONSULTEES:	None
FINANCIAL IMPLICATIONS: (Authorised by Section 151 Officer	The financial implications for the preferred option within this paper will add an additional cost to the framework between £90k and £150k over the next 12 months. This is dependent upon the number of schemes approved during that time.
	The funds used to support this increase in rates will be within the allocation of DFG funds allocated by MHCLG and DoH and will not affect the Councils budget. Although this allocation has risen consistently over the previous five financial years it cannot be guaranteed this will continue. The contract states

	<ul> <li>the Council does not have to place any orders with the winning contractors so should the allocation reduce, the number of schemes offered can be reduced also.</li> <li>The Council offers a service (Housing Adaptations) to disabled and vulnerable residents of the borough to assist them in making an application for a DFG where a referral is made by an Occupational Therapist from Adult Services or Children's Services. Government regulation limits maximum individual grants to £30,000 in England including all on costs and VAT as appropriate.</li> <li>The preferred option 4 agrees to a rate rise that potentially sees the Council and contractors to the end of the current contract.</li> </ul>
	However in the current climate, there is a risk that cost in materials continues to rise during uncertain economic times with both COVID and leaving the EU. Contractors have been consulted with and have agreed that 10% would be acceptable for a further 12 months. This will also allow the Council to provide continuity of service and continue to deliver savings against the current contract form and avoid extended delivery times and staff resources.
	The preferred option also has the potential to allow the contractors to clear the current backlog due to COVID by paying them more that covers the reasonable cost increases in materials.
	The financial risks of not agreeing to the rate increase of 10% are in section 6 within the report, and each one covered has an increase in financial cost to the delivery of this service.
LEGAL IMPLICATIONS: (Authorised by Borough Solicitor)	Legal and procurement advice has been provided by STAR and is detailed in the main body of the report. It is important that the project officers follow the advice from STAR to ensure that both the Procurement Regulations and the Council's standing orders are complied with.
CONFLICT OF INTEREST:	None
DISPENSATION GRANTED BY STANDARDS COMMITTEE ATTACHED:	N/A
ACCESS TO INFORMATION:	The background papers relating to this report can be inspected by contacting the Report Writer, Jim Davies:
	Telephone: 0161 342 3308
	E-mail: jim.davies@tameside.gov.uk

2.0

Signed Dated: 11 August 2021 Councillor Eleanor Wills - Executive Member for Adult Social Care and Health

# **EXECUTIVE DECISION REPORT**

SERVICE AREA:	ADULT SERVICES
SUBJECT MATTER:	FRAMEWORK OF CONTRACTORS TO PROVIDE ADAPTATIONS FOR DISABLED PEOPLE - VARIATION TO CONTRACT TO INCREASE RATES
DATE OF DECISION:	11 August 2021
DECISION TAKER(S):	Councillor Eleanor Wills
DESIGNATION OF DECISION TAKER (S):	Executive Member for Adult Social Care and Health
REPORTING OFFICER:	Stephanie Butterworth – Director of Adult Services
	Sandra Whitehead – Assistant Director of Adult Services
REPORT SUMMARY:	The current rates for works within the contract require to be varied to take into effect changes in the cost of materials and equipment. These changes are due to a number of rises in the cost of materials in the construction industry due to the effects of the Covid-19 pandemic, global supply issues and Brexit, as well as the need for contractors to make a reasonable profit to be able to retain operatives.
RECOMMENDATION:	It is recommended that approval is given under Procurement Standing Orders 9.3.1 to agree a 10% increase on the rates contained within the framework contract.
JUSTIFICATION FOR THE DECISION:	<ol> <li>The contract has provision for the tendered rates to be amended during the contract;</li> <li>No previous rate rise has been agreed;</li> <li>The rates require review following the effects of the pandemic, Brexit and global shipping costs.</li> </ol>
ALTERNATIVE OPTIONS REJECTED (if any):	<ol> <li>Not to increase the rates would probably result in contractors withdrawing from the contract leaving no choice but to abandon the contract. This would mean a return to individual quotes per scheme leading to increased delivery times. Quotes would be based on current prices so costs will still rise but it is not possible to determine by how much.</li> <li>Ignore requests for the suggested increase and offer a rate appaintent with a single way rate. This would</li> </ol>
	rate consistent with a single year rate. This would probably again lead to contractors withdrawing and leave no choice but to abandon the contract. A return to individual quotes per scheme would increase delivery times. Quotes would be based on current prices so costs will still rise but it is not possible to determine by how much.
	<ol> <li>Retender the contract. This is a lengthy process and would not alleviate immediately the issues of the contract rates. Preparation for a new tender to be procured in 2022 is currently underway.</li> </ol>

CONSULTEES:	None
FINANCIAL IMPLICATIONS: (Authorised by Section 151 Officer)	The financial implications for the preferred option within this paper will add an additional cost to the framework between £90k and £150k over the next 12 months. This is dependent upon the number of schemes approved during that time.
	The funds used to support this increase in rates will be within the allocation of DFG funds allocated by MHCLG and DoH and will not affect the Councils budget. Although this allocation has risen consistently over the previous five financial years it cannot be guaranteed this will continue. The contract states the Council does not have to place any orders with the winning contractors so should the allocation reduce, the number of schemes offered can be reduced also.
	The Council offers a service (Housing Adaptations) to disabled and vulnerable residents of the borough to assist them in making an application for a DFG where a referral is made by an Occupational Therapist from Adult Services or Children's Services. Government regulation limits maximum individual grants to £30,000 in England including all on costs and VAT as appropriate.
	The preferred option 4 agrees to a rate rise that potentially sees the Council and contractors to the end of the current contract. However in the current climate, there is a risk that cost in materials continues to rise during uncertain economic times with both COVID and leaving the EU. Contractors have been consulted with and have agreed that 10% would be acceptable for a further 12 months. This will also allow the Council to provide continuity of service and continue to deliver savings against the current contract form and avoid extended delivery times and staff resources.
	The preferred option also has the potential to allow the contractors to clear the current backlog due to COVID by paying them more that covers the reasonable cost increases in materials.
	The financial risks of not agreeing to the rate increase of 10% are in section 6 within the report, and each one covered has an increase in financial cost to the delivery of this service.
LEGAL IMPLICATIONS:	Legal and procurement advice has been provided by STAR
(Authorised by Borough Solicitor)	and is detailed in the main body of the report. It is important that the project officers follow the advice from STAR to ensur that both the Procurement Regulations and the Council' standing orders are complied with.
CONFLICT OF INTEREST:	None
DISPENSATION GRANTED BY STANDARDS COMMITTEE ATTACHED:	N/A
ACCESS TO INFORMATION:	The background papers relating to this report can be inspected by contacting the report writer Jim Davies by:

Telephone: 0161 342 3308
E-mail: jim.davies@tameside.gov.uk

## 1.0 BACKGROUND

- 1.1 Legislation in the form of the Housing Grants, Construction and Regeneration Act 1996 (plus subsequent amendments) places a statutory duty on local housing authorities to deliver adaptations within its boundary. The authority has a duty to receive and approve eligible applications where the Council considers the adaption to be "necessary and appropriate<sup>1</sup>" to meet the assessed needs of the disabled person, and "reasonable and practicable<sup>2</sup>" in relation to the age and condition of the property to be adapted.
- 1.2 Funding for Disabled Facilities Grant (DFG) has been included within the Better Care Fund (BCF) since 2015-16. It operates under Section 75 of the National Health Service Act 2006 (pooled budget arrangements between Clinical Commissioning Groups and the local council). Capital funding is provided annually through Ministry of Housing Communities and Local Government (MHCLG) and Department of Health (DoH). However the provision of DFG for those who qualify for the service remains a statutory duty on the local housing authority.
- 1.3 The Council offers a service (Housing Adaptations) to disabled and vulnerable residents of the borough to assist them in making an application for a DFG where a referral is made by an Occupational Therapist from Adult Services or Children's Services. Government regulation limits maximum individual grants to £30,000 in England including all on costs and VAT as appropriate. Many adaptations are however subject to VAT relief.
- 1.4 The delivery of adaptations to residents of Tameside meets a number of initiatives within the Corporate Plan. (6) Nurturing our Communities: increase access, choice and control in emotional and mental self-care and wellbeing. (7) Longer and Healthier Lives: increasing physical and mental health life expectancy, improve the wellbeing of our population. (8) Independence and activity in older age and dignity and choice: increasing the number of people helped to live at home, reduce hospital admissions due to falls, increase levels of self-care and social prescribing; prevention support outside the care system.
- 1.5 In December 2017, a procurement exercise was carried out to deliver adaptations via a framework of contractors. The new contract would remove the need to obtain 3 quotes for individual schemes which was a time consuming exercise for both the Housing Adaptations team and the contractors. Four types of bathrooms, (one wet floor, and one wet room both with a different floor construction option) were included as fixed price schemes. These fixed prices enabled a quicker and more efficient way to agree schemes and prices with the contractors. The contractors know what they will receive for each basic scheme. This part of the contract includes rates for unforeseen variations and items not part of the fixed price scheme. These schemes are subject to the mandatory or discretionary grant process.
- 1.6 The procurement exercise also included for works of less than £1000. These works, referred to as Minor Works, are also a mandatory obligation upon the local authority and must be provided free at the point of delivery to those with an assessed need. There is no application form required and such works include external handrails, half steps, visual impairment items, door widening, door release mechanisms, etc.
- 1.7 Following a complaint by one of the bidders in early 2018, this first procurement process was abandoned on advice from Legal Services. A second procurement exercise was carried out in May 2018 and resulted in the current contract being awarded to 8 contractors in July 2018.
- 1.8 Since letting the contract, 3 contractors have left the framework. One withdrew from the contract due to the works no longer fitting in with its revised core activity, one left the contract due to consistent poor workmanship and two serious complaints, and a third could not provide the level of service required by the contract. This left 5 contractors delivering adaptations.

<sup>&</sup>lt;sup>1</sup> uk/disabled-facilities-grants/eligibility

<sup>&</sup>lt;sup>2</sup> https://www.gov.uk/disabled-facilities-grants/eligibility

- 1.9 The contract allows for a review of the rates submitted but does not include a percentage or method how this should be determined. The contract relies on the contractors giving 3 months' notice of their request for a rate rise. A rate rise was envisaged in 2020 but the onset of the Covid-19 pandemic in late March 2020 resulted in contractors placing staff on furlough and work in properties was brought to a halt for a while due to the risks associated with Covid-19.
- 1.10 Work recommenced in early June 2020 but at a greatly reduced capacity due to the need to maintain social distancing measures. The number of referrals to Housing Adaptations had dropped during this period. Some residents were also requesting their works to go on hold, again due to concerns over Covid-19 and people attending their homes. The need to maintain social distancing in residents' properties extended the delivery times from an average of 7 days per scheme to 10 days; an increase of around 40%. Contractors were not able to charge any additional costs for the work other than the costs associated with cleaning down, etc.
- 1.11 During the Covid-19 pandemic material costs have increased more than the rate of inflation which does not generally include for building related works. Contractors have cited two increases in materials and certain specific items since March 2020. Some items are specific to the adaptations arena such as specialist toilets; non-slip wet flooring, shower units with adaptation packs. Other items subject to price rises include general building materials such a cement, plaster, timber, tiles, etc.
- 1.12 It is difficult to apply general inflationary rates to such specific works. The indices used for building related works tends to fall into two distinct categories: new-build and building repair and maintenance but adaptations tends to fit into neither listing. There are a number of indices covering these areas RPIX (not including mortgages), COP (Construction Output Price) Index and BCIS (Building Construction Index Service). Building Repair and Maintenance is the better fit, although not perfect, for adaptations because it does not include the specifics.
- 1.13 Contractors are subject to their suppliers and merchants applying price increases that do not follow the general price increases applied to the retail sector and some rates have increased by as much as 8% for some products. Many of the products used in adaptations are direct from manufacturers who import parts from overseas/ Europe and this means that there are now import costs to consider. Delays in imports is also driving up cost for those alternatives where they are available.

# 2.0 PROCUREMENT STANDING ORDER SEEKING TO WAIVE / AUTHORISATION TO PROCEED:

- 2.1 Procurement Standing Order 9 covers Exemptions and Modifications to contracts
- 2.2 Procurement Standing Order 9.3 refers to Modifications to a Contract or Framework Agreement.
- 2.3 Procurement Standing Order 9.3.1 relied upon. PSO 9.3.1 states that "Contracts and Framework Agreements may be modified during their term without a new procurement procedure in accordance with this Rule 9.3 in any of the following cases:
  - a) Where the Modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses or options, provide that such clauses
  - *i.* ) State the scope and nature of possible modifications or options as well as the conditions under which they may be used, and
  - *ii.* ) Do not provide for modifications or options that would alter the overall nature of the Contract or Framework agreement;

- 2.4 The agreement to a rise in the submitted rates will not affect any other part of the contract or the way in which it is delivered. Should this EDN be approved a Modification Form for STAR is ready for submission.
- 2.5 STAR Procurement has been consulted regarding this process and has commented by email that Section 9.3.1 is the correct Procurement Standing Order to use in this instance and that new procurement activity for 2022 is accurate.

## 3.0 VALUE OF CONTRACT

- 3.1 In 2018, the value of the initial contract had an estimate of £1.5M per year based upon expenditure from the previous 2 years.
- 3.2 The effect of changes to the Council's RRO Policy has removed some of the barriers to making applications for assistance thereby increasing the number of approved adaptations where there is no requirement for a means test. Simplified paperwork means more applications succeed and delivery in certain cases is quicker. This in turn means contractors are in need of more products and materials.
- 3.3 The amounts quoted here comprise numerous individual purchases. Part of this contract has fallen during the Covid-19 pandemic and this has had an effect on the number of adaptations completed and therefore expenditure. The value of spend in the first 2 full financial years of the contract is as follows:

### 2019/20 (Full financial year)

Total expenditure on adaptations within the framework was £1,555,285

### 2020/21 (Full financial year during pandemic)

Total expenditure on adaptations within the framework was £913,468

- 3.4 The rates within the Framework contract should be increased by 10% to cover recent increases in material and material costs over the previous 24 months.
- 3.5 Depending upon the number of schemes approved and completed over the next 12 months the additional cost to the framework will be between approximately £90,000 and £150,000

## 4.0 GROUNDS UPON WHICH WAIVER / AUTHORISATION TO PROCEED SOUGHT

- 4.1 It is to the Council's advantage that a rate rise for the contractors is agreed. The contract documents contain a clause allowing the rates contained in the contract to be varied although it does not state at what level the rate should be.
- 4.2 The Covid-19 pandemic has had a serious and detrimental effect on the delivery of adaptions. The costs being passed down to builders is exceeding their ability to deliver the works contained within the contract and make an operating profit. Brexit is also becoming part of the reason for increased costs.
- 4.3 Information received from contractors regarding the general increases in costs indicates:
  - 8% increase in early 2021 and a further 6% from supplier AKW due autumn 2021.
  - 7% increase in 2020 and a further 4% increase in 2021 from Mira showers.
  - 4% increase in 2020 and a further 5% in 2021 from Closomat (specialist toilet).
  - 5% increase in 2021 for Geberit (specialist toilets).
  - 4.5% increase in 2021 from Regal Care (shower room products).
  - 6% increase 2020 and a further 5% increase in 2021 from Polyfloor and Altro Floor.

- Up to 7.5% increase for sanitary ware and up to 5% increase for bricks/ cement, etc from Benchmark
- 6-8% increase in 2021 for general plumbing supplies from Watermark.
- 28% increase in copper for electrical cabling
- 40% increase in aluminium over last 12 months but 6 week delivery now 12 weeks

Specialist toilets are not standard items in all adaptations; they are by request from the Occupational Therapist. The percentage increases above do not include the contractors on costs for items such as fuel/ transport, wages, insurances, etc.

- 4.4 The Housing Adaptations Service recently carried out a separate pricing exercise with a number of contractors, including those within the current Framework to obtain a view on what costs would be if a return to individual quotations was implemented. This identified an increase in the standard schemes of between £1000 and £1500. This compares with a potential increase of between £350 and £450 per scheme using the framework prices and 10% rate rise. The prices within the contract are as they were when the contract was let in 2018.
- 4.5 The current Framework provides a quick method of pricing and delivering adaptations saving time on staff resources.
- 4.6 The time and resources required to procure 3 quotes for each and every individual scheme would put increased pressure on the team and would not produce costs anywhere near those in the contract even with the suggested rate rise.
- 4.7 The rate rise would give the contractors a reasonable uplift in costs but would not have the same effect on the budget as obtaining 3 quotes for each scheme.
- 4.8 Contractors have expressed their concerns about their ability to continue with the current contractual arrangements and may have to reconsider their positions.
- 4.9 Contractors in the framework have been consulted on this process and some would prefer a more substantial rate increase however they fail to substantiate the claim. A rise of 10% across all the rates is considered a fair amount based upon the materials used in these schemes. Responses received all 5 contractors indicate their acceptance of a 10% rise.

#### 5.0 REASONS WHY USUAL REQUIRMENTS OF PROCUREMENT STANDING ORDERS NEED NOT BE COMPLIED WITH BUT BEST VALUE AND PROBITY STILL ARE ACHIEVED

- 5.1 This Council's Procurement Standing Orders have been followed in order to this increase of the rates within the contract. Section 2 above refers to PSO 9.3.1 allowing a modification to be made to an existing contract. Consultation with STAR procurement has taken place concerning this extension request. STAR was not involved in the original tender process because the tender pre-dates Tameside becoming part of STAR. A Modification Request Form will be submitted to STAR upon approval of this report.
- 5.2 There are a number of options that could be considered
- 5.3 Option 1: Do nothing. This option is not favoured at this time. The five active contractors within the framework have expressed their concerns over the current rates contained in the contract and have stated they may decide not continue to provide their services and withdraw from the framework. This would leave no contractors in the framework and result in each adaptation being the subject of at least 3 quotes to determine a price. As noted above the costs per job would increase between £1000 and £1500. This is also a staff resource intensive option and would result is a drop in delivery times

- 5.4 Option 2: Terminate the current framework contract. This is not a favoured option. The current contract is not due to expire until July 2022 although it is possible to terminate the contract giving suitable notice. With no alternative in place, it would result in extended delivery times as per Option 1 above.
- 5.5 Option 3: Retender the service. This not the current favoured option. The current contract will expire in July 2022 and as such, a new framework is under consideration. The time involved in preparing the documents, running the tender, dealing with the bids and evaluating them, etc. will take a considerable amount of time and would not address the issue at hand
- 5.6 Option 4: Agree a rate rise that will potentially see the Council and contractors through to the end of the life of the current contract although is difficult to predict whether further increases in costs will be forthcoming in the current economic climate. The five contractors have all indicated they are willing to continue for a further 12 months within the terms of the existing contract subject to an increase in the rates that allows them to keep pace with the effects of the pandemic, Brexit and shortages caused by shipping. The current prices have been in force for over 2 years.
- 5.7 Option 4 is the favoured option as it allows the Council to provide continuity of service and will continue to provide savings against extended delivery times and staff resources.
- 5.8 The funds used to support this increase in rates will be within the allocation of DFG funds allocated by MHCLG and DoH and will not affect the Councils budget. Although this allocation has risen consistently over the previous five financial years it cannot be guaranteed this will continue. The contract states the Council does not have to place any orders with the winning contractors so should the allocation reduce, the number of schemes offered can be reduced also.

## 6.0 RISKS

- 6.1 The main risks to not agreeing to a rate rise for the contractors are that Housing Adaptations staff will have to prepare documents for each scheme to obtain quotes from at least three contractors. It will then be necessary to obtain approval from STAR for each quote. This will result in extended delivery times and more pressure on staff resources in what is already a small team, and there will be greater inconvenience for residents.
- 6.2 Increased costs to the budget. The current costs for adaptations are very economical and based upon guaranteed work for the contractors over the period of the contract. Having carried out a small benchmarking task where Housing Adaptations obtained prices outside the contract the average cost for the same work contained within the Contract was between £1000 and £1500 more than the contracted rates. It is difficult to obtain ad-hoc rates the same as those in a formal contract even when asking three contractors to compete. The rates in the Contract are completely out of date with current circumstances. Any rate rise agreed is unlikely to result in a rise in cost as high as £1000 per scheme.
- 6.3 Extended delivery times for adaptations. If the option to go for ad-hoc purchasing was adopted it would be necessary to arrange for individual builders to visit the property to be adapted. In many cases, this would have to be an accompanied visit to discuss the scheme. This could result in up to three visits with different builders creating disturbance and inconvenience to the resident. There would then be a delay whilst each builder prepares their price and submits it. The quotation process also requires the creation of a min-Project Initiation Document to allow the quotes to be obtained. All this process increase delivery times.
- 6.4 Contractors leaving the framework. If a reasonable rate rise is not offered they may become selective about the work they accept from the framework, ensuring they do not make a loss. Contractors may choose to seek work elsewhere where the rates are more beneficial to them.

It is common knowledge that during the pandemic many people have been spending money they would have used for holidays on home improvements. Building work is being carried out everywhere and contractors are enjoying a work and income boom. Many builders are able to pick and choose the work they want and prices are rising constantly due to the same reasons covered in this report, however residents have money burning in their pockets and this drives the lucrative domestic home improvement market. The Council can offer regularity of work but we have to offer this work at a fair price or suffer the consequences. 4 of the 5 contractors are local but they are still tempted by private work that offers a better margin for profit to enable them to keep their staff employed and their business buoyant.

6.5 Additional support from Adults and Children's Services. The need to go through an extended quotation process could place unnecessary pressure on Adult and Children's Services to provide additional support until the adaptations are provided. These services are already under increased pressure to deal with the existing level of cases built up from the pandemic. Staffing and budget issues are already under pressure and agreeing to the rate rise would help to keep this to a minimum. The longer residents have to wait for essential adaptations increases the risk of complaints to the Council and potentially to the Local Government Ombudsman (LGO). The LGO considers delays in delivery of adaptations to be a fault by the Council in many of its determinations, even when taking into account the pandemic.

### 7.0 EXISTING APPLICATIONS FOR GRANT BEING PROCESSED

- 7.1 The immediate effect of the change to the rates may be to take the cost of some works over the limit of the Grant for Adaptation set up as part of the Housing Assistance Policy 2018-2023. This states that works costing less than £5,000 can be processed without the need for a means test and requires a reduced application form.
- 7.2 As part of this process to increase rates, Housing Adaptations would continue to treat all those referrals received prior to the change as being within the remit of the Grant for Adaptation to ensure that where the applicants whose scheme cost for their adaptations exceeds £5,000 are not disadvantaged by this in year change to the rates.
- 7.3 The Housing Assistance Policy 2018-2023 will be revised in due course to change the level of the grants to ensure applicants continue to benefit from adaptations as originally intended by the Policy.

#### 8.0 **RECOMMENDATION**

8.1 As detailed at the front of the report.