



ADVANCE PUBLICATION OF REPORTS

This publication gives five clear working days' notice of the decisions listed below.

These decisions are due to be signed by individual Cabinet Members and operational key decision makers.

Once signed all decisions will be published on the Council's Publication of Decisions List.

1. **MW HIF - CONTRACT VARIATION FOR PM / QS SERVICES** (Pages 1 - 20)
2. **AWARD OF WORKS CONTRACT FOR BRIDPORT & CONSTABLE CLADDING REMEDIATION** (Pages 21 - 32)

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London Borough of Enfield**Operational Report****Report of** Penny Halliday – Commercial Director Meridian Water**Subject:** MW HIF - Contract Variation for PM / QS services**Executive Director:** Peter George – Director of development**Ward** Upper Edmonton**Key Decision:** KD5569**Purpose of Report**

1. The purpose of this report is to obtain approval to vary the existing call-off contract with Turner & Townsend to account for additional services that have been provided during the PCSA and prolongation of the programme period. T&T were appointed in August 2020 as Project Management Consultant to support the delivery of Strategic Infrastructure Works in Meridian Water.
2. Since entry into contract, T&T have submitted several (retrospective) fee requests (as detailed in Confidential Appendix A), which have been disputed due to the quantum of and the lack of substantiation. A Dispute Resolution Procedure was started in summer 2022 in accordance with the contract to negotiate an amicable solution.
3. After various negotiation meetings under this procedure, T&T have submitted a revised and final offer for fees up to the end of December 2022 and provided substantiation of their claim including timesheets detailing the extra senior resources required over above their original PCSA period. It is considered that T&T is entitled to additional fees and LBE has already incurred cost liability under the contract and/or common law.
4. The settlement agreement is reasonable and representative of the amount of additional work provided, and prolongation incurred on the programme. The settlement fee is considered to represent value for money and is in line with the average contractual day rate. Refusal to pay reasonable and additional fees may be a breach of contract by LBE and T&T would be entitled to suspend services under the contract, which would result in significant disruption to the project delivery of SIW works.
5. Furthermore, this report recommends approval of a further allowance for 6 months prolongation of PCSA service from T&T until June 2023 (as detailed in confidential appendix). This extension is required to cover the management of the contractors extended design activities under the PCSA and prepare for main contract award, which is dependent on funding decision from DLUHC.
6. The recommendations for latest audit report related to contract management on Meridian 1 are being reviewed and are taken on board in contract management of T&T going forward. The team has now implemented an improved change control

process to ensure changes are agreed prior to additional scope of services being undertaken and close monitoring of suppliers' performance and progress is in place.

Proposal(s)

7. Approve the settlement agreement and associated expenditure (as detailed in Confidential Appendix A) for additional services and prolongation provided by Turner & Townsend up the end of December 2022.
8. Approve a further allowance for 6 months prolongation of PCSA service from T&T until June 2023 (as detailed in confidential appendix) to cover the management of the contractors extended design activities under the PCSA and prepare for main contract award.
9. Authorise the variation of the Call-off Agreement to reflect the changes detailed in this report and authorise the delegated legal officer to complete settlement agreement / deed of variation if required.
10. Note that the expenditure related to proposals 7 and 8 above can be covered from the Meridian Water Capital Programme and claimed in arrears from DLUHC (former MHCLG) on a quarterly basis in accordance with the terms in the HIF Grant Determination Agreement.

Reason for Proposal(s)

11. T&T submitted a final claim for all work up to the end of December 2022 and provided substantiation of their claim including timesheets detailing the extra senior resources required over above their original PCSA period.
12. The final claim is reasonable and representative of the amount of additional work provided, and prolongation incurred on the programme. The settlement fee is considered to represent value for money and is in line with the average contractual day rate.
13. It is considered that T&T is entitled to additional fees and LBE has already incurred cost liability under the contract and/or common law. Refusal to pay reasonable and additional fees may be a breach of contract by LBE and T&T would be entitled to suspend services under the contract, which would result in significant disruption to the project delivery of SIW works.
14. A further allowance for 6 months prolongation of PCSA service from T&T until June 2023 is required to cover the management of the contractors extended design activities under the PCSA and prepare for main contract award. The allowance is based on framework rates and reduced resources levels reflecting lower intensity of work over the next couple of months until entry into main contract, which is dependent on funding decision from DLUHC

Relevance to the Council's Plan

15. The Strategic Infrastructure Works delivered through the HIF funding serve future development which is key to unlocking the development of Meridian Water and contributes to the priorities of the Council's Corporate Plan:
 - a. *Good homes in well-connected neighbourhoods*
The Strategic infrastructure at Meridian Water is key to building more and better homes in Enfield. It is also key to delivering and driving investment to

deliver growth in Enfield. Further to this, a key aim in the Council Plan is to Complete Government-funded strategic infrastructure works for Meridian Water, which include a major new road and public park, due for completion in 2023.

b. *Safe, healthy and confident*

The Strategic Infrastructure works underpin placemaking capability at Meridian water that will contribute to reducing reliance on cars and increasing walking, cycling and public transport at Meridian Water and it will also contribute to opportunities to visit and enjoy parks and open spaces.

c. *An Economy that works for everyone*

The Strategic Infrastructure Works at Meridian water are key to shaping the economy of Meridian Water and allowing the economic growth of Meridian Water to be filtered out to connecting areas throughout Enfield, attracting jobs, business growth and supporting Enfield residents and the local economy.

Background

Previous Decisions

16. In December 2018 the Council submitted a bid to the Department for Levelling Up, Housing and Communities (DLUHC, formerly MHCLG) for the Housing Infrastructure Fund (HIF) to deliver the first phase of strategic infrastructure works in Meridian Water. The Strategic Infrastructure Works comprise of rail enhancement works amounting to a value of circa £54m (HIF Rail Works) and strategic road and flood alleviation works for a value amounting to circa £116m (HIF Street Works).
17. On 12th February 2020 Cabinet approved (KD 5085) the entry by Council into the Grant Determination Agreement (GDA) and in October 2020 the Council entered the GDA with DLUHC for a total amount of £170m.
18. Following the announcement that the Council had successfully secured the HIF funding, a Project Management Consultant was procured through the Homes England Framework for Multidisciplinary Technical Services. In July 2020 the Director of Place approved (KD5170) the appointment of Turner & Townsend (T&T) as Project Management Consultant to support the delivery of the Strategic Infrastructure Works (SIW). The total authorised expenditure related to the appointment of T&T is detailed in Confidential Appendix A.
19. The T&T tendered contract sum (as detailed in Confidential Appendix A) was based on a defined scope and programme to manage Pre-Construction Service Agreement (PCSA) between the VINCI Construction UK Limited (VTW) and LBE, and the Main Work NEC4 contract.
20. The Project Management Consultancy Services provided by T&T are eligible for HIF funding under the GDA and could be claimed in arrears on a quarterly basis.

Key Project Challenges

21. The budget pressure on the Street Works has increased incrementally since the start of the project. The latest interim cost estimate prepared by the Council's Cost Consultant showed a significant budget pressure on Street Works, mainly due to

exceptional inflation cost. Value Engineering and de-scoping items identified can only partially ease the budget pressure.

22. Conversations have started with DLUHC to obtain additional HIF funding for the cost overruns. LBE have provided information to support this and DLUHC is carrying out a national HIF funding review, which will inform their decision to allocate any further funding. The outcome of the funding review was expected in November this year, but latest information from DLUHC identified that a funding decision will not be taken before June 2023.
23. As result of budget pressures and delays to the DLUHC funding decision uncertainty remains on the surety of the total price of the Street Works being contractable in the HIF funding envelope. This in turn prevents the Council from entry into the main works contract and start the works on site and has caused significant delays.
24. It should be noted that the delayed start on site for the Street Works will impact the completion date, which will exceed the HIF funding deadline of March 2024. An extension of the HIF funding deadline to December 2025 is being considered by DLUHC as part of the overall funding review.
25. The strategy is therefore to continue discussions with DLCUH around securing the full funding ask and delivering all the housing objectives, whilst also presenting alternative options considering prevailing uncertainties. A funding ask and updated business case has been submitted to DLUHC, along with lobby letters from senior officers and stakeholders to key stakeholders in central government.

Main Considerations for the Council

Fee Claims and Negotiation

26. The PCSA service provide by T&T was scheduled to be completed in July 2022. However, it is in delay due to various challenges:
 - Extended negotiation on PCSA agreement between LBE and VTW prior to entry into the PCSA;
 - Extensive PCSA design development including value engineering to mitigate the project risks and support the wider development programme;
 - Project affordability issue and budget pressure due to extraordinary inflation based on the supply chain feedbacks during PCSA procurement phase;
 - Delayed HIF funding review by central government.
27. As a result, T&T have retrospectively submitted several fee requests (as detailed in Confidential Appendix A). The additional services cover the extended PCSA period up to December 2022, which is an extension of 19-month in comparison to the original PCSA period (PCSA prolongation). The fee requests have been disputed by LBE due to the quantum of and the lack of substantiation.
28. Following these disputes, T&T and LBE entered into a Dispute Resolution Procedure in June 2022 in accordance with the contract to negotiate an amicable solution. After various negotiation meetings under this procedure, T&T have submitted a revised and final and provided substantiation of their claim including timesheets detailing the extra senior resources required over above their original PCSA period.

29. The average day rate for T&T revised fee claims is in line with the average of T&T contractual day rate and it is considered that the revised T&T fee claims are acceptable and reasonable for settlement agreement.
30. Furthermore, extended contractors design activities and delayed funding decision from DLUHC, result in further prolongation on the PCSA period and delay to start on site of the main works. As a result, there is a need of further 6-month allowance for prolongation of PCSA service required from T&T until June 2023 (as detailed in confidential appendix).
31. The allowance is based on framework rates and reduced resources levels reflecting lower intensity of work over the next couple of months until close out of the PCSA period and entry into main contract, which is dependent on funding decision from DLUHC.
32. Usage of the prolongation allowance is dependent on the timing of the DLUHC funding decision, and the amount of additional funding confirmed, if any. The sooner the decision comes through the quicker the Council can enter into the main works contract and complete the PCSA. However, it should be noted that if no or limited additional funding comes through a de-scoping / value engineering exercise will need to be undertaken to ensure project is deliverable within funding envelope.

Framework and Call-Off Contract

33. T&T is appointed on a call-off contract under the Homes England Framework for multidisciplinary services. The call-off contract binds the parties to (also) act in accordance with the framework terms.
34. The framework terms require the contractor to agree any anticipated costs incurred in excess of agreed tender rates, with the Council's nominated/instructing officer before commencing the additional services. Although, as a result of the prolonged PCSA period these extra services may have been deemed to constitute 'additional' services (as the contractual scope of works for the PCSA is 11 months only) the contractor submitted a fee claim to the Council, post-provision of such extra services. However, the contractual documentation does not bar the consultant from claiming for additional services retrospectively, as has happened with claims submitted by T&T.
35. At the end of 2022 an audit was carried out to provide assurance that supplier management risks within the Meridian One project were identified, reviewed and mitigated. The recommendations set out in this report are being reviewed and are taken on board in contract management of suppliers going forward, including T&T.
36. In addition, the team has now implemented an improved change control process to ensure changes are agreed prior to additional scope of services being undertaken and close monitoring of suppliers' performance and progress is in place.

Cost and Budget

37. It is recommended that the total expenditure on PM/QS consultancy service for T&T is increased as detailed in confidential appendix A.

38. The cost can be covered from the budget allowance for HIF Street Works for FY 2022/23 / 2023/24 and the additional expenditure for T&T set out in this report is included in the overall project CAPEX.
39. Conversations have started with DLUHC to obtain additional HIF funding for the exceptional inflation cost. LBE has been providing information to support this and DLUHC is carrying out a national HIF funding review, which will inform their decision to allocate any further funding. The outcome of the funding review is not expected until February 2023.
40. The costs for T&T's services are eligible for HIF funding and expenditure to date has been successfully claimed back from DLUHC in the form of preliminary funding. Subject to approval of the recommendations set out in this report, any expenditure related to T&T's appointment will continue to be claimed back from DLUHC.

Risk of additional fee claims

41. Based on an increasing construction value T&T have indicated that additional fees of circa £345k on their Construction Period Fee may be required. This potential claim cannot be settled at this stage and has been excluded from the Fee Settlement Agreement.
42. It should be noted that an additional Claim Settlement could be considered a substantial variation to T&T contract and may constitute a new contract for the purposes of the procurement rules, requiring LBE to launch a new tender in respect of PM/QS service under the Public Contract Regulation 2015.
43. Advice has been sought from legal and procurement and exemptions to the rules are available and it is considered that the risk on the need to re-tendering remains low.
44. The team is reviewing T&T's performance and exploring alternative options, including reprocurement of the services should it become necessary to replace T&T with an alternative consultant either under an existing framework or through another relevant frameworks. A separate procurement strategy would be submitted for approval should this be required.

Safeguarding Implications

45. The recommendations in this report do not have any safeguarding implications.

Public Health Implications

46. There are no public health implications arising directly from this decision.

Equalities Impact of the Proposal

47. There are no equalities impact arising from the decision in this report.
48. Impact on parties currently operating on the land where the SIW will take place was analysed through Equalities Impact Assessment (EQIA) in relation to the CPO. The initial EQIA was conducted in December 2019 internally by the Council, with a subsequent extensive review by external consultant Ottaway Strategic Management in March 2020. Both assessments identified no direct negative

impact of the CPO. Please see KD 4832 (January 2020) Cabinet and (July 2020) Operational reports for details.

49. A predictive EqIA was completed on the Meridian Water Masterplan in 2018 and found that the scheme will have a positive impact on groups sharing protected characteristics, creating a sustainable community in Meridian Water that is connected to the surrounding communities in Edmonton and promoting social equity and reduce inequalities. The EqIA demonstrated that the scheme will deliver social, economic, health, educational, physical, and environmental infrastructure that meets the needs of different groups and reduces inequality across a number of domains, including housing, health, and employment.

Environmental and Climate Change Considerations

50. There are no environmental implications arising directly from this decision.

Risks that may arise if the proposed decision and related work is not taken

51. Not approving the recommendations set out in this report will result in having to pause Street Works, until the budget pressures on the Street Works have been resolved and additional HIF funding by DLUHC is confirmed. This will have direct and indirect impacts on the delivery of strategic aims at Meridian Water. Impacts of having to stop / pause the Street Works are set out below:
52. **Programme Impact:** The team will need de-mobilised, being unable manage and close out the PCSA, resulting in a significant delay to the programme and risk of DLUHC withdrawing the funding.
53. **Budget Impact:** Pausing Street Works is expected to result in additional cost related to inflation, as well as de-mobilisation and re-mobilisation cost of project teams.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

54. **Risk:** T&T are not providing required services up to expected standard and are underperforming.
Mitigation: Contract and change management procedures are under review as well as the possibility to introduce Key Performance Indicators. In addition, options are being explored to reprocure the services should it become necessary to replace T&T with an alternative consultant.
55. **Risk:** Further fee claims could be considered a substantial variation to T&T contract and may constitute a new contract for the purposes of the procurement rules, requiring LBE to launch a new tender.
Mitigation: In addition, options are being explored to reprocure the services should it become necessary to replace T&T with an alternative consultant.
56. **Risk:** Delay or other breach of GDA - non-compliance with the Council's obligation under the GDA, such as delay to the Infrastructure Milestones could result in breach of contract and in the worst-case scenario termination of the agreement and further funding being withheld or all/ some funding being claimed back, including the funding to cover the expenditure set out in this report.
Mitigation: Existing project management arrangements are in place to manage the project and ensure timely delivery of Infrastructure Milestones. Close

engagement with DLUHC is ongoing through monthly progress meetings and if required agreement will be sought from the DLUHC for a waiver or extension.

Financial Implications

Legal Implications

Legal Services has been consulted in the process of preparing this report and make the following observations (provided by MP 24/10/22 based on version of report circulated on 17/10/22, timed at 13:52hrs). Report updated by OD on 05/01/23 based on version of the report circulated on 21/12/22.

57. S.111 Local Government Act (1972) gives a local authority power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions, including its housing functions.
58. Furthermore, the general power of competence under s.1(1) Localism Act (2011) states that a local authority has the power to do anything that individuals generally may do provided it is not prohibited by legislation and subject to Public Law principles. The proposal to enter into settlement agreement with Turner & Townsend for additional services as mentioned within this report are therefore in accordance with the Council's powers.
59. The parties entered into a call-off contract, let under the 'Homes England Multi-Disciplinary Technical Services Framework'. In addition to the terms stipulated therein, the call-off contract by reference, binds the parties to act in accordance with the framework terms. The framework terms (*Part 5 – Invoicing Procedure; clause 1.4*) require the contractor to agree "*any anticipated costs incurred **in excess of** agreed tender rates*", with the Council's Nominated/Instructing Officer **before** commencing such additional services.
60. Whilst as a result of the prolonged PCSA period, the extra services may have been deemed to constitute 'additional' services (owing to the contractual scope for the PCSA being for 11 months only) this would not excuse the contractor from following due process. The contractor submitted various fee claims to the Council, **post-provision** of such extra services.
61. Although the contractual documentation does not explicitly prohibit the contractor from claiming for additional services retrospectively, again, this does not excuse it from following due process. The framework terms (*Part 5 – Invoicing Procedure; clause 1.3*) implies that any additional services (falling outside of the agreed scope and fee) provided to the Council, are done so at the contractor's own risk. The framework terms further state that:

"no payments shall be made for any Services supplied by the Consultant [contractor] for which no Instruction or no approval to the Consultant's [contractor's] Fees has been given by [the Council] in accordance with this Contract."

The Council, upon receipt of such retrospective fee claims from the contractor, engaged in negotiations, hence (i) implying acceptance of the steering away from

the actual 'fee claim / invoice submission' process and (ii) accepting/showing willing that the Council is agreeable to negotiate and settle at a fee for the services rendered.

62. Upon discussion with the Council, the contractor has acknowledged that there had been a 'steering away' on its part, from the actual 'fee claim/invoice submission process' and this acknowledgement is reflected in the reduction in the settled fee claim figure. It is confirmed that Legal Services have been consulted on the settlement.
63. The Council has been advised to agree and document a process with the Contractor, to avoid this situation from arising again (for the remainder of the contract term including any extension to the contractual arrangement). The Council is also advised, considering what has occurred, to ensure that management of this contract is tightened.
64. All formal variations to the original call-off contract currently in place between the parties and/or settlement agreements, should be drafted by and in a form approved by the Director – Law & Governance.

Workforce Implications

65. Not applicable

Property Implications

66. Not applicable

Other Implications

67. The original contract with Turner & Townsend for Project Management and Quantity Surveying Services for the Delivery of Strategic Infrastructure at Meridian Water was let under the Homes England Multi-Disciplinary Technical Services Framework.
68. Procurement services note the request for additional expenditure under this contract. Any additional expenditure must be in accordance with the original contract and demonstrates best value. The additional services must be substantially the same as those provided for in the original contract. Any additional expenditure must also comply with the 2015 Public Contract Regulations.
69. Any extensions or variations to the original contract must be recorded on the London Tenders Portal.

Options Considered

70. **“Do Nothing”** – it is considered that T&T is entitled to additional fees and LBE has already incurred cost liability under the contract and/or common law. Refusal to pay reasonable additional fees may be a breach of contract by LBE and T&T would be entitled to suspend services under the contract, which would result in significant disruption to the project delivery of SIW works. This option is therefore not recommended.
71. **“Continue to dispute the fee under dispute resolution”** - it is considered that the proposed settlement is within the acceptable range of LBE assessment. Further

dispute resolution procedure would likely lead to expert determination and/or adjudication. While it may be possible to achieve some betterment under these proceedings, the LBE costs to run these proceeding would be significant and in general not recoverable. This would offset any potential further betterment on the fee negotiation and result in significant disruption to the project delivery of SIW works. This option is therefore not recommended.

Conclusions

72. This report recommends varying the call-off contract with T&T to account for additional services that have been provided during the PCSA period and prolongation of the programme period
73. It is considered that T&T is entitled to additional fees and LBE has already incurred cost liability under the contract and/or common law. Refusal to pay reasonable additional fees may be a breach of contract by LBE and T&T would be entitled to suspend services under the contract, which would result in significant disruption to the project delivery of SIW works.
74. It is considered that this offer represents value for money for acceptance by the Council because
 - a. The settlement offer represents a significant reduction against their initial claim;
 - b. The prolongation costs are below the PCSA contract rate, as the T&T revised fee claim is in line with the average of T&T contractual day rate and is considered acceptable and reasonable for settlement agreement.
 - c. The further prolongation allowance is deemed to be required to close out prolonged PCSA activities and ensure a minimum level of resources whilst DLUHC funding decision is awaited, without having to fully demobilise the team.
75. In addition, this report recommends the approval of further expenditure for additional scope items to allow (critical) enabling works to be carried out under the PCSA and mitigate any delays to entry into the main works contract while central government is carrying out their ongoing review on HIF funding.

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Date of report: 27/01/2022

Appendices

- Confidential Appendix A

Background Papers

The following documents have been relied on in the preparation of this report:

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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Please note Part 2 report is now confidential appendix.

London Borough of Enfield

Operational Report

Report of Joanne Drew, Director of Housing and Regeneration

Subject: Award of Works Contract for Bridport & Constable Cladding Remediation

Executive Director: Sarah Cary

Ward: Upper Edmonton (Bridport House) & Southbury (Constable House)

Key Decision: 5313

Purpose of Report

1. To obtain approval to award a works contract for the cladding remediation works to Bridport House and Constable House.

Proposals

2. That approval be given to award and enter into a contract for the cladding remediation to Bridport and Constable House for the contract price detailed in the restricted appendix.

Reason for Proposal(s)

3. The HRA Capital programme for 2022-23 is focused on the investment in our housing stock to ensure it meets building safety requirements, decent homes requirements and the green agenda.
4. In the light of national reviews of cladding, Enfield Council commissioned an assessment of the existing cladding system at Bridport and Constable House, which determined that the system needs to be upgraded to meet the updated criteria for protection against fire spread of the Building Safety Act 2022.

Relevance to the Council's Plan

5. The contract will support the following objectives from the Corporate Plan:

6. Good homes in well-connected neighbourhoods: The programme will improve the quality and safety of existing homes and therefore positively impact on the wellbeing and quality of life for our residents.
7. Sustain healthy and confident communities: Improving the existing homes where people desire to live will help to create and maintain healthy and confident communities.
8. An economy that works for everyone: Ensuring residents can fully participate in activities within their neighbourhood.

Background

9. Bridport House is a 14-storey block including 12 storeys of social housing units and an additional vehicular underpass at ground level with pram sheds at first floor level. The works being undertaken at Bridport House are intended to rectify the currently failing fixings to the existing cladding system to the underpass and to replace the cladding on the pram sheds which contains combustible insulation. The Fire Risk Appraisal of the External Wall Construction (FRAEW) has classified this building as low risk. The scope of works to this block can be broken down as:
 - Replacement of the cement fibre board with foam backing insulation and timber subframe
 - Replacement of defective sheathing board cladding with timber subframe and mineral wool insulation in the under-croft area
 - Firestopping to any service penetrations to the building floor slab in this area
 - Installation of any cavity and fire barriers as required in this area
 - Access equipment to carry out the works
10. Constable House is a 6-storey residential block of two storey maisonettes. The scope of works to this block is:
 - Replacement of the cladding panels and insulation but to retain the timber studwork frame.
 - Installation of cavity barriers where required
 - Vent the external face of the wall to mitigate any forming condensation
 - Access equipment to carry out the works
11. A two-stage procurement route was selected where, a specialist cladding contractor, D&B Facades, were appointed under a Pre-Construction Service Agreement (PCSA) to undertake intrusive surveys in order to investigate existing systems and determine requirements. This commonly used contractual approach enables the development of the Employers Requirement document and a detailed design and cost proposal.
12. The specification of works has been wholly designed by D&B Facades, therefore a JCT 2016 Design & Build contract form is deemed most suitable for this scheme.
13. Capital PCC have provided a commercial cost validation report following the review of the proposed specification and costs, this confirms the rates and

overall contract value are inclusive of necessary elements and are consistent with current market rates.

Main Considerations for the Council

14. The programme is required to ensure that the Council complies with Building safety requirements.

Safeguarding Implications

15. The works will require Contractors to enter residents' homes and therefore Contract Documents require Disclosure & Barring Services (DBS) and adherence with the Council's Safeguarding Policy and Data Protection Policy.
16. In addition to the above the Contractor is required to provide a dedicated Resident Liaison Officer (RLO) whose role is to ensure that residents needs are reflected in the necessary processes adopted by the Contractors.

Public Health Implications

17. The works will improve the living conditions leading to less respiratory complications secondary to cold surroundings and poor insulation. This aligns with the provisions of the Enfield Joint Health and Wellbeing Strategy, which makes reference to the importance of housing quality as a determinant of health.
18. The contractors are required to provide a detailed method statement and risk assessment for each activity and the Council, and its advisors will review and comment on these prior to the commencement of works.
19. A dedicated communication strategy and information pack will be jointly developed by the Council and Contractor and both will provide an RLO function to enable access and support residents during the works to their home.
20. It will also ensure use of energy efficient means of insulation and heating. This is likely to reduce energy costs for residents which is particularly relevant to current cost of living crisis.
21. Furthermore, with improved energy efficiency, it will have less impact on environmental resources.

Equalities Impact of the Proposal

22. An Equality impact assessment has been undertaken and is appended to this report.
23. The works will be delivered to the social housing blocks described above and will benefit residents irrespective of the protected characteristics of the residents.

24. The terms and conditions of the contract will require adherence with the Equalities Act and contractors will be required to share their Equality Diversity and Inclusion policy to assure the council of their recruitment policies

Environmental and Climate Change Considerations

25. The Contractors' adhere to their environmental strategy which focuses on waste reduction, responsible waste disposal, hybrid/electric vehicles and carbon reduction. Contractors will use local suppliers where possible to minimise the carbon footprint of deliveries.
26. Material selection is governed by fire safety criteria and non-combustibility of replacement components. The key components of the remediation works consisting of metallic elements for the framing and cladding exterior would be 100% recyclable. Mineral wool elements are fully recyclable into other insulation products.

Risks that may arise if the proposed decision and related work is not taken

27. Risks to the Council and likely impact if the proposed decision and related work is not taken are detailed below:

Risk	Likelihood	Impact
Resident dissatisfaction as fire risk to Constable House has been highlighted in the Planning Documents and the news (Enfield Dispatch)	High	High
Fixtures and fittings are visibly failing to Constable House as some panels have come loose, therefore a health and safety concern and increased cost to repairs	High	High
Risk of non-compliance with the requirements of the Building Safety Act 2022 if works are not progressed	High	High

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

28. The table below highlights the risks identified and mitigating actions taken:

Risk	Mitigation	Residual likelihood	Residual impact
Poor resident satisfaction caused by poor contractor performance	Contract Key Performance indicators and effective contract management will be employed; ultimately other contractors can be used to deliver works	Low	Low
Contractor claims for additional monies	Robust Quantity Surveying support/resource within the Council to ensure contract provisions applied	Low	Medium
Incidents/accidents on site	Robust management of risk; Contractor submission of risk assessments etc	Low	High

Contractor refusing to sign the contract	Contractor has already signed up to the framework agreement and is aware of call off terms and conditions.	Low	Low
Coronavirus	Business continuity has been considered in the bidder quality submissions and the contractor will be expected to deliver the works in line with any government advice prevalent at the time	Low	Medium
Insolvency	A credit check with a recognised credit agency has been carried out prior to the recommendation for award	Low	High

Financial Implications

29. See Restricted Appendix

Legal Implications [Legal implications by ZS on draft report circulated on 21 October 2022]

30. The Council, as a corporate landlord has numerous duties under common law and under statute with regards to the premises that it owns/or controls. Under the Regulatory Reform (Fire Safety) Order 2005 (RRO 2005), the Council as landlord has a duty to take general fire precautions and to carry out (and regularly review) a fire risk assessment and as a result to put in place measures to remove, or reduce, so far as is reasonable, risk from fire or the spread of fire. The RRO 2005 was amended by the Fire Safety Act 2021 (FSA 2021) and the FSA 2021 clarifies that the common parts to which the RRO 2005 applies include the structure, external walls (including cladding), balconies and flat entrance doors of buildings containing two or more sets of domestic premises whatever their height. The Building Safety Act 2022 (BSA 2022) received Royal Assent on 28 April 2022 and some sections came into force on 28 June 2022 establishing a regime on fire safety with emphasis on “higher risk buildings” and it is intended to complement the RRO 2005 and the Housing Act 2004. The BSA 2022 created, amongst others, obligations that apply throughout a building’s lifecycle and new roles and responsibilities during the occupation of a higher risk building on Accountable Persons. The Council will be a Responsible Person under the RRO 2005 and a Principal Accountable Person under the BSA 2022 for its housing stock that fall within the relevant legislation. Accordingly, the recommendations in this report will enable the Council to meet its duties under the RRO 2005, the Housing Act 2004 and the BSA 2022.
31. Section 111 of the Local Government Act 1972 gives a local authority power to do anything which is calculated to facilitate or is conducive or incidental to the discharge of its functions. In addition, the Council has a general power of

competence under section 1(1) of the Localism Act 2011 to do anything that individuals may generally do provided it is not prohibited by legislation. There is no express prohibition, restriction or limitation contained in a statute against use of the power in this way.

32. The Council must ensure compliance with its Constitution, in particular the Contract Procedure Rules (CPRs). The CPRs permit the use of Frameworks, where they exist, provided Best Value can be demonstrated and sufficient evidence is retained to demonstrate compliance.
33. The contract value is below the threshold for public works contracts (currently £5,336,937 inclusive of VAT) under the Public Contracts Regulations 2015 (PCR 2015). However, as the procurement process undertaken was via a call off under a framework, Part 2 of the PCR 2015 will apply. Calling off from frameworks is permitted under regulation 33 of Part 2 of the PCR 2015. The contract award must be in accordance with the process set out in the Framework Agreement and the Service Department must ensure that the Procurement team have carried out a due diligence exercise and advised that the Council can call off from the Framework.
34. The Council must ensure that it complies with its obligations regarding best value in accordance with the Local Government Act 1999.
35. The Key Decision process under the Constitution must be followed as the value is above the Key Decision threshold of £500,000.
36. The CPRs provide that contractors must be required to provide sufficient security in one of the forms outlined in CRP 7.3. If the contractor cannot provide such security and the contract value is £1m or above, the Executive Director of Resources must approve such a decision, with reasons and risk mitigation measures set out in the relevant authority report, prior to the contract award.
37. The Service Department must further ensure that the contract includes adequate insurance requirements after undertaking a risk assessment, including but not limited to, insurance to cover the fire safety compliance works.
38. The contract recommended in this report must be in a form to be approved by Legal Services and must be executed under seal.

Workforce Implications

39. There are no direct workforce implications in this tender approval process.

Property Implications

40. HRA Property Implications: these are to be found throughout this report.
41. Corporate Property Implications: none.

Procurement Implications

42. When awarding the contract proposed in this report the Council must comply with its contract procedure rules and the Public Contracts Regulations 2015, both of which permit direct awards off frameworks provided the framework terms permit. The Pretium Framework permits direct awards.
43. As the contract is over £500k the service must ensure that sufficient security has been considered to manage risk.
44. The service must ensure that authority to procure has been obtained and must be uploaded onto the London Tenders Portal.
45. The procurement and award of the contract, including evidence of authority to award, promoting to the Councils Contract Register, and the uploading of the executed contract must be undertaken on the London Tenders Portal including future management of the contract.
46. In accordance with the Councils CPR's the service must ensure that a Contract Manager is nominated and allocated to the procurement once uploaded onto the LTP, and that the monitoring requirements are adhered to.
47. The awarded contract must be promoted to Contracts Finder to comply with the Government's transparency requirements.

Comments by Samantha Rose

Options Considered

48. Do nothing; this is not recommended as investigatory reports have deemed it necessary to carryout remediation works.
49. The procurement options available for consideration are:
 - i. Use of a suitable consortia framework agreement, with appointment via direct award or mini competition.
 - ii. Unilateral tendering of a bespoke contract utilising either the open or restricted process.
50. Using a framework can save time and money, while still delivering a service specified to local requirements. Contractors are assessed for suitability prior to joining the framework and have signed up to pre-agreed terms and conditions. Standard documentation is also provided as well as support from the framework itself. Value for money has been demonstrated through cost review from a specialist consultancy with experience of delivering similar works.

Conclusion

51. To award the contract to the proposed contractor based on the approved design.

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5th January 2023

Appendices

Background Papers

The following documents have been relied on in the preparation of this report:

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

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