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London Borough of Enfield

Operational Report

Report of: Joanne Drew – Director of Housing & Regeneration

Subject: Award of Measured Term Contract – Water Risk Assessment and remedial works

Cabinet Member: Cllr G Needs

Executive Director: Sarah Cary – Exec Director - Place

Ward: All Wards

Key Decision: KD 5070

Purpose of Report

1. To seek approval for the award of a three-year measured term contract for the provision of Water Risk Assessments (WRAs) and remedial works across the housing stock, in furtherance of the Council's statutory duty as Landlord.
2. The contract is being awarded for a three-year term with the ability to extend for a further two years, at twelve monthly intervals.

Proposal(s)

3. That approval be given to direct award a new three-year, measured term contract to the first placed service provider on South East Consortiums (SEC) Compliancy Management Framework, and authority to extend (at the Council's sole discretion) for a further 2 years at 12 monthly intervals, the contract, subject to the contractors continued performance.

Reason for Proposal(s)

4. Due to poor performance the Council has ended its current supplier arrangements for water hygiene services, as such the Council must urgently appoint a new contractor to maintain compliance across its housing stock and manage the risk posed by Legionnaires disease to its residents.
5. The Compliance team are currently issuing work packages to ensure that priority water risk assessments (WRAs) and priority 1 risks are completed, to manage the ongoing risk. However, this approach is not sustainable.

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6. Due to the risk posed to residents and the statutory risk to the Council, for expediency, following consultation with the Councils procurement hub, it was agreed that a direct call off via an OJEU compliant framework, was the quickest route to market, whilst remaining compliant with the Councils Contract Procurement Regulations (CPRs).
7. As such following a review of the available frameworks, the South East Consortium's framework (which the Council retains membership of and as such is able to access enhanced framework rates) Lot 4a – Water Hygiene, was selected for the procurement

Relevance to the Council's Plan

Good homes in well-connected neighbourhood

8. The programme will improve the quality and safety of existing homes creating thriving neighbourhoods and places

Sustain strong and healthy communities

9. Developing and sustaining good quality and safety compliant housing in areas where people desire to live will help to create and maintain strong sustainable communities.

Build our local economy to create a thriving place

10. Support residents to take more responsibility to increase the local economy and improve their communities by more active engagement in project delivery.

Background

11. The Council has statutory duties under the Health & Safety at Work etc Act; the Control of Substances Hazardous to Health Regulations (COSHH) and the Social Housing Regulator's Homes standard to control the risks posed by water services.
12. In accordance with the Health & Safety Executives Approved Code of Practice (L8), the Council is required to make an assessment of risks and complete relevant actions/ controls to ensure any risks identified, are reduced to the lowest practicable level.
13. As such the Council employs a competent contractor, to undertake water hygiene risk assessments (WRAs) across its stock and undertake a planned water maintenance programmes to monitor water temperature, the condition of stored water and treat communal water systems where appropriate, to maintain water quality and manage the risks associated with Legionnaires disease.
14. The Council has dispensed with the services of its incumbent supplier, following an internal audit, which raised significant concerns regarding the

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quality of WRAs being supplied. Hence a decision was taken to cease the current contract arrangements and seek the services of a competent contractor to supply this service.

15. Echelon (a specialist procurement consultancy) was appointed to support the Council with the tender exercise.
16. A direct call off strategy was selected as the most expedient route to market, given the importance of the service and urgency for replacement of services. This is deemed compliant with the Councils CPRs.
17. South East Consortium as an OJEU compliant framework has evaluated, all service providers, on price and quality, as such the proposed supplier, has been evaluated as the first placed supplier on the lot, hence providing the Council with the most advantageous offer.
18. The first placed bidder on the Lot was interviewed as part of the selection process to confirm they met the Councils competence requirements and had sufficient capacity to fulfil the contract over the three-year term.
19. In addition, the Council has sort references from the contractors existing clients, who have procured their services via the SEC framework, to attain assurance regarding their service quality.
20. The Council propose to award the contract via a JCT Measured term contract, as such orders for services and works, will be raised by the M&E & Compliance team, as required against a set of agreed schedule of rate costs, which are embedded within the framework.
21. Having undertaken a review of the historic rates and the contract rates, the Council will benefit from an overall operational saving, by awarding this contract.
22. The annual value of the contract is such that it is below the threshold whereby Leaseholder Consultation is required under The Landlord & Tenant Act. The cost of this service forms part of the annual service charge costs, as such there is no capital charge recovery associated with this contract award.

Main Considerations for the Council

23. The Council has statutory duties under the Health & Safety at Work etc Act; the Control of Substances Hazardous to Health Regulations (COSHH) and the Social Housing Regulator's Homes standard to control the risks posed by water services.
24. In accordance with the Health & Safety Executives Approved Code of Practice (L8), the Council is required to make an assessment of risks and complete relevant actions/ controls to ensure any risks identified, are reduced to the lowest practicable level.

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Safeguarding Implications

25. The works will require Contractors to enter resident's homes and therefore the Contract Documents require Disclosure & Barring Services (DBS) and adherence with the Council's Safeguarding Policy.
26. 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 both the works delivered and the processes adopted by the Contractors. Evaluation of the Contractors offers in this area are a major component of the qualitative evaluation.

Public Health Implications

27. The works will improve the living conditions of those residents that receive works. This aligns with the provisions of the Enfield Joint Health and Wellbeing Strategy, which makes frequent references to the importance of housing quality as a determinant of health.
28. The contractor will be completing works in-line with the governments Covid Secure and CLC guidelines.

Equalities Impact of the Proposal

29. Corporate advice has been sought in regard to equalities and an agreement has been reached that an equalities impact assessment is neither relevant nor proportionate for the approval of this report, however it should be noted that the any contracts awarded should include a duty on the successful applicant to assist us with meeting our obligations under the Equalities Act 2010

Environmental and Climate Change Considerations

30. The nature of these works will not impact on the overall performance of the housing stock, however in line with current procurement requirements, the contractor is providing a Social Value offer, in accordance with the Councils Social Value requirements, which includes, supporting local employment, training opportunities and greening of estates.

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

31. Risks to the Council and likely impact if the proposed decision and related work, is not taken

Risk	Likelihood	Impact
The Council will be in breach of its statutory duties as Landlord and will be subject to prosecution	High	High
The Council will fail to meet the Decent Homes Standard	High	High

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Potential that residents are exposed to dangerous substances leading to ill-health/ death	High	High
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Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

32. The table below highlights risks identified and mitigating actions taken.

Risk	Mitigating action	Residual risk High / Medium or Low
Compliance with Public Contracts Regulations 2015	Contract procured via established framework with support from the framework providers who ensure compliance with the framework rules and Public Contract Regulations 2015	Low
Price Assurance	The contract is being procured via a JCT MTC contract form, as such order will be raised to instruct work, ensuring the team have price assurance and can carefully monitor the annual budget spend	Low
Contractual issues	The Councils requirements are built into the bespoke contract and tender documentation	Low
Supplier performance	Clearly defined key performance indicators (KPI's) have been incorporated into the contract. Structured and regular meetings to be held with the Councils Project Manager to monitor programme and performance. A new Gas and Water quality inspector role has been created in the Compliance Management team to provide quality assurance	Low
Coronavirus – Contractor workforce / material lead ins	All contractors are required to work in accordance with Covid secure and CLC guidance.	Low

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	Further lockdowns are not expected to impact work delivery or impact material supplies.	
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Financial Implications

33. The cost of this contract is funded by the Repairs revenue account, as an operational cost.
34. Costs are recoverable from residents via service charges.

Legal Implications

Legal Implications provided by MP on 15th December 2020 based on version of report circulated on 8th December 2020 timed at 13:59hrs.

35. 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. The proposals outlined in this report are in accordance with this power.
36. The Council also has a general power of competence in s.1(1) Localism Act (2011) which states that a local authority has the power to do anything that individuals generally may do provided it is not prohibited by legislation.
37. The Council must ensure that all procurement has been carried out in accordance with the Council's Contract Procedure Rules (CPRs) and the Public Contracts Regulations (2015). Officers must ensure the selection and award process is carried out in accordance with the relevant SEC framework rules and terms. The use of a framework is a compliant route to award, provided that the procurement process complies with the Public Contracts Regulations (2015) ("PCR 2015"), the Council's CPRs, and the rules/terms of the framework itself. The P&C Hub carried out due diligence on the SEC framework and has confirmed that a compliant procurement process has been undertaken.
38. The terms of the contract procured must be consistent with the SEC framework, and it, along with any other supplementary contractual documentation must also be in a form approved by the Director of Law and Governance ahead of contract commencement.
39. In respect of any contract with a value between £500,000 - £1,000,000, in accordance with the Council's CPRs (7.2), officers are expected to consider whether additional security from the contractor is required. In accordance with CPR 7.3 'sufficient security', means one of the following:
 - (i) parent company, ultimate holding company or holding company guarantee where their finances prove acceptable;

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- (ii) director's guarantee or personal guarantee where their finances prove acceptable;
 - (iii) performance bond, retained funds or cash deposit; or
 - (iv) any other security as determined by Financial Management Services and/or Legal Services.
40. Evidence of the form of security required **or** why no security was required must be stored on the E-Tendering Portal for audit purposes. The Council should liaise with the Procurement & Commissioning Hub for assistance on this.
41. The Council must comply with (and continue to comply with) its obligations relating to obtaining best value under the Local Government (Best Value Principles) Act 1999. In accordance with CPR 4.3 the officer awarding the contract has a duty to demonstrate that best value has been obtained. Further, officers must ensure throughout the lifetime of a contract
42. The Council must ensure compliance at all times with its Constitution. As this is a Key Decision the Council must comply with the Key Decision procedure.
43. The Council has carried out all procurement exercises in accordance with its Contract Procedure Rules ("CPRs") and the Public Contracts Regulations (2015) ("PCRs (2015)"). In awarding any contracts the Council must continue to adhere to the PCRs (2015), its CPRs and in particular the requirement of CPR 4.2 which states that no contract may be awarded unless there is sufficient budget available for the goods, supplies, services or works being procured and appropriate delegated authority to award the contract, has been provided.
44. Any legal agreements (and ancillary documents where relevant) arising from the matters described in this report must be approved in advance of contract commencement by Legal Services on behalf of the Director of Law and Governance.

Workforce Implications

45. The above report has no direct implications on the current workforce at this time as these are works not completed by our employees.
46. Resources to manage the contract are already provide within the existing M&E & Compliance management function.
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Property Implications

47. None.

Other Implications - Procurement

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48. A review of known suitable works framework agreements was undertaken by the Service to identify available agreements to the Council, critiquing each option to narrow down those that can be considered, considering delivery timescales.
49. The Call-Off from the Framework must be carried out in line with the relevant framework process. As the service is using the SEC Tendering Portal all procurement documentation associated with this procurement must be uploaded onto the Councils E-Tendering Portal following successful authority to award being obtain.
50. The service must ensure that authority to procure has been obtained and must be uploaded onto the London Tenders Portal
51. The award of the contract, including evidence of authority to award, promoting to the Councils Contract Register, and the uploading of executed contracts must be undertaken on the London Tenders Portal including future management of the contract.
52. The awarded contract must be promoted to Contracts Finder to comply with the Government's transparency requirements.

Options Considered

53. No other options were considered as frameworks offer the most expedient route to market available, whilst remaining compliant with the Public Contract Regulations 2015.
54. Given the importance of these services and urgency emphasis was placed on speed of re-procurement over value for money, However it should be noted that the framework rates offer a cost saving against the previous contract rates.
55. Suppliers on frameworks are assessed for suitability prior to joining the framework with pre-agreed terms and conditions. Standard documentation is available but can be amended to include specific requirements by the client.
56. Tendering through OJEU compliant Frameworks allows clients to create bespoke documentation designed to fit its requirements. This approach gives tender opportunity to a wider group of bidders but requires a long time from document preparation and procurement to tender receipt.

Conclusions

57. That approval be given to award a three-year measured term contract to the first placed service provider on the Water Hygiene Risk Assessment lot, utilising the South East Consortium (SEC) Framework.

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Date of report 8th February 2021

Appendices

Appendix 1 – Part 2 (Confidential) report