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London Borough of Enfield

Operational Report

Report of: Joanne Drew – Director of Housing & Regeneration

Subject: Award of Measured Term Contract – Passive Fire Safety 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 passive fire safety remedial works across the housing and community facilities portfolio, in furtherance of the Council's statutory duty as the Responsible Person for fire safety.
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 award a new three-year contract to Contractor 1 following a mini tender process undertaken via the EU compliant South East Consortium framework – Fire Safety Remedials lot. The authority will have the ability to extend (at the Council's sole discretion) for a further 2 years at 12 monthly intervals, the contract, subject to the contractor's continued performance.

Reason for Proposal(s)

4. The Council has a statutory duty as the Responsible Person, as defined by the Regulatory Reform (Fire Safety) Order to reduce the risk from fire, to as low as reasonably practicable (ALARP) and to ensure the Council is prepared for the enactment of the Building Safety Act in autumn 2021.

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5. In furtherance of its statutory duty, the Council undertakes Fire Risk Assessments (FRAs) at regular intervals to quantify the risk and the required controls to reduce the risk to ALARP. Control measures will vary from block to block but fall into three main categories; the provision or repair of existing passive fire safety measures; the provision or repair of active systems or management controls.
6. This contract is being awarded as a vehicle to deliver the passive control measures, as identified in the FRA, in order for the Council to fulfil its statutory duty.
7. Third Party Certification for the installation of passive life safety systems, is a key requirement of this contract, to provide the Council and residents with assurance as to the quality products and workmanship.

Relevance to the Council's Corporate 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 a statutory duty as the Responsible Person, as defined by the Regulatory Reform (Fire Safety) Order to reduce the risk from fire, to as low as reasonably practicable (ALARP) and to ensure the Council is prepared for the enactment of the Building Safety Act in autumn 2021. Fire Safety is also a defined risk under the Housing Health & Safety Rating System and a key element of the Social Housing Regulators Homes Standard.
12. This contract is being awarded as a vehicle to deliver the passive control measures, as identified in the FRA, in order for the Council to fulfil its statutory duty.
13. Third Party Certification for the installation of passive life safety systems, is a key requirement of this contract, to provide the Council and residents with assurance as to the quality products and workmanship.

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14. The Councils DLO, Enfield Repairs Direct (ERD), does not currently hold the relevant certification to install passive life safety systems, as such this work must be outsourced. However attainment of certification, is within the ERD skills development plan for the medium term.
15. Echelon (a specialist procurement consultancy) was appointed to support the Council with the tender exercise.
16. A mini-tender via SECs Fire Safety Remedials Lot was selected as the most appropriate route to market, ensuring that the Council procured the services of a Certified contractor, with sufficient skills, knowledge and experience of delivering safety critical works, whilst demonstrating competition to attain best value.
17. South East Consortium as an EU compliant framework has evaluated, all service providers, on price and quality and competence, ensuring that all bidders are suitably qualified to bid for works of this nature.
18. 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 Building Safety team, as required against a set of agreed schedule of rate costs, which are embedded within the contract.
19. Where the value of the works at a single block will be in excess of £250 per leaseholder, a decision will be made subject to the risk, to undertake block consultation, or where there is a significant risk, which warrants that the Council progresses works quickly, the cost of the works will be capped. As such the cost of works undertaken under this contract will be recovered via the annual service charge costs, in the majority of cases, as such there is no capital charge recovery associated with this contract award.

Main Considerations for the Council

23. The Council has a statutory duty as the Responsible Person, as defined by the Regulatory Reform (Fire Safety) Order to reduce the risk from fire, to as low as reasonably practicable (ALARP) and to ensure the Council is prepared for the enactment of the Building Safety Act in autumn 2021. Fire Safety is also a defined risk under the Housing Health & Safety Rating System and a key element of the Social Housing Regulators Homes Standard.

Safeguarding Implications

24. 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.
25. 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

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Contractors. Evaluation of the Contractors offer in this area are a major component of the qualitative evaluation.

Public Health Implications

- 26. 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.
- 27. The contractor will be completing works in-line with the governments Covid Secure and CLC guidelines.

Equalities Impact of the Proposal

- 28. 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

- 29. 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

- 30. 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 Homes Standard	High	High
Loss of Life and property as a result of fire	Medium	High
Reputational risk, associated with significant fire incidents	High	High

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

- 31. The table below highlights risks identified and mitigating actions taken.

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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 orders 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	<p>Clearly defined key performance indicators (KPI's) have been incorporated into the contract.</p> <p>Structured and regular meetings to be held with the Councils Project Manager to monitor programme and performance.</p> <p>Building safety Surveyor role will be monitoring delivery and providing quality assurance</p>	Low
Coronavirus – Contractor workforce / material lead ins	<p>All contractors are required to work in accordance with Covid secure and CLC guidance.</p> <p>Further lockdowns are not expected to impact work delivery or impact material supplies.</p>	Low

Financial Implications

32. The cost of this contract will continue to be funded by the Repairs revenue budget, which are included within the HRA 30 year Business Plan.

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33. Costs are recoverable from residents via service charges.

Legal Implications

34. Under the Regulatory Reform (Fire Safety) Order 2005 (Fire Safety Order), 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 proposals in this report will enable the Council to meet its duties under the Fire Safety Order. The Council must further closely monitor the Building Safety Bill and Fire Safety Bill to ensure that, when enacted, any legal requirements on the Council are implemented.
35. Section 111 of the 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 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 generally 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.
36. The Council must comply with its Contract Procedure Rules (CPRs) and the Public Contracts Regulations 2015 (PCR 2015), and its obligations with regard to obtaining best value under the Local Government Act 1999. Both the PCR 2015 and the CPRs permit the use of framework agreements. A due diligence exercise must be carried out by the Procurement and Commissioning Hub (P&C Hub) prior to calling off from a Framework and the Council must be clearly identified as a contracting authority able to use the Framework when the Framework was set up. The contract award must be in accordance with the process set out in the Framework agreement and the terms of the call off contract must be consistent with the framework terms.
37. The Key Decision process under the Constitution must be followed as the contract value is above the Key Decision threshold of £500,000. The contract must be in a form approved by Legal Services for and on behalf of the Director of Law and Governance and it must be executed under seal.
38. For contracts £1,000,000+ in value, 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, 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.

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Workforce Implications

39. The above report has no direct implications on the current workforce at this time as these are works not completed by our employees.
40. Resources to manage the contract are already in place within the existing Building Safety team.

Property Implications

41. HRA property implications: these are found throughout this report.
42. Corporate property implications: none.

Other Implications - Procurement

43. Any procurement must be undertaken in accordance with the Councils Contract Procedure Rules (CPR's) and the Public Contracts Regulations (2015).
44. 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. This includes procurements from a framework. Where procurement was undertaken outside of the LTP, all documentation can be provided to Procurement.support@enfield.gov.uk for uploading into the London Tenders portal, and the corporate contract register.
45. All awarded projects must be promoted to Contracts Finder to comply with the Government's transparency requirements.
46. All frameworks must be legally accessible to the Council and be access in line with the framework rules.
47. All contracts over £100k must have a nominated contract manager in the London Tenders Portal. Contracts over £500,000 must show evidence of contract management of KPI's to ensure VFM throughout the lifetime of the contract.

Options Considered

48. No other options were considered as frameworks offer the most expedient route to market available, whilst remaining compliant with the Public Contract Regulations 2015.
49. Given the importance and safety critical nature of these works emphasis was placed on speed of procurement.

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50. 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.
51. Tendering through EU 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

52. That approval be given to award a three-year measured term contract for Passive Fire safety Remedial works to Contractor 1, utilising the South East Consortium (SEC) Framework.

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Date of report: 17th March 2021

Appendices

Appendix 1 – Part 2 (Confidential) report