

# London Borough of Enfield

## Operational Report

Report of **Director of Housing and Regeneration**

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**Subject:** **263 Bullsmoor Lane:** Award of Two Stage Design and Build Contract

**Executive Director** Sarah Cary (in consultation with Fay Hammond)

**Ward:** Chase

**Key Decision:** KD 5370

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### Purpose of Report

1. This report seeks the approval for the award of the full design services and construction (Turnkey Contract) of the 263 Bullsmoor lane development to bidder B as identified in Appendix A through the LHC NH2, Workstream 4 (Full Turnkey Solution) Framework
2. The first stage of the appointment, is the preconstruction service agreement (PCSA). This stage comprises of the full design services, planning application, surveys and includes payment for the contractor's overhead and profit in relation to these services.
3. The second stage is the offsite manufacture, on site assemble, preliminaries, overhead and profit and construction of the scheme. This bidder has provided an indicative value as detailed in Appendix A. The value provided has been checked in line with the framework ceiling rates and has been confirmed to be 8.9% below the maximum ceiling rate.
4. The award and progress of the second stage is predicated on achieving planning approval for the design.
5. Approval of this decision will allow progress on the delivery of the Bullsmoor lane scheme, which is part of the Council's Building Council Homes for Londoners programme, and will ensure that start on site is achieved and grant funding drawdown.

### Proposal

6. Approve the award of full design and construction services to Bidder B as Turnkey contractors through a competitive tendering using the LHC frameworks. Details of competition are included in Appendix A. This award includes the full

design services, surveys, planning application, off site manufacture, site assemble of the development at 263 Bullsmoor Lane and the contractors overhead and profit. The manufacture and site assembly is dependent on achieving planning permission for the scheme.

### **Reasons for Proposal**

7. The Key decision (**KD 5285**) authorised in June 2021 approved the overall capital investment for the 263 Bullsmoor Lane. Cabinet in February 2021 (KD5219) delegated authority to the Executive Director of Place, in consultation with Executive Director of Resources, to enter into development partnerships, award contracts for works and professional services and enter into or agreements for the acquisition or disposal of property for development schemes. The award of this contract is within this key decision.
8. The development is part funded by the GLA's Building Council Homes for Londoners programme and the grant is conditioned on start on site by September 2022. This award is critical to the achievement of planning consent and off-site manufacture and site assemble to meet the grant requirements.
9. The LHC framework is a Public Contracts Regulations 2015 compliant framework agreement. Procurement have confirmed that the competition carried out within the Turnkey lot of the framework is a permissible route within this framework for this award and that the competition was carried out in accordance to its process.

### **Relevance to the Council's Plan**

10. This contract will enable delivery on the priorities of the 2018-2022 Plan, "Creating a lifetime of opportunities in Enfield", by providing good homes in well-connected neighbourhoods.

### **Background**

11. The Council purchased the land in January 2020 with a planning consent (17/05227/FUL) for the redevelopment of this site; however, the Council does not intend to build out this consent, because the Council believes that the site can be optimised to provide more homes.
12. The proposal is to deliver a high-quality planning compliant scheme of up to 31 homes using modern methods of construction to achieve an exemplar, sustainable and low carbon scheme.
13. This award will enable the Council to submit a detailed planning application by December of this year. This will ensure the Council is able to drawdown GLA funding by the September 2022 deadline. Not progressing the scheme would lead to slippage and risk of funding loss.

### **Budget and Tender Summary**

14. See Appendix A and Tender report

## Main Considerations for the Council

15. Already agreed as part of the HRA 30-year Business Plan, the Bullsmoor lane project is a major scheme that delivers the objectives of the Housing and Growth Strategy 2020-2030 and Council's development delivery strategy milestones.
16. As shown in the following project plan, there is need to progress the development to maintain GLA funding.

<b>Project Milestones</b>	<b>Deadline</b>
Investment Decision DAR	June 2021
Planning Submission	December 2021
Contract award first stage PCSA (Pre-construction service agreement)	July 2021
Planning Consent	March 2022
Construction Contract Award second stage	April 2022
Start on site and grant draw down deadline	September 2022
Practical completion and balance of grant drawdown	Nov 2023

17. The award for the contract can be met within the £6.049m project allocated budget.

## Options Considered

### Do nothing

18. The Council will not be able to place the Turnkey contract for this scheme.
19. It is vital that these homes are delivered to meet the GLA BCHL programme by September 2022.
20. The loss of this opportunity would otherwise not provide much needed council homes and reduce pressures on the council house waiting list and temporary accommodation budgets.

### Compliant open tender

21. This option was considered however there would be a cost associated with procurement of a Turnkey contract, including extending the period for procurement. As the LHC framework has a dedicated Turnkey lot for MMC suppliers, the preferred route was a competitive tender using this framework.
22. Given the cost and time for an open tender the priority is to achieve a start on site by September 2022 to drawdown the GLA funding. If this was not achieved or delivered within budget assumptions, this would make the scheme unviable and unable to progress

## REASONS FOR RECOMMENDATIONS

23. The Council worked with the London Housing Consortium (LHC) using the Turnkey Contractor Lot of the framework to approach 6 contractors. An Expression of Interest (EOI) was issued to all 6 contractors to which 3 confirmed interest. The EOI included quality criteria which the contractors were requested to complete. Following this stage, the three contractors were invited for a second round of quality criteria clarification and interview. When invited to interview only two contractors responded, resulting in two tenderers being invited forward to the second stage of the tender process.
24. The first stage of the tender process focused on the qualitative assessment of the two tenderers. These two tenderers were invited for interview and to present their proposals to the Council.
25. The Quality section of this tender has been allocated a 55% weighting. The table below details the score that was awarded to each of the tenderers.

	Quality score
Bidder A	48.75%
Bidder B	55%

26. The second stage ITT was issued on 28 April 2021. The second stage focused on establishing the Pricing and Social Value scores of each tenderer. Social value has been allocated 10% and pricing allocated 35%
27. Following tender review and clarifications Bidder B was the lowest tender therefore scoring 35% on price. Bidder A scored 25.68% as the second lowest bidder.

	Price score
Bidder A	25.68%
Bidder B	35%

28. The tenderers were also requested to use the Social Value Portal to detail the proposed added social value within their submissions. The Social Value section of this tender has been allocated a 10% weighting to the overall score. The Social Value submissions from both providers was reviewed in accordance with the published instructions for submission and marking model. Bidder A scored 0% as the Social Value Delivery plan was not submitted and the social value offer is not contract related and does not provide benefits to the community within the definition of 'local'. Bidder B's Social Value response was contract related, therefore it was scored as "Good" and 75% weightings were given in accordance with the scoring matrix, which then got converted to 8.75% out of 10% allocated for Social Value"
29. The table below details the scores awarded to each contractor.

	Social value score %
Bidder A	0%
Bidder B	8.75%

30. Based on the above, the value of the award is competitive against market rates and provides good value for money
31. The winning bidder had evidence of the design that achieved SAP A rating
32. The bid also had evidence of design which achieved net zero and met emerging standards.

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

33. The key risk would be the missed opportunity to develop additional affordable rented homes that are within the Council's financial parameters.
34. A delay to decision making could also result in delay to start on site and risk of loss of GLA funding.

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

Risks	Likelihood & Impact	Mitigation
1. This project is a pilot MMC development, so Planning constraints and requirements could delay planning submission	H	A PPA with the LPA for the scheme should assist in working through any planning constraints and enable a timely submission of a compliant and viable scheme.
2. That build costs could rise excessively prior to starting on site on this scheme.	M	A Quantity Surveyor's review and assessment will be completed as design is developed to ensure costs have been correctly benchmarked against current market trends.
3. Community and Stakeholders objection to development.	M	Effective consultation with wider community as design develops will ensure that that all the relevant Stakeholders can feedback on the design.
4. Risk of uncertain market conditions due to Brexit and COVID 19	L	This is mitigated by developing affordable product with GLA funding

5. Underground obstructions/contaminated ground could delay and/or make the scheme unviable to deliver.	M	Adequate site investigations will be commissioned to de-risk the site.
6. Loss of Grant Funding	H	Award the main contract in time to start on site by September 2022
7. Unable to agree deed of easement with neighboring developer to provide access	M	Review scheme design to allow viable alternative access in discussion with planning

### **Safeguarding Implications**

35. No safeguarding implications identified at this point

### **Public Health Implications**

36. The award of a full design and construction contract for the Bullsmoor Lane development has no direct Public Health implications.

37. However, the provider's commitment to using modern methods of construction will reduce carbon emissions and other environmental effects arising from the development across its lifecycle, leading to Public Health benefits compared to a traditionally constructed development

### **Equalities Impact of the Proposal**

38. EQIA on the procurement of this contract, will have due regard to the requirements of the Public-Sector Equality Duty

- a. Eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Act
- b. Advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it
- c. Foster good relations between people who share a relevant protected characteristic and those who do not share it

39. We are satisfied that the chosen supplier has an equality policy in relation to employment and will help the council meet its equality duties.

40. The supplier will promote equal opportunities in the employment of staff working on the contract.

41. Public-Sector Equality Duty will be considered in the design brief, this would involve consultation with local community affected by the scheme

42. An EQIA will be completed at relevant points in the development of the scheme.

43. The Council will check a contractor's compliance with equalities issues in two ways:

- a. Prior to Contract Award: by asking the equalities questions requiring documentary evidence to support equality systems/processes within the company.
- b. After Contract Award: by including contract conditions on equality in all Council contracts and by monitoring a contractor's performance and compliance.

### **Environmental and Climate Change Considerations**

44. The Turnkey contract being procured will support the design and delivery of a scheme in line with London Plan requirements and so demonstrate that proposed climate change mitigation measures comply with London Plan energy policies, including the energy hierarchy. It will also ensure energy remains an integral part of the development's design and evolution.
45. The services being procured will also support the demonstration of how the zero-carbon target for residential developments will be met, with at least a 35% on-site reduction beyond Part L 2013 and proposals for making up the shortfall to achieve zero carbon, where required.
46. An assessment of energy provision on the site will be undertaken as part of the design development
47. An energy/carbon emissions reduction assessment will be completed for the scheme by the appointed engineer as part of the planning submission.
48. The Modern Method of Construction approach will allow the development to achieve low carbon emission, less consumption of materials, reduced waste on site and fewer construction vehicle trips.
49. Environmental impacts of site maintenance/management regimes will be considered as proposals are finalised. This will include bin storage and waste collection routes, surface water drainage systems and public realm cleansing. Any potential environmental impacts and mitigation measures will be highlighted in the planning submission.
50. The impact of climate change will be considered as part of the energy strategy and will include over-heating calculations that will take account of future climate change impacts. Future climate change impacts will also be considered as part of the Sustainable Urban Drainage Strategy.
51. Buildings in use make up 38% of borough-wide emissions so future retrofits must be avoided as far as possible.

### **Financial Implications**

52. Approved budget assumes total scheme cost £7.75m for 31 units, all to be let at London Affordable Rent in return for grant. Total scheme cost, including contingency, estimated £7.75m.
53. Stress testing, the results of which are unchanged from those approved under KD 5285, indicates the overall viability is compromised if there is an increase of 10% in total scheme costs: NPV per unit would fall from a positive £11k per unit
54. Appendix shows detailed breakdown of cost estimates and how they compare to original estimates approved at KD 5285.

### **Budget – Capital & financing & debt**

55. 31 units funded by grant of £100k per unit, confirmed by GLA 5<sup>th</sup> July 2021.  
Total grant funding £3.1m therefore remaining £4.65m funded from borrowing.

### Budget – Revenue

- 56. Rental income – unchanged at published LAR rates
- 57. Interest cost – in line with approved budget assuming at 3½%

### Taxation – Residential units

- 58. VAT - Construction costs exempt; rental income is zero rated
- 59. Stamp Duty Land Tax (SDLT) - payable at higher rate where more than one property acquired; not applicable to this scheme
- 60. No adverse VAT implications identified

### Taxation - Commercial units

- 61. Construction costs subject to standard rated VAT; rental income exempt
- 62. VAT - Authority unable to recover VAT incurred in cost of construction unless Option to Tax exercised before development commences.
- 63. Exercising Option to Tax has the effect of adding standard rated VAT on commercial rents and enabling Authority to recover VAT incurred in construction of the related commercial units
- 64. No commercial units therefore outside scope – for completeness only

### **Legal Implications**

- 65. The Council has a wide general power of competence under Section 1 of the Localism Act 2011 (as amended) to do anything that individuals generally may do. The existence of this general power of competence is not limited by the existence of any other power of the Council which (to any extent) overlaps it. A local authority may exercise the general power of competence for its own purpose, for a commercial purpose and/or for the benefit of others. The Council also has a power under section 111 of the Local Government Act 1972 (as amended) to do anything which is calculated to facilitate or is conducive or incidental to the discharge of any of its functions. Furthermore, pursuant to section 8 of the Housing Act 1985 (as amended), the Council is required to consider the housing conditions and needs of their area with respect to the provision of further housing accommodation. The report and its recommendations are consistent with these powers and duties
- 66. The legal comments in report KD5285 remain applicable. All works and services associated with this scheme must be procured and dealt with in accordance with the Council's Constitution, especially its Contract Procedure Rules and Procurement Manual, and the Public Contracts Regulations 2015 (as amended). All contracts pursuant with this report will need to be in a form approved by Legal Services on behalf of the Director of Law and Governance.
- 67. As noted above, Cabinet (KD5219) delegated authority to the Executive Director of Place, in consultation with Executive Director of Resources, to award contracts for this scheme.
- 68. BB July 21

### **Workforce Implications**

- 69. There are no new workforce implications in this report.

### **Property Implications**



70. HRA property implications: These are throughout the report.

71. Corporate property implications: none.

### **Procurement implications**

72. Any procurement must be undertaken in accordance with the Councils Contract Procedure Rules (CPR's) and the Public Contracts Regulations (2015).

73. 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.

74. All awarded projects must be promoted to Contracts Finder to comply with the Government's transparency requirements.

75. Any framework used must be legally compliant and accessible to the Council. The terms and conditions of the framework must be used, and the framework accessed in accordance with the framework rules.

76. The 263 Bullsmoor Lane project has been approved by Head of Service - Place and it was agreed to use the LHC framework, which provides a selection of pre-assessed MMC Contractors and would deliver value for money plus more cost effective than a full tender procurement exercise.

77. During the planning process due regard was taken to include social value, equalities and sustainability elements within the procurement tender documents. This is in line with the CPR's and new Sustainable & Ethical Procurement policy that will come into effect in October 2021.

78. It is expected that a contract of this size and risk, should have regular contract reviews, and that KPI's are monitored including the delivery of any social value, and carbon emissions elements.

79. The contract DN522145 in line with the CPR's should have a nominated contract managed named in the LTP, and evidence of regular reviews uploaded to the LTP

### **Other Implications**

80. N/A

## Conclusions

81. This decision will provide an exemplary, sustainable and low carbon development using modern methods of construction that will contribute to a transformation of the area while delivering much needed affordable homes.

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## Appendices

Appendix A: Confidential Appendix

Appendix B: Tender report from Motts Macdonald

Appendix C: Price Validation from LHC