

London Borough of Enfield

Operational Report

Report of Joanne Drew, Director of Housing and Regeneration

Subject: Award of Boroughwide Housing Block Refurbishment Works Contracts

Executive Director: Sarah Cary

Ward: Boroughwide

Key Decision: 5313

Purpose of Report

1. To obtain approval to award two contracts for external and communal area refurbishment works to residential properties in the Borough, following a compliant tender process.

Proposal(s)

2. That approval be given to award two, four-year contracts. The works included within these contracts comprise validation of stock condition information, survey, design and replacement and refurbishment of the external envelope of housing flat blocks and ancillary external works.
3. The scope of the works relates to approximately 1,000 properties within blocks. The blocks are situated throughout the Borough and are all owned by the Council and there are Leaseholders within the Blocks that will be subject to the requirements of Section 20 Consultation.

Reason for Proposal(s)

3. Given the high volume of properties included in the programme and planned timescale for completion of the works, it is recommended to award two separate contracts to ensure the Council mitigates risks around possible labour shortages and supply chain performance.
4. The procurement plan was approved at the Procurement and Commissioning Hub on Tuesday 24th September 2019, noting that all such procurement activity would be carried out in accordance with the Council's procurement rules to ensure the programme delivers value for money and achieves the quality standards expected for tenants.

Relevance to the Council's Plan

5. The contract will support the following objectives from the Corporate Plan.
6. Good homes in well-connected neighbourhood: The programme will improve the quality and safety of existing homes and therefore positively impact on the quality of life for our residents.
7. Sustain strong and healthy communities: Improving the existing homes where people desire to live will help to create and maintain strong sustainable communities.
8. Build our local economy to create a thriving place: Ensuring residents can fully participate in activities within their neighbourhood.

Background

9. The 2021/22 capital programme has identified the need for a substantial programme of refurbishment works to approximately 1000 homes located in housing flat blocks throughout the borough, to ensure that the stock remains well maintained in accordance with the Decent Homes Standard and ensure compliance with the Housing Health and Safety Rating System.
10. Tenders were issued with the intention of entering into two contracts with the first two ranking Contractors for four years. The Contracts are designed to be flexible in use and are 'order based', i.e., works are packaged into orders with defined start and finish dates and agreed prices based upon the tendered rates. There is no obligation upon the Council to issue Orders and no guarantee of work content or mix.
11. The scope of works includes:
 - Repair and replacement of pitched and flat roof coverings and associated details, flashings and rainwater goods
 - External fabric repairs
 - Structural repairs
 - Insulation measures including external wall insulation, cavity wall insulation and loft insulation
 - Works to eliminate the ingress of water, presence of damp, free ventilation and thermal bridging
 - External works including repair and replacement of fencing and paving
 - Work to boundary control elements and retaining walls
12. The project includes works to leasehold properties.
13. As the contracts values are above the Public Contracts Regulations (PCR) threshold for advertising in the Official Journal of the European Union (OJEU), the Council decided to use the Southeast Consortiums approved procurement framework as the procurement route. This Framework provides a route to market where the participants have been pre-qualified through an PCR

compliant process for works of this nature. The specific Framework used is for 'Internal and External Building Works, for projects over £1m per annum'.

14. The new agreements are designed to bring additional benefits to both residents and the wider Enfield community through social value initiatives built into the contract. Accordingly, bidders were required to submit an offer detailing their social value commitments via the social value portal.

Main Considerations for the Council

15. The programme is required to ensure that the Council delivers homes that meet the Decent Homes Standard.

17. See restricted appendix for further details.

Safeguarding Implications

18. 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.
19. 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

20. Good homes are a basic necessity for human health, the award of these contracts will help secure this. It should also mitigate the risk from excess winter deaths as well as that of placing residents in a position of 'heat or eat' whereby poverty and expenditure places the resident in a situation of having to choose between the two.

Equalities Impact of the Proposal

21. It is not deemed relevant or proportionate to carry out an equality impact assessment/analysis for the approval of the tender that represents the winning bid and complies with the tender requirements of the Council for external repairs as part of the Council's Decent Home Programme.
22. Individual requirements are addressed prior to starting on site to ensure all relevant individual circumstances are considered during the works.
23. Any contract 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

24. The Contractor's offers include several environmental commitments that will be delivered to the Council including related to waste management, recycling and carbon reduction.
25. In addition, the works will provide improved environmental performance from the resident's homes by providing modern facilities and improved thermal efficiency through insulation measures, works to eliminate the ingress of water, presence of damp, free ventilation and thermal bridging. Following completion of works a domestic EPC inspection will be undertaken to update the property performance rating.
26. The Council are applying for Social Housing Decarbonisation Fund (SHDF) grants and if successful intend to use this project as a delivery vehicle for funded works.
27. Installations are required to meet bespoke requirements and current Building Regulations and this will typically result in improvements in environmental performance of the home.

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

27. See table

| Risk | Likelihood | Impact |
|--|-------------------|---------------|
| The Council will fail to meet Decent Homes Standard | High | High |
| Increased levels of resident dissatisfaction with the condition of their homes | High | Medium |
| Deterioration of property that may lead to increased future costs | Medium | Low |

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

28. See table

| 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 |

29. See restricted appendix for further details.

Financial Implications

30. An investment budget was approved as part of the rent setting report in February 2020 and the costs of these works are included, in the HRA 30-year business plan.

31. See restricted appendix for further details.

Legal Implications

32. The Council has the power to alter, repair or improve its housing stock in accordance with section 9 of the Housing Act 1985. The Council further has power under s111 of the Local Government Act 1972 to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. It is empowered to enter into contracts for the discharge of its legal powers (section 1 Local Government (Contracts) Act 1997) and has a general power of competence under s1 (1) of the Localism Act 2011 to do anything that individuals generally may do, provided it is not prohibited by legislation and subject to public law principles.

33. The Council must be mindful of the Fire Safety Act 2021 (FSA 2021) which received Royal Assent on 29 April 2021 and amended the Fire Safety Order 2005. The FSA 2021 provides that all responsible persons (i.e. the relevant duty-holder) for multi-occupied, residual buildings must manage and reduce the risk of fire for: (i) the structure and external walls of the building, including cladding, balconies and windows; and (ii) entrance doors to individual flats that open into common parts.

34. The Council must ensure that the contract and specification are robust so that any obligations on the Council under the Building Safety Bill are incorporated and/or can be implemented during the contract term (Legal commentators currently expect the Bill to receive Royal Assent around April 2022). In particular, the Council must be mindful that certain obligations, such as the Gateway 1 (planning gateway) process for construction and major refurbishment of higher buildings came into force on 1 August 2021 by virtue of the Town and Country Planning (Development Management Procedure and Section 62A Applications) (England) (Amendment) Order 2021.

35. The Council must further continue to closely monitor the Building Safety Bill and draft regulations (the draft Building (Appointment of Persons, Industry Competence and Duty holders) (England) Regulations) to ensure that when enacted and if any of the buildings covered by this contract will fall within the definition of High Risk Residential Building (in the draft bill currently over 18 metres or seven storeys), any legal requirements on the Council are capable of being implemented and incorporated into the Orders to be issued under the contract. For example, the draft regulations impose a general competency requirement on any person carrying out the works and anyone appointing a Principal Designer or Principal Contractor to carry out building or design work must take all reasonable steps to ensure that the appointee meets the competency requirements. The Bill further places obligations on Accountable

Persons to engage pro-actively with residents in higher-risk buildings, including the creation and updating of Residents' Engagement Strategy, and establishing an internal complaints process.

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. The Service Department must ensure that the Procurement and Commissioning Hub (P&C Hub) have carried out a due diligence on the Framework. 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 value of each contract is above the Key Decision threshold of £500,000. The contracts must be in a form approved by Legal Services for and on behalf of the Director of Law and Governance and 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.
39. CPR 6 (Insurance) states that contracts with direct advice and/or design services provided by the supplier (including all consultancy and construction arrangements) must have a requirement for professional indemnity insurance. The Service Department must undertake a risk assessment to ensure that the levels of insurance are adequate seeking advice from the Council's Insurance team. Finally, adequate security must be obtained as part of the requirements of the contract in one of the forms set out in CPR 7.3
40. The Service Department is advised to liaise with the Council's Data Protection Officer to carry out a Data Protection Impact Assessment prior to the award of the contract to ensure that residents personal data is lawfully processed for the duration of the contract term.

Workforce Implications

41. The above report has no direct implications on the current workforce at this time as these are works not completed by our employees.
42. There is sufficient capacity in the Capital Programme structure to adequately manage and supervise these works.

Property Implications

43. There are no property implications in connection with this report

Other Implications - Procurement

A Business Case was presented to the Departmental procurement Board / P&C Review Board.

44. 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.
45. Due diligence and approval of the Southeast Consortium Internal and External Building Works framework agreement (OJEU Ref: 2019/S 078-184728) was undertaken by the Procurement Services prior to any procurement.
46. By agreement from Southeast Consortium the procurement was carried out via the Councils E-Tendering Portal in line with the Councils Contract Procedure Rules. The London tenders Portal reference is DN 514112.
47. The award of the contract, including evidence of authority to award, promoting to the Councils Contract Register, and the uploading of executed contracts will be undertaken on the Councils E-Tendering Portal, including future management of the contract.
48. The awarded contract will be promoted to Contracts Finder to comply with the Government's transparency requirements

Leasehold

49. For Housing procurement contracts the Commonhold and Leasehold Reform Act 2002 (CLRA) may apply. Where applicable, officers must undertake the required consultation with leaseholders. Leaseholders can nominate Suppliers for inclusion on a tender list for specific, below EU Threshold, procurement projects. Officers must liaise with Home Ownership Services to clarify the requirements under the CLRA before commencing with any procurement likely to affect leaseholders.
50. For all other procurement's officers shall ensure that where applicable consultation with stakeholders is undertaken within the appropriate period of the procurement process.
51. As per the advice from Legal and in consultation with CLRA, s.20 consultation was completed with the Notice of Intention being served on 1 November 2020 and expired on 1 December 2020. Following approval of this DAR we will then instruct the Service Charge and Major Works team to draft and serve the Notice of Estimate.

Options Considered

52. Consideration was given to several alternative options to deliver the works that can be summarised as follows:
 - Option A: A single contract covering the whole borough of a long duration i.e. 5 years or more

- Option B: 2 geographically based contracts of up to 4 years duration

53. Option B was selected based upon the following:

54. Option A: Single Long-Term Contract

55. This approach is commonly used within the sector and does have benefits in terms of management input i.e. a single relationship to manage. However, the key factors that led to its rejection were:

- Failure or poor performance is systemic and provides a major risk for the Council

56. Option B: 3 geographically based contracts

57. Officers considered that this option provides the optimum solution, it was selected because:

- Having 2 contractors reduces the impact of failure or poor performance
- The Council's management team and structure is ideally suited to this scale of Contract

Conclusions

58. It is recommended to award the two contracts to the highest ranked bidders, following a compliant tender process.

Report Author: Abigail Ellis – Interim Director of Investment and Resident Safety

Date of report: 23 September 2021

**Appendices: Restricted Appendix A and Appendix B Echelon ITT
Evaluation Report
Background Papers: None**