

Please note Part 2 report is now confidential appendix.

London Borough of Enfield

Operational Report

Report of Paul O'Donnell, Acting Investment and Resident Safety Director

Subject: Award of works contracts – Packages 1-3 Fire Safety Packages
Executive Director (Acting): Joanne Drew
Ward: Turkey Street, Southbury, Upper Edmonton, Southgate Green
Key Decision: 5313

Purpose of Report

1. To obtain approval to award two contracts for Fire Safety works to seven council owned residential blocks.

Proposals

2. That approval be given to award and enter into contracts for Fire Safety Works to “Contractor A” and “Contractor B” as follows: The first contract for Package 1 to be awarded to “Contractor B” for works at Bonington, Brookbank and Gainsborough Houses; and the second contract for Packages 2 and 3 to “Contractor A” for works at Scott, Bridport, Jackson and Swinson Houses for the contract price detailed in the confidential appendix.
3. That approval be given for the contingency sum detailed in the confidential appendix. The total project cost including consultancy services, staff costs and contingency will be £10,072,086.86.

Reason for Proposals

4. The HRA Capital programme for 2022-23 is focused on the investment in our housing stock to ensure it meets building safety legislation requirements, especially where this would impact the safety of buildings in which residents reside.
5. Given the high volume of blocks, which require fire safety works and planned timescale for completion, it was decided to separate these packages into four distinct packages – 1, 2-3, 4 and 5. Packages 1 and 2-3 are two distinct contracts and are proposed to be awarded to two different contractors to ensure supplier capacity to meet required programmes, mitigating risks around possible future labour shortages and supply chain performance. Packages 4 and 5 cover the requirements at other blocks and approval will be requested separately due to different procurement procedures as they will be over the threshold for the Public Contracts Regulations (PCR).

6. A compliant tender exercise has been undertaken in accordance with the Council's Contract Procedure Rules. The tender was evaluated based on a quality/cost split of 60/40, with Contractors 1 and 2 scoring highest overall and therefore considered to have provided the most economically advantageous tender. Further details are provided in Part 2.

Relevance to the Council's Plan

7. The contract will support the following objectives from the Corporate Plan:
8. 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.
9. Sustain healthy and confident communities: Improving the existing homes where people desire to live will help to create and maintain healthy and confident communities.
10. An economy that works for everyone: Ensuring residents are able to fully participate in activities within their neighbourhood.

Background

11. The capital programme has identified the need for multiple packages of work to undertake fire safety works to ensure compliance with the building safety legislation.
12. The projects include leasehold properties, and the section 20 process has been followed with the support of leaseholder services.
13. The tender was issued with the intention of entering into two contracts with the two highest ranked Contractors.
14. Tenders were issued via the London Tender Portal (LTP) to six contractors with a proven track record of delivery in this area and of a suitable size to deliver the works, in accordance with the Council's Contract Procedure Rules (CPRs). Five Tenders were received following one bidder withdrawing from the process following a review of the full specification.
15. The scope of works includes:
 - Replacement/installation of Fire Alarm Systems
 - Replacement/installation of Sprinkler Systems
 - Installation of Fire Doors (Flat entrance and Communal)
 - Fire Compartmentation works
 - Soil Stack Replacement
16. The contract specification/scope of works has been written by specialist consultancy Stace LLP following detailed surveys of the blocks.
17. These 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, tenderers were required to submit an offer detailing their social value commitments as part of their quality submission at

ITT stage. Commitments include work placements, donations to social value initiatives and using local suppliers.

18. The form of contract will be JCT Intermediate Building Contract with Contractors Design (JCT ICD).

Main Considerations for the Council

19. The programme is required to ensure that the Council complies with building safety regulations.

20. See restricted appendix for further details.

Safeguarding Implications

21. The works will require Contractors to enter residents' homes and therefore the Contract Documents require Disclosure & Barring Services (DBS) and adherence with the Council's Safeguarding Policy.

22. 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 processes adopted by the Contractors. Evaluation of the Contractors offers in this area are a component of the qualitative evaluation.

Public Health Implications

23. 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 reference to the importance of housing quality as a determinant of health.

24. The contractors will be completing works in-line with the government's Covid Secure and CLC guidelines. They 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.

25. 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.

Equalities Impact of the Proposal

26. An Equality impact assessment has been undertaken and is appended to this report.

27. The works will be delivered to the social housing blocks described above and will benefit residents irrespective of the protected characteristics of the residents.

28. People with disabilities will be profiled by the Contractors Resident Liaison Officer (RLO) and necessary adaptations to the fire alarm mechanism will be

installed in individual properties (eg vibrating pillows or flashing alarms). Development of disabilities following the completion of the works and any required adaptations will be managed under the councils existing aids and adaptations referrals process. 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.

29. Engagement with residents will be undertaken by the Contractor in accordance with their processes for resident engagement and liaison which were evaluated as part of their tender submission which adapt process according to the profile of the resident (e.g. vulnerability, language spoken).

Environmental and Climate Change Considerations

30. The Contractors' offers include several environmental commitments that will be delivered to the Council including related to waste management, recycling and carbon reduction. Contractors will use local suppliers where possible to minimise the carbon footprint of deliveries and increase the use electric vehicles during the contract term.

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 are detailed below

Risk	Likelihood	Impact
The Council will fail to meet Building Safety Legislation	High	High
Fire will not be contained as much as possible and could result significant risk to residents	High	High

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.

33. 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	Draft contract issued with ITT and no updates are	Low	Low

	proposed. Adopt stand by or withdraw stance.		
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Financial Implications

34. The budget for this project was approved as part of the rent setting report in February 2021, these costs are included in the HRA 30-year business plan.
35. See restricted appendix for further details.

Legal Implications [by ZS on the draft dated 1-3 May 2022]

36. 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 sections of the FSA 2021 that were not in force came into force on 16 May 2022. 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.
37. The Building Safety Act 2022 (BSA 2022) received Royal Assent on 28 April 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; new roles and responsibilities during the occupation of a higher risk building on Accountable Persons; and requirements relating to the competence of those involved with buildings.
38. It is to be noted that the commons parts and non-residential part of high rise buildings and buildings that do not fall within the definition of high rise buildings will continue to be subject to the RRO 2005. Additionally, it is to be noted that section 156 of the BSA 2022 amends the RRO 2005 to require, amongst others, duties on a Responsible Person (as defined in the RRO 2005) which include a duty to: (i) record their fire risk assessment; (ii) record their fire safety arrangements; for buildings with two or more domestic premises, a duty to provide specific fire safety information to residents and keep records of the relevant fire safety matters; a duty to take reasonable steps to identify themselves to all other Responsible Persons in the same premises; and for higher risk buildings, a duty to identify and cooperate with Accountable Persons.
39. Although some section of the BSA 2022 will come into force on 28 June 2022 (for example the provisions extending the limitation period under the Defective Premises Act 1972), it is envisaged by the government that the bulk of the BSA 2022 (including the duty holder regime on high risk buildings) will come into force within 12 to 18 months of the BSA 2022 receiving Royal Assent (i.e. by Autumn 2023 or 12-18 months from 28 April 2022).

40. The Council will be a Responsible Person under the RRO 2005 and an 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 (as and when the relevant sections of the BSA 2022 come into force).
41. 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.
42. 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. The Council is further required to act in accordance with the Public Sector Equality Duty under section 149 of the Equality Act 2010 and have due regard to this when carrying out its function which includes making new decisions.
43. 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.
44. 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.

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. There is sufficient capacity in the Capital Programme structure to adequately manage and supervise these works.

Property Implications

47. HRA property implications: these are to be found throughout the body of this report.
48. Corporate property implications: none.

Other Implications – Procurement

49. A business case approving the route to market was presented to and approved by Procurement Services on 1st November 2021.
50. The procurement was undertaken using London Tenders Portal (ref DN580809, in accordance with the Councils Contracts Procedure Rules (CPRs).
51. In accordance with the CPRs the Supplier must be required to provide sufficient security. Evidence of the form of security required, or why no security was required, must be stored and retained on the LTP for audit purposes.
52. 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 LTP, including future management of the contract.
53. 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 including evidence of regular contract reviews.
54. The awarded contract will be promoted to Contracts Finder to comply with the Government's transparency requirements.

Options Considered

55. Consideration was given to an alternative option to deliver the works alongside that chosen; these can be summarised as follows:

Option A: A single contract of all Fire Safety Works in blocks across the borough.

- Option B: 4 contracts packages – grouping blocks geographically into packages which are large enough to maintain supplier appetite in a competitive market but not so large that the programme will not meet the council's requirements.

56. Option B was selected.

57. Option A: Single Long-Term Contract

58. This approach is used within the sector but usually for regular works eg decency components or regular and has benefits including management input i.e. a single relationship to manage. However, the key factors that led to its rejection are below

- Failure or poor performance is systemic and provides a major risk for the Council (all eggs in one basket)
- Only Major Contractors have the capacity to tender for these works and therefore competition is limited and capacity or even Major Contractors for this volume of works would be limited.
- The potential involvement of Small/Medium Enterprises (SMEs) is limited to working for the Main Contractor reducing local opportunities

59. Option B: 4 Geographically Based Contracts

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

- Having 3-4 contractors reduces the impact of failure or poor performance (across all 4 packages - 2 contracts are in the scope of this Key Decision)
- The Council's delivery team and structure is ideally suited to this scale of Contract
- The size of the contract enables smaller SMEs to tender
- The Council's experience in working with SMEs to deliver this type of work has been mixed, but the experience gained would enable identification of high performing contractors

Conclusions

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

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Date of report: 9th August 2022

Appendices: **Appendix 1: Restricted Appendix**
 Appendix 2: Equality Impact Assessment

Background Papers

The following documents have been relied on in the preparation of this report:
Echelon Evaluation Report (Confidential and Legally Privileged)