

Please note Part 2 report is now confidential appendix.

London Borough of Enfield

Operational Report

Report of Joanne Drew, Director of Housing and Regeneration

Subject: Award of Works Contract for Bridport & Constable Cladding Remediation

Executive Director: Sarah Cary

Ward: Upper Edmonton (Bridport House) & Southbury (Constable House)

Key Decision: 5313

Purpose of Report

1. To obtain approval to award a works contract for the cladding remediation works to Bridport House and Constable House.

Proposals

2. That approval be given to award and enter into a contract for the cladding remediation to Bridport and Constable House for the contract price detailed in the restricted appendix.

Reason for Proposal(s)

3. The HRA Capital programme for 2022-23 is focused on the investment in our housing stock to ensure it meets building safety requirements, decent homes requirements and the green agenda.
4. In the light of national reviews of cladding, Enfield Council commissioned an assessment of the existing cladding system at Bridport and Constable House, which determined that the system needs to be upgraded to meet the updated criteria for protection against fire spread of the Building Safety Act 2022.

Relevance to the Council's Plan

5. The contract will support the following objectives from the Corporate Plan:
6. 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.

7. Sustain healthy and confident communities: Improving the existing homes where people desire to live will help to create and maintain healthy and confident communities.
8. An economy that works for everyone: Ensuring residents can fully participate in activities within their neighbourhood.

Background

9. Bridport House is a 14-storey block including 12 storeys of social housing units and an additional vehicular underpass at ground level with pram sheds at first floor level. The works being undertaken at Bridport House are intended to rectify the currently failing fixings to the existing cladding system to the underpass and to replace the cladding on the pram sheds which contains combustible insulation. The Fire Risk Appraisal of the External Wall Construction (FRAEW) has classified this building as low risk. The scope of works to this block can be broken down as:
 - Replacement of the cement fibre board with foam backing insulation and timber subframe
 - Replacement of defective sheathing board cladding with timber subframe and mineral wool insulation in the under-croft area
 - Firestopping to any service penetrations to the building floor slab in this area
 - Installation of any cavity and fire barriers as required in this area
 - Access equipment to carry out the works
10. Constable House is a 6-storey residential block of two storey maisonettes. The scope of works to this block is:
 - Replacement of the cladding panels and insulation but to retain the timber studwork frame.
 - Installation of cavity barriers where required
 - Vent the external face of the wall to mitigate any forming condensation
 - Access equipment to carry out the works
11. A two-stage procurement route was selected where, a specialist cladding contractor, D&B Facades, were appointed under a Pre-Construction Service Agreement (PCSA) to undertake intrusive surveys in order to investigate existing systems and determine requirements. This commonly used contractual approach enables the development of the Employers Requirement document and a detailed design and cost proposal.
12. The specification of works has been wholly designed by D&B Facades, therefore a JCT 2016 Design & Build contract form is deemed most suitable for this scheme.
13. Capital PCC have provided a commercial cost validation report following the review of the proposed specification and costs, this confirms the rates and overall contract value are inclusive of necessary elements and are consistent with current market rates.

Main Considerations for the Council

14. The programme is required to ensure that the Council complies with Building safety requirements.

Safeguarding Implications

15. The works will require Contractors to enter residents' homes and therefore Contract Documents require Disclosure & Barring Services (DBS) and adherence with the Council's Safeguarding Policy and Data Protection Policy.
16. 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 necessary processes adopted by the Contractors.

Public Health Implications

17. The works will improve the living conditions leading to less respiratory complications secondary to cold surroundings and poor insulation. 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.
18. The contractors 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.
19. 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.
20. It will also ensure use of energy efficient means of insulation and heating. This is likely to reduce energy costs for residents which is particularly relevant to current cost of living crisis.
21. Furthermore, with improved energy efficiency, it will have less impact on environmental resources.

Equalities Impact of the Proposal

22. An Equality impact assessment has been undertaken and is appended to this report.
23. The works will be delivered to the social housing blocks described above and will benefit residents irrespective of the protected characteristics of the residents.
24. 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

Environmental and Climate Change Considerations

25. The Contractors' adhere to their environmental strategy which focuses on waste reduction, responsible waste disposal, hybrid/electric vehicles and carbon reduction. Contractors will use local suppliers where possible to minimise the carbon footprint of deliveries.
26. Material selection is governed by fire safety criteria and non-combustibility of replacement components. The key components of the remediation works consisting of metallic elements for the framing and cladding exterior would be 100% recyclable. Mineral wool elements are fully recyclable into other insulation products.

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

27. Risks to the Council and likely impact if the proposed decision and related work is not taken are detailed below:

Risk	Likelihood	Impact
Resident dissatisfaction as fire risk to Constable House has been highlighted in the Planning Documents and the news (Enfield Dispatch)	High	High
Fixtures and fittings are visibly failing to Constable House as some panels have come loose, therefore a health and safety concern and increased cost to repairs	High	High
Risk of non-compliance with the requirements of the Building Safety Act 2022 if works are not progressed	High	High

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

28. The table below highlights the risks identified and mitigating actions taken:

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	Contractor has already signed up to the framework agreement and is aware of call off terms and conditions.	Low	Low
Coronavirus	Business continuity has been considered in the bidder quality submissions	Low	Medium

	and the contractor will be expected to deliver the works in line with any government advice prevalent at the time		
Insolvency	A credit check with a recognised credit agency has been carried out prior to the recommendation for award	Low	High

Financial Implications

29. See Restricted Appendix

Legal Implications [Legal implications by ZS on draft report circulated on 21 October 2022]

30. The Council, as a corporate landlord has numerous duties under common law and under statute with regards to the premises that it owns/or controls. 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 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. The Building Safety Act 2022 (BSA 2022) received Royal Assent on 28 April 2022 and some sections came into force on 28 June 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 and new roles and responsibilities during the occupation of a higher risk building on Accountable Persons. The Council will be a Responsible Person under the RRO 2005 and a Principal 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.
31. Section 111 of the Local Government Act 1972 gives a local authority power to do anything 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 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.
32. The Council must ensure compliance with its Constitution, in particular the Contract Procedure Rules (CPRs). The CPRs permit the use of Frameworks, where they exist, provided Best Value can be demonstrated and sufficient evidence is retained to demonstrate compliance.

33. The contract value is below the threshold for public works contracts (currently £5,336,937 inclusive of VAT) under the Public Contracts Regulations 2015 (PCR 2015). However, as the procurement process undertaken was via a call off under a framework, Part 2 of the PCR 2015 will apply. Calling off from frameworks is permitted under regulation 33 of Part 2 of the PCR 2015. The contract award must be in accordance with the process set out in the Framework Agreement and the Service Department must ensure that the Procurement team have carried out a due diligence exercise and advised that the Council can call off from the Framework.
34. The Council must ensure that it complies with its obligations regarding best value in accordance with the Local Government Act 1999.
35. The Key Decision process under the Constitution must be followed as the value is above the Key Decision threshold of £500,000.
36. 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 and the contract value is £1m or above, 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.
37. The Service Department must further ensure that the contract includes adequate insurance requirements after undertaking a risk assessment, including but not limited to, insurance to cover the fire safety compliance works.
38. The contract recommended in this report must be in a form to be approved by Legal Services and must be executed under seal.

Workforce Implications

39. There are no direct workforce implications in this tender approval process.

Property Implications

40. HRA Property Implications: these are to be found throughout this report.
41. Corporate Property Implications: none.

Procurement Implications

42. When awarding the contract proposed in this report the Council must comply with its contract procedure rules and the Public Contracts Regulations 2015, both of which permit direct awards off frameworks provided the framework terms permit. The Pretium Framework permits direct awards.
43. As the contract is over £500k the service must ensure that sufficient security has been considered to manage risk.

44. The service must ensure that authority to procure has been obtained and must be uploaded onto the London Tenders Portal.
45. The procurement and award of the contract, including evidence of authority to award, promoting to the Councils Contract Register, and the uploading of the executed contract must be undertaken on the London Tenders Portal including future management of the contract.
46. 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.
47. The awarded contract must be promoted to Contracts Finder to comply with the Government's transparency requirements.

Comments by Samantha Rose

Options Considered

48. Do nothing; this is not recommended as investigatory reports have deemed it necessary to carryout remediation works.
49. The procurement options available for consideration are:
 - i. Use of a suitable consortia framework agreement, with appointment via direct award or mini competition.
 - ii. Unilateral tendering of a bespoke contract utilising either the open or restricted process.
50. Using a framework can save time and money, while still delivering a service specified to local requirements. Contractors are assessed for suitability prior to joining the framework and have signed up to pre-agreed terms and conditions. Standard documentation is also provided as well as support from the framework itself. Value for money has been demonstrated through cost review from a specialist consultancy with experience of delivering similar works.

Conclusion

51. To award the contract to the proposed contractor based on the approved design.

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Appendices

Background Papers

The following documents have been relied on in the preparation of this report: