

CABINET

17 March 2020

Title: Wivenhoe Road Temporary Accommodation Project - Appointment of Construction Contractor	
Report of the Cabinet Member for Finance, Performance and Core Services	
Open Report	For Decision
Wards Affected: Thames	Key Decision: No
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Accountable Director: Ed Skeates, Development Director, Be First	
Accountable Strategic Leadership Director: Graeme Cooke, Director of Inclusive Growth	
Summary This report seeks approval for a waiver to enable the direct award of the Pre-Construction Services Agreement (PCSA) and Main Contract, for a total of 20 Temporary Accommodation Homes on the former garage sites adjacent to 75 - 77 Wivenhoe Road, Barking to Jerram Falkus Construction Limited (JFC). The approval for the financial and delivery details of this project have been separately approved as part of the Investment and Acquisition Strategy updated and reported to Cabinet on 17 September 2019.	
Recommendation(s) The Cabinet is recommended to: (i) Waive the requirement to tender in accordance with the Council's Contract Rules and agree that the Council proceeds with the direct award of the Pre-Construction Services Agreement (PCSA) and main contract to Jerram Falkus Construction Limited to undertake the construction of 20 new homes at the Wivenhoe Road site for a total contract sum of circa £3m; and (ii) Authorise the Director of Inclusive Growth, in consultation with the Cabinet Members for Regeneration and Social Housing and Finance, Performance and Core Services, the Director of Law and Governance and the Chief Operating Officer, to award and enter into the PCSA and main contracts with Jerram Falkus Construction Limited for the described works.	

Reasons

The recommendations are aligned to four elements of the new Council vision and priorities namely:

- Regeneration and development of the borough
- Housing Estate Regeneration
- Provision of affordable housing
- Community and social benefits

1. Introduction and Background

- 1.1 At the Cabinet meeting held on 21 May 2019 (Minute No.9), the Cabinet approved the Be First Business Plan 2019-2024. Wivenhoe Road formed part of this plan. This project also formed part of the Council's Investment and Acquisition Strategy, the last update of which was presented to and approved by Cabinet on 17 September 2019 (Minute 46).
- 1.2 The site at Wivenhoe Road forms part of the portfolio of Temporary Accommodation projects the council is undertaking to reduce the financial burden of placing homeless people and families within privately rented accommodation while they wait for a permanent home to become available.
- 1.3 The Weighbridge Project (Cook Road, Dagenham) is the first of these Temporary Accommodation projects, which is being delivered by JFC Ltd, who were procured through a competitive process from Lot 2 of The London Borough of Barking and Dagenham Framework Agreement for New build Housing Works. The project is currently under construction and works are due to complete in the first Quarter of 2020.
- 1.4 The homes on the Weighbridge project are being constructed off-site utilising a modern method of construction that mitigates the impact of construction works on site, whilst speeding up delivery. This is a relatively new method of construction within the construction industry. Therefore, JFC together with its supply chain has gained valuable knowledge that would benefit the Council on other similar projects, specifically Wivenhoe.
- 1.5 Given that JFC Ltd demonstrated value for money through a competitive procurement process on the Weighbridge project, and the knowledge they have gained through the delivery of that project, it is proposed that they are selected as the preferred contractor for Wivenhoe via Direct Award, subject to agreeing the terms of the appointment. The Be First Board approved this approach at the Be First Board meeting on 7 May 2019.

2. Proposal and Issues

Procurement Process

- 2.1 It is proposed to award a contract to JFC with no competition.

- 2.2 Jerram Falkus Construction Limited were appointed to the Weighbridge project on a two stage Design and Build basis via mini-competition using Lot 2 of The London Borough of Barking and Dagenham Framework Agreement for New build Housing Works.
- 2.3 After assessment of their tender by Be First, Jerram Falkus Construction Limited were deemed to have provided the most economically advantageous tender as per the parameters set out in the Tender Documents and were recommended for appointment.
- 2.4 The Pre-construction Stage of this process (carried out under PCSA) included design development, obtaining the required statutory approval and procurement of sub-contractors to construct the new homes. Each Works Sub-contract Package has been competitively tendered by Jerram Falkus Construction Limited, and this has been demonstrated via an Open Book process, a set of Contractor Proposals were then produced. These proposals were assessed by Be First and their appointed Cost Management team and were deemed to have met the Employer's Requirements and to have demonstrated Value for Money.
- 2.5 Early 2019 Be First engrossed a contract between Jerram Falkus Construction Limited and the London Borough of Barking Dagenham for the Weighbridge project, this contract was subsequently executed by both parties.
- 2.6 This proposed direct appointment provides a number of benefits to the delivery of the project, including but not limited to the following:
- Lessons Learned from the Weighbridge site design, build and construction to be fed into the Wivenhoe Road project, this includes the designs, manufacturer and installation of the new homes.
 - Lessons learned provides a good foundation/understanding of the build methods, including achieving building regulations and planning approval, other statutory approvals, i.e. Secured by Design, London Fire Brigade.
 - The project team have developed an in-depth knowledge/expertise in the delivery using this method of construction from Weighbridge.
 - Utilising the same contractor will therefore facilitate the delivery of new homes at the earliest opportunity thereby improving the outcome for residents and saving the Council money in relocating families from expensive TA
 - Where possible standardisation of the final product will be adopted, which will assist with future maintenance.
 - Programme and Budget benefits from using the same suppliers.
 - The products delivered will be consistent across the Temporary Accommodation Programme providing cost savings and maintenance benefits in the operational phase of the building product delivered.
- 2.7 Where applicable, the Weighbridge project's contractor proposals will be used for programme/quality/cost benchmarking to agree a set contractor's proposal to deliver the Wivenhoe Road project. As the Weighbridge scheme was competitively tendered this will demonstrate best value. When it is not possible to use the Weighbridge project for benchmarking purposes, Be First and their Consultant team will use in-house and appropriate market data to ensure value for money is achieved.

- 2.8 The cost element of this benchmarking will assess the pre-construction costs (design and management), preliminaries and works' package costs that were received for the competitively tendered Weighbridge project to ensure value for money is being achieved. All cost benchmarking will be undertaken in conjunction with the Be First Cost Management team.
- 2.9 The works will be let under Pre-construction Services Agreements and Main Contracts.
- 2.10 The project received Investment Panel approval in December 2017 for circa 20 units with an estimated total development cost of £1,730,000 and a pre-development budget requirement of £400,000. The PCSA costs (outlined in paragraph 3.2.1) of £280,000 are to be funded under the approved pre-development budget of £400,000. The estimated Main Works Contract sum of £2.7m will be subject to future Investment Panel approval at Gateway 4 subject to the project meeting the Council's investment metrics and providing value for money.

3. Proposed Procurement Strategy

3.1 Outline specification of the works, goods or services being procured

- 3.1.1 The design, manufacture and installation of, 20 new homes on the Wivenhoe Road site.
- 3.1.2 Initial appointment to individual PCSA's on each project to develop the design and Contractor's Proposals for Main Contract Agreement.
- 3.1.3 Should the Contractor's Proposals meet the Employer's Requirements, demonstrate value for Money and meet Be First's social value requirements then JFC shall be engaged under a JCT Design and Build 2016; as amended Contract to deliver the Works on Site.

3.2 Estimated Contract Value, including the value of any uplift or extension period

3.2.1 Wivenhoe Road

PCSA	£280,000
Main Works (Estimated)	£2,720,000
Total Value of Award (Estimated)	£3,000,000

3.3 Duration of the contract, including any options for extension

- 3.3.1 Wivenhoe Road - November 2019 – September 2020

3.4 Is the contract subject to (a) the (EU) Public Contracts Regulations 2015 or (b) Concession Contracts Regulations 2016?

- 3.4.1 Not applicable.

3.5 Recommended procurement procedure and reasons for the recommendation

3.5.1 Direct Award of Main Contractor, to Wivenhoe Road scheme.

3.5.2 This approach was approved by the Be First board on 7May 2019.

3.5.3 This approach will maintain project delivery programmes and drive efficiency through lessons learnt on the Temporary Accommodation programme as a whole.

3.6 The contract delivery methodology and documentation to be adopted

3.6.1 JCT 2016 Design & Build Contract, using the JCT Pre-construction Service Agreement to agree contractor proposals.

3.7 Outcomes, savings and efficiencies expected as a consequence of awarding the proposed contract

3.7.1 As stated at paragraph 2.6 - The award to Jerram Falkus Construction Limited to capture the knowledge, innovation and modular product development to be applied to this project leading to efficiencies in the cost, time and programme.

3.8 Criteria against which the tenderers are to be selected and contract is to be awarded

3.8.1 As detailed above, this contract to be benchmarked against the Weighbridge project which was competitively tendered.

3.8.2 The project costs will also be benchmarked against industry data held by our appointed Quantity Surveyors and available from the Royal Institute of Chartered Surveyors.

3.9 How the procurement will address and implement the Council's Social Value policies

3.9.1 By utilising Jerram Falkus Construction Limited for these works the overall contribution from the Contractor for its commitment to Social Value and Skills will be enhanced. Using a Contractor who is engaged in ongoing projects with the Council and Be First means that they are already committed to delivering long term results for the local community from their relationship with Be First.

3.9.2 Be First and the Council have agreed a Social Value Policy through which our Framework Contractor's will be measured. Jerram Falkus is signed up to this and is committed to deliver the agreed targets.

3.10 Contract Management methodology to be adopted

3.10.1 Be First Construction Management are overseeing the Project with the assistance of an external Employer's Agent and Cost Controller along with an internal Clerk of Works. The management of this includes monthly progress meetings, Risk Management, Daily site attendance, along with a monthly Project Overview meeting with senior Be First Management and reports fed back to the Client.

4. Options Appraisal

4.1 Four options are available:

1. Run a mini-competition via the Be First Development Framework, this has been discounted as it increases the risk of losing the valuable knowledge gained via the design and construction of the Weighbridge Project.
2. Run a full open tender procedure to the wider market, this option is discounted as it further increases the risk outlined in Option 1 and increases cost and delays delivery.
3. Do nothing – this will impact the supply of temporary accommodation homes within the borough and reduce the chances of homeless residents being able to be housed within the borough.
4. Directly award to JFC to design and build the project –this will lead to programme/quality and cost benefits.

5. Waiver

- 5.1 This report seeks to waive contract rule 28.5; requiring contracts in excess of £50,000 to be subject to a competitive tender exercise, in that the awards for the works are being directly awarded to the Main Contractor, JFC.
- 5.2 The waiver is required to realise the anticipated benefit noted in this report for Programme, Cost Quality and consistency of delivery and product.
- 5.3 The grounds for the waiver are covered in part 4, Chapter 1 of the Council's Contract Rules, clause 6.6, (G) which states; the nature of the market for the works to be carried out of the goods or services to be provided has been investigated and is such that a departure from the requirements of Contract Rules is justifiable.

6. Consultation

- 6.1 These projects have been to Be First Board and approval has been granted subject to the Council's Cabinet Approval for the direct appointment of JFC.
- 6.2 As part of the Be First programme these projects will be delivered with the full engagement of the communities, local stakeholders and residents they impact, this starts from the inception of the project and is confirmed via the production of an individual Engagement Strategy for each project which is integrated into Be First's internal Gateway approval process.

7. Corporate Procurement

Implications completed by: Euan Beales, Head of Procurement

- 7.1 The Contract rules require all spend over £50k to be formally tendered, however if the sum is below EU threshold, a waiver can be applied if full justification to support the waiver is offered.
- 7.2 The report requests a direct award to JFC for a value which is below EU threshold for works, and as such would not require a fully compliant process.

- 7.3 The waiver is sought under the validation of works, being value for money and with the process being reviewed by Gowlings.
- 7.4 Based on the contents of the report and that Gowlings have reviewed the process, the recommendations as made should stand.
- 7.5 It should be noted, that in the event there are additional costs attained to this project it cannot exceed the OJEU threshold for works, so consideration is required to mitigate any cost creep.

8. Financial Implications

Implications completed by: David Dickinson, Investment Fund Manager

- 8.1 Wivenhoe has an agreed total development cost of £1,730,000 and a pre-development budget requirement of £400k. The PCSA costs of £280k form part of the pre-development budget.
- 8.2 The main works contract at an estimated £2.7m will be discussed and, subject to meeting the Council's return metrics, will need to be agreed as part of the Gateway 4 stage by the Investment Panel.
- 8.3 Given the nature of the contract a direct award to JFC to design and build the projects will allow the development to be produced quickly and allow for consistency across the Temporary Accommodation Programme providing cost savings and maintenance benefits in the operational phase.

9. Legal Implications

Implications completed by: Gowling WLG (and assessed by Ian Chisnell, Special Projects Lawyer, Law & Governance)

- 9.1 External legal advisers Gowling WLG have been asked to comment in this report on the procurement and best value considerations associated with the proposed direct appointment of JFC by Be First given the request for a waiver (although Gowling WLG were not instructed on the original negotiations, they have since been retained to advise on the construction documentation).
- 9.2 Be First and the Council are bound by the Public Contracts Regulations 2015 ("**Regulations**"). The Council is bound by its best value duty under the Local Government Act 1999 and Be First is contractually bound to assist the Council in fulfilling that duty.

Procurement

- 9.3 There is a risk of challenge for breach of the Regulations from other economic operators for use of the framework in breach of its terms. Even if such a challenge were to materialise, then Be First and/or the Council would, we anticipate, contend that:
- a) the appointment falls outside of the ambit of the Regulations as each has a value of less than £4,292,000 (2019) or £4,733,252 (2020); and

- b) this contract (together with the Margaret Bondfield contract for 15 homes (see separate request for waiver)) has not been artificially created by way of two sub-lots so as to bring each beneath the applicable threshold – whilst the contracts are granted to the same contractor, the schemes, and the risks associated with each are separate.

9.4 Notwithstanding this, the Council still has a legal obligation to comply with the relevant provisions of the Council's Contract Rules. For reasons set out in the body of the report it has been decided to directly award the Pre-Construction Services Agreement (PCSA) and Main Contract, for Wivenhoe Road, to JFC. This therefore requires a waiver of the Council's contract rules as any contract above £50,000 is required to be subject to a competitive tendering exercise. Contract Rule 6.3 permits Cabinet to grant waivers in excess of £500,000 providing it is satisfied that the justification for such waiver is sound and that it is in the Council's overall interests.

Best Value Duty

9.5 The Council is bound by its best value duty under the Local Government Act 1999 and Be First is contractually bound to assist the Council in fulfilling that duty.

9.6 The approach taken by Be First is summarised below and accords with the value for money protocol which applies to single source appointments. In the absence of a tender exercise, compliance with that protocol, in our view, sufficiently evidences a defensible approach to the need to fulfil the best value duty. The following describes the approach taken:

- a. Price (in each case) assessed by Budget holder against benchmarked rates from previous Be First appointments where applicable, along with published market data.
 - b. Offer to be assessed by Budget Holder for compliance with the requirements of the opportunity.
 - c. Offer to be considered in terms of any added value that is being offered.
 - d. Award to be signed off by Be First PMO.
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- a) Appointment of JFC to the Weighbridge project through a previous mini-competition as the most economically advantageous tender;
 - b) The competitive tender of each Weighbridge sub-contractor package and assessment by Be First of those packages delivering value for money;
 - c) Appointment of JFC to the lot 1 panel pursuant to the Regulations;
 - d) Application of the Weighbridge project methods of construction and suppliers to the proposed Wivenhoe Road project.
 - e) Identification of the benefits set out at paragraph 2.10 above; and
 - f) Use of Weighbridge, Be First in-house and market data for the purposes of benchmarking costs.

Council Powers

9.7 The power of the Council to enter into the PCSA and in due course the JCT Design & Build 2016 is contained in section 1 Localism Act 2011 together with the so called incidental power under section 111 Local Government Act 1972.

10. Other Implications

- 10.1 **Risk Management** – This project will be managed/monitored throughout with a Risk Register that will be updated and monitored regularly.
- 10.2 **Contractual Issues** – A standard form JCT 2016 D&B contract with the council amendments will be used for this project.
- 10.3 **Corporate Policy and Equality Impact** – An approval for a waiver to direct appoint this contractor will allow for the progression of this appointment to construct in total 20 new homes in total. This is consistent with the independent Growth Commission's recommendations for the borough to continue bringing forward redevelopment which will help encourage further regeneration and investment. The delivery of the scheme will help deliver the aspirations of the Council's vision and corporate policies. The Scheme which will be enabled by the a wavier being granted is also consistent with the Council's planning policies.
- 10.4 **Health Issues** – Following completion of these works, the new homes present an opportunity for improving health and reduced health inequalities through social and economic regeneration. These works will also go some way to improve/prevent mental health issues due to the uncertainty of families living in Bed and Breakfast accommodation.
- 10.5 **Crime and Disorder Issues** – These will be considered as part of the planning application decision making. The Scheme will improve crime prevention through its design which improves natural surveillance by building on this site the positives will be that this under used area will come back into use and will reduce the anti-social behaviour that appears to be prevalent around this unused garage sites.
- 10.6 **Property / Asset Issues** – Both sites are within the Council's ownership and have been approved via existing Cabinet Reports for development.

Public Background Papers Used in the Preparation of the Report: None

List of appendices: None