

## CABINET

14 November 2023

<b>Title:</b> Procurement Strategy for Housing Major Works	
<b>Report of the Cabinet Member for Community Leadership and Engagement</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> All	<b>Key Decision:</b> Yes
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<b>Accountable Executive Team Director:</b> Leona Menville, Strategic Director of My Place	
<b>Summary:</b>  The Council has a duty to provide a well-maintained housing stock, being safe, secure, warm and dry homes, which are fit for purpose.  This report sets out the proposed “route to market” strategy to procure maintenance services to fulfil the Council’s obligations as a landlord and help deliver the Housing Revenue Account (HRA) capital Stock Investment Programme.  The intention is to use the Southeast Consortium Framework (SEC) to competitively tender works to suitable contractors, providing a medium-term compliant route to market which will offer value for money and leasehold compliance that will enable the appropriate income recovery from leaseholders.	
<b>Recommendation(s)</b>  The Cabinet is recommended to:  (i) Agree that, subject to the endorsement of the Procurement Board, the Council proceeds with the procurement strategy for Housing Major Works and all other necessary or ancillary agreements in accordance with the strategy set out in the report; and  (ii) Authorise the Strategic Director, My Place, in consultation with the Cabinet Member for Community Leadership and Engagement, the Strategic Director, Resources and the Head of Legal Services, to conduct the procurement and award and enter into the contract(s) and all other necessary or ancillary agreements to fully implement and effect the proposals.	
<b>Reason(s)</b>  To help deliver the Corporate Plan (2023-26) Priority 7 - Residents live in good housing and avoid becoming homeless.	

## **1. Introduction and Background**

- 1.1 This report seeks approval to proceed with the procurement of a mix of Capital Projects with varying contract durations commencing November 2023 for a period of up to five years. The contracts are a mix of refurbishment and improvement projects including compliance issues such as fire safety (fire doors and alarms), asbestos removal, improving insulation values, making our homes warm and dry and free from damp and mould, to help reduce and alleviate fuel poverty and improve the quality of life of our residents. The projects are further designed to improve living standards and safety of residents by improving the quality of housing stock, ensuring our tower blocks have reliable working lifts for everybody but particularly those with mobility problems and young children, having electricity services are constant, reliable, and safe, having block heating systems to heat our homes efficiently and collectively meet “Decent Homes standards” targets and conformity with landlord statutory obligations. Much of this work demonstrates the Council’s obligations to conform with our obligations relating to the newly introduced Fire Safety Act and commitments made to the Housing Regulator.
- 1.2 The Council’s Capital Programme, including programmes associated with the HRA Stock Investment Programme, was approved by Cabinet on 20 February 2023.
- 1.3 The HRA stock investment Capital Programme 2023/24 and future years remain under review and will be adjusted in line with the financial position of the HRA. The budget provision for the proposed contracts will be contained within HRA Capital Investment programme. It was confirmed by the Asset and Capital Board on 15th June 2023, that all non-essential items be removed or postponed until financial provision is available, and that in the meantime, essential health and safety works should take priority.
- 1.4 The route to market outlined within the report will deliver improved efficiency and reduce procurement costs, which will benefit the Council and offer residents value for money by competitively tendering. The cost of all the new contracts will be contained within the approved capital budgets with regular monitoring via the Council’s financial processes.
- 1.5 The proposed procurement will cover the following works:
- Lift Replacement
  - Fire Safety Improvement Works
  - Communal Heating Replacement
  - Electrical Lateral Replacements
  - External Fabric - Blocks
  - Communal Roof Replacements (including roof safety and access systems)
  - Conversions
  - Decent Homes Internal Works
  - Decent Homes External Works – Roofs, Window, Fabric (Houses)
  - Adaptations for Occupiers
  - Water Tank Replacements
  - Renewable Energy system – including Ground or Air Source Heat Pumps and Solar PV
  - External & Communal Painting and Decorating

- Fixed Wire Testing (Domestic & Communal)
- Sprinkler Systems

- 1.6 The preferred and recommended route to market is using the Southeast Consortium (SEC) framework (including the Dynamic Purchasing System which allows leaseholder nominated contractors to be added), as this is easily accessible and will give the Council the best outcome due to there being no access fee to use the framework and the Council benefits from a low levy of 1.5% which is collected directly from the contractor once a call off contract is awarded. This framework was procured using a bespoke cost model using composite and individual rates backed up by version 6.2 and 7 of the National Housing Federation (NHF) Schedule of Rates (SOR). The SEC framework offers appropriate lots (types of work) which cover the range of work proposed to be undertaken in LBBD over the period of the contract. The agreement with SEC will not prevent other frameworks being used should specialist work be required in the future or should a better alternative framework be preferred for any project in the future.
- 1.7 To ensure costs which are recoverable from leaseholders in accordance with Section 20 Landlord and Tenant Act, all projects (where a leaseholder contribution is required) will undergo a full consultation with leaseholders in advance of the tender process. The consultation will inform leaseholders of the scope of work proposed, advising them that SEC is our preferred route to market.
- 1.8 Leaseholders will have the opportunity to make observations relating to the scope of the work, nominate a contractor and the proposed route to market before any tender documents are issued and further consulted once tenders are returned, evaluated and before any contracts are awarded.
- 1.9 Projects procured from the SEC framework will normally be below the threshold required for public notice, and under a year in length, however, should any individual project exceed these limits, an application for dispensation through the First Tier Tribunal (FTT) would be considered and used if appropriate.
- 1.10 Following this fully legally compliant process, will improve our ability to recover costs from leaseholders and eliminate any risk imposed by the obligations contained within Section 20 Landlord and Tenant Act.
- 1.11 The tender stage will contain detailed specifications including full industry safety standards and full certification to meet and be able to demonstrate that we are meeting our landlord responsibilities.

## **2. Proposed Procurement Strategy**

### **2.1 Outline specification of the works, goods or services being procured**

2.1.1 Project by project, reflecting the nature of each project.

### **2.2 Estimated Contract Value, including the value of any uplift or extension period**

2.2.1 Project by project, reflecting the nature of each project.

## **2.3 Duration of the contract, including any options for extension**

2.3.1 Project by project, reflecting the nature of each project.

## **2.4 Is the contract subject to (a) the Public Contracts Regulations 2015 or (b) Concession Contracts Regulations 2016? If Yes to (a) and contract is for services, are the services for social, health, education or other services subject to the Light Touch Regime?**

2.4.1 The SEC Framework and DPS is subject to Public Contract Regulations 2015

## **2.5 Recommended procurement procedure and reasons for the recommendation**

2.5.1 It is proposed to use the SEC which can provide LBBD with a compliant route to market and covers all varieties of Major Works including consultancy, refurbishment, compliance and zero carbon projects.

2.5.2 It is proposed that LBBD will become a full member of the SEC which will enable the Council full access to the specialist framework including cost data and benefits with a low levy on all procured contracts.

2.5.3 The SEC frameworks and DPS was developed using a bespoke cost model using composite and individual rates backed up by version 6.2 and 7 of the NHF SORs. There is no access fee to use these frameworks and a levy of 1.5% is collected directly from the contractor once a call off contract is awarded.

2.5.4 It is envisaged that in most procurement exercises a mini competition will be used to demonstrate value for money. LBBD will make use of its own specifications, determine cost/quality/social value using questions developed in-house.

## **2.6 The contract delivery methodology and documentation to be adopted**

2.6.1 Contracts will primarily be managed by My Place, but LBBD will have flexibility to enable works to be delivered via the Councils delivery agents (Be First and BDTP) or external consultants appointed via the SEC consultancy framework.

2.6.2 The contract forms to be used will vary per contract but likely to be JCT Minor Work 2016 with LBBD amendments, JCT Minor Works Building Contract with contractor's design 2016, and may include NEC 3/4 contracts where appropriate for the project to be delivered.

## **2.7 Outcomes, savings and efficiencies expected as a consequence of awarding the proposed contract**

2.7.1 The contracts will enable Major Works to be efficiently programmed to ensure delivery of the Councils capital programme and timely collection of leaseholder contributions.

## **2.8 Criteria against which the tenderers are to be selected and contract is to be awarded**

2.8.1 The evaluation criteria may vary between contracts as appropriate to the project being delivered but mostly would be mini competition between framework and DPS suppliers using an appropriate Price, Quality and Social Value scoring method.

## **2.9 How the procurement will address and implement the Council's Social Value policy**

2.9.1 The evaluation criteria for all contracts awarded will award 10% social value considerations. The quality questions will reflect sustainability and the Council's aim of being carbon neutral. Furthermore, the evaluation process will take note of the Council's legal obligation to consider Social Value under the Public Services (Social Value) Act 2012 and in all cases will be support by a Social Value coordinator to ensure the potential social benefits offered to the borough and its residents are considered. To guide suppliers, we will give potential bidders access to the Council's Social Value Toolkit where information is provided regarding the Social Value themes.

2.9.2 Where practicable and without placing a financial risk upon the Council, contract documentation will ask suppliers to focus their SV commitments on the Investment in Local People theme and where possible to include the use of local labour and suppliers to support contracted service delivery. This will include activities such as the engagement and training of apprentices during the currency of longer-term contracts. This will aim to reduce youth unemployment and improve the skills and qualifications of residents within the borough. Youth employment has a knock-on effect at reducing other social issues such as offending, social exclusion and mental health services.

2.9.3 Where possible, the use of social enterprises will be used which will help develop local social enterprise and voluntary organisations that inherently contribute to the local area.

2.9.4 Any social value commitments agreed with the successful supplier will be contractually binding and these will be managed and reported on as part of the Contract Management process.

## **2.10 How the Procurement will impact/support the Net Zero Carbon Target and Sustainability**

2.10.1 Suppliers will be facing examination regarding their proposals to meet the council's aim to achieve Net Zero Carbon target of 2030 and Sustainability. Suppliers will be expected to demonstrate how they will contribute to achieving our aims during the length of the contract term. Innovative, measurable proposals by suppliers will be considered as part of the quality assessment of tender analysis.

2.10.2 Every contract will look to reduce the environmental impact within the borough and reduce carbon emissions. Initiatives such as recycling, water recovery, reducing the number of heavily polluting vehicles, or the numbers of miles driven by contractors will contribute to this. Reducing the environmental impact that contractors will have

will result in a positive effect in areas such as air quality which will have a positive effect on residents' health and reduce healthcare costs. Contractors will also be expected to have considered noise and light pollution and take positive steps to reduce these types of emissions.

### **3. Options Appraisal**

3.1 In arriving at this proposed procurement route, the following options were considered:

**Do-nothing** has been rejected as this will not support the Council to achieve its strategic aims to deliver the investment necessary to maintain its housing stock as well as meet Decent Homes and decarbonisation targets.

**Open Frameworks** - Several compliant frameworks have been considered, with a comparison attached as Appendix 1; the frameworks and DPS available by SEC are sufficient for all varieties of Major Works identified on the capital programme, which have sufficient industry suppliers including firms who have successfully delivered major works to LBBD previously and include local suppliers.

**Open Market** procurement was considered and rejected based on the requirements of each project and because the number of suppliers likely to bid would be significant, thereby requiring large amounts of officer time to evaluate the tenders received.

3.2 The strategy set out in this report provides the best approach for a timely and cost-effective route to meet our compliance obligations and requirements for QLTA and Section 20 compliance which will assist us to procure the work more expediently.

### **4. Waiver**

4.1 A waiver is not required for this report.

### **5. Consultation**

5.1 The proposals in this report will be considered at the November Procurement Board. Due to the timing of the works required, Cabinet approval is sought subject to the endorsement of the arrangements by the Procurement Board, which is aware of this timetable.

### **6. Corporate Procurement**

Implications completed by: Francis Parker – Senior Procurement Manager

6.1 The proposed route to market is compliant with the Councils Contract Rules and the PCR 2015

6.2 The SEC frameworks cover the categories and services listed in this report over a number of different frameworks. They do not all operate as a DPS, so resident choice cannot be included for many of the services as the framework suppliers are fixed.

- 6.3 The frameworks have been competitively tendered using an established industry SoR, although without seeing the percentage adjustments it is not possible to clarify whether this delivers value for money. Mini-competitions can be carried out which should provide further competition and drive value for money.
- 6.4 The rebate fee of 1.5%-2% is likely to be less than the cost of individual tenders. The time taken to procure services will likely be shorter compared to open competitions so efficiencies will be delivered.
- 6.5 It should be noted that the frameworks all have different expiry dates, so long-term agreements may not be possible for all categories of spend included within this report.

## **7. Financial Implications**

Implications completed by: Sandra Pillinger, Group Accountant

- 7.1 This report is requesting approval to proceed with the procurement of the Housing Major Works programme via the Southeast consortium (SEC) framework. The value of the programme for 23/24 has been set at £14m inclusive of project management fees. This will be funded from HRA capital programme resources. Costs attributable to leaseholder properties will be recovered from leaseholders in accordance with s20.
- 7.2 The programme will be closely monitored to ensure that all expenditure is contained within the agreed budget.

## **8. Legal Implications**

Implications completed by: Lauren van Arendonk, Interim Principal Contracts and Procurement Lawyer

- 8.1 This report seeks to approve the use of the South East Consortium Dynamic Purchasing System (SEC DPS) as procurement strategy and compliant route to market, for the procurement of major housing works. Given the housing works will affect leaseholders, s 20 of the Landlord and Tenant Act 1985 requires that leaseholders are consulted prior to undertaking major works that leaseholders would ordinarily be required to contribute towards the cost of.
- 8.2 Legal and procurement have been consulted and engaged to assist with ensuring that the route to market enables the Council to recover the relevant proportion of associated works' costs from leaseholders. The SEC DPS permits the Council to consult with leaseholders and therefore, recover contributions. Each batch of works under the DPS will need to be consulted separately with affected leaseholders so that they could potentially nominate contractors at the Notice of Intention stage for any contract/batch. Any failure to properly consult with leaseholders would see the Council capped in its recovery of works' costs.
- 8.3 Given the value of the contract, the Council as a public authority is legally required to advertise the tender the Find a Tender Service. The length of the contract determines which schedule of consultation is required. If it is more than 12-month, even if for qualifying works as opposed to services, then it is a Qualifying Long-

Term Agreement and requires consultation. Regulation 34 of the Public Contract Regulations 2015 and the Council's Contract Rules permits an Authority to use a DPS for commonly used purchases the characteristics of which, as generally available on the market, meet their requirements. In this instance, SEC appears to be a PCR compliant DPS and suitable for use of procuring major works. It is recommended that this strategy be approved.

## **9. Other Implications**

- 9.1 **Risk and Risk Management** - A risk-based approach has been considered throughout this report and reflected in the proposed procurement option.
- 9.2 **TUPE, other staffing and trade union implications** - At the time of preparation of this report TUPE is not expected to apply. This will be reviewed as part of each individual procurement process and any implications that may arise will be detailed within individual contract award reports. If My Place significantly increase the number of contracts directly managed, TUPE implications will be considered and discussed with existing delivery agents.
- 9.3 **Corporate Policy and Equality Impact** - A copy of the Equalities Impact Assessment Screening Tool is attached at Appendix 1.
- 9.4 **Health Issues** - The implication of the delivery of the contracts discussed in this report with respect to health issues and whether the proposals are likely to have a positive or negative affect on the local community, will be reviewed as part of each individual procurement process and will be detailed within individual contract award reports where applicable.
- 9.5 **Crime and Disorder Issues** - The implication of the delivery of the contracts discussed in this report with respect to crime and disorder reduction, will be reviewed as part of each individual procurement process and will be detailed within individual contract award reports where applicable.
- 9.6 **Property / Asset Issues** - The delivery of the contracts discussed in this report will maintain and improve the social and economic value of the housing stock and estate, achieve compliance and benefit residents.
- 9.7 **Compliance Issues** - Failure to carry out this work will result in properties not meeting adequate legislative compliance standards.

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

### **List of appendices:**

- **Appendix 1** – Equality Impact Assessment Screening Tool