

CABINET

4 August 2014

Title: Re-Procurement of Housing Framework Agreements	
Report of Cabinet Member for Housing	
Open Report	For Decision
Wards Affected: All	Key Decision: Yes
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Accountable Divisional Director: Jeremy Grint, Divisional Director of Regeneration	
Accountable Director: Steve Cox, Director of Growth	
Summary The current Housing Framework arrangements for the delivery of capital projects were procured in 2011. Since this time the composition of the proposed housing capital programme has changed in terms of the overall scale of the programme as well as there being a greater emphasis on housing new build projects than originally envisaged. As a consequence, it is proposed that new arrangements be procured with separate Framework Agreements for housing refurbishment and new build, both of which will have separate lots for higher and lower value work.	
Recommendation(s) The Cabinet is recommended to: (i) Agree the procurement of new Housing Framework Agreements for the provision of the services in accordance with the strategy set out in this report; and (ii) Indicate whether Cabinet wishes to be further informed or consulted on the progress of the procurement and /or the award of the contract, or is content for the Director of Housing, in consultation with the Cabinet Member for Housing, the Chief Finance Officer and the Head of Legal Services, to conduct the procurement and award the contract to the successful bidders.	
Reason(s) The reasons this recommendation should be accepted are as follows : a) To procure new Housing Framework Agreements in the areas of New Build and Refurbishment that ensure that the Council's changing needs are met. b) Ensuring continued efficiency, elimination of waste, and value for money through market-competitive pricing, contractual improvements, and process redesign c) The proposal will support the Community Strategy in the following areas : (i) Ensure that every child is valued so that they can succeed by maximising post-16	

- training through apprenticeships and other initiatives.
- (ii) Create thriving communities by maintaining and investing in existing homes and providing new high quality homes.
 - (iii) Maximise growth opportunities and increase the household income of the Borough residents through aspiring to engage local suppliers

1. Introduction and Background

- 1.1 The current arrangement for delivering the Housing programme is through a four contractor framework that is intended to deliver both housing refurbishment and new build projects. This approach was chosen on the basis of the projected composition of the programme at the time that the framework was being planned during 2011. This envisaged a smaller programme of works to bring sections of the stock up to the Decent Homes standard and a less ambitious programme of council house building.
- 1.2 Framework arrangements are governed by the Public Procurement Regulations 2006 (as amended) and contractors can either be selected via call off or mini-competition. The former can only be used where all of the terms of the contract are settled (e.g. volume of work, prices etc.) and where this is uncertain or where flexibility is required then individual contracts are let through the mini competition bidding process. This is used on the present Housing Framework; all projects are offered to all of the contractors on the Framework and contractors are selected on the basis of the quality and price of their bid.
- 1.3 The use of a Framework means that the Council can meet its obligations under the Public Procurement Regulations; these govern the procedures for letting contracts over the EU thresholds (currently £4,322,012). The rules also apply to individual contracts that are below the threshold but could be considered part of a larger requirement. Under the aggregation rules the value of the overall requirement must be taken into account when considering if the thresholds apply; this is to prevent contracts being broken down into smaller lots in order to avoid the procurement rules. Even where the requirement is below the threshold, it has been established through case law that the obligation for public authorities to be fair and transparent obliges the majority of contracts to be advertised. This effectively means that most capital projects have to go through an advertisement, pre-qualification and tender process, which is time consuming and expensive if applied to each and every project. The use of a Framework avoids this repetition since the process of advertisement and pre qualification only occurs when the Framework is let and the contracts let within the Framework can be let quickly; usually with a two to six week tender period depending upon the size of the contract.
- 1.4 The Frameworks do offer benefits from working with a small group of contractors over a period of time. Not only do they become familiar with the type of work required and depending upon the length of contracts, can reap the benefits of repetition, they can also collaborate in such areas supply contracts and training. As an example, the current Frameworks have agreed common specification and prices for the supply of kitchen and sanitary ware. The contractors are also obliged to produce an employment and training plan for each contract awarded; as part of the current Framework arrangements they have concluded a memorandum of

understanding with Barking College to share apprentices when the work under a single contract is not sufficient to support longer term training arrangements.

2. Proposal and Issues

- 2.1 The contractors selected for the current Framework were chosen predominately for their experience in carrying out works in occupation although all were proficient in the construction of new housing. However, with an increasing new build programme it would seem sensible for the council to have separate streams for the delivery of refurbishment and new build projects. Frameworks specifically set up to provide new build housing could attract house builders who could offer turnkey (that is standardised housing designs) solutions that might be cheaper and quicker to construct where bespoke designs were not required.
- 2.2 The Council's other Framework arrangements have been successful in attracting smaller regional firms rather than national constructors. These firms have tended to be more responsive to the Council's requirements than the larger national companies. This has been partially due to restricting the geographical reach of the Frameworks and also by incorporating value bands. Whilst there can be no guarantee that smaller firms bids will be successful, the availability of a lower value banding should be attractive and offer more flexibility to the Council.
- 2.3 The Council proposes to spend approximately £30 million a year on the refurbishment of its housing stock and would prefer to see as much of that investment as possible spent through local suppliers. Although some of the work required is such that it can only be delivered by contractors with larger resources. As a consequence, it is proposed that the programme will be delivered through three separate work streams; £10 million through Capital Delivery, £10 million through the Direct Labour Organisation and £10 million via small contractors. Framework contracts are currently being procured on behalf of the Council's Direct Labour Organisation in order to procure a number of smaller contractors in order that they can deliver an element of the housing capital programme going forward. This will generally be for projects with an individual work value of below £1million. It is therefore anticipated that these procurement initiatives will compliment each other and will allow a more flexible approach going forward.
- 2.4 Given the nature of these works, particularly where we are working in residents homes, it is essential that the chosen firms have the highest of standards in terms of workmanship and customer care. It is also important that the firms and tradesmen are able to communicate effectively with residents in order to avoid some of the issues that sometimes occur when working in occupied premises. As a consequence, the selection criteria will be heavily weighted to include a detailed examination of firm's ability to ensure that quality of installation, customer care, customer liaison and communication are placed to the fore and are of the highest order.
- 2.5 The proposed arrangement for Capital Delivery is to procure separate Frameworks for Housing new build and refurbishment. The Frameworks will continue to have advantages in saving individual contract procurement time, collaboration in supply chain purchasing and training. However, by separating the two areas the council should be able to select contractors that are specialists in those areas. In particular,

the firms chosen for the refurbishment frameworks will be expected to have expertise in the repair and modernisation of tower block and high rise housing.

2.6 Given the overall aim to increase the exposure to smaller regional firms, it is proposed that both the new build and refurbishment Frameworks will be split into lots; effectively meaning that there will be four Framework arrangements:

- New Build projects up to £2.5 million
- New Build projects over £2.5 million
- Refurbishment projects between circa £1million up to £2.5 million
- Refurbishment projects over £2.5 million

2.7 The figure of £2.5 million has been found through experience, to be a suitable cut off point between SME and larger firms. It is proposed at this stage that up to six firms will be appointed to each framework.

2.8 The Council has other Frameworks for the delivery of education and general construction projects. These have been procured on behalf of the other ELS Council's and incorporate a levy which is paid to this council when the framework is used. The previous housing framework's main focus was refurbishment and because of the leasehold recharge issues involved, did not attract external use. However, with separate lots for new build construction it is possible that these will be attractive to the other ELS Council's and those in adjacent areas in Essex; it is proposed that this potential will be explored prior to the placement of the OJEU advertisement.

3. Options Appraisal

3.1 A limited number of options were considered. The first being to do nothing and leave the current arrangements in place. As outlined above, the changing circumstances in funding and programme mean that these do not present the best opportunity to deliver the proposed pattern of investment.

3.2 The option to use an existing Framework administered by others is not possible for refurbishment works that require leasehold recharges since statutory consultation with leaseholders to allow those recharges to be made can only be carried out by the landlord. There also appear to be no Frameworks that the council could use that have been specifically set up to deliver new build housing. It is also unlikely that any existing arrangements would allow the council to ensure that there was a contractual obligation to deliver skills training as the current Housing Framework does.

3.3 A third option would be to have no Framework at all. However, this would mean that extensive procurement exercises would need to be carried out for each project with a value above the EU procurement limits and the general obligation on public authorities to act transparently and fairly, obliges the council to advertise and undertake time consuming tendering activities for the majority of below threshold contracts.

3.4 As a consequence, it is considered that the option presented in this report presents the best method for procuring capital works.

4. Draft Implementation Programme

4.1 A draft programme setting out a proposed procurement timetable is as set out below:

Task	Date - New Build	Date - Refurbishment
Report to Cabinet	4 th August, 2014	4 th August, 2014
Stage 1 Leaseholder Consultation Concludes	Not Applicable	19 th September, 2014
OJEU advert placed	22 nd August, 2014	26 th September, 2014
Expressions of Interest to be received	3 rd October, 2014	7 th November, 2014
PQQ's Returned	10 th October, 2014	14 th November, 2014
Evaluate PQQ's	19 th December, 2014	13 th February, 2015
Agree Tender Lists and issue debriefs	6 th March, 2015	6 th March, 2015
Issue Tenders	13 th March, 2015	13 th March, 2015
Tender Return	24 th April, 2015	24 th April, 2015
Tender Evaluation	15 th May, 2015	5 th June 2015
Interviews	12 th June, 2015	26 th June, 2015
Moderation and tender finalisation	3 rd July, 2015	3 rd July, 2015
Preparation of debrief material	10 th July, 2015	17 th July, 2015
Contract Decision Notices	24 th July, 2015	24 th July, 2015
Standstill Period	6 th August, 2015	6 th August, 2015
Report to Cabinet	22 nd September, 2015	22 nd September, 2015
Stage 2 Leaseholder Consultation	Not Applicable	23 rd October, 2015
Contract award and mobilisation	2 nd October, 2015	30 th October, 2015

5 Risk and Risk Management

5.1 The main risks are those linked to this proposal are as set out in the table below:

Challenges and Risks	Opportunities and Mitigating Factors
Uncompetitive / Unsustainable bids by large suppliers	Design Tender Process to emphasise need for high quality service in occupied and void properties as well as right to rule out financially unsustainable bids
Lots uncompetitive and exclude suitable suppliers	Design lots and package sizes to enable competition across the market.
Over-reliance upon suppliers	Risk controlled through multiple suppliers
Challenge from Unsuccessful Supplier	Compliant Procurement to mitigate risk
Internal Resource Issues	Recruit and plan workload accordingly so as not to compromise timescales

6. Consultation

- 6.1 Consultation with key internal clients and relevant Cabinet Members has taken place as part of the preparations for this procurement.

7. Financial Implications

Implications completed by: Carl Tomlinson, Group Manager H&E/CEX Finance

- 7.1 The Frameworks themselves do not commit the Council to any contractual obligation to purchase or deliver construction works. They are a mechanism by which specific contracts can be let to a selected group of contractors at the Council's discretion.
- 7.2 The cost of procuring services under this framework will be met through either capital budgets or operational revenue budgets in accordance with the Council's budgetary controls and financial regulations.
- 7.3 The time table set out in paragraph 4.1 indicates that the new framework contracts will not be in place until the early part of the 2015/16 financial year. The likely spend on these contracts will, for the most part, be dictated by the size of the Housing capital programme.
- 7.4 As an indication, the proposed Housing capital programme for that financial year is £40.4m for investment in existing housing stock and £22.0m for new build projects.
- 7.5 There will possibly be a small spend from existing Housing revenue budgets, however, due to the fluctuating nature of maintenance works, the exact amount is difficult to estimate.

8. Legal Implications

Implications completed by: Daniel Toohey , Principal Corporate Solicitor

- 8.1 The Council has power to enter into contracts for professional construction services under section 1 of the Local Government (Contracts) Act 1997 on the basis that such services are properly required for the discharge of the Council's duties. An alternative "power" could be; "By section 1 (1) of the Localism Act 2011, "A local authority has power to do anything that individuals generally may do". This is known as the general power of competence and whilst subject to certain limitation it permits the Council to enter into arrangements anticipated by this report".
- 8.2 It is anticipated that the estimated value of the Contract will be in excess of the threshold for application of the Public Contracts Regulations 2006 (the Regulations) of £4,322,012 and therefore subject to the full application of the Regulations.
- 8.3 The conditions of contract to be entered into between the Council and the successful tenderer are yet to be agreed and Legal Services shall advise on the implications thereof upon receipt of instructions.

- 8.4 In deciding whether to award contract, the Council must comply with the principles of administrative law including taking into account all relevant considerations, the outcome of the valuation of each of the tenders and their financial implications. In particular in order to comply with the Council's fiduciary duty and duty to ensure Best Value, the Council must be satisfied that the tenders represent value for money for the Council.
- 8.5 Additionally, prior to the commencement of any procurement The Public Services (Social Values) Act 2012 requires the Council to consider:
- (a) How what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area, and
 - (b) How, in conducting the process of procurement, it might act with a view to securing that improvement.
- 8.6 When undertaking construction related projects the Council has legal obligations that must be met such as the appointment of CDM Coordination services for reporting notifiable projects to the Health and Safety Executive (HSE).

9. Other Implications

- 9.1 **Contractual Issues** - The Frameworks themselves do not commit the Council to any contractual obligation to purchase or deliver construction works. They are a mechanism by which specific contracts can be let to a selected group of contractors at the Council's discretion. They will be procured through a process that complies with the Public Contracts Regulations by the Corporate Commissioning and Delivery section that has considerable experience in procuring similar framework arrangements.
- 9.2 **Staffing Issues** - There are no specific staffing issues. The Frameworks themselves can be managed within the Corporate Client and Delivery Unit establishment.
- 9.3 **Corporate Policy and Customer Impact** - This proposal will support the Community Strategy by maximising post-16 training through apprenticeships and other initiatives; improve health and well-being by ensuring that homes provide healthy environments for living; contribute to the creation of thriving communities by maintaining and investing in existing homes and providing new high quality homes; maximise growth opportunities and increase the household income of the Borough residents through initiatives to engage local suppliers.
- 9.4 **Safeguarding Children** - This proposal will indirectly safeguard children through minimising the risks consequent with living in unsuitable or low standard properties and the surrounding communal areas.
- 9.5 **Health Issues** - This proposal may have a positive impact upon health issues ; for example, in bringing existing properties up to the Decent Homes Standard, risks of asbestos and / or other detrimental health issues such as damp and condensation will be reduced.

- 9.6 **Crime and Disorder Issues** - This proposal will reduce the risks of crime and disorder by renewing or refurbishing run down or unsuitable properties, thus improving the overall environmental standards of the surrounding area.
- 9.7 **Property / Asset Issues** - The proposal will have a positive impact upon the property or assets, raising the standard and value of the properties, reducing the need for incrementally expensive remedial work at a later date, and making sale and letting of the properties in future more attractive. The Council assets will be protected from dilapidation and degradation and all brought to the Decent Homes standard, protecting the property assets functionality and value.

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

List of Appendices: None