



CABINET

14 August 2013

Subject Heading:

Award of Term Contract for Responsive Repairs and Voids – Lot One Responsive Repairs

Cabinet Member:

Councillor Lesley Kelly

CMT Lead:

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Policy context:

HRA Policy and budgets

Financial summary:

To agree the award of the contract for the provision of the responsive repairs service to housing in management of the Council. The cost can be met from within the HRA revenue repairs budget.

Is this a Key Decision?

Yes

Is this a Strategic Decision?

No

When should this matter be reviewed?

Reviewing OSC:

Towns and Communities

The subject matter of this report deals with the following Council Objectives

Ensuring a clean, safe and green borough	<input type="checkbox"/>
Championing education and learning for all	<input type="checkbox"/>
Providing economic, social and cultural activity in thriving towns and villages	<input checked="" type="checkbox"/>
Valuing and enhancing the lives of our residents	<input checked="" type="checkbox"/>
Delivering high customer satisfaction and a stable council tax	<input type="checkbox"/>

SUMMARY

This report sets out the results of the tendering exercise for the provision of responsive repairs services to the housing stock managed by the Council. The tendering process has been undertaken in accordance with the rules set out in the Public Contract Regulations 2006 and subsequent directives (EU regulations).

The proposed contract award will enable Homes and Housing to provide the responsive repairs service to tenants and leaseholders as set out in the Tenancy Agreement and schedules within lease agreements. The award will also enable Homes and Housing to discharge its statutory obligations as a landlord.

RECOMMENDATIONS

To agree the award of Lot 1 of the Term Contract for Responsive Repairs and Voids Refurbishment – Responsive Repairs, to Breyer Group PLC, in accordance with the offer set out in the tendering documentation and subject to the expiry of the required 10 day stand still period and section 20 of the Landlord and Tenant Act 1986 requirements.

REPORT DETAIL

The current partnership contract with Morrison Facilities Services (MFS) is set to expire on 31 July 2013 as a natural end to the agreement. This contract was being administered by the former ALMO and prior to re-integration it was agreed with the Council to commence the re-tendering of the arrangement. This had also been discussed with the former ALMO Board and it was agreed to commence the re-tendering process. Subsequent to this the current arrangement was extended until 30 September 2013 by mutual agreement due to a delay to the process associated with leaseholder recharges.

A procurement exercise was completed and Faithhorn Farrell Timms were appointed as support consultants for the project. The scope of the project comprised the re-tender of the responsive repairs and voids refurbishment works programmes in two separate lots. The subsequent EU procurement notices and prequalification (PQQ) and invitation to tender (ITT) documents specified the Councils right to award these lots either separately or as a combined contract.

The scope of works included in the re-tender specification is different to the current scope of the agreement with MFS. The proposed contract is for responsive repairs only and is focused on works of this type. This was to ensure a concentration on the provision of a high quality repairs service to tenants and leaseholders. The pricing mechanism is for a fixed fee to be provided by the contractor for the

proposed works with a maximum liability of £1000 per instruction. Any works above this level will be reverted back to the Council to either obtain competitive quotes or seek alternative solutions. The prices are based on a standard schedule of rates which will be used to value works for recovery from leaseholders. The adjustment applied will be in accordance with the fee provided as a percentage. The tender also provided for an inspection, to be carried out in the first year of the contract, of all Council rented property to ascertain condition and repairs liabilities moving forward as well as collect other key pieces of information relating to occupation, property alterations etc.

The proposed commencement date for the contract is 1 October 2013. The contract is proposed to be for a 5 year period with the option to extend based on performance.

The tendering process has been conducted in accordance with the Public Contracts Regulations 2006 and the details of the process and results are contained in the consultants' tender evaluation appended as a restricted annex to this report.

REASONS AND OPTIONS

Reasons for the decision:

The Council, in its role as a landlord and building owner, has obligations in statute and under the Tenancy Agreement to provide a responsive repairs service. The contract currently in place is set to expire on 31 July 2013, extended to 30 September 2013. The Council has obligations, as a contracting authority, to comply with the requirements of the Public Contracts Regulations 2006.

Other options considered:

To extend the existing arrangement with Morrison Facilities Services for a further period.

REJECTED – There were no further provision in the contract to extend and any further extension would have been in breach of Public Contract regulations.

IMPLICATIONS AND RISKS

Financial implications and risks:

Contract

The award of a new responsive repairs contract will help the Council to keep the stock in good order; clearly failure to keep the housing stock in serviceable condition could lead to further financial liabilities being incurred.

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The contract form proposed is a standard form of partnering contract, widely used within the sector. This “partnering” will apply to the contract administration, so that items such as disputes will be dealt with in this way.

Some aspects of “partnering”, such as risk reward sharing, will not be applicable. The scope of the proposed contract is not as wide reaching as the current agreement with MFS. There is a pre-determined maximum liability of £1,000 per instruction to the contractor, which will be valued by the application of standard schedule of rate items. Works above this will be at the discretion of the Council to instruct others via quotes or tenders. In addition, the use of a fixed price arrangement for the majority of repairs, by value, requested will give the Council greater cost certainty.

Ordinarily, the responsive repairs service, given it is driven by the tenants requesting services on an ad-hoc basis, means it is a high risk activity from a financial perspective. The proposal here though is for a fixed fee, irrespective of volumes. So if volumes decrease, there is a risk the HRA will pay in excess of value – if volumes increase, that is the risk for the contractor. All work will be commissioned by officers, so there is an element of control over volumes.

Planned maintenance will be dealt with by alternative arrangements.

Inflation

Inflation is dealt with via the application of the rate derived from the Consumer Price Index (CPI).

Financial Stability

As required by the Councils Contract Procurement Rules a financial check has been carried out of the proposed bidder and their rating is recorded by Experian as below average risk.

Budget

The cost of the contract will be met within the revenue repairs budget. The estimated value of the contract is detailed in the except annex to the report

Legal implications and risks:

With any procurement process carried out under the Public Contracts Regulations there will be inherent risks to contracting authorities. It is essential the risks are mitigated by taken appropriate actions during the various key stages. The process has been carried out in accordance with the EU procurement rules and in accordance with the Council’s Contract Procurement Rules.

The risk of challenge is governed by regulation 47 of the Public Contracts Regulations, in particular 47D. This puts an emphasis on bidders, should they feel a challenged is warranted, to do this with 3 months of when the event, in their view, a breach occurs.

The items that potential could be challenged relating to this procurement are;

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- The size and nature of contract – consolidated value of contract exceeds threshold for Part B services (works) - £4,348,350. The process recognises this and the Public Contract Regulations were the governing aspect of the procurement.
- The actual process adopted – This must be open, fair, transparent and honest. The process used followed EU procurement regulations and the various issued directives. The Council, in this instance, used a third party organisation to scrutinise and validate the conduct of the procurement officers and the assessment panels conduct. They were supported by their own advisors, Trowers and Hamlin specialist procurement team.
- Decision to reject a qualified tender – The appointed consultants sought legal advice on the nature of the letter issued by the bidder. They confirmed and we have a written statement from Trowers and Hamlin stating the document was qualified and breaches a specific requirement within the ITT.
- Abnormally low bid – A submission was received from a bidder which was considered to be a potential risk. The procurement team followed the process as set out in the regulations and the business case provided was comprehensive and accepted by the assessment panel.
- Scoring process – all aspects of the scoring process was published in the PQQ and ITT

Human Resources implications and risks:

There are no direct HR implications or risks to the Council or its workforce that can be identified from the recommendations made in this report. The change of service provider was deemed likely to be subject to TUPE (Transfer of Undertakings (Protection of Employment) Regulations). As such, the ITT document specified that potential contractors were obliged to satisfy themselves that they would be able to meet all TUPE requirements relating to this tendering exercise.

The bidders were provided with relevant details of all affected staff employed by the current service provider, in line with TUPE and subject to Data Protection Act principles, and their pension status. This information was obtained from the incumbent contractor as part of the ITT and made available to potential bidders with the knowledge and agreement of the incumbent contractor for the purposes of TUPE compliance only.

A question of clarification around pension provision was issued to all potential contractors bidding for these services, relating to obligations under TUPE and the contractors' consideration to becoming an admitted body to the Local Government Pension Scheme, or providing an approved comparable scheme. The matters relating to TUPE in this service re-provisioning exercise do not directly impact on the Council or its current workforce. Potential bidders were advised to seek independent legal advice with regard to any TUPE implications.

Eve Anderson, Strategic HR Business Partner (Children's, Adults & Housing and Public Health)

Equalities implications and risks:

The procurement process has been carried out in accordance with the EU procurement rules and the Council's Contract Procurement Rules.

The PQQ document contained a specific requirement for prospective bidders, under section E of the PQQ, to provide evidence of their Equal Opportunities and Diversity policies and to demonstrate their compliance with the Equality Act 2010 (or relevant equal opportunities and anti-discrimination legislation for non-UK based companies). Bidders were assessed on a pass or fail basis based on the evidence provided. Applications who failed to satisfy the E&D requirement were rejected.

The ITT document contained specific wording relating to the Council's Equality in Service Provision policy which was attached as an appendix and the commitment required of all contractors to be able to demonstrate their adherence to this and compliance with the Equality Act 2010. It was also highlighted that the Council would monitor and evaluate the contractors' progress in achieving the aims set out in the policy on a regular basis and that any breach of legislation or non-compliance with the Council's Equality in Service Provision Policy could lead to termination of the contract.

BACKGROUND PAPERS

None