

Item No. 14.	Classification: Open	Date: 22 October 2013	Meeting Name: Cabinet
Report title:		Gateway 1 Major Works Contractor Framework	
Ward(s) or groups affected:		All	
Cabinet Member:		Councillor Ian Wingfield, Deputy Leader and Cabinet Member for Housing Management	

FOREWORD – COUNCILLOR IAN WINGFIELD, DEPUTY LEADER AND CABINET MEMBER FOR HOUSING MANAGEMENT

The council is committed to delivering the Warm, Dry and Safe programme by 2016 and then continuing to provide an effective asset management strategy. In order to do this, it needs to employ professional contractors who can deliver in terms of time, quality and price. Having long term agreements in place helps ensure this happens. These contracts will ensure that firms are in place to carry out major works and act as a useful support to the current framework contracts in place.

This framework will help ensure a consistent resident focused service for the period of the contract. The firms will be in Southwark for four years and therefore an increased sense of ownership of their service will be developed so improving quality and service delivery even further. Resident representatives will be involved in the selection process through representatives from both tenants council and home owners council and they will help establish the trust and confidence of residents in the services we provide and the way major contracts are handled in the future and all greater transparency for all residents in the whole process of managing, monitoring and delivering major works. Residents have specifically asked for greater transparency in framework contracts and this new arrangement will not only provide an effective method of ensuring quality but will also have an ongoing competitive tender process. I therefore fully support and endorse all the recommendations.

We therefore ask the cabinet, after consideration of the officers' report set out from paragraph 1 onwards to approve the recommendations below

RECOMMENDATIONS

Recommendation for the Cabinet

The cabinet approves

1. The procurement strategy outlined in this report for a housing and related services major works contractor framework covering 4 lots (for main building works, district heating works and communal electrics work as further detailed in paragraph 9 at a total estimated annual cost of up to £92m for a period of four (4) years from 1 September 2014, making a total estimated contract value of up to £368m.

Recommendations for the Leader of the Council

That the Leader of the council delegates

2. Authority to the Deputy Leader and cabinet member for housing management to award and enter into the framework agreement with four lots.
3. Authority to the Deputy Leader and cabinet member for housing management to award and enter into the overarching agreement with all providers on the framework agreement to cover management and governance provisions and the delivery of soft benefits.

BACKGROUND INFORMATION

4. On 14 June 2010 the council awarded main housing building works partnering contracts to five contractors covering different geographical areas of the borough. The contracts awarded and the areas they cover are set out in the table below:

Contractor	Area covered by the contract
A & E Elkins	Nunhead and Peckham Rye/Dulwich
Breyers	Borough and Bankside/Walworth
Apollo/Keepmoat	Camberwell/Peckham
Saltash	Street properties, TA halls, hostels, major voids
Wates	Rotherhithe/Bermondsey

5. The contracts with Wates Construction Limited (Wates) and Breyer Group PLC (Breyers) have since been mutually concluded leaving three in place with Apollo Property Services Group Limited/Keepmoat Limited (Keepmoat), A & E Elkins Limited (A & E Elkins) and Saltash Enterprises Limited (Saltash). Since the contracts with Wates and Breyers ended, Keepmoat have been providing back up for the Bermondsey/Rotherhithe areas and A & E Elkins for Borough and Bankside/Walworth.
6. These contracts expire in June 2015 but have options to extend for a further five years.
7. The council needs a more flexible approach to how it is awarding housing and related services major works contracts in the future, one which gives options for procuring works, ensures value for money and still enables a good quality and speedy delivery of service and commitment to the local community through using consistent quality contractors. It is believed that setting up a framework agreement with a list of contractors covering different areas of work will achieve this.
8. The framework agreement will provide the council with resilience in the event that there are any issues with the council's existing arrangements; and provide the council with an easy to use procurement path for those works not currently covered by the existing arrangements. The council will thus have a variety of options for work even in a worst case scenario if there were issues with the partnering contracts/contractors whether extended or not.

9. In considering the setting up of the framework it was decided that the same advantages could be obtained from the inclusion of additional areas of works covering district heating schemes (mains, boilers and internal works), and communal and internal electrics where there are standalone electrics works. These works are currently procured on an individual tender basis.

Summary of the business case/justification for the procurement

10. The framework agreement shall be broken down into four separate lots, the details of each lot being provided in the below table. The estimated values are maximum figures based on current programme proposals and the tendering contractors will be advised as part of the selection process there are no guarantees of works under the framework and that these may change dependent on the future of the current partnering contracts. At the time of tender, proposed programmes known at the time can be put in to the tender documentation.

Lot	Lot title	Works covered	Estimated annual value	Number of providers
1	Main building works (low value schemes)	<i>External and internal building works up to the value of £3m</i>	£30m	6
2	Main building works (high value schemes)	<i>External and internal building works above £3m</i>	£50m	7
3	District mains, boilers and internal works	<i>Replacement or major refurbishment work to mains, boilers and internal works on district schemes.</i>	£10m	6
4	Communal and internal electrics	<i>Standalone electric works.(if part of general building scheme, will be carried out in Lots 1 or 2)</i>	£2m	6

11. It is intended that the framework agreement shall be in place by 1 September 2014 and shall at least initially supplement the existing partnering contracts, which could then have only another nine months to run. As such there is a certain longer term need for works in two areas, Borough and Bankside/Walworth and Bermondsey/Rotherhithe as well as the heating and electric works and possibly a need for the other three areas if the current partnering contract is not extended.

12. The partnering contracts shall continue to be monitored for value for money and performance and from this review a decision will be made as to whether to extend the existing partnering contracts or not. The council's decision on whether or not it will extend the existing partnering contracts will be based on value for money considerations. Officers intend to consider a number of factors such as the performance of the contractors, efficiencies that have or can be achieved and the comparative values of the framework agreement and the partnering arrangements when deciding whether or not the existing arrangements will be extended or whether the works will be transferred to the framework agreement on the expiry or earlier termination of the existing arrangements.

13. It should be noted that due to exclusivity requirements with the existing partnering contracts, that whilst the partnering contracts are still in operation, the framework agreement can only be used for the two areas where the contracts with Wates and Breyers have been mutually concluded and any works that are not covered by the scope of work set out in the existing partnering contracts. The lower estimated value of the lots over this period of time shall be reflected in the Official Journal of the European Union (OJEU) notice.
14. All providers appointed onto the framework will be required to enter into an overarching agreement which will contain the collective management and governance provisions and set out the 'soft' benefits of the contract around community benefits and local employment and training opportunities.
15. It is recommended that the deputy leader and cabinet member for housing management be delegated the decision to award the framework contracts as this will enable the housing major works programme for to be progressed urgently. Once appointed through the framework, the firms will be managed by the appropriate project manager in Major Works or Maintenance and Compliance, who will appoint them for each specific framework scheme through the issue of a new instruction having authority from the Strategic Director of housing and community services. Delegated authority will be sought in the Gateway 2 report for the Strategic Director to award contracts for each scheme under the framework agreement following mini-competition. Each individual scheme would not therefore need to go in the forward plan, exactly the same procedure as with the current partnering contracts
16. Having a framework in place will ensure a consistency of high level service to be provided and also enable best value to be obtained as the firms in the framework could receive a substantial number of tender opportunities from the council across the duration of the contract if they maintain a high standard of service quality, monitored through the Key Performance Indicators (KPI's) in the contract and consistently provide value for money tenders. The KPI's will include standards for resident satisfaction, client satisfaction, value for money, employment and training opportunities and programme efficiency. Failure to meet KPI's may result in a contractor being suspended from the framework agreement or their participation in the framework agreement being terminated.
17. The appointment of each firm on this framework will encourage collaboration through working with the council. This will result in improved efficiencies, standardisation of processes and procedures, consistency of approach and ultimately better quality and value for money for residents and the council.

Market considerations

18. The market for construction services is very good. Competition is strong and it is anticipated that competitive prices will be obtained through this process as with the current framework contracts. The OJEU advertising process prescribed by the EU procurement regulations places the project in the public domain and advertises the contract extensively and will be sufficient to attract a good response and there are a number of firms with the capacity to carry out the work. Contractors will only be allowed to bid for one of the building lots. This will allow the council a wider range of contractors for resilience and capacity. Also with two building lots in place of differing sizes, it is anticipated that medium sized firms will be encouraged to tender for the smaller building lot.

KEY ISSUES FOR CONSIDERATION

Options for procurement route including procurement approach

19. All the key options have been considered before determining the procurement strategy set out in this report.
 - Do nothing/use of EXOR list
 - Bring work in house
 - Use of an existing internal/external framework
 - Create the council's own framework with a second stage tender
20. The first option would be to tender each works contract as and when required, which is in effect the 'do nothing' option. This would be very time consuming and bureaucratic involving a brand new tendering and appraisal and approval process for every individual scheme, may not achieve the best value for money as only one stage of tendering would be done and would not allow quality long term relationships to be developed with contractors.
21. The second option of bringing the work in house does not in reality exist for major building works as Southwark Building Services (SBS) only do day to day repairs. There may be opportunities for other works departments to tender to go on the frameworks such as the electrical contracts.
22. Existing external frameworks cannot be used as there has been no specific consultation with leaseholders.
23. The recommended option is to have a new framework in place as this would ensure high quality firms are used and that through an individual second stage tendering process, leaseholders in particular could be confident that a value for money price had been achieved as there would be a second stage tender. All leaseholders will be written to in advance advising them of the forthcoming OJEU notice prior to it being issued, for information only, as they would not have nomination rights at this stage. The framework proposed will allow leaseholders to nominate a contractor to go on the individual scheme tender lists when the mini-competitions are undertaken for individual pieces of work if the scheme is below the OJEU limit. If it is above the OJEU limit then the project may be tendered following the full OJEU procedure. There will be no direct call offs with the new framework proposed.
24. The intention is to have these contracts covering both works below and above OJEU limits. There would therefore be no risk of challenge that the council were trying to have smaller contracts to avoid the need for OJEU procedures as all contracts would be covered, so no disaggregation claim can occur.
25. Thus the council proposes to proceed with a framework contract with four lots as set out above. This is considered to be the best option to proceed because it guarantees value for money and it will create a set of committed contractors who will provide additional benefits too through the provision of benefits such as apprenticeships for local residents. It is thus proposed that the framework will be tendered under an EU restricted procedure.

26. This framework would cover all works, and orders would be both below and above the OJEU threshold to a maximum individual order of £15m, although clearly only Lot 2 would have a contract of this size. In 2012/13 four Major Works contracts were above the OJEU threshold. If a leaseholder does nominate a valid contractor for schemes above the OJEU limit then the framework will not be able to be used and the full OJEU process will be required.

Proposed procurement route

27. A full EU restricted procedure will be followed comprising an initial pre-qualification stage in response to a pre-qualification questionnaire (PQQ) where bidders will be shortlisted to tender. Leaseholders will be written to prior to the OJEU notice so they can advise any contractors they might wish to apply for the contracts. The second stage will comprise shortlisted tenderers being invited to respond to an Invitation to Tender (ITT).

Identified risks for the procurement

28. The table below summarises the key risks, likelihood and risk mitigation which will be put in place.

Risk	Likelihood Before Mitigation	Risk Mitigation/Management	Likely Impact After Mitigation
27.1 Issues from leaseholders to new framework	High	<p>Discussions with Home Owners Council.</p> <p>Discussions with leaseholder Major Works Service Improvement Group.</p> <p>Will be a HOC representative on the Project Board.</p> <p>Advising all leaseholders of proposals prior to OJEU notice.</p> <p>Allows leaseholder contractor nominations at individual scheme stage. If a leaseholder makes a valid nomination for schemes above the OJEU limit then the framework cannot be used. To date, Southwark has not had a valid nomination on a major works scheme.</p> <p>Ongoing competition under the framework agreement will hopefully reassure leaseholders that ongoing value for money is being achieved.</p>	Low
27.2 Possible disparities	Medium	As noted in paragraph 75, there is a risk that in the event of a	Low

Risk	Likelihood Before Mitigation	Risk Mitigation/Management	Likely Impact After Mitigation
between the requirements of domestic and European legislation creates risk in the proposed arrangement.		nomination being received for over EU value works, then these might be subject to a separate procurement. Mechanisms shall be put in place to ensure that such risks are mitigated to the extent possible during the process and in any subsequent mini-competition process. Bidders will be aware of these mechanisms and they will be incorporated into the framework documentation. Further advice will be taken from the director of legal services and head of specialist housing services as required.	
27.3 Contractor(s) does not perform	Medium	<p>Robust default and monitoring provisions (including detailed KPI's) will mitigate this and ensure that the council has an effective remedy in the event that the risk materialises.</p> <p>The framework will be non-exclusive so no contractors will be guaranteed any work or specific tendering opportunities.</p> <p>There will be a 'no fault' walk away clause in the contract to allow easy termination by the council.</p>	Low
27.4 Contractor ceases to trade and/or becomes insolvent	Medium	<p>The very structure of the framework agreement will ensure that the council has access to alternative contractors in the event that one of the contractors becomes insolvent.</p> <p>Financial checks will be carried out on all firms selected to tender.</p> <p>Where applicable and/or appropriate a PCG and/or performance Bond will be put in place.</p>	Low
27.5 Risk of prices differing from the partnering contractor	Medium	1. The council mitigates its risk on receiving different prices by securing a number of long term contracts. Any tender process will mean some variation in	Low

Risk	Likelihood Before Mitigation	Risk Mitigation/Management	Likely Impact After Mitigation
framework.		prices both up and down and this has never previously been an issue, but the partnering and proposed framework contracts will help the council to ensure that consistent prices are maintained over longer periods.	
27.6 Limited interest from Contractors to compete for Lot 2 on the basis that the majority of projects would exceed EU threshold and might be subject to separate arrangements	Medium	1.Over the last year only 4 contracts have been let above EU threshold. In the tender process we will provide information for bidders to enable them to make sound commercial judgement in regard to the level of potential values within each lot.	Low

Key /Non Key decisions

29. This report is a strategic procurement and is therefore a key decision.

Policy implications

30. The framework will help ensure that the council can meet all its statutory obligations as regards major works. It will also help ensure that the council is able to deliver the housing capital programme, in particular the Warm, Dry and Safe (WDS) programme, one of the Fairer Future promises.

Procurement Project Plan (Key Decisions)

Activity	Complete by:
Forward Plan (if Strategic Procurement)	25th July 2013
DCRB Review Gateway 1 CCRB	29 July 2013 22 Aug 2013
Notification of forthcoming decision –despatch of Cabinet agenda papers	25 Sep 2013
Approval of Gateway 1: Procurement strategy report	22 Oct 2013
Scrutiny Call-in period and notification of implementation of Gateway 1 decision	6 Nov 2013
Issue Notice letters to leaseholders(for information only)	2 Dec 2013
Completion of tender documentation	24 Feb 2014
Advertise the contract	3 Jan 2014
Closing date for expressions of interest	10 Feb 2014
Completion of short-listing of applicants	17 March 2014
Invitation to tender	28 March 2014
Closing date for return of tenders	12 May 2014
Completion of any clarification meetings	26 May 2014
Completion of evaluation of tenders (including project board approval)	16 June 2014
Issue Notice of Proposal – complete by	N/A
Forward Plan (if Strategic Procurement)	28 March 2014
DCRB Review Gateway 2 CCRB	30 June 2014 10 July 2014
Notification of forthcoming decision –	23 July 2014
Approval of Gateway 2: Contract Award Report	28 July 2014
Scrutiny Call-in period and notification of implementation of Gateway 2 decision	4 August 2014
Alcatel Standstill Period (if applicable)	15 August 2014
Contract award	18 August 2014
TUPE Consultation period	N/A
Place award notice in Official Journal of European (OJEU)	26 August 2014
Contract start	1 Sept 2014
Contract completion date	31 August 2018
Contract completion date – (if extension(s) exercised)	NA

TUPE/Pensions implications

31. The risk of TUPE applying to the proposed framework is low) -
The proposed framework agreement does not present any TUPE or pensions implications for the council as an employer because the council does not deliver these services directly. TUPE will be a matter for any incumbent contractor/s and the successful contractor/s and not the council. It is difficult to say with certainty whether or not TUPE will apply to the respective contractors because it will depend on circumstances at the time the framework is in place or more specifically when contracts are called off from the framework. However it is considered that the risk of TUPE applying is low due to a number of factors, principally that:
- a. if which is envisaged the called off contracts will be to carry out single specific tasks or tasks of short term duration they will be exempt from TUPE; this may be weakened if one contractor on the framework is awarded a succession of short term contracts for the same or similar work as that undertaken by a current contractor.
 - b. where existing work will continue under the partnering contracts this would give credence to the argument that there will be no continuing activity.
 - c. there is or will be a fragmentation of activities: given the number of current contractors and contractors on the framework and, as is envisaged, provided that contracts are called off to a number of contractors it will be difficult to say that any particular part of the service has transferred from one contractor to another, or that any of the employees of an existing contractor are assigned to an activity taken over by one of the contractors under the new arrangements.
 - d. if the current contractors do not have organised groupings of employees whose principal purpose is the carrying out of activities for the Council immediately before any call- off their employees will not transfer. Consideration needs to be given to undertaking a due diligence of the current contractors' workforce but it is how their workforce is organised at the point of a call off from the framework which will be determinative

The bidders will need to take their own independent legal advice on the application on TUPE and whilst the council can form a view it should not give any assurances of Warranties or make any representations in the tender process.

Development of the tender documentation

32. Following an investigation in 2008 and subsequent prosecution by the Information Commissioners Office, there has been some concern that some construction industry firms have been 'blacklisting' union workers. Potential suppliers will be asked to respond on this point as part of the PQQ process.
33. The tender documentation will be prepared by a professional advisor in conjunction with the council's legal and procurement teams to assist with procedures and implementation. They will have extensive experience in this field and will prepare tender documents in conjunction with staff in the Major Works team on the technical aspects of the documents such as evaluation methodologies and criteria and the specification. Southwark's legal services will be fully involved in drawing up contract documents in the areas of instructions to tenderers etc.
34. A project board will be put in place to inspect draft documentation and to sign off key documents. This will be led by the head of major works in conjunction with

the professional advisor. This will include representatives legal, procurement and home ownership and compliance and engineering. The project board will agree the procedures for the procedure for using the framework and governance required to allow speedy delegated approvals to let works following the mini competition process. In addition there will be a project delivery team led by the Investment Manager in Major Works. This will include technical, legal and procurement representatives and will enable detailed input in to the tender documentation.

35. The contracts will not be exclusive and the contract documentation will make clear that the amounts in the framework would be maximum sums as actual sizes of schemes available in the framework will depend on the extent of use of the existing partnering contracts and future housing funding available and then where spending is prioritised.

Advertising the contract

36. The framework will be advertised in the Official Journal of the European Union (OJEU) and this will be sufficient to attract interest from a number of firms. It is therefore not anticipated that any further advertising will be necessary. Any contractors who have expressed an interest in working for Southwark in the past will also be advised, and details will also be placed on the Southwark website at OJEU stage.

Evaluation

37. There will be two stages for appointment onto the framework: PQQ Stage and ITT evaluation Stage. Evaluation of submissions will be undertaken in accordance with strict criteria set out in "Evaluation Methodologies" prepared by the professional advisor at each stage. It is proposed that the professional advisor facilitate the evaluations, having the requisite skills and competencies to undertake evaluation.
38. The first stage short listing of the PQQ responses will be facilitated by the professional advisor appointed to manage the process. The detailed ITT evaluation document will be produced with the tender documentation.
39. The intention is to set short listing criteria such that only firms who have extensive experience and proven ability and sufficient resources will be invited to tender .The detailed criteria will be prepared by the professional advisor in association with Major Work's staff and resident representatives.
40. The ITT evaluation will be undertaken by a tender evaluation panel facilitated by the professional advisor with a team of Major Work's staff and resident representatives (one leaseholder and one tenant). The selection criteria will be based on MEAT (Most Economically Advantageous Tender) criteria with a split of 60; 40 price; The decision to change from the usual 70;30 is because this allows a focus and emphasis on quality with the certainty that via the mini tenders to be carried out on each individual scheme, there will be a very competitive edge to this process. Prices are expected to be very keen and it is vital to ensure that the firms selected can carry out the works to the highest standard given the potential size of the housing capital programme in future and this will be done by setting quality thresholds. Contractors will be expected to hold their tender prices as a maximum price when tendering for each individual scheme. The council's intention is primarily (where it is able to do so) to evaluate on price at mini-

competition stage. Where the council is unable to evaluate solely on price, quality criteria will be used and the facility to do this will be incorporated into the framework documentation.

41. The intention is that six firms (seven for the largest building works lot) will be chosen for each lot. As each contract of works on each estate(s) is specified, then a mini-competition will be held under the relevant lot of the framework agreement and all six/seven contractors on that lot that are capable of undertaking the works would be asked to participate in that mini-competition. The council's expectation is that bidders at mini-competition must bid below or at their tendered rates (except in exceptional circumstances, e.g. if TUPE were later held to apply to a specific contract that is being called off).
42. As and when the council's procurement needs arise and mini-competitions are held leaseholders will be consulted in compliance with relevant domestic legislation and the leaseholder will have the right to nominate a contractor to provide the works that are the subject of a competition under the framework. If a nomination is received for a scheme above the OJEU limit a full OJEU procedure might be needed as a single contract.
43. It is hoped that leaseholders will be content with the council's procurement approach (as set out in this document) as establishing a framework agreement will ensure both quality in the works delivered and ongoing competition for those works.
44. Contractors on the list would be expected to provide local labour and apprenticeship opportunities and provide community initiatives as with the current partnering contracts.

Community impact statement

45. Having a consistent set of firms working in the borough will improve the quality of service and help ensure that the contractors work comprehensively with all sections of the community.
46. The contractors will be able to offer local employment and training opportunities for the community and will be encouraged to use local suppliers.

Economic considerations

47. It is expected that local medium sized firms will tender for some of the work available in the lots. The successful contractors will bring local job opportunities for the community as well as tendering opportunities for local suppliers and sub-contracting firms.

Social considerations

48. The London Living Wage will apply to all relevant staff working directly on the contracts and to any relevant staff employed by any sub-consultant. For this contract, the quality improvements are expected to be a higher calibre of professionals employed and it is therefore considered that best value will be achieved by including this requirement. On award, the associated quality improvements and cost implications will be monitored as part of the annual review of the contract. Given the technical nature of these contracts, it would be anticipated that this should be easily accomplished by each firm.

Environmental considerations

49. There are no specific environmental considerations at this stage. The procurement process will be managed if possible through e-tendering systems with the professional advisor (in line with Government guidance) to minimise the impact on the environment and in particular, in relation to printing and paper usage. The public services (social value) act 2012. requires that the council must consider how what is proposed to be procured may improve the economic, social and environmental well being of the area and how the council may act with a view to securing that improvement in conducting the process of procurement. This procurement process will ensure contractors who meet all these criteria and who are selected who will provide economic and social well being through providing jobs, training and community benefits as well as meet statutory environmental standards and other council requirements such as the safer lorries requirements.
50. The contract documents will ensure that the contractors have to comply with all the council's environmental requirements as regards, for example, timber usage, CO2 emissions and safer lorries.

Plans for the monitoring and management of the contract

51. The performance of the firms will be monitored by the Major Works and Compliance and Engineering Teams. They will ensure for each time the firm is instructed that they carry out works for the scheme to the highest quality, are involved in the consultation process with residents, follow the timetable for the scheme. Each project manager in the Major Works team or other section using the contracts will provide a quarterly monitor on the performance of the firm and there will be specific KPI's in the contract in the areas of time, cost and quality. The contract would be non-exclusive so no firms would be guaranteed any work and there will also be liquidated and damages clauses for late contract completions and retentions held to ensure works will be rectified. The overall contract will be monitored by the Head of Major Works.

Staffing/procurement implications

52. There are no specific staffing implications to this report. The resources required for procurement of this framework can be met from existing resources within housing and community services for both the project board and project delivery team as set out in paragraph 32.

Financial implications

53. This report recommends the procurement strategy for major works contractor framework covering four lots for housing and related services. The total estimated contract value is up to £368m and covers a four year period starting from 1 September 2014.
54. The capital cost of these contracts will be met from the resources budgeted within the council's housing investment program (HIP). The current HIP allocation is budgeted and approved up to 31 March 2016. Further capital allocation approval will be required as part of the council's capital refresh process, beyond this period to meet the ongoing costs from these contracts.

55. It is estimated that the total annual cost of these contracts will be up to £92m with no minimum contract value and individual contracts will only be awarded when funding is confirmed.

Legal implications

56. Please see concurrent from the Director of Legal Services.

Consultation

57. There will be extensive consultation with leaseholders on the procurement to the framework, and statutory consultation will be carried out on the specific packages of work. Leaseholders will not be consulted on the framework under section 20. Leaseholders would be specifically advised In addition a tenants and a resident's representative will be asked to join the final tender evaluation panel as part of the consultation process with Tenants Council and Home Owners Council.

Other implications or issues

58. These are all covered in the report.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Head of Procurement

59. This report is seeking approval of the procurement strategy for a major works contractor framework. The framework shall be divided into four lots covering areas of work.
60. Paragraphs 18 – 25 describe the procurement options that have been considered for the delivery of these works. Paragraph 24 confirms that a framework approach with ongoing mini competitions between contractors is considered to be the best option to achieve continued value for money as set out in the table at paragraph 9 of the report.
61. With a contract of this size and nature, EU regulations apply. The report confirms that a restricted (2 stage) procurement process will be followed which is in line with the regulations and satisfies the council's contract standing orders.
62. The timeline for the project is ambitious but achievable provided the appropriate resources are available when necessary. The report confirms that the project will be supported by external and internal resources. Paragraph 32 outlines the project governance arrangements that will be in place throughout the project to help ensure the project delivers on target.
63. The evaluation methodology for setting up the framework will be on the basis of the most economically advantageous tender and in determining this shall use a price/quality ratio of 60:40 which although is not in line with the Council's current recommended ratio can be justified with price being evaluated on each and every scheme.
64. The report confirms that once the framework is established and schemes are specified, all the providers on the relevant lot shall be invited to participate in a mini competition. This process should ensure that best value for money on each specific project is achieved. The report confirms that at mini competition stage

the contractors must bid either at or below their tendered rates. To ensure the framework arrangement remains EU compliant and satisfies leaseholder legislation, additional processes will be in place to accommodate any contractor nominations made by leaseholders.

Director of Legal Services (KM 30/09/2013)

65. This report seeks the cabinet's approval to the procurement strategy for the major works contractor framework, as further detailed in paragraph 1. As this is a strategic procurement (having an estimated contract value of over £15m) then the decision to approve the procurement strategy is reserved to the cabinet.
66. The nature of the services to be procured are such that they are subject to the full tendering requirements of the EU procurement Regulations. As noted in paragraph 26, it is the council's intention to follow a full EU restricted procedure, so this requirement is met. It is proposed that a framework of providers is established to ensure consistent high level service and best value over the life of the framework, and the council must therefore ensure that the procurement and later management of the framework is undertaken in accordance with the additional requirements of regulation 19 which govern frameworks. This report confirms that the framework period will be 4 years, which is the maximum permitted, and that the framework agreement will set out specifically how later call offs for individual pieces of work will be undertaken. As detailed in paragraph 22, work above the EU threshold of £4.34m might need to be subject to a separate procurement in the event that a nomination is made for these works, but further advice will be given in the event that this situation arises.

Strategic Director of Finance and Corporate Services (CR – 30/09/2013)

67. This report is seeking cabinet approval for the procurement strategy for the major works contractor framework covering four lots as detailed in paragraph 9, for housing and related services at a total estimated annual cost of up to £92m for a period of 4 years from 1 September 2014, equating to a total estimated contract value of up to £368m.
68. This report is also seeking approval from the leader of the council to delegate authority to the deputy leader and cabinet member for housing management to award the framework agreement with the providers as reflected in paragraph 2.
69. The reasons and justification for the proposed procurement strategy is contained within the main body of the report and the report concludes that a framework approach with mini competitions with the selected contractors before award of each contract works is considered to be the best option of achieving continued value for money for the council.
70. It is noted that the council expects the contractors to bid below or at their tendered rates during the mini competition stages to ensure the rates continue to be competitive and guarantees value for money for the council.
71. The cost of the contracts are expected to be funded from capital allocation budgeted within the council's housing investment programme, which is currently approved up the period 2015/16. Approved capital allocations beyond this period as part of the council's capital refresh process will be required to meet the ongoing costs from these contracts. It is noted that the procurement strategy for the framework contract proposes no minimum contract value and will be flexible

to accommodate the works required and also the budget available and officers should therefore ensure that works on these contracts are only commissioned against confirmed funding.

72. Staffing and any other costs connected with this contract to be contained within existing departmental budgets.

Head of Specialist Housing Services (For housing contracts only)

73. Any communal repairs carried out to blocks with leasehold properties are service chargeable and therefore statutory consultation under section 20 of the landlord and tenant act 1985 (as amended) is required.
74. Section 20 consultation under schedule 2 of the regulations was carried out for the original partnering framework. When the Wates contract was mutually concluded Counsels opinion was sought in regard to the validity of the notices of proposal served on the leaseholders in the Bermondsey and Rotherhithe areas if the back-up contractor (Apollo) was to be used instead. Counsel advised that the notices would need to be re-served identifying Apollo as the main contractor and providing Apollo's rates as part of the paragraph 4 statement, and this will be done for any packages of work given to either Apollo or AE Elkins as part of the back-up arrangements.
75. Prior to any packages of work being agreed further statutory consultation will need to be carried out under schedule 3 of the regulations.
76. If a new framework is set up as outlined above then the agreements will not be qualifying long term agreements, and will therefore not be subject to statutory consultation under the act. However, this will mean that for each tendered package of work a two part statutory consultation process will need to be carried out, pre and post tender. This will have to be under schedule 4 part 2 of the regulations, and will require that the council offers the leaseholders the opportunity to nominate contractors to be included on the tender list. Such contractors may not be part of the existing framework agreement, but would have to be asked to tender for the package of work. This has been addressed in paragraphs 22 and 40 of this report. Should a package of work be proposed that is above the OJEU limit and a leaseholder wishes to nominate a contractor, this may mean that the package will have to be tendered via the OJEU process so that the relevant statutory consultation requirements can be complied with.
77. If separate tenders (whether via a framework agreement or using a standard process) return costs which are lower than those provided by the partnering contractors then the service charge to those leaseholders having work carried out under the partnering contracts could be at risk.
78. In general leaseholders are opposed to partnering and prefer separately tendered contracts. Carrying out a mini-tendering exercise under a framework agreement would address these concerns.

BACKGROUND DOCUMENTS

Background Documents	Held At	Contact
None		

APPENDICES

No	Title
None	

AUDIT TRAIL

Cabinet Member	Councillor Ian Wingfield, Deputy Leader and Cabinet Member for Housing Management	
Lead Officer	David Markham, Head of Major Works, Housing & Community Services	
Report Author	Ferenc Morath, Investment Manager, Major Works, Housing & Community Services	
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Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Head of Procurement	Yes	Yes
Director of Legal Services	Yes	Yes
Strategic Director of Finance & Corporate Services	Yes	Yes
Head of Home Ownership	Yes	Yes
Contract Review Boards		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
Cabinet Member	Yes	Yes
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