

Item No. 19.	Classification: Open	Date: 20 October 2015	Meeting Name: Cabinet
Report title:		Gateway 1 - Asbestos Consultancy Services Contract A – Surveying and Bulk sampling and Contract B – Air Sampling and Monitoring	
Ward(s) or groups affected:		All wards	
Cabinet Member:		Councillor Richard Livingstone, Housing	

FOREWORD – COUNCILLOR RICHARD LIVINGSTONE, CABINET MEMBER FOR HOUSING

This report sets out the procurement strategy for the surveying, sampling and monitoring of asbestos in our council homes for the four-year period starting 1 January 2017. It is proposed to keep the current separation of these contracts between a larger contract (Contract A) that surveys and samples for suspected asbestos and a smaller contract (Contract B) that focuses on air sampling and monitoring following the removal of asbestos. The separation of these two contracts ensures that the council complies with the 2012 Control of Asbestos Regulations.

In the preparation of this procurement strategy, the options of providing this service in-house, using existing procurement frameworks or sharing the service with neighbouring boroughs have all been explored. Unfortunately, the specialised nature of this work has not allowed any of these options to be pursued further and it is therefore proposed to tender out the two contracts.

RECOMMENDATION

1. That cabinet approves the procurement strategy outlined in this report for two Asbestos Consultancy Services Contracts - Contract A – surveying and bulk sampling at an estimated annual cost of £1.2m and Contract B – air sampling and monitoring at an estimated annual cost of £274K, for a period of four years from 1 January 2017 to 31 December 2020, with the potential to extend each contract by a further 2 year period, making a total estimated value of £8.84m for both contracts.

BACKGROUND INFORMATION

2. Currently there are two asbestos consultancy services contracts providing surveying and bulk sampling and air sampling and monitoring.
3. The scope of each contract is detailed below:
 - Contract A: surveying and bulk sampling of the councils residential and other premises for suspected asbestos containing materials.
 - Contract B: air sampling and monitoring after asbestos removal to ensure airborne asbestos fibres are absent before the area is occupied.
4. The Control of Asbestos Regulations 2012 (CAR) places a duty on the council to manage asbestos contained within its assets to ensure employees, residents and its

contractors are not exposed to asbestos. In addition CAR also places a duty to ensure arrangements are in place to monitor and verify its condition and safe removal.

5. The council's current Management of Asbestos Policy ("the policy") requires independent verification for identifying asbestos - Contract A and confirmation of its subsequent removal - Contract B. The separation of Contracts A and B ensures compliance with the policy and CAR.
6. The current contracts commenced on 1 January 2013 for an initial term of 3 years with the option to extend for two 12 month extensions at the council's discretion.
7. A Gateway 3 report seeking a 12 month extension for both Contracts A and B was approved 9 September 2015.
8. Therefore the existing two contracts are due to expire on 31 December 2016 and there is a requirement to ensure that arrangements are in place for these services.
9. The estimated annual value for both Contracts stands at £1.474m and is apportioned at £1.2m for Contract A and £274K for Contract B.
10. The above contract values are composed of an estimated annual expenditure of £437k revenue and £1.037m capital.
11. Consultation with other council departments identified that there is currently not a requirement for wider usage of these two new Contracts. The corporate facilities management (CFM) team's requirements will be limited to a backup provision only should there be performance issues with the council's CFM contract.

Summary of the business case/justification for the procurement

12. The council has a legal obligation as a social landlord and employer to ensure it fulfils its statutory obligations under CAR and the Health and Safety at Work Act 1974.
13. The council must also ensure that an asbestos register is maintained and updated. These two contracts will directly contribute towards this and ensure it is up to date.
14. The two contracts directly contribute to environmental improvement by ensuring the safety of residents, contractors and council staff who will be working within the vicinity.
15. The two contracts will provide CFM with back up arrangements for non-housing stock should the need arise and be part of their contract risk mitigation strategy.
16. The council is required to carry out a refurbishment and demolition survey on all refurbishment and demolition works prior to their commencement. This will be provided by Contract A. Should asbestos be identified and in a condition/position where it needs to be removed, then Contract B will provide independent verification that it has been removed safely and that no asbestos fibres remain.
17. The separation of Contract A and B ensures compliance with the council's policy.

Market considerations

18. This is a highly specialised and regulated service industry with a core group of organisations that provide the services for Contract A. The market is less limited for Contract B and therefore a high number of expressions of interest are anticipated after advertisements are placed in trade journals following the publication of an OJEU notice.
19. The rationale for the contract duration of up to six years is to ensure that the asbestos consultancy contracts are closely aligned with the maintenance and major work contracts with the object of reducing delays to housing voids and investment works to council properties with the minimum of disruption and inconvenience to our residents.

KEY ISSUES FOR CONSIDERATION

Options for procurement route including procurement approach

20. The asset management division considered the following options before determining the procurement strategy set out in this report:
 - A. Do nothing - this is not an option to the council. As a landlord and employer it is essential that the council ensures that both independent surveying and bulk sampling and air sampling and monitoring are in place to meet its legal and statutory obligations.
 - B. The council provides these works in-house - the specialist nature of these contracts means that the council does not have the in-house resources to undertake these contracts. Obtaining the correct insurances and health surveillance would not make this an economically viable option.
 - C. The use of internal or external frameworks - there are no existing frameworks.
 - D. Shared Services - neighbouring boroughs already have their own contracts in place which have not been opened up for other boroughs to use.
21. As none of the above options are viable and these services are estimated above the EU threshold for services, it is proposed that an EU restricted tender process is carried out to procure these services.

Proposed procurement route

22. This procurement will be carried out in accordance with an EU restricted procedure. In response to the OJEU notice, organisations interested in tendering will be required to formally express an interest in order to receive a pre-qualification questionnaire (PQQ).
23. The PQQ and tender evaluation will set out minimum quality and financial thresholds. This will meet the EU restricted procurement process.

Identified risks for the procurement

24. The table below identifies a number of risks associated with this procurement, the likelihood of occurrence and the control in place to mitigate the risks:

R/N	Risk Identification	Likelihood	Risk Control
R1	Challenges to procurement outcome	Low	Ensure robust procurement in line with EU procurement regulations.
R2	The procurement process fails due to inadequate quality of submissions by tenderers	Low	Ensure that tender documents are drafted to facilitate submissions of required standard.
R3	The procurement process is delayed	Low	Effective procurement project management.
R4	The contractors fail to deliver service	Low	There will be contractual mechanisms in the contract for default. Also, selection of contractors from the council's Approved list may be used.

25. Parent company guarantees will be required should the successful contractors have a parent company. A performance bond will not be required as retention will be held on all interim payments.

Key /Non Key decisions

26. This deals with a strategic procurement and this report is therefore a key decision.

Policy implications

27. These contracts will ensure that the council fulfils it's duties in the policy and CAR.

Procurement Project Plan (Key Decisions)

Asbestos consultancy 2015 – Activity timetable	Complete by:
Forward Plan for Gateway 1	July 2015
DCRB Review Gateway 1 CCRB Review Gateway 1	24 Aug 2015 27 Aug 2015
CMH Review Gateway 1 (if applicable)	14 Sept 2015
Deadline Agenda Planning	28 Sept 2015
Approval of Gateway 1: Procurement strategy report - cabinet	20 Oct 2015
Scrutiny Call-in period and notification of implementation of Gateway 1 decision	27 Oct 2015
Completion of tender documentation	30 Oct 2015
Publication of OJEU Notice	3 Nov 2015
Publication of Opportunity on Contracts Finder	5 Nov 2015
Closing date for receipt of expressions of interest	11 Jan 2016
Completion of short-listing of applicants	5 Feb 2016
Invitation to tender	8 Feb 2016
Closing date for return of tenders	10 Mar 2016
Completion of evaluation of tenders	22 April 2016
Forward Plan for Gateway 2	May 2016

Asbestos consultancy 2015 – Activity timetable	Complete by:
DCRB Review Gateway 2: CCRB Review Gateway 2:	27 June 2016 7 July 2016
CCRB Review Gateway 2	7 July 2016
CMH Review Gateway 2 (if applicable)	11 July 2016
Notification of forthcoming decision – despatch of Cabinet agenda papers	8 Aug 2016
Approval of Gateway 2: Contract Award Report	20 Sept 2016
End of scrutiny Call-in period and notification of implementation of Gateway 2 decision	30 Sept 2016
Debrief Notice and Standstill Period (if applicable)	5 Oct 2016
Contract award	7 Oct 2016
Add to Contract Register	10 Oct 2016
TUPE Consultation period (if applicable)	19 Dec 2016
Place award notice in Official Journal of European (OJEU)	10 Oct 2016
Place award notice on Contracts Finder	10 Oct 2016
Contract start	1 Jan 2017
Initial contract completion date	31 Dec 2021
Contract completion date – (if extension(s) exercised)	31 Dec 2023

TUPE/Pensions implications

28. It is thought that TUPE will apply to the current two contracts and advice is being sought from the council's legal services department so that all relevant provisions are included in the tender documentation.

Development of the tender documentation

29. A project team and project board will be set up for this procurement. The procurement team will be responsible for producing the tender documentation and the project board will provide governance.
30. The form of contract to be used will be an over EU Services agreement which will be subject to amendment as directed by the council's legal services department.

Advertising the contract

31. The contracts will be advertised by way of an official notice that will be published in the official Journal of the European Union (OJEU).
32. In addition, the contracts will also be advertised in the asbestos trade journal and the council's website.
33. After publication of the OJEU notice, an advert will also be placed on the council's website as well as the Contract Finder website.

Evaluation

34. The PQQs returned will be evaluated by officers in the council's asset management division. The selection process will be an evaluation of each contractor's economic and financial standing, technical knowledge, accreditation, experience and their ability and capacity to do the work. A number, to be agreed by the project board, will be shortlisted and invited to tender. Contractors will be allowed to bid for both Contracts A&B but the evaluation methodology will set out that only one contract can be awarded to ensure that the council complies with its policy.
35. Tenderers will be evaluated on the basis of M.E.A.T (most economically advantageous tender) using a weighted model of 70:30 price and quality. This achieves a balance between cost and the quality of service delivery.
36. Price evaluation will be undertaken by officers in the council's asset management division and checked by officers in housing finance.
37. Quality evaluation will be undertaken by officers in the council's asset management division. Tenderers' will be evaluated based on the method statements for:
 - Mobilisation and quality of resources available
 - Service delivery in achieving specification, customer care, health and safety and key performance indicators
 - Response to a scenario
 - London living wage.
38. The full evaluation methodology will be agreed by the project team and approved by the project board.

Community impact statement

39. The two contracts are borough wide and support the council's commitment to providing warm, dry and safe homes and the future kitchen and bathroom replacements.
40. Both contracts will be of low impact to residents as the majority of surveys are carried out to properties prior to refurbishments. Any surveys undertaken will be under controlled conditions, which will mean restricted access in areas where samples are being obtained and/or air sampling and monitoring is being carried out.

Sustainability considerations

41. The Public Services (Social Value) Act 2012 requires the council to consider a number of issues including how what is proposed to be procured may improve the economic, social and environmental well-being of the local area. These issues are considered in the following paragraphs, which set out economic, social and environmental considerations.

Economic considerations

42. It is envisaged that expressions of interest will be submitted by interested parties within the EU in response to the published OJEU advertisement.

43. Due to the specialised nature of these services it is not feasible to provide work experience opportunities but consideration will be given to office based contract administration and data management apprenticeships.

Social considerations

44. Contractors will be required to demonstrate that they operate an Equal Opportunities Policy.
45. The successful contractors are expected to meet the London Living Wage (LLW) requirements. For these contracts, the quality improvements are expected to include a high calibre of surveyors that will contribute to the delivery of the services on site and it is therefore considered that best value will be achieved by including this requirement. As part of the tender process, tenderers will be required to confirm that they pay the staff, who will be engaged on the contracts, equal to or more than the minimum LLW hourly rate and will continue to do so through the contract term and confirm how productivity will be improved by payment of LLW and. On award, any associated quality improvements and cost implications will be monitored as part of an annual review of each contract.
46. Contractors will be encouraged to register with and seek to secure accreditation through the TfL Fleet Operator Recognition Scheme (FORS).

Environmental considerations

47. Both contracts will encourage the use of low emission vehicles and the minimisation of journeys needed. Contractors must provide waste consignment to ensure materials containing asbestos are disposed of at controlled sites and not fly-tipped.

Plans for the monitoring and management of the contract

48. The contracts will be let and managed by the asset management division.
49. Key performance indicators will be set and challenged to ensure the successful contractors' performance. In particular, targets will be set to ensure survey data is uploaded to the council's asbestos register and void properties are surveyed within set time limits to prevent re-letting delays.
50. The council's commercial team will review all applications for payment and monitor and administer defaults and recovery of costs for poor performance.
51. To ensure robust contract management arrangements are in place, officers will undertake audit site inspections to ensure that method statements are adhered to and surveys, sampling and air monitoring results are accurate.
52. Monthly progress meetings, to be attended by officers will be arranged and recorded to review performance and compliance.
53. Where CFM engage the services of these contracts as a back up then CFM will carry out inspections and attend the appropriate meetings.

Staffing/procurement implications

54. There will be no impact on staff as the existing asbestos management team are already performing the contract management functions.

Financial Implications (FIN0866 – JP)

55. The current HRA asbestos budget for both Contract A and B is £453k and has not been highlighted for savings in 2016/17. Therefore, the indicative budget would be sufficient to cover the expected costs of £437k. And each Housing Investment Programme scheme has an allocated budget for asbestos surveys approved within each gateway, so the level of expenditure (estimated at £1.037m) will remain dependent on each individual scheme approval.
56. These contracts are due to commence in January 2017, and will be subject to budget decisions to be agreed by cabinet as part of budget setting for 2016/17 and subsequent years. Further information on the prices obtained and the likely budget requirements will be provided as part of a subsequent report when the contracts are recommended for award.

Investment implications

57. None.

Legal implications

58. Please see supplementary advice from the director of legal services.

Consultation

59. Meetings will be arranged with the resident tenant groups and internal business units within the council to ensure services are maintained.

Other implications or issues

60. None.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Head of Procurement

61. This report seeks approval for the procurement strategy of two asbestos consultancy contracts (contract A, surveying and bulk sampling and contract B, air sampling and monitoring).
62. The report explains that the services are required to meet legal obligations in line with the control of asbestos regulations 2012 (CAR) and that these contracts shall replace existing contracts that are due to expire in December 2016.
63. The options for procuring these services have been explored and the report concludes that the most viable option is for the council to carry out a competitive tender process following an EU restricted procedure. The process described in the report is in line with the Council's contract standing orders (CSO's) and EU regulations.
64. The evaluation methodology for this procurement will be on the basis of the most economically advantageous tender and in determining this shall use a price/quality ratio of 70:30.

65. Through the procurement process tenderers will be allowed to bid for both contracts, however, each of the contracts shall be awarded to different providers to ensure compliance with the council's current management of asbestos policy, which requires the services to be provided independently of each other.
66. The project timetable included within the report is both reasonable and achievable for the proposed procurement strategy, provided that appropriate resources are allocated to the project at the appropriate time.
67. The report confirms that both project team and project board will be put in place which will help support successful delivery of this procurement.

Director of Law and Democracy

68. This report seeks the approval of cabinet to the procurement strategy for two Asbestos Consultancy Contracts (Contract A – surveying and bulk sampling) and (Contract B – air sampling and monitoring) at an estimated annual cost of £1.2m and £274k respectively, for a period of four years from 1 January 2017 to 31 December 2021 with the potential to extend each contract by a further 2 year period, making a total estimated value of £8.84m for the contracts as outlined in this report.
69. The nature and value of these services are such that they are subject to the tendering requirements of the Public Contract Regulations 2015 (PCR15). Paragraphs 21 and 22 of this report confirm that an EU restricted procedure will be followed which will comply with PCR15 and contract standing order (CSO) tendering requirements.
70. As this procurement strategy falls within the circumstances noted in CSO 4.4.2 a), the decision to approve the procurement strategy is reserved to the cabinet or cabinet committee, after consideration of this report by the corporate contracts review board (CCRB).

Strategic Director of Finance and Governance (Ref No FC15/021)

71. The strategic director of finance and governance notes the recommendations in this report for the procurement of asbestos consultancy contracts. The contracts will incur costs in all financial years from 2016/17 to 2020/21, and potentially until 2022/23. The financial implications note that there is sufficient budget at present to meet the costs of the proposed contracts, and that this will be reviewed once the tenders are received and evaluated.

Head of Specialist Housing Services (For Housing contracts only)

72. The asbestos consultancy services are a service chargeable cost under the terms of the lease. Communal elements of the work will be service chargeable within the terms of the lease and will be included as part of revenue service charges where undertaken. Statutory consultation is required on agreements that are Qualifying Agreements (in excess of 12months) under the terms of the Commonhold and Leasehold Reform Act 2002. However, I note that the costs associated with this agreement are below those that require statutory consultation and it is therefore not necessary for this contract.

BACKGROUND DOCUMENTS

Background Documents	Held At	Contact
Gateway 3 – ‘open’ report approved on August 2015 Asbestos Consultancy Services Contract A – surveying and bulk sampling and Asbestos Consultancy Services Contract B – air sampling and monitoring	Engineering & Compliance, 160 Tooley Street	Gavin Duncumb 020 7525 0685
Link: http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&MId=5140&Ver=4		

APPENDICES

No	Title
None	

AUDIT TRAIL

Cabinet Member	Councillor Richard Livingstone, Cabinet Member for Housing	
Lead Officer	David Markham, Head of Major Works	
Report Author	Reuben Humphries, Procurement Officer	
Version	Final	
Dated	8 October 2015	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Head of Procurement	Yes	Yes
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Head of Specialist Housing Services	Yes	Yes
Cabinet Member	Yes	Yes
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