

<b>Item No.</b> 11.	<b>Classification:</b> Open	<b>Date:</b> 18 July 2017	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Gateway 0: Strategic Options Assessment for Service Provision of Professional Technical Services	
<b>Ward(s) or groups affected:</b>		All	
<b>Cabinet Member:</b>		Councillor Stephanie Cryan, Deputy Leader and Cabinet Member for Housing	

## **FOREWORD – COUNCILLOR STEPHANIE CRYAN, DEPUTY LEADER AND CABINET MEMBER FOR HOUSING**

The council has set a number of fairer future promises to provide new homes, refurbish its existing housing and regenerate its neighbourhoods. To be able deliver these promises it is essential that designs and construction meet the needs of our residents and provide the solutions and value to the council.

This Gateway 0 details the options available to the council for delivering professional technical services and recommends procuring a framework providing a suite of multi-disciplinary and individual lots for specialists to enable us to manage the demand for these services and to deliver on our commitments.

### **RECOMMENDATIONS**

That cabinet:

1. Approves this Strategic Options Assessment for delivery of professional technical services for the council and notes the next steps set out in the report.
2. Approves publication of a Prior Information Notice (PIN) to inform the market of the council's intention to procure.
3. Approves the issuing of leaseholder notice of intentions, prior to the Gateway 1 report approval.

### **BACKGROUND INFORMATION**

4. Professional technical services typically comprise the following:
  - Architects
  - Building surveying
  - Contract administration/ employers agent
  - Quantity surveying
  - Mechanical and electrical engineering
  - Structural engineering
  - Project management; and
  - Planning.
5. The council has a substantial demand for all of these services across a number of different departments – the key ones being:

<b>Department</b>	<b>Approximate Annual Spend</b>
Housing and Modernisation Asset management	£24m
Chief Executive's Department Regeneration	£25m
<b>Total Annual Spend:</b>	£48m

6. The council currently has no central framework/method to procure any of these professional technical services; instead the two departments procure these services in the following way:

#### **Asset management**

7. Asset Management currently has two contracts for professional technical services in place which are due to expire on 31 October 2017.

#### **Regeneration**

8. Regeneration currently have no formal contracts specifically for their department for professional technical services; but instead engage consultants on a demand led basis using suppliers from either the council's approved list of contractors or external frameworks such as SCAPE and PAGABO.

#### **Other departments**

9. A number of other council departments such as corporate facilities management (CFM) and Environment and Social Regeneration require these professional technical services to a lesser extent.

### **KEY ISSUES FOR CONSIDERATION**

#### **Future service requirements and outcomes**

10. Asset management and regeneration both have a number of key deliverables to be actioned over the next 10 years.
11. Asset management team are responsible for delivering 11,000 new council homes by 2043, with 1,500 by 2018.
12. The 'Southwark Housing Strategy to 2043' is a complex programme encompassing the following:
- New build housing stock.
  - Refurbishment of existing housing stock, and
  - Build on top and extensions to existing housing stock.
13. There is a wide range of statutory regulations that must be met when providing professional technical services to ensure the council is compliant with current legislation. This requires specialist knowledge in each of the professional technical services disciplines.
14. It is important to note that each department has differing needs:

## **Asset management**

- needs to have the flexibility of direct award and mini-competitions to meet the requirements of leasehold consultation and project timescales; and
- prefer to have the flexibility of a 'one stop shop' or multi – disciplined professional technical service in order to get the best solution for each project.

## **Regeneration**

- are currently able to go out to mini-competition for each project but would like the flexibility of direct award particularly where timescales are tight for projects; and
- are more project based and have more specific needs for specialist services in line with the individual projects' requirements.

## **CFM**

- need consultants on a limited basis and would like the flexibility of a 'one stop shop' or multi – disciplined professional technical services in order to get the best solution for each project.
15. Consultation between the asset management, CFM and regeneration teams have been undertaken to assess the future requirements for professional technical services and to ensure that all services can be met which has led to a co-ordinated single procurement approach being considered to capture these requirements.
16. The following list of services are required:
- a. Architects:
    - Multi-disciplined (inclusive of b to g below).
    - Specialists in housing, regeneration, social care and education.
  - b. Contract administration/employers agent
  - c. Structural engineers
  - d. Mechanical and electrical engineers
  - e. Surveys:
    - Ground surveys
    - Topographical surveys
    - Site investigation
  - f. Planning consultation
  - g. Quantity surveying and cost consultants.
17. Due to the specialist nature of the work undertaken by some departments, consultants from each of the services above will also need to have specialist knowledge and expertise in individual disciplines and sectors such as housing, regeneration, social care and education.

## **Strategic service delivery options assessment**

18. Detailed below are the main options available to the council when looking to provide professional technical services.

### **a) Do nothing**

19. This is not an option as the council would not be able to deliver on its commitments in the 'Southwark Housing Strategy to 2043' strategic report as is detailed in paragraphs 10 and 13 above.

### **b) In-source**

- i) The council could create its own in-house professional technical services team.
20. Fluctuations in programmes do not provide a stable demand that warrants recruiting a permanent team. Previously teams were in place but this did not provide the flexibility to meet changing demands.
  21. An in-house team as a fixed staff resource would not provide the level of responsiveness able to deal with programme adjustments to meet budgets.
  22. It accords with industry norms to draw in external professional technical services as required to provide the most cost efficient approach to delivery.
  23. The council would also face significant human resources supply constraints in attracting the right skill sets and recruiting the required number of competent staff. The current market suggests that the council would find it challenging to recruit a balanced and suitably qualified in-house team.
  24. The council may potentially also face significant cost risks arising from redundancies/ TUPE should the capital programme be reduced or terminated prematurely, which would need to be factored into overall programme costs.
  25. Estimated costs for in-sourcing professional technical services range between 11.5% – 14.5% of the works package value. This would equate to an approximate cost up to £50.8m per annum based on a potential £350m annual works packages for the whole council.

### **c) External procurement**

- i) Use existing external frameworks
26. There are a number of generic frameworks that provide professional technical services which have been and could be used by the council. These include frameworks such as SCAPE and PAGABO.
  27. The advantages using an EU compliant framework is that it offers:
    - shorter timescales than running a full EU compliant tender
    - depending which framework you use you have the option of conducting a direct award (which has even shorter timescales) or of running a mini-competition to appoint a supplier.

28. However, the disadvantages of using an externally procured EU compliant framework are that:
- It is typically tendered on a very generic specification and therefore does not address all the service demands required by the council
  - There is usually an additional cost/charge incurred by the council in order to access the framework and manage the mini competitions
  - The frameworks are usually won by similar suppliers which limit competition and reduce opportunities to local SME's.
29. Estimated costs for using external frameworks typically range between 10% – 12% of the works package value. This would equate to an approximate cost up to £42m per annum based on a potential £350m annual works packages for the whole council.
- ii) Award individual contracts for each service/lot
30. This would not provide the flexibility and specialisms for the service demands and would inevitably require any successful suppliers to sub-contract some elements. This lack of a direct relationship with the sub-contractors is likely to limit flexibility for the council and may result in lower performance levels in specific areas.
31. This approach is also likely to limit the number of potential suppliers to large multi-disciplinary organisations and/or those that can facilitate a significant supply chain, therefore limiting the opportunity of small medium enterprises (SME).
32. Estimated costs for individual contract awards usually range between 9% – 12% of the works package value. This would equate to an approximate cost up to £42m per annum based on a potential £350m works packages per annum for the council as a whole.
- iii) Procure a framework providing a suite of multi-disciplinary and individual lots for specialists
33. By developing its own framework the council can scope out its own requirements and be as generic or as specific as it desires and enable it to award contracts in line with each departments individual requirements i.e. it could have an option of direct award or mini-competition for all or some lots. For example, the council could award the top scoring suppliers in each lot to allow direct award to reduce project timescales but reserve the right to carry out mini-competition should it be envisaged that further savings can be obtained or if the top scoring supplier(s) have reached a financial threshold limit for a particular timescale to prevent overstretching its resources.
34. This would enable the council to achieve the required level of flexibility and responsiveness to suit each departments needs and enable the project manager to obtain best value by assembling a “fit for purpose” professional technical services team.
35. This option would suit new build, refurbishment and bespoke projects where a supplier can address clearly defined objectives, and the contract manager/project manager is able to work through a single point of contact.

36. By awarding works according to smaller lots, SME's would have an increased opportunity to participate and the council could derive better value for money through increased competition.
37. Estimated costs for a multi-disciplinary and individual suite framework typically range between 8% – 10.5% of the works package value. This would equate to an approximate cost of £36.8m per annum based on a potential £350m works packages per annum for the council as a whole.

#### **d) Shared services**

38. Internally the various council departments have been consulted to understand all of the service requirements for a shared service delivery so that the council can go to the market.
39. Due to the value and size of the council's requirements it would not be viable to combine services with other organisations as this would add difficulties in contract management.
40. No costs can be calculated for a shared option with other organisations.

#### **External procurement advice**

41. Due to the specialism involved in this market, legal assistance is required to support the council in managing the procurement process. The council has had initial discussions with external legal advisors (using the LBLA framework) who have experience in this market and type of procurement. This support is subject to a separate GW2 report.

#### **Market engagement**

42. Market engagement is a process which takes place prior to procurement and which aims to:
  - Identify potential bidders.
  - Build capacity in the market to meet the requirement(s).
  - Inform the design of the procurement and contract.
43. This will require the council to publish a prior information notice (PIN) to enable potential suppliers to express an interest.
44. Currently there are significant numbers of large, medium and small suppliers which can provide the various service disciplines.
45. The main players within the multi-disciplinary architect market are Atkins Ltd, Mace Ltd and NPS Consultancy Ltd.
46. The market has OJEU compliant frameworks in place such as PAGABO which enables clients to access professional technical services when there is a demand.

#### **Voluntary sector/not for profit**

47. There is a small not for profit sector providing professional technical services however this is unlikely to be able to deal with the volume and range of services that

the council requires. Any external procurement route will allow not for profit suppliers to tender alongside commercial suppliers.

### **Decommissioning services**

- 48. Asset management needs to de-mobilise its two current contracts. Projects will continue to be awarded to the incumbents up until contract award for the new procurement. Any projects awarded to the incumbents will expire when the individual projects are completed.
- 49. As regeneration does not need to decommission any services as they do not have any set contracts with consultants for these services.

### **Policy implications**

- 50. This report relates to the delivery of council targets contained in the 'Southwark Housing Strategy to 2043'.

### **Recommended strategic delivery option**

- 51. This report recommends procuring a framework containing a suite of multi-disciplinary and individual lots for specialists using a competitive procedure with negotiation (CPN) as detailed in paragraphs 33 to 37.
- 52. This allows the council to have greater flexibility when assessing the requirements for each project such as technical specialism demand, timescales and consultation.
- 53. This option will establish a framework containing a number of specialists and one stop shop organisations whilst meeting the requirements of EU procurement law and CSO's.
- 54. The framework will also provide opportunities to local SMEs.
- 55. This report recommends that the cabinet approve the publication of a PIN to inform the market of the council's intention to procure.
- 56. Due to the potential size and complexity of the recommended option, the PIN will inform the market and set out timescales for the procurement programme.
- 57. This report recommends that the cabinet approve the issuing of leaseholder notice of intentions (NOI), prior to the Gateway 1 report approval. The council has a legal duty to consult with leaseholders on future long term agreements and to accommodate this and negotiations with potential suppliers NOI's will need to be issued prior to the GW1.

### **Identified risks for the service and recommended strategic option**

- 58. List of risks, including any assumptions made in the strategic options assessment:

<b>No</b>	<b>Risk</b>	<b>Description and mitigation</b>
1.	<b>Delays to procurement programme</b> - Procurement programme is delayed resulting in a period where contracted services are not available and thus the	The programme will be planned to ensure that the appropriate resources are deployed to meet target dates to obtain timely decisions so that the tender can be published on Contracts Finder and OJEU.

No	Risk	Description and mitigation
	construction programme is delayed.	Robust tender documents will be developed to reduce the likelihood of subsequent revisions and clarifications that cause delays. The evaluation of tenders will be properly resourced and executed, and completed on time.
2.	<b>Insufficiently robust specification</b> - Poor specification results in contracted services not being fit-for-purpose to meet the council's requirements, or including services that may be more efficiently procured via one-off quotations.	Effective stakeholder engagement to identify needs and the analysis of services and their value to define the scope and specification of services. The project manager will hold workshops with internal stakeholders to ensure that all requirements are identified.
3.	<b>Poor Response</b> - A poor response resulting in few suppliers presenting submissions undermines the procurement and limits the council's choice of suppliers.	A Prior Information Notice (PIN) will be published to alert the market to the impending publication of the OJEU notice. Open days for bidders will be held to inform potential suppliers and promote the procurement to the market, particularly SME's.

### Key/non-key decisions

59. This report deals with a key decision.

### Next steps

60. Workshops will be held with stakeholders to ensure that the scope and specifications are fully captured ready for the future procurement.

61. A Gateway 3 report will be presented to extend the existing professional technical services contracts to align with the commencement of this procurement.

62. Once this market engagement is complete and outcomes known, this will inform the gateway 1 (procurement strategy approval).

### Service Delivery Project Plan (Key Decisions)

Activity	Complete by:
Enter Gateway 0 decision on the Forward Plan	30/05/2017
DCRB Review Gateway 0	26/06/2017
CCRB Review Gateway 0	29/06/2017
Notification of forthcoming decision - IDM	03/07/2017
Approval of Gateway 0: Strategic Options Assessment	06/07/2017
Scrutiny Call-in period and notification of implementation of Gateway 0 decision	19/07/2017
Current contract end date	31/10/2017



### **Community impact statement**

63. Professional technical services will support the council's commitment to providing quality affordable housing.
64. Professional technical services will be of a medium impact to tenants, homeowners and other stakeholders as these services will provide design, specification and management of the council's housing stock.

### **Social Value considerations**

65. The Public Services (Social Value) Act 2012 requires that the council considers, before commencing any procurement process, how wider social, economic and environmental benefits that may improve the well being of the local area can be secured. Social value considerations and how the delivery of these services can benefit the local area are detailed below:

### **Economic considerations**

66. Economic considerations are to be built into the options appraisal process for the market engagement exercise and will be reported in the GW1 report.

### **Social considerations**

67. Social considerations are to be built into the options appraisal process for the market engagement exercise and will be reported in the GW1 report.

### **Environmental/Sustainability considerations**

68. Environmental aspects and sustainability considerations are to be built into the options appraisal process for the market engagement exercise and will be reported in the GW1 report.

### **Plans for the monitoring and management of project**

69. The market engagement exercise will be overseen by an external legal advisor to ensure this complies with legal requirements and meets best practice.

### **Resource implications**

70. Resource implications will be built into the GW1 report.

### **TUPE/Pensions implications**

71. Whichever, of the various service delivery options set out in this report is chosen will have a bearing on the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). A change in the provider of the existing services is likely to amount to a Service Provision Change under the TUPE, though whether or not TUPE will apply will depend on the option pursued and the circumstances at the time of the change in service provision. TUPE will be considered further at the Gateway 1 stage.

## Financial implications

72. There are no financial implications arising directly from this report. All financial implications will be identified in the procurement strategy and contract awards report.
73. The strategic service delivery options assessment set out in paragraphs 33 to 37 of this report suggests that this option would provide best value for money based on the indicative fee ranges.
74. The indicative fees from this preferred option would range from £28m - £36.8m per annum based on an estimated £350m annual works contract.
75. The anticipated fees of the professional technical services would be met from the Housing Investment Capital programme.
76. The following table provides an approximate annual spend for professional technical services for capital funded projects undertaken by asset management and regeneration. These values include a 10% contingency amount in case there is a requirement to bring projects forward.

<b>Department</b>	<b>Approximate Annual Spend</b>
Housing and Modernisation Asset management	£24m
Chief Executive's Department Regeneration	£25m
<b>Total Annual Spend:</b>	£48m

\* Will be determined at GW1 stage subject to the extent Regeneration will use the framework.

## Investment implications

77. These contracts directly enable the capital works described in the "Southwark housing strategy to 2043".

## Legal implications

78. Please see the concurrent from the Director of Law and Democracy.

## Consultation

79. Consultation has been held across the council departments to establish the service requirements.

## Other implications or issues

80. None.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Strategic Director of Finance and Governance**

81. The strategic director of finance and governance notes the recommendations in this report. The report itself has no direct financial implications. Any costs involved in the future service delivery will be identified in separate reports subject to the council's governance process.

### **Head of Procurement**

82. This report seeks the approval of the cabinet for the strategic options assessment for the delivery of professional technical services for the council, to publish a Prior Information Notice (PIN) to inform the market of the council's intention to procure, to issue leaseholder notice of intentions prior to the Gateway 1 report approval and to note the next steps as further detailed in the body of the report.
83. At this stage the total annual spend is estimated to be £48million and following a review of the strategic options available the report recommends procuring a framework containing a suite of multi-disciplinary and individual lots for specialists using a competitive procedure with negotiation as detailed in paragraphs 35 to 39. However the procurement strategy and value will be confirmed in the Gateway 1 which will be brought for decision in due course.

### **Director of Law and Democracy**

84. This report seeks the approval of the cabinet to the strategic options assessment for the delivery of professional technical services for the council, to publish a Prior Information Notice (PIN) to inform the market of the council's intention to procure, to issue leaseholder notice of intentions prior to the gateway 1 report approval and to note the next steps as further detailed in the body of the report.
85. Under contract standing orders, a pre-procurement/gateway 0 is required for any service contract with an estimated contract value of £10m or more. At this stage, the value of the possible procurement options is unknown, but it is felt appropriate to seek approval of the strategic options regardless of this value.
86. The cabinet will note the intention to undertake market engagement which will inform the procurement strategy, which will be brought for decision in a gateway 1 report in due course.

### **Director of Exchequer (For Housing contracts only)**

87. This is a proposal for the establishment of a long term agreement for Professional Technical Services to support building work across various council departments. Where the service supports work that is carried out to residential blocks, there are statutory consultation requirements on the council as landlord if the costs are to be recovered from leaseholders in those blocks by way of service charges. The regulations with regard to the service charging of the cost of Professional Technical Services under a long term agreement which is over 12 months in duration are identified in the regulations appertaining to the Commonhold and Leasehold Reform Act 2002 under schedules 1 and 2, depending on whether OJEU is applicable to the tender process.

88. For schedules 1 and 2 to apply, the regulations require that an agreement is a Qualifying Long Term Agreement (QLTA) the terms of the Act. A QLTA has been closely defined in case law, and among other things requires that the agreement identifies a specific rate to be applied to a property, and exclusivity of the work in so far as only that rate will apply. Under these circumstances, costs over £100 per annum are recoverable only where leaseholders have been consulted. The consultation requirements are the service of a Notice of Intention (NOI) identifying the scope of the agreement, the need for it, and inviting leaseholders to make a nomination to the tender list if the tender is not through the OJEU process. Following tenders the service of a Notice of Proposal (NOP) identifying the proposed contractor and the rates applicable. There is a 30 day observation period for each Notice.
- It is not open to a landlord to treat a framework of contractors, from which any can be selected for a body of work, as a QLTA. There are no statutory consultation requirements for the establishment of the framework and costs arising directly from it cannot be recovered from leaseholders above the statutory minimum.
  - Where the proposal outlined in paragraphs 33 to 37 refers to the appointment from the framework of a specific supplier to the north and to the south of the borough, this would be a QLTA and would require consultation with all leaseholders who may be charged in the future for these services. Note that where the consultancy costs are dependent on a variable contract sum, as they would be under this proposal, the regulations do not allow for a percentage rate to be identified. The rates must be unit, hourly or daily. Consideration needs to be given to the decision making process on which areas is allocated to which supplier. No further consultation is required on the appointment to a particular package of work.
  - Where the proposal outlined in paragraphs 33 to 37 refers to the appointment of a supplier from the framework under a mini tender for a specific package of work, and that appointment would be for more than 12 months, this would be a QLTA and would require consultation with leaseholders to be charged under that package. Note that where the consultancy tender costs can be estimated by applying the rate against a known or estimated contract sum, a percentage rate can be accommodated within the regulations. Note also that the consultation requirements allow for leaseholders to nominate to the tender list a supplier that is not on the council's framework.
89. This concurrent gives an overview of the consultation regulations as they affect this proposal. The establishment of a framework, and protocols for how it will operate in respect of residential housing stock, should involve the service charge construction team, or external legal advice, with regard to the recovery of charges arising from the agreement in the future. Where the construction and application of this proposed agreement does not fit with the requirements of the regulations, there is the option to apply for dispensation from the First-tier Tribunal, however there are costs and risks associated with this, and any proposed application would need to be considered on its individual merits.

## BACKGROUND DOCUMENTS

Background Documents	Held At	Contact
Southwark housing strategy to 2043	Housing and Modernisation Tooley Street	Ferenc Morath 020 7525 1375
<b>Link (please copy into your browser):</b> <a href="http://www.southwark.gov.uk/assets/attach/2675/Southwark_Housing_Strategy.pdf">http://www.southwark.gov.uk/assets/attach/2675/Southwark_Housing_Strategy.pdf</a>		
Housing Strategy to 2043- Equality Analysis	Housing and Modernisation Tooley Street	Ferenc Morath 020 7525 1375
<b>Link (please copy into your browser):</b> <a href="http://moderngov.southwark.gov.uk/documents/s51238/Appendix%203%20Equality%20Analysis.pdf">http://moderngov.southwark.gov.uk/documents/s51238/Appendix%203%20Equality%20Analysis.pdf</a>		
Gateway 3: Variation to professional technical services contract (2015)	Housing and Modernisation Tooley Street	Ferenc Morath 020 7525 1375
<b>Link:</b> <a href="http://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?ID=5416">http://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?ID=5416</a>		
Gateway 3: Variation to professional technical services contract (2014)	Housing and Modernisation Tooley Street	Ferenc Morath 020 7525 1375
<b>Link (please copy into your browser):</b> <a href="http://moderngov.southwark.gov.uk/documents/s46183/Signed%20Report.pdf">http://moderngov.southwark.gov.uk/documents/s46183/Signed%20Report.pdf</a>		
Gateway 2: Professional technical services contract (2013)	Housing and Modernisation Tooley Street	Ferenc Morath 020 7525 1375
<b>Link:</b> <a href="http://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?ID=4018">http://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?ID=4018</a>		
Gateway 1: Procurement Strategy Approval - Professional Technical Services Contract	Housing and Modernisation Tooley Street	Ferenc Morath 020 7525 1375
<b>Link:</b> <a href="http://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?ID=3278">http://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?ID=3278</a>		

## APPENDICES

No	Title
None .	

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Stephanie Cryan, Deputy Leader and Cabinet Member for Housing	
<b>Lead Officer</b>	Dave Markham, Director of Asset Management	
<b>Report Author</b>	Gavin Duncumb, Commercial Manager	
<b>Version</b>	Final	
<b>Dated</b>	3 July 2017	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments sought</b>	<b>Comments included</b>
Strategic Director of Finance and Governance	Yes	Yes
Head of Procurement	Yes	Yes
Director of Law and Democracy	Yes	Yes
Director of Exchequer (For Housing contracts only)	Yes	Yes
<b>Contract Review Boards</b>		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
<b>Cabinet Member</b>	Yes	Yes
<b>Date final report sent to Constitutional Team</b>		3 July 2017