

Item No.	Classification: Open	Date: 12 March 2019	Meeting Name: Cabinet member for housing management and modernisation
Report title:		Gateway 1 Procurement Strategy Approval Asbestos Removal Works Contracts	
Ward(s) or groups affected:		All	
From:		Strategic Director of Housing and Modernisation	

RECOMMENDATION

1. That the cabinet member for housing management and modernisation approves the procurement strategy outlined in this report to undertake an EU restricted procurement exercise for two (2) asbestos removal contracts – Contract A – north of the borough at an estimated cost of £1.1m per annum and Contract B – south of the borough at an estimated cost of £1.1m per annum, for a period of four (4) years from 15 December 2020 with the option to extend by up to a further 2 years (in yearly increments) making an estimated total value of £13.2m for the 2 contracts.

BACKGROUND INFORMATION

2. Currently there are two (2) contracts in place, split into north and south (Contract A – north) and Contract B – south), for the provision of asbestos removal works with Franklyn Shaw Associates Ltd and Ductclean (UK) Ltd respectively. These contracts commenced on 15 December 2014 for an initial four (4) year period with the provision to extend for a further two (2) years for a total estimated value of £15.6m. The two (2) year extension was utilised via a Gateway 3 report dated 8 August 2018 giving an expiry date of 14 December 2020.
3. The existing contracts are due to expire on 14 December 2020 and it is essential that the housing and modernisation division has arrangements in place to deliver asbestos removal works for both its housing and operational buildings.
4. The proposed scope of works for housing and operational buildings are:
 - a) asbestos removal;
 - b) encapsulation of existing asbestos materials;
 - c) associated minor repairs and reinstatement works;
 - d) emergency response and out of hours service for making safe and disposing of asbestos; and
 - e) scaffolding mobile towers and all work platforms required to facilitate the works.
5. The contracts will be awarded based on a geographical split of the borough as set out below, with an estimated term for each contract of 4 years. The contracts will include a provision for them to be extended by 2 years in yearly increments.

- a) Contract A – North - Walworth, Borough and Bankside, Bermondsey, Rotherhithe.
 - b) Contract B – South - Camberwell, Peckham, Nunhead and Peckham Rye, Dulwich.
6. It should be noted that given the volume of asbestos across the borough, the appointment of a single contractor for these works would not be appropriate. It is considered that such an arrangement would present a significant risk to the council should that contractor default or fail to perform. Such a risk would increase in the absence of any backup or support arrangement with an alternative contractor. Therefore no single contractor will be awarded both contract areas and two contractors will be appointed who will also act as backup to each other.
7. The duration and value of these proposed contracts will achieve a balance between price competitiveness and provide two attractive contracts to the market.
8. The estimated annual value of both contracts stands at £2.2m and is apportioned at £1.1m for Contract A and £1.1m for Contract B.
9. The estimated annual combined spend of £2.2m is broken down into various departments as follows:
- | | |
|--|-------------------|
| a) Asset management (budget) | £1,600,000 |
| b) Corporate Facilities Management (CFM) | £ 300,000 |
| c) Contingency sum for other departments | <u>£ 300,000</u> |
| | £2,200,000 |
10. The total estimated value of the proposed contracts stand at £13.2m broken down as follows:
- a) Total cost for a 4 year term = £8.8m
 - b) Total cost of additional 2 year term = £4.4m

Summary of the business case/justification for the procurement

11. The provision of the works within these contracts are essential to meet legislative requirements in the management of asbestos relating to the day to day repairs and void works carried out to council managed housing properties and communal areas.
12. Whilst not all asbestos needs to be removed prior to works being undertaken, there is a requirement under the Control of Asbestos Regulations (2012) to have available specialist licensed contractors to encapsulate / remove asbestos that is damaged to facilitate repairs or demolition.
13. The rationale for the contract duration of 4 plus 2 years is to ensure that the asbestos removal and repair and maintenance works are closely aligned with the objective of reducing delays to housing voids and repairs to Southwark properties with the minimum of disruption and inconvenience to our building users and stakeholders, thus improving void turnarounds and the frequency that repairs are completed in a single visit. This contract duration also allows for continuous improvements in the initial period with the advantage of extending should performance be met. In addition this contract will allow CFM to meet its

statutory duty in ensuring compliance with the undertaking of these works for the operational estate.

14. The contracts will also allow other departments to access these for one off projects should the need arise.
15. The procurement of asbestos removal contracts directly contributes to environmental improvement by reducing the likelihood of exposure of residents and building users to asbestos within our building portfolios.
16. The Health and Safety at Work Act 1974 requires that employers protect the health of any person whether employed by them or not who may be affected by their undertakings. These are expanded upon in the Management of Health and Safety at Work Regulations 1999 and require the employer to assess the risks to the health and safety of employees and others who might work on their premises to identify what measures are required to protect them. Employers must then make appropriate arrangements to put into place preventative or protective measures.

Market considerations

17. The licensed asbestos removal sector is an active market with more than 280 companies registered with the Asbestos Removal Contractors Association (ARCA) and is likely that there will be a keen interest from companies to tender for these contracts.
18. Soft market testing was undertaken by the asset management of the 37 licensed asbestos removal companies on Exor (the council's approved list). 25 of these companies listed achieved the required Mint check threshold of 41 and had the required turnover.
19. As a publicly advertised tender all organisations including SMEs will be able to participate in expressing an interest and tendering.

KEY ISSUES FOR CONSIDERATION

Options for procurement route including procurement approach

20. The asset management team 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 has arrangements in place to carry out asbestos removal works.
 - b) The council provides these works in-house – the council's Traded Services department currently provides building repairs and maintenance to the whole borough via its Southwark Building Services (SBS) business unit. SBS were contacted in December 2018 but have confirmed that its focus is delivering in-house repairs. SBS do not have a Health and Safety Executive Licence for asbestos removal and have therefore been precluded as an option.
 - c) The use of internal or external frameworks - there are frameworks with dedicated lots for asbestos removal works. However, these have been procured on generic conditions and the value of these contracts would

exceed its financial limitations. This has therefore been precluded as an option.

- d) Shared Services - the 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 suitable and these works are estimated above the EU threshold for works, it is recommended that an EU restricted procedure be used to procure these works.

Proposed procurement route

22. This procurement will be carried out in accordance with an EU restricted procedure via the council's e-procurement system ProContract3. In response to the ProContract3 advert and Official Journal of the European Union (OJEU) notice, companies interested in tendering will be required to express an interest online in order to receive a PAS91 questionnaire to view the rest of the tender documents and to submit a completed questionnaire the deadline set.

23. A minimum of 6 organisations will be selected for the combined tender list for contracts A and B, subsequent to the PAS91 questionnaire process. In the event that any tenderer achieves a score within 2% of the ranked sixth tender it would be included in the shortlist. This will meet the EU restricted procurement process.

Identified risks for the procurement

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

R/N	Risk Identification	Likelihood	Risk Control
R1	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.
R2	The procurement process is delayed	Low	Effective procurement project management.
R3	Successful contractors cease trading, go into liquidation or administration leaving works incomplete.	Low	Each contractor will act as back up however in the event of both failing then back up contractor(s) will be selected from the council's approved list. Robust due diligence of tenderers financial situation will be undertaken.

25. The contract documentation will include for retentions to be held on all works completed. A performance bond will not be required for these contracts. A parent company guarantee will be required if the successful contractors have a parent company.

Key /Non Key decisions

26. This report deals with a non key decision.

Policy implications

27. This procurement will contribute to the council's fairer future values of treating residents if they were a valued member of our own family and ensuring they live in a safe, well maintained home and building.
28. The procurement of these works will ensure compliance with legislation, the council's policy of the Management of Asbestos in the Workplace and the Control of Asbestos Regulations 2012.

Procurement project plan (Non Key decisions)

Activity	Complete by:
DCRB Review Gateway 1:	04/03/2019
CCRB Review Gateway 1:	07/03/2019
Brief relevant cabinet member (over £100k)	11/03/2019
Notification of forthcoming decision	14/03/2019
Approval of Gateway 1: Procurement strategy report	21/03/2019
Notice of Intention Completion date (applies to Housing Section 20 Leaseholder consultation only)	17/05/2019
Completion of tender documentation	24/05/2019
Publication of OJEU Notice	27/05/2019
Publication of Opportunity on Contracts Finder	29/05/2019
Closing date for receipt of expressions of interest	28/06/2019
Completion of short-listing of applicants	20/09/2019
Invitation to tender	26/09/2019
Closing date for return of tenders	08/11/2019
Forward Plan (if GW2 is key decision)	14/11/2019
Completion of evaluation of tenders	03/01/2020
Notice of Proposal Completion Date (applies to Housing Section 20 Leaseholder consultation only)	06/03/2020
DCRB Review Gateway 2: Contract award report	23/03/2020
CCRB Review Gateway 2: Contract award report	02/04/2020
Notification of forthcoming decision (if GW2 is key decision)	20/04/2020
Approval of Gateway 2: Contract Award Report	15/05/2020
End of scrutiny Call-in period and notification of implementation of Gateway 2 decision (If GW2 is key decision)	28/05/2020
Debrief Notice and Standstill Period (if applicable)	11/06/2020
Contract award	25/06/2020

Activity	Complete by:
Add to Contract Register	02/07/2020
Place award notice in OJEU	03/07/2020
Place award notice on Contracts Finder	06/07/2020
TUPE Consultation period (if applicable)	30/10/2020
Mobilisation	14/12/2020
Contract start	15/12/2020
Initial Contract completion date	14/12/2024
Contract completion date – if extension(s) exercised	14/12/2026

TUPE/Pensions implications

29. The appointment of a new contractor to one or both contracts in this proposed retender will amount to a Service Provision Change. There are no TUPE implications for the council as an employer because the council's contract management and administrative function will remain with the council and these activities will not form part of the contract specification. If a new contractor is appointed as result of the tender exercise then TUPE is likely to apply in relation to the incumbent and new contractor/s (and their sub-contractors). However TUPE would only apply to transfer those employees engaged by the incumbent contractor or sub-contractor wholly or predominantly in the delivery of the transferring service. Due diligence will need to be carried out and staffing information obtained from the current contractors to ascertain whether there are any employees who would be in scope to transfer should the tender result in the appointment of a new contractor/s and whether there are any pension implications for the council as an administrating authority of the LGPS. This due diligence work needs to be carried out before the tender process commences as its results need to be included in the tender pack and appropriate provision made in the contractual documentation. The procurement timetable takes into account of and provides sufficient time for the affected parties to comply with their obligations under or arising from TUPE.

Development of the tender documentation

30. A project team and project board will be set up for this procurement. The project team will be responsible for producing the tender documentation and the project board will provide governance. The form of contract to be used will be JCT Measured Term Contract 2016, which will be subject to amendment as directed by the council's legal services department. The contract documents will be passed to the legal services department for formal execution.

Advertising the contract

31. The contracts will be advertised by way of an official notice that will be published in OJEU. After publication of the OJEU notice, an advert will also be advertised in the ARCA trade journal as well as the Contract Finder website. The contract will also be advertised to all relevant suppliers on the London Tenders Portal via ProContract3.

Evaluation

32. 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 its ability and capacity to do the work. Five tenders, to be agreed by the project board, will be shortlisted and invited to tender. The short-listed companies invited will be able to bid for both Contracts A and B but the evaluation methodology will set out that each contract will be awarded to separate companies and not to a single company.
33. The council's standard evaluation criteria are based on 70:30 price/ quality split. This achieves a balance between cost and the quality of service delivery. However, for asbestos removal works the essential requirements are service delivery and safety. The driver is therefore much more focused on quality rather than just price. It is therefore recommended that the council employ an evaluation criterion of 60:40 price/quality split.
34. This sends a clear message to the market that the council expects a high quality service that is safe and not simply the cheapest one. The risk of the council having to pay more for the works is mitigated by the fact that this market is currently extremely competitive. Given the value of these contracts, the market is expected to price tenders very keenly so even with the emphasis on quality, the council still expects to achieve value for money.
35. Price evaluation for the asbestos removal works will be undertaken by asset management team and reviewed by finance. It is proposed to use a price model that ensures lowest un-economical bids do not receive the highest scores. To achieve this the 60% awarded for price will be split into two distinct sections as follows:
 - a. Lowest price, which is likely to account for 35%, where the Tenderer with the lowest price is awarded the maximum percent and all other Tenders are scored proportionally to the lowest price.
 - b. Mean average price tenders, which is likely to account for 25%, where the Tenderer with their score closest to the mean average value of all compliant tenders will be awarded 25% with all other tenders scored proportionally to the mean average price.
36. Officers in the asset management team will undertake quality evaluation. An evaluation methodology will be developed by the project team and approved by the project board.

Community impact statement

37. The contracts will operate borough wide and will involve works to all council residential properties, communal areas and operational buildings including offices, shops, industrial units, park buildings and schools. These contracts will ensure that asbestos removal works are undertaken to current legislative requirements and all appropriate notifications are issued.

38. Both contracts will be of a medium to high impact to tenants, leaseholders and other stakeholders as any removal works will mean their exclusion from the areas affected until air monitoring has been completed and is satisfactory.
39. The removal of asbestos containing materials that are damaged will provide residents, leaseholders and building users with a safe property. The tender documentation will be detailed in re-instatement works to ensure fire integrity and insulation.

Social Value considerations

40. The Public Services (Social Value) Act 2012 requires that the council considers, before commencing a procurement process, how wider social, economic and environmental benefits that may improve the well being of the local area can be secured. The details of how social value will be incorporated within the tender are set out in the following paragraphs.

Economic considerations

41. It is envisaged that expressions of interest will be submitted by interested parties within the EU in response to the published OJEU advertisement.
42. The successful contractors will be required to provide apprenticeship opportunities to Southwark residents through the Southwark apprenticeships standard. The contract manager will monitor the contractors and report on progress. The standard addresses four key areas that the council has learnt are central to the success of any apprenticeship:
 - Minimum contract of 12 months
 - Payment of London Living Wage (LLW)
 - Quality training provision
 - Mentoring and support
43. The contracts will contain the requirement to provide work experience for schools and those not in education, employment or training.

Social considerations

44. The successful contractors will be required to demonstrate that they operate an Equal Opportunities Policy, comply with the provisions of the Equalities Legislation, the Employment Relations Act 1999 (Blacklists) Regulations 2010 and the Prevent Duty under section 26 of the Counter-Terrorism and Security Act 2015.
45. The successful contractors are expected to meet the LLW requirements. For these contracts, the quality improvements are expected to include a high calibre of staff 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. On award, any associated quality improvements and cost implications will be monitored as part of an annual review of each contract.

46. The successful contractors will be encouraged to consider trades union recognition in line with the council's Fairer Future Procurement Strategy.
47. The successful contractors will be encouraged to register with and seek to secure accreditation through the TfL Fleet Operator Recognition Scheme (FORS). FORS helps fleet operators to measure and monitor performance, encompassing safety, fuel efficiency, vehicle emissions and improved operations, in order to promote fleet management best practice and reduce social / environmental impacts.

Environmental/Sustainability considerations

48. A waste consignment note will be requested from the successful contractors to ensure materials containing asbestos is disposed of in controlled conditions to an approved site. Regular on the spot audits will be undertaken by the asbestos coordinator.
49. The use of sustainable materials to the appropriate British Standards will be required to ensure fire integrity for re-instatement works.
50. The use of low emission vehicles and planning of journeys will be encouraged within the contracts.

Plans for the monitoring and management of the contract

51. The contracts will be let and managed by the asset management team.
52. Key performance indicators will be set and challenged to ensure the successful contractors' performance.
53. The council's commercial team will review all applications for payment and monitor and administer defaults and recovery of costs for poor performance.
54. To ensure robust contract management arrangements are in place, officers will undertake audit site inspections to ensure that method statements are adhered to and re-instatement works are compliant and delivered to a high standard.
55. Monthly progress meetings, to be attended by officers will be arranged and recorded to review performance and compliance.
56. Annual performance reviews will be prepared and submitted to departmental and corporate review boards.

Staffing/procurement implications

57. There will be no impact on staff as the existing engineering and compliance management team are already performing the contract management functions.

Financial implications (NM/AM001)

58. As noted in paragraph 9 and 10, there is a budget for asbestos works within Asset Management. This is a demand led service and as such the actual contract expenditure will be determined by conditions pertaining at the time. Any variance between the budget and the actual contract costs will be managed within the totality of the Housing Revenue Account (HRA).

59. The other service costs (CFM and contingency) are indicative. Any financial commitment would be made as and when needed on a project by project basis out of existing budgets.

Legal implications

60. Please see concurrent from the director of law and democracy

Consultation

61. Consultation with residents will be held at the monthly tenants and residents associations meetings.
62. Specific requirements, from the various teams who wish to use these contracts, will be incorporated in the contract documents.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Head of Procurement

63. This report seeks approval for the procurement strategy for two asbestos removal works contracts. The report explains that these two contracts will be based on a North/South geographical split. The report also details the rationale for having two separate contracts namely the necessary back up arrangements in the event that these are required.
64. The report confirms that other council departments will be able to access the contracts.
65. The process described in the report is in line with the Council's contract standing orders (CSO's) and EU regulations.
66. The report confirms that a weighted evaluation model 60/40 in favor of price with the use of mean average pricing to ensure sufficient quality and mitigate against sub optimal and abnormally low bids
67. The project timetable included within the report including the requirement to consult with Leaseholders is both reasonable and achievable provided that appropriate resources are allocated to the project at the appropriate time.
68. Due to the value of both these contracts, paragraph 30 confirms that the project team will report to and undergo scrutiny from an independent project board during the course of the procurement.
69. Paragraphs 52 to 56 of the report confirms monitoring and management arrangements that be put in place upon award of the contracts.

Director of Law and Democracy

70. This report seeks the approval of the cabinet member for housing management and modernisation for the procurement strategy to procure 2 contracts as further detailed in paragraph 1. As the value of the intended contracts is between £10-

15m, the decision to approve this procurement strategy is reserved to the relevant cabinet member.

71. The nature and value of this work is such that it is subject to the full tendering requirements of the Public Contracts Regulations 2015 (EU regs). Paragraphs 21 to 23 of this report confirm that an EU restricted procedure will be followed which will comply with both the EU regs and contract standing orders (CSO) tendering requirements.

Strategic Director of Finance and Governance

72. The Strategic Director of Finance and Governance advises that there are no budget implications arising directly from this report. Expenditure will be committed on a site by site basis, as and when need arises. The financial implications will be monitored and managed within the services commissioning works under these contracts.

Director of Exchequer (for housing contracts only)

73. These contracts are for work that is service chargeable to leaseholders under the terms of the lease. They are qualifying long term agreements under the terms of the Commonhold and Leasehold Reform Act 2002 and will require consultation with leaseholders under schedule 2 of the regulations. Notice of Intention should be served and the observation period ended before tenders are invited for the contracts. Following receipt of tenders Notice of Proposal should be served and the observation period ended before the contracts are let. Any work carried out under the contract that will result in individual charges in excess of £250 will require further consultation under schedule 3 of the regulations.

1. DECISION(S)
As set out in the recommendations of the report.
2. REASONS FOR DECISION
As set out in the report.
3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED BY THE OFFICER WHEN MAKING THE DECISION
As set out in the report.
4. ANY CONFLICT OF INTEREST DECLARED BY ANY CABINET MEMBER WHO IS CONSULTED BY THE OFFICER WHICH RELATES TO THIS DECISION

5. NOTE OF ANY DISPENSATION GRANTED BY THE MONITORING OFFICER, IN RESPECT OF ANY DECLARED CONFLICT OF INTEREST

If a decision taker or cabinet member is unsure as to whether there is a conflict of interest they should contact the legal governance team for advice.

6. DECLARATION ON CONFLICTS OF INTERESTS

~~I declare that I was informed of no conflicts of interests.*~~

or

I declare that I was informed of the conflicts of interests set out in Part B4.*

(* - Please delete as appropriate)

BACKGROUND DOCUMENTS

Background Documents	Held At	Contact
Gateway 2 Asbestos Removal Work Contract	Housing & Modernisation/ Asset Management 160 Tooley St, SE1 4PQ	Gavin Duncumb X50685
Link: http://moderngov.southwark.gov.uk/ieDecisionDetails.aspx?ID=4902		
Gateway 3 Asbestos Removal Contracts A&B	Housing & Modernisation/ Asset Management 160 Tooley St, SE1 4PQ	Gavin Duncumb X50685
Link: G:\Asset Management\Engineering & Compliance\Engineering Procurement\Asbestos Removal\Gateways\Gateway 3\Report Gateway 3 - Variation Decision Asbestos Removal Contracts A and B.pdf		

APPENDICES

No	Title
None	

AUDIT TRAIL

Lead Officer	Stuart Davis, Director of Asset Management	
Report Author	Gavin Duncumb, Commercial Manager	
Version	Final	
Dated	7 March 2019	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
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
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team		11 March 2019

BACKGROUND DOCUMENT -CONTRACTS REGISTER ENTRY FORM – GATEWAY 1

Contract Name	Asbestos Removal Works Contract A
Contract Description	Asbestos removal works, encapsulation and minor remedial works
Contract Type	JCT MTC 2016
Lead Contract Officer (name)	Gavin Duncumb
Lead Contract Officer (phone number)	0207 525 0685
Department	Housing and Modernisation
Division	Asset Management
Procurement Route	EU Restricted
EU CPV Code (if applicable)	TBC
Departmental/Corporate	Corporate
Fixed Price or Call Off	Fixed price
Contract Total Value	£4.4m (initial term) £2.2m (2 year extension)
Contract Annual Value	£1.1m
Contract Start Date	15 December 2020
Initial Term End Date	14 December 2024
Number of Remaining Contract Extensions	2 x 12 month extensions
Contract Review Date	15 December 2022
Revised End Date	14 December 2026
SME/ VCSE (If either or both include Company Registration number and/or registered charity number)	TBC
Comments	None
London Living Wage	Included

On approval by the decision maker this document should be passed to the member of staff in your department who is responsible for keeping your departmental contracts register up to date.

BACKGROUND DOCUMENT -CONTRACTS REGISTER ENTRY FORM – GATEWAY 1

Contract Name	Asbestos Removal Works Contract B
Contract Description	Asbestos removal works, encapsulation and minor remedial works
Contract Type	JCT MTC 2016
Lead Contract Officer (name)	Gavin Duncumb
Lead Contract Officer (phone number)	0207 525 0685
Department	Housing and Modernisation
Division	Asset Management
Procurement Route	EU Restricted
EU CPV Code (if applicable)	TBC
Departmental/Corporate	Corporate
Fixed Price or Call Off	Fixed price
Contract Total Value	£4.4m (initial term) £2.2m (2 year extension)
Contract Annual Value	£1.1m
Contract Start Date	15 December 2020
Initial Term End Date	14 December 2024
Number of Remaining Contract Extensions	2 x 12 month extensions
Contract Review Date	15 December 2022
Revised End Date	14 December 2026
SME/ VCSE (If either or both include Company Registration number and/or registered charity number)	TBC
Comments	None
London Living Wage	Included

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