

Executive (Reconvened Meeting)

Friday 26 March 2010
12.30 pm
160 Tooley Street, London SE1 2TZ

Supplemental Agenda No.1

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	To consider the addendum report relating to the Gateway 2 – Contracts Award Approval – Housing Major Works Contracts.	

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Date: 26 March 2010

Item No.:	Classification: OPEN	Date: 26 March 2010	Meeting Name: Executive
Report title	Addendum report - Gateway 2 – Contracts Award Approval Housing Major Works Contracts		
Ward(s) or groups affected	All		
From	Strategic Director of Environment and Housing		

RECOMMENDATIONS

1. The Executive is recommended to approve the award of contracts for major works for a period of five years in order to allow the major programme of repairs and improvements to the estates as set out in paragraph 12 to commence. Executive notes that the award of these contracts to allow the work on these estates is consistent with the LVT decision as all leaseholders on these estates have been fully consulted.
2. The Executive delegate the final award of contracts to the Strategic Director of Environment and Housing.
3. The Executive note the Legal Advice that there are good grounds to appeal the decision of the Leaseholders Valuation Tribunal and the Executive instructs the Strategic Director of Communities, Law and Governance to lodge the appeal.
4. The Executive notes that representatives from Home Ownership Council have been fully involved in the development of the contracts and the evaluation of the tender. In addition Home Ownership Council representatives have an active role in eh contract management and giving feedback.
5. Executive confirm that both tenants and leaseholders will be fully consulted and involved in drawing up the programme of works from 2012 onwards. Executive also note that the effect of the LVT decision is that no works under these contracts affecting leaseholders, other than the works set out in paragraph 12 of this report will proceed.

BACKGROUND

6. On 23 March, the Executive decided to postpone decision making on the Contracts Award Approval Housing Major Works Contract because officers had been advised by the Leaseholder Valuation Tribunal (LVT) of the result of their application for dispensation from the requirements of Schedule 2, paras 4(4), 4(5), 4(6) and 4(7) of the Regulations. The Tribunal did not grant the dispensation, and officers required a short period to advise the Executive of the actions open to them, and this included seeking legal advice. The Council had expected the decision in February 2010, but it was not received until 23 March 2010.

7. This report outlines the actions open to the Executive in light of the LVT decision and the recommended course of action.

CONSULTATION WITH LEASEHOLDERS AND TENANTS

8. The Commonhold and Leaseholder Reform Act 2002 introduced new provisions which require landlords to carry out extensive consultations with leaseholders when landlords intend to carry out works, the costs of which will be more than £250, or where the intent to enter into long term agreements which will last more than a year and cost a leaseholder more than £100 in an accounting year.
9. The Council plan was to procure a Major Works Contract for 5 years, with a possible extension for a further five years. In effect, this was the start of a ten year programme of major improvements and an essential plank of the Council's plan to deliver major stock improvements.
10. Publishing more than two years of an advanced programme of works is constrained for a number of factors including insufficient and uncertain funding from central government and receipts available to the Council. The Council published the first two years of the programme and a Schedule 2 Notice of Proposal; a post-tender consultation giving details of the tender process and proposed contractor for each area, was served on 28th January 2010 and the consultation ended on 1st March. Included in the Notice of Proposal was the two year programme of priority schemes agreed by the Executive for delivery between 2010 – 2012. The LVT decision has no impact on the delivery of these schemes, as all leaseholder consultation requirements have already been met.
11. The proposed contracts are Fixed Term Partnering Contracts which provide no guarantee of the future quantum of work to be provided to contractors. The contracts could therefore, subject to the points made below, be awarded for the full term of initially five years, with the council only agreeing the Programme for the initial 2 years. The draft contracts provided to tenderers set out this issue and all tendering contractors have been made aware of this condition throughout the procurement process.
12. The first two years of the Programme are:

<u>Block/Estate</u>	<u>Area</u>
St Saviours Estate 1b	Bermondsey
St Saviours Estate 2a and 2b	Bermondsey
Manor 4	Bermondsey
Rockingham Estate	Borough & Bankside
Sceaux Gardens	Camberwell
63 – 78 Marchwood Close	Camberwell
Proctor/Flatman/Brisbane	Camberwell
Crystal Court	Dulwich

Cossall Estate	Nunhead
Consort Estate	Nunhead
Hawkstone Estate	Rotherhithe
Kennington Park House	Walworth
Draper House	Walworth
Peckham & Camberwell street properties	Peckham/Camberwell

Tenants have been fully involved and they fully support the proposal form of contracting and have been fully involved in the design of the contracts and evaluation of the tenders.

13. The recommendation is to award the contract and undertake this two year programme. Whilst a number of schemes could be delivered through traditional procurement routes, those exceeded EU limits would need to be subject to a full open tender, taking twelve to eighteen months. The evaluation of prices in the major works procurement suggest that traditional procurement will be up to 10% more expensive in the current market. This programme will deliver improvements to nearly 3000 homes in the borough. These homes will be brought from non-decent to the decent homes standard and increase the number of decent homes in the Council by 9% gross. The importance of homes in Southwark meeting the decent homes standard was highlighted at the recent Council Assembly meeting as an essential part of the Children and Young People's Plan.
14. Any work for which leaseholders are to be recharged beyond 2012 would in effect be determined by the outcome of an appeal to the Lands Tribunal. The LVT's refusal to grant dispensation from some of the consultation requirements for leaseholders would in effect make the contracts impractical to take forward over the life of the contract. Whilst the tender documents and contract confirm that there is no guarantee by the Council as to the value or scope of any work which might be given during the term, in view of the uncertainty of work which might be put through the contract after the initial two years, it is important for the Council to clarify to tenderers how the LVT decision (if the Council is not successful on appeal) might impact on the scope of work. It is for this reason that the Executive are recommended to delegate the final contract award to the Strategic Director.

CONSEQUENCES OF DELAY

15. The Housing Investment two year programme was published and consulted on during October/November 2009. The programme is designed to run continuously, so a December contract award would have allowed the programme to have run through to the new financial year with no break. The adjournment of the LVT from October to January already meant that a number of overdue and high profile schemes were delayed from start until June 2010.
16. Although the nature of schemes vary, all those identified in the housing investment programme target the worst of the Council's stock. The largest scheme, the Hawkstone Estate, is an estate where serious health and safety and quality of life issues have been identified. Structural problems are such that regular inspections of shearing concrete are necessary to minimise the risk of

serious injury. Sewage backsurge has been a frequent problem which can only be addressed by major works. Many flats have windows that cannot be repaired and have to be nailed shut, leading to serious damp and condensation problems. Another large scheme, Draper House, has already been delayed by the Strata development. Again, conditions in this block are deteriorating rapidly, and leaseholders believe themselves disadvantaged by cost escalations since 2007.

17. In this report we have considered if any useful purpose is served by delaying awarding the contract -

- No useful purpose would be served by delaying awarding the contract until June, as the LVT appeal will take a minimum of 6 months to be heard.
- If the Council delays while waiting for the results of the appeal, it will not be possible to do any of the works outlined in paragraph 12 before 2011 even if the Council is successful because we will have to gear up for the award of contracts and there is no guarantee that the current conditions within the contract will still be enforceable in 8 months time.
- If you wait for appeal and the Council loses the appeal, subject to any further appeal, there will an even longer delay because a further procurement process would be required.

18. In order to meet the responsibilities of the Council as a landlord in these estates the Council would have to pursue other contracted processes, some will require full European competitive tender and costs can only rise in that situation.

LEASEHOLDER IMPLICATIONS

19. As a result of this Report, there are no leaseholder implications in respect of the first two years of the programme, as these have had full leaseholder consultation under section 20 of the Act. The details of the actions previously taken, and the leaseholder implications, are outlined in the Main Report. As a contingency against the required dispensation not being granted the council served notices on leaseholders within the pilot schemes providing a date by when relevant cost information would be available. This statutory consultation was carried out in two parts as set out in the following paragraphs.

20. In paragraph 59 of the Main Report, the Executive were informed at the time of the writing of the Report that the LVT decision was awaited. The observation period could not be closed until we received the decision. We have now received it, and there have been no further leaseholder observations.

21. The Council received 45 observations from leaseholders, all of whom have received a written response. The observations were mainly about programming of works and future consultation. None would lead to a delay in awarding the contract enabling the two year pilot programme of works. The observation period has now closed.

22. If the contracts are agreed, those leaseholders in the pilot schemes who have service chargeable work programmed for their block or estate will receive a third consultation notice. This will give the scope of work and detail why it is necessary, its cost and an individual estimated service charge. Leaseholders then have an opportunity to make observations on the works and consequent service charges.

LEGAL CONCURRENT

23. We are advised by Leading Counsel that the Council has good grounds for Appeal of the LVT decision.
24. These comments are supplemental to the advice noted at paragraphs 81-87 of the main report. The Executive is asked to approve the award of contracts for major works subject to clarification of certain pricing and packaging issues. The need for these clarifications results from the negative LVT judgement received on 23rd March with the effect that the council has not been granted a dispensation from parts of the consultation requirements. Therefore with the exception of the works in the initial 2 year programme were subject to the full consultation requirements, the Council would be unable to recharge leaseholders for works undertaken outside of that 2 year programme.

AUDIT TRAIL

Lead Officer	Gill Davies, Strategic Director of Environment and Housing	
Report Author	Margaret O'Brien, Head of Housing Management	
Version	FINAL	
Dated	26 March 2010	
Key Decision	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Community Law and Governance	Yes	Yes
Finance Director	No	
Executive Member	No	
Date final report sent to Constitutional Team	26 March 2010	

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