

Item No. 16.	Classification: Open	Date: 25 September 2012	Meeting Name: Cabinet
Report title:		Gateway 1 Procurement Strategy Approval Professional Technical Services Contract	
Ward(s) or groups affected:		All	
Cabinet Member:		Councillor Ian Wingfield, Deputy Leader and Cabinet Member for Housing Management	

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

The council is committed to delivering the Warm, Dry and Safe Programme by 2016 and then continuing to provide an effective asset management strategy. In order to be able to do this, it will need to employ professional technical services firms who can deliver in terms of time, quality and price. Having long term agreements in place will help ensure that this happens. The firms will act as a support to Southwark's own staff and through the agreements a consistent high level of service will be achieved. The contracts will ensure value for money due to their size and length and the tender evaluation process and they will also ensure the council can improve its own efficiency as it will avoid the need for an individual tender process as each new professional service is required.

These contracts will ensure that a main firm will be in place to do the majority of work, but also that there is a committed back up firm in place, so the council can ensure a continued high level of service to all of its residents. This will help ensure a consistent resident focused service for the period of the contract. The firms will be in Southwark for some time potentially and therefore an increased sense of ownership of their service will be developed so improving quality and service delivery even further.

We will build on work already carried out with residents through the 'Putting Residents First' consultation process on major works and the leaseholder major works service improvement group. Residents representatives will be involved in the selection process through representatives from both tenants council and home owners council and they will help in establishing the trust and confidence of residents in the services we provide and the way major contracts are handled in the future and give greater transparency for all residents in the whole process of managing, monitoring and delivering major works. I therefore fully support and endorse all the recommendations

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

RECOMMENDATIONS

Recommendations for the Cabinet

That cabinet approves

1. The procurement strategy outlined in this report for Professional Technical Services which is to let 2 contracts including arrangements for back up provision.
2. A period of four years for both contracts from 22 July 2013 with provision for 2 extensions of up to three years at the council's discretion.

Recommendation for the Leader

3. That the leader of the council delegates authority to the deputy leader and cabinet member for housing management to award the contracts for the reasons set out in paragraph 11.

BACKGROUND INFORMATION

4. The council does not currently have in place any long term agreements for the provision of construction related professional services. Professional services typically comprise the following: Building Surveying, Quantity Surveying, M&E Engineering, Structural Engineering, Project Management (including Employers Agent), CDM Co-Coordinator and Clerk of Works services. Construction consultants would typically be appointed to support the council to deliver a range of projects and services to housing properties. This means that if there are any leasehold service charges involved, then a very long process has to be adopted involving two stages of leaseholder consultation, each taking approximately two months to complete, and an individual tender process taking approximately 1-2 months. Virtually all of the housing capital contracts let includes communal work for which leaseholders are charged so all contracts have a potential lead in period of six months.
5. Currently work is carried out using in-house staff where resources are available and this is expected to continue. Where outside firms are used, this had been done using previous framework contracts which have now expired or contracts are individually tendered for individual schemes. There are no specific staff assigned by outside firms to Southwark housing schemes but they are assigned on a task by task basis.
6. As such, rather than have a series of individual tenders, it is felt that longer term agreements with two professional service organisations should be established. It is proposed that an initial term of four years is awarded to successful operators, with the possibility of two extension periods of up to three years each, up to a maximum of ten years, i.e. 4+3+3=10. This ties in with the potential ten year partnering contracts in place with the framework contractors and meets the needs of a long term asset management programme. The extension options will be dependant upon the performance of individual operators and the council's future strategy.
7. The proposal is to establish two separate contracts. The provider of the first/larger contract will carry out approximately 90% of work in each year with the second provider carrying out an estimated 10% of work. The 90/10 split is recommended as it allows a long term arrangement to be built up with one firm doing the majority of work, becoming acquainted with the council's policies and procedures and contracts and ensuring value for money and consistency. The second firm provides a useful and committed back up firm should there be any problems with the first firm. The evaluation of the tenders would be the same for both firms so either of them would be able to take on all the work if required.

A robust method of allocating the work will be discussed and agreed by the project board prior to the tender being issued. It is envisaged that the appointed organisations will work alongside the council's in-house technical services team and in particular, where there are insufficient in house resources.

8. For the 2013/14 Warm, Dry and Safe main building work programme, in total over £26m, it is anticipated at this stage that approximately £14m of the total will require the use of professional service firms as a support to existing in house provision. In addition there may be some use of professional services firms for mechanical and electrical projects as well as ad hoc inspections, feasibility studies etc. In future years it can be anticipated there will be a need for the use of professional firms for approximately between £20-30m. The actual contract values will vary from year to year and area to area dependent on programme and funding and thus could increase if additional funding became available. The contracts will be awarded on the basis the firms will receive a percentage of works costs although there will also be hourly rates in the contracts. The initial contract prices for these hourly rates which would be fixed for four years. After that any hourly rates in the contract would be index linked using the Consumer Price Index.
9. The tenders to be sought for professional services will cover the full range of expected services as outlined above. This may include a full Lead Consultant role on a project or the selection of individual elements as required. In addition, time charge rates for the provision of professional services relating to disrepair cases, party wall matters, feasibility reports and the like, will also be established.
10. It is proposed that the procurement exercise is advertised as two contracts with the larger contract comprising an estimated 90% of a years work and the second contract for a firm being given an estimated 10% of work. This would ensure that there will be a committed back up firm in place should there be issues with the main firm. Experience has shown with the contractor partnering contracts that back up firms are required and it also has the benefit of ensuring there is no complacency by any firm. The proposed length of the contracts allows for the option to continue them if standards are maintained so ensuring value for money.
11. It is recommended that the deputy leader and cabinet member for housing management be delegated the decision to award the contracts as this will enable the housing major works programme for 2013/14 and 2014/15 to be progressed urgently. Once appointed the firms will be managed by the project manager in major works who will appoint them for each specific project through the issue of new instruction in consultation with the strategic director of housing and community services.

Summary of the business case/justification for the procurement

12. It is very inefficient to tender for each set of professional services used and very time consuming. Having long term agreements with professional firms for between four and ten years will save time and minimise bureaucracy.
13. It will enable a consistency of high level service to be provided and also enable best value to be obtained as the firms in the long term agreement will receive a

substantial volume of instructions from the council across the duration of the contract if they maintain a high standard of service quality.

14. The procurement of these contracts will provide the council with more control and flexibility in its use of professional services.
15. The appointment of each firm on long term agreements will encourage collaboration through working with the council. This will result in improved efficiencies, standardisation of processes and procedures, consistency of approach and ultimately better quality and value for money for residents and the council.

Market considerations

16. The market for construction related consultancy services is very good. Competition is strong and it is anticipated that very competitive prices will be obtained through this process. There are a number of firms who could provide these services, some of whom already work for the council or who have previously worked for the council. The OJEU advertising process prescribed by the EU procurement Regulations places the project in the public domain and will be sufficient to attract a good response and there are a number of firms with the capacity to carry out 90% of the work.

KEY ISSUES FOR CONSIDERATION

Options for procurement route including procurement approach

17. There are other options for professional services procurement. The first of these would be using existing frameworks such as the Government Procurement Service (GPS) or the London Construction Programme framework developed by London Borough of Haringey. However other frameworks cannot be used extensively as leaseholders were not consulted from the outset and this would mean they could not be recharged for any costs incurred. Given the size and nature of the housing programme a tailored set of technical consultancy services divided into contracts is considered the best option.
18. Another option would be to tender each works contract as and when required, which is in effect the 'do nothing' option. This would be very time consuming and bureaucratic, would not achieve the best value for money and would not allow quality long term relationships to be developed with partners.
19. The recommended option is to carry out a competitive tender process for the professional technical services contracts which would improve the efficiency of progressing programmes and ensure best value in both quality and price. It is possible that other council departments could use the contracts too if there was sufficient capacity by the firms and within the contract sums after the housing schemes had been allocated.

Proposed procurement route

20. A full EU restricted procedure will be followed comprising an initial pre-qualification stage in response to a pre-qualification questionnaire (PQQ) where bidders will be shortlisted to tender. The second stage will comprise shortlisted tenderers being invited to respond to an Invitation to Tender (ITT).

Identified risks for the procurement

21. There may be objections from leaseholders to the principle of a long term agreement, but these can be overcome by making those leaseholders aware that comprehensive fixed price for percentage fees and time charge fees which will be used for the duration of the contract will be obtained and will operate for the duration of the contract. This risk has been reduced as a meeting has been held with the leaseholders Major Works Service Improvement Group to explain the process and the financial and time benefits of the proposal and then Home Owners Council will be invited to nominate a representative to sit on the tender evaluation panel. Prices will be sought on a percentage basis against the works contract sums, but each firm will need to give an estimate of the hourly rates they have assumed in preparing this percentage, so that leaseholders can be advised of an equivalent unit rate, thus obviating the need to apply to the Leasehold Valuation Tribunal for dispensation from part of the regulations governing section 20 leaseholder consultation. The percentage rate will be the price used for the contract. The proposal to award only a small percentage of the work to a second firm should reduce the risks of challenge by leaseholders considerably and the financial implications are very minor.
22. Any risks associated with the procurement process such as a challenge by leaseholders are already being reduced. The council expects that there will be a healthy response to its call for expressions of interest given the current market. There are sufficient resources to carry out and manage the procurement and the appointment of a professional advisor who has extensive experience of the process, will assist the preparation of accurate and appropriate documentation and methodology. The only other key risk to this process is that one of the appointed service providers not perform to the required standard or may become insolvent. This risk is negated by having a second firm in place and strict quality criteria set at all stages of the tender process. Firms bidding for the contracts will need to have the capacity to be able to undertake all of the work available and this will be made clear in advertising the contract.
23. Successful tenderers will be required to provide a Parent Company Guarantee (PCG) in the form set out in the Invitation to Tender (ITT). Prospective tenderers will be required to confirm at pre-qualification stage that they are able and willing to enter into a PCG. A PCG is required to provide assurances that in the event that the appointed company commits a breach of contract or fails to perform the required services, then the parent or holding company will meet the obligations under the contract and therefore provide continuation of service. For those companies who do not have a parent or holding company, then a performance bond will be required but it is not anticipated a bond will be required as matter of course.

Key /Non Key decisions

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

Policy implications

25. There are no specific policy implications to this report.

Procurement Project Plan (Key Decisions)

Activity	Complete by:
Forward Plan (if Strategic Procurement)	16 July 2012
DCRB Review Gateway 1 CCRB CMT	2 Aug 2012 16 Aug 2012 29 Aug 2012(TBC)
Notification of forthcoming decision –despatch of Cabinet agenda papers	13 Sept 2012
Approval of Gateway 1: Procurement strategy report	25 Sept 2012
Scrutiny Call-in period and notification of implementation of Gateway 1 decision	9 Oct 2012
Issue Notice of Intention – complete by	12 Nov 2012
Completion of tender documentation	10 Oct 2012
Advertise the contract	16 Nov 2012
Closing date for expressions of interest	17 Dec 2012
Completion of short-listing of applicants	11 Jan 2013
Invitation to tender	18 Jan 2013
Closing date for return of tenders	28 Feb 2013
Completion of any interviews	29 Feb 2013
Completion of evaluation of tenders	8 March 2013
Issue Notice of Proposal – complete by	1 May 2013
Forward Plan (if Strategic Procurement)	6 May 2013
DCRB Review Gateway 2 CCRB CMT	6 May 2013 23 May 2013 NA
Notification of forthcoming decision – despatch of Cabinet agenda papers	NA
Approval of Gateway 2: Contract Award Report	18 June 2013
Scrutiny Call-in period and notification of implementation of Gateway 2 decision	2 July 2013

Activity	Complete by:
Alcatel Standstill Period (if applicable)	16 July 2013
Contract award	18 July 2013
TUPE Consultation period	N/A
Place award notice in Official Journal of European (OJEU)	19 July 2013
Contract start	22 July 2013
Contract completion date	21 July 2017
Contract completion date – (if extension(s) exercised)	21 July 2023

TUPE/Pensions implications

26. TUPE should not apply to the appointment of two new contractors to carry out single specific tasks of short term duration, e.g. on spot contracts in cases where the council, which will generally continue to carry out the services in-house does not have the necessary resources. However, if the intention is that the newly appointed contractors will carry out an ongoing service or will be awarded a succession of short-term contracts to the extent that they are essentially providing such a service, then there is a risk that TUPE may apply. In respect of the council's employees, the risk should be low given that the council will continue to provide the services in-house. In relation to the existing contractors, again, on the understanding that they do not have organised groupings of employees whose principal purpose is the carrying out of contracts for the council, no employees should transfer.

Development of the tender documentation

27. The tender documentation will be developed by Cameron Consulting (UK) Ltd who has been appointed as a professional advisor to assist with procedures and implementation and have extensive experience in this field. They have extensive experience in this field and will prepare tender documents in conjunction with staff in the Major Works Team. Southwark's Legal Services will be fully involved in drawing up contract documents.
28. A Project Board will be put in place to inspect draft documentation and to sign off key documents. This will be lead by the Head of Major Works in conjunction with the professional advisor and will include other sections such as mechanical and engineering staff who will be using the contract.

Advertising the contract

29. The contracts will be advertised in the Official Journal of the European Union (OJEU) and this will be sufficient to attract interest from a number of firms. It is therefore not anticipated that any further advertising will be necessary.

Evaluation

30. There will be two stages: PQQ Stage and ITT evaluation Stage. Evaluation of submissions will be undertaken in accordance with strict criteria set out in "Evaluation Methodologies" prepared by the professional advisor at each stage. It is proposed that the professional advisor facilitate the evaluations, having the requisite skills and competencies to undertake evaluation. Stakeholder input into the evaluations will consist of moderation of scoring and attendance at interview during the ITT Stage.

31. The first stage short listing of the PQQ will be facilitated by the professional advisor appointed to manage the process. The detailed ITT evaluation document will be produced with the tender documentation.
32. The intention is to set short listing criteria such that only professional services firms who have extensive experience and proven ability and sufficient resources will be invited to tender. The detailed criteria will be prepared by the professional advisor in association with Major Work's staff and resident representatives.
33. The ITT evaluation will be undertaken by a tender evaluation panel facilitated by the professional advisor with a team of Major Work's staff and resident representatives (one leaseholder and one tenant). The selection criteria will be based on MEAT (Most Economically Advantageous Tender) criteria with a split of 70:30 price; quality. Prices are expected to be very keen and it is vital to ensure that the firm selected can carry out the design and supervision works to the highest standard given the potential size of the housing capital programme in future and this will be done by setting quality thresholds.

Community impact statement

34. Having a consistent set of professional service firms working in the borough will improve the quality of service and help the consultants to ensure that the Partnering Contractors in particular work comprehensively with the community.

Economic considerations

35. There are no specific economic considerations to this report

Social considerations

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

Environmental considerations

37. There are no specific environmental considerations at this stage. The procurement process will be managed if possible through e-tendering systems with the professional advisor (in line with Government guidance) to minimise the impact on the environment and in particular, in relation to printing and paper usage.

Plans for the monitoring and management of the contract

38. The performance of the Professional Service firm will be monitored by the Major Works Team. They will ensure for each time the firm is instructed that they follow the brief for the scheme, are involved in the consultation process with residents, follow the timetable for the scheme, and ensure that the works

are carried out to the set quality on site by the contractors. Each Project Manager in the Major Works team or other section using the contracts will provide a quarterly monitor on the performance of the Professional Service firm and there will be specific KPI's in the contract in the areas of time, cost and quality.

Staffing/procurement implications

39. There are no specific staffing implications to this report

Financial implications (SB-FIN0725)

40. The report sets out the procurement strategy for the provision of professional technical services to support the delivery of the Council's Warm, Dry, Safe programme together with other mechanical and electrical engineering works programmes.
41. The estimated annual value of this contract is based on a capital works programme of £20-30m per annum. Whilst the value of the WDS programme is largely determined up to 2015/16, beyond that the value of investment programme will vary in line with available resources and the value of this contract will fluctuate accordingly.
42. Whilst tender submissions are invited for the provision of 100% of the potential work, the contract will be split on a 90:10 ratio, but with the proviso that the backup contractor has the capacity to provide 100% of the required work in the event of failure of the primary contractor.
43. In terms of price, the report makes reference to current market conditions for construction related consultancy services and the expectation is that fee rates will be very competitive. Professional fees of this nature are chargeable to the capital programme and can be contained within the programme resources available. The cost of the procurement process (c. £50k) is deemed to be a revenue item and will be met from the professional services budget within the Major Works division.
44. There is sufficient approved capital budget within the Housing Investment Programme to handle this proposal in the medium term, future years being dependant on standard Council budget setting processes.

Legal implications

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

Consultation

46. There will be extensive consultation with leaseholders as part of the statutory process. In addition a tenants and a resident's representative will be asked to join the final tender evaluation panel as part of the consultation process with Tenants Council and Home Owners Council

Other implications or issues

47. These are all covered in the report

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Head of Procurement

48. This report seeks approval from the cabinet for the procurement strategy of two Professional Technical Services contracts for an initial period of 4 years with the option at the discretion of the council for two extensions of up to three years.
49. The recommended option for procurement is for the council to carry out a competitive tender process. The process described in the report is in line with the council's contract standing orders (CSO's) and EU regulations.
50. The project timetable included within the report is achievable for the proposed procurement strategy, provided that appropriate resources are allocated to the process.
51. The report confirms that the evaluation shall be carried out on the basis of the most economically advantageous tender and in determining this shall use a price/quality ratio of 70:30 which is in line with the council's preferred ratio.
52. As the strategy is to procure two contracts splitting the work between the two on a 90:10 basis it is important that the evaluation criteria is developed to cover both the split and the allocation of work prior to issuing the tender documentation to interested parties.
53. Paragraph 28 of the report advises that a project board will be put in place. It is important that good governance arrangements are in place to ensure the successful delivery of this procurement

Director of Legal Services

54. This report seeks the cabinet's approval to the procurement strategy for professional technical services as detailed in paragraph 1. At this value, this is a strategic procurement and therefore approval of the procurement strategy is reserved to the cabinet.
55. The nature and value of the services to be procured (being in excess of £173,934) are such that they are subject to the full application of the EU procurement regulations. As noted in paragraph 29, the contracts will be advertised in OJEU and will be procured fully in accordance with the regulations.

Strategic Director of Finance and Corporate Services (NR/FCS/31/8/12)

56. This gateway one report recommends that the cabinet approves the procurement strategy for two professional technical services contracts, each for a period of four years from 22 July 2013 with provision for 2 extensions of up to three years at the council's discretion and that the leader of the council delegates authority to the deputy leader and cabinet member for housing management to award the contracts. The strategic director of finance and corporate services notes the financial implications contained within the report. Officer time to effect the recommendations will be contained within existing budgeted revenue resources.

Head of Home Ownership

57. The services carried out under these agreements will be service chargeable to leaseholders, and therefore statutory consultation under section 20 of the Landlord and Tenant act 1985 (as amended) is required.
58. The consultation will be carried out under schedule 2 of the statutory regulations. This will require the issue of a notice of intention prior to carrying out the tender process and a notice of proposal served post-tender and pre-acceptance. Any observations received must be fully answered before the contracts proceed any further.
59. As the consultation will be carried out under schedule 2 leaseholders are not given the option to nominate contractors to tender. However, the notices of intention must be served prior to the OJEU notice being placed so that leaseholders can alert their preferred contractors.

BACKGROUND DOCUMENTS

Background Documents	Held At	Contact
None		

APPENDICES

No	Title
None	

AUDIT TRAIL

Cabinet Member	Councillor Ian Wingfield, Deputy Leader and Cabinet Member for Housing Management	
Lead Officer	David Markham - Head of Major Works, Housing & Community Services	
Report Author	Ferenc Morath - Investment Manager, Major Works, Housing & Community Services	
Version	Final	
Dated	13 September 2012	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Head of Procurement	Yes	Yes
Director of Legal Services	Yes	Yes
Strategic Director of Finance & Corporate Services	Yes	Yes
Head of Home Ownership	Yes	Yes
Contract Review Boards		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team		13 September 2012