

Item No.	Classification: Open	Date: 19 September 2013	Decision Taker: Deputy Leader and Cabinet Member for Housing Management
Report title:		Gateway 2 - Professional Technical Services Contract	
Ward(s) or groups affected:		All	
From:		Strategic Director of Housing and Community Services	

RECOMMENDATIONS

1. That the Deputy Leader And Cabinet Member For Housing Management approves the award of the first Professional Technical Services contract to Calford Seaden LLP at an estimated annual value of between £675,000 and £1,125,000 per year for a period of four years from 16 Oct 2013 with provision for two extensions each of up to three years at the council's discretion making an estimated value of between £6,750,000 and £11,250,000.
2. That the deputy leader and cabinet member for housing management approves the award of the second Professional Technical Services contract to Potter Raper Partnership at an estimated annual value of between £75,000 and £125,000 per year for a period of four years from 16 Oct 2013 with provision for two extensions each of up to three years at the council's discretion making an estimated value of between £750,000 and £1,250,000.
3. That the Deputy Leader and Cabinet member for housing management notes that the process for the appointment of each specific project will be made by the issue of new instruction by the Project Manager in Major Works in consultation with the Strategic Director of Housing and Community Services.

BACKGROUND INFORMATION

4. The planned procurement strategy was the subject of a Gateway 1 report which was approved by cabinet on 25 September 2012. The approved competitive tendering procurement strategy was followed. An EU restricted tender process was carried out with the aim to put in place two contracts for a period of four years with a provision to extend for a further six years to cover all technical services required for housing major works contracts and these will be prioritised although the contracts could be used for non housing contracts if it were not fully utilised for housing major works contracts.
5. This is a Key Decision and the gateway 1 approval agreed that authority be delegated to the deputy leader and cabinet member for housing management to approve the contracts at gateway 2 stage. It was noted that:-
 - The cost of the contracts will vary between £75,000 to £1,125,000 per year.
 - There are specific possible extensions built into the contract.
 - The contract price is generally not index linked except for the specific time charge elements.

6. 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 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 and these contracts will be prioritising those works. 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 almost all contracts have a potential lead in period of six months.
7. 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.
8. 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 current 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. Lessons have been learnt from other contracts and there is no exclusivity in these contracts, no guarantees of work and contracts can be terminated relatively easily.
9. 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 was 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 has been discussed and agreed by the project board which will involved the firm with the smaller contract having works up to 10% of the overall total each year, with their allocations starting in the Borough and Bankside and Walworth areas. 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. 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.

10. For the second half year of the 2013/14 Warm, Dry and Safe main building work programme, in total over £26m, it is anticipated 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 £20-35m of works. 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.
11. The tenders sought for professional services 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.
12. Once appointed the firms will normally 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.

Procurement project plan (Key Decision)

13. See table below:

Activity	Completed by:
Forward Plan for Gateway 2 decision	16 July 2012
Approval of Gateway 1: Procurement Strategy Report	25 Sep 2012
Issue Notice of Intention	8 Oct 2012
Invitation to tender	18 March 2013
Closing date for return of tenders	24 Apr 2013
Completion of evaluation of tenders	6 June 2013
Issue Notice of Proposal – complete by	23 Aug 2013
DCRB Review Gateway 2: CCRB Review	12 Aug 2013 22 Aug 2013
Notification of forthcoming decision – Five clear working days	2 Sept 2013
Approval of Gateway 2: Contract Award Report	25 Sep 2013
Scrutiny Call-in period and notification of implementation of Gateway 2 decision	9 Oct 2013
Alcatel Standstill Period (if applicable)	23 Oct 2013
Contract award	24 Oct 2013

Activity	Completed by:
Add to Contract Register	24 Oct 2013
Contract start	24 Oct 2013
Publication of award notice in Official Journal of European (OJEU)	24 Oct 2013
TUPE Consultation period	N/A
Contract completion date	23 Oct 2017
Contract completion date – if extension(s) exercised	23 Oct 2023

KEY ISSUES FOR CONSIDERATION

Description of procurement outcomes

14. The procurement has enabled two firms to be selected who will help ensure that the housing capital programme can be delivered and for best value. 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.

Policy implications

15. It will help deliver on one of the council's Fairer Future promises, that of making all council homes Warm, Dry and Safe by 2015/16.

Tender process

16. Contract Standing Orders requires that all reasonable steps are taken to obtain at least 5 tenders following a publicly advertised competitive process. Seventeen firms had expressed an interest and returned completed Pre-Qualification Questionnaires(PQQ's) and following a selection process, on this occasion, eight (8) firms were invited to tender for these works following short listing using the EU restricted tender process.

Tender evaluation

17. Eight tenders were returned to 160 Tooley Street on 24 April 2013 and were opened on 24 April 2013. The tenders were evaluated by members of the project board, Head of Major Works and Investment Manager and Head of CDM, and the resident representatives, plus the professional advisor (Cameron Consulting).
18. As stated in the Gateway 1 report a weighted evaluation model was adopted 70/30 split was adopted price/quality.
19. As a separate submission within their returns, tenderers were required to provide information to support their quality submission that demonstrated their ability to fulfil the requirements of the contract and demonstrate experience in similar project types. The quality assessment was weighted in relation to the level of importance put upon each criterion and was detailed in the tender evaluation assessment criteria included within the tender documents. The evaluation panel consisted of the Head of Major Works, the Investment Manager, Cameron

Consulting the professional advisors for this project, and a leaseholder and tenant representative. Their final evaluation was presented to the Project Board for this procurement which included representatives from Southwark's legal, procurement and home ownership teams.

20. There were a number of criteria which were pass/fail criteria around the deployment of resources and health and safety criteria. Four firms failed to meet the required resources standards to move on to the next stage. The four firms remaining had specific quality scores in the areas of management & resources, ability to meet council requirements, ability to support wider Council objectives and collaboration with the council. Any firms not meeting the minimum score in any area were not able to proceed and there were two firms who did not meet the full standards required. Pass/fail criteria were used in areas such as deployment of resources to ensure that any firm could not win the contract by being very good in certain areas of selection, but not be able to deliver the overall quality of service required.
21. Whilst only 2 firms remain following the quality evaluation, the Project Board believe that award can still be recommended because firms are required who can work to the quality standards that the council requires and 2 have demonstrated this in a competitive process. The alternative would be to retender the process which would lead to drastic delays in the delivery of the housing major works capital programme in particular and there is no reason to believe a different result would be achieved.

Plans for the transition from the old to the new contract

22. Not applicable.

Plans for monitoring and management of the contract

23. The performance of the professional service firms and any commitments made in their bids will be monitored by the Major Works team. They will ensure for each time the firms are 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 firms and there will be specific KPI's in the contract in the areas of time, cost and quality.
24. The spend and performance on the contracts will be monitored by the Head of Major Works and reported each month to the major works monitoring group led by the Director of housing and community services. Although the contracts can cover a range of projects within the council, in practice it has been mainly designed and programme estimates used for the works run by the Major Works team, and it is therefore anticipated priority will be given for this programme for major schemes until the end of the Warm, Dry and Safe programme, although other areas of the council will be able to use the agreements if capacity is available.

Identified risks for the new contract

25. There may be objections from leaseholders to the principle of long term agreements, 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 contracts 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 nominated a representative to sit on the tender evaluation panel as did Tenants Council. Prices were sought on a percentage basis against the works contract sums, but each firm also gave 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.

26. Any risks associated with the procurement process such as a challenge by leaseholders are already being reduced. There was a healthy response to the call for expressions of interest. 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, assisted 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 needed to have the capacity to be able to undertake all of the work available and this was made clear in advertising the contracts.
27. Successful tenderers were asked to provide a Parent Company Guarantee (PCG) in the form set out in the Invitation to Tender (ITT) if they were part of a larger company. 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. As neither is part of a larger company and do not require a PCG, they will be required to produce a performance bond.

Other considerations (Design Specification Compliance)

28. Southwark council has standard specifications in a number of areas of work and these will be used as appropriate.

Leasehold Implications

29. These are covered in the concurrent from the Head of specialist services.

Community impact statement

30. 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

31. There are no specific economic considerations to this report.

Social considerations

32. 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

33. There are no specific environmental considerations at this stage.

Market considerations

34. The market for construction related consultancy services is very good. The OJEU advertising process prescribed by the EU procurement Regulations placed the project in the public domain and was sufficient to attract a good response.

Staffing implications

35. There are no specific staffing implications to this report.

36. 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. TUPE will need to be considered on the expiry of these contracts and or if the work is retendered.

Financial implications

37. The annual value of the professional services fees will vary depending on the nature and volume of works required. The table below shows the estimated fees based on a minimum and maximum annual value, compared with the value of works they will support:

	Full year value	
	Estimated Minimum	Estimated Maximum
	(£s)	(£s)
Calford Seaden	675,000	1,125,000

Potter Raper	75,000	125,000
Total Estimated Fees	750,000	1,250,000
Value of works	20,000,000	35,000,000
% of fees to value of works	3.8%	3.6%

38. The tender evaluation was undertaken using the council's 70/30 weighting of price and quality. On that basis the above fees are seen to represent fair value in the current market.

Investment implications

39. The costs for the Professional Technical Services contract will be charged to the respective project costs programmed in the Warm, Dry and Safe capital allocation budgeted within the Council's Housing Investment Programme. It should be noted that the current Warm, Dry and Safe programme budgets is only approved up to 2015/16 and therefore further capital allocations will need to be incorporated within the Housing Investment Capital Programme beyond this period to meet this and other costs connected with the Warm, Dry and Safe programmes.

Second stage appraisal (for construction contracts over £250,000 only)

40. Not applicable as procurement was carried out using an EU tendering process.

Legal implications

41. Please see the concurrent from the Director of legal services.

Consultation

42. There was extensive consultation with leaseholders as part of the statutory process. In addition a tenants and a resident's representative were on the final tender evaluation panel as part of the consultation process with Tenants Council and Home Owners Council.

Other implications or issues

43. Not applicable.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Head of Procurement

44. This report is seeking approval for the award of two professional technical services contracts. The two contracts shall deliver professional consultancy services for construction related projects (as set out in detail in the background information of the report). It is intended that the work is split between the two contracts on a 90:10 basis.

45. Although the contracts are split on a 90:10 basis, the report confirms that both contractors were assessed on their ability to deliver 100% of the council's requirement. This was done to ensure that back up arrangements were built in

and either contractor was capable of fulfilling the whole of the contract should the need arise.

46. The report confirms that the previously approved procurement strategy has been followed with a full EU competitive process being undertaken. The award is being based on the most economically advantageous tenders following a weighted model 70:30, price/quality.
47. The tender evaluation section of the report outlines the approach to the quality element of the evaluation, which required tenderers to provide information that demonstrated their ability to meet the requirements of the contract. By including additional pass/fail criteria at tender stage, officers designed the process to robustly test providers ability to address some of the key issues previously experienced on major project contracts i.e. health and safety and deployment of resources.
48. With only two providers passing these areas of assessment the evaluation panel presented to the project board to consider the situation. The project board agreed that deployment of resources was fundamental to the success of the contracts and only providers demonstrating ability to meet this requirement should be considered for award.
49. The report describes how the contractors' performance on the individual schemes will be monitored and how the overarching contracts will be managed and monitored throughout the life of the contract.

Director of Legal Services

50. This report seeks the approval of the deputy leader and cabinet member for housing management to the award of 2 contracts for professional technical services to Calford Seaden and Potter Raper Partnership, as further detailed in paragraphs 1 and 2. As part of the gateway 1 procurement strategy approval, the decision to award these contracts was delegated to the deputy leader and cabinet member, who is therefore able to make these decisions.
51. The nature and value of these contracts are such that the procurements are subject to the full application of the EU procurement regulations. As noted in paragraph 17, a full EU tendering process has been undertaken in accordance with the restricted process. The council's criteria for award of these contracts is on the basis of the most economically advantageous tenders, with the highest ranking tender being awarded the first and larger contract, and the second ranked tender being awarded the second contract. Following evaluation, it is the evaluation panel's view that Calford Seaden and Potter Raper's tenders are the most economically advantageous tenders and are therefore recommended for award. Whilst these 2 bidders were the only 2 who passed all parts of the quality evaluation, it is the project board's view that award should still proceed, as these quality standards are necessary to ensure the contract can be fulfilled.
52. As noted in paragraph 30, the tender submitted by Pellings was further analysed by technical specialists, as this bid would otherwise have received the highest scores for quality and price, if it had not been omitted from the process due to a failure of the resource standards. Whilst there is a risk that Pellings might seek to challenge the council's award of these contracts, it is the council's technical specialist's view that the level of resourcing proposed by Pellings is

unacceptable, and it is therefore considered that the council can demonstrate to Pellings the basis of its recommendations for award.

53. Contract standing order 2.3 requires that no steps should be taken to award a contract unless the expenditure involved has been approved. Paragraphs 39-40 confirm the financial implications of these awards.

Strategic Director of Finance and Corporate Services

54. This report is seeking approval from the Deputy Leader and Cabinet Member for Housing Management to award the Professional Technical Services contract to Calford Seaden LLP and Potter Raper Partnership for a period up to 10 years with an estimated contract value detailed in paragraph 38, following a tender evaluation process.
55. It is noted that the costs of the contract will be charged to the respective Warm, Dry and Safe capital schemes budgeted within the council's Housing Investment Programme which is currently approved up to 2015/16. Further capital allocations will need to be approved to meet these costs beyond this period. Officers should therefore ensure works on these contracts are only commissioned against confirmed funding into the future. Any awards will be subject to the council's scheme of management.
56. Individual Staffing and other costs connected with this contract to be contained within existing departmental budgets.

BACKGROUND DOCUMENTS

Background Documents	Held At	Contact
GW1 Report - Professional Technical Services Contract cabinet 25 September 2012	160 Tooley Street, SE1 2QH	Ferenc Morath Investment Manager

APPENDICES

No	Title
N/A	

AUDIT TRAIL

Lead Officer	David Markham – Head of Major Works	
Report Author	Ferenc Morath – Investment Manager	
Version	Final	
Dated	19 September 2013	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Head of Procurement	Yes	Yes
Head of Specialist Housing Services	Yes	Yes
Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional team	19 September 2013	