

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 17 April 2014	<b>Meeting Name:</b> Strategic Director of Finance and Corporate Services
<b>Report title:</b>		Gateway 3 Professional Technical Services Contract	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Strategic Director of Housing and Community Services	

## RECOMMENDATIONS

1. That the strategic director of finance and corporate services agree the increase of the first Professional Technical Services contract with Calford Seaden LLP for the first two years of the contract.
2. That the strategic director of finance and corporate services agree the increase of the second Professional Technical Services contract with Potter Raper Partnership for the first two years of the contract.

## BACKGROUND INFORMATION

3. On 30 September 2013 the deputy leader and cabinet member for housing management agreed the award of two Professional Technical Services contracts. The first was with Calford Seaden LLP (CSP) for a period of four years at an estimated annual value of up to £1,125,000 per year for four years with provision for two extensions each of up to three years. The second was with Potter Raper Partnership (PRP) at an estimated annual value of up to £125,000 per year for four years with provision for two extensions each of up to three years.
4. The contracts were to provide professional technical services, in particular to the Major Works team in housing and community services, responsible for the delivery of the majority of the housing capital programme and a vigorous selection process took place on the basis of Best Value and in fact only CSP and PRP met the minimal quality criteria.
5. The contracts were awarded on the basis of a 90/10 split between the two firms, with the PRP allocation starting in the Borough and Bankside and Walworth areas. 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.
6. At the time of the original OJEU advertisement it was felt that there would be an anticipated need for the use of professional firms of between £25-35,000,000 of works per annum. The figure of £1,250,000 per annum for technical services firms was based on anticipated resources at the time, although it was noted in the report that 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.

## **KEY ISSUES FOR CONSIDERATION**

### **Key Aspects of Proposed Variation**

7. The proposal is to increase both the contract sizes in the first two years of the contract to enable the full implementation of the housing capital programme.
8. The programme of housing capital works is not known beyond 2015/16 and a further Gateway 3 report will be prepared if required once an idea of the future years works are known. It is anticipated at this time that there will be a need for a further Gateway 3 report.
9. The proposal will return the 90/10 split between the two firms in the second year of the contract. The first year is an exceptional split due to the amount of WDS work in Borough and Bankside and Walworth, and will help deliver a consistency of service in the area.

### **Reasons for Variation**

10. At the time of the original Gateway 1 in September 2012 and then subsequent OJEU notice, it could never have been anticipated that the housing capital programme would be so large. At the time of the report, the estimated resources were based on known resources at the time, that there would be a WDS programme of up to £35m per year, plus a relatively small revenue need for legal disrepair cases. As it was an estimate based on resources at the time, and it was vital to get in tender prices to enable the programme to proceed on an ongoing basis, it was made clear in the Gateway report that 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. It was always envisaged that the commission would grow beyond the estimated figures at tender stage. The specific areas where there have been significant changes are set out in paragraph 11.
11. Since the original gateway 1 report and partly since the gateway 2 approval there have been a number of substantial changes to the programme, with schemes both brought forward and unforeseen additions to the programme. At the time of the gateway 2 some of these additions to the programme were known to be likely to happen such as the backlog funding with others possibly to happen, but these are now far more likely, along with additional works following more detailed designs at Abbeyfield and Four Squares. These were a series of unforeseen circumstances, and these contracts cannot for technical and economic reasons realistically be carried out separately without major inconvenience to residents and the council;
  - a. The council has obtained substantial Decent Homes backlog funding for 2014/15 of £50.7m from the Greater London Authority, a decision that is outside the control of the council. This has meant a lot of work has been brought forward in particular in the Borough and Bankside and Walworth areas, those areas targeted for PRP which has meant the increase for PRP is so substantial in the first year alone but will normalise in the future, subject to detailed programmes being prepared.

- b. As more detailed surveys are being done on the WDS programme and further stock condition surveys, the condition of the housing stock has been found to be in worse condition than previously reported. Only 10% of the stock had been originally surveyed as part of the first stock condition survey, with the rest of the information having results cloned from that 10%, which formed the basis of the creation of the WDS programme. This was only realised some time after the OJEU notice with a report identifying this to cabinet on 26 June 2013 as part of the update on the WDS programme. This was the first time this issue had been reported.
- c. Essential fire safety works have been required to be carried out, the total programme now being in excess of £75m including the recently agreed sprinkler/ alarm proposals agreed by Cabinet. Figures and details were only known after the OJEU notice and Gateway 2 report as a full programme of Fire Risk Assessments (FRAs) and priorities were prepared following those.
- d. The Coroner has now reported back following the tragic events at Lakanal meaning refurbishment works can now be undertaken although the resources have still to be identified. At the time of the OJEU notice, it was not known what the plans would be for Lakanal as there were options available to demolish or sell the block rather than refurbish it. No figures or surveys were prepared in advance of the Coroners completion as it was not felt appropriate to do so given the potential legal position.
- e. New and expanded regeneration schemes have been brought in to the High Investment Needs Estates (HINE) programme at Four Squares, Abbeyfield and Hawkstone and extra works to Badminton House on East Dulwich estate which is now being refurbished. An appraisal is being carried out for the Tustin Estate and it is anticipated major changes may be made to other estates within the next two years as detailed surveys are carried out and decisions made on the value of basic refurbishment works and provision has been allowed within this variation for some new schemes. At the time of the OJEU notice and Gateway 2 report the sheer size and potential extent of these regeneration programmes was not known and these are now allowed for in this report.
- f. A new strategy will be decided across the stock as part of the Savills review, of which earlier versions first went to cabinet in April 2013 and are still ongoing, and asset management process. This will be implemented after 2015/16 and therefore the need for technical resources will need to be reviewed from year 3 onwards and a further Gateway 3 report done as required.
- g. Additional resources have been identified since the OJEU notice for new TMO buildings, hostels, TRA halls, plus the start of a Preventative Planned Programme (PPM) including new entry phone installations and an external and communal decorations programme since the Gateway 2 report, as the extent of works required has become known.
- h. Substantial works have been identified, especially for Fire Risk Assessment (FRA) and other H & S works to the sheltered units in the borough.

12. In addition to the programme changes, the department has also experienced resourcing changes. It was anticipated at the time that a substantial element of the programme would be undertaken by the Major Works team of lead designers. In practice due to long term sickness and flexible retirement there are some part time vacant areas.
13. The estimates of additional works and programmes can be summarised below but it is likely there will be further works included over the next two years also. This approval covers the following schemes below plus the mainstream WDS works in the original gateway 1 report.

Details of changes	Estimated sums (£,000)
Additional Decent Homes Backlog funding	58,700
Increases in WDS schemes.	5,000
Additional Fire safety works	15,000
Lakanal refurbishment project	12,000
Additional increase in HINE schemes and other regeneration schemes	15,000
TMO offices, hostels and TRA halls.	750
Sheltered Unit works	500

#### **Future Proposals for this Service**

14. Once the housing programme has been agreed beyond 2015/16 then a review of technical services requirements will be made. At this time, consideration will be made to only allowing the contract to run for the initial term, although this may lose all the benefits and experience for the Council of using the same firms and ensuring a consistent high level of service, responsive to resident needs.

#### **Alternative Options Considered**

15. There are two other real options. Firstly using an existing framework prepared by others. These cannot be used as leaseholders were not specifically consulted on the framework proposals. The second option is a new tender process, which would need to be done as an OJEU scheme. This would delay the whole programme for a year and it is not envisaged any better value for money would be obtained. Contracts can be adjusted if there are additional works identified which were not included in the contract and which were not certainly known and would cause economic and technical issues for the Council. There is a limited market of firms who can carry out this work and all those known to council staff did express an interest.

#### **Identified risks for the extension**

16. The key risks of the proposals and actions to diminish these risks are set out below.

Risk	Likelihood before mitigation	Risk mitigation/management	Likelihood after mitigation
CSP or PRP are unable to deal with new workload	Low	CSP have provided a staffing structure to deal with additional workload. PRP have already provided details of staffing as part of their original bid.	Low
CSP are not financially able to deal with the new work.	Low	A financial check has been done by Finance on CSP and there are no issues.	Low
Challenge from CSP due to changes in 90/10 split.	Medium	CSP have confirmed they are happy with new proposals. They are happy with the changes in the first two years and it is a better option for the Council as it allows PRP to maintain a consistent service in the Borough and Bankside and Walworth areas.	Low
Challenge from leaseholders	Low	<ul style="list-style-type: none"> <li>a. Both firms have decreased their overall percentage slightly so leaseholder bills will be reduced, although the base unit rates have remained unchanged.</li> <li>b. If the original tender had been bigger the reduced savings would have been very marginal as overhead costs will be very similar for the firms and the costs of providing professional services would not change. A retender would be very unlikely to get lower rates than the current contracts on a Best Value basis incorporating price and quality.</li> <li>c. None of the other firms passed the minimum quality criteria.</li> </ul>	Low
Challenge from other unsuccessful firms, particularly from those who challenged their	Low	<ul style="list-style-type: none"> <li>a. The firms were advised that the contracts could increase at the time of tender.</li> <li>b. None of the other firms passed the minimum quality criteria.</li> </ul>	Low

failure at the time.		c. One firm initially challenged the decision and were asked for extensive additional information which confirmed they did not meet the criteria and the council were satisfied there had no basis to challenge the award and they withdrew their challenge.	
Challenge from internal staff	Medium	Existing staff would still be awarded any design work as a 'first choice' on all parts of the programme.	
Challenge from firms who chose not to express an interest originally because of the contract value	Low	All the major firms that the Council expected to express interest did so, based on officers experience and knowledge of the market	Low

### Policy implications

- The professional services contracts help deliver on one of the council's Fairer Future promises, that of making all council homes, Warm, Dry and Safe by 2015/16.

### Contract management and monitoring

- The performance of the professional service firms and any commitments made in their bids is monitored by the Major Works team. They ensure for each time the firms are instructed that they follow the works 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 provides 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. The first KPI's will be produced in May 2014, but the initial indications are that both firms are performing very well in terms of both quality and timeliness.
- The spend and performance on the contracts is 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.

### **Community Impact Statement**

20. Having a consistent set of professional service firms working in the borough improves the quality of service and helps the professional technical firms to ensure that the Partnering Contractors in particular work comprehensively with the community.

### **Economic considerations**

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

### **Social considerations**

22. The London Living Wage applies 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 has been 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, this should be easily accomplished by each firm.

### **Environmental considerations**

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

### **Financial Implications**

24. The only revenue element of this report will be an ongoing contribution of approximately £50k for minor repairs and maintenance. This will be treated as revenue contributions to capital outlay as part of the financing of the total spend.

### **Investment Implications (Housing Contracts only)**

25. The increase value for these contracts will be charged directly to the respective projects.
26. On 18 March 2014, cabinet approved a refresh of the Housing Investment capital programme budgets up to the period 2021/22 but individual works programme for future years have yet to be confirmed. Any cost implications arising from the contract variation will need to be contained within the approved capital budgets.
27. In addition to the capital budgets, there will be an ongoing contribution of approximately £50k for minor repairs and maintenance which will be treated as revenue contributions to capital outlay as part of the financing of the total spend.

### **Legal Implications**

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

## **Consultation**

29. 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**

30. Not applicable.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Head of Procurement**

31. This report is seeking approval to vary the two existing professional technical services contracts. These contracts were let in September 2013 to deliver professional consultancy services for construction related projects mainly delivered through the major works programme within the Housing and Community's Services department.
32. The report explains that due to unforeseen circumstances there is a significant amount of additional work which will need to be delivered through these contracts.
33. With such an increase in contract value there will be risks associated with the recent procurement process and the services to be delivered. Paragraph 16 highlights these risks and their rating both before and after the mitigation action is in place. All risks have been considered to be low in nature
34. These contracts were originally let with the potential to run for ten years including extension provision. Given the increase in volume that has occurred so early on in the life of the contracts, and the possibility of further additional work being identified, it is vital that the spend going through these contracts is monitored closely. In the event of any further increase in contract value consideration should be given to ending the contract after the initial term. This may be necessary to mitigate further procurement risks and ensure value for money is being achieved. The report confirms that a review of the current arrangements will be undertaken once the housing programme has been agreed beyond 2015/16.

### **Director of Legal Services**

35. This report seeks the approval of the strategic director of finance and corporate services to additional services being included within the 2 professional technical services contracts as further detailed in recommendations 1 and 2. As the contract values exceed £250k and the variations are more than 10% of that contract value then approval of these variations is required from the strategic director of finance and corporate services.



36. The professional technical services contracts were originally tendered in accordance with the relevant EU Regulations, and therefore additional services being provided through them should only be to the extent that those Regulations and the contracts permit. Whilst an anticipated spend was noted at the point of tendering this contract, the OJEU notice and tender documents specified that this sum could vary from year to year depending on programme and funding, and could therefore increase if additional funding became available. A possible increase in the amount of work was envisaged when the contract was tendered, and therefore additional services being provided through the contracts would not be in breach of the EU requirements. However the extent of that increase is significant, and for this reason there remains a risk that these variations could be subject to challenge. This risk might be mitigated by the fact that the increases are not for the totality of the contract period, with levels of services intending to return to original amounts (and percentage split) in years 3 and 4.
37. There are also provisions under the EU Regulations which permit negotiations to be undertaken with existing contractors (to provide additional services) if through unforeseen circumstances those services were not included in the original contract, and for technical or economic reasons cannot be undertaken separately without great inconvenience to the council. However this provision may only be relied upon if the value of the additional services does not exceed 50% of the original contract value, so would apply to the additional services to be instructed to CSP. Paragraph 14 of this report sets out the detailed reasons for the additional services being required, and the unforeseen nature of some of the additions. As noted in the report it would cause the council great inconvenience to carry out these services separately. Whilst there are good reasons for these variations, and the council has mitigated the risks as far as it is able, because of the size of the variation there remains a risk of challenge which is noted in paragraph 16.
38. Contract standing order requires that no steps should be taken to vary a contract unless the expenditure involved has been identified. Paragraphs 24 to 27 confirm the financial implications.

#### **Strategic Director of Finance and Corporate Services (Cap14/002)**

39. This report is seeking approval from the Strategic Director of Finance and Corporate Services to approve the increase in the contract value in the first two years of the Professional Technical Services contract to Calford Seaden LLP and Potter Raper Partnership as detailed in paragraphs 1 and 2. The reasons for the contract variation are included in the main body of the report.
40. The financial implication provides details of the contract variation and it is noted that the costs of these contracts will be charged to the respective projects and need to be contained within approved budget.
41. Staffing and any other costs connected with these contracts to be contained within existing departmental revenue budgets.

#### **Head of Specialist Housing Services (For Housing contracts only)**

42. This is a qualifying long term agreement under the terms of the Commonhold and Leasehold Reform Act 2002, and Section 20 consultation was carried out under schedule 2 of the regulations in July 2013. Consultation did not refer to the contract value since this was an upper limit only per contract and does not relate

to a fixed sum tendered. Consultation relied instead on the unit rates, which remain the same or marginally lower. No further consultation with leaseholders is required on this agreement

43. Any costs arising from this contract remain chargeable to leaseholders where they are incurred in support of chargeable major works

**FOR DELEGATED APPROVAL**

Under the powers delegated to me in accordance with the Council's Contract Standing Orders, I authorise action in accordance with the recommendation(s) contained in the above report.

Signature  ..... Date 30.4.14.....  
 Duncan Whitfield, Strategic Director of Finance and Corporate Services

**BACKGROUND PAPERS**

Background Papers	Held At	Contact
Gateway 2 Report – Professional Technical Services Contract	Chief Executive's – 160 Tooley Street	Everton Roberts, 0207 525 7221

**APPENDICES**

No	Title
n/a	

**AUDIT TRAIL**

<b>Lead Officer</b>	Gerri Scott, Head of Housing and Community Services
<b>Report Author</b>	David Markham, Head of Major Works
<b>Version</b>	Final
<b>Dated</b>	15 April 2014
<b>Key Decision?</b>	Yes

**CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER**

Officer Title	Comments Sought	Comments included
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Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	Yes	Yes
<b>Cabinet Member</b>	n/a	n/a
<b>Date final report sent to Constitutional Team</b>		1 May 2014

