

Item No.	Classification: Open	Date: 2 October 2017	Meeting Name: Strategic director of housing and modernisation
Report title:	Gateway 1 Procurement Strategy Approval Responsive Repair and Maintenance - Fire Protection Contracts (North & South)		
Ward(s) or groups affected:	All		
From:	Director of Asset Management		

RECOMMENDATION

1. That the strategic director of housing and modernisation approves the procurement strategy outlined in this report to undertake a competitive tender using the council's works approved list for two (2) responsive repair and maintenance fire protection contracts as detailed below at an estimated annual combined cost of £1m for a period of three years making a total estimated value of £3m commencing on 3 October 2018.
 - Contract A – North of the borough - £500,000 per annum
 - Contract B – South of the borough - £500,000 per annum

BACKGROUND INFORMATION

2. Currently, there is a contract for long term repairs and maintenance (the contract) with Mears Ltd (Mears) for the south of the borough and there is a service level agreement (SLA) in place with the council's Southwark Building Service (SBS) for the north of the borough, which provide housing repair and maintenance works to the geographical divisions.
3. The contract with Mears commenced on 3 October 2013 for an initial five year period, with the option to extend for a further 5 years (three years plus two years) for an estimated value of £55m. The initial period is due to expire on 2 October 2018. At this time, there are no plans to utilise the extension option.
4. The SLA with SBS commenced on 3 June 2009 for a 10 year period and is due to expire on 8 June 2019.
5. The SLA and the contract provide the following works across all trades to residential buildings;
 - Day to day responsive repairs
 - Void works
 - Out of hours emergency works
6. Both Mears and SBS sub-contract responsive repairs and maintenance fire protection works.
7. An options appraisal, for the future repairs service, was presented to cabinet member for Housing and cabinet member for Finance, Modernisation and Performance on 11 September 2017. This report detailed various options with the recommendation to;
 - Implement a new SLA with SBS to deliver internal non leasehold chargeable repairs to tenant properties.

- Procure a number of measured term contracts for leasehold chargeable works as detailed below;
 - i. Two responsive repair and maintenance (2) roofing and rainwater contracts.
 - ii. Two responsive repair and maintenance (2) communal repairs contracts.
 - iii. Two responsive repair and maintenance (2) fire protection contracts.
 - iv. One responsive repair and maintenance (1) metal works contract.
8. The asset management team undertake regular housing inspections of the fire protection works to ensure repairs are completed and free from hazards.
 9. The responsive repairs and maintenance contracts aim to maintain fire protection systems across the council's housing stock. These contracts will complement the quality homes improvement programmes (QHIP).
 10. The proposed scope of works will be:
 - Passive & Active fire protection, including all / any associated works
 - Windows, Doors, frames, linings and casings in compliance with Approved Document B
 - Associated sundry building works
 - All scaffolding, mobile towers, hydraulic lifts and working platforms to facilitate the works
 - Repair all external associated repairs
 11. These new contracts will be awarded based on a geographical split (north and south) of the borough, each providing all of the works, with a term for each contract of three years.
 - a. Contract A – north - Walworth, Borough and Bankside, Bermondsey, Rotherhithe
 - b. Contract B – south - Camberwell, Peckham, Nunhead and Peckham Rye, Dulwich
 12. The rationale for the 3 year contract duration is to allow asset management time to evaluate the effectiveness of the contracts described above in paragraph 6 and whether they deliver value for money, and allow sufficient time to re-procure the contracts.

Summary of the business case/justification for the procurement

13. The responsive repairs and maintenance contracts will contribute to maintaining the council's housing stock complementing the warm dry and safe works already undertaken and future QHIP. These contracts will fall within the scope of the Right To Repair Regulations 1994.
14. Residents rely on the council to ensure that all passive & active fire protection, windows, doors, frames, linings and casings are maintained to a standard to reduce the risk from fire in homes and communal areas. The council also needs to ensure that preventative maintenance is undertaken to remove the demand on responsive repairs. The provision of these contracts will contribute to the health and safety and quality of life of council residents.
15. Subjecting these requirements to competitive tender will demonstrate best value to leaseholders. Historically these works have always been sub-contracted. There is a need to ensure service delivery and therefore these two contracts will provide back up arrangements.

16. The organisation of service delivery areas (north and south) reflect the volume of orders and values, and present to the market packages that local small and medium sized enterprises (SME) can tender for and resource. This is expected to attract highly competitive tenders.
17. The three year contract period will enable officers to analyse the contracts' approach to determine its effectiveness. This analysis will form the basis for procurement of longer term contracts.

Market considerations

18. The estimated value of these works contracts falls below the EU tender threshold. As such it is proposed to competitively tender these works to contractors on the council's works Approved List under the general building maintenance and ground works categories.
19. Assessment by asset management team indicates that the market is well developed as there are 20 suitably sized contractors (within the London area) to whom the council can tender the works and a tender list will be drawn up in accordance with contract standing orders (CSO) 4.3 with the assistance of the council's finance and governance department.

KEY ISSUES FOR CONSIDERATION

Options for procurement route including procurement approach

20. The engineering and compliance team considered the following options before determining the procurement strategy set out in this report:
 - Do nothing - this is not an option available to the council. As a landlord and employer, it is essential that the council maintains the fire protection systems.
 - The council provides these services in-house – the council's SBS department currently provide responsive repairs and maintenance in the north of the borough. However, as these works will be chargeable to leaseholders, the council would risk not recovering its costs from leasehold contributions should these works not be procured. This has therefore been precluded as an option but SBS will be invited to tender for these works.
 - The use of internal or external frameworks - there are no existing external frameworks.
 - Shared Services - the neighbouring boroughs already have their own contracts in place, which have not been opened up for other boroughs to use.
21. As none of the above options are suitable and these works are estimated below the EU threshold for works contracts, it is recommended that these works are competitively tendered in line with CSO 4.3, with contractors invited from the general building maintenance and ground works categories of the council's works approved list as set out in paragraph 22 below.

Proposed procurement route

22. The proposed procurement route is to undertake a competitive tender inviting a minimum of five contractors from the general building maintenance categories of the council's works approved list as well as SBS and any nominated contractors.

Identified risks for the procurement

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

R/N	Risk Identification	Likelihood	Risk Control
R1	The procurement process fails due to inadequate quality of submissions by tenderers	Low	Ensure that tender documents are drafted to facilitate submissions of required standard.
R2	The procurement process is delayed	Low	Effective procurement project management.
R3	Contractor(s) ceases trading, goes into liquidation or administration leaving works incomplete.	Low	Use of the council's works Approved List means that credentials and financial stability of tenderers are assured. Second stage appraisal will test financial stability of tenderers. Use of the backup contractor or the council's works Approved List whilst a re-procurement is undertaken.

24. A performance bond will not be required for either contract. The contract documentation will include for a percentage of monies to be withheld until satisfactory completion of the contracts. An ultimate holding/parent company guarantee will be required if the successful contractor(s) has a parent company.

Key /Non Key decisions

25. This report deals with a non key decision.

Policy implications

26. The works provided through these contracts will contribute to the council's Fairer Future Promise of quality affordable homes, improving housing standards and revitalising neighbourhoods.

Procurement project plan (Non Key decisions)

Activity	Completed by
DCRB Review Gateway 1:	02/10/2017
Brief relevant cabinet member (over £100k)	02/10/2017
Approval of Gateway 1: Procurement strategy report	04/10/2017
Issue Notice of Intention (Applies to Housing Section 20 Leaseholder consultation only)	09/10/2017
Completion of tender documentation	22/11/2017
Invitation to tender	27/11/2017
Closing date for return of tenders	29/01/2018

Activity	Completed by
Completion of evaluation of tenders	26/02/2018
Forward Plan (if GW2 is key decision)	Jan 2018
Issue Notice of Proposal (Applies to Housing Section 20 Leaseholder consultation only)	05/03/2018
DCRB Review Gateway 2: Contract award report	19/03/2018
Notification of forthcoming decision (if GW2 is key decision)	28/03/2018
Approval of Gateway 2: Contract Award Report	03/04/2018
End of scrutiny Call-in period and notification of implementation of Gateway 2 decision (If GW2 is key decision)	11/04/2018
Contract award	16/04/2018
Add to Contract Register	18/04/2018
TUPE Consultation period (if applicable)	21/09/2018
Contract start	03/10/2018
Initial Contract completion date	02/10/2021
Contract completion date – if extension(s) exercised	N/A

TUPE/Pensions implications

27. The appointment of new contractors for the existing services in this proposed retender is likely to amount to a Service Provision Change under The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). TUPE will apply on a service provision change where activities cease to be carried out by a contractor on the council's behalf and are instead carried out by another contractor on its behalf, where there is an organised grouping of employees whose principal purpose is the carrying out of that activity, and where the activity is to be carried out otherwise than in connection with a single specific event or task of short-term duration. Only those employees assigned to the transferring activity will transfer. This may affect both those providing services under the contract through Mears Ltd. as well as staff providing services under the SLA with SBS in the event that this procurement results in those services being delivered by a new provider.
28. Mears Ltd. has potentially around 100 employees providing services under the contract at present and a number (approximately 20) of individuals engaged as subcontractors. There are also likely individuals engaged as subcontractors carrying out services under the SLA with SBS that may be in the scope of this contract. Further information is being sought from Mears Ltd. and SBS to assess the number of employees who may be in scope to transfer to any new provider.
29. There may also be TUPE implications for the council as an employer should there be an organised grouping of employees whose principal purpose is the carrying out services

under the SLA with SBS that will be within the scope of this contract. Further information is being sought to ascertain the number of affected employees who may be in scope to transfer to any new provider.

30. There may be pension implications for the council in regard to any affected employees of the council and of Mears Ltd. who are members of or who may be eligible for membership of the LGPS. Further information is being sought to determine the extent of these pension implications.
31. The above information is required before the tender process commences as relevant TUPE and pension details need included in the tender pack.
32. Definitive advice on the full scope of any pension or TUPE implications cannot be determined until due diligence is carried out. This due diligence work needs to be carried out before the tender process commences as the results need to be included in the tender pack.

Development of the tender documentation

33. The asset management team with the assistance of legal services and the procurement advice team will prepare tender documentation. The form of contract to be used will be JCT Measured Term Contract 2016, which will be subject to amendment as directed by the council's legal services department. The contract documents will be passed to the legal services department for formal execution.

Advertising the contract

34. Not applicable as contractors will be selected from the council's works Approved List and any contractor nominated by leaseholders.

Evaluation

35. Tenders will be evaluated on the basis of M.E.A.T (most economically advantageous tender) using a weighted model of 70:30 price and quality.
36. Price evaluation will be undertaken by officers in the engineering and compliance team and checked by officers in the housing and modernisation finance team.
37. Officers in the asset management team will undertake quality evaluation. An evaluation methodology will be agreed with the procurement advice team and legal services.

Community impact statement

38. The two contracts are borough wide and support the council's Fairer Future Promises for quality affordable homes and revitalised neighbourhoods.
39. Both contracts will be of a low impact to tenants, homeowners and other stakeholders as these works will be done externally.

Social Value considerations

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

Economic considerations

41. The cost of these contracts is contained in paragraph 1 of this report.
42. The contracts will contain the requirement to provide work experience for schools and those not in education, employment or training.

43. The successful contractors will be encouraged to participate in the Southwark Construction Apprenticeship Scheme
44. SME companies will be selected from the council's works approved list.

Social considerations

45. The successful contractors will be required to demonstrate that they operate an Equal Opportunities Policy, comply with the provisions of the Equalities Legislation, the Employment Relations Act 1999 (Blacklists) Regulations 2010 and the Prevent Duty under section 26 of the Counter-Terrorism and Security Act 2015. The council can exclude companies who break the law by blacklisting if they are either still blacklisting or have not put into place genuine actions concerning past blacklisting activities. The council can require "self cleaning" which enables a potential contractor to show that it has or will take measures to put right its earlier wrongdoing and to prevent them from re-occurring and to provide evidence that the measures taken by the economic operator are sufficient to demonstrate it has:
- "Owned Up": clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities
 - "Cleaned Up": taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct, and
 - "Paid Up": paid or undertaken to pay compensation in respect of any damage caused.
46. The council's contract conditions will include an express condition requiring compliance with the blacklisting regulations and include a provision to allow the contracts to be terminated for breach of these requirements. In addition, the council's contract conditions will include an express condition requiring compliance with the Prevent Duty. The council's working in occupied premises policy will include this provision and will require the successful contractors to notify the council if they have any concerns.
47. The successful contractors are expected to meet the London Living Wage (LLW) requirements. For these contracts, the quality improvements are expected to include a high calibre of staff that will contribute to the delivery of the services on site and it is therefore considered that best value will be achieved by including this requirement. As part of the tender process, tenderers will be required to confirm that they pay the staff, who will be engaged on the contracts, equal to or more than the minimum LLW hourly rate and will continue to do so through the contract term and confirm how productivity will be improved by payment of LLW. On award, any associated quality improvements and cost implications will be monitored as part of an annual review of each contract.
48. The successful contractors will be encouraged to consider trades union recognition in line with the council's Fairer Future Procurement Strategy.
49. The successful contractors will be encouraged to register with and seek to secure accreditation through the TfL Fleet Operator Recognition Scheme (FORS).

Environmental/Sustainability considerations

50. The contracts will contain requirements to recycle metal and timber products.
51. The use of low emission vehicles and the planning of journeys will be encouraged within the contracts.

Plans for the monitoring and management of the contract

52. The contracts will be let by the engineering and compliance team. Contract management will be undertaken by the repairs and maintenance teams.

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

Staffing/procurement implications

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

Financial implications

58. These works are currently performed by the repairs contractors (SBS and Mears) and are sub-contracted out, these will now form part of a separate fire protection contracts (North and South) from October 2018 for a period of 3 years.
59. The estimated cost of the proposed fire protection contracts is £1m per annum and can be met from the current (2017/18) repairs and maintenance budget.
60. The repairs and maintenance budget allocation may be subject to further adjustments depending on budgetary pressures and will be reconfirmed at the GW2 contract award stage.

Investment implications

61. None

Legal implications

62. Please see supplementary advice from the director of law and democracy at paragraph 71.

Consultation

63. Consultation with residents will be held at the monthly tenant and resident association meetings and estate walkabouts.

Other implications or issues

64. None

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Head of Procurement

65. This report seeks approval for the procurement strategy of two fire protection responsive repair contracts for a period of up to 3 years. The report explains the two contracts will be based on a geographical split and provides justification for having two separate contracts.
66. The report advises that the works are essential to ensure that all fire protection systems are properly maintained in all buildings and associated communal areas in accordance with the council's standard building risk assessment methodology.
67. The options for procuring these works have been explored and the report concludes that the most viable option is for the council to carry out a sub OJEU competitive tender process. The process described in the report is in line with the Council's contract standing orders (CSO's) and EU regulations.

68. 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.
69. The project timetable included within the report is achievable for the proposed procurement strategy, provided that appropriate resources are allocated to the project at the appropriate time.

Director of Law and Democracy

70. This report seeks the approval of the strategic director of housing and modernisation for the procurement strategy to procure two contracts as further detailed in paragraph 1.
71. The nature and value of these works are such that they are subject to the council's contract standing orders (CSO). CSO 4.3 requires all reasonable steps to be taken to obtain at least 5 tenders and those invited to submit tenders must be selected from the council's works approved list.
72. Paragraph 22 of this report confirms that this process is to be followed.
73. As the value of the intended contracts are below the relevant EU threshold, the decision to approve this procurement strategy is reserved to the relevant chief officer (or under her delegated authority).

Strategic Director of Finance and Governance

74. None

Director of Exchequer (for housing contracts only)

75. This is a qualifying long term agreement under the terms of the Commonhold and Leasehold Reform Act 2002. The work streams referred to are service chargeable costs and consultation will be required under schedule 1 of the regulations. It is necessary to complete the Notice of Intention consultation before tenders are invited for this contract.

PART A – TO BE COMPLETED FOR ALL DELEGATED DECISIONS

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

Gerri Scott

Date... 12-10-2017

Gerri Scott, Strategic Director of Housing and Modernisation

PART B – TO BE COMPLETED BY THE DECISION TAKER FOR:

- 1) All key decisions taken by officers

- 2) Any non-key decisions which are sufficiently important and/or sensitive that a reasonable member of the public would reasonably expect it to be publicly available.

1. DECISION(S)

As set out in the recommendations of the report.

2. REASONS FOR DECISION

As set out in the report.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED BY THE OFFICER WHEN MAKING THE DECISION

As set out in the report.

4. ANY CONFLICT OF INTEREST DECLARED BY ANY CABINET MEMBER WHO IS CONSULTED BY THE OFFICER WHICH RELATES TO THIS DECISION

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

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

6. DECLARATION ON CONFLICTS OF INTERESTS

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

or

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

(* - Please delete as appropriate)

BACKGROUND DOCUMENTS

Background Documents	Held At	Contact
Future repairs Options	Housing & Modernisation, Asset Management	Gavin Duncumb Ext 50685
G:\Asset Management\Engineering & Compliance\COMMERCIAL TEAM\Gavin Duncumb\Dave markham\Repairs		

APPENDICES

No	Title
None	None

AUDIT TRAIL

Lead Officer	David Markham, Director of Asset Management	
Report Author	Gavin Duncumb, Commercial Manager	
Version	Final	
Dated	9 October 2017	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Finance and Governance	Yes	No
Head of Procurement	Yes	Yes
Director of Law and Democracy	Yes	Yes
Director of Exchequer (for housing contracts only)	Yes	Yes
Cabinet Member	No	No

Contract Review Boards		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	No	No
Cabinet Member	Yes/No	Yes/No
Date final report sent to Constitutional /Community Council/Scrutiny Team		TBC

