

Item No.	Classification: Open	Date: 18 September 2019	Decision Taker: Strategic Director of Housing and Modernisation
Report title:		Gateway 2 Works Contract for the New Homes Delivery programme – Commercial Way	
Ward(s) or groups affected:		Peckham	
From:		Director of New Homes Development	

RECOMMENDATION(S)

The Strategic Director of Housing and Modernisation:

1. Approves the award of works contract for the 109 unit scheme located on Commercial Way, appointing Durkan Limited commencing from 08 August 2019 for a period of 98 weeks plus 12 weeks for mobilisation from possession.
2. Approves an anticipated contingency sum and a further unanticipated contingency sum in the total scheme costs.

BACKGROUND INFORMATION

3. Planning permission was granted on 21 May 2018 for a total of 109 new homes, with 74 flats for council rent including 8 wheelchair units and 35 intermediate units (shared ownership). The site will accommodate 8 car parking spaces for the wheelchair units and 2 car club parking spaces as well as child play space provision.
4. The planned procurement strategy was the subject of a Gateway 1 report which was approved by Cabinet on 4 April 2016. On 26 June 2019 a Notice of variation to executive scheme of delegation was approved by the Leader to change the decision maker who approves to proceed with the procurement of a contractor to deliver the new homes on the Commercial Way site from the Chief Executive to the Strategic Director of Housing and Modernisation.
5. The Gateway 1 report recommended procuring these works following the OJEU restricted procedure.
6. The procurement strategy relates to the council's 11,000 new homes programme.
7. The tenders sought a JCT Design & Build Contract 2011 based on Southwark's Employers Requirements and the Stage 4 scheme design.
8. The works contract will be for a fixed period of 98 weeks plus 12 weeks for mobilisation from date of the transfer of site possession from the council to the contractor. There is a high possibility that the existing substation may need to be replaced rather than upgraded as was originally recommended by United Kingdom Power Networks. If a new substation is required the scheme will need to be redesigned to accommodate it. In this scenario this work will be covered as a Pre-Contract Services Agreement. An alternative to the PCSA would be to include the design work within the existing contract, which would trigger an

extension of time of at least 2 weeks beyond the fixed period noted above. However a PCSA is likely to be a better arrangement for the council.

Procurement project plan (Key Decision)

9. See table below:

Activity	Completed by/Complete by:
Approval of Gateway 1: Procurement Strategy Report	07/06/2016
Forward Plan for Gateway 2 decision	20/06/2019
Invitation to tender	06/07/2018
Closing date for return of tenders	14/09/2018
Completion of evaluation of tenders	26/10/2018
Briefed relevant cabinet member (over £100k)	15/07/2019
DCRB Review Gateway 2:	08/07/2019
CCRB Review Gateway 2:	18/07/2019
Notification of forthcoming decision – Five clear working days	13/08/2019
Approval of Gateway 2: Contract Award Report	14/08/2019
Scrutiny Call-in period and notification of implementation of Gateway 2 decision	23/08/2019
Debrief Notice and Standstill Period (if applicable)	27/08/2019
Contract award	15/10/2019
Add to Contract Register	14/10/2019
Contract start	21/10/2019
Publication of award notice in Official Journal of European (OJEU)	16/10/2019
Publication of award notice on Contracts Finder	17/10/2019
Contract completion date	30 /11/2021

KEY ISSUES FOR CONSIDERATION

Description of procurement outcomes

10. The procurement was designed to select one contractor who will deliver construction works in line with the planning approval for the Commercial Way housing development.
11. The tendered price is considered to represent value for money.

Key/Non Key decisions

12. This report deals with a key decision

Policy implications

13. These 109 new homes are in line with the council's principles and visions for a new housing strategy which is aimed at increasing the availability, affordability and quality of homes in the borough. The new homes will play a key role in assisting the council to achieve its target of building 11,000 new homes by 2043. The programme has a short term objective of 2,500 homes by 2022.

Tender process

14. The Commercial Way works contract was tendered in accordance with an EU restricted procedure that follows two stages, Pre-Qualification (PQQ) followed by Invitation to Tender (ITT).
15. Following advertisement through the OJEU and the London tenders portal, 13 contractors responded to the pre qualification questionnaire and 5 contractors were invited to tender in accordance with the guidance in the invitation to tender.
16. The tendering exercise was undertaken using the council's E Procurement portal, Pro Contract 3.
17. The closing date for the standard supplier's questionnaire was 11 May 2018. The closing date for the tenders was 14 September 2018. The tenders were reviewed on 26 October 2018.
18. The pre qualification questionnaire and the quality section of the subsequent tenders were evaluated by LBS officers and a representative from Martin Arnold, (appointed as Employers Agent for the project). A consensus scoring method was used during this evaluation.
19. The price and contract sum analysis were examined by the appointed Quantity Surveyor for the project. Financial checks on each tenderer were completed by the council's Finance department.

Tender evaluation

Pre Qualification Questionnaire

20. The standard suppliers questionnaire included a quality assessment that focused on the following:
 - a. Experience
 - b. Quality and Value for Money
 - c. Community Engagement
21. The following tables show the quality scores for the tenderers the top 5 scoring tenderers highlighted in green were shortlisted and invited to ITT stage. The lowest scoring contractors highlighted in yellow were not invited to ITT stage:

Overall Summary

Tenderer	Rank
Durkan Limited	1
Mulalley and Company Limited	2
Higgins Construction PLC	3
United Living (South) Limited	4
Engle Regeneration Limited	5
Hill Partnership	6
Purelake New Homes	7
Neilcott Construction	8
Guildmore	9
AMCM Group	10
EHA Group	11
Kevin Watson Group	12
Jay Tech Venutres	FAIL

Invitation to Tender

22. As previously approved in the Gateway 1 report, tenders were evaluated on the basis of the most economically advantageous tender (MEAT), with a 60/40 quality/price split. This is a revision from the Gateway 1 report which recommended a 70/30 split for quality and price, the choice to prioritise quality over price for this particular scheme takes into account the size and the complexity of the project and is considered an appropriate response to the emerging build requirements post-Grenfell.
23. Tenderers were required to provide information to support their quality submission that demonstrated their ability to fulfil the requirements of the contract. The questions asked were focused around the following:
 - a. Quality, Innovation and Value for Money
 - b. Constraints and Delivery
 - c. Defects, Quality and Future Maintenance
24. The questions within the quality assessment were weighted equally and detailed in the tender evaluation assessment criteria included within the tender documents.
25. Tenderers were required to provide a contract sum and a contract sum analysis, which was evaluated by the Employers Agent.
26. All firms invited to tender submitted a tender, with the exception of United Living who withdrew due to "insufficient resources".
27. After bidders submitted their tenders council officers and the employer's agent undertook an extended clarifications period. This was due to requiring further technical clarifications from contractors about how they would manage the access arrangements on site as Cronin Street must remain accessible in the event of an emergency. Officers also carried out investigations and discussions regarding the Industry's request to include a Brexit clause as part of their contract. However, following these investigations and discussions it was determined that such a clause should not be included in the contract. The clarifications resulted in a delay in tender process.

28. All tenderers met the quality threshold scores in accordance with the evaluation assessment criteria and there were no tenders excluded. The successful tenderer was Durkan Limited. The scores achieved by the tenderers were as follows:

Tenderer	Rank
Durkan Limited	1
Higgins Construction PLC	2
Engie Regeneration Limited	3
Mulalley and Company Limited	4

29. The total score for price was 40%, with 38% awarded for the lowest tender price and the remaining 2% awarded for the lowest provisional sums.

Plans for the transition from the old to the new contract

30. Not applicable as not a transition to a new contract.

Plans for monitoring and management of the contract

31. The project management, including the management and administration of the contractor appointment, will be run and resourced through the New Homes Development Team. Performance of the consultant team will be subject to constant scrutiny and monthly formal review including reviews on cost, quality and programme. The officer client team will use a number of mechanisms for monitoring and controlling the financial and programme performance of the contract, including,
- Strategic cost plan, which will be regularly reviewed and updated
 - Monthly site meetings and monthly progress reports
 - Monthly financial statements by the contractor and verification by the Employers Agent
 - Monthly appraisals of progress against programme
 - Tracking and chasing actions on critical issues
 - Periodic project team 'look ahead' workshops covering key phases of work and risks
 - Risk and issues log
32. Payment will be made on a monthly on the basis of a valuation that has been verified and agreed by the Employers Agent.
33. Internal governance arrangements for the programme were reported to cabinet in December 2014. There have also been regular updates to DCRB and CCRB. These confirmed that ultimate responsibility for the overall programme resides with the Delivery Programme Board, chaired by the Strategic Director of Housing & Modernisation

Identified risks for the new contract

RISK		RISK LEVEL	MITIGATION ACTION
1	Contractor has inadequate resources and management arrangements to mobilise and deliver the contract	Low	As a part of the quality assessment the New Homes Development Team requested a financial assessment of the bidding contractors. The Finance evaluation concluded that there were no matters of concern relating to the economic or financial standing of Durkan Limited. Once in contract the New Homes Development Team will monitor the contract and regularly review performance.
2.	Contractor risk of insolvency	Low	NHBC insolvency cover will be obtained by the contractor, in addition a parent company guarantee for this project will be sought.
3.	Project cost overruns	Low	The form of contract used for this project is a JCT Design and Build contract and the contract sum is all inclusive subject to any provisional sums and future variations. All the surveys which the council anticipates will be necessary have been carried out which should help mitigate against there being any unforeseen site conditions or abnormalities. Any future variations will be fully scrutinised, justified and costed by the Employers Agent prior to instruction. Value engineering will take place where necessary to ensure that the budget is achieved.
4.	Project delivery delays resulting from discharge of planning conditions and liaison with third party organisations.	Medium	The new homes delivery team will assist where possible with liaison with third parties to help mitigate delays, particularly any which may result from the discharge of planning conditions or necessary approvals from within the council. Any extension of times will be fully scrutinised, justified and costed by the Employers Agent and concerns monitored at regularly meetings

			with the contractor. Liquidated Ascertained Damages sums have been included as part of the contract and will be claimable should the project overrun without any justification.
5	Contractor seeking further negotiations on contractual terms prior to entering into contract.	Low	A standard JCT works contract is being utilised, with the council's amendments to the terms clearly set out from the start of the tender process. The tender documents and clarifications during the tender process have been robust and clearly define the terms of the contract.

34. A performance bond/guarantee will be provided for this contract.

Other considerations (Design Specification Compliance)

35. Southwark council has standard specifications in a number of areas of work and these will be used as appropriate. This will include using Southwark Housing Design Standards.

Community impact statement

36. Southwark is a borough with high levels of deprivation, low income levels and high levels of housing need. Southwark's housing Strategy 2009-16 identified that there is a shortage of affordable housing in the borough, particularly of larger homes. Households from black and ethnic minority communities tend to be over-represented among those living in overcrowded, poor quality housing.

37. Cabinet agreed a new vision for Southwark through its 2013 to 2043 housing strategy which included a principle to use every tool at our disposal to increase the supply of all kinds of homes across Southwark.

38. The proposals to increase the supply of affordable, good quality homes will benefit households in need from all Southwark communities, and will increase the housing options available for older people and people with disabilities.

39. Those households in the vicinity of the new developments may experience inconvenience and disruption in the short term, whilst works are taking place but such communities will benefit in the longer term from the provision of new homes. Particularly as 50% of these homes will be let to existing tenants from the local area subject to an agreed local lettings policy.

40. Local residents will continue to be consulted at each stage of the development proposals as outlined in the Charter of Principles agreed by cabinet in November 2014.

Social Value considerations

41. 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 social value considerations included in the tender (as outlined in the Gateway 1 report) are set out in the following paragraphs in relation to the tender responses, evaluation and commitments to be delivered under the proposed contract.

42. The councils approach to procurement of design, development and construction process will ensure a requirement to maintain and improve the sustainability of each tendered project.
43. A low energy, efficient and cost effective building engineering services design that keeps running costs to a minimum will be an essential component of the project brief. Key considerations will include;
 - Consideration of whole life-cycle costs
 - Sustainable sourcing
 - Incorporation of environmentally benign heating and lighting provision
 - Provision of facilities and equipment to encourage the re-use and recycling of materials including, where practical, water recycling.
 - Ensuring projects achieve Code of Sustainable Homes criteria or any successor requirement.
44. The appointed contractor will be participating in a local employment and training initiative in line with Southwark Economic Wellbeing Strategy 2012-20. The initiative will generally conform to any Local Government policy including requirements set-out by the Homes and Community Agency and/or Greater London Authority that generally will encompass the Contractor, wherever possible, being encouraged to employ local subcontractors and labour and shall involve the training and employment of local people. Such employment and training will be relevant to the needs of the local community.

Economic considerations

45. The design briefs for the new homes will be developed in consultation with the 'user client' officers and make it clear that the council is seeking developments that are not only attractive and functional in their design but also durable and easy to maintain with low running costs.
46. The council is an officially accredited London Living Wage (LLW) Employer and is committed to ensuring that, where appropriate, our contractors and subcontractors pay their staff at a minimum rate equivalent to the LLW rate. The Gateway 1 report dated 07 June 2016 confirmed, for the reasons stated in that report, payment of LLW was an appropriate and best value requirement for this contract. The 11,000 new homes programme is a strategically important undertaking for the council and its benefits are expected to be realised in a number of ways, including the recruitment of qualified staff, retention of staff and an improved service delivery to the council. Each tenderer agreed to this in section 2.2 of the contract amendments issued with the tender. Following award, quality improvements and costs implications linked to the payment of LLW will be monitored as part of the contract review process.

Social considerations

47. The new housing will provide high quality affordable housing for local people in need of accommodation. 50% of these homes will be made available to existing tenants in the local area based on an agreed local lettings policy. The remainder will be made available to other households in need of accommodation from the council's housing register.
48. The new rented homes will be let at social rent levels.
49. The council can exclude companies who break the law by blacklisting or have not put into place genuine actions concerning past black listing 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 personal 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.
50. The council has requested the necessary information from Durkan Limited (using the council's standard documentation in relation to blacklisting) and they have confirmed that they are not in breach of the requirements under Regulations 3(1) of the Employment Relations Act 1999 (Blacklisting) Regulations 2010. The contract conditions also includes an express condition requiring compliance with the Blacklisting Regulations and include a provision to allow the contract to be terminated for breach of these requirements.
51. The contractor is obliged to work with council approved local employment and skills agencies to recruit borough residents into construction industry apprenticeships. They will provide a minimum of 16 unemployed borough residents with sustained construction industry employment they train a minimum of 16 borough residents with short courses and they will provide at least 4 new construction Industry Apprenticeships or NVQ Starts.

Environmental considerations

52. By investing in high quality and well designed buildings and estates the Council aim to achieve positive impacts which will benefit the environment and increase the stock of environmentally friendly buildings within the borough.
53. As part of the design development process, there will be a requirement for environmental assessments to be completed, with a view to identifying what impact would be caused by any proposed development.

Market considerations

54. The market for construction related consultancy services is good. Of the 13 firms expressed an interest in the project at SQ stage, 5 were invited to tender

and 4 subsequently provided a bid. This level of response is considered to be good.

Staffing implications

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

Financial implications

56. The value of the contract arising from the procurement described in this report forms part of a wider programme. The project will also have associated on costs.

57. The costs of delivery of new council rented homes can be funded from grant funding from the Greater London Authority's Affordable Homes Programme. This scheme has been allocated in the region of £8m of GLA funding (with 50% drawdown on start on site and 50% on practical completion), with the remaining costs being funded from existing HRA resources. The costs for the new build works elements relating to the play space and parking bays of the new build works has been estimated to cost £25,000 and 35,000 respectively. The land was appropriated on 18 May 2017 and it is currently not being used for housing. There will be some sales receipts due at the end of the scheme from the shared ownership units.

58. The following tables show the breakdown of the total scheme costs and estimated apportioned costs of the residential elements:

Investment implications

59. The costs of this contract will be charged to the respective project cost programmed in the capital allocation for new homes delivery budgeted within the council's Housing Investment Programme.

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

60. A MINT credit check has been undertaken, which details the following:

- A credit scoring which indicates the company is secure with failure normally occurring only as a result of exceptional changes within the company or the market in which it operates.

61. In line with the requirements of the Contract Standing Orders, this report confirms that a restricted OJEU tender process was undertaken and that adequate financial provisions to fund the expenditure associated with the delivery of this project.

Legal implications

62. Please see concurrent from the Director of Law and Democracy.

Consultation

63. Local residents have been and will continue to be consulted at each stage of the development as outlined in the Charter of Principles agreed by Cabinet in November 2014.

Other implications or issues

64. Not applicable.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Head of Procurement

65. The report seeks the approval of the Strategic Director of Housing and Modernisation for the award of a works contract to Durkan Limited. This contract is to deliver the 109 unit scheme located on Commercial Way. The contract is due to commence on 08 August 2019 for a period of 98 weeks plus 12 weeks for mobilisation from possession. The report also approves a contingency sum.
66. The report details the tender process and scores achieved that results in the recommendation of this report in paragraphs 18-36.
67. The report details in paragraphs 38-40 detail the plans for the management and monitoring of this contract. London Living Wage will be paid and monitored as set out in paragraph 54.
68. Four apprenticeships and 16 construction roles for previously unemployed Southwark residents will be offered as part of the contract as detailed in paragraph 59.

Director of Law & Democracy

69. This report seeks the approval of the Strategic Director of Housing and Modernisation to the award of a works contract for Commercial Way to Durkan Limited as further detailed in paragraphs 1 and 2.
70. The value of the works is such that they are subject to complying with the Public Contracts Regulations 2015 in accordance with contract standing order ("CSO") 4.4.1. Paragraphs 18 and 19 confirm this requirement was complied with, and that five organisations were invited to tender (from the 13 that had submitted responses to the pre qualification questionnaire).
71. Paragraph 4 notes that the Leader (under powers conferred by the council's constitution) issued a notice enabling the decision on the award of the contract to deliver the new homes on Commercial Way to be taken by the Strategic Director of Housing and Modernisation. In the absence of such delegation, the decision on the award of a contract for a Strategic Procurement such as this would need to be taken by the cabinet or cabinet committee, after consideration by the CCRB of the report, in accordance with CSO 6.5.2(a).
72. CSO 2.3 requires that no steps should be taken to award a contract unless the expenditure has been approved. Paragraphs 12 and 64-66 confirm the financial implications.

Strategic Director of Finance and Governance (H&M19/068)

73. The report is requesting delegated approval from the Strategic Director of Housing and Modernisation to award the works contract for constructing 109 homes, create car parking space and child play space at Commercial Way, appointing Durkan Limited.
74. The report identifies the total cost of works including fees and contingency. The financial implications section details how these cost will be funded.
75. There is an estimated resource shortfall for the Housing Investment Programme. There is also likely to be further demand on the capital programme and it is therefore important that the costs of these works are carefully monitored and that accurate forecasting is in place to enable efficient financing of capital expenditure over the life of the programme.
76. Any other variation or extension of the contract beyond the scope of this report will require further approval in line with the council's procurement protocols.

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  Date 1 October 2019
Michael Scorer, 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

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Not applicable.

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
GW1 Contractor Procurement – Over OJEU	160 Tooley Street, SE1	Tim Bostridge

APPENDICES

No	Title
Appendix 1	n/a

AUDIT TRAIL

Lead Officer	Stuart Davis, Director of New Homes Development	
Report Author	Elisha Stewart, Project Manager	
Version	Final	
Dated	18 September 2019	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Finance and Governance	Yes	Yes
Head of Procurement	Yes	Yes
Director of Law and Democracy	Yes	Yes
Cabinet	N/a	N/a
Date final report sent to Constitutional Team		

BACKGROUND DOCUMENT – CONTRACT REGISTER UPDATE - GATEWAY 2

Contract Name	Works Contract for the New Homes Delivery programme – Commercial Way
Contract Description	Works Contract for the New Homes Delivery programme – Commercial Way
Contract Type	Works
Lead Contract Officer (name)	Stuart Davis
Lead Contract Officer (phone number)	0207 525 7201
Department	Housing & Modernisation
Division	Asset Management
Procurement Route	Tender from Council Approved Works List
EU CPV Code (if appropriate)	N/A
Departmental/Corporate	Departmental
Fixed Price or Call Off	Fixed Price
Supplier(s) Name(s)	Durkan Limited
Contract Total Value	£26,606,617.48
Contract Annual Value	N/A
Contract Start Date	21 October 2019
Initial Term End Date	30 November 2021
No. of Remaining Contract extensions	N/A
Contract Review Date	N/A
Revised End Date	N/A

SME/ VCSE (If either or both include Company Registration number and/or registered charity number)	N/A
Comments	
London Living Wage	Not fixed

This document should be passed to the member of staff in your department responsible for keeping your departmental contracts register up to date.