

Report for: Cabinet Meeting 15th December 2015

Item number: 23

Title: Approval to enter into a Deed of Variation to vary the Major Capital Works Framework Agreement and Contract Award and allocation of Major Capital Works following Mini Competition tender process

Report authorised by : Tracie Evans , Chief Operating Officer

Lead Officer: David Sherrington , Homes for Haringey Director of Asset Management and Deputy Director of Property

Ward(s) affected: All

**Report for Key/
Non Key Decision:** Report for Key Decisions

1. Describe the issue under consideration

- 1.1 That Cabinet approves the varying of the terms of the Framework Agreement by entering into a Deed of Variation with the Major Capital Works Framework Constructors with respect to Framework Prices submitted as part of the Major Capital Work Framework mini competition
- 1.2 That Cabinet approves the award of call off contracts under the Major Capital Works Framework Agreement to the two Constructor Partners in delivering the Housing Capital Programme Phase 9 (2016/2017) & Phase 10 (2017/2018).Constructor Partners named in paragraph 3.3 below following the mini competition tender process and based on the Most Economically Advantageous Tenders.
- 1.3 The recommended Constructor Partners were selected following a competitive tender process that complied with both the Public Contracts Regulations 2006 (as amended) (the “Procurement Regulations”) and the Council’s Contract Standing Orders.

2. Cabinet Member Introduction

- 2.1 Through the housing capital programme the Council provides essential improvements to the homes of Council residents, including upgrades to kitchens, bathrooms, roofs, windows and door entry systems. This report approves the appointment of contractors to deliver this vital work over the next two years.

3. Recommendations

- 3.1 That the Council enters under seal a Deed of Variation with respect to the Major Capital Works Framework Agreement Pricing Models and the Constructor Partners tender price submission under mini competition.
- 3.2 That Cabinet approves the award of call off contracts to the two Constructor Partners named below and based on the Most Economically Advantageous Tender to deliver the Housing Capital Programme (Phase 9 2016- 2017) and Phase 10 (2017 – 2018)
- 3.3 That the 1st and 2nd ranked Constructor Partners following the mini competition tender evaluation Wates Living Space and Keepmoat Regeneration (Apollo) Limited ranked 1st and 2nd respectively are appointed to deliver the Phase 9 and Phase 10 Housing Capital Programmes
- 3.4 That the successful CPs are awarded specific Phase 9 packages of work on the following basis and based on specific contract areas and budget allocations and the approval of the individual Agreed Maximum Price (AMP) for the contracts let under the Major Capital Works Framework mini competition for the Phase 9 and Phase 10 programme years up to a total value of £50.0m
- 3.5 **Phase 9 (2016-2017)**
- North Tottenham Contract Area Package 1 NT9 with budget allocation of £5.5m
 - Borough Wide Contract Area Package 2 Internal K&B programme with budget allocation of £4.0m
 - Noel Park Estate Phase 2 Contract Area Package 3 with budget allocation of £5.0m
- 3.6 All work package programmes will be delivered on a traditional site set up basis and delivered through the SCMG supply chain model.
- 3.7 The allocation of the Phase 9 Package 1 and Package 2 to the Constructor Partners ranked 1st following evaluation with a total budget allocation of £9.5m
- 3.8 The allocation of the Phase 9 Package 3 to the Constructor Partners ranked 2nd following evaluation with a budget allocation of £5.0m
- 3.9 The allocation of all of the Phase 9 Packages 1 , 2 and 3 to the Constructor Partners ranked 1st following evaluation
- 3.10 **Phase 10 (2017-2018)**
- 3.11 The allocation of the Phase 10 programme of work packages will be on the basis of the Constructor Partners ranked 1st and 2nd following the tender

evaluation with the two appointed CPs each awarded packages with a total value of between £13m and £16m. Detailed programme information is not yet available for Phase 10.

4. Reasons for decision

- 4.1 To allow the Framework agreement to be varied under a Deed of Variation and the mini competition tender process to be undertaken between the four Framework Constructor Partners.
- 4.2 Homes for Haringey considered the option of not entering into a Deed of Variation and undertaking the mini competition process based on the original ITT Framework pricing models as unattainable as the Constructor Partners could not sustain the same level of tendered Preliminaries from their original tender prices due to market conditions and increased construction costs and require the Framework Agreement to be varied with regards to this specific clause under the Deed of Variation
- 4.3 A decision is required in order that the Housing Capital Programme of works can be delivered. The delivery of the Housing Capital Programme is a central element to the Council's Asset Management Strategy and the best method of delivering the programme and achieving the best value for money to the Council is via the allocation of the Phase 9 and Phase 10 programme of works following the mini competition tender process and evaluation.
- 4.4 The call off contracts under the Framework Agreement will ensure that the remaining Housing Capital Programmes of work 2016/2018 will be delivered on target.
- 4.5 Undertaking the mini tender process between the four existing Framework Constructor Partners will promote greater efficiencies and competition based on current market conditions

5. Alternative options considered

- 5.1 Homes for Haringey as part of their procurement strategy for the delivery of the Year 9 (2016-2017) and Year 10 (2017-2018) of the Major Capital Works programme considered the option of maintaining the framework agreement clause with respect to pricing and that the Preliminaries, OH&P % as submitted by the Constructor Partners as part of the original ITT tender procurement process would be fixed in line with the Framework Pricing models.
- 5.2 Homes for Haringey considered this option as unattainable as the Constructor Partners could not sustain the same level of tendered Preliminaries from their original tender prices due to market conditions and increased construction

costs and require the Framework Agreement to be varied with regards to this specific clause under the Deed of Variation

- 5.3 Consideration was also given to allocating the Phase 9 and Phase 10 programmes of work to the two existing Framework Constructor Partners currently delivering the Housing Capital Programmes under a Direct Award provision but this was considered to be in breach of the Procurement Regulations and carried the risk of challenge from the other two Constructor Partners held in reserve

6. Background information

- 6.1 Following the OJEU compliant ITT tender procurement process for the Major Capital Works programme , Haringey Council, Homes for Haringey and the successful Constructor Partners entered into a Framework Agreement for the delivery of the Decent Homes Programmes for Year 7 (2014-2015) and Phase 8 (2015-2016)
- 6.2 The Cabinet Approval obtained in July 2013 agreed to delegate authority to make required adjustments (due to the availability of funding, wider stock investment priorities and/or other unforeseen issues that affect delivery)to the Major Capital Works programme by the Chief Operating Officer following consultation with the Lead Member for Housing and Regeneration and the Lead Member for Finance.
- 6.3 From the four Constructor Partners selected following ITT tender process , two were allocated programmes of works for the first two years of the framework.
- 6.4 In accordance with the Framework Agreement, proposals were set out to undertake a mini competition tender process at the anniversary of the second year of the delivery programme (Phase 8) for the delivery of the following two years of the programme (Phase 9 & 10) and that the four framework Constructor Partners would be invited to tender under a mini competition procurement process.
- 6.5 Under the Framework Agreement Section 5.0 Clause 5.1 , it stipulated that the prices (Preliminaries %) as submitted by the Constructor Partners under the original ITT Major Capital Works tender would be fixed and carried forward for mini competition evaluation purposes.
- 6.6 Following advice from our Legal advisers Trowers & Hamlins they recommended that agreement be sought from the Framework Constructor Partners to vary the Framework Agreement and enter into a Deed of Variation in order that the mini competition tender process could be undertaken with amended pricing models.
- 6.7 The implementation of the Deed of Variation mitigated the risk of the mini competition not proceeding and subsequently presented the Constructor Partners the opportunity to tender under more equitable and current market conditions.

- 6.8 The Deed of Variation will remove the fixed Preliminaries % derived from the framework tender and allow the Constructor Partners to submit revised prices based on current market conditions and construction costs.
- 6.9 Discussions with the Constructor Partners established that if the mini competition was undertaken on the basis of the submitted Preliminaries, OH&P % under the original ITT Framework, they would have declined the invitation to take part in the mini competition
- 6.10 The Major Capital Works Framework Agreement included for mini tender exercises to be carried out after two years and again after four years of the Framework Agreement to enable all the four Constructor Partners to tender for works beyond the first two years of the Framework.
- 6.11 Homes for Haringey advised the tendering Constructor Partners as part of the mini competition evaluation criteria and methodology that they reserved the right to allocate further Phase 9 and Phase 10 Packages of work to the appointed CPs as required in order to balance capacity and promote efficiency.

7. Contribution to strategic outcomes

- 7.1 Approval of the Deed of Variation will allow Homes for Haringey to proceed with the mini competition tender process in line with our procurement strategy and successfully delivery the Housing Capital Programme of works.
- 7.2 Approval of the selection of the Constructor Partners and the award of contract AMPs following the mini competition tender process evaluation will allow Homes for Haringey to proceed in line with our procurement strategy and successfully deliver the Phase 9 and Phase 10

8.0 Leaseholder Implications

- 8.1 Under the terms of their leases the lessees are required to make a contribution towards the cost of maintaining in good condition the main structure, the common parts and common services of the building. Such contributions are recovered by the freeholder through the lessee's service charge account.

9. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

9.1 Finance comments

The costs of the works allocated to 2015-16 can be contained within the existing capital budget for Decent Homes work allocated for 2015-16. An indicative capital budget for 2016-17 was set as part of the Medium Term

Financial Strategy agreed by Cabinet in February 2015, the works in this report related to 2016-17 can be funded from that indicative budget. If the budget for future years changes as a result of ongoing capital strategy work then it will be necessary to review the agreed programme to ensure total spend remains within budget.

9.2. Procurement Comments

9.2.1 The procurement for Phases 9 and 10 of the Housing Capital Works Programme has been undertaken by Homes for Haringey and their respective advisors in accordance with the Housing Capital Works Framework Agreement, the Agreement and the Deed of Variation.

9.2.2 Following consultation with legal, internal and external advisors involved in the procurement, the Deed of Variation does not constitute a material change under Article 72 of the Public Contract Regulations 2015.

9.2.3 Corporate Procurement has not undertaken an in-depth review of the procurement process; however has discussed the procurement process with the relevant advisors and is satisfied the procurement has followed due process.

9.2.4 The evaluation is aligned to that described in the Housing Capital Works Framework Agreement and the mini tender documentation that was distributed to bidders on the basis of Price 60% and Quality 40%. (Quality was based on the original Framework Agreement Quality submissions with the original scores carried over).

9.3. Legal

9.3.1 Based on figures calculated by Homes for Haringey and provided the value of the variation is below the EU threshold for works and is within 15% of the anticipated contract value, Homes for Haringey's legal advisors have advised that the proposed variation complies with the Public Contracts Regulations 2015. Homes for Haringey have confirmed that the value of the variation is below the EU threshold for works and is within 15% of the anticipated contract value.

9.3.2 Homes for Haringey have confirmed that the mini-competition has been carried out in accordance with the Framework Agreement (as varied by the Deed of Variation). Therefore provided Cabinet approves the Deed of Variation the Assistant Director of Corporate Governance sees no legal reasons preventing Cabinet approving the award of the call-off contracts.

9.3.3 This is a key decision and Homes for Haringey have confirmed this has been included on the Forward Plan.

9.3.4 Subject to 9.3.2 above the Assistant Director of Corporate Governance sees no legal reasons preventing Cabinet from approving the recommendations in the report.

9.4. Equality

Homes for Haringeys Asset Management Strategy 2010-2017 covers all investment in the councils housing stock including Decent Homes. An Equalities Impact Assessment was prepared when the strategy was formulated and the findings have been incorporated into the planning process for delivering the Housing Capital Programme. This includes ensuring that all residents receive the same standard of works and that specific language and other needs are indentified and addressed

10. Use of Appendices

10.1 Appendix A – Deed of Variation in relation to the Framework Agreement