



**PROCUREMENT COMMITTEE**



Agenda item **[No.]**

**Procurement Committee**

**On 13/02/2007**

Report Title: **Award of Framework Agreements to four Decent Homes Constructor Partners**

Forward Plan reference number (if applicable):

Report of: **Interim Director of Adults, Culture and Community Services**

Ward(s) affected: **All**

Report for: **Decision**

**1.0 Purpose**

1.1 This report seeks Members' approval to award four Constructor Partners Framework Agreements for four years to the deliver the Department for Communities and Local Government (DCLG) Decent Homes Target by 2010 (subject to legislative changes). The recommended appointments are as follows:

- o Constructor 1 – Wood Green
- o Constructor 2 – Hornsey
- o Constructor 3 – North Tottenham
- o Constructor 4 – South Tottenham

**2.0 Introduction by Executive Member**

2.1 This report is for decision on the appointment of Constructor Partners to undertake the Decent Homes Programme. A report to this Committee on 14<sup>th</sup> November set out the progress made to procure the necessary work packages which will be required to deliver the decent homes standard and to maintain our homes to a good standard. It is important that we are able to show the Audit Commission, at the forthcoming ALMO inspection in May 2007 that we are in a strong position to deliver the decent homes programme. This report concludes the procurement process.

### **3.0 Recommendations**

- 3.1 That Members agree to award Framework Agreements for the above, as allowed under the European Union Directive on public procurement (the Consolidated Directive), as implemented in the UK by the Public Contracts Regulations 2006 and in accordance with the Council Standing Orders, in accordance with the recommendation in paragraph 13 of this report.

Report Authorised by: Interim Director of Adult, Culture and Community Services

Contact Officer: Olatayo Akinfe – Head of Asset Management, Homes for Haringey (x 3272)

### **4.0 Reasons for any change in policy or for new policy development (if applicable)**

- 4.1 Not applicable

### **5.0 Local Government (Access to Information) Act 1985**

- 5.1 List of background documents:
- Pre-Qualification Questionnaires (PQQ) responses from Constructors dated September 2006
  - Short list Report dated October 2006
  - Invitation to Tender Document dated October 2006
  - Tender Reports dated February 2007

This report contains exempt and non-exempt information. Exempt information is contained in Part B and is not for publication. The exempt information is under the category identified in the amended Schedule 12A of the Local Government Act 1972.

### **6.0 Background**

- 6.1 The requirement for all local authority homes to meet the Decent Homes Standard was set out by The Office of the Deputy Prime Minister (ODPM) now known as Department for Communities and Local Government (DCLG) in February 2003. The objective of the Decent Homes Standard is that every tenanted home should be decent in accordance with the guidelines of the ODPM (now DCLG) by December 2010.

- 6.2 The Decent Homes Programme is a long term programme of major investment to bring all tenanted homes up to a decent standard. Environmental improvements, including sustainability issues, may represent up to 5% of the overall programme.
- 6.3 The projected funding required for the Decent Homes Programme is approximately £231m out of a total capital programme of £323m (which includes the Decent Homes Programme until 2010/11. A bid has been made to DCLG for decent homes funding of £231m. Homes for Haringey should be informed of the funding for the programme hopefully by spring/summer 2007 however this will be subject to Homes for Haringey acquiring a two (2) star rating by the audit commission following the inspection due in May 2007.
- 6.4 Managing and delivering the Decent Homes programme to cost, time and to the expectation of the tenants and residents of Haringey is paramount and as such requires the appointment of Constructors with a proven track record of delivering a similar programme for other Local Authorities/ALMOs.
- 6.5 The procurement and delivery of the Decent Homes Constructors has been managed by Homes for Haringey under the terms of its management agreement with the Council.

## **7.0 Budget**

- 7.1 Design and construction costs are to be accommodated from funding to be secured from the DCLG for the Decent Homes programme of works.
- 7.2 Mainstream funding of circa £90m from 2006/07 to 2010/11 Has been earmarked to fund non-decent homes work including Planned Preventative Maintenance. Some of these non-decent homes works may be carried out by the Decent Homes constructor partners, in cases where this offers best value for money.

## **8.0 Description of Procurement Process**

- 8.1 It was established and reported previously that the most suitable procurement route for the delivery of the Decent Homes programme would be using the design and build option where the constructor undertakes all the responsibility for the delivery of the programme on an annual basis to cost and time. The delivery of the programme will therefore be via a framework of design and build Constructors. This framework is procured in accordance with European Union (EU) regulations.

- 8.2 As outlined in the Official Journal of the European Union (OJEU) notice, it is envisaged that the services to be provided by the Decent Homes constructor will include: survey, design, building services design and the execution of the works
- 8.3 The successful framework Constructors will need to work in a collaborative and partnering manner not only with the Homes for Haringey team, but also with a wider range of stakeholders (internal and external), including residents, Homes for Haringey staff and Board and Haringey Council staff and Members.
- 8.4 Twenty-Three Expressions of interest for the Decent Homes constructor framework agreement were received and evaluated and a short list of eight Constructors were invited to tender. The evaluation of the tenders was undertaken by HfH Head of Asset Management, Haringey Council (Diversity, Equality and Sustainability representatives), Mace Ltd (Consultants) and members of the Resident Procurement Panel. The process was overseen by Haringey Council's Construction Procurement Group. Legal support was provided by Trowers& Hamlin with Corporate overview by Haringey Legal Services.
- 8.5 The tender documents were issued on 18<sup>th</sup> September and returned on 30<sup>th</sup> November 2006.
- 8.6 The tender submissions were scored on the basis of Quality 60% and Price 40%.
- 8.7 Site visits and interviews were included as part of the Quality assessment of the Constructors and contributed 27% of the Quality score. The site visits and interviews were undertaken by Homes for Haringey, Mace Ltd (Consultants), members of the Resident Procurement Panel and Contract Procurement (interviews only).

## **9.0 Consultation**

- 9.1 Residents have been fully consulted on the procurement process and a 'Residents Procurement Panel' (RPP) was established in November 2005.
- 9.2 The RPP participated in the evaluation of both the PQQ and the Invitation to Tender documents to determine the shortlist to invite to tender and to agree on the proposed Constructor Partners respectively.

- 9.3 Two of the seven members of the RPP undertook site visits to all eight Constructors whilst the other five members did four site visits.
- 9.4 Three members of the RPP panel were part of the interviewing panel that assessed all eight of the Constructor Partners.
- 9.5 See paragraph 19 for comments on the formal leaseholder consultation procedure.

## **10.0 Key Benefits and Risks**

- 10.1 The benefits of appointing Constructor Partners via Framework Agreements to the delivery of the Decent Homes programmes are as follows:
- Early involvement of Constructor Partners to work collaboratively with all stakeholders to agree a programme of work over four years. This will be broken down into realistic annual programmes of work throughout the Borough that will meet the required reduction of non-decent properties and meet the Decent Homes Target.
  - Ability to achieve cost certainty as a pre-condition to any works being undertaken ensuring that the programme is delivered to budget, on time and to the correct quality.
  - Common approach to delivery of the Decent Homes programme across all areas of the Borough with clear recognition of the need for consultation with both tenants and leaseholders.
  - Consistent approach to the design and installation of kitchens, bathroom, windows and roofs where required resulting in being better equipped to deal with future maintenance issues.
  - Less adversarial and improved customer satisfaction.
  - Compliance with Gershon and Egan objectives with respect to partnering, collaborative working, measuring and monitoring Key Performance Indicators (KPI's ) and benchmarking constructor partners against each other to generate efficiency savings over the duration of the framework.
  - The flexibility of the framework to award work after the first and subsequent years based upon performance (KPIs) in the previous year.

- The flexibility for the council to allocate work in other contract areas to framework Constructors besides the one to which they are allocated where there is a shortfall in performance by any particular framework constructor.
- Agreement of standard model documents that will govern each delivery phase to establish effective template for successive award of project contracts.
- Decent homes funding will be year on year thus allowing the council to manage each award of work under the framework according to the level of funding.

10.2 The risks to the framework appointments are as follows:

- Delay/lack of funding resulting in Constructors not having a continuous workload
- Non-performance by a Constructor Partner(s) however this can be mitigated by giving additional work to other performing Constructor Partner(s).

## **11.0 Contract and Performance Management**

11.1 There will be a three tier arrangement to the Contract as follows:

Strategic Alliance Agreement – Agreement between all the Constructor Partners and Haringey Council. This establishes contractual links between the constructors to promote sharing and best practice, shared supply chains, measured performance and flexibility in terms of work load.

Framework Agreement- Individual agreement between each Constructor Partner and Haringey Council for each Contract Area. This establishes the scope of the programme for each constructor and the model documents governing the award of each project contract.

Project Partnering Contracts (PPC 2000) – Annual Project Contract between each Constructor and Haringey Council for the delivery of a specific programme of work. The performance of the Constructors will be measured against specific KPIs agreed between the Constructors and all the stakeholders upon signing of the Framework Agreements

## **12.0 Summary and Conclusions**

12.1 That the proposed Constructor Partners are awarded Framework Agreements in the respective areas noted in Section 1 of this

report in accordance with the EU process and the Quality 60%/Price 40% evaluation criteria.

### **13.0 Recommendations**

- 13.1 That Members award the Framework Agreements to four Constructor Partners in accordance with EU Directive on public procurement (the Consolidated Directive), as implemented in the UK by the Public Contracts Regulations 2006 and the Council Standing Order.
- 13.2 The award to the four Constructor Partners is based on the evaluation of the price/quality score and confirmation that the Constructors will be able to deliver the Decent Homes Programme within the current forecasted budget. Refer to Part B.

### **14.0 Equalities Implications**

- 14.1 After appointment residents throughout the Borough will be involved in the process with respect to selection of certain supplier components and at design and delivery stage.
- 14.2 The works will ensure that all tenants and leaseholders living throughout the Borough will reside in a decent home by the end of this programme of work.
- 14.3 The above include the disabled, elderly and residents from all ethnic minority groups.

### **15 Health and Safety Implications**

- 15.1 All the Constructors have been assessed as competent under the Construction Health and Safety Assessment Scheme (CHAS), which is requirement of the Council's Health and Safety Policy.
- 15.2 The Construction Design and Management Regulations 1994 apply to this project and the Constructors Construction Phase Health and Safety Plan will be checked and approved by the Planning Supervisor.

### **16.0 Sustainability Implications**

- 16.1 Social and economic sustainability will be included as a Key Performance Indicator (KPI) to be measured and monitored throughout the duration of the framework agreement.
- 16.2 These KPIs will be linked against a target of 20% of on-site workforce (excluding managers and supervisors) employed during the work programme comprise of local residents and 10%

of on-site workforce (excluding managers and supervisors) employed during the work programme comprise of trainees year on year throughout the life of the Framework Agreement.

- 16.3 The Council seeks to ensure that local businesses have free and fair opportunity to compete for trading opportunities emanating from developments in the borough. Contractors are encouraged to share information about their supply chain and sub-contracting opportunities with local businesses, and to give them a free and fair opportunity to compete for contracts.
- 16.4 The above will be monitored by the Council's Economic Regeneration Unit. NB The compliance team are also monitoring this according to the other report.
- 16.5 Homes for Haringey will agree and implement a common approach to waste management and recycling with the Constructor Partners on this programme of work across the entire Borough.
- 16.6 The design and supply of windows, roofs, kitchens and bathroom will be assessed on the basis of Life Cycle Cost hence taking into consideration future maintenance, repair, replacement and disposal. The environmental performance of components such as timber and paints will form part of this assessment.
- 16.7 The above will be a consistent approach for the programme of works across the entire Borough.

## **17.0 Comments of the Director of Finance (Homes for Haringey)**

- 17.1 The contracts proposed to be awarded are in respect of the Council's Housing Revenue Account Capital Programme, which will be managed by Homes for Haringey as set out in the Management Agreement. There is no direct financial consequence for Homes for Haringey arising from the award of these contracts, other than that they are essential for the successful delivery of the Decent Homes programme. The advice of the Council's Acting Director of Finance deals with the financial consequences for the Council of the proposed awards

## **18.0 Comments of the Council's Acting Director of Finance**

- 18.1 As stated in section 8 of this report the costs for this element of the Decent Homes Programme fall within the overall estimated costs. However the approval of this budget is subject to borrowing approvals being awarded to Haringey by Central



Government, which is reliant on the achieving of a 2 star status in the forthcoming inspection of Homes for Haringey.

- 18.2 Should the award of borrowing approvals not be granted then works will not be commissioned under these framework arrangements as the funding will not be available.
- 18.3 The Council's finance department has been an integral part of the project team for this project and all of the short-listed companies were financially evaluated and found to be sound in relation to the size of contract being awarded.

## **19.0 Comments of the Head of Legal Services**

### **Contract Procurement**

- 19.1 The EU Directive on public procurement (the Consolidated Directive), as implemented in the UK by the Public Contracts Regulations 2006, allows local authorities to conclude framework agreements with contractors and to select contractors for specific projects from the contractors with which they have concluded framework agreements.
- 19.2 Legal advice on the procurement of the framework agreement has been provided by external legal advisers (Trowers & Hamblins), who have confirmed compliance with the provisions of the Public Contracts Regulations 2006.
- 19.3 **Leaseholder Consultation**
- 19.4 Homes for Haringey is conducting formal consultation with every leaseholder in the Borough in order to fulfil the Council's obligations under The Service Charges (Consultation Requirements) (England) Regulations 2003 ('the Regulations'). A Notice of Intention to appoint Constructor Partners was sent to leaseholders on the 21<sup>st</sup> of July 2006. The form and content of the Notice was approved by Mr Jonathan Brock, a leading property law Queen's Counsel, before it was issued. A Notice of Proposal, naming the proposed Constructor Partner, will then be sent to leaseholders after the 13<sup>th</sup> of February 2007. Again, the form and content of this second notice will be approved by Mr Brock.
- 19.5 Homes for Haringey has applied to the Leasehold Valuation Tribunal for a dispensation from some of the requirements of the Regulations as they apply to the second notice. Mr Bob Watts, the Executive Director of Building Services, Homes for Haringey, has written to every leaseholder in the Borough advising them of

the reasons why the Council has made the application. A draft copy of that letter is attached in Schedule 1 to this report. The hearing of the Council's application will take place on the 29<sup>th</sup> and 30<sup>th</sup> of March 2007. The Council will be asking the LVT to retrospectively dispense with the requirement to provide specific cost information in the second notice. The nature of the proposed framework agreements means that it will not be possible to provide specific cost information to leaseholders at the time of Notice of Proposal (second notice). See Mr Watts' letter for more information. Other Boroughs, such as Barnet, have already made similar successful applications to the LVT and the Head of Legal Services is confident that the Council's application will also be successful.

## **20.0 Comments of the Head of Procurement**

- 20.1 The selection of Framework Agreements as a procurement route for the delivery of the construction work for this programme will ensure that there is sufficient capacity in the constructor partners as a whole.
- 20.2 A Framework Agreement will also allow appropriate contract management measures, and appropriate action is easier to take should one of the contractors under-perform.
- 20.3 The process of selecting the Framework contractors has been undertaken with support from the Construction Procurement Group who have wide experience and knowledge of the benefits and process of such a procurement route.
- 20.4 The tender process has fully tested the market, and there has been significant interest from a large number of contractors.
- 20.5 Additionally, there has been robust resident involvement throughout this process, including in the site visits and tender evaluations.
- 20.6 This process has been supported by Homes for Haringey's Legal partners, Trowers and Hamlins, in which case, the Head of Procurement would also support the recommendation at para. 13.

## **21 Comments of the Council's/ Homes for Haringey External Legal Advisors (Trowers and Hamlins)**

- 21.1 Legal advice on the procurement of the framework agreement has been provided by Trowers & Hamlins, who have been appointed by the Council to provide advice on EU procurement, forms of contract and the strategic relationships required to carry out the programme of works. They confirm that the procurement of bilateral framework agreements described in paragraph 11.1

above complies with the Public Contracts Regulations 2006 and is line with Office of Government and Commerce (OGC) Guidance (January 2006)

- 21.2 In the event of a change in financial status of a Constructor Partner, the Framework Agreement protects the Council by providing, as pre-condition to the Council issuing any Project Contract to the Constructor Partner, that there is no change in the financial circumstances of the Constructor Partner which in the opinion of the Council (acting reasonably), may adversely affect the ability of the Constructor Partner to undertake works in accordance with this Framework Agreement and each Project Contract. The Framework Agreement also provides that the Agreement will automatically determine in the event of insolvency of the Constructor Partner
- 21.3 Under the Public Contracts Regulations 2006, framework agreements can subsist for a maximum of four years. However, the Council has become aware that there remains a possibility that the DCLG will only release funding to the Haringey programme at the earliest in April 2008. This is also predicated on the fact that Homes for Haringey achieves two star status. Therefore if the DCLG confirm that funding will only be made available at that time then the works themselves can only commence at that time. Therefore, if the Council were to enter into framework agreements with each Constructor Partner shortly after selection, this will mean an expiry date of that framework of early 2011. If however works can only commence in April 2008 (or later depending on confirmation of funding) this will leave only a maximum of three years to carry out the programme rather than the potential four years.
- 21.4 Office of Government and Commerce (OGC) Guidance (January 2006) is that that towards the end of the term of any framework agreement, an individual "call-off" may be let extending beyond the term of the framework agreement itself. This guidance reflects the EU Explanatory Note on Framework Agreements which confirms that a framework agreement can continue to be used right until the end, even if specific performance of the call off takes place after the expiration of the framework itself. The length of the final call-off should not distort competition or circumvent the Regulations and should reflect the "normal pattern" for call-off contracts under the framework itself
- 21.5 However, the concern for the Council is that executing the Framework Agreements too early may mean that the framework

agreements do not provide the vehicle to complete the programme. Experience from other similar programmes has been that the time taken to properly prepare timetabling, setting programmes of work and carry out the relevant design surveys of each units can mean that works in fact do not start for several months or longer after selection. In addition, for this programme the Council requires the Constructor Partners to validate the stock condition survey which was only based on a 13% sample before the timetabling and design surveys can commence. This validation will take the form of wider decent homes surveys across the borough which will

- test the stock condition survey
- scope of properties for proposed work programmes; and
- set a budget for the Council for the programme.

The budget for the programme and scope of properties would only be agreed following this testing of the stock condition survey. Accordingly, the testing of the stock condition survey is to be taken outside the Framework Agreement meaning that when the budget and scope of properties for the first project contract is set, this and the framework agreement can then be entered into, subject to agreement of the other relevant project documentation. This will mean an "Early Works Agreement" will need put in place to instruct the Constructors to carry out the decent homes surveys and for payment.

- 21.6 Notwithstanding that no Framework Agreement is executed, the Council and the Constructors are contractually linked via the Strategic Alliancing Agreement which provides that contractual link for the parties to oversee and manage the testing of the stock condition survey, setting initial construction and design processes, benchmarking of the Constructor's supply chains and common supply chains agreed and for project documentation to be agreed in advance of the setting of the works programmes. The Council and the Constructors use the Strategic Alliancing Agreement as a practical way of ensuring communication between the parties on a contractual basis.