


<p style="text-align: center;">London Borough of Hammersmith & Fulham</p> <p style="text-align: center;">CABINET</p> <p style="text-align: center;">4 FEBRUARY 2019</p>	
<p style="text-align: center;">APPROVAL TO WAIVE CONTRACT STANDING ORDERS AND TO APPOINT ARKBUILD PLC. AS MAIN CONTRACTOR FOR THE CONSTRUCTION OF 10 GENUINELY AFFORDABLE NEW HOMES AT SPRING VALE ESTATE</p>	
<p>Report of the Cabinet Member for the Economy and the Arts : Councillor Andrew Jones</p>	
<p>Open report A separate report on the exempt part of the Cabinet agenda provides exempt financial information.</p>	
<p>Classification - For Decision Key Decision: Yes</p>	
<p>Wards Affected: Avonmore and Brook Green</p>	
<p>Accountable Director: Jo Rowlands, Strategic Director for Growth and Place</p>	
<p>Report Author: Matt Rumble Head of Area Regeneration</p>	<p>Contact Details: Tel: 0208 753 4552 E-mail: matt.rumble@lbhf.gov.uk</p>

1. EXECUTIVE SUMMARY

- 1.1 This report seeks approval to appoint ArkBuild Plc. as main contractor for the construction of 10 genuinely affordable new homes at Spring Vale Estate and approval of further budget to deliver the scheme. The report also seeks a waiver of the tendering requirements of Contract Standing Orders and sets out the contract price and background to the decision.

2. RECOMMENDATIONS

- 2.1. That Cabinet approves a waiver of the standard tendering requirements of Contract Standing Orders to permit a direct award of contract for the appointment of a contractor for a building scheme at Spring Vale Estate on the basis that the market for the works has been investigated and demonstrated to be such that a departure from Contract Standing Orders is justified.

- 2.2. That Cabinet approves an increase in the project budget of £352,559 to allow for development costs that fall outside of the scope of the contract as well as a 5% contingency on the build contract.
- 2.3 That the increase in the project budget of £352,559 be funded by:
 - £105,768 of Right to Buy one for one receipts
 - A £246,791 increase in the Housing Capital Financing Requirement, financed initially by internal borrowing.

3. REASONS FOR DECISION

- 3.1. The decision is to appoint a contractor to build 10 genuinely affordable new homes.
- 3.2. Site preparation works have been undertaken at the Spring Vale Estate development site and any delay in appointing a contractor could result in complaints from residents.
- 3.3. The development will enable the Council to use its banked 1-4-1 Right to Buy receipts towards replacing social housing sold through Right to Buy.

4. PROPOSAL AND ISSUES

- 4.1 In March 2017 approval was granted under an Urgency Report of the Leader to undertake a procurement exercise to appoint a contractor / contractors to carry out the construction works for the land adjacent to Jepson House (garages and stores) and Spring Vale Estate projects included in the Council's direct delivery programme.
- 4.2 This approval followed an abortive tender exercise using the Haringey-owned London Construction Programme framework forming part of the Southern Construction Framework. No tenders were received in response to that earlier tender exercise.
- 4.3 In August 2017 an open tender was carried out via the Council's Capital E-Sourcing portal for the Spring Vale Estate development project.
- 4.4 The Council received only a single tender return - from ArkBuild Plc. All other suppliers who were alerted about the opportunity (36No.) declined to tender or did not respond.
- 4.5 ArkBuild Plc. submitted a valid tender which was evaluated by officers and the Council's appointed cost consultant. ArkBuild Plc. demonstrated quality in their tender return and the Council received positive references and credit checks.
- 4.6 Following evaluation of the tender the Council decided to revise the scope of works to alter the frame type from a timber frame to a hybrid frame comprising of steel and traditional masonry. It therefore went back to its sole tenderer and asked it to re-price for the revised scope.

- 4.7 Furthermore, there will be 16 months between the tender and recommendation of award of the contract due to negotiations around the frame cost uplift. In the initial tender exercise, ArkBuild Plc. were required to hold their price for 6 months.
- 4.8 As more than 12 months have elapsed from the original tender submission, ArkBuild Plc. also submitted revised build costs to allow for inflation.
- 4.9 Minor sewer diversion works are required before construction can start. The most efficient strategy for delivery of sewer diversion works is for this to be included within the main works contract. This will reduce mobilisation time between sewer works and main building works and reduce further costs associated with procurement and project administration.
- 4.10 It should also be noted that the consented scheme (granted in 2013) was for 6 intermediate and 4 private market homes however, the Council chose to vary this to 10 social rented homes. This did not require further consultation under planning and residents have not been formally notified of the change. This will be communicated to residents at a public exhibition –to be held before works start. It should be noted that the development team will work with housing teams to value engineer the specification of the units and expect to realise further cost reductions to the overall contract sum on a like-for-like basis.
- 4.11 The Legal Implications below indicate the legal basis on which the appointment of ArkBuild Plc. is being recommended so as to still comply with Contract Standing Orders despite the departure from the tender process that Arkbuild Plc. originally responded to.

5. OPTIONS AND ANALYSIS OF OPTIONS

- 5.1 **Option 1** – Appoint ArkBuild Plc. and award the contract for construction works at Spring Vale Estate.

5.1.1 This option is recommended for the reasons set out in Section 3.

- 5.2 **Option 2** – Amend the delivery strategy and transfer the site to the Council's Housing Association Framework.

5.2.1 It is unlikely that this project would appeal to the Council's Housing Association Framework partners. It is a relatively small project (10 units) on an existing council-owned housing estate.

5.2.2 It is likely that a Housing Association would want to increase the density of units planned for the site. This would require a re-submitted planning application which would cause significant delays to starting construction.

5.2.3 Management of such a small number of properties on an existing council-owned housing estate would be difficult for a Housing Association Framework partner.

5.3 **Option 3** - Re-tender the project via alternative accessible frameworks.

5.3.1 The Spring Vale Estate development site has been tendered three times previously - including an unsuccessful tender via the London Construction Programme Framework, where no bids were received. It is therefore unlikely that the Council would find appropriate suppliers from alternative accessible frameworks.

5.3.2 Were the Council to find appropriate suppliers from alternative frameworks there is a risk that their tenders may be above the current price.

5.4 **Option 4** – do not proceed with the construction works and return the site to its former use (a car park).

5.4.1 The site was previously used as a car park. Studies show that the car park was under-used and had been somewhat neglected.

5.4.2 The construction of 10 genuinely affordable new homes offers far greater benefits than the re-instatement of an under-used car park.

6. **CONSULTATION**

6.1. The Council has committed to a public exhibition once the contract has been awarded and ArkBuild Plc. are appointed - likely to be held in early-March 2019.

7. **EQUALITY IMPLICATIONS**

7.1. The Council has paid due regard to its Public Sector Equality Duty (PSED), as set out in section 149 of the Equality Act 2010, and it is not anticipated that there will be any negative impact on any groups with protected characteristics from the awarding of this contract.

7.2. The table over the page provides analysis in respect of three groups of protected characteristics in relation to the development proposals:

Characteristic	Analysis	Impact (Positive, Neutral or Negative)
Age	<p>The tenure of the new homes will be social rent with tenants selected from the Council's housing register. The new homes will be one, two and three bedroom making them suitable for single people, couples and small families.</p> <p>The location has well established and convenient transport links.</p>	<p>Neutral</p> <p>Neutral</p>
Disability	The new homes will conform to Lifetime Homes requirements and the ground floor homes can be easily adapted for wheelchair users.	Neutral
Race	It is not uncommon for ethnic minorities to be over-represented in low income groups. All 10 homes will be let at social rents so affordability will not be a barrier.	Neutral

- 7.3. The redevelopment of this underused ex-car parking site to provide genuinely affordable new homes will have a positive impact on the local area. The urban environment will be greatly improved strengthening communities and increasing investment in local businesses.
- 7.4. The construction of 10 genuinely affordable new homes will help create new jobs and investment in local labour and supply chains in line with the Council's procurement, diversity and inclusion policy commitments.
- 7.5. Equality Implications verified by Peter Smith, Head of Policy and Strategy, tel. 020 8753 2206.

8. LEGAL IMPLICATIONS

- 8.1. This report seeks approval for the award of a contract for works. It is below the threshold for following an EU-compliant tender process but the EU requirements of fairness, transparency and non-discrimination still apply.
- 8.2. A tender process was undertaken through the Council's capEsourcing portal and only one tender was received. This followed an earlier unsuccessful procurement when no tenders were received using a construction framework run by Haringey Council.
- 8.3. Following the receipt of a single tender, officers found themselves unable to accept that tender because of a need to depart from the specification of works for which tenders had been invited. Rather than doing a new tender exercise, the decision was taken to negotiate directly with the sole tenderer. Under the

EU rules, the circumstances under which this can be done are very limited. However as this procurement is below the EU threshold, there is a wider ability to do this, as recognised by Contract Standing Order 15.

- 8.4. However after that exercise to amend the specification, the validity of the tender expired. As a result, the tender with its revised specification is no longer open for acceptance. However it is still proposed to award a contract on the basis of that tender submission, but with a negotiated increase in price due to an uplift for inflation due to lapse of time from the original submission.
- 8.5. Furthermore, the scope of works has changed again due to the proposal to include the drainage works within the contract.
- 8.6. The recommendation to award the contract can therefore not be said to be in response to the tender exercise, because of the lapse of time and subsequent negotiations on the price uplift and additional works after that. Therefore the recommended award is a direct award of contract, being otherwise than in accordance with the standard tendering requirements of Contract Standing Order 10.2 to use a framework or follow a tender process. However overall this approach is considered to be in the best interests of the Council in light of the failed tender exercises that have occurred.
- 8.7. Under Contract Standing Order 3, it is possible for a decision-maker to waive tendering requirements of CSO 10.2 where one of a number of specified grounds is made out. Here there has already been a failed tender exercise using the Haringey framework, followed by a tender exercise where only one tender was received. The relevant ground here is that the “the nature of the market for the works to be carried out ... has been investigated and is demonstrated to be such that a departure from these CSOs is justifiable...” Accordingly a waiver is being requested on this basis, in order to permit the proposed award of contract to go ahead, on the basis of the description in the report concerning lack of interest from the market.
- 8.8. There is a risk of challenge from other potential tenderers on the basis of breach of the general EU duties as referred to in paragraph 8.1. They could argue that they would have tendered had the hybrid frame been specified during the tender process as opposed to timber. However this risk is considered low because of the lack of interest in tendering for the contract from those very companies.
- 8.9. *Deborah Down, Senior Associate at Sharpe Pritchard on secondment to the Council – email: ddown@sharpepritchard.co.uk*

9. FINANCIAL IMPLICATIONS

Budget Impact

- 9.1 The April 2017 Leaders Urgency Report approved a budget of £3,100,000 with the Decent Neighbourhoods Capital Programme for this development. Of this

budget £3,074,790¹ remains, and in addition a deposit of £27,000 has been paid to Thames Water from previously approved budgets, which is refundable upon completion of sewer works. This makes the total remaining budget available to £3,101,790 which is sufficient to cover the cost of this contract.

- 9.2 The additional budget requirement of **£352,559** is sufficient to cover the remaining development costs that fall outside of the scope of the contract as well as a 5% contingency on the build contract.
- 9.3 The proposed budget increase of **£352,559** will be 30% funded by retained Right to Buy 1-4-1 receipts and remaining will be funded by Housing Capital Receipts / internal borrowing as per the summary table below:

Spring Vale	Remaining Budget as at 31/10/2018	Proposed Revised Budget	Proposed increase
Project costs	3,101,790	3,454,349	352,559
Funded by:			
RtB retained 1-4-1 Receipts	930,537	1,036,305	105,768
S106 Contributions	977,385	977,385	-
Housing Capital Receipts / Internal Borrowing	1,193,868	1,440,659	246,791
Total Funding	3,101,790	3,454,349	352,559

- 9.4 The Capital Programme Monitor & Budget Variation report for the first quarter of 2018/19 approved at 8 October Cabinet forecasts the Housing Revenue Account capital financing requirement (CFR)² to be £253.8m by 31 March 2022. The Government has lifted the previously imposed limit on the Housing CFR at the end of October 2018. The above addition to the budget will be added to the forecasted CFR, to uplift by £246,791.

Financial Benefit of Additional Affordable Units

- 9.5 The provision of ten additional affordable rented homes will contribute to the avoidance of temporary accommodation costs incurred by the Council. Based on the 2018/19 temporary accommodation budget this cost avoidance equates to £21,000 per annum.
- 9.6 The additional units will also make a direct contribution to the HRA from the rental income generated³.
- 9.7 Implications completed by: Firas Al-Sheikh, Head of Financial Investment & Strategy (Growth & Place), tel. 0208 753 4790.

¹ As at 31st October 2018.

² The Capital Financing Requirement is the non-funded element of capital spend which is in respect of borrowing or credit arrangements used to **finance capital** expenditure on assets. This is not restricted to external borrowing as the council may elect to internally borrow against cash balances.

³ The rents to be charged are yet to be determined but will be established via the social or affordable rent formula.

9.8 Implications verified by: Emily Hill, Assistant Director, Corporate Finance, tel. 020 8753 3145.

10. IMPLICATIONS FOR BUSINESS

10.1. The proposed contractor has been selected through an open competition process, following council procurement rules. No local companies have expressed interest and participated in this opportunity.

10.2. Business implications completed/verified by: Alben Karameros, Economic Development Team, tel. 07739 316 957.

11. COMMERCIAL IMPLICATIONS

11.1. The estimated value of the contract is under the statutory value for works, currently set at £4,551,413. Therefore, following a complete OJEU compliant tender is not required. However, the market was tested in a fair, transparent manner and an initial attempt of awarding the contract through an open tender took place. ArkBuild Plc. were the only interested bidders who submitted a proposal. The need to alter the scope of works of the project led to negotiations with the sole tenderer. The new value also includes an uplift for inflation.

11.2. It is considered that, by negotiating and changing the scope of the project, the initial tendering exercise has been abandoned, this being the reasoning behind a direct award rather than an awarding procedure following the tendering exercise.

11.3. For contracts over £100,000, the appropriate Cabinet Member in consultation with the Leader of the Council can waive the requirements of the CSOs and directly award the contract as recommended in the report. (CSOs table 3.1). It is believed that, considering the tendering exercise that resulted in a sole tenderer, *the nature of the market for the works to be carried out, or the goods to be purchased, or the services to be provided has been investigated and is demonstrated to be such that a departure from these CSOs is justifiable.* (CSOs 3.1.)

11.4. The contract shall be entered in the Council's Contracts Register and a copy of the signed version shall be attached.

11.5. The contract must be managed in accordance with the established KPIs and constantly monitored accordingly.

11.6. Commercial implications provided by Andra Ulianov, Procurement Consultant, tel. 0208 753 2284

12. IT IMPLICATIONS

12.1. There are no IT Implications.

12.2. IT implications provided by Veronica Barella, interim Chief Information Officer, tel. 0208 753 2927.

13. RISK MANAGEMENT IMPLICATIONS

13.1. Officers have undertaken two procurement exercises which resulted in the second instance, using the open tender process, in only one bid being received. Officers have taken reasonable steps to demonstrate competition and to secure value for money in recommending a direct award in this instance. The construction of 10 new genuinely affordable new homes contributes to the Council's priorities.

13.2. Approval of this proposal will take the current HRA the HRA Capital Financing Requirement very close to the cap. As a result, careful monitoring and management of the HRA CFR will be required when considering any further schemes which would increase the requirement.

13.3. Risk Management Implications provided by David Hughes, Director of Audit, Fraud, Risk and Insurance, tel. 0207 361 2389.

14. OTHER IMPLICATIONS PARAGRAPHS

14.1. None

LIST OF APPENDICES:

APPENDIX 1 – RIDER LEVETT BUCKNALL, SPRING VALE ESTATE, VALUE FOR MONEY REPORT 2018 *(contained in the exempt report on the exempt Cabinet agenda)*