

## LONDON BOROUGH OF HAMMERSMITH & FULHAM

**Report to:** Cabinet Member Decision – Cllr Homan, Cabinet Member for Housing

**Date:** 17/03/2021

**Subject:** Contract Award - Responsive Capital Contract

**Report author:** William Shanks, Governance and Commissioning Manager, The Economy

**Responsible Director:** Tony Clements, Strategic Director, The Economy

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### Summary

A Cabinet report of 7th October 2019 approved a procurement strategy to procure long term contracts for the repairs and maintenance of the Council's housing stock. All but one of these contracts were procured and went live on 1<sup>st</sup> August 2020. The final contract was for a 'Responsive Capital' contract.

This contract plays an important role in our maintenance model – it is a flexible contract for carrying out major capital projects at a 'responsive' pace, projects that are too complex or high in value for the other repairs and maintenance contractors to carry out. It is designed with two types of work in mind – complex voids (structural issues, damp/drainage issues, major refurbishment) and urgent fire safety capital projects (e.g. installing new fire doors in a block). It is flexible enough though to carry out a wider range of projects, ensuring that the Council always has capacity to deal with any maintenance issues that arise.

Approval is now sought to appoint a contractor to deliver the Responsive Capital contract. The contract is for a period of 5 years with an option to extend by a further 2 years.

### Recommendations

That the Cabinet Member for Housing:

1. Agrees that Appendix A is exempt from disclosure on the grounds that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information) under paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended) and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
2. Approves the award of the Responsive Capital contract to Kier Services Limited for five years from 1<sup>st</sup> May 2021 (with an option to extend for two additional

years), for a total potential value of £75m over the five-year term subject to orders placed.

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**Wards Affected:** All

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<b>H &amp; F Priorities</b>	<b>Summary of how this report aligns to the H&amp;F Priorities</b>
Building shared prosperity	The winning contractor has committed to 15.1% Social Value contribution on all Responsive Capital projects. The primary route to Social Value will be via spend on local suppliers. In addition, the winning contractor has detailed their capacity to deliver work placements and training programmes. 10% of the evaluation score was for social value questions using a methodology that was agreed with Corporate Procurement and the Social Value Portal.
Creating a compassionate council	The winning contractor scored very highly on the quality criteria for this procurement, detailing how they would deliver capital projects in ways that minimised the impact on residents.
Doing things with local residents, not to them	Leaseholder consultation has been carried out.
Being ruthlessly financially efficient	<p>The contract prices are highly competitive and compare very favourably to rates that the Council pays on other construction sector contracts and that are available on frameworks. The prices are the result of a highly competitive two stage procurement process. Open book is at the heart of this contract with the contractor required to provide multiple quotes from their supply chain.</p> <p>This contract will enable LBHF to bring a number of long term voids back to a lettable standard and secure additional rental income.</p>

Taking pride in H&F	This contract will provide LBHF with capacity to deliver urgent capital projects at pace, at excellent value for money. It will be a valuable tool in helping LBHF deliver for residents.
Rising to the challenge of the climate and ecological emergency	The winning contractor will sign up to the Council's Social Value Portal and therefore there is scope to encourage them to achieve some of their 15.1% Social Value commitment through climate change measures. Responsive Capital is a flexible vehicle for delivering capital projects – it is for the specific capital projects, and the Governance around them, to determine the specific climate change requirements (such as the materials to use, recycling practices, use of electric vehicles etc). We would expect the Responsive Capital provider to be able to price for, and source, anything we require.

## **Financial Impact**

### Contract Value

The scope of this contract is wide and covers major capital projects including complex voids and urgent fire safety projects relating to the Council's housing stock. As a result, the total value of the contract has been set at up to £75m over a five year period from 2021/22 – 2025/26.

However, the award of this contract does not commit the Council to incur any costs. Instead, it is a flexible contract from which work can be requested when necessary. Any works required will need to be subject to confirmation of available budget within the Housing Capital Programme prior to instruction.

### Budget

The total Housing Capital Programme budget over the four years 2021/22 – 2024/25, as approved by Full Council in February is £142.3m. Of this, the total budget available for complex voids is £7m and for fire safety projects is £54.7m.

The nature of all works required under this contract are expected to be capital in nature.

Following consultation with leaseholders, it is expected that relevant costs will be recharged to leaseholders where their contribution exceeds £250 per property.

### Value for Money

The contract prices obtained are highly competitive and compare favourably with other rates for similar work that the Council has procured. Specifically, the schedule of Rates (SOR) discount rates on the Long Term Repairs Model repairs contracts are no more than 17% whereas under this procurement, the discount rates are 31%.

### Financial Status

A Credit Safe report was run on Kier Services Limited on 1<sup>st</sup> March and the score of 51 suggests a low financial risk to the Council. The average turnover for the most recent two years is £390m, which is well in excess of double the proposed contract value.

### Risks

Given the current financial climate, Kier Services Ltd's financial position should be monitored with suitable contingencies in place so that should their position worsen to the point of affecting delivery, its impact on the Council and residents is minimised.

The time spent during the procurement to ensure that Kier Services Ltd understand the commercial model and the payment terms should minimise the risks of disputes during the contract.

No mobilisation or TUPE costs are associated with this procurement.

### **Legal Implications**

This report recommends that a contract is awarded to Kier Services Limited in relation to the responsive capital repairs. The Contract is order based and there is no guarantee or warranty as to the number of orders placed under the Contract. The Contract is for a period of 5 years with a potential to extend for a further 2 years. The maximum potential contract value is £75,000,000. The total value of the contract exceeds the EU threshold for works under the Public Contracts Regulations ("PCR"), which is currently £4,733,252. Therefore, the PCR applies in full.

The PCR requires the contract to be procured by either a new procurement competition or the use of a framework agreement. This is also the requirement under the Council's CSOs for this high value contract (CSO 19.1). In accordance with the procurement strategy a competitive procedure with negotiation was used. Details of the procurement process followed is set out in this report. The procurement was run in stages with selection stage, initial tender stage and final tender stage.

The tender documentation included award criteria which were applied at each stage. At the Final Tender Stage the evaluation criteria were applied to determine the most economically advantageous tenderer. It is recommended that the Contract is awarded to the highest scoring tenderer in accordance with the tender documentation.

The decision maker needs be satisfied that the recommended award of contract is to the tenderer submitting the most economically advantageous tender on the basis of the award criteria set out in the Council's tender documentation. This will secure compliance with the PCR requirements and the Council's Contract Standing Orders.

A contract award notice must be published in the Official Journal of the European Union within 30 days of award of the contract and Contracts Finder 24 hours thereafter. In addition following Brexit a notice should also be placed in Find a Tender Services (FTS).

The Council's Legal Service will assist with preparing a formal contract. The tender was issued with a draft contract and will be entered into on those terms.

As the value of the call-contract is above £300,000, the call-off contract award is a Key decision and must be submitted to Committee Services for publication on the Council's website. In addition, a copy of the completed (dated) call-off contract must be uploaded to the Council's Contracts Register along with a copy of the award report.

Implications completed by: Sally Stock, Partner at Sharpe Pritchard  
[sstock@sharpepritchard.co.uk](mailto:sstock@sharpepritchard.co.uk) on secondment to the Council.

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Verified by: Emily Hill, Director of Finance

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### **Background Papers Used in Preparing This Report**

Cabinet report: 'Procuring and delivering a long-term Repairs and Maintenance model for Hammersmith and Fulham', 7<sup>th</sup> October 2019.

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## **DETAILED ANALYSIS**

### **Proposals and Analysis of Options**

- 1 Following the Cabinet report of 7<sup>th</sup> October 2019, a fully compliant procurement process was initiated to put into practice the Procurement Strategy as set out in that report.
- 2 In order to draw the attention of the market to the new contracts before the procurement commenced, a 'Meet the Buyer' day was advertised and took place at St Paul's Centre on 26th September 2019. This provided the opportunity for contractors to learn about the Long Term Repairs Model and the contracts that would be put out to tender. The event was attended by more than 50 suppliers and was well received.
- 3 In line with the Procurement Strategy approved by Cabinet, a Competitive Procedure with Negotiation (CPN) was launched with a Contract Notice in the Official Journal. The Council's preferred online procurement portal CapitalEsourcing was used for the procurement.
4. Leaseholder consultation was carried out from 13th September 2019 to 18th October 2019, presenting the suggested lot structure and approach to procurement. No issues were raised by leaseholders and so the tender documentation and advert were prepared ready for publication.
5. A notice was submitted to Contracts Finder and the Official Journal of the European Union (OJEU) via the CapitalEsourcing portal in accordance with the Council's Contract Standing Orders on 29<sup>th</sup> January 2020 (contract reference number 2020-040186).
6. The initial Procurement was aborted at Initial Tender stage following legal advice. Errors in the tender documents meant there was a risk that the procurement was not properly set up to reward best value bids.
7. The tender documents were therefore re-drafted and a second procurement was launched. 10% of the evaluation score was assigned to social value questions using a methodology that was agreed with Corporate Procurement and the Social Value Portal.
8. A new notice was submitted to Contracts Finder and the Official Journal of the European Union (OJEU) via the Capital Esourcing portal in accordance with the Council's Contract Standing Orders on 7th September 2020 (contract reference number 2020-042015).
9. The tender process then proceeded in four stages  
Selection Questionnaire (SQ) stage:
10. Economic Operators were required to complete the SQ which required them to provide information to satisfy certain legal and financial requirements (for example passing certain mandatory criteria and evidencing their economic and financial standing).
11. Responsive Capital received 11 SQ submissions before the deadline of 2<sup>nd</sup> October 2020. Following evaluation of the response 6 suppliers subsequently

passed the SQ stage and were invited to tender.

Initial tender:

12. The shortlisted economic operators invited to tender were required to submit a formal bid featuring answers to Qualitative/Technical questions set by LBHF, and a set of prices that would constitute their Commercial Offer.
13. 6 bids were submitted. These bids were evaluated on the basis of the published evaluation criteria which were a 60:40 quality to price weighting. The tender documents stipulated that the highest scoring 4 firms would be invited to negotiate,

Negotiation:

14. The 4 remaining bidders took part in a two week-long negotiation process with LBHF officers. The aims of the negotiation were:
  - 1) To ensure the bidders fully understood the scope of the contract and LBHF's requirements, so as to be able to offer a service solution that would be of maximum value to LBHF. There was a particular objective to ensure bidders understood the commercial model and payment terms of the contract, to minimise the risk of future commercial disputes.
  - 2) Identify areas where bidders could offer additional value beyond the requirements of the contract, and where these aligned with LBHF objectives, to confirm that LBHF would welcome these offers in the final bids.
15. The format and guidelines for the negotiation were planned in advance with the input of the Council's legal advisors, Sharpe Pritchard, and a Commercial Consultant. The officers leading the negotiation were trained in these guidelines.
16. The negotiation period lasted for two weeks in December 2020 and involved one meeting with each bidder. The meetings with each bidder were structured in the same way to ensure fair and equal treatment. The meeting focused on the commercial model, our key quality requirements, and our objectives around Social Value. There was a focus on the practicalities and unintended consequences of running a volume rebate system (which ultimately led to this concept being removed from the contract). Between the meetings, additional information was circulated online to all Bidders (via CapitalEsourcing).
17. The negotiation period was judged a success by the LBHF officers involved because they felt it led to bidders gaining a fuller understanding of LBHF's priorities: a high level of Social Value commitment, efficient planning of work programmes, minimising No Access issues to ensure programmes are completed on time, and LBHF's policies on fire safety and the quality of materials. It was felt that the quality of all bids would improve as a result LBHF would ultimately procure a higher quality service.

Final tender:

18. On 15<sup>th</sup> January 2021 the 4 bidders were invited to prepare their final bids.

Final versions of the contract documents (specifications, pricing schedules) were published. The deadline for bids was 29<sup>th</sup> January 2021.

19. A team of four evaluators was put together to mark the bids. The team was comprised of the AD Operations, AD Repairs, AD Resident and Building Safety and the Head of Capital Delivery. The evaluators were trained by the Governance and Commissioning team to ensure compliance with the Council's standards.

20. Tenders were opened virtually on the 29<sup>th</sup> January 2021 with representatives from Corporate Procurement in attendance.

21. Tenders comprised two sections. These were:

A) Qualitative / Technical Questions:

The weighting given to the qualitative section in the evaluation criteria was 60%. Bidders were required to submit a number of method statements which were then evaluated.

A moderation session was held on 22<sup>nd</sup> and 23<sup>rd</sup> February 2021 to agree on a single score for each method statement for each Bidder. The overall weighted quality score was then calculated.

B) Pricing / Commercial Offer:

The weighting given to the commercial section in the evaluation criteria, was 40%. The evaluated price was based on three elements: a schedule of rates discount, a central overhead and profit margin, and a set of standard preliminaries (using indicative volumes). Scores were allocated on a comparative basis – with the contractor with the lowest price receiving the maximum score for that element (6%, 19% and 15% respectively for the elements described above) and all other contractors being scored relative to the lowest price for that element.

22. Following moderation, the weighted pricing and qualitative scores for each Bidder were combined. An overall score was achieved for each Final Tender response. The Final Tenders were then ranked – highest first.

23. See Appendix A, section 1 for the combined final total scores.

24. The evaluation panel recommends that Kier Services Limited should be awarded the contract.

Next steps

25. All bidders will receive written confirmation of the Council's decisions to award the contracts. These letters are prepared in line with the Public Contracts



Regulations 2015 and will provide reasons for the decision together with the characteristics and relative advantages of the successful Tenderer.

26. After the letters have been issued via the Capital E Sourcing portal, a standstill period of 10 calendar days must be observed by the Council in accordance with the Regulations. No activity to engage with successful bidders or to advance progress with the process may be carried out during this time.
27. After the conclusion of the standstill period, Privacy Impact Assessments will be carried out for the new contractors.
28. At the same time, the final stage of leaseholder consultation will take place, with leaseholders being advised of the award decision, and an opportunity to ask questions and provide feedback provided to them. The minimum time for this consultation is 35 working days and should run from late March 2021 to late April 2021.
29. Once leaseholder consultation has concluded, the process of contract signing will start.
30. Draft contracts were issued at the start of the procurement process in September 2020 and these will be engrossed prior to being executed as a deed. This process should take no more than two weeks.
31. Mobilisation of the new contractor will commence after the statutory standstill period following contract award has finished – expected to be at the end of March. There is no TUPE transfer and no IT integration so mobilisation should only require four weeks.

### **Reasons for Decision**

32. Hammersmith and Fulham Council has a legal obligation to ensure its properties are maintained. The Responsive Capital Contract will ensure that LBHF has capacity to deal with any major capital project concerning housing maintenance and safety that arises.
33. The recommendations outlined are based on a competitive tendering process in line with the Public Contracts Regulations 2015. The Final Tenders received were evaluated by the Council's evaluation team against published evaluation criteria. The Contractor recommended for appointment was identified as the most economically advantageous tenderers having applied the evaluation criteria.

### **Equality comments**

34. There are no anticipated negative implications for groups with protected characteristics, under the Equality Act 2010, by the approval of the proposed contract set out in the recommendations.

## **Risk Management implications**

35. There is an expectation from the Insurance market that adequate provision is made to ensure that properties are being maintained to a good standard. This contract will help to meet the legal obligation, insurers requirements also the needs and expectations of Residents. Risks relating to the financial and commercial model have been mitigated by ensuring bidders clearly understand the model and payment terms of the contract. The Council's Covid recovery planning will benefit from a high level of Social Value commitment, efficient planning of work programmes, minimising No Access issues to ensure programmes are completed on time, LBHF's policies on fire safety and the quality of materials contributing positively to the Ruthlessly Financially Efficient Value.
36. Risk implications verified by: Michael Sloniowski, Risk Manager, tel: 020 8753 2587

## **Climate Change comments**

37. This award does not in itself have a direct impact on carbon emissions but establishes a flexible vehicle through which future capital projects will be procured according to their own criteria and relevant policies. This vehicle offers a flexible schedule of rates through which there is the opportunity to procure capital works according to stronger standards around sustainability. To ensure high standards of sustainability are achieved, any works using this vehicle must specify low-carbon solutions, taking into account embedded carbon in the materials used, their lifecycle, and operational carbon in both the works to be carried out and in use of the final capital asset.
38. The social value commitment of 15.1% provides an opportunity to deliver on climate emergency outcomes, which should be considered when working with the supplier to develop this commitment.
39. Climate Change comments provided by: Jim Cunningham, Climate Policy & Strategy Lead, tel. 07468 365829

## **Local Economy and Social Value**

40. The winning contractor has committed to 15.1% Social Value contribution on all Responsive Capital projects. The primary route to Social Value will be via spend on local suppliers. In addition, the winning contractor has detailed their capacity to deliver work placements and training programmes. This is line with the Social Value Strategy.
41. LBHF's method of monitoring Social Value was explained to bidders in detail during Tender and the winning contractor will sign up with Social Value Portal during contract mobilisation.
42. Implications completed by Ilaria Agueci, Social Value Officer tel. 0777 667 2978

## **Consultation**

43. In accordance with Section 20 of the Landlord and Tenant Act 1985 (as amended by Section 151 of the Commonhold and Leasehold Reform Act 2002) and the Service Charges (Consultation Requirements) (England) Regulations 2003, a Notice of Intention was served on 13<sup>th</sup> September 2019 and expired on 18<sup>th</sup> October 2019.
44. A second Notice (of Proposal) will need to be issued as the procurement process concludes, after the Contract Award report has been authorised by Cabinet Member and after the ALCATEL period. The regulations allow for leaseholders to comment on the suppliers being recommended for appointment. The Council, as Landlord, is required to 'have regard' to any comments but is not required to act on any suggestions from leaseholders. At the end of the 30-day period point the Council will be compliantly able to enter into contracts with suppliers and to then recharge leaseholders where contributions exceed £250 per property.

## **List of Appendices:**

Exempt Appendix A – Evaluation Scores