

## Appendix 2 – Procurement Strategy

### HOUSING REVENUE ACCOUNT (HRA) 12 YEAR ASSET MANAGEMENT CAPITAL STRATEGY

#### Contract Specifications Summary

1. A variety of different provider solutions will need to be procured in order to deliver the 12 year Asset Management Capital Strategy (the Strategy) described in the paper above. The procurement strategy will need to evolve over time, responding to new information, new needs, changes in the market, and lessons learned from previous procurements and experiences of provider delivery.
2. This procurement strategy does not attempt to describe the procurement solution for every aspect of the Strategy. Instead it describes a first phase strategy designed to equip the London Borough of Hammersmith & Fulham (LBHF) with sufficient provider options to be able to deliver the works scheduled to start in 2022/23, whilst maintaining a high degree of flexibility to change the mix and use of provider as circumstances require, including the addition of supplementary providers.
3. Responsive Capital
4. During 2020/21 LBHF procured Kier services limited to deliver a highly flexible five year capital works contract, called 'Responsive Capital', up to a maximum value of £75m but with no guaranteed work. The contract provides for design and build services and features two different pricing mechanisms. The contract is designed to accommodate almost any capital project, with Kier expected to use their extensive supply chain to offer a solution for any project we commission through the contract.
5. Responsive Capital was procured using competitive procedure with negotiation. While this is a lengthy and labour intensive process, it is a process that delivered highly satisfactory results: all of the four bids invited to final tender scored highly on quality (Kier's quality score was nearly 90%) and the tendered prices were deemed to be highly competitive with all four bidders tendering the minimum Central Overhead and Profit margin that was permitted (a floor was set by the tender rules to avoid unsustainable bids).
6. The intention is that the Responsive Capital/Kier contract will be used to deliver a significant amount of the works described in the Fire Safety section of the Strategy, particularly the works scheduled for the earlier years.
7. Five additional Responsive Capital style contracts
8. The procurement strategy proposed in this paper is that LBHF procures five additional contracts on the same model as the Responsive Capital contract. These contracts would be flexible vehicles able to cover any form of capital work over a period of 5 years, with no guaranteed work but maximum contract values

of up to £50m each (see table in section 12). The strategy would be that the five contracts would align with, and deliver the work described in, the following sections of the Strategy:

- Structural Safety (outside of White City)
- White City 1
- White City 2
- Charecroft Estate Phase 2
- Asset Replacement (including West Kensington estate assets)

9. White City is a large estate with 46 blocks so it is felt that there should be two contractors to prevent over reliance on any one contractor and to enable comparative benchmarking of cost and performance.

10. Future procurement strategies need to be informed by the results of the Energiesprong pilot taking place in 2021/22 and by future bids for Government funding for domestic retrofit. All works covered by the contracts listed above will seek to maximise Climate Change (zero carbon) measures.

#### 11. Package design

12. A table showing the full range of contracts proposed is set out below:

<b>Procurement</b>	<b>Contract</b>	<b>Description</b>	<b>Value</b>	<b>Length</b>
Exercise 1 (two lots)	Structural Safety (outside of White City)	Balconies, soffits and roof details at Becklow & Emlyn and Mackay House.  Concrete/steel structural issues on 60 estates.  Strengthening of roofs and rebuilding of upper window arches at Cranbury Street terraced properties.	£50m	5 years + 1 +1
	Asset Replacement (including West Kensington estate assets)	30 commercial boiler schemes.  Booster pumps to transport water in tower blocks.  Window replacements.  Kitchen and bathrooms replacements.	£50m	5 years + 1 +1

		With the Decent Homes programme ceasing in 2010 all the internal works will over the life cycle of the Strategy, require refurbishment.		
Exercise 2 (two lots)	White City 1	Major works programme at White City Estate consisting of the following:  <ul style="list-style-type: none"> <li>• Category 1 Hazards</li> <li>• Structural safety repairs</li> <li>• Ventilation</li> <li>• Heating (including alternative to gas)</li> <li>• Doors/Windows</li> <li>• Fire Safety</li> <li>• Insulation</li> <li>• Roofing</li> <li>• Drainage</li> <li>• Water infrastructure</li> </ul> <p>Two providers to ensure there is sufficient capacity to proceed with pace.</p>	£37.5m	5 years + 1 +1
	White City 2		£37.5m	5 years + 1 +1
Exercise 3 (one lot)	Charecroft Estate Phase 2	Completion of the Charecroft Phase 2 works delivering:  <ul style="list-style-type: none"> <li>• Replacement windows and infill panels</li> <li>• Roof</li> <li>• External/structural repairs</li> <li>• Sprinklers</li> </ul> <p>A specialist project due to freeholder complexity, site access challenges, and historic issues.</p>	£25m	5 years + 1 +1

13. For maximum procurement, governance and leasehold consultation process efficiency the five contracts will be procured across 3 separate procurement

exercises. One will be for borough wide contracts, whereas the other two will be estate specific. This split is required for leaseholder consultation purposes.

14. It is not possible to accurately predict the financial value of any particular lot. Indicative values will be provided for each lot in order to support market engagement in the lead-in to the procurement process. Contracts of this kind will generally be of the term variety whereby no volume of work is committed to but where the contractual conditions are set out for any work which is instructed. Without wishing to mislead the market, higher value lots are generally better than lower value lots. There are two reasons for this: firstly, because higher value lots tend to be more attractive to bidders and can result in better quality bids. This is LBHF's experience with setting a £75m value for the Responsive Capital contract. The second reason is that spending beyond the published value of any lot is against EU and UK procurement rules whereas an under spend is more understandable given that these are all estimates.

#### 15. Contract length

16. The contract length is suggested as 5+1+1 years with a 6-month no fault termination at will clause. The five to seven year contracting arrangement is long enough to review and refine the various contracts and to develop good working relationships, but short enough not to allow complacency to set in. A formal contract review will take place at the end of every year of the contract.

17. The longer contract duration means theoretically higher value contracts which should be attractive to bidders and, hopefully, result in a higher quality and lower cost service. Each lot will result in one supplier with the second highest scoring being kept as a reserve in case of poor performance or financial collapse. A six-month no-fault termination clause in line with industry best-practice across the sector.

18. The option to access two one-year extensions at the end of the five-year period will give the Council flexibility to ensure that high-performing providers can be rewarded for sustained positive resident and client feedback.

### **Procurement Route Analysis of Options**

19. The four main procurement routes are:

- Open
- Restricted
- Competitive with negotiation
- Competitive dialogue

20. Under the open procedure any company which is interested may submit a tender in response to a contract notice. There is therefore no process of shortlisting in this procedure and it does not allow the authority to undertake any process of negotiation with the contractor. There are two potential disadvantages to this procedure. First, in a field of activity where there are a large number of potential providers (which is the case here), there is a danger that the Council will receive

an unmanageably large number of bids. These would all need to be evaluated in accordance with the published criteria. This could be a demanding task and require considerable resources to undertake it. An open procedure could have adverse consequences in terms of the quality of the bids. If a contractor knows that it is only one of a relatively small number of companies invited to submit a tender it will be incentivised to put in a high quality and competitive bid. This incentive is less likely to apply with the open procedure.

21. The restricted procedure allows the Council to restrict the number of companies invited to submit a tender. This has the advantage that the Council can decide the number of bids it needs to provide reasonable competition. The participants know that they are competing with a relatively small number of competitors and therefore have an incentive to devote a reasonable level of resource to their bid and to be competitive. There is no power under the restricted procedure to engage in any negotiation in relation to the bid. However, it is possible to provide explanations and clarifications so that all potential bidders are clear about what they are applying for and how their bids should be structured.
22. Under the competitive procedure with negotiation the authority must, in the tender documents provide a description of their needs and the characteristics required of the works/services to be procured. The authority can limit the number of participants. Negotiations take place to improve the contents of the bids. However, authorities can award on the basis of the submitted tenders only (meaning without negotiations) provided they have reserved the right to do this.
23. The competitive dialogue procedure requires the authority to define their needs and requirements in a descriptive document. There is then a dialogue to identify and define the means best suited to satisfying their needs. There is no option of simply accepting a tender without dialogue. If this procedure is chosen, the authority is committing itself to a dialogue. There is usually a process of successive stages of dialogue with the number of participants reduced at each stage. Once the dialogue is concluded the remaining participants are invited to submit final tenders based on their solutions.
24. The open and restricted procedures can be used for any procurement exercise taking place under the Public Contracts Regulations. The competitive procedure with negotiation and the competitive dialogue procedure can only be used in the situations specified in regulation 26(4). In the case of this procurement it would be because of "specific circumstances related to the nature, the complexity or the legal or financial makeup or because of risks attaching to them".
25. There are clear disadvantages for this procurement in using the open or competitive dialogue procedures. The open procedure may result in an unmanageably large number of bids without sufficient incentive to ensure these are of a high quality. The competitive dialogue is likely to be demanding in terms of resources and may commit the authority to negotiations which are unnecessary.
26. Whether the restricted procedure or the competitive procedure with negotiation is preferable will depend on (1) whether the Council regards the procurement as

sufficiently complex for this to be a situation where the competitive procedure with negotiation can be used and (2) whether there is in fact likely to be a need for negotiations

## 27. Options appraisal

28. Option 1 - Appoint contractors from frameworks to carry out all of Hammersmith & Fulham's capital work
29. Frameworks are likely to feature in future procurement strategies covering other aspects of the Strategy. They can be a useful option, enabling much quicker procurement. The drawback is that the Council has to use 'off the shelf' framework contracts that are not to LBHF needs or incorporate 'lessons learned' from LBHF's experience of clienting contractors. There is a risk that a framework contracts might include clauses that undermine effective clienting or don't fit in with LBHF's clienting practices (the advantage of creating multiple Responsive Capital style contracts is that it enables the Economy department to embed a single clienting methodology that officers can become experts in). Using frameworks can also impede leaseholder recharging, and framework contracts can only be used for 4 years.
30. Option 2 – Procure a mix of long-term contracts via Competitive procedure with Negotiation (CPN) (this is the recommended option)
31. Whilst procuring via CPN is more time consuming than using frameworks it does allow for contracts which can run for longer than 4 years. It also allows the Council to specify exactly what it requires; to require its precise standards and to set the terms under which it is prepared to transact. This provides the Council with a more bespoke end product and should result in greater levels of protection and quality of service for both residents and the Council. Over long periods of time these advantages could be significant and should substantially outweigh the extra time and resource required in terms of procurement. Should it be necessary for any particular reason then the option of making an award from an existing Framework Agreement for any particular requirement is always open to the Council.

## 32. Recommendation:

33. It is recommended that the Competitive Procedure with Negotiation (CPN) is adopted, on the basis that the operation of the contracts is likely to be complex and require some form of negotiation in order to secure best value. The route also allows the Council not to negotiate if it feels that bids are sufficiently clear that an award can be made without any prior negotiation.
34. The Economy department has recent experience of delivering CPN procurements for major contracts – with the Responsive Repairs contracts and the Responsive Capital contract. In both cases, Negotiation proved a valuable undertaking as it led to bidders having greater clarity around the commercial models underlying the contracts, which led to more sustainable bids being submitted. The Council's

commitment to Social Value was underlined in Negotiation sessions and led to bidders making more ambitious Social Value commitments.

### **Market Analysis, Local Economy and Social Value**

35. This is a very mature market made up of large national providers, many of which LBHF has experience of working with in the recent past. There are likely to only be 6-10 bidders per lot/contract, and likely that every lot/contract will attract the same set of bidders. Rules will be set to ensure that within a procurement exercise no contractor can win all of the lots, to ensure that we end up with at least three contractors for the five contracts.
36. There are likely to be opportunities for local suppliers to serve in the supply chain of the five contracts. Indeed, the Responsive Capital contractor has engaged with the Small and Medium Enterprise (SME) Forum to flag up opportunities in their supply chain. There will be no reservation to London or SME businesses – these contracts will work best when delivered by large firms able to handle a variety of different work because they have extensive supply chains. The work will often be highly complex and specialist, with major Health and Safety implications.
37. The opportunity for Social Value is significant. The Responsive Capital contractor has committed to 15.1% Social Value which is more than £11m over 5 years (or less depending on the profiling of the work). The greatest impact is likely to be local employment and apprentices, but also local supply chain spend. The likely bidders in the market have great experience of delivering Social Value, with established programmes for outreach and employment support that they can roll out to LBHF.

### **Risk Assessment and Proposed Mitigations**

38. Key risks are that there are too few bidders (less competition, less value) or that one single bidder wins the maximum number of contracts possible (three out of five), making LBHF too reliant on a single firm for the delivery of the first phases of the capital programme (making us vulnerable to contractor failure). Mitigations are that the procurement will be well designed and professionally run – there will be a market shaping day to advertise and explain the opportunities, ample time for bids will be provided, with a responsive and timely approach to answering clarifications questions. The use of a Negotiation stage should ensure all bidders reach full understanding of our requirements. This rigorous approach should maximise the number of bidders and the competitiveness of all bids, such that there should be variety in the final outcomes. The procurement is complex but the Governance and Commissioning Team in the Economy department have the experience of Competitive Procedures with Negotiation and the capacity to deliver. A dedicated Capital Procurement Officer will be recruited and they will focus primarily on these procurements.

### **Timetable**

Key Decision Entry	April 2021
Contracts Assurance Board (CAB)	23 <sup>rd</sup> June 2021
Cabinet Sign off	6 <sup>th</sup> September 2021

Find a Tender Service Notice	September 2021
Evaluation of Tenders	December 2022
Key Decision Entry (Award)	December 2022
CAB (Award)	January 2022
SLT/Cabinet Member (Award)	January 2022
Find a Tender Service Contract Award Notice	January 2022
Contract engrossment	February 2022
Contract mobilisation and implementation	February 2022
Contract Commencement date	April 2022

## Selection and Award Criteria

41. Each contract will be awarded to the most economically advantageous tender based on a combination of price and quality. Tenderers for each contract will be evaluated based on their Quality (Technical) submission and Price (Commercial) submission. This will be at a ratio of 60/40 of Quality and Price in line with the Council's standard evaluation practice set out in its standard procurement procedures, and the ratio that was used for the procurement of the Responsive Capital contract.
42. Pricing will be similar to the Responsive Capital contract. Bidders will be required to submit a fixed Central Overhead and Profit % that will apply to all projects. This will be capped between 3% and 10% to prevent unsustainable bids or poor value bids. Bidders will also submit a set of generic project preliminaries (primarily related to key labour roles and to key site facility/welfare costs) that will apply to all projects. Wherever appropriate, we will seek schedule of rate discounts, but the nature of the work is such that these will rarely be appropriate (given how the projects will be large and complex, whereas schedule of rates works best for very standard, routine work). Project pricing will primarily revolve around open book tendering of sub-contractors – and each contract will give LBHF strong rights to demand and scrutinise this tendering process, building on the process in the Responsive Capital contract.
43. Social Value
44. The procurement process will follow the Council's Social Value policy by setting aside 10% of the evaluation score for Social Value questions (10% Social Value, 50% other quality questions, 40% price). For each contract, bidders will be required to tender a minimum Social Value % that will represent the level of Social Value, relative to the project cost, that they will deliver, and that will apply to every project commissioned through that contract. This was the approach that was applied to the Responsive Capital contract and resulted in the successful bidder committing to 15.1% Social Value for every project.
45. Environmental performance will also be considered through the procurement process, including examining transportation options, use and recycling of materials, waste management, service delivery practices, as well as seeking to



stimulate technological innovation to enable environmental advances in the performance of Council in its heating, lighting and fabric of its housing stock

### **Contract Management**

46. The Assistant Director of Resident and Building Safety will be the named Contract Administrator for all of the contracts. Operational contract management will sit with the Direct Capital Delivery team.
47. A similar suite of Key Performance Indicators (KPIs) will be used as for the Responsive Capital contract – focusing on delivery of project milestones to time, quality standard and agreed price. There will be Health and Safety KPIs, and KPIs around the delivery of the Social Value Plan. There will be monthly contract governance meetings and quarterly core groups with a more senior audience.
48. The contracts will stipulate that contractors must sign up with the Social Value Portal to enable the monitoring of their social value commitments. The contracts will lay out the fee structure for the Social Value Portal.
49. The pricing mechanism revolves around a fixed profit and central overhead margin and open book tendering of sub-contractors, which negates the need for inflationary uplifts. There may be scope to fix certain generic project preliminaries (ie Site Manager, Quantity Surveyor labour rates), where it would be appropriate to have inflationary clauses to reflect wage increases. This would be CPI.

### **Climate and Ecological Emergency Implications**

50. The Strategy includes £106.5m over ten years for capital works aimed at tackling the Climate Emergency. This would primarily involve works to improve the energy efficiency of the Council's housing stock, building on the whole-home retrofit pilot that will take place in West Kensington at the end of 2021. More than a third of the Council's carbon emissions come from heating our housing stock so this additional capital spend is a crucial part of the Council's Climate strategy.
51. When LBHF procures contractors to deliver any of the capital works within the capital programme, officers will seek to procure solutions that minimise carbon emissions – through carefully designed specifications and evaluation criteria and employing the full potential of the Council's Social Value methodology.
52. Implications verified by: Jim Cunningham, Climate Policy Lead, Environment, 07468 365829

### **Local Economy and Social Value Implications**

53. This procurement strategy is seeking approval to progress with the procurement of the first phase of the Strategy. The first contract was awarded to Kier for the Responsive Capital project, with 15.1% social value commitments secured. This procurement strategy is proposing to procure five additional contracts on the same model to cover any form of capital work over a 5 years period, with no

guaranteed work but maximum contract values of up to £50m for each contract awarded.

54. This strategy explains that for each contract, bidders will be required to tender a minimum 10% Social Value relative to the project cost that they will deliver, and that will apply to every project commissioned through that contract. This is in line with Social Value Strategy.
55. Bidders will be required to register on Social Value Portal to enter social value quantitative responses. The Successful Bidder is responsible for paying the Social Value Portal Management Fee for the initial term of the Contract (5 years).
56. Contract managers will need to work with the Council's Social Value Officer to ensure commitments are being effectively monitored and delivered. The final contract should contain appropriate social value clauses so that the Council can enforce its right to compensation if social value commitments are not delivered.
57. Implications verified/completed by: Ilaria Agueci, Social Value Officer, tel. 0777 667 2878