

LONDON BOROUGH OF HAMMERSMITH & FULHAM

Report to: Councillor Lisa Homan, Cabinet Member for Housing

Date: 01/10/2021

Subject: Procurement Strategy and Direct Award of contract to provide consultancy support for various schemes within the Housing Capital Programme

Report author: Vince Conway, Senior Programme Manager, Capital Delivery

Responsible Director: Jonathan Pickstone, Strategic Director for Economy

Summary

This report seeks approval of a procurement strategy and direct award of a contract for the provision of multi-disciplinary consultancy services urgently required to deliver a range of projects forming part of the housing capital programme. These include schemes to tackle the high risk of external fire spread at Charecroft and Edward Woods estates and priorities at West Kensington and other estates. The appointment of professional consultants is urgent if the council is to meet the timetable for accessing the Government's Building Safety Fund and to enable the council to maximise external grant opportunities in support of the climate change agenda.

The contract will be procured via the South East Consortium (`SEC`), a third party consortium established in 2005 to achieve procurement savings for social housing providers. The proposal is an interim measure pending the establishment of the council's own consultancy framework, anticipated to go live in early 2022, after which any new commissions via the SEC will be subject to further approval.

Recommendations

1. That Appendix 1 of this report is currently exempt from disclosure on the grounds that it contains information relating to the financial or business affairs of a particular person (including the authority holding that information) under paragraph 3 of Schedule 12A of the Local Government Act 1972, and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
2. That the Cabinet Member for Housing approves the procurement strategy proposing the use of the South East Consortium Consultancy Framework direct award procedure for the provision of multi-disciplinary services to enable the delivery of projects outlined in Appendix 1.
3. That the Cabinet Member for Housing approves the award of a contract to Baily Garner under the South East Consortium Consultancy Framework direct

award procedure for the provision of multi-disciplinary services to enable the delivery of the Phase 1 projects outlined in Appendix 1 at an estimated total value of £2.1m. The contract is expected to start in October 2021 for an estimated period of up to four years.

4. To note that the Phase 1 commissions will be for urgent safety works at Edward Woods and Charecroft estates; the continuation of complex void works and spandrel panel removal; the grant-funded retrofit of West Kensington estate houses; and window replacement and associated works to West Kensington towers. Each workstream will be subject to the agreement of specific scope of services and there will be negotiations on fee proposals taking into account the overall volume of work being awarded. Value for money, capacity, and delivery of social value will be key assessments for each commission.
5. To note that the commission for the Phase 2 projects will be subject to further market testing, anticipated to be via a mini-competition under the SEC or other framework.
6. To note that the estimated fees detailed in Appendix 1 will be recalculated based on the total contract value and service proposal for each project and will be detailed in individual works contract award reports.

Wards Affected: All

Our Values	Summary of how this report aligns to the H&F Values
Building shared prosperity	The consultants will play a critical part in improving and maintaining the standard of council homes. Housing is a prime influence on quality of life, life expectancy, opportunities for work, education, leisure etc. It is critical to economic development, educational achievement, public health, community cohesion.
Creating a compassionate council	Investment in social housing enables the council to fulfil its landlord function and provide good-quality homes to local people that are safe, secure and genuinely affordable.
Doing things with local residents, not to them	Residents will be fully consulted during the preparation of schemes, their progression to site, and final delivery. The expertise of the appointed consultant will be integral to ensuring residents are properly informed about

	decisions affecting their homes and, where necessary, specific feasibilities and impact assessments will be undertaken. The consultation will continue post-procurement to include site set-up arrangements and further information on the delivery stage.
Being ruthlessly financially efficient	The proposed consultants have achieved highest ranking, for both quality and costs, on the SEC's multi-disciplinary framework following an OJEU-compliant tender process. They will provide robust contract management and cost control to ensure schemes achieve quality standards and demonstrate value for money.
Taking pride in H&F	The consultants will be integral to the assessment of each project's environmental impact including reviewing contractors' approach to energy consumption, use of sustainable materials, transport plan, site waste management, and noise pollution.
Rising to the challenge of the climate and ecological emergency	Baily Garner will scope out works incorporating carbon reduction and energy efficiency initiatives where feasible and cost-effective. This will assist in establishing a roadmap to Net Zero Carbon by the council's 2030 target

Financial Impact

As outlined in Appendix 1 , the proposed estimated award value of £2.6m of consultancy fees is in respect of estimated capital works worth of £91.3m. Of this, only £33.8m is contained within the currently approved budget, with the remaining £57.5m being part of the new *12-year Asset Management Strategy* agreed by the September 2021 Cabinet and to be incorporated into the 2022/23 capital programme to be approved by Full Council in February 2022.

The contract will not be entered into until after the formal approval of the Asset Strategy and relevant capital budgets and any commissions instructed under the contract will be subject to budgets being in place.

A credit report was produced on the proposed contractor Baily Garner LLP via CreditSafe on 18 August 2021. It shows they have a low risk credit score of 79. The average of their most recent two financial years' turnover is £12m, which is well above the Council's minimum requirement of double the contract value.

Legal Implications

This report requests the approval for the procurement strategy of making a direct award via the South East Consortium (SEC) to appoint Baily Garner LLP as a Consultant for the projects outlined in appendix 1.

Baily Garner LLP's previous contractual dealings with the Council is of relevance here and paragraph 15 of the report indicates that Baily Garner LLP has a satisfactory track record. To ensure good delivery of public services and value for money, [Procurement Policy Note 04/15](#) confirms that a supplier's reliability can be determined by reference to its performance of past contracts.

Regarding the initial meetings with Baily Garner LLP outlined in paragraph 27, Regulations 47 of the Public Contracts Regulations 2015 (as amended) (the "PCR") allows 'preliminary market consultations' to be carried out before a procurement is started. This can be done with a view to preparing the procurement and informing economic operators of the contracting authority's procurement plans and requirements. However, it is important that the Council takes steps to ensure competition is not distorted and the measures taken to safeguard this should be well documented (Regulation 40(3) PCR).

The approximate value of the consultancy services is stated to be £2,600,000 (in respect of refurbishment/building works with an estimated value of £91,289,000).

As the value of the consultancy services is above the current threshold specified in the PCR and is classed as a High Value Contract in the Council's Contract Standing Orders (CSO), the procurement process must both meet the requirements set out in the PCR and regulation 19 of the CSO's.

Public Contracts Regulations 2015

The preferred procurement process set out as Option 4 at paragraph 14 of the report is a direct award under a framework agreement. Regulation 33(8)(a) of the PCR sets out the criteria for making a direct award to the supplier able to fulfil the order most efficiently as assessed by predetermined factors.

Paragraphs 21 – 25 of the report indicates that the appropriate procedures in line with the PCR's have been followed by SEC (the framework organisers). SEC is a not-for-profit central purchasing body specifically created to support the housing sector in providing public sector organisations with pre-approved suppliers. From Paragraph 4 of the report, suppliers on their frameworks have a proven track record in executing successful projects.

The supplier's performance of past contracts and reliability has led to the award of further projects and possible risks associated with this have been considered and appropriate mitigation plans put in place at paragraph 17.

An advantage of proceeding with Option 4 is that a direct award can offer a compliant and swift route to market and by cutting out the need for a competition, this allows projects to commence on time, within the set schedule and with a suitable supplier.

Contract Standing Orders

CSO 19.1 permits the use of complaint frameworks for the award of high value contracts. As outlined above, the framework has been compliantly established. Details of OJUE notices and validity periods are set out at paragraph 21 of the report.

All High Value Contracts are required to have:

- a Service Review Team established to oversee the procurement (CSO 17);
- a Procurement Strategy reviewed at the Contracts Assurance Board and approved by the relevant decision maker before the procurement process commences (CSO 18);
- a Tender Appraisal Panel established following approval of the procurement strategy (CSO 19.3).

Additionally, as this concerns a contract with estimate value in excess of £300,000, Article 12 of the Council's Constitution deems it a Key Decision therefore this report must be submitted to Committee Services for publication on the Council's website (CSO 18.2 & 21.7) with implementation taking place only after expiry of any call-in period.

Although a stand still period is not mandated by the PCR, voluntary compliance with the stand still rules will protect the contact from ineffectiveness and is required by CSO 21.7.

The decision maker has an obligation to satisfy themselves that the call off under the framework represents value for money – in this regard please see comments under "Being Ruthlessly Financially Efficient" (last row at the table at page 2 of the Report) which sets out the considerations that has been given to this.

Decision-maker

The appropriate decision maker for:

- a) procurement strategies for contracts between £500,00 and £5million is the relevant Cabinet Member; and
- b) contract award for contracts between £500,000 and £5million is the relevant Cabinet Member.

Therefore, the Cabinet Member needs to be satisfied that the recommended strategy and contract award is in the best interests of the Council. The implementation of this decision will then be in accordance with the UK procurement legislation.

Social Value

The Council is also under an obligation under the Public Services (Social Value) Act 2012 to consider how the letting of the contract can benefit the social, economic and environmental well-being of their area. Paragraph 40 indicates that attempts will be made to negotiate a commitment from the supplier to deliver Social Value equivalent to 10% of the contract value, in line with the Council's Social Value policy.

Baily Garner are committed to achieving the required social value and that each commission entered into will include a contractual requirement to deliver on Social Value with penalty clauses for not doing so.

Social Value Implications are considered and outlined at paragraphs 40-42.

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Background Papers Used in Preparing This Report – None

DETAILED ANALYSIS

Background

1. The Council's Asset Management Compliance Strategy and Capital Programme approved in July 2020 set out a large programme of works primarily focused on health and safety compliance and mainly targeting higher risk properties. The proposed 12 year Investment Plan agreed by Cabinet in September extends this compliance-based approach across all the stock but also includes major element renewals and carbon reduction measures to ensure the safety and integrity of homes for the longer term.
2. External consultancy support is required to lead on the preparation of projects - including detailed feasibilities where required - and their day-to-day management, co-ordinating the various aspects of each phase from design through to completion.
3. Whilst a separate procurement strategy has been approved for the council to set up its own consultancy framework this opportunity is at the early stages of evaluation and it will therefore be some months before it is established. In the meantime urgent schemes need to be progressed to site whilst initial scoping needs to start on other prioritised schemes.

4. It is therefore proposed to secure external consultancy services via the South East Consortium, a third-party framework. The SEC is a not for profit organisation established in 2005 to achieve procurement savings for social housing providers and other public services. The SEC has established a series of frameworks to cover various works and support services and the council, as a full member, has accessed these to successfully deliver a number of housing capital programme projects since 2019.

Reasons for Decision

5. A decision is required to secure a supplier to provide multi-disciplinary consultancy services to support the delivery of various projects forming part of the housing capital programme.
6. This procurement strategy and award report is submitted for Cabinet Member approval in accordance with paragraphs 18.1 and 21.1 of Contract Standing Orders (`CSOs`).

Contract Specifications Summary

7. The proposed contract will cover a range of disciplines including but not limited to:
 - Employers Agent
 - Building surveying and architect services
 - Liaison with council's planning and building control officers to ensure compliance
 - Quantity Surveying
 - Principal designer
 - Project management and contract administration
 - Clerk of works
8. The consultancy support will be required throughout the duration of each works contract and for a further year post-contract to cover the defects liability period.
9. The form of contract, or contracts, will be the JCT Consultancy Agreement (2016) incorporating agreed framework rates based on the services required for individual schemes.

Procurement Route Analysis of Options

10. A number of options have been considered:
11. Option 1 – Do Nothing. This is not an option as urgent safety schemes need to be progressed to site and managed effectively.
12. Option 2 – Carry out a full tendering exercise. A new procurement would be a very long and resource-intensive process. It would also overlap with the procurement of the council's own consultancy framework.

13. Option 3 – Carry out a mini-competition under an existing framework. Whilst this option would provide a suite of pre-qualified suppliers it would not significantly shorten the tender process, most of the effort going into establishing selection criteria and evaluating bids.
14. Option 4 – Call off from an existing framework using a direct award process. This is the preferred option. The council has successfully used the SEC framework since 2018 and Baily Garner retained their status as top-ranked supplier on the multi-disciplinary services lot when it was retendered in 2020.

Market Analysis, Local Economy and Social Value

15. The market for construction consultancy firms is well developed and the council has experience of dealing with many different suppliers over the years. Baily Garner has been working with the council to deliver a range of fire safety and major refurbishment projects over the last couple of years and have performed well.
16. As this is a direct award, officers will discuss social value targets with Baily Garner to ensure adherence to the council's Social Value Policy. Baily Garner will create a specific social value offer for each project or workstream they are commissioned to work on and will commit to deliver a minimum of 10% Social Value as part of their contract terms. As much as possible each offer will be directed towards the estates being worked on. Meetings are scheduled to take this process forward and agree targets for the initial projects at Edward Woods and Charecroft estates.

Risk Assessment and Proposed Mitigations

17. Directly awarding a number of projects to a single supplier carries the risk that a failure in performance becomes far-reaching. However, Baily Garner have demonstrated previously that they can adequately resource a large programme of works encompassing various projects. Further, the projects will be released on a phased basis and subject to satisfactory performance.
18. The proposed establishment of the council's own consultancy framework means this arrangement will be an interim one and future workloads are expected to be more widely distributed.
19. Various projects are included in the 12-year Asset Management Strategy agreed by Cabinet on 6th September 2021 and the funding proposed therein which is subject to approval by Full Council in February 2022. The proposed contract will not be entered into prior to the strategy being formally approved. No discussions or commissions on individual projects or workstreams will be instructed without budgets being in place.

Timetable

20. Please include an estimated timetable of the competition process through to contact commencing.

Key Decision Entry (Strategy)	1 April 2021
Contracts Assurance Board (Strategy and Direct Award)	29 September 2021
Cabinet Member Sign off (Strategy and Direct Award)	1 October 2021
Find a Tender Service Notice	N/A
Closing date for clarifications	N/A
Closing date for submissions	N/A
Evaluation of Tenders	N/A
Key Decision Entry (Award)	N/A
CAB (Award)	N/A
SLT/Cabinet Member (Award)	N/A
Find a Tender Service Contract Award Notice	
Contract engrossment	October 2021
Contract mobilisation and implementation	October 2021
Contract Commencement date	October 2021

Selection and Award Criteria

21. The SEC is a not for profit organisation established in 2005 to achieve procurement savings for social housing providers and other public services. Hammersmith & Fulham Council is a full member. The SEC has established a series of frameworks to give members compliant access to a range of consultancy services .
22. In 2020 the SEC undertook the re-procurement of its consultancy services framework under OJEU Ref: 2020/S 124 331370. The framework was awarded 08/02/2021 and expires 07/02/2025.
23. The framework established twelve Lots including one for multi-disciplinary services covering all aspects of construction projects from inception to completion. These services typically include but are not limited to:
 - Project management and contract administration
 - Quantity surveying
 - Principal designer
 - Building and Architect services
 - Planning and building control compliance
24. Expressions of interest were received by SEC from 310 suppliers with 185 bids received across the twelve Lots. Following assessment of the Pre-Qualification Questionnaire, a total of 73 were shortlisted for Invitation to Tender.
25. A tender evaluation process was undertaken by SEC using the principle of Most Economically Advantageous Tender (MEAT). A minimum of eight and

maximum of ten suppliers were awarded places on each SEC Lot and ranked based on scores achieved using a criteria of 40% price and 60% quality.

26. For Lot 11, multi-disciplinary services, Baily Garner were top ranked, achieving maximum scores for both quality and price.

RANKING	TENDERER	TOTAL WEIGHTED SCORE
1	Baily Garner	100.0
2	Supplier 2	77.42
3	Supplier 3	65.80
4	Supplier 4	64.97
5	Supplier 5	59.28
6	Supplier 6	56.47
7	Supplier 7	54.95
8	Supplier 8	54.13

27. There are two ways to use this SEC framework; direct call-off or mini-competition. The direct call-off method is used where there is an immediate need for a compliant contract and this is considered both appropriate and necessary in this instance.
28. Officers have reviewed the fee percentages included in Baily Garner's tender and consider them to be competitive compared to similar services provided on historic contracts. However, in view of the volume of work being awarded, officers will seek to negotiate a reduction on the total fee to achieve the most competitive rate available.
29. An initial meeting with Baily Garner has provided assurance that they fully understand what will be required for the projects and will be able to adequately resource them. A full resource schedule will be provided for each workstream.

Contract Management

30. The Assistant Director, Building and resident safety, is the strategic lead for the housing capital programme. The Head of Capital Delivery will manage the operational team overseeing the appointed consultants and contractors.
31. Baily Garner will assume the role of contract administrator for each works contract and will be responsible for issuing all instructions, variations, notices etc. to contractors. Their appointed Quantity Surveyor will provide cost control and valuation of works.

32. A suite of KPIs will be agreed with the council and used to monitor, measure and report on the performance of both consultants and contractors. Example KPIs specific to the consultancy support will include:
- Time to produce pre-construction cost information
 - Predictability of cost
 - Time to complete scope of works and outline specification
 - Time to complete final account
 - Time to produce health and safety files
 - Client satisfaction

Equality Implications

33. The annual housing capital programme seeks to ensure that the Council can continue to provide social rented homes of a good standard; fulfil the Council's statutory obligations as a social housing provider; protect the health, safety and well-being of residents; and preserve the integrity of the housing stock.
34. The schemes detailed in Appendix 1 comprise various maintenance, refurbishment and improvement works and, generally, works are considered to have a positive impact on all residents including protected groups. Where major works may have temporary negative impacts, the Council will consider mitigating actions, for example decanting vulnerable residents for the duration of works.

Risk Management Implications

35. Firms that are Regulated by RICS, as is the contractor being proposed here, commit to the highest professional and ethical standards. They are also an accredited provider on Constructiononline to their Gold Standard. The contractor being proposed has a Corporate Social Responsibility document outlining how their employees are to act with integrity and respect towards one another and exercise a high standard of business practice and workmanship. They support diversity, fairness and equal opportunities and aim to involve and consult regularly with employees as to the direction of the business. Their Environmental Policy is managed through a British Standards accredited ISO 14001 environmental management system. Their Business Integrity Statement, similar to the Local Authority Corporate Governance Statement, states their aim to give fair value, consistent quality and reliability and to have the highest professional and ethical standards which will be honest, open and transparent in all their dealings with customers. The Contractor's Equal Opportunities Policy and Diversity Policy was updated as recently as September 2019. Baily Garner have developed a template risk register which will be further reviewed by officers and amended as necessary to meet the council's specific requirements on each project.

36. Baily Garner will record risk using a register which will be further reviewed by Council Officers and amended as necessary to meet the council's specific requirements. As a minimum the risk register will clearly identify:
- Significant risks (both strategic and operational)
 - Affected parties
 - Probability rating (ranked 1 to 5, very low to very high)
 - Impact rating (ranked 1 to 5, very low to very high)
 - Risk rating (probability x impact)
 - Action plan (mitigation measures)
 - Risk owner
 - Action Date
37. Baily Garner will take responsibility for logging the project risks, assigning ownership and action for reducing the risk, and for monitoring the action status. The Risk Register will be reviewed by the Client on a monthly basis, and form part of regular project team meetings. Residual risk ratings should therefore reduce over time where mitigation measures have been implemented effectively. Where necessary, risks will be escalated to the Assistant Director, Building and resident safety and Head of Capital Delivery ahead of regular monthly meetings.
38. From a health and safety perspective and as Principal Designers, Baily Garner will carry out Design Risk Appraisals with each discipline within the project team in order to identify and manage and potential risks associated with each project.

Implications verified by: David Hughes, Director of Audit, Fraud, Risk and Insurance, 07817 507 695

Climate and Ecological Emergency Implications

39. Baily Garner offer expert environmental consultancy for buildings from RIBA Stage 1 to 7. This extends from Pre-planning Energy & Sustainability statements, Part L compliance (SAP & SBEM), wellbeing & comfort assessments, dynamic simulation modelling, thermal bridging calculations, daylight & sunlight analysis and CFD modelling to life cycle costing.
40. Baily Garner will scope out works to the council's existing residential buildings providing carbon reduction and energy efficiency advice and can assist in establishing a roadmap to Net Zero Carbon by the council's 2030 target. They will provide, as required, in-house PAS 2035 assessors and co-ordinators with experience in full house retrofit and refurbishment projects with carbon reduction in mind.

Implications verified by: Hinesh Mehta, Strategic Lead – Climate Emergency 07960 470125

Local Economy and Social Value Implications

41. Commissioners have confirmed that the contractor was made aware of the 10% social value requirement. As at this stage the total contract value is an estimate, it is acceptable to include the 10% social value requirement as part of the contractual obligation and define social value outcomes and measurements at later stage. For each order that the Council will raise with the contractor, the 10% requirement will have to be met before the order can be agreed.
42. Baily Garner will be required to set targets for measures on the Social Value Portal for effective monitoring and will be responsible to pay the relevant fee, as per the Instruction to Tender document published at the tender stage. Contract managers will need to work with the Council's Social Value Officer to develop a delivery plan for these measures with the contractor. Commissioners have suggested that as much as possible, this delivery plan may be directed towards the estates being worked on.
43. It is recommended that the commissioner will work closely with Legal to ensure appropriate social value clauses are included in the contract so that the Council can enforce its right to compensation if social value commitments are not delivered.

Implications completed by: Ilaria Agueci, Social Value Officer 0777 667 2878

Consultation

44. There have been, and will continue to be, various consultation events and communications with residents affected by the proposed schemes. Baily Garner have extensive experience in social housing construction projects, including in Hammersmith & Fulham, and are fully briefed with the specific requirements of the Council's resident communications plan.

Digital Services and Information Management Implications

45. IT Implications: No IT implications are considered to arise from the proposal in this report. Should this change, Digital Services should be consulted.
46. IM Implications: A Data Privacy Impact Assessment will need to be completed to ensure all potential data protection risks arising from this proposal are properly assessed with mitigating actions agreed and implemented.
47. Suppliers appointed as a result of this report will be expected to have a Data Protection policy in place and all staff will be expected to have received Data Protection training.
48. Any contracts arising from this report will need to include H&F's data protection and processing schedule which is compliant with Data Protection law.

Implications verified/completed by: *Tina Akpogheneta, Interim Head of Strategy and Strategic Relationship Manager, IT Services, tel 020 8753 5748.*

List of Appendices

Appendix 1 – List of proposed schemes and estimated fees