


To be completed for all waiver requests to the Contract Standing Orders		
Waiver request for Local Authority Delivery scheme grant spending		
Waiver value: £1,000,000 (Grant funding £500,000, council match funding £500,000)		
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NOTE: All waivers must be sent to the Head of Procurement for initial approval.

1. RECOMMENDATION:

- 1.1 That the Director of Resources approves a waiver of Contract Standing Order 19.1 on the following ground:

22.3.4. the procurement will be run as Collaborative Procurement or other partnership arrangement with another public body, and the procurement procedures of that other public body will apply

2. JUSTIFICATION:

- 2.1 Hammersmith & Fulham Council (H&F) has jointly won £10,788,601.78 grant funding from the Green Homes Local Authority Delivery (LAD) Phase 2 scheme as part of a consortium of twelve London boroughs, led by the London Borough of Ealing (LBE) as accountable body for the grant funding, to carry out energy efficiency and low-carbon retrofits for low-income households in the private sector.
- 2.2 BEIS have recently offered additional grant funding, on top of the £10.79m, to the consortium which boroughs may draw upon if needed. This amount is unspecified. H&F will be using this to submit additional council domestic properties for retrofit work, up to the maximum of 100 properties.
- 2.3 The funding agreement signed by Ealing commenced on 1 November 2021 and will continue in full force and effect for a period of two years. However, this can be extended for two further periods of 12 months.
- 2.4 H&F have signed the Inter Authority Agreement on 21 January 2022 which commenced on 1 October 2021 and continues in full force and effect until the later of the expiry or early termination of the Framework Agreement. The project is expected to finish on 31 July 2022, however may be further extended to 30 September 2022.

- 2.5 The grant scheme is a continuation of the LAD Phase 1 scheme, which H&F have participated in with the same arrangements. H&F's indicative allocation for Phase 2 is £624,292.64, of which, £500,000 of grant funding will be put towards council properties. The remainder of the allocation will be dedicated to private domestic properties within the borough. The funding spent on each home is dependent on the specific energy efficiency improvements. The funding is expected to cover improvements to between 62 and 124 homes in our borough.
- 2.6 LBE have already sub-contracted WarmWorks, the managing agent, for the required works and services, such as enabling works, on behalf of H&F and its consortium partners, in accordance with its Contract Procedure Rules and the Public Contract Regulations 2015. A direct award to the managing agent was made and drawn down from the Cambridgeshire and Peterborough Combined Authority (CPCA) framework. The conditions of the grant award require a lead partner to be responsible for and manage the grant. With input from the consortium boroughs LBE will procure a managing agent to have responsibility for the works completed at the eligible homes. H&F will identify and nominate the households eligible for the scheme in Hammersmith & Fulham, and completed works will be certified before any payment is made by LBE.
- 2.7 The existing contract for WarmWorks through the consortium only exists for the grant funded portion of works. However, as the council are expected to match fund for works on council properties, a separate contract with WarmWorks is required. Hence, the recommendation for a waiver is made to allow the Council to appoint WarmWorks to deliver the project, including any enabling work, on its behalf for council domestic properties.
- 2.8 The funding helps H&F to deliver its commitment to a net zero carbon borough by 2030. The funding is to be spent on energy efficiency measures such as insulation and low-carbon heating for the borough's most energy-inefficient homes: those with an energy performance certificate (EPC) rating of D, E, F or G. This will reduce the borough's carbon footprint in one of its greatest sources of emissions, with housing representing 37% of borough emissions. Implementing a measure such as solid wall insulation alone on 50–100 homes potentially saves between 31 and 110 tons of carbon per year.
- 2.9 The funding will also be used to retrofit potentially 100 council owned domestic properties with energy efficient measures. The council will be expected to match fund as stated in the criteria of the grant. The provision for £500,000 is being made within the HRA account.
- 2.10 The funding tackles fuel poverty by improving properties lived in by low-income households. It is targeted at households earning under £30,000 per year living in properties with an EPC rating of D or below.
- 2.11 BEIS have announced the continuation of the Green Homes Grant: Local Authority Delivery (Phase 3) within the Sustainable Warmth scheme. H&F will be continuing to participate with the consortium and place an application for future funding to support fuel poor residents.
- 2.12 The funding also supports a green, local recovery from Covid-19.
- 2.13 Initial property surveys will be starting in January and require upfront payment. Therefore, there is insufficient time to secure an alternative installer. Upon the result of an unsuccessful waiver, implications include being unable to proceed with upgrading council owned properties, which may lead to increased costs to the council if no other suitable grant funding is found. This may also delay meeting H&F's net zero targets by 2030. Additionally, H&F may not meet funding allocations, resulting in the funding being reallocated to other boroughs in the consortium.

3. LEGAL IMPLICATIONS:

This waiver application relates to the proposed appointment of the London Borough of Ealing (LBE) as the Council's delivery provider in relation to the retrofit works that will be required to be done on private sector homes in LBHF's area pursuant to a successful grant application, installing energy efficiency measures.

Under the Public Contracts Regulations 2015 (the "PCR"), public bodies (which would otherwise have to comply with the tendering requirements of the PCR) are able to collaborate and award contracts within that collaborative group without following the usual tendering requirements. To rely on this exemption set out in reg 12, all of the following conditions have to be fulfilled:

- (a) The contract implements a co-operation between the participating authorities, with the aim of ensuring that public services they are responsible for are provided with a view to achieving common objectives;
- (b) The implementation of that co-operation is governed solely by considerations relating to the public interest;
- (c) The participating authorities perform on the open market less than 20% of the activities concerned by the co-operation.

Here it is understood that there are no activities to be conducted on the open market, as the collaboration is established solely for the local authorities to expend the grant money, and there is no general offer to homeowners and private tenants from which a profit is derived. While it is the case that homeowners and private tenants (and their landlords owning the properties) will benefit from these works, the purpose of the authorities' co-operation is in the public interest to reduce carbon emissions.

It is therefore open to the Council to rely on the reg 12(7) exemption where satisfied that the three conditions are met.

A contract of this value is a High Value contract and so is required to be tendered as set out in CSO 19.1. However, this can be waived using one of the grounds for waivers set out in CSO 22. Contract Standing Orders specifically recognise in CSO 32 different ways of collaborating with other local authorities, and indicates that a waiver of the usual tendering requirements can be sought on the ground that a specific legislative exemption applies, as set out in Contract Standing Order 22.3.3. Relying on reg 12(7) of the PCR qualifies as such a legislative exemption.

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