

APPENDIX 2 – LILLIE ROAD MAIN CONTRACTOR PROCUREMENT STRATEGY

Summary

This procurement strategy sets out the procurement route for procuring works by a principal construction contractor for the redevelopment of the T & RA Hall and disused Nursery at 70/80 Lillie Road, to provide 42 new homes, of which 21 (50%) will be affordable homes, and a replacement T & RA Hall.

The scheme delivers against the Council's Building Homes and Communities (Growth) Strategy, underwrites the Council's Financial Strategy and Housing Revenue Account (HRA) 40 Year Financial Plan (2021-2061), and responds to the Council's recent approved Climate and Ecology Strategy and transitional targets. The development will be built to Passivhaus certified standards reducing onsite carbon emissions by 70% and delivering substantial energy savings to new residents. A planning application for the proposed scheme was submitted in January 2023.

Financial Impact

1. This report proposes to procure through an open tender a single stage design and build construction JCT contract for the proposed development at 70/80 Lillie Road.
2. There is no direct financial impact of approving this strategy except for minor legal costs which can be funded from the existing RIBA stage 3 development capital budget. The full cost of the construction will not be known until the tender process is complete. Full financial implications and checks on the financial standing of the successful tenderer will be set out in the subsequent contract award decision report.
3. Further funding will be sought from the Cabinet subject to financial viability and deliverability of the project, prior to the agreement of a principal construction contract.

Harun Guleid, Principal Accountant (Development), 10th January 2023

Verified by: Sukvinder Kalsi, Director of Finance, January 2023

Legal Implications

1. The value of the contract will be over EU thresholds and so the Public Contracts Regulations 2015 (PCRs) will apply.
2. It is also a High Value Contract under the Council's Contract Standing Orders (CSOs).

3. The procurement strategy proposed has identified the Find a Tender Service (FTS) for the procurement of the main contractor, using the Open Procedure under the PCRs. This strategy would comply with both the PCRs and the CSOs.
4. All procurement strategies must be submitted to the Contracts Assurance Board before being submitted for approval to the decision maker in accordance with CSO 18.1. Where the procurement strategy concerns a contract with estimate value in excess of £300,000 in value or the expenditure is otherwise significant, then it is a Key Decision (see Article 12 of the Constitution) and the report must be submitted to Committee Services for publication on the Council's website.
5. As the contract value will be over £5,000,000 this procurement strategy would need to be approved by the Cabinet (CSO 18.1).

Joginder Bola, Senior Solicitor (Contracts & Procurement), 12th January 2023

Background Papers Used in Preparing This Report

None

DETAILED ANALYSIS

Background

1. In June 2019, the council launched the Building Homes and Communities (Growth) Strategy, through which it committed to using its assets to:
 - Build up to 1,800 new homes in the borough over 10 years.
 - Utilise assets to help manage demand and avoid costs, for instance from specialist housing or temporary accommodation
 - Generate long-term sustainable income for the council to safeguard frontline services.
2. More recently, the council pledged to secure up to 3,000 new affordable homes over the next four years through a range of avenues including the development programme, partnership initiatives and the planning pipeline.
3. The Lillie Road site is home to a nursery which has been vacant for a number of years, along with the West Kensington Tenants & Residents Hall, which closed in 2020 due to the Covid Pandemic. In consultation with Asset Management colleagues, the site was identified for redevelopment for the provision of much needed affordable homes in the Borough, along with a replacement T & RA Hall.

4. An initial feasibility study identified that the Site could accommodate a 45 home development.
5. In November 2020, Cabinet approved a General Fund capital budget of £1,802,000 to facilitate the progression of development activities associated with the redevelopment of the Site up to and including planning and procurement (RIBA Stages: 1, 2, 3 & 4).
6. In September 2021, the council appointed Lifschutz Davidson Sandilands (LDS), to act as lead Architect and 'Design Team', while Arcadis were appointed as the 'Control Team' for the scheme, to oversee project management, cost advice and CDM services.

Reasons for Decision

7. The project requires the authorisation to approve the 'works' procurement strategy and authorise commencement of procurement of the principal construction contractor for the redevelopment of the Lillie Road site.

Contract Specifications Summary

8. An industry recognised standard form of building contract (JCT) will be used for commissioning the principal construction services, to deliver the Lillie Road scheme, through a design and build contract and will include all sub-consultant and sub-contractor services to enable the delivery of the full and detailed project scope of works.
9. The recommended length of contract for the works will be circa 24 months and will be confirmed during the procurement process. There will be provisions to extend the contract and have break clauses to ensure the Council delivers the full scope of the project and this will be managed by the Lillie Road project delivery team.

Procurement Route Analysis of Options

10. The council's technical consultants Arcadis have undertaken an analysis of the preferred route to market which takes into consideration the current analysis, understanding, engagement and feedback of the market, size and complexity of the proposed scheme, and the potential principal construction services available, with the ability to not only deliver the scheme, but desire to potentially tender for the scheme.
11. Alongside the project team, Arcadis have assessed the market and undertaken a review of the potential procurement routes available to the team and identified as:
 1. FTS open procurement process
 2. Utilising an existing framework agreement
 3. Do nothing option.

Find a Tender Open Procurement process, under PCR2015 (recommended)

12. There are a number of benefits that the project stands to gain by undertaking the Open procurement process to select an appropriate main/principal contractor:
- Allowing the largest number of potential and appropriately sized contractors to participate in the process (and therefore the greatest level of interest and competition).
 - Promote the opportunity for local SME and Tier 2 and 3 Contractors to access the procurement - who otherwise may have been excluded via the use of a Framework agreement.
 - The opportunity of attracting principal contractors that are proportionally aligned to the size and complexity of the scheme, should promote vfm and ensure we are ruthlessly efficient with public resources
 - Greater flexibility in the procurement process and programme than would be available through the use of a Framework agreement.
 - Ability to award a range of contract types.
 - Size and complexity of the project not limiting the type of contractor able to engage in the procurement process.
 - Allowing us to generate any material changes to the contract – likely JCT – which would be limited under a Framework agreement.
 - References and track record can be requested as part of the selection, which is limited under Framework Agreements (procurement law restricting the ability to ask questions twice).
13. By selecting an open procurement process, a slightly longer pre-qualification and due diligence period (PQQ) will be required to initially shortlist a number of eligible contractors, prior to the issue of an invitation to tender (ITT). This additional period has been accommodated in the project procurement programme.

Utilising an existing framework agreement

14. A wide range of currently available construction frameworks have been reviewed, accompanied by 'soft market testing' engagement to determine if any offer the most suitable procurement route for the proposed scheme. The consultant project team reviewed the following frameworks in relation to their project suitability (the full review is detailed in appendix 1).
- A2 Dominion, Lot LN3
 - London Construction Programme, Lot 1.4
 - Notting Hill Genesis
 - Procure South East, £12m+
 - CCS, Lot 6.2
 - CCS, Lot 7.2
 - Pagabo
 - Hyde Housing

15. Following the framework review and accompanying engagement and 'soft market testing', a number of factors and drivers reduced the suitability of a framework agreement as the proposed procurement route for this particular project:
- The expected Lillie Road contract 'value' sits outside of the primary levels sought by Larger main/principal construction contractors (i.e: Tier 1 and Tier 2) populating several the framework lots.
 - A single stage design and build contract is the preferred option for this contract, some the frameworks reviewed cater for only two stage tenders, and, most Tier 1 contractors try to encourage two stage to lock-in and maximise their returns.
 - Certain frameworks require additional fees for use, these have not been accommodated within the project budget and ensure we are 'being ruthlessly financially efficient'
 - The size, scale and complexity of the project is likely to be attractive to local SME contractors and Tier 2 and 3 contractors - whose representation is limited on a number of the available frameworks.
 - Promotes wider market participation and encourages the promotion of growth and opportunity, to help yield the most economically advantageous tender for the Council.

Do nothing option

16. This is not possible, due to the Council's strategic commitments and business plan objectives to deliver this project and the provision of much needed new affordable homes in the Borough.

Market Analysis, Local Economy and Social Value

17. The construction sector signalled a renewed slowdown in business activity growth during November/December 2022, with cost inflation in the sector dropping to its lowest level since January 2020. The S&P Global/CPI UK Construction PMI highlights that business expectations in the UK construction industry are the weakest they have been since May 2020. Meanwhile, inflationary cost pressure has been negated by softer commodity prices but supported by rising energy prices and supply chain constraints.
18. Despite the recent slowdown in construction industry business activity, cost pressures remain primarily due to energy costs and global supply chain pressures. Employment numbers within the industry remain strong, albeit with a shift to more caution shown to hiring policies according to the S&P Global/CMI.
19. The Council with the support of its external consultants, Arcadis, has carried out detailed soft market analysis, including direct engagement with proportionately sized construction principal contractors. This was to understand market capacity, contractors' appetite for a development of this size, complexity and type, deliverability of the development within the Council timeline, as well as relative desirability of different procurement routes.

20. The soft marketing exercise has identified that the scheme can be procured using a single stage procurement route, with 50% of contractors approached endorsing this approach at this time. This exercise identified that contractors were keen to have a level playing field in terms of contractor size and capability; sufficient design information to mitigate pricing risk (i.e: issue supplementary RIBA 3+ information); a pre-qualification and adherence to a tender programme.
21. It is the council's policy that all contracts let by the council with a value above £100,000 commit to social value contributions that are additional to the core services required under the contract, and/or, those required by SV planning conditions.
22. Paragraph 35 in this strategy describes how social value contributions will be scored as part of the mini competition; that a 10% weighting of the total score will be included in the Quality and Sustainability category of the scoring criteria.
23. As part of the ITT documents, tenderers will be invited to consider Social Value commitments aligned with council strategies and therefore deliverable Social Value can be on a scale commensurate with the large value of this contract. This is to maximise the social value that can be realised from this tender.
24. The Council will secure Social Value through the use of bespoke measures that are suited to construction works and bidders will be required to offer Social Value for evaluation. 10% of the overall quality score will be ascribed to Social Value and both the value and the quality of bidders' proposals will be scored.
25. The scoring will incentivise bidders to maximise their social value offer, however, bids offering a social value of less than 10% of a bid's price will not automatically be rejected. This procurement strategy is seeking dispensation from the requirement to invalidate bids not offering a social value of less than 10% of a bid's price.
26. Social value measures committed to by the winning bidder should be included as conditions in the contract agreement with financial remedies sought for non-delivery. It is advised that the winning bidder contact the Economic Development team to help them design a detailed delivery plan for the agreed measures. Council services are available to support the winning bidder plan, deliver and measure social value contributions.

Risk Assessment and Proposed Mitigations

27.

| No. | Identified risk | Likelihood | Risk Control/Mitigation measure |
|------------|-------------------------------------|-------------------|---|
| 1 | Insufficient interest from suitable | Low | The project team carried out soft market testing in Summer 2022, and this revealed that there is 'access' |

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| | contractors in the tender which results in no bids. | | to sufficient market interest and capacity. The council will also develop a procurement strategy, route and brief that is sufficiently detailed and clear to encourage wide contractor participation. |
| 2 | Procurement does not achieve required competitiveness and does not provide value for money. | Low | Market engagement has established interest and appetite for this development and to ensure engagement of contractors the tender pack will be reviewed for simplicity and clarity. Use of bespoke Social Value measures that are more suited to construction works |
| 3 | Construction market inflation and the period for which tenders might remain valid. | High | This risk is managed, monitored and mitigated with regular reviews with our cost consultants' and where possible supplementary and/or simplification of some aspects of detailed design to ensure design buildability retain costs within budget envelope. |
| 4 | Contractor becomes insolvent or no longer has the capacity to deliver scheme | Medium | While the likelihood of this risk is low, the potential impact might be significant depending on construction stage. Before a contract is awarded, robust financial assessments will be undertaken including independent financial and credit checks and where necessary and applicable insolvency cover, bonds and/or parent company guarantees may be requested. |
| 5 | Mobilisation/ construction delayed due to unforeseen site issues | Medium | Council to ensure that the internal and external resources are in place to deliver the project in a timely manner. The site has been de-risked through extensive site investigations to eliminate technical issues prior to start on site. |
| 7 | No tender commits to a Social Value of 10% or more | Medium | This is mitigated against by inviting tenderers to Social Value commitments that are more aligned with council policies so as to maximise Social Value from the contract to be awarded. |
| 8 | Extended procurement programme due to using FTS. | Low | The inclusion of a expressions of interest and pre-qualification period have been included in the overall project programme and will not impact overall project target dates. |

Timetable

| | |
|--|----------------|
| Key Decision Entry (Strategy) | October 2022 |
| Contracts Assurance Board (Strategy) | January 2023 |
| SLT/Cabinet Member/Cabinet Sign off (Strategy) | April 2023 |
| PQQ Issue | July 2023 |
| Find a Tender Service Notice | August 2023 |
| ITT Issue | September 2023 |
| Closing date for clarifications | October 2023 |
| Closing date for submissions | November 2023 |

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|---|----------------|
| Evaluation of Tenders | December 2023 |
| Key Decision Entry (Award) | February 2024 |
| CAB (Award) | March 2024 |
| SLT/Cabinet Member (Award) | March 2024 |
| Find a Tender Service Contract Award Notice | April 2024 |
| Contract engrossment | April 2024 |
| Contractor mobilisation and implementation Period | April/May 2024 |
| Possession & Contract Commencement date | June 2024 |

Selection and Award Criteria

28. In accordance with the council's CSOs and PCR 2015 Regulation (67), the contract will be awarded on the basis of the Most Economically Advantageous Tender (MEAT) using a quality to price ratio of: 60:40 in recognition of the complexity of the construction and the specification of a highly sustainable development. This was discussed and agreed between council officers and their professional consultants.
29. In evaluation of price submissions, the lowest priced tenderer will receive 40% and the remaining tenders will be scored proportionately to the lowest price. Tenders will be evaluated in accordance with the following criteria:

| Element | Weighting | Scoring basis |
|---------|-----------|---|
| Price | 40% | Lowest price submitted will receive 40% and the remaining submissions will be scored in accordance with their difference from the lowest price as follow: Score = Lowest Price / Bidder Price x 40% |
| Quality | 60% | Quality scoring will be carried out in accordance with the Framework's terms and weighted as follow: Score = Scored Marks Available x 60% Social value evaluation will form part of the quality and weighted at 17% of the 60% quality to account for an overall weight of 10%. |

30. Quality evaluation will incorporate sub-elements that will be scored and weighted as follow:

| Quality sub-categories | Weighting |
|---|-----------|
| Experience – This will be drafted to be compliant with the regulations and will include capability, capacity and quality. | 10% |
| Interview – Working with the Procurement & Commercial group together with Legal the procurement will seek to compliantly deliver community engagement in a form that is yet to be finalised. | 5% |
| Project delivery/ approach / programme / Logistics / Resources | 28% |

| | |
|--|-----|
| Social Value – 10% of total as per CSOs, is being developed to be integrated into this procurement. | 17% |
| TOTAL | 60% |

31. In accordance with council's standing orders, Social Value will account 10% of the overall scoring (17% of the 60% quality assessment).
32. An interview with each tenderer will be evaluated and scored as part of the quality evaluation, where each tenderer will be asked the same questions.
33. The council will not bind itself to accept the lowest submission or any tender/submission and reserves the right to accept the whole or any part of any Tender submitted.
34. The council will also reserve the right to seek clarifications before concluding the evaluation stage and where the pricing of a Tender seems abnormally low the Council reserves the right to reject the Tender and exclude it, so it does not affect scoring.
35. The technical specifications, including levels of indemnity and insurances are currently being finalised by officers.
36. The scores awarded to each tender for the Quality and Price elements of the evaluation will be added together to establish the MEAT, which is the tender with the highest combined score for price and, quality.

Tender Appraisal Panel (TAP)

37. A Tender Appraisal Panel (TAP) will be set up in accordance with Contract Standing Orders to oversee the procurement process and evaluate tenders. TAP will include representatives from the Council's Procurement Team, the Development Team and asset management colleagues and supported by external professional consultants led by the council's lead consultants on this project. TAP will manage the procurement process including expression of interest, sifting and the launching of the mini-competition and the issuing of the full ITT documentation. In addition, TAP will manage and oversee tender clarifications, evaluation, and contract negotiation and award.
38. In accordance with the council's Contract Standing Orders all evaluation panel meetings will be chaired by the Head of Procurement, or a delegated (procurement) officer.
39. The procurement will actively explore resident engagement in line with the Council's policy manifesto.

Contract Management

40. The contract will be managed by a project development team supported by a team of professional services appointed under a separate procurement strategy for the whole life cycle of the development.

41. A suite of KPI's will be used to monitor, measure and report on the performance of both principal construction contractor and sub-contractors. Example of KPI's that might be used to monitor performance:
- a) Meeting or exceeding programme expectations
 - b) Design Development within the requirements of the Client Brief
 - c) Response times to client RFIs (Requests for information)
 - d) Successfully engaging and involving wider local residents and other stakeholders e.g., Considerate Constructors Scheme
 - e) Responsiveness to issues or concerns raised by residents within a defined period
 - f) Time taken to rectify defects in line with H&F repairs response times
 - g) Understanding and mitigating environmental impact, waste control, noise, water usage, dust during construction.

Equality Implications

42. It is not anticipated that the approval of this Procurement Strategy, as set out in the Recommendations, will have any direct negative impact on any protected groups, under the Equality Act 2010.

Risk Management Implications

43. The report identifies, in the table in paragraph 31 a number of procurement-related and construction market risks, including material price instability which has arisen due to Covid-19 and post-Brexit economic conditions. Officers have set out a range of mitigations to manage these risks and will need to keep these risks under close review throughout the procurement and contract delivery phases. Officers will need to ensure that robust programme and governance arrangements are in place to oversee the scheme, including the maintenance of a programme risk register.
44. A range of procurement routes have been assessed and an option recommended by the appointed technical consultants. The proper use of the FTS procurement route enables a variety of contractors to enter the procurement process, which is in line with the Council's objective of being ruthlessly financially efficient.

David Hughes, Director of Audit, Fraud, Risk and Insurance, 14th January 2023

Climate and Ecological Emergency Implications

45. On 17th July 2019 LBHF declared a climate emergency, pledging to cut CO2 emissions from the Council's activities to net zero by 2030.
46. The proposals for Lillie Road will target high levels of sustainability for the new development and will aim to promote the climate emergency via a variety of different methods. Through-out the design process the project team have designed clear ways in which to insulate buildings and use recyclable material

where possible. The proposal also includes the elimination of fossil fuels along with the installation of solar panels or other renewable energy generation and will look to switch to a renewable energy provider and install measures to help manage building energy demand, such as smart meters, timers on lighting, or building management systems.

47. The design has considered multiple factors to promote ecological benefits of the project, which include avoiding converting green space to hard surfacing and use underutilised space for planting, such as green roofs and walls. The project will also provide space for animals e.g. long grass areas, bird boxes, bat boxes and insect hotels.
48. The design will also look to install water-saving devices in taps, showers and toilets, re-use grey water in new developments and ensure all new building models and mitigates future overheating risk, with adequate ventilation and shading. The development will also convert hard surfacing to green and permeable surfacing where possible and install Sustainable drainage systems (Suds).
49. The Contractor will also seek to construct using construction methods that reduce overall energy use, such as modular, factory-built components, or use of electrical plant on-site.

Jim Cunningham, Climate Policy & Strategy Lead, 14th January 2023

Local Economy and Social Value Implications

50. It is a requirement that all contracts let by the council with a value above £100,000 provide social value commitments that are additional to the core services required under the contract. In addition, the evaluation of social value should account for a weighting of a minimum of 10% of the overall score.
51. As a planning application has been submitted by the council, any social value measures invited to be proposed by bidders should not duplicate any contributions required in a Section 106 agreement or unilateral undertaking to mitigate the impact of the development on the local area. Similarly, social value measures should not be double-counted with Passivhaus standards committed.
52. Paragraph 24 of this Procurement Strategy sets out the intent to use a pared-down menu of social value measures that would not duplicate planning obligations. Paragraph 25 explains that the strategy is to seek dispensation from the minimum policy to require suppliers to propose at least a proxy value of 10% social value. Should dispensation not be given, then any bid with a social value contribution worth less than 10% of the price of the contract should not be considered.
53. Social value measures committed by the winning bidder should be included as conditions in the contract agreement with financial remedies sought for non-delivery. It is advised that the winning bidder contact the Economic Development team to help them design a detailed delivery plan for the agreed

measures. Council services are available to support the winning bidder plan, deliver and measure social value contributions.

Paul Clarke, Social Value Officer, Economic Development Team, 17th January 2023

Consultation

54. A wide-ranging engagement strategy has been adopted and followed during the design development stage of this project. Full details of this are included in the Statement of Community Involvement submitted with the planning application.

LIST OF APPENDICES

None