

Cabinet 11 September 2024	 TOWER HAMLETS
Report of: Paul Patterson Interim Corporate Director for Housing and Regeneration	Classification: Unrestricted
Procurement Route of HRA Capital Investment Contracts	

Lead Member	Cllr. Kabir Ahmed, Cabinet Member for Housing Portfolio
Originating Officer(s)	Michael Killeen, Divisional Director for Asset Management Tania Dyos Head of Housing Contracts and Procurement
Wards affected	All wards
Key Decision?	Yes
Reason for Key Decision	Financial threshold and significant impact on wards
Forward Plan Notice Published	A special urgency request has been made to Chair of Overview and Scrutiny Committee.
Exempt information	None
Strategic Plan Priority / Outcome	All

Special Circumstances Justifying Urgent Consideration (also known as 'Reasons for Urgency')

The report missed the statutory deadline due to revisions required to ensure a more comprehensive account of both commercial and qualitative information, to advise the Mayor of the proposed procurement route to market and provide assurance that financial risk was mitigated and future commercial management was robust within the proposed contracts. The report cannot await beyond September Cabinet due the urgency of the effective capital investment contracts being in place to deliver the programmes of improvement works safe homes and obligations as landlord for the Building Safety Act.

Executive Summary

This report seeks authorisation to commence the procurement exercise leading to a fully compliant and commercial advantageous route to market for the HRA capital investment programme which will ensure best value in future provision and provide for vigorous contract management procedures to be adopted in the proposed contract.

The council invests annually in its existing housing stock to ensure it creates homes that are decent and safe for residents to live in. The investment committed by the Council to improve homes and the safety of residents is £140M over the next 5 years. This includes £3.7M for professional consultancy services to support the delivery of the programme.

This investment specifically tackles issues including building safety, fire safety, damp and mould etc. To deliver the necessary works to the housing stock, we need external building contractors and professional technical consultancy support. The existing contracts are due to expire and following a review of the existing arrangements, officers are proposing a different contracting approach.

This report outlines the existing contracting landscape that delivers the Housing Management Capital Investment programme. It summarises the findings of a review of the arrangements that officers have undertaken, makes proposals about the contracting approach going forward and the proposed procurement strategy. It also provides information about the contract monitoring and management arrangements that will be in place for the contracts to ensure value for money is achieved.

To do this a special project group will be set up, to be led by Procurement, to test all of the assumptions currently made, including, the current route to market considering the new regulations coming into force on 28th October, the market appetite for such deals, again in light of the advent of the Building Safety Act, the scoring methodology with specific attention being paid to the split between quality and price. It will also ensure the tender documents include the defined requirements for Social Value and the inclusion of Local Supply chain arrangements in the new contractual arrangements.

The composition of the group will include at key points, The Mayor and Lead Member for Housing, Senior Executive officers, external legal, financial and commercial experts with support from the Project team in the Housing department. This will ensure that all best practices are adopted and managed through the procurement process and onto the contract future management. This will involve setting up a strong client-side function to ensure all the benefits are measured and managed through the life of the contract.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Approve the contracting approach and procurement strategy for the Major Works contracts and Professional Technical Consultancy Services contracts that will deliver the Capital Investment Programme for Housing Management.
2. Authorise the Corporate Director Housing and Regeneration to enter into all contracts and associated agreements and documentation, in consultation with the Mayor and Lead Member, to the winners of the various competitive exercises in accordance with this report

3. Authorise that a special project team (Led by Procurement) is created to include feedback and inclusion of the Mayor and Lead Member for Housing to ensure effective qualitative criteria and evaluation of most advantages submissions is in place with support from Senior Executive officers, external legal, financial and commercial experts within the Council

1 REASONS FOR THE DECISIONS

- 1.1 [The Capital Investment programme cannot be delivered without appropriate external resources in place. The proposed approach is recommended following a review of the existing arrangements and is deemed to be the most suitable and effective way to deliver the programme going forward (given the lessons learned and the changing legislative environment) and meet the assumptions of the Medium-Term Financial Strategy.]

2 ALTERNATIVE OPTIONS

- 2.1 Alternative options for delivery of these services are as follows: Do Nothing i.e. allow existing arrangements to expire and do not replace. (not recommended as there will be no resources to deliver the housing management capital investment programme)

3 DETAILS OF THE REPORT

Background

- 3.1 To ensure the council creates better homes and keeps its residents safe, it continues to invest in its housing stock. The programme of works delivered through this investment is broadly shaped by stock condition data, legislation and council objectives.
- 3.2 The council has a programme of stock condition surveys to ensure its data is maintained and can effectively inform the capital investment programme. Following the Grenfell Tower Fire, there has been an increased focus on keeping councils' residential housing stock safe and free from risk of fire. Also, the Government's most recent review of the Decent Homes Standard is due to report this year, with an update of standards for services, facilities, and components, alongside new measures to combat damp and mould and improve energy efficiency.
- 3.3 The capital investment programme will prioritise those homes which still need to meet the Decent Homes Standard and incorporate elemental programmes of replacement kitchens, bathrooms, windows and entrance doors.
- 3.4 A summary of the type of works contained in the current capital investment programme is listed below:

- Decent Homes
 - Roof renewals
 - Concrete repairs
 - Window renewals
 - Kitchen and Bathroom renewals
 - Communal decorations
 - Damp and Mould works
- Building Compliance
 - Roof compartmentation
 - Front Entrance Door (secure by design) renewals
 - Communal Fire doors
 - Cladding removal
- Building Safety Act works
 - Fire Risk Assessment remediation works
- Structural works
 - Block strengthening work
- Mechanical and Electrical works
 - Lift renewals
 - Communal Heating works
 - Landlord electrical works
 - Domestic electrical works
- Housing initiatives
 - Overcrowding projects

3.5 Over the next four years the HRA Business Plan has modelled and can afford budgeted investment of £140m. Due to the emerging requirements of the Building Safety Act, an additional £10 m has been set aside (between 2023/4 – 2025/6 to ensure emergency building safety works can be resourced without impacting the main annual capital budget. The following table shows the four-year budget allocation for the whole of the capital investment programme and a breakdown of the works that will be delivered through these contracts:

<u>Estimated Costs</u>	<u>2025/26</u>	<u>2026/27</u>	<u>2027/28</u>	<u>2028/29</u>	
	<u>Est Spend £</u>	<u>Est Spend £</u>	<u>Est Spend £</u>	<u>Est Spend £</u>	<u>Totals</u>
Major Works (Decent Homes, damp & mould)	15,506,849	11,960,646	9,467,728	8,655,945	45,591,168
Building and Fire safety works	20,734,186	15,295,110	15,783,481	13,966,335	65,779,112
Extensions and knock throughs	600,000	600,000	600,000	600,000	2,400,000
External Consultancy Services	925,000	925,000	925,000	925,000	3,700,000
Contingency	500,000	500,000	500,000	500,000	2,000,000
Totals	38,266,035	29,280,756	27,276,209	24,647,280	119,470,280

HRA BP Budget (includes £10m BP HRA reserve)	£28,000,000	£34,000,000	£40,000,000	£44,000,000	£146,000,000
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N.B other works will be delivered via contracts outside of these Major works contracts.

- 3.6 The existing housing management capital investment programme is delivered through a range of procurement vehicles. There are two existing frameworks (one covering general major works, the other professional technical consultancy services). Mechanical and Electrical works are delivered through separate contractual arrangements.
- 3.7 The two existing frameworks are due to expire in November 2024 and it is the replacement of these arrangements that is the subject of this report. A review of these existing arrangements has been undertaken to inform the proposed procurement strategies.
- 3.8 The review found that there is a need to change the way we source contractors to deliver the Housing Capital Works. We need to be more agile and able to respond to the requirements of emerging legislation in the delivery of the works. With regards to the way we source professional technical consultancy services (that assist with the delivery of complex projects), the review confirmed that generally this approach has worked well and the proposed approach for sourcing these resources should be similar i.e. have a number of suitable firms available to support the delivery of more complex works as and when required. However, the review identified that the way we monitor and measure the work of the consultancy services needs to change.

Existing Contractor Framework

- 3.9 The framework delivering general major works had a total estimated value of £118m (budget allocation for these works) over its 4-year duration. The Work issued through this arrangement is demand led and there is no exclusivity rights or guarantee of work for any contractor appearing on the framework. Contractors are not obliged to accept an order to deliver a scheme and can decline from participating in a further competition process.
- 3.10 The scope of works covered by this arrangement has been
- Block fabric works
 - Communal internal and external decorations
 - Internal refurbishment (kitchens, bathrooms)
 - Fire safety works
- 3.11 The framework has in total 7 contractors that were successfully appointed to the framework having competed in an open tendering process and demonstrated they had the technical capability, experience and capacity to deliver the major works requirements.

Existing Professional Technical Consultants Framework

- 3.12 The framework delivering professional technical services was set up to support the delivery of the major works. It has a 4-year duration and an estimated total value of £7m (budget allocation for these services). The in-house project teams responsible for delivering the major works projects, use these resources to support the scoping out and delivery of the works projects. Services provided through this framework are also demand led and there are no exclusivity rights or guarantee of work.
- 3.13 The scope of services provided by this arrangement includes:
- Building Surveying
 - Quantity Surveying
 - Structural Engineering
 - Fire Safety Engineering
 - Project Manager
 - Contract Administration
 - Clerk of Works
 - Designer
 - Principal Designer Advisor (CDM)
- 3.14 This framework has 7 technical consultancy firms that were successfully appointed to the framework having competed in an open tendering process and demonstrated they had the technical capability, experience and capacity to deliver the service requirements to support the major works projects.

How the frameworks have been used

- 3.15 The two frameworks generally have been used in the following way:
- Technical consultants have been used to fully scope projects and produce detailed specifications.
The specifications have been issued through the contractor framework as part of a further competition (i.e. contractors have been given an opportunity to price for specific projects) N.B it should be noted that contractors cannot increase the prices they submitted during the original tender exercise that set up the framework, they can only improve on these.
 - Interested contractors appearing on the framework would respond to opportunities by submitting a proposal.
 - Officers would evaluate the submissions received and place an order with the highest scoring contractor.

Lessons Learned

- 3.16 Before starting the procurement project for the new arrangements, officers undertook a review which looked at the following:
- What was working well and what could be improved
 - Statutory and Regulatory changes that impact on our requirements going forward
 - Market conditions

Key Findings of the review

- Contractors have been able to pick and choose which schemes they want to be considered for, which has led to some schemes receiving little or no interest. There are a number of factors that may have contributed to this:
 - With numerous contractors and no guarantee of work, contractors have not been committed to delivering the capital investment programme and more focussed on competing for more lucrative opportunities
 - The rates submitted by the contractors at the time the framework was set up are the maximum rates the contractors can charge. Although these rates are adjusted in line with inflation, contractors have complained that they are no longer able to deliver some works at the rates they previously submitted, claiming that for some materials there have been price hikes and the inflationary uplifts have not gone far enough.
 - Without a steady flow of work, contractors have complained that they are unable to plan their resources which has led to capacity issues.
- The further competition processes followed when a) appointing a consultant and then b) when appointing a contractor has caused delays in getting works started on site.
- Some consultant opportunities have also received little or no interest. In the main this has been because most of the consultants have been reluctant to take on the responsibility for scoping out schemes with fire safety works. This issue has been recognised across the industry since the Grenfell Tower Fire in 2017 and the findings of the Hackitt Review in 2020.
- One consultancy provider was prepared to take on design responsibility and received the majority of orders for this work. This however led to them having capacity issues which caused delays in getting the specifications produced. This ultimately caused delays in getting work started on site for many schemes.
- The Building Safety Act has brought new requirements in relation to higher risk blocks (LBTH have identified 77 amongst its stock). A gateway process has been introduced for works delivered to these blocks. It is now necessary to have design signed off before works can start on site. To satisfy this requirement earlier engagement with contractors will be required.
- The Key Performance Indicators for both contractors and consultants have not been consistently used.
- Our ability to secure social value has been limited. Although both frameworks have the potential to secure social value commitments, with work being issued on a scheme-by-scheme basis and orders being placed with several providers, the ability to secure meaningful social value is reduced.

3.17 It is clear from the findings of the review that the existing framework for contractors is no longer fit for purpose and would need to change to meet our future needs. With regards to the professional technical consultancy services, whilst having a multi provider approach is appropriate, our approach to

scoping out works needs to change which will lead to a reduced reliance on these services.

Proposed Contracting Approach

Major works contracts

- 3.18 Taking on board the findings of the review, it is proposed that instead of setting up another multi contractor framework, we procure 2 major works contracts geographically split with a duration of 3 + 1 year. The estimated total value including the extension will be £140m (in line with the HRA Business Plan).
- 3.19 The size of the contract (and potential volume of work) is more likely to be attractive to the market, receive more interest and secure better value for money.
- 3.20 Although there will be no exclusivity rights, the two contractors are likely to receive a larger value and consistent stream of work, which will help with their resource planning. With a higher spend through the contracts, we will be able to secure more social value and focus on tangible offers including apprenticeships and local labour.
- 3.21 The 2 contracts will cover all types of work covered by the existing arrangement but will also cover more complex works i.e. Fire Safety Works including sprinkler installations, small internal and external alterations (extensions and conversions).
- 3.22 The 2 successful contractors will be engaged early on with projects and help identify efficiencies and innovative approaches to stock condition issues including fire safety. This approach will support the latest requirements of the Building Safety Act. The introduction of the gateway process, there is a requirement for the design of proposed works to be signed off independently before commencing on site. This approach will allow contractors to get early involvement.
- 3.23 With only 2 contractors, we will also be able to assess their supply chain strategies during tendering and promote the use of local sub-contractors and suppliers.
- 3.24 To mitigate against the appointed contractors going bust, we will also undertake the necessary financial assessments during the tender process. The two selected contracts will provide back-up arrangements in the event of financial issues and/or poor performance. There will be no exclusivity rights, and we will continue to have the ability to procure works outside of these arrangements.
- 3.25 For more complex projects, there will still be flexibility to explore procurement routes outside of these contracts for delivery.

Professional Technical Consultancy Service contracts

- 3.26 We are proposing to appoint up to 4 professional technical consultancy service providers. These contracts will have durations that will align to the contractor framework (3 + 1 years) and will have a total estimated value of £3.7m including extension). The value of these contracts is expected to be less than the current framework due to the way we intend to use these resources. It is envisaged that all capital projects will be managed by inhouse project managers, and it is proposed that we use technical consultants to support only the more complex projects where specialist services (not available inhouse) are required e.g. for schemes involving heritage assets with Grade I and II listed status. They may also be used to assist with the new Gateway process requirements under the Building Safety Act for high rise buildings.

Other proposed changes

- 3.27 A complete review of the way we monitor the performance of both contractors and technical consultants has been undertaken. A simplified set of meaningful Key Performance Indicators will be set in agreement with our new providers. The performance of the new providers will be measured against these indicators and performance will be linked to the allocation of work.

Proposed Procurement Strategy

- 3.28 For both the procurement of Major Works and Professional Technical Services contracts, it is proposed that we follow a two stage open competitive procurement process that will be publicly advertised via the council's e-tendering portal. This approach is in line with the council's procurement procedures and UK procurement law.
- 3.29 To aid the tender process, a bidders' briefing session is planned to explore in more depth the opportunity to those who express an interest and to ensure the council's requirements are fully understood.
- 3.30 To satisfy leaseholder legislative requirements we will run the tender process with two discrete lots. Bidders will be allowed to tender for one or both lots. At the end of the procurement process we will end up with 2 ranked lists. If the same Bidder is top ranked for both lots – then we will award them one contract only (whichever provides the best deal for the council – likely to be the larger valued contract of the two). The smaller lot will then be awarded to the second ranked bidder for that lot. Whilst this does not eliminate the risk of challenge from a leaseholder, it provides a clear process that supports the justification for appointing two different contractors.
- 3.31 Full section 20 leaseholder consultation will be undertaken prior to embarking on the tender process and again prior to the award of contracts. Further consultation will be undertaken during the life of the contracts prior to orders being placed and schemes being delivered.

- 3.32 The evaluation criteria will be 60% price and 40% quality (including 10% for social Value). At shortlisting stage, we will assess applicants experience, technical ability and financial standing. Those selected will be invited to tender for the whole borough (both lots) however, the two highest ranked providers will only be awarded one Lot each.
- 3.33 For the major works contracts, the National Housing Federation (NHF) suite of documents will be used for this procurement (LBTH bespoke rates will be added to the NHF schedule of rates), as these provide the housing-specific provisions in terms of service delivery as well as contractual clauses. This suite of documents offers good protection for the council and both, the business and the market are familiar with them.
- 3.34 The use of Schedule of rates will help provide cost certainty throughout the contract duration. The successful contractors will have submitted rates for bespoke schedules and percentage adjustments for more general items. Throughout the life of the contract these rates will be capped and only adjusted in line with inflation on an annual basis. These rates will include for undertaking preconstruction services e.g. following the gateway process prior to undertaking works on site.
- 3.35 For the Professional Technical Consultancy Services contracts, fees will be captured for all disciplines. Additional fee rates will be captured to cover consultants undertaking pre-construction services. This provides further flexibility when delivering schemes.

Contract Monitoring and Management Arrangements

- 3.36 Building on the findings of the review of the existing arrangements, the monitoring and management arrangements need strengthening. To ensure effective contract monitoring and management arrangements are in place for these contracts, the following steps are being taken:
- Project Managers will be involved in the tender process ensuring that we are testing the contractors using questions created by project managers who will be monitoring performance. The project managers are also setting the KPIs.
 - Through training we will ensure project managers understand the new contracts and the remedies that can be used if/when performance is poor.
 - Project Managers will be required to gather performance data on a regular basis and report on poor performance. This information will be collated to provide early warning process for poor performance so that timely action can be taken.
 - Through training we will ensure that project managers are confident to exercise contingency plans i.e. take work away if necessary
 - Robust contract monitoring and management arrangements with good record keeping will be in place to protect the council against any disputes etc. that may arise.

4 EQUALITIES IMPLICATIONS

4.1 None have been identified.

5 OTHER STATUTORY IMPLICATIONS

5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:

- Best Value Implications,
- Consultations,
- Environmental (including air quality),
- Risk Management,
- Crime Reduction,
- Safeguarding.
- Data Protection / Privacy Impact Assessment.

5.2 The evaluation criteria will be:

60% price

40% quality (this includes 10% for Social Value).

The Contract (and project) will be managed by a Capital Delivery Team Project Manager within Housing Asset Management. This is a complex project to procure and deliver and will require a strong client-side team.

5.3 Community Benefits

We will work with the Council's Economic Benefit Officer and Head of Housing Community Partnerships to develop the approach for social value. The Council's Social Value Matrix will be used, and it is envisaged that as a minimum the following items will be specifically included:

- Local Recruitment
- Support for local supply chain

Social Value will have 10% overall weighting in the tender evaluation process with the requirements being developed and defined during the preparation of the Tender Pack. This will include consideration of Social Value benefits that can reasonably be delivered within the proposed contract.

6 COMMENTS OF THE CHIEF FINANCE OFFICER

6.1 The HRA Business Plan has modelled expenditure totalling £146m from 2025/26 to 2028/29. This includes a £10m contingency budget held in reserves to meet the cost of emergency works falling out of building and fire

safety surveys. This level of investment is affordable within the approved parameters of the HRA Business Plan.

7 COMMENTS OF LEGAL SERVICES

- 7.1 The Council has the legal power to undertake the activities detailed in this report.
- 7.2 The Council is legally obliged to obtain statutory Best Value and to comply with the prevailing procurement law. Undertaking both procurements in the manner recommended in the report should achieve both objectives for both the services and the major works contracts
- 7.3 The new Procurement Act 2023 comes into force on the 28 October 2024. In the event that these contracts are advertised after this date then the new law will apply to these procurements. Contracting routes broadly similar to those proposed in this report are available under the new law and therefore these procurements should be able to proceed in the proposed manner if approved.

Linked Reports, Appendices and Background Documents

Linked Report

- NONE.

Appendices

- NONE

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- NONE.

Officer contact details for documents:

N/A