

# **Report to the Council Housebuilding Cabinet Committee**



**Report reference:** CHB-005-2013/14  
**Date of meeting:** 10 July 2013

**Epping Forest  
District Council**

**Portfolio:** Housing – Cllr David Stallan

**Subject:** Procurement of Works Contractor – Council Housebuilding Programme

**Responsible Officer:** Paul Pledger, Asst. Director of Housing (Property) (01992 564248)

**Democratic Services Officer:** Jackie Leither (01992 564756)

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## **Recommendations:**

**That the Council procures its Works Contractors for the House-Building Programme using the current and any future East Thames EU-compliant Framework Agreement.**

## **Reasons for Proposed Decision:**

The procurement of works for the House-Building Programme would require the Council to undertake an EU-compliant tender exercise. However, East Thames have already undertaken an EU-compliant tender exercise, which is available for the Council to use.

## **Other Options for Action:**

1. To undertake a separate EU procurement exercise, specific to just the Council's House-building Programme. This would be time consuming and costly.
2. Not to undertake an EU procurement exercise, and to let individual works contracts for each site. This would not generate savings through economies of scale and would be much more resource intensive to undertake. It would significantly delay the period between receipt of planning permission and starting on site.

## **Report:**

1. A significant part of the House-building Programme is the procurement of the construction works. The Council's Contract Standing Orders requires the Council to undertake competitive tenders for all works over £50,000. However, in addition, EU procurement rules apply to all works contracts where the value is (currently) in excess of £4,348,350.
2. In order to obtain the best value for money, the Council would seek to appoint a Works Contractor on a single contract for each phase of works. This would not necessarily reach the EU limits on a phase by phase basis, but would over the whole of the programme. As part of the Council's Development Agency Agreement with East Thames, East Thames has the responsibility for procuring the Works Contractor on behalf of the Council. However, East Thames have already undertaken an EU-compliant procurement exercise to select a list of approved Framework Contractors from which all of their own House-building Programme is tendered, and have offered the Council, as part

of their tender for Development Agent, the opportunity to use this Framework Agreement, to avoid the necessity of the Council incurring the time and expense to produce a similar document.

3. East Thames have taken Legal Advice from their Solicitor, Trowers & Hamblins, who have confirmed that the Council can legally use their Framework Agreement, and that its use by the Council would comply with EU procurement rules.

4. The Framework Agreement is based on a list of approved Contractors, who have all applied to join the Approved List to undertake construction works, based on a traditional JCT Design and Build Contract. The list is broken down into two separate contracts, one for contracts below £5m and one for contracts above £5m. The estimated value of the Council's works packages will determine which list of contractors is invited to tender. There are at least two local contractors on each of the Approved Lists.

5. Invitations to tender will be issued to all contractors on the list, who will then provide a competitive bid, which will therefore satisfy Contract Standing Orders. It is therefore recommended that the Council seeks competitive tenders for the construction works using the East Thames Framework Agreement.

#### **Resource Implications:**

Undertaking a competitive tender exercise for the Construction works using the East Thames Framework Agreement is included in the Development Agent tender submission by East Thames. The fees and works costs are included in the existing Capital Programme for Council House-Building

#### **Legal and Governance Implications:**

Based on the advice from East Thames and their own Legal Advisors, Trowers and Hamblins, using this Framework Agreement satisfies the EU Procurement Rules. This also complies with Contract Standing Orders.

#### **Safer, Cleaner and Greener Implications:**

None

#### **Consultation Undertaken:**

Advice has been sought from the Essex Procurement HUB and East Thames legal advisors, Trowers and Hamblins

#### **Background Papers:**

The East Thames OJEU Notice and the advice from Trowers and Hamblins Solicitors

#### **Impact Assessments:**

##### Risk Management

Legal advice has been sought in order to consider and mitigate risks.

##### Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? N/A

What equality implications were identified through the Equality Impact Assessment process?

N/A

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?

N/A