

Report to the Council Housebuilding Cabinet Committee



**Epping Forest
District Council**

Report reference: CHB-013-2015/16

Date of meeting: 19 January 2016

Portfolio: Housing

Subject: Council House-Building Programme (Phase 3) - Procurement of Works Contractor

Responsible Officer: P. Pledger (01992 564248)

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Recommendations/Decisions Required:

- (1) That for Phase 3 the Council adopts an alternative procurement strategy and breaks down the 8 sites making up Phase 3 into 7 separate contracts with a mixture of Design and Build contracts and traditional fully designed contracts, and tender them in accordance with the Council's Contract Standing Orders; and**
- (2) That the additional costs of £ [to be reported verbally] associated with the design, management and supervision of 7 separate contracts be met from the existing HRA Capital programme for house-building.**

Executive Summary:

Due to the lack of interest from larger contractors on the East Thames Framework to undertake Phase 3 of the Council's house-building programme as a whole due to the complications and difficulties managing dispersed sites, it is necessary to look at alternative procurement methods. Soft market testing suggests a better approach might be to let the works through a mixture of smaller contracts using different contract types.

Reasons for Proposed Decision:

The Cabinet Committee has already agreed a Procurement Strategy for its house-building programme, which make use of the East Thames Group EU compliant Framework of contractors. However, based on lessons learnt from Phase 1, and through discussions held with a number of Contractors, this report explores a number of other options.

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, costly and would not guarantee interest from any other Contractors.

Report:

1. The Cabinet Committee, at its meeting in July 2013 agreed a procurement strategy that meant the Council would use the East Thames EU-compliant Framework Agreement when tendering its house-building programme. That framework expired in July 2015.

However, Since then, East Thames has adopted an EU compliant Framework established by Notting Hill Housing. East Thames has confirmed that this Framework is available for use by the Council and avoids having to undertake a separate EU procurement exercise for future phases.

2. When compiling a list of tenderers for Phase 1, there was little interest from the contractors on the East Thames Framework, with just 2 out of the 12 Contractors expressing an interest. There were a number of reasons for this, which are summarised below:

- Larger contractors were less interested due to the dispersed nature of the development sites, and would prefer to focus on larger value projects on single sites.
- Smaller contractors were less inclined to work on Design and Build contracts where the financial risks were too great and experience was limited.

3. When discussing the Phase 3 developments with the East Thames Framework Contractors it was quickly apparent that there was little interest from any of the Contractors on the list. However, collectively, the estimated value of constructing all 34 homes is around £6.215m, which is some way above the OJEU limit of £4,104,394 for Works Contracts. This means the Council has to either undertake a separate EU compliant tender exercise, which could take around 9-12 months, or find an alternative means of procuring the works.

4. In order to avoid a lengthy EU Procurement exercise, it is necessary to break up the sites into smaller packages so they are below the OJEU threshold and tender them separately in accordance with Contract Standing Orders. Since the sites are not directly related, this would be an acceptable means of procuring the works without breaching EU Procurement Rules.

5. Pellings LLP have undertaken a soft market test with other Contractors outside of the East Thames Framework, some of whom are local small contractors, to gauge their interest or otherwise in tendering for the 8 sites that make up Phase 3. The feedback from this exercise has resulted in a mixed response. Some were interested in a design and build approach, some were interested in a fully designed approach, some were only interested if the tender was based on a two stage approach (initial enquiry and then negotiated pricing), some were interested in only a small number of units and some were not interested at all. One common theme was that they would not be interested in the whole package due to the geographical remoteness of each site.

Design and Build v Traditional (Fully Designed)

6. The Council has already adopted a Design and Build approach to its house-building programme, which is a common form of contract used across the construction industry and particularly used by Housing Associations for their house-building programmes, as it provides the client with a certain amount of financial surety.

7. Up until the house-building programme commenced, the Council has been more familiar with traditional fully designed contracts, where a scheme is fully designed and a Bill of Quantities is prepared from which the works are measured and then priced through a tender exercise. The end result is the same, but the approach to supervision and management of the works is quite different.

8. From the outcome of the soft market testing it is recommended the Council breaks down the 8 sites making up Phase 3 into 7 separate contracts with a mixture of Design and Build contracts and traditional fully designed contracts, all in accordance with the Council's Contract Standing Orders. This will mean each contract is significantly below the OJEU Thresholds and it also reflects the varying preferences of the contractors approached

through the soft market testing. The suggested contracts are as follows:

Contract A: Springfields Site C and Centre Avenue - 8no. units using design and build.

Contract B: Stewards Green Road - 4no. units using a traditional procurement.

Contract C: Parklands Site A - 4no. units using design and build.

Contract D: Queens Road - 12no. units using design and build.

Contract E: Bluemens End - 4no. units using design and build.

Contract F: Centre Drive - 1no. unit using a traditional procurement.

Contract G: London Road - 1no. unit using a traditional procurement.

9. It should be noted that by having 7 separate contracts there will be additional costs associated with supervising 7 contracts instead of 1 contract. In addition, there are additional costs associated with fully designing the schemes that are to be let using a traditional procurement. At the time of writing these additional costs were not available. However, they will be reported verbally at the meeting.

10. In terms of the risks associated with adopting this approach, there is more likelihood of something going wrong, but the impact of anything going wrong will be considerably lower

Resource Implications:

The outcome of any tender exercise and the benefits in any economy of scale by letting 1 contract as opposed to 7 contracts cannot be quantified, and will only become apparent once tenders have been received. However, the additional costs associated with managing and supervising 7 contracts as well as design fees associated with those sites to be let using traditional procurement will be reported verbally at the meeting.

Legal and Governance Implications:

EU Procurement Rules, Contract Standing Orders and Financial Regulations.

Safer, Cleaner and Greener Implications:

All new affordable Council homes are to be constructed to "Secure By Design" standards, Lifetime Homes Standards and will meet the Code for Sustainable Homes level 4.

Consultation Undertaken:

Soft market testing of 13 separate SME Contractors (some locally based) has been undertaken to help inform the recommended approach

Background Papers:

None

Risk Management:

In terms of the risks associated with adopting this approach, there is more likelihood of something going wrong, but the impact of anything going wrong will be considerably lower.

The Council may be exposed to some financial risks on the traditionally let fully designed contracts through any unforeseen issues not accounted for in the contract documents, which a Design and Build Contract may not.

A detailed Risk Register will be prepared for each site to monitor risks. Where risks are exposed, these will be reported to the Cabinet Committee through the normal regular progress report.

Due Regard Record

This page shows **which groups of people are affected** by the subject of this report. It sets out **how they are affected** and how any **unlawful discrimination** they experience can be eliminated. It also includes information about how **access to the service(s)** subject to this report can be improved for the different groups of people; and how they can be assisted to **understand each other better** as a result of the subject of this report.

S149 Equality Act 2010 requires that due regard must be paid to this information when considering the subject of this report.

Within the Housing Service Strategy, it has been identified that the target groups that are affected by the Council's house building programme are people in need of:

- Affordable Housing,
- Homelessness assistance,
- Supported housing for special needs groups,
- Owners and occupiers of poor condition housing
- Council and housing association tenants.

From that, it was identified that generally, there is an under provision of suitable accommodation for nearly all target groups. This has been reaffirmed in the most recent Strategic Housing Market Assessment.

Decision making is affected by funding and other factors, such as the availability of building land suitable for particular groups e.g. the elderly or young families.

There is no evidence of unlawful discrimination in relation to the provision of affordable housing.

The target group that this report is aimed at affects contractors rather than individuals. Since any contract let will be in line with Contract Standing Orders, this will also avoid any discriminatory actions.