

CABINET

29 JUNE 2010

GATEWAY 3 CONTRACT AWARD: COMPLETION OF DECENT HOMES PROGRAMME 2010/2011

Portfolio Holder: Councillor Howard Doe, Housing and Community Services

Report from: Deborah Upton, Assistant Director, Housing and Corporate Services

Authors: Derrick Singleton, Head of Landlord Services
Jim Mack, Interim Head of Building and Design Services

Summary

To seek approval to the completion of the Decent Homes Programme 2010/2011.

1. BUDGET AND POLICY FRAMEWORK

1.1 The decision is within the Council's policy and budgetary framework.

2. RELATED DECISIONS

2.1 The Cabinet report dated 4 August 2009 and decision outlining the tendering proposals and Procurement Board report dated 23 September 2009.

3. BACKGROUND / INTRODUCTION

3.1 The Assistant Director (Housing and Corporate Services) advised Members in December 2008 that due to the problems the Council had experienced with Erinaceous and 3Cs, the Council's previous contractor, the Capital Works element of the HRA Housing Contract would be re-tendered.

3.2 Consultants were appointed to help drive the Decent Homes Capital Programme and to ensure that the programme was delivered and achieved on target for the end of the financial year 2009/2010. This has proved successful, and a Gateway 4 contract management report will be presented in the near future.

- 3.3 Delegated authority was granted to the Assistant Director (Housing and Corporate Services) by Cabinet on 4 August 2009 to award the contract subject to consideration by Procurement Board.
- 3.4 Tenders were invited and contract awards made for Decent Homes Building capital works and Heating Installations for 09-10 following both Cabinet and Procurement Board approvals. The council awarded works to both United House Limited and Mears.
- 3.5 Performance monitoring of both contractors has been ongoing in relation to works awarded to both Mears and UHL a summary of project managers KPI details is shown in the table below:

Decent Homes Contractors Performance Monitoring – Summary table

Project	Contr	Time Management	Financial Management	Health and Safety	Management of Sub-contractors	Quality of Workmanship	Progress in Making Good Defects	Collaborative Approach	Contractor Performance	Contractor Design (If Applicable)	Customer Satisfaction	Total Project Score	Overall Project Percentage
As at 02/05/10													
	MEARS	4	4	5	4	4	4	4	4	4	5	42	84%
	UHL	4	4	4	2	3	4	4	3	4	3	35	70%

- 3.6 Re tendering of the decent homes works is unlikely to result in improved value for money, will waste considerable time and ultimately lead to a failure to meet the 2010/2011 decent homes target. The proposed continuity with the existing Mears Contract will ensure that the 2010/2011 decent homes target is achieved, continuity and good contract performance standards are maintained, continue to build tenant trust and confidence and demonstrate VFM.
- 3.7 The Monitoring Officer has been requested to agree an exemption to contract rules in order to extend the contracts of the existing consultant project team. The total fee for each specialist consultant service will not exceed the EU threshold for service contracts. Services covered include Project Management, Quantity Surveying, Clerk of Works, Mechanical and Electrical Services and CDM coordinator.

- 3.8 Following completion of a full stock condition survey, a Housing Asset Strategy is in the process of being developed and this will provide options and identify the resources required to improve and maintain the stock. Options regarding future capital works programmes following the completion of the Asset Strategy will be brought before Members in the future, for consideration.

4. SUMMARY OF THE BUSINESS CASE

4.1 Strategic Context

- 4.1.1 The Council is required to ensure that 100% of its housing stock meets decent homes standards (set by government) by December 2010. Awarding the 2010-11 Decent Homes works as recommended below will ensure that this target is achieved.
- 4.1.2 With regard to properties that cannot be accessed, these will be classed as a refusal by the tenant to have work undertaken as long as the Council can demonstrate that reasonable attempts have been made to contact the tenant and that the Council has taken individual circumstances / needs on board. Landlords are not expected to make a home decent if this is against a tenant's wishes as work can be undertaken when the dwelling is next void (empty). For reporting purposes, these properties are not counted as "non-decent" until they are void.
- 4.1.3 This work fits in with the Council's core priorities of putting the customer at the centre of everything we do and also providing value for money. Ensuring the retained Council housing stock meets the Decent Homes standard also fits in with the five aims of the Housing Strategy 2008-2011.

4.2 Options

Option 1 Re-tender All Contracts

- 4.2.1 Re-tendering of the contracts is unlikely to result in improved value for money, will waste considerable time and ultimately lead to a failure to meet the 2010/2011 decent homes target. Continuity of works will be lost and tenant/customer satisfaction will undoubtedly decline. There may also be adverse implications and consequential risks associated with any re-tendering exercise as a result of the existing Mears contract.

Option 2 Award all works to Mears

- 4.2.2 Mears have offered the Council a considerable reduction on their existing contract rates. This has narrowed the price gap considerably between Mears and prices offered by other contractors such as UHL under the contract awarded in 2009/10.

- 4.2.3 A desk top review has been completed by the Quantity Surveyor on 329 properties that have been identified as requiring DH works in 2010-11 using actual information from the Rand stock condition survey. This indicates that the cost of completing the decent homes works on these properties is now comparable between UHL and Mears. It should be borne in mind that the actual number of properties that will require works to be carried out would be greater 329, although detailed information regarding the condition is worked on at the moment.
- 4.2.4 The Key Performance Information gathered during the 09-10 programme along with the number of complaints received relative to each contractor indicates a considerable improvement on the performance of Mears. Reverting to the existing Mears Contract also mitigates any potential claims in the event that a tendering exercise for future works is undertaken and a new contract is awarded to an alternative Contractor.
- 4.2.5 A post project review has been completed for the 2009-10 works and lessons learned will be incorporated into the management and delivery of the 2010-11 programme. This includes method of working e.g. the differing approach between the contractors for installing a kitchen has led to a larger number of complaints received for UHL installations.

4.3 Whole Life Costing / Budgets

- 4.3.1 An allowance has been made within the 2010-2011 capital programme for Decent Homes and other works. The budget required to complete the DH programme will be funded from this sum. Capital monies spent on improving the condition of properties will have a net effect of reducing the revenue burden i.e. money spent on capital works to improve homes can result in less money spent on repairs.

4.4 Risk Management

- 4.4.1 Risks are considered in relation to Option Two awarding 2010 Decent Homes works to Mears.

Risk	Probability (P) Score 1-4	Impact (I) Score 1-4	Overall Score P X I	Action to avoid or mitigate risk
If option two is not selected a Legal Challenge from Mears may arise due to existing contractual agreements. Due to the removal of	1	4	4	Award works to Mears. Mears are unlikely to make a challenge under the existing contract. Mears will undertake the Decent Homes Capital Works on the old terms and conditions of the existing repairs contract. Mears have also

the Capital Works element from the current repairs and maintenance contract the council has with Mears				offered a considerable discount on current rates.
Failure to meet Decent Homes target as a result of non-access.	4	4	16	Agree policy decision relating to non access. See 4.1
Revision of the work specifications requires a price uplift to meet current requirements.	4	1	4	Extensive stock condition and decent homes information now exists following the commissioning of Rand Associates and carrying out of Scoping Surveys.
The cost of carrying out works for the overall works package may be higher than the budget allocation.	2	2	4	Information obtained during the 09-10 delivery programme, scoping surveys and stock condition survey enables a more accurate prediction to be made for the remainder of the programme. Although approximately 16% of the stock have not been surveyed.
The contractor who is awarded the overall contract fails to perform. Performance is below the expectations of the KPI's set at the beginning of the contract. Such as failing to cope with the volume of works.	2	3	6	Experience from the 09-10 programme along with information from the project review meeting will be used to improve delivery and resource planning. Mears' performance during 09-10 has been satisfactory and there is no reason to suggest that this should not continue for 10-11
Mears fail to perform.	2	4	6	Appoint new contractor on single tender action contract rule 12 to complete Decent Homes works subject to compliance with any applicable EU procurement rules.

Tenants Expectations are not met either via lack of performance or due to a reduction in work due to budgetary constraints.	4	4	16	Procurement process was weighted towards quality and ongoing quality checks and KPI's will monitor this aspect of work.
Mears instigate the break clause of the current repairs contract as the current contract value is not economically viable without the capital works	2	4	8	There is no reason to believe that this will occur. Mears have performed well and their relationship with the Council greatly improved and stakeholders like MeRGE (Medway Residents Group).

4.5 Stakeholder Consultation

- 4.5.1 MeRGe (Medway Residents Group) have been involved during the 2009-10 programme of works attending contractor progress and performance meetings. They have also been consulted and support the recommendation to continue with the existing delivery arrangements.

5. COMMENTS OF THE PORTFOLIO HOLDER FOR HOUSING AND COMMUNITY SERVICES

- 5.1 Tenders were invited and contract awards made for Decent Homes and Heating Installation capital works for 2009-10 following both Cabinet and Procurement Board approvals. At the time the full extent of the decent homes and heating works required for the Councils housing stock was unknown. Indeed it may have been expected that the ongoing value beyond 2009-10 would have exceeded EU thresholds resulting in the need for a fully compliant EU tender assuming ongoing works were not given to Mears Limited ("Mears") under their existing 5 year maintenance, repair and improvement of the Council's housing properties.
- 5.2 A full stock condition survey was completed in May 2010 by Rand Associates. The information gained from the surveys, together by the scoping surveys carried out during the 2009/2010 decent homes programme, concludes that the anticipated value of works required to comply with the decent homes standard is not as extensive as expected. This is set out in the exempt appendix.
- 5.3 It should also be noted that an ongoing programme of capital planned maintenance works is required to improve and maintain the condition of the stock. A future planned capital repairs programme will be created following the completion of the Housing Asset Strategy. Mears have indicated that they may

be prepared to offer an equivalent discount on other capital works procured via their existing Contract although this is subject to further discussion.

6. PROCUREMENT BOARD – 9 JUNE 2010

- 6.1 The Procurement Board considered this report on 9 June 2010 and agreed to forward the recommendation to Cabinet as prescribed within the recommendations below.

7. FINANCIAL, PROCUREMENT AND LEGAL COMMENTS

7.1 Procurements Comments

- 7.1.1 Strategic Procurement has provided quality assurance support and advice throughout the previous procurement process and in the options appraisal leading up to this report and the associated recommendations herein. Strategic Procurement advises that the preferred option and recommendation herein is within the remit of the Monitoring Officer to exempt contract rules in respect to procuring consultancy services, provided that each respective consultancy contract does not exceed the EU procurement threshold of £156,442.
- 7.1.2 The decision to waive contract rules, as per the recommendation of this report lies solely with the Monitoring Officer (this authority is set out in paragraph 12 of the Contract Rules, as set out in the Council's Constitution). In the event that the preferred option and recommendation herein are accepted, the client department must complete an exemption request form and submit it to Strategic Procurement for Quality Assurance and presentation to the Monitoring Officer. This is a mandatory requirement for audit purposes and to fulfil the Monitoring Officer's duty to report back to Full Council on all exemptions approved. The recommendation to continue to contract with Mears on the terms and conditions of the original contract subject to variation of pricing is also within the remit of the Monitoring Officer in consultation with Procurement Board, the Chief Executive and Cabinet. Strategic Procurement will provide quality assurance throughout the process as and when instructed by the client department.

7.2 Legal Comments

- 7.2.1 Reverting to the existing Mears Contract under option 2 should reduce the risk of potential legal challenge from Mears. The offer of discounted contract rates together with an implementation of effective contract management mechanisms should result in a contract delivering value for money to the Council. Officers are advised to obtain a written confirmation of the discounted rates that have been offered and agreed by Mears for the Council's records.
- 7.2.2 In relation to the award of Contract to the Project team without competition while it is accepted that the estimated values of their services as stated in the body of

the report is below the current threshold of services £156,442, there is still a requirement to comply with the set of basic standards for the award of public contracts which are derived directly from the rules and principles of the EU Treaty. The principles of equal treatment and non-discrimination on grounds of nationality imply an obligation of transparency which, according to the ECJ case-law, “consists in ensuring, for the benefit of any potential tenderer, a degree of advertising sufficient to enable the services market to be opened up to competition. These standards apply equally to the award of contracts below the thresholds. Any decision to let the contract without advertising should be reasonably supported by sufficient reasons that take account of the requirements of the Treaty obligations and related interpretative communication published by the EU. Also, the possible impact of the implication of the new Remedies Directive on a decision to award a contract without competition needs to be considered.

7.3 Finance Comments

- 7.3.1 The approved budget relating to Decent Homes and Planned Maintenance related capital works for 2010/2011 has been notionally set at £4,000,000. However, the size of the final programme will depend upon the results of the stock condition survey combined with the requirements of the asset management strategy. Should there be a requirement to alter the budget given above, approval will be sought from Members at the earliest opportunity.
- 7.3.2 The tendering process has given assurance that the Council is receiving value for money in relation to the capital works that will be carried out.

8. RECOMMENDATIONS

- 8.1 Cabinet is requested to agree to continue the 2010/2011 Capital works under its existing contract with Mears, on the basis of the discount on their existing contract rates.
- 8.2 The Cabinet agrees that the Monitoring Officer may grant a waiver to Contract Rules to continue with the existing consultant project team on their existing tendered rates.
- 8.3 The Cabinet delegates authority to the Assistant Director for Housing and Corporate Services in consultation with the Portfolio Holders for Finance and Housing and Community Services, to agree a further discount with Mears for ongoing capital works that may be required following the completion of the Asset Strategy and subsequent capital programme of works.

9. SUGGESTED REASONS FOR DECISION(S)

- To ensure Decent Homes target is achieved by the December 2010 deadline.
- To maintain continuity of works and maximise VFM using the existing tendered Contract.
- To continue to build the trust and confidence of tenants now that the decent homes programme has recommenced.
- To retain a high performing principal Contractor and project team.
- To mitigate risk issues in relation to existing Mears Contract.

Report Originating Officer:

Derrick Singleton

☎ 01634 333517

Chief Finance Officer or deputy:

Mick Hayward

☎ 01634332220

Monitoring Officer:

Deborah Upton

☎ 01634 332133

Head of Procurement or deputy:

Gurpreet Anand

☎ 01634 332450

Background papers:

None