

	<b>Officer Key Decision</b>
	<b>Report to the Operational Director for Housing Community and Wellbeing Directorate</b>
<b>AUTHORITY TO AWARD FRAMEWORK AGREEMENT FOR DISABLED FACILITIES INSTALLATION AND REPAIR WORKS IN COUNCIL - OWNED RESIDENTIAL PROPERTIES</b>	

<b>Wards Affected:</b>	<b>All</b>
<b>Key or Non-Key Decision:</b>	<b>Key Decision</b>
<b>Part Exempt:</b> <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	<b>Part Exempt – Appendix 1 is exempt</b> as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: “Information relating to the financial or business affairs of any particular person (including the authority holding that information)”
<b>No. of Appendices:</b>	<b>3</b>
<b>Background Papers:</b>	<b>Appendix 1 : Exempt</b> <b>Appendix 2: Evaluation Grid</b> <b>Appendix 3 : Equalities Impact Assessment</b>
<b>Contact Officer(s):</b> <small>(Name, Title, Contact Details)</small>	<b>Neil Edwards, Contracts Manager, Private Sector Housing Services, Community and Wellbeing Directorate.</b>

## 1.0 Purpose of the Report

- 1.1 As required under Contract Standing Order Regulations 88 and 89, this Report seeks approval for the Council’s procurement of, and entry into, a Framework Agreement; with the first two Contractors referred to at paragraph 2 of this Report (Recommendations) and in Appendix 1 (“Tenderer A and Tenderer B”), for the installation and repair of disabled facilities in respect of Council-owned residential properties (“Framework Agreement”).
- 1.2 Entry into the Framework Agreement will allow the Council to award Call off Contracts by placing Orders with Tenderer A and Tenderer B, as and when

required for installation or repair works, of a total estimated value of up to £2,800,000.00 split between these Tenderers, for up to 4 years.

- 1.3 This report summarises the process undertaken in tendering the Framework Agreement and, recommends to whom the Framework Agreement should be awarded following evaluation of tenders received for the letting of the Framework Agreement.

## 2.0 Recommendation(s)

That the Operational Director of Housing:

- 2.1 note the Council's invitation of expressions of interest for appointment of disabled facilities Contractors for the installation and repair of disabled facilities at Council-owned properties on the basis of the procurement method and evaluation criteria set out in paragraph 4 of this Report and the pre-tender considerations set out in para 4.6; and
- 2.2 approve the Council's award to Tenderer A and Tenderer B of the right to supply Works of a total value of up to £ 2,800,000.00 for a period of 24 months with two possible consecutive extensions of 12 months each, under a Framework Agreement, on the basis of the award process set out in this Report.

## 3.0 Detail

- 3.1 On 1 April 2018, the facilitation and management of disabled adaptations for Council tenants was transferred from Brent Housing Management ("**BHM**"), to Private Housing Services ("**PHS**") within the Council.
- 3.2 PHS already administers designs and facilitates adaptations for disabled adaptations in private housing and other properties throughout Brent. It was felt that the transfer of this service to PHS would achieve a tenure neutral service for all residents in Brent needing adaptations.
- 3.3 This also allows BHM to focus on its core business of tenancy engagement and property management.
- 3.4 The Council's last contract with Effectable Construction Services Ltd expired on 31 March 2020. In tendering a new Framework, the Council's intention was to move from what was essentially a contractor-led design and build process to one which is more customer focused and managed, by **Council** Surveyors.

Officers intend-

- 3.5.1 to remove the contractor design/management element from the control of the Contractor. Private Housing Services ("**PHS**"), which designs, administers and

facilitates disabled facilities grant-funded works for all other tenures within Brent, will be used to design and manage all adaptation projects and

- 3.5.2 to move from a single Contractor arrangement to a multi-Contractor Framework, with two Contractors appointed to the Framework. This will allow a far more flexible approach to letting the relevant works, should one Contractor not have the capacity to accept and perform a particular Order.
- 3.6 The two Contractors referred to within this Report were chosen as a result of the tender exercise referred to in paragraph 4 below.
- 3.7 It is intended that the Council will place Orders (“**Call Off Contracts**”) with one or other of the two Contractors on an alternating basis as described at paragraph 3.9.
- 3.8 The Contractors’ bids for appointment to the Framework have been evaluated and scored as the first and second most economically advantageous tenders based on statutory award criteria described at paragraph 4 below.
- 3.9 Adaptation works will be ordered directly from one of the two Contractors appointed on an alternating basis. if the work required is routine or standard. The work is defined as routine or standard if it costs £15,000 or less and is capable of falling into the scope of the work quoted in the Specification of Services and Schedule of Rates advertised when the letting of the Framework Agreement was advertised.
- 3.10 The overwhelming majority (about 97%) of the work that will be let by the Council under the Framework over the next four years falls into the description of works in the preceding paragraph.
- 3.11 If neither of the two Contractors appointed to the Framework Agreement is able to carry out the relevant Works then the Council will let it in a procurement-compliant manner outside the scope of the Framework agreement subject to the receipt of necessary Council approval.
- 3.12 Any remaining complex adaptation or construction work (about 3%) or any work that does not fall squarely into the Specification or Schedule of Rates but is related to it within certain limits will be mini-competed between the two Contractors on the Framework.
- 3.13 The evaluation criteria used for mini-competition will be the same as that which was used for the award of the Framework Agreement as described at paragraphs 4.4, 4.5 and 4.6 of this Report.
- 3.14 The alternating basis for direct award and for mini-competition on the nature of the work that would be subject to such award, was set out in the Procurement documents for the letting of the Framework Agreement.

- 3.15 As with any Framework Agreement let by a contracting authority, the Council is not bound to let all its' disabled facility installation and repair work via the Framework Agreement. The Council gives no guarantee and no minimum guarantee of work to the Contractors appointed under this Framework. It will remain free to let any installation repair and demolition and construction work relating to disabled facilities to other Contractors using other procurement-compliant routes other than the Framework Agreement referred to in this Framework Agreement, subject to the receipt of relevant Officer or Cabinet approval
- 3.16 It is anticipated that the Council will save costs by omitting the design function from the scope of the work required under the proposed Framework and that design by the Council will be more customer-focused. Hence, the Council will obtain a more efficient service from its new Contractors.

#### **4.0 The Tender Process**

- 4.1 The new contract will be let as a Framework Agreement supplemented where necessary by the industry-standard JCT Minor Works Contract 2016 for 24 months initially then potentially by way of up to two consecutive extensions of 12 months each)
- 4.2 Advertisements regarding the letting of the Framework Agreement were placed [in Contracts Finder and the London Tenders Portal on 4th June 2020 to seek initial expressions of interest, which elicited twelve enquires. Contractors were provided with an outline specification and details of the tender approach and were invited to complete a selection questionnaire using the London Tenders' Portal] and they all subsequently completed the selection questionnaire.
- 4.3 Shortlisting was carried out on the basis of the contractors' financial viability, and technical ability. All eleven contractors who had responded to the Council's advertisement passed the Council's selection criteria as set out in the selection questionnaire and were invited to tender.
- 4.4 The tendering instructions stated that the contract would be awarded based on the most economically advantageous offer to the Council] and that in evaluating tenders, the Council would have regard to the following:
- Quality (Demonstrable ability to provide the service via a Delivery Statement) - management of site set-up and logistics around occupants with disabilities and vulnerabilities and site restraints; logistics; mechanisms; mechanisms for robustness of supply chain for duration of an installation under a works Order; workmanship of a standard one would expect from a fully trained professional tradesman relevant to the task being carried out, and all of the quality control set standards; Schedule of Rates; Resources – details of workforce; skills expertise; qualification; organisational; Health and Safety procedures; Safeguarding

- Quality Assessment Social Value – 3 criteria requiring responses based on the following Council policies - Every Opportunity to Succeed; Future Built for Everyone and a Cleaner More Considerate Brent
  - Commercial Value for Money and Price– Schedule of Rates (not scored); pricing schedule Examples (scored)
- 4.5 Tenderers were required to submit additional information regarding their finances as part of the selection phase referred to at paragraph 4.3 in respect of which the Director of Finance was requested to check by way of due diligence to ensure that the Tenderers chosen for award of the right to supply to this Framework Agreement were financially sound and solvent.
- 4.6 In accordance with Contract Standing Order 89 (Pre-Tender Considerations), pre-tender considerations have been set out below.

Ref.	Requirement	Response	
(i)	The nature of the works	The installation and repair of disabled facilities for Council owned residential properties.	
(ii)	The estimated Value.	£ 2,800.000.00 for the Framework for a full four-year period.	
(iii)	The contract term.	24 months +12months +12months (2+1+1)	
(iv)	The tender procedure to be adopted.	Two Stage Tender Procedure	
v)	The procurement timetable.	<b>Actual and indicative dates are:</b>	
		Invite to tender	04 June 2020
		Deadline for tender submissions	10 July 2020
		Evaluation and Moderation	05 August 2020 and 29 September 2020
		Report recommending appointment to the Framework circulated internally for comment	05 January 2021 to present date
		Strategic/Operational Director Approval	Present Date

Ref.	Requirement	Response	
		Decision Letters Issued	To be issued on expiry of Call in period
		Call-in period (minimum of 5 days assuming no call –in by Overview and Scrutiny	5 days or such period of time that it takes for the Overview and Scrutiny Committee to approve or to reject this Key Decision if it is called in
		Standstill Period	No standstill period
		Framework Mobilisation	6 weeks
		Framework start date	1 April 2021
(vi)	<p>The evaluation criteria and process.</p> <p>Selection Criteria for shortlisting for appointment as Contractor to the Council's Framework</p> <p>Award Criteria for the award of an individual Call Off Contract/Order on Framework Terms</p>	<p>Two Stage Tender (Selection and Award)</p> <p>The tenders were evaluated against the following criteria:</p> <ul style="list-style-type: none"> <li>• <b>Quality (Demonstrable ability to provide the service via a Delivery Statement</b> management of site set-up and logistics around occupants with disabilities and vulnerabilities and site restraints - logistics and mechanisms; mechanisms for robustness of supply chain for duration of an installation under a works Order; workmanship of a standard one would expect from a fully trained professional tradesman relevant to the task being carried out, and all of the quality control set standards; Schedule of Rates; Resources – details of workforce; skills expertise; qualification; organisational ; Health and Safety procedures; Safeguarding ; Health and Safety procedures; Safeguarding - 25%</li> <li>• <b>Quality Assessment Social Value</b> – 3 criteria based in the following Council policies –Every Opportunity to Succeed; Future Built for Everyone and a Cleaner More Considerate Brent - 10%</li> </ul>	

Ref.	Requirement	Response
		<ul style="list-style-type: none"> <li>• <b>Commercial Value for Money and Price</b>– Schedule of Rates (not scored); pricing schedule Examples (scored)- 65%</li> </ul> <p>NB The Council intends to restrict mini-competition as described at paragraph 3.6 of this Report.</p>
(vii)	Any business risks associated with entering the Contract.	Officers consider that risks will be significantly reduced by bringing the design and management roles in-house and introducing a far more effective system of monitoring the contractors' performance and Customer service.
(viii)	The Council's Best Value duties.	Inviting competitive tenders will help the Council achieve its best value duties. Please refer to paragraph 3.8 of this Report.
(ix)	Consideration of Public Services (Social Value) Act 2012	See paragraph 11 of this Report.
(x)	Any staffing implications, including TUPE and pensions.	TUPE does not apply
(xi)	The relevant financial, legal and other considerations.	See paragraphs 6 to 11 of this Report.

## 5.0 Evaluation process

5.1 The tender evaluation was carried out by a panel of officers from Private Housing Services, Community and Wellbeing.

5.2 All tenders had to be submitted electronically no later than 10 July 2020. Twelve (12) Expressions of Interest were received.

5.3 The Evaluation panel met on 05 August 2020. The Panel consisted of three members of the Private Sector Housing Team. Each member of the Evaluation Panel read the Tenders and carried out an initial evaluation of how well they considered each of the award criteria was addressed in the Tender. Each submission was marked by the whole of each Panel against the award criteria.

5.4 The scores were moderated by the Council's Procurement Officer who met with the Evaluation Panel on 29 September 2020. Each member of the

Evaluation Panel read the Tenders and carried out an initial evaluation of how well they considered each of the award criteria was addressed in the Tender. The scores on each submission were then adjusted by one Procurement Officer against the award criteria.

- 5.5 The names of all the tenderers are contained in Appendix 1. The scores received by the tenderers are included in Appendix 2. It will be noted that Tenderer A was the highest and Tenderer B the second highest scoring tenderer. Officers therefore recommend the award of the contract to Tenderer A and to Tenderer B.
- 5.6 For clarity Tenderer L's bid was rejected during evaluation because its bid was non-compliant. It was non-compliant because the Bidder submitted a qualified Schedule of Rates not a definite final Schedule that would apply throughout the term of the Framework Agreement as required under the Council's Invitation to Tender. In addition, paragraph 7.5 of the ITT expressly stated that Variant Bids were not permitted.

## **6.0 Financial Implications**

- 6.1 The estimated value of the call off contracts for disabled facilities is £2.8m, for the full four-year duration.
- 6.2 The disabled facilities work will be undertaken in Council tenanted properties and forms part of the Housing Asset Management Strategy.
- 6.3 The cost of this joint contract will be funded from resources within Housing Revenue Account (HRA).

## **7.0 Legal Implications**

- 7.1 The value of the Framework Agreement over its lifetime is under the financial threshold that requires the use of the formal statutory procurement procedures for works contracts under the Public Contract Regulations 2015. Currently this threshold stands at £4,733,252 for works contracts.
- 7.2 The Framework Agreement award is subject to the Council's own Standing Orders in respect of Medium Value Contracts and the Council's Financial Regulations.

Under the Council's own Standing Orders, Chief Officers have delegated to them power to award Medium Value Contracts in accordance with paragraph 9.5.3 (a), of Part 3 of the Constitution. They can exercise this delegated power provided that:-

- 7.2.1 in the case of a contract for the supply of works, the estimated value at the commencement of any procurement process doesn't exceed £5 million



aggregated over the life of the contract (including any possible extension) (*para 9.5.3 (a) (a) of the Scheme of Delegation*) and

7.2.2 that the award of the contract would not place the Council in breach of procurement legislation (*para 9.5.3 (a) (d) of the Scheme of Delegation*) and

7.2.3 there is sufficient budgetary provision (*para 9.5.3 (a) (e) of the Scheme of Delegation*).

7.3 Under paragraph 9.7 of the Scheme of Delegation in Part 3 of the Constitution, the Operational Director for Housing has delegated to him, all the powers of the relevant Strategic Director including the power to approve the procurement of the Framework Agreement and the award of the right to supply works under it insofar as they relate to the service for which he is responsible.

This delegated power vested in the Operational Director is subject to the same limits as are set out at paragraphs 7.2.1 to 7.2.3 above. He may only exercise such delegated power to the extent that this is not inconsistent with any other part of the Constitution and only if the Strategic Director has not directed that the Operational Director should not approve the award of such contracts or agreements.

7.4 The value of the proposed Framework Agreement renders the procurement and award decision (that is the approval for the Council's entry into the Framework Agreement with Tenderers "A" and "B") a Key Decision.

Key Decisions are subject to the Council's Access to information Rules within Part 2 of the Constitution. This means that any award proposal must be published on the Forward Plan at least 28 days before the decision to award is taken.

The Council must also wait a minimum of 5 days after the decision is made to implement the award decision, or longer, if the Key (award) Decision is called in by the Council's Overview and Scrutiny Committee

7.5 Because the proposed Framework Agreement is a multiple supplier Framework, any call off awards to Tenderer A or Tenderer B must comply with the terms laid down in the Council's Framework Agreement and Schedules including the Specification and Schedule of Rates, according to Regulation 33 of the Procurement Regulations 2015

The award Call Off award process described at paragraph 3.6 is acceptable under Regulation 33 (8) (a) (i) and (ii) of the Procurement Regulations 2015 provided all the objective conditions governing the choice of operator (the alternating methodology for award and all the terms governing the choice of Contractor) were clearly set out in the Framework Agreement.

If not all the objective conditions governing the choice of operator are so set out, then the Call off Contract must be mini-competed as required under Regulation 33 (8) (c) of the Procurement Regulations 2015.

- 7.7 The mandatory minimum 10 calendar day standstill period before the award of the right to supply to the Framework and before the first call off can be made will not apply to this Framework Agreement because its' estimated value is less than financial threshold set according to procurement legislation for a public contract for works.
- 7.8 There are no staff transfer implications under the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- 7.9 The content of paragraph 8 is noted as regards equality implications.
- 7.10 It is noted that the Operational Director has already signed a previous delegated authority Report approving the procurement of the Disabled Facilities Framework Agreement on 19 May 2020.

## **8.0 Equality Implications**

- 8.1 The proposals in this report have been subject to screening and officers believe that there are no equality implications.

## **9.0 Consultation with Ward Members and Stakeholders**

- 9.1 There has been no Ward Member or stakeholder consultation in respect of the procurement or award of the right to supply under this Framework Agreement.
- 9.2 Any works to be undertaken by the Contractors will be subject to prior arrangement and agreement with those of the Council's tenants who occupy the houses and flats at which disabled facilities are to be installed or repaired.

## **10.0 Human Resources/Property Implications (if appropriate)**

- 10.1 There are no staff transfer implications for Council staff arising from retendering the contract.
- 10.2 The properties at which work will be undertaken are Council-owned. They will not be let or licensed to the Contractors under the Framework Agreement and will remain subject to existing Council tenancies.

## **11.0 Public Services (Social Value) Act 2012**

- 11.1 The Council is under a duty pursuant to the Public Services (Social Value) Act 2012 ("the Social Value Act") to consider how services being procured might improve the economic, social and environmental well-being of its area; how, in conducting the procurement process, the Council might act with a view to

securing that improvement; and whether the Council should undertake consultation. [This duty does not strictly apply to the proposed contract, as it is not a services contract. Nevertheless, Officers have had regard to considerations contained in the Social Value Act in relation to the procurement.

- 11.2 The Council required Tenderers to provide a response within their Tenders, which addressed what Social Value commitment each Tenderer was offering. This element was allocated a tender evaluation score at 10%.
- 11.3 The criteria set by the Council required each Tenderer to demonstrate what they could offer by way of social value based on the Council's strategic objectives in the Borough Plan for 2019 to 2023.
- 11.4 On evaluation and moderation of their responses, Tenderer A's Social Value response scored the highest and Tenderer B's Social Value Action Plan ranked second in terms of social value as is apparent from the Matrix at Appendix B of this Report

**Report sign off:**

**Hakeem Osinaike**

Operational Director Housing