

	Officer Key Decision
	Report to the Strategic Director, Regeneration & Environment
Authority to Re-tender for the Design & Build Contract at 1 Morland Gardens, Stonebridge	

Wards Affected:	Stonebridge
Key or Non-Key Decision:	Key Decision
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
No. of Appendices:	0
Background Papers:	0
Contact Officer(s): (Name, Title, Contact Details)	Joy Ogbechi, Capital Project Manager Property & Assets, Regeneration & Environment Email: joy.ogbechi@brent.gov.uk Tel: 020 8937 3386

1.0 Purpose of the Report

1.1 This report concerns the redevelopment at 1 Morland Gardens, Stonebridge to deliver a new education centre, new council homes, affordable workspace, a public facing café, and public realm improvements. This report requests approval to invite tenders by way of a mini competition under the Notting Hill Genesis Contractor Framework and approve the pre tender considerations as required by Contract Standing Orders 88 and 89.

2.0 Recommendation(s)

The Strategic Director, Regeneration & Environment:

2.1 Notes the reasons for the lack of bids received from the original procurement exercise for this contract as set out at paragraph 3.3.

- 2.2 Approve the inviting tenders via a mini-competition under the Notting Hill Genesis Contractor Framework agreement for a contractor on the basis of the Pre-tender considerations set out in section 4 of the report.
- 2.3 Approves Officers evaluating tenders referred to in 2.2 above based on the evaluation criteria set out in paragraph 4.1 of the report.
- 2.4 In January 2020 Cabinet approved a budget of £43 million pounds and there is sufficient budgetary provision for the proposed call off contract estimated at £39,820,380.

3.0 Detail

Initial Tender Exercise

- 3.1 On 12 January 2021 Cabinet approved the procurement process for Morland Gardens, to invite tenders via a one-stage mini-competition under the Notting Hill Genesis (NHG) Contractor Framework agreement for a Design and Build (D&B) contractor.
- 3.2 Following on from this approval, officers issued an invitation to tender on a single stage Design and Build contract basis utilising the NHG framework on 5 February 2021. Despite initial interest from suppliers on the framework, no bids were received by the deadline of 28 May 2021.
- 3.3 Officers received feedback from the suppliers on the framework specifying the reasons for not returning a bid. These included:
 1. Prefer two-stage D&B contracts
 2. Level of design required for this project under a single stage D&B contract is prohibitive
 3. Linked to the above, a firm and fully priced submission could not be provided due to the required number and quantum of provisional sums
 4. Risk profile too great for the Executive Boards of contractors to sign off principally based on a single stage tender.
 5. If the council took on board the above considerations to follow a more collaborative procurement strategy the suppliers on the framework would be interested in participating in a future tender exercise.
- 3.4 Therefore, officers would need to seek an alternative procurement method for the re-tender of this contract.

Re-tender Options

- 3.5 On 12 January 2021, Cabinet approved that delegated authority be given to the Strategic Director, Regeneration and Environment to approve inviting tenders using an alternative procurement method and any resultant pre-tender considerations in consultation with the Cabinet Members for Regeneration, Property and Schools, Employment and Skills if the proposed exercise did not elicit sufficient bids in order for officers to propose the awarding of the contract.
- 3.6 As described in paragraphs 3.1 – 3.4, sufficient bids were not elicited from the initial procurement exercise. Having assessed the comments back from the contractors, the project team carried out an analysis of the procurement method used against alternative options. These included the following procurement routes:
- Use of an alternative framework
 - Open or Restricted procedure tender
 - Redesign to RIBA 4 and re-tender under a single stage tender
 - Negotiated Route
 - Re-use of the existing NHG framework and re-tender under a two-stage D&B contract.
- 3.7 A number of factors required consideration before compiling the pre-tender considerations for the re-tender of this contract. Taking these one at a time and expanding on the issues, the following were evaluated.

Alternative framework or open tender

- 3.8 The NHG framework has a comprehensive number of suppliers capable of undertaking a project of this size. Thereby considering feedback received outlined in paragraph 3.3 the decision was made that consideration of alternative frameworks would not be necessary. The Open tender approach would not be considered as this might lead to a mix of submissions with suppliers who do not have the required capabilities and financial grounding to undertake a procurement of this value.

Open or Restricted Procedure Tender

- 3.9 Using an open or restricted procedure tender may bring in additional competition and will test the wider construction market. However, contractors do not like to compete against a high number of competitors due to the costs associated with bidding for a contract of this size and not knowing the odds of winning the contract. It is better to identify a shortlist of contractors from a framework.

Redesign to RIBA Stage 4 and re-tender under a single stage basis

- 3.10 Whilst this would lead to a co-ordinated design, there are cost and time implications. Brent would need to employ a design team to take the scheme back through RIBA 3 and then through RIBA 4. This would then give us suitable

information to go out to procurement on a single stage tender, however it may delay the project by up to nine months to get the design finalised and the documentation ready for tender. Brent would also have to take on the costs of the co-ordinated design and then a contractor may choose to change this at a later point in time in any event in order to add buildability to the proposals.

Negotiated Route

- 3.11 Competitive Procedure with Negotiation was considered but believe that the requirements of the project based on an agreed design will not realise any additional benefits.

Re-use existing framework and re-tender under a two-stage D&B contract (recommended option)

- 3.12 The NHG framework is a suitable framework due to the nature and scope of the project as well as the suppliers available on the framework who would be potentially interested in this contract.
- 3.13 As set out in paragraph 3.3, the feedback from the contractors for not submitting a bid mainly rested on the single stage process and that a two stage collaborative design approach would be beneficial for both the client and contractors. It was not due to the framework utilised.
- 3.14 A two-stage D&B process with a financial envelope that will not exceed what has been set out in 2.4 in the form of a GMP (Guaranteed Maximum Price) is proposed. The GMP will be inclusive of a cost plan for the works, fixed percentages for overheads & profit and pricing preliminaries. If the Contractor is then unable to keep the costs within the GMP, the Council will have the option to go back out to tender with completed designs.
- 3.15 With a two-stage D&B contract, the first stage is the Pre-Construction Services Agreement (PCSA). The PCSA will define the services that are required of the contractor during the pre-construction phase and is generally similar to a consultancy agreement. It will make clear the contractor is undertaking design work, the design liability and what will happen to this liability if they are not appointed for the second stage. If the contractor operates within the GMP and approved budget, the Council triggers the second stage by entering into the D&B Contract and the building works then commence.
- 3.16 The benefits of this route is that whilst the design is being carried out, the pricing runs simultaneously, which means there is no separate pricing period required and this can reduce the programme by approximately 12-16 weeks. Further, this early involvement of the contractor should improve the buildability and cost-certainty of the design as well as creating a better integrated project team and reducing the likelihood of disputes.

3.17 The main risk of a two-stage D&B process is that the contractor may not stay within the budget so the Council has to re-procure an alternative contractor. The alternative contractor may want to undertake design services, which better suit their approach leading to abortive costs and delays to the project.

4.0 Way Forward Pre-tender Considerations

4.1 Based on the above, officers are proposing a two-stage D&B contract and procure via the NHG Framework. The estimated contract value of the procurement is £39,820,380. In accordance with Contract Standing Orders 88 and 89, pre-tender considerations have been set out below for the approval of the Strategic Director, Regeneration & Environment.

Ref.	Requirement	Response	
(i)	The nature of the works	Demolition of the existing building, the design and build of a new adult education centre, 65 new council homes, a public facing café, and public realm improvements	
(ii)	The estimated value.	£39,820,380 (thirty nine million, eight hundred twenty thousand, three hundred and eighty pounds)	
(iii)	The contract term.	Estimated two years plus 24 months defects liability period	
(iv)	The tender procedure to be adopted.	Mini competition from Notting Hill Genesis Contractor Framework	
v)	The procurement timetable.	Indicative dates are:	
		Invite to tender	23.08.2021
		Deadline for return of tenders	01.10.2021
		Interviews	11.10.2021-15.10.2021
		Evaluation	w/c 18.10.21
		Authority to Award	05.10.2021
		Contract Award	w/c 12.11.2021
		Stage 1 Design commence	29.11.2021
		Stage 2 Approval Sought	30.05.2022
		Stage 2 Start on Site	30.06.2022
(vi)	The evaluation criteria and process.	1. The Notting Hill Genesis Contractor Framework does not recommend a selection stage and therefore a Sifting Brief exercise need not be undertaken.	

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		<p>2. At tender evaluation stage, the panel will evaluate the tenders against the following criteria:</p> <table border="1"> <thead> <tr> <th>Technical Quality /</th> <th>Area weighting</th> <th>Overall weighting</th> </tr> </thead> <tbody> <tr> <td>Delivery Statement</td> <td>30%</td> <td rowspan="7">40%</td> </tr> <tr> <td>Programme</td> <td>35%</td> </tr> <tr> <td>Resources</td> <td>20%</td> </tr> <tr> <td>Resident Engagement & Communications</td> <td>5%</td> </tr> <tr> <td>Public Realm</td> <td>5%</td> </tr> <tr> <td>Sustainability</td> <td>5%</td> </tr> <tr> <td>Total for Quality/Technical</td> <td>100%</td> <td></td> </tr> <tr> <th>Social Value</th> <th>Area weighting</th> <th>Overall weighting</th> </tr> <tr> <td>Strong Foundations</td> <td>2%</td> <td rowspan="5">10%</td> </tr> <tr> <td>Every Opportunity to Succeed</td> <td>2%</td> </tr> <tr> <td>A borough where we can all feel safe, secure and happy</td> <td>2%</td> </tr> <tr> <td>A future built for everyone, an economy fit for all</td> <td>2%</td> </tr> <tr> <td>A cleaner, more considerate Brent</td> <td>2%</td> </tr> <tr> <th>Commercial Cost -</th> <th>Area weighting</th> <th>Overall weighting</th> </tr> <tr> <td>Commercial (Price)</td> <td>100%</td> <td>50%</td> </tr> <tr> <td>Total</td> <td></td> <td>100%</td> </tr> </tbody> </table>	Technical Quality /	Area weighting	Overall weighting	Delivery Statement	30%	40%	Programme	35%	Resources	20%	Resident Engagement & Communications	5%	Public Realm	5%	Sustainability	5%	Total for Quality/Technical	100%		Social Value	Area weighting	Overall weighting	Strong Foundations	2%	10%	Every Opportunity to Succeed	2%	A borough where we can all feel safe, secure and happy	2%	A future built for everyone, an economy fit for all	2%	A cleaner, more considerate Brent	2%	Commercial Cost -	Area weighting	Overall weighting	Commercial (Price)	100%	50%	Total		100%
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(vii)	Any business risks associated with entering the contract.	The delivery of the contract caused by current economic environment; availability of resources; increased costs to estimated contract value.																																										
(viii)	The Council's Best Value duties.	Mini competition undertaken from an approved framework so that competitive submission can be sought to support the Council's Best Value duties																																										

Ref.	Requirement	Response
(ix)	Consideration of Public Services (Social Value) Act 2012	10% of the evaluation is included for Social Value – see Section 8 below.
(x)	Any staffing implications, including TUPE and pensions.	See Section 7 below
(xi)	The relevant financial, legal and other considerations.	See sections 4 and 5 and other sections below.
(xii)	Sustainability	Appropriate Sustainability Key Performance Indicators / Outcomes will be included in the contract.
(xiii)	Key Performance Indicators / Outcomes	Appropriate Key Performance Indicators / Outcomes will be included in the contract.
(xiv)	London Living Wage	The Contract will require the payment of the London Living Wage
(xv)	Contract Management	A contract manager will be appointed and appropriate contract management provisions will be included in the contract.

5.0 Financial Implications

5.1 The Morland Gardens project budget was approved by Cabinet on 14 January 2020. The total project budget is £43m of which £41.5m was assigned for the redevelopment of the Morland Gardens site and £1.5m for the decant costs for Brent Start.

5.2 The pre-tender estimate for the redevelopment works of £39,820,380 is within this budget.

6.0 Legal Implications

Procurement Regulations

6.1 The Contract falls within the definition of a ‘works contract’ under the Public Contracts Regulations (PCR) 2015, the estimated value of the Contract is

above the procurement threshold for works (currently £4,551,413), and therefore the full rules of the PCR will apply to the award of the Contract. Officers are also required to observe the rules set out in the Council's Contract Standing Orders (CSO).

- 6.2 Officers recommend the use of a framework to procure the Contract. The PCR 2015 allows the use of framework agreements and prescribe rules and controls for their procurement. Contracts may then be called off under such framework agreements without the need for them to be separately advertised and procured through a full procurement process. Call offs under the framework need to be carried out in accordance with the framework rules, to include using evaluation criteria specified in the framework and utilising the terms and conditions set out in the framework.

Council CSOs

- 6.3 The Contract is classed as a High Value Contract under the Council's Contract Standing Orders (CSO) and Financial Regulations. Officers have determined that it would be most effective to procure the contract by way of the NHG Framework. The Council's Contract Standing Orders state that no formal tendering procedures apply where contracts are called off under a framework agreement established by another contracting authority, where call off under the framework agreement is approved by the relevant Chief Officer and provided that the Director of Legal, HR, Audit and Investigations has advised that participation in the framework is legally permissible. The Director of Legal, HR, Audit and Investigations confirms that participation in the relevant Framework Agreement is legally permissible.

Authority to Tender

- 6.4 In January 2021, Cabinet delegated authority to the Strategic Director, Regeneration and Environment to approve inviting tenders using an alternative procurement method and any resultant pre-tender considerations in consultation with the Cabinet Members for Regeneration, Property and Schools, Employment and Skills if the proposed exercise did not elicit sufficient bids in order for officers to propose the awarding of the contract.
- 6.5 Officers have recommended that in accordance with CSOs 88 and 89, the Strategic Director, Regeneration and Environment approve the pre-tender considerations and invite tenders. Officers have also recommended that he confirm that there is sufficient budgetary provision for the Contract in accordance with CSO 86(e)(ii).
- 6.6 On completion of the tendering process, the Strategic Director, Regeneration and Environment has been delegated powers from Cabinet (January 2021) to award the contract. Officers will report to the Strategic Director, explaining the process undertaken in tendering the contracts and recommending an award.

Contract Terms & Conditions

- 6.7 As required by the Framework, the Council will follow the rules for tendering under the Framework including the use of call off contracts allowed therein. The Council has identified the JCT Design & Build Contract (2016) as a suitable contract allowed under the Framework.

7.0 Equality Implications

- 7.1 The Strategic Director, Regeneration and Environment is referred to the Equalities Implications described and the appended Equality Impact Assessment from the Morland Gardens Cabinet Report from January 2021. Officers do not consider there is any change in the equalities implications from the time of the January 2021 report.
- 7.2 Specific to the contract award for the refurbishment works at Stonebridge Annexe and tender for the redevelopment of Morland Gardens, Brent Start learners will need clear notice of the changes to the venue of the provision along with significant advance notice.

8.0 Human Resources/Property Implications (if appropriate)

- 8.1 The Contract is a Works contract and there are no direct implications for Council staff arising from the procurement of this contract
- 8.2 Clear and ongoing communication with staff will be required to ensure they understand the interim arrangements during Brent Start's time at the Annexe whilst the delivery of the new building takes place. For example, staff will need to adjust their travel to work plans.

9.0 Public Services (Social Value) Act 2012

- 9.1 The Council is under 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.
- 9.2 Ten percent of the overall evaluation criteria is allocated to Social Value and will be in line with the Council's Social Value and Ethical Policy approved by Cabinet in April 2020. It is envisaged that the successful contractor should be able to offer local employment, apprenticeships and work experience to residents in Brent. It would be expected that the successful contractor would offer other community benefits to the residents in Brent. Bidders are required to identify a monetary value (or cash value) for each element of the Social Value

that they offer. The monetary value should be 10% of the contract value. If suppliers do not deliver on the social value commitments, the Council will look at claiming back the monetary value.

Related documents:

Morland Gardens Cabinet Report 12 January 2021

Report sign off:

Nick Ljustina
Operational Director, Property & Assets