

Cabinet Supplementary Agenda



4. Urgent Business (If any) (Pages 3 - 20)

To receive notice of any business not on the agenda which in the opinion of the Chair, by reason of special circumstances, be considered as a matter of urgency.

The attached Heating Services Procurement - Revised Award Report has been approved by the Chair of Scrunity & Overview Committee to be considered under Special Urgency and Call-in rights have been waived.

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LONDON BOROUGH OF CROYDON

REPORT:	Cabinet	
DATE OF DECISION	24/05/2023	
REPORT TITLE:	Heating Services Procurement - Revised Award Report – Part A	
CORPORATE DIRECTOR / DIRECTOR:	Susmita Sen – Corporate Director of Housing	
LEAD OFFICER:	Susmita Sen – Corporate Director of Housing Email: Susmita.Sen@croydon.gov.uk	
LEAD MEMBER:	Councillor Lynne Hale, Cabinet Member for Homes	
KEY DECISION?	Yes	Key Decision Number: 4623EM Key Decision – Decision incurs expenditure, or makes savings, of more than £1,000,000 or such smaller sum which the decision-taker considers is significant having regard to the Council’s budget for the service or function to which the decision relates
CONTAINS EXEMPT INFORMATION?	YES	Public with exempt Part B report Exempt under paragraph 3 of Schedule 12A of the Local Government Act 1972 and the public interest in withholding disclosure outweighs the public interest in disclosure.
WARDS AFFECTED:	N/A	

1 SUMMARY OF REPORT

- 1.1** The Executive Mayor in Cabinet endorsed the recommended procurement award for delivery of the Housing Responsive Repair Service and Heating in March 2023 (Reference PB-2223-000018-A). As part of this report British Gas Social Housing Ltd t/a PH Jones were awarded the Heating Services Contract as they provided the Most Economically Advantageous Tender that scored highest for quality: cost ratio.
- 1.2** During the mobilisation of the Heating Services element of the contract, British Gas Social Housing Ltd t/a PH Jones indicated that they were withdrawing their tender on 15 May 2023, we understand this was an internal business decision unrelated to Croydon The Council is now proposing to award the Heating Services Contract to the

remaining top scoring bidder. The Council wrote to all remaining Heating Services Contractor bidders asking them to confirm that they would keep their tender open and all 4 remaining bidders confirmed this. The Council then re-calculated the scores to check that there is no change (as the pricing and social value scores are relative to other bidders' submissions). Following this revaluation the Council is recommending awarding the Heating Services Contract to Bidder I.

- 1.3** Information regarding the identity of the bidder, specific evaluation scores and pricing/costs information is set out in Part B of this report. This information is exempt from publication under paragraph 3 of Schedule 12A of the Local Government Act 1972 as it relates to the financial or business affairs of any particular person (including the authority holding that information). The public interest in withholding disclosure outweighs the public interest in disclosure.

2 RECOMMENDATIONS

For Executive Mayor in Cabinet:

For the reasons set out in the report and its appendices, the Executive Mayor in Cabinet is recommended:

- 2.1** to agree the award of a contract to deliver Heating Services to Bidder I (as identified in the Part B report) for a period with an initial contract term of 6 years and 8 months with a break option at that point and a total maximum contract duration of 10 years and 8 months (plus a 1year defects liability period) for the maximum contract value stated in the Part B report.
- 2.2** to note, the break options referred to in recommendation 2.1 above shall follow the same governance process as a permitted extension under the Tenders and Contracts Regulations (as amended).
- 2.3** to note, the successful provider name will be made public after the decision takes place.

3 REASONS FOR RECOMMENDATIONS

- 3.1** The Executive Mayor in Cabinet endorsed the recommended procurement award for delivery of the Housing Responsive Repair Service and Heating in March 2023 (Reference PB-2223-000018-A). The Heating Services Tender was awarded to British Gas Social Housing Ltd t/a PH Jones.

- 3.2** Following Cabinet approval, the Council successfully conducted the Leaseholder consultation and the standstill period. The Council began mobilisation of the contracts with the three successful contractors. However, during the mobilisation of the Heating Services British Gas Social Housing Ltd t/a PH Jones indicated that they were withdrawing their tender on 15 May 2023.
- 3.3** The Council re calculated the scores to check that there is no change (as the pricing and social value scores are relative to other bidders' submissions). Following this revaluation the Council is recommending awarding the Heating Services Contract to Bidder I.
- 3.4** Alternative options to this recommendation would result in not awarding the contracts and either do nothing, in-source or re-procure/rewind the current procurement. All these options would leave the Council without long term contractors for the Heating Services Contract. It would result in the Council requiring a less optimal temporary solution and a new longer-term solution which would be likely to lead, in the short term at least, to worse service levels and higher costs.
- 3.5** Therefore, for these reasons the recommendations in Section 2 for the Council to award the contract to Bidder I is proposed to ensure best value and service for the Council's Heating Service Contract.

4 BACKGROUND AND DETAILS

- 4.1** The Executive Mayor in Cabinet endorsed the recommended procurement strategy for delivery of the Housing Responsive Repair Service and Heating in June 2022 (Reference CCB1750/22-23).
- 4.2** Following this the Executive Mayor in Cabinet endorsed the recommended procurement award for delivery of the Housing Responsive Repair Service and Heating in March 2023 (Reference PB-2223-000018-A).
- 4.3** Following the evaluation of final tenders on the procurements the Council agreed to award the Responsive Repairs and Maintenance contracts to Wates for Area 1 (Lot 1); Mears for Area 2 (Lot 2); and Heating Services to British Gas Social Housing Ltd t/a PH Jones as the Most Economically Advantageous Tenderers that scored highest for quality: cost ratio.
- 4.4** Following Cabinet approval, the Council successfully conducted the Leaseholder consultation and the standstill period. The Council began mobilisation of the contracts with the three successful contractors. The mobilisation of the Responsive Repairs and Maintenance for both Area 1 and Area 2 is continuing as planned. However, during the mobilisation of the Heating Services, British Gas

Social Housing Ltd t/a PH Jones (PH Jones) indicated that they were withdrawing their tender on 15 May 2023.

- 4.5** On receiving notification from PH Jones of their withdrawal the Council sought legal advice from our internal legal team and our external legal advisers. As a result of this advice the Council decided to take the necessary steps to award the Heating Services contract to the top scoring Tender once PH Jones was removed from the Tender list.
- 4.6** The Council tender documents require the Contractors to keep their Tenders open for a period of 12 months from when the tenders were submitted. The tender deadline was 28th November 2022 so the Council is well within this timeframe.
- 4.7** Accordingly, the Council wrote to all remaining Heating Services bidders asking them to confirm that they would keep their tender open and all 4 remaining bidders confirmed this.
- 4.8** The Council then re calculated the scores to check that there is no change to any scores. This is required as the pricing and social value scores are calculated relative to other bidders' submissions and therefore removing a Tenderer from the Tender list can affect other Tenders scores.
- 4.9** The Council procurement route for Heating related service was a Restricted Procedure in compliance with the Public Contract Regulations. The Council published its Contract Notice ref (DN622522 / [2022/S 000-021633](#)) on Find a Tender Service on 5th August 2022. At the Selection Questionnaire (SQ) (shortlisting Stage) the Council received SQ submissions from 13 Contractors and the 6 highest scoring contractors were shortlisted to the invitation to tender stage (ITT).
- 4.10** The final ITT was issued to the shortlisted bidders on the 14th October 2022 and returned on the 28th November 2022. One bidder withdrew from the process and the remaining 5 submitted tenders. All bidders passed the compliance and completeness checks.
- 4.11** Between 28th November 2022 and 5th January 2023 evaluators completed a full evaluation of the Method Statement questions on a 50/50 quality/ price ratio. The evaluation criteria for quality were as set out in the ITT as below:

Proposal Area	Section Weighting
Project Delivery	16
Resident Care	11
ICT	5
Social Value	10
Performance Management	4
Health and Safety	4
TUPE	Not scored
Total	50

- 4.12** The Moderator of the scores for each panel was Matthew Devan, Strategic Procurement Manager with the exception of the panels for Resident Care and Social Value which were moderated by Nigel Kletz, Procurement Improvement Advisor.
- 4.13** As set out in the ITT guidance, any organisation that scores less than a 2 on any qualitative response will be rejected. In this case all submissions scored 2 or better on all qualitative proposals.
- 4.14** Qualitative scores are generally high, averaging in excess of 3 (satisfactory) for all Bidders with the highest scoring close to an average of 4 (good). An average score between 3 and 4 represents very good quality submissions as to receive an average above 4 a bidder would have to consistently demonstrate that their tender submission provided innovation and/or added value.
- 4.15** The range of scores following the re-calculation is very small with only 1.54 marks separating the 1st to 3rd ranked scores. Across all of the scores only 1 bidder scored a 2 (Unsatisfactory) on a single Method Statement. Across the 3 highest scoring bidders scoring was very close and following the re-calculation the difference on individual Method Statements rarely exceeded a single mark.
- 4.16** All Method Statements submitted would form a suitable basis for entering into a contract. There were a couple of very minor clarifications that the Council went back to some of the bidders to seek clarity on.
- 4.17** The submitted pricing schedule spreadsheets were checked for arithmetical errors and a tender comparison was carried out of all key areas to identify any inconsistencies, areas of concern or issues where further clarification would be necessary.
- 4.18** The tenders submitted by Bidders I and J were very similar with only a very small difference between them.
- 4.19** The anonymised price/quality summary scores are set out below, following recalculation in light of the withdrawal of British Gas Social Housing Ltd t/a PH Jones. Names of bidders can be found in the Part B report.

Bidder	Total Score	Rank
Bidder I	84.91	1
Bidder J	84.58	2
Bidder K	83.03	3
Bidder L	72.07	4
Bidder H – PH Jones	withdrawn	

4.20 The Council is recommending awarding the Heating Services Contract to the new top scoring bidder - Bidder I.

4.21 As the highest scoring bidder based on quality: price and therefore the Most Economically Advantageous Tender (MEAT) it is recommended to award the contract to Bidder I.

4.22 Bidder I scored highest in quality and ranked 2nd out of 5 on tender price. However, it should be noted the price was only marginally lower than the bidder ranked third on price. The bidder ranked first on price was substantially cheaper however, the quality element of the submission did not score as well and therefore they were not the most economically advantageous Tenderer.

4.23 Bidder I provided a comprehensive offering in respect of quality and social value, further details on this can be found in the Part B report.

4.24 The details of the bidder's response to Premier Supplier Programme can be found in the Part B report.

4.25 Contract Management and Performance Monitoring

4.26 The details of the contract management and performance monitoring are as per the original Procurement Award Report. However, the reduced mobilisation period that Bidder I will have at contract start will need to be reflected in the approach to contract management and performance monitoring during the initial contract period.

4.27 Revised Timetable

4.28 The revised timetable for Heating Related Services is as follows:

Activity	Date
Procurement Board – Procurement Strategy	26 May 2022
Executive Mayor in Cabinet	22 June 2022
PCR Contract Notice and SQ published	5 August 2022
SQ return deadline	5 September 2022
Invitation to Tender (ITT) issue	14 October 2022
ITT return deadline	21 November 2022
Procurement Board -Award	23 February 2023; Revised (virtual) 24 May 2023
Cabinet meeting	6 March 2023; Revised urgent item 24 May 2023
Standstill period concludes	18 March 2023; Revised 12 June 2023

Contract award	25 April 2023; Revised 17 July 2023
Mobilisation/TUPE	1 May 2023 – 31 July 2023; Revised 18 July – 31 July 2023
Contract commencement	1 August 2023

2 ALTERNATIVE OPTIONS CONSIDERED

2.1 At this stage the primary alternative option is based on not awarding the contract set out above. In the event of non-award of this contract the Council would need to revisit options available to ensure the service continued once the incumbent contract ends. None of these are deemed more advantageous than awarding the contract to Bidder I, and in addition would not be viable in the available time leading to a requirement to find an interim solution. The main potential alternative options are included in the table below:

Option Summary	Pros	Cons
Do Nothing (Not Recommended)	<ul style="list-style-type: none"> Saves costs of running the service. Reduced Council management input. 	<ul style="list-style-type: none"> Unable to fulfil statutory duty to provide Council Housing. Health and safety issues with damage to property and people. Legal costs resulting from the damage caused to property and people.
In-Sourcing the heating servicing contract (Not Recommended)	<ul style="list-style-type: none"> Council retains direct ownership and control 	<ul style="list-style-type: none"> This option was already ruled out at Procurement Strategy stage and the issues in this option would still remain. Time to in-source would leave a gap in service provision that would require a temporary solution adding to costs and service disruption.
Re procure via a compliant procedure or framework (Not Recommended)	<ul style="list-style-type: none"> Compliant route to market 	<ul style="list-style-type: none"> Unlikely to deliver better outcome than current procurement. Time to re-procure would leave a gap in service provision that would require a temporary solution adding to costs and service disruption Resource constraints on the team in having to re procure whilst simultaneously trying to mobilise the Responsive Repairs Contract.
Re wind the current procurement and	<ul style="list-style-type: none"> Compliant route to market 	<ul style="list-style-type: none"> Unlikely to deliver better outcome than current procurement.

allow all bidders to resubmit tenders (Not Recommended)	<ul style="list-style-type: none"> Allows all bidders a chance to re-bid in current market conditions 	<ul style="list-style-type: none"> Time to re-procure would leave a gap in service provision that would require a temporary solution adding to costs and service disruption. Resource constraints on the team in having to re-procure whilst simultaneously trying to mobilise the Responsive Repairs Contract.
Attempt to force PH Jones to enter into the Contract (Not recommended)	<ul style="list-style-type: none"> Retain the top scoring Tenderer - PH Jones on the Contract 	<ul style="list-style-type: none"> The legal advice was, as the award was subject to contract this is not enforceable. The contractual relationship with PH Jones is likely to be very difficult.

3 CONSULTATION

3.1 There has been consultation as part of the commissioning strategy process with the following:

- Residents
- Contractors
- Members
- Staff within the Housing Team

The details of this are as set out in the original procurement award report.

4 CONTRIBUTION TO COUNCIL PRIORITIES

4.1 A key Council priority is the safety and welfare of all its residents in a way that delivers value for money. The re-procurement of these key strategic contracts is key to ensure that the Council fulfils its duty of care towards residents and enable it to maintain its responsibilities and fulfil its obligations as a landlord. The competitive nature of a procurement process and the commercial positions taken by the Council help ensure the contracts will deliver value for money.

4.2 This is in accordance with the following Mayor priority that is detailed in the Corporate Plan - The council balances its books, listens to residents and delivers good, sustainable services.

5 IMPLICATIONS

5.1 FINANCIAL IMPLICATIONS

5.1.1 Revenue and Capital consequences of report recommendation

5.1.2 The CCB Commissioning process specified detailed requirements for assessing bidders' financial health, which included minimum annual

turnover, assessment of Company Watch health score, as well as calculation of recommended maximum transaction size when taking account of the health score.

- 5.1.3** The Finance team carried out the above mentioned due diligence on all bidders and did this again for Bidder I and the financial health was still acceptable.
- 5.1.4 The price for Bidder I was similar to PH Jones and therefore the Revenue and Capital consequences is as set out in the original award report.
- 5.1.5 Comments approved by Orlagh Guarnori Head of Finance Housing

5.2 LEGAL IMPLICATIONS

- 5.2.1 The Council has been advised throughout the procurement process by external legal advisors, the majority of the legal commentary was provided in the original award report. The additional legal comments in relation to this revised award are as follows:
- 5.2.2** The Council has sought advice on the proposed award to Bidder I and the Council has followed the procurement principles set out in Regulation 18(1) of the Public Contracts Regulations 2015 (PCR). The Council has treated economic operators equally and without discrimination and has also acted in a transparent and proportionate manner in the circumstances.
- 5.2.3** The Council shall observe the procurement standstill period of 10 days (in accordance with Regulation 87 PCR and the tender documents) concurrently with the leaseholder consultation period of 30 days (in accordance with Section 20 of the Landlord & Tenant Act 1985 (as amended by the Commonhold & Leasehold Reform Act 2002)).

5.3 EQUALITIES IMPLICATIONS

- 5.3.1 The Council has a statutory duty, when exercising its functions, to comply with the provisions set out in the Sec 149 of the Equality Act 2010. The Council must, in the performance of its functions, therefore, have due regard to:
 - a. eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under this Act.
 - b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
 - c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 5.3.2 An equality analysis has been carried out and has identified a positive impact for women and girls. It has also identified a negative impact on males and the gender reassignment characteristic. Mitigation has been identified in each case.

The Directorate will also investigate how the service meets the needs of race and religion and belief.

5.3.3 When a service is contracted out both the contractor and the public authority that commissioned the service must give due regard to the three principles of the General Duty as set out above. Any supplier that is exercising public functions also has an obligation to fulfil the general duty.

5.3.4 The Contract Management Framework is required to work within the framework of the Equality Strategy 2020- 2024. The deliverables in the Equalities Strategy should be incorporated into the Contract Management Framework and policy documents as detailed below:

“Outline how the proposed contract(s) will comply with the Public Sector Equality Duty outlined in Section 4 of the EQIA; and meet the outcomes of the Council’s equality strategy, particularly:

- i. All Council contracts contribute towards delivering our equality objectives.
- ii. Council contractors are inclusive and supportive of vulnerable groups.
- iii. Ensure that every strategy, delivery plan, council contract and staff appraisal have an equality

5.3.5 The Council will take steps to ensure equality clauses/requirements are monitored as part of the contract monitoring process and the provider supports the Council to meet its Public Sector Equality Duty via its Equality policy, collecting equality information and providing appropriate training.

5.3.6 An EQIA was undertaken and found no negative equality implications however in order to improve the quality of decision making the department should pursue improvements in the data collection of service users.

Approved by: Denise McCausland – Equality Programme Manager 23/05/23

8.3 OTHER IMPLICATIONS

8.4 PROCUREMENT IMPLICATIONS

8.4.1 This report has been supported by both the Council’s procurement team and internal and external legal throughout the process. The majority of the procurement implications were as per the original Procurement Award Report. The updated procurement commentary are set out in section 4 of the report.

8.5 HUMAN RESOURCES IMPLICATIONS

8.5.1 The Human Resource implications are as per the original Procurement Award report.

8.5.2 There are no immediate workforce implications arising from the contents of this report. In the event that there are any workforce implications the council’s normal policy and procedure framework will apply, including consultation with the recognised trades

unions. The move to award to the second place provider does not have any additional HR implications over and above the initial report.

Approved by: Dean Shoesmith, Chief People Officer

8.6 CRIME AND DISORDER IMPLICATIONS

8.6.1 The crime and disorder implications are as per the original Procurement Award report.

8.7 PROPERTY AND ASSET MANAGEMENT IMPLICATIONS

8.7.1 The Property and Asset Management implications are as per the original Procurement Award report.

8.8 ICT IMPLICATIONS

8.8.1 The ICT implications are as per the original Procurement Award report.

8.9 ENVIRONMENTAL IMPLICATIONS

8.9.1 The Environmental implications are as per the original Procurement Award report.

8.10 RISK IMPLICATIONS

8.10.1 The risk implications set out in the original procurement award report largely remain subject to the following points.

8.10.2 There will be less time to mobilise the contract this risks poor service delivery at contract start. This is being mitigated by early mobilisation with the new contractor and agreeing interim positions where full contract standards are not achievable at contract start.

8.10.3 Potential low risk of procurement challenge awarding to Bidder I, however legal advice has been obtained, including input prior to issuing relevant communications to bidders, and the Council has treated bidders equally and transparently.

8.11 DATA PROTECTION IMPLICATIONS

- **WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?**

YES

8.11.1 The personal data will relate to information on tenants' personal information this will include name, address, contact details and other key details. This is required to allow contractors to contact tenants to gain access to properties

HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?

8.11.2 Following advice from the Information Management Team a draft Data Protection Impact Assessment has been produced as far as possible. This will be completed in conjunction with the successful contractors at the point of contract award.

9 APPENDICES

N/A

10 BACKGROUND DOCUMENTS

**Re-procurement of Responsive Repairs Contract – Cabinet Contract Award Report
Part A 060323**

**Re-procurement of Responsive Repairs Contract – Confidential Cabinet Contract
Award v1 Part B 060323**

11 URGENCY

This decision is sought on an urgent basis due to the unforeseen circumstances set out in this report and the tight timescales required to mobilise the service.

Special Urgency has been agreed by the Chair of Scrutiny & Overview, and a Special Urgency Noticed published before this meeting of Cabinet. The Chair has also agreed to waive call-in.

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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