

## Executive/ Decision Report

<b>Decision maker</b>	Leadership Team 25 July 2018	 THE ROYAL BOROUGH OF <b>KENSINGTON          AND CHELSEA</b>
<b>Date of Leadership Team meeting</b>	Forward Plan reference: 05257/18/K/A  Portfolio: Cllr Kim Taylor-Smith (Deputy Leader, Grenfell and Housing)	
<b>Report title</b>	PROCUREMENT STRATEGY FOR DELIVERING THE HOUSING REVENUE ACCOUNT CAPITAL WORKS PROGRAMME 2018-2024	
<b>Reporting officer</b>	Robyn Fairman , Executive Director for Grenfell	
<b>Key decision</b>	Yes	
<b>Access to information classification</b>	Public	

## 1. EXECUTIVE SUMMARY

- 1.1. For the current financial year, the Council's HRA Capital Programme was set at £23.54 million

	<b>Budget 2018/19 £000's</b>
Capitalised Repairs and Improvements	17,374
Trellick Tower	2,671
Edenham Way	95
Fire Doors	2,400
Fire Related Assessments Work	1,000
<b>TOTAL</b>	<b>23,540</b>

Table 1: Budget 2018/19

- 1.2. Over the next five years, provision of £115 million has been made for capitalised repairs and improvements. Slippage on the in-year programme is anticipated as we have reviewed the existing major works framework agreement and expect slippage to be about £4m.
- 1.3. Kensington and Chelsea Tenant Management Organisation (TMO) procured framework agreements with several suppliers, through which it intended to deliver

works. Following a review, this route to market is no longer considered suitable for some contracts.

- 1.4. Accordingly, to deal, mainly with a backlog of works, the Council has some urgent short-term works and services it must procure. In the medium term, i.e. the next 3-4 months, a further range of contracts is needed to deliver this year's capital programme. In the long term, the Borough needs contracts to deliver the five-year capital programme.

## **2. RECOMMENDATIONS**

- 2.1. It is recommended that the Council adopt the following approach to the Housing Revenue Account Capital Programme procurement strategy and urgent procurements for Repairs Direct:
  - (i) that the HRA related works and services requirements listed in Table 2 proceed to competitive tender, extension or are drawn down from third-party Public Contract Regulations (PCR) compliant frameworks;
  - (ii) that Key Decisions, arising in August and early September 2018, on the award of contracts listed in Table 2 are taken by the Lead Member and published on the Council website, in accordance with the Council's Constitution and Contract Regulations, to enable the Council to commence urgent work and undertake preparatory work for future years. It is necessary to take decisions in this way over the summer to prevent the backlog of works growing with the start dates potentially delayed beyond September; and
  - (iii) that officers report the findings of the tenant and leaseholder consultation to the November 2018 Leadership Team, together with their proposals for procuring the remainder of the HRA Capital Programme

## **3. REASONS FOR DECISION**

- 3.1. The Council's Contracts Regulations require Leadership Team approval for contract awards that exceed the value of £181K or lower where there is a significant public interest.

## **4. BACKGROUND**

### **What has changed?**

- 4.1. Until March 2018, Kensington and Chelsea Tenant Management Organisation (TMO) oversaw the firms who carried out works to residents' homes. The Council has taken back that responsibility from the TMO.
- 4.2. In 2015 the TMO put out a tender and entered into a contract to carry out general construction work which included painting and window repairs for example. Having transferred the services to the Council, we engaged a firm of Chartered Surveyors to review the contract. Having completed their analysis, we have concluded that it does not provide sufficient control to ensure effective outcomes in all cases.

- 4.3. In February 2018 the Council approved a five-year HRA capital programme of £115M. The budget for 18/19 is £23.54M, and the majority of spend here will be on works required to ensure the housing stock is compliant with regulations and keep homes wind and watertight. We have commissioned a stock condition survey, and this will inform what work is needed where over the next five years. The survey should complete in September this year.
- 4.4. The delay caused by the decision not to use the TMO contract does give us a real opportunity to involve residents in shaping future procurement, designing services and help with the selection of new suppliers. It also means that we will be certain that we have transparency, that pricing has been market tested and that we are getting value for money.

### **Need**

- 4.5. It is also clear that more and different types of works are needed (around minimising health and safety risks and managing the mechanical and electrical infrastructure effectively. There is therefore a need to undertake a programme of procurement in the short-term so that works can commence this year. This is an interim measure only that will involve the use, in part, of predefined frameworks. Longer-term our residents will be involved in the procurement process and actively consulted.
- 4.6. We need to appoint new suppliers so we can start undertaking the works needed as set out in appendix one .We also need to appoint suppliers to help prepare for projects needed in future years. To appoint new suppliers, there are a lot of regulations we need to follow - both the Council's and the Government's. In the most complex situation, (e.g. a major project costing more than £4.5M with leaseholder service charges to pass on), procurement involves:
- Leadership team / Lead Member approval through the Key Decision process (pre and post-competition);
  - Consultation with Leaseholders (stage 1 pre-tender and stage 2 post tender); and
  - Procurement through the Official Journal of the European Union, advertising across the single market (minimum requirement on timescales are unlikely to change for several years following Brexit).
- 4.7. When all of these conditions apply, we need to allow around 250 days from approval to move to competition to project mobilisation. For example, a process commencing on the 1<sup>st</sup> July would not progress to contract award until Spring 2019. There may be some opportunities to reduce this timescale by parallel running some processes. Conversely the timescale makes no provision for contingency.
- 4.8. Officers have considered four options for procuring suppliers to deliver works in the short and long term, Table 1.

Option	Summary of considerations
<b>1. Procure a new Framework with up to 5 contractors in each lot and mini-competitions for packages of work (Long Term)</b>	This option would provide competition for large packages of work and enable the Council to ensure we can work with a number of contractors. As these contracts are longer term future works can be given to contractors who have demonstrated the ability to deliver. The OJEU framework would also avoid the need for repeated tendering processes. Consultation with leaseholders would take place before setting up the framework and before any works commence.
<b>2. Tendering individual work packages (Short and Long Term)</b>	As with the Option 1, this would provide competition for packages of work. However, it would greatly increase lead-in times when compared to a framework; a full tendering exercise and two-stage leaseholder consultation would be required for each work package. This would take a minimum of 250 days for each tender. Used in conjunction with a framework, it would provide the opportunity to benchmark framework performance and cost as well as being appropriate for larger estate-based works.
<b>3. In-house delivery (Repairs Direct) (Short Term)</b>	The Council's programme expands and contracts over time as well as covering many different specialist technical areas. In particular, the early part of the programme will prioritise health and safety works. Specialisms vary greatly across work packages, particularly with regards to the Mechanical and Electrical programme and the Council would find it difficult to attract the necessary engineering labour to maintain a viable in house option for delivery.
<b>4. Third-party frameworks (Short and Long Term)</b>	Other contracting authorities and government agencies establish frameworks from time to time that can be accessed by other Councils. These frameworks have not, however, been subject to consultation with the Council's leaseholders and there may be difficulty in recharging costs. However this is expedient in terms of urgent work where there is limited leaseholder recharges.

Table 1: Summary of Options Appraisal

### Three-pronged approach

4.9. To appoint suppliers, we have adopted a three-pronged approach:

- 1: short-term - letting contracts quickly to get priority works started
- 2: engagement with tenants and leaseholders
- 3: let long-term contracts, driven by residents' Procurement Panel

4.10. We are going to let urgent contracts so we can start work this year. We will use third-party frameworks (contracts set up by other public bodies) and some restricted tendering. Doing this allows us to follow regulations. Regrettably,

resident involvement will be less than we would wish. We will only follow this approach because of urgency. We have already set up a Procurement group with some resident volunteers from the Tenants Consultative Committee (first meeting was held on 18<sup>th</sup> June 2018). We have scheduled a meeting with the Procurement Board for July and will discuss with residents where they want to get involved in the more urgent procurements.

- 4.11. Moving forward we will be driven by engaging fully with tenants and leaseholders, so they are at the heart of choosing the firms that work on their homes. The residents on the Board want to consider and agree on a term of reference. We will send a full report on the consultation to the Leadership Team (likely to be in November 2018). As procurement becomes more planned we see resident involvement in the procurement options as the norm. At present though we have some urgent procurement which is reactionary to the situation.
- 4.12. In stage 3, with the assistance of the Procurement Board, we will advertise and appoint firms to do the works that are not immediately urgent.

## **5. OPTIONS AND ANALYSIS**

### **Proposed Strategy**

- 5.1. The proposed procurement strategy is:
  - to procure several contracts for the capital programme 2018 to 2019 (and in some cases beyond) through third-party frameworks and restricted tendering, see Appendix 1. Where the matter is less urgent, officers will prepare an options paper setting out the proposed route to market and indicating, for each of the major works programmes, which route will provide the best value. To expedite matters, this report delegates to the Lead Member the authority to approve the proposed route to market and award of these contracts; Residents
  - to engage with tenants and leaseholders regarding the preferred procurement vehicle(s) and methods of engagement for the delivery of the full five-year programme, to identify a core or residents and leaseholders to engage in the procurement process, including input into specification, evaluation and mobilisation; and
  - to report the results of the initial consultation with tenants and leaseholders to the Leadership Team with officers' recommendations for the long-term procurement of the capital programme.
- 5.2. It is recommended that approval of this report by Leadership Team delegates authority set out in Appendix 1 to the Lead Member and Director of Housing Management.
- 5.3. As part of the preparations for this report we consulted with the Council's Corporate Procurement and Commercial Manager who commented as follows:

“The Corporate Procurement and Commercial Manager concurs with the conclusions and recommendations of this report. The flexibility to utilise the whole range of permissible routes to market will be essential. Where time permits, pre-market engagement will help determine the most appropriate approach as well as the formulation of requirements. It will be important that the parameters of residents’ involvement in procurement decisions are clearly defined and understood in order to avoid any misunderstandings and the risk of transgressing the Public Contract Regulations 2015”.

## **6. CONSULTATION AND COMMUNITY ENGAGEMENT**

- 6.1. Residents and leaseholders will be placed at the centre of procurement as far as is possible given statutory requirements. The process and approach will be agreed with residents and the Lead Member. This resident consultation will be an ongoing activity for the Council, the first main task for the procurement group is the replacement to the ex TMO Framework. A report on the preferences of tenants and leaseholders will be provided to the Leadership Team hopefully by November, and a long-term procurement strategy proposed, taking account of tenants and leaseholders views. The first meeting with residents who expressed an interest in being involved took place on 18<sup>th</sup> June. Residents were presented with possible engagement structures, invited to volunteer for activities and officers set out some early thinking on possible approaches to procurement.
- 6.2. Internally officers across Housing and the wider Council have had the opportunity to comment on drafts of this report and, as the strategy is developed, their involvement and wise contributions shall be sought.

## **7. HUMAN RESOURCES AND EQUALITIES IMPLICATIONS**

- 7.1. There are no human resources or equities implications.

## **8. CONTRIBUTION FROM LEGAL**

- 8.1. Contracts awarded by the Council must comply with the Council’s Contract Regulations. The Regulations require that decisions to award high-value contracts are taken by the Lead Member. There is no requirement for full Cabinet to take those decisions. The award of each contract over the EU threshold is a Key Decision. The award of contracts by Repairs Direct is a separate decision of Repairs Direct Limited itself rather than the Council since Repairs Direct is a separate company (albeit wholly owned by the Council). The Council has a contract with Repairs Direct for it to provide services and any need to re-procure services provided by Repairs Direct will be a matter for Repairs Direct.

## **9. FINANCIAL, PROPERTY AND ANY OTHER RESOURCES IMPLICATIONS**

- 9.1. The budget provision for the HRA Capital Programme was set out in the HRA Business Plan which was agreed by the Leadership Team in February 2018. The proposals in this report set out the procurement arrangements for various schemes which will need to be funded from this provision.

## 10. COMMUNICATION TEAM

10.1. Communications reviewed this report and had no comments.

Robyn Fairman, Executive Director for Grenfell

Local Government Act 1972 (as amended) – Background papers used in the preparation of this report

None.

Contact officer(s): Doug Goldring, Director of Housing Management

### **Formal clearance requirements for all key decision reports**

Cleared by Finance (officer's initials) SM

Cleared by Director of Legal Services (officer's initials) AH

Cleared by Communications & Community Engagement (officer's initials) NT

## Appendix one

### Awarding contracts for 2018 – 2019

Proposed actions associated with urgent procurements are set out in Table 2.

<b>Description</b>	<b>Urgency</b>	<b>Current situation</b>	<b>Proposed action</b>
<b>Replacement of non-compliant fire doors.</b>	High	Award approved by the Leadership Team	Awaiting clearance of due diligence.
<b>Fire Door Consultancy (Principle Designer, Clerk of works etc.)</b>	High	The route to the market being determined	A call off from a framework or a competition outside a framework. This item is covered by Director of Housing Management's delegated authority (each requirement is a separate contract). However, for completeness agreement of Leadership Team sought to proceed to competition or the use of a framework and confirm delegation of authority to award to Director of Housing Management.
<b>Fire Door Testing</b>	High	Market testing undertaken, providers approached.	This has been subjected to market testing; constraint is the availability of facilities for carrying out testing. Approval is probably covered by Director of Housing Management's Delegated authority. For completeness Leadership Team asked to delegate award of a contract to Director of Housing Management. This sum now reflects the requirement to test all door styles on both sides; this is a more comprehensive regime that envisaged in the June report to the Leadership Team.
<b>Fire Risk Assessment Remediation Works</b>	High	No compliant facility*	Let a call off contract possibly through a framework or following direct competition subject to Leaseholder consideration. Leadership Team

<b>Description</b>	<b>Urgency</b>	<b>Current situation</b>	<b>Proposed action</b>
			asked to delegate approval of competition / call off and award to Lead Member and Director of Housing Management.
<b>Asbestos surveys where required</b>	High	No compliant facility*	Create a call off contract following a restricted tender. Approval is probably covered by Director of Housing Management's Delegated authority. For completeness Leadership Team asked to delegate award of a contract to Director of Housing Management.
<b>Asbestos removal across all properties</b>	High	No compliant facility*	Create a call off contract following a restricted tender. Leadership Team asked to delegate approval of competition / call off and award to Lead Member and Director of Housing Management.
<b>Construction consultancy (e.g. project management, clerk of works, employers agent)</b>	High	No compliant facility*	Our preference is to build up capacity in-house to manage works projects. Inevitably there will be a need to deal with peaks of demand, urgency and highly specialised projects. This is designed to provide the capacity to respond to those needs. A call-off contract will be let through a framework, following mini-competition or by selecting highest scoring supplier. Leadership Team asked to delegate approval of competition / call off and award to Lead Member and Director of Housing Management.
<b>M&amp;E survey of sites with complex M&amp;E</b>	High	No compliant facility*	Let a call off contract through a framework either direct call off or mini-competition. Leadership Team asked to delegate approval of competition / call off and award to Lead Member and Director of Housing Management.
<b>Gas consultancy</b>	Medium	Contract coming to end	Requires a re-procurement. Leadership Team authority to move to competition and to delegate

<b>Description</b>	<b>Urgency</b>	<b>Current situation</b>	<b>Proposed action</b>
			authority to Lead Member and Director of Housing Management to approve the award of Contract.
<b>AOV vents</b>	High	No compliant facility*	Let a call off contract through a framework or following a competition. Leadership Team asked to delegate approval of competition / call off and award to Lead Member and Director of Housing Management.
<b>Repairs Direct extend contracts with subcontractors</b>	<b>High</b>	Repairs Direct previously asserted the company was not covered by PCR 2015. There is now no doubt that they are a Contracting Authority and need new internal Contract Regulations.	Extend existing contracts on terms to be negotiated. Leadership Team asked to delegate approval of competition / call off and award to Lead Member and Director of Housing Management.
<b>Repairs Direct re-procurement of the vehicle fleet</b>	Medium	Repairs Direct previously asserted the company was not covered by PCR 2015. There is now no doubt that they are a Contracting Authority and need new internal	Award a contract or extension. It may be possible to use the Council's framework or the Crown Commercial Services Framework. Leadership Team asked to delegate approval of competition / call off and award to Lead Member and Director of Housing Management.

<b>Description</b>	<b>Urgency</b>	<b>Current situation</b>	<b>Proposed action</b>
		Contract Regulations.	
<b>Repairs Direct re-procure contracts with Sub-contractors</b>	<b>Medium</b>	Repairs Direct previously asserted the company was not covered by PCR 2015. There is now no doubt that they are a Contracting Authority and need new internal Contract Regulations.	Let a number of sub-contracts to provide additional capacity to Repairs Direct to cope with peaks or specialist needs. Award a contract or extension. Leadership Team asked to delegate approval of competition / call off and award to Lead Member and Director of Housing Management.
<b>Roof Replacement and associated works, 37 Holland Road, Cecil Court Beaufort House.</b>	High	No compliant facility*	A competition to be carried out to appoint new contractors. Depending upon leaseholder issues we may use a framework. Leadership Team asked to delegate approval of competition / call off and award to Lead Member and Director of Housing Management.
<b>Structural works and boundary wall. 18 Pembridge, 155 Notting Hill, St. Mark's Grove, Moravian Place, Tor Court 123-125 Holland Road, Rear of 62 Elm Park Gardens.</b>	High	No compliant facility*	A competition to be carried out to appoint new contractors. Depending upon leaseholder issues we may use a framework. Leadership Team asked to delegate approval of competition / call off and award to Lead Member and Director of Housing Management.
<b>Programme works. Multiple Units, Mulberry Close, Holland Road Part 2, 113 Holland Road, 15 Stratford.</b>	Medium	No compliant facility*	A competition to be carried out to appoint new contractors. Depending upon leaseholder issues we may use a framework. Leadership Team asked to delegate approval of competition / call off and

Description	Urgency	Current situation	Proposed action
			award to Lead Member and Director of Housing Management.
<b>Kitchen and Bathroom replacement in 21 properties.</b>	Medium	No Compliant Facility*	This is the tail end of the programme which was being undertaken through the TMO. A report on the procurement options will be provided to the Lead Member for approval. The options are likely to include a restricted competition or a contract with the firm that has undertaken the bulk of the work to date.

Table 2: Short-term procurement requirements

\* No compliant facility means that we do not have a contract in-house that complies with all regulations, which can be used to supply the works or services.