

Decision maker and date of Leadership Team meeting or (in the case of individual Lead Member or Executive Director decisions) the earliest date the decision will be taken	Leadership Team Date of meeting: 17 th March 2021 Forward Plan reference: 05783/21/K/AB	 THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA
Report title	APPOINTMENT OF DESIGN AND BUILD CONTRACTOR FOR CONSTRUCTION STAGE OF PHASE 1 SITES OF THE NEW HOMES PROGRAMME	
Reporting officer	Anna Benbow Director of Social Investment and Property	
Key decision	Yes	
Access to information classification	Public (Part A) with Confidential/Exempt (Part B) Appendix	
Wards	Dalgarno Ward, Golborne Ward	

1 EXECUTIVE SUMMARY

- 1.1. The New Homes Delivery Programme Procurement Strategy was approved by the Leadership Team in March 2020, (05576/20/K/AB). The report recommended the Deputy Leader and Lead Member for Grenfell, Housing and Social Investment will place such appropriate pre-commencement and enabling works contracts to an aggregated maximum value of £10m prior to the award of main contract.
- 1.2. On 2nd October 2020 the Lead Member approved the Key Decision to appoint the design & build contractor Willmott Dixon to carry out preconstruction stage of the Phase One schemes under a Pre-Construction Service Agreement (PCSA) (05719/20/H/AB). This includes validating the design; finalising the price and the construction delivery and phasing plan. This is a two-stage procurement process, with the second stage forming the subject of this report.
- 1.3. The first units within the Council's new Homes Programme - Phase One – are located on Hewer Street, Acklam Road, 54 St Helens Gardens and Kensal Road and will deliver 97 new homes.

- 1.4. This report summarises the current tender position as submitted by Willmott Dixon. Leadership Team are recommended to approve the decision to appoint Willmott Dixon to two of the four contracts, to note that the Lead Member for Grenfell, Housing and Social Investment will approve the appointment of Willmott Dixon on Acklam Road if an agreed maximum price can be achieved, and to approve the removal of St Helens Gardens from the contract which will be tendered separately.

2 RECOMMENDATIONS

- 2.1 Leadership Team are asked to:

- (1) Approve the appointment of Willmott Dixon as the Design & Build (D&B) contractor for two of the four Phase One schemes namely; the Kensal Road scheme and the Hewer Street scheme
- (2) Agree to remove the St Helens Gardens scheme and retender
- (3) Delegate to the Deputy Leader, Grenfell, Housing, and Social Investment authority to award the Design and Build Contract in respect of the Acklam Road scheme if acceptable price can be agreed with Willmott Dixon

3 REASONS FOR DECISION

- 3.1 The Council have identified suitable sites to deliver over 600 new homes and have been awarded funding from the Greater London Authority (GLA) for social and intermediate rental units. This agreement stipulated that construction on all sites in respect of which the grant is to be claimed, must have commenced by March 2023 as well as meeting specific annual targets, otherwise funding allocation may be cancelled. The Council have provided the GLA with a phased programme with these annual targets to meet the overarching deadline
- 3.2 The four Phase One sites received planning permission in July 2020 with the intention for the construction to start on site before the end of March 2021, thus meeting the agreed yearly GLA obligations. Delays on the start on site date could lead to a loss of grant.
- 3.3 Appointing a contractor now will enable a start on site to be achieved by the end of the month and fulfil GLA grant obligations for two of the four schemes.

4 BACKGROUND

- 4.1 As a result of the pressing need for new homes, particularly social rent homes in the Borough, an assessment was undertaken in 2018 to examine the opportunities for development on land owned by the Council without the loss of any existing homes. This identified that there were potentially opportunities to deliver approximately 600 new homes of mixed tenures, adopting a strong place-making approach and incorporating the maximum possible number of affordable homes on RBKC-owned sites.

- 4.2 The New Homes Programme supports key council strategies including the Housing Strategy as well as contributing to the delivery of the Council Plan, specifically the priority to ensure the borough is a great place to live, work and learn. By building new homes we will increase the number of affordable homes available for people to rent and deliver community facilities that will have a positive impact on the area and the residents.
- 4.3 As part of the development of the programme, the procurement strategy for the Phase One sites was approved by the Leadership Team in March 2020. The report delegated authority to the Lead Member for Grenfell, Housing and Social Investment to place appropriate pre-commencement and enabling works contracts to an aggregated maximum value of £10m prior to the award of main contract. On 2nd October 2020 the Lead Member approved the Key Decision to appoint the design & build contractor Willmott Dixon to carry out the preconstruction stage of the project under a PCSA via the Southern Construction Framework
- 4.4 The procurement approach follows a two-stage process where the contractor is appointed initially under a PCSA to an agreed value to work up the design. The evaluation of the PCSA included a forecasted lump sum in relation to the overall contract cost.
- 4.5 Willmott Dixon have now completed RIBA stage 4 - the detailed design - and compiled a firm tender price for undertaking the works. This price is built up of packages of work, each which has at least three separate sub-contract tender prices from which the most appropriate has been selected.
- 4.6 Arcus and Arcadis (our appointed Project Managers and Quantity Surveyors) have reviewed the revised tender submission and have identified a significant uplift from the original tender offer. The increase in price is related to some key items:
- Covid: because of the reopening of sites across the country there is a strong materials demand which has led to an uplift in prices of key building materials
 - Inflationary risk due to the forecasted effects of Brexit on both labour and materials.
 - Building specification enhancements following the design review to ensure that the projects are buildable.
 - RBKC design specification is at a higher standard than most social housing due to enhanced fire and health and safety requirements.
 - Mechanical and electrical specification is high to support the Council's low carbon commitment
 - The smaller scheme – St Helens – does not provide value for money due to high preliminary costs being applied due to the size and location of the scheme.

- 4.7 The project team have undertaken research with both the unsuccessful bidders, and the organisation that supports the procurement framework, as well as scanning the wider the labour and materials market to validate the prices prepared by Wilmott Dixon and have found that there has been a market shift that has led to increases.
- 4.8 Arcus and Arcadis also carried out the exercise to validate the prices and found a similar shift and identified an increase in building across the capital that has led to the increased demand for materials which has resulted in increased prices.
- 4.9 The specification has also been noted by Arcus and Arcadis as higher than others for social housing. While we recognise the importance of delivering high quality and well-designed housing, we will do further work to review some of these elements within our specification that do not compromise life safety, health and safety, comfort or design. For example, we could change the specification of the carpet and flooring, or other consumable items which would not compromise the comfort of these new homes or look to a different brick manufacturer to ensure we meet the quality and look at an improved price.

5 PROPOSAL AND ISSUES

- 5.1 The proposal is to award two out of the four schemes to Wilmott Dixon for a maximum sum of £26million to construct the Phase One schemes at Kensal Road and Hewan Street.
- 5.2 The Acklam Road scheme will be reviewed in more detail by both Wilmott Dixon, the project team and RBKC to review the pricing and if an acceptable price is achieved, the award of the contract will be the subject of a Lead Member decision. If this cannot be achieved, then a new tender exercise will be completed.
- 5.3 St Helens Gardens, the fourth scheme, will be removed from the contract award and an individual tender process will commence.
- 5.4 The contract proposed to be used will be the JCT Design & Build contract with RBKC standard amendments. The Design & Build Contractor will report to the Council's consultant Employer's Agent & Project Manager who in turn will report directly to the Capital Projects Team.
- 5.5 We have held discussions with the GLA on the proposal confirming that we wish to delay delivery of St Helens and Acklam Road to start on site by the second quarter of 2021/22. They recognise the financial issues and have asked us to validate our remaining years programme to incorporate this.
- 5.6 The split of appointments will ensure that the Council can still achieve the funding timescales, can deliver new homes and not impact on the wider programme viability, deliver new homes that meet the design and specification and are at a high quality that is affordable and supports the overall programme delivery to achieve start on site for all units by March 2023.

6 OPTIONS AND ANALYSIS

6.1 There are three options that can be considered.

Option 1 – not appoint

6.2 Not award any schemes to Wilmott Dixon and re-run the procurement exercise again using another framework or open tender process. The risk in not appointing would be that the Council will not be able to start by March 2021 and the allocation of grant for these may be cancelled by the GLA as we would not have met our funding obligations.

6.3 This option is not recommended as this option would delay the commencement of delivery of much needed new housing on two of the sites where the price is acceptable. We would also lose grant for these schemes which would impact on the overall programme model.

Option 2 – Appoint Wilmott Dixon for all four schemes

6.4 We could award Wilmott Dixon all four schemes and work with them to review the prices. While this would achieve the start on site date to enable grant to be claimed, it would negatively impact on the wider programme viability as the price is considerably higher than forecasted and modelled, and the council could not guarantee that a reduced price would be agreed. This would impact on future schemes viability which would risk the Council not being able to deliver all the homes forecast in the programme. Awarding all four schemes at the higher value would also risk a perception in the market through benchmarking of contract awards that the price being paid by the Council is higher than in other Boroughs which could negatively impact on the ability to get a fair price through other procurement exercises on future schemes.

Option 3 – Appoint based on the recommendation

6.5 Proceed with the recommended option to appoint Willmott Dixon as the preferred contractor with a maximum price on Kensal Road and Hewan Street and continue to work with them on the tender submission price these schemes as well as for Acklam Road. This would include reviewing the types of materials and options that do not impact on design, safety, comfort or quality. This option enables RBKC to meet the timescales to deliver the new homes programme and to claim a proportion of the GLA grant forecast with the remainder being claimed in the next financial year. There is GLA support on the proviso that we deliver all future schemes to the agreed schedule.

7 CONSULTATION AND COMMUNITY ENGAGEMENT

- 7.1 Prior to submitting planning an extensive Community Consultation exercise was undertaken to obtain the feedback and views of the community which was reflected in the final plans.
- 7.2 Representatives of the local community, residents and local community organisations were also invited to provide questions to be used as part of the contractor interview process. The questions were focused on the engagement of the contractor with local employment and skills team, and any supporting groups in the community, to ensure that they are working in partnership with the key groups in the local area.
- 7.3 As part of the procurement process and throughout the work that has been done with Wilmott Dixon, we have emphasised the focus on both social value and delivering wider social investment. While significant development sites in the Borough are subject to Planning conditions, including several that support local employment, skills and business we are also working on some further initiatives to enhance the outcomes delivered.
- 7.4 Examples of the wider work being developed through partnership with the Economic Development Team include:
- Building Lives Enrichment programme, which is specifically designed to inspire school students to consider construction and its associated roles as a career choice has been put forward for consideration. The current programme is delivered over six weeks and includes activities such as a project inception workshop, careers carousel & project challenge, project tour, digitising construction, employability skills such as CV's & mock interviews & a STEM Activity.
 - Building Lives Academy: To improve the level of skilled people in RBKC area, also it has been proposed to set up a Wilmott Dixon Building Lives Academy. Recently recognised at the 2020 RICS Social Impact Awards, the academy will offer local people the chance to access employability, life skills and construction training and certification.
- 7.5 The specific obligations that will need to be met as part of the Planning application requirements will include:
- The development and submission of an employment and skills plan for approval by the Council
 - Promotion of opportunities to local residents and notification of vacancies arising from the development
 - Monitoring and reporting on the outcomes of this work to identify local employment within the development
 - Implementing activity to promote local procurement and sourcing of local suppliers.

- 7.6 The Tri-Borough Director of Audit, Risk, Fraud and Insurance has been consulted on the procurement and has provided comments in the exempt appendix.

8 HUMAN RESOURCES AND EQUALITIES IMPLICATIONS

- 8.1 A programme level Equalities Impact Assessment has been prepared and will be monitored and updated throughout the construction stages of each project. Any implications identified will feed into the programme.
- 8.2 The contractor will have a contractual commitment to meet the London Living Wage requirements and has legal obligations to comply with the Modern Slavery Act and our Modern Slavery Policy. The contractor will support their supply chain by providing them with advice and guidance with regards to the 'Right to Work' process.

9 LEGAL IMPLICATIONS

- 9.1 The Council is entitled to award contracts under framework agreements that themselves have been awarded in accordance with the Public Contracts Regulations 2015. Provided that the Southern Construction Framework complies with those regulations and the council is listed as an organisation that is entitled to use it, the award of the contact to Willmott Dixon will be lawful.

- 9.2 Ashfords solicitors advised the Council on the PCSA and have advised as follows:

- 1.2.1 "As noted in the report, for each of the four schemes, RBKC has entered into a separate, standalone PCSA with Willmott Dixon. Each of those PCSAs grant complete discretion to the Council as to whether to continue with Willmott Dixon for the construction phase of the relevant project. In particular, clause 2.7.2 states that:

"The Employer is under no obligation to accept any Second Stage Tender and no binding contract in respect of the Construction Phase of the Project shall come into existence as between the Employer and the Contractor unless and until they enter into the Main Contract. Nothing in this Contract shall prevent or restrict the Employer from entering into negotiations or contracting with any other contractor at any time in relation to the Construction Phase of the Project or any part of it. The Employer shall not incur any liability to the Contractor (including without limitation in relation to loss of opportunity, loss of revenue or loss of profit) if the Employer contracts with any other contractor in relation to the Construction Phase of the Project or any part of it and/or elects not to enter into the Main Contract with the Contractor for whatever reason."

- 1.2.2 In other words, RBKC is perfectly within its contractual rights to reject Willmott Dixon's second stage tender for any project (or projects) and to seek alternative bids from elsewhere.

1.2.3 It is also worth noting that an election by RBKC not to continue with Willmott Dixon on any one or more of the developments will not fetter or extinguish Willmott Dixon's contractual liability for the design work it has undertaken pursuant to the PCSAs. Clause 2.7.3 of the PCSAs states that:

"An election by the Employer to appoint or not to appoint the Contractor to carry out and complete the Construction Phase of the Project shall not in any way affect the Contractor's liabilities under this Contract, which shall subsist until the date falling twelve years after completion of the Pre-Construction Services or earlier termination of the Contractor's engagement under this Contract."

1.2.4 This means that RBKC can (if it wishes to do so) use and rely upon Willmott Dixon's detailed design for the schemes, even if the Council chooses to embark upon the construction phase with a third party contractor.

9.3 In view of Ashfords' advice the decision not to award the contract for St Helens Garden to Willmott Dixon will be lawful as will the decisions to award other contracts to them.

9.4 Any changes that are made to the specification must be within the parameters permitted by the Public Contracts Regulations 2015, The changes mentioned in this report appear to be relatively minor and therefore should not be controversial but in any event, they should reviewed against the regulations.

10 FINANCIAL, PROPERTY, IT AND ANY OTHER RESOURCES IMPLICATIONS

10.1 Corporate Finance has been consulted and comments that the financial implications of this decision are explained in this report and in the Confidential Part B Appendix. The current Capital Programme includes budget provision for the New Homes Delivery Programme from which the cost of the proposed appointment will be met in addition to other commitments. The budget will be managed, and commitments prioritised within the overall budget envelope.

10.2 Robust budget monitoring is currently in place for the New Homes Delivery Programme and Corporate Finance are committed to regularly reviewing and reporting on, the management of the budget, and the financial viability of the programme overall.

11 OTHER IMPLICATIONS

Project Management

11.1 The project will be managed by the RBKC Project Manager and Consultant Project Manager using a project specific Risk Register with mitigation actions and costings. This will be reviewed regularly by the Capital Programme Manager and the Design Team.

- 11.2 A Clerk of Works will also be appointed to monitor and inspect the workmanship, quality and safety of work on all 4 construction sites and reports back RBKC'S Project Manager.
- 11.3 The project team will extensively review all the project information and engage with the design team and all stakeholders involved as much as possible in order to provide an informed opinion as to the project's key risks and the proposals for mitigation. The project shall be subject to formal risk management which will be implemented and managed on behalf of the project by the Project Manager. Once the preferred Contractor is selected, responsibility will be split between the Project Manager and the Contractor as appropriate and managed collaboratively. The objective of the risk management process will be to establish and maintain a "risk aware" culture that encourages the ongoing identification and assessment of project risk. All members of the project team will play an active role in the identification, analysis, classification, allocation and mitigation of risks to the project.
- 11.4 The Project Manager will co-ordinate and facilitate the management process by including risk management on the agenda of regular meetings, in addition to arranging specific workshops at key stages of the project. Risks will be identified and compiled into a project risk register as early as possible in the project and the register will be reviewed on a regular and ongoing basis as part of the process of risk reviews. The Contractor will be responsible for reporting construction related risks as soon as they become apparent, and for implementing mitigating measures as necessary to reduce or eliminate such risk.
- 11.5 Robust management of cost will allow the project to be completed within the anticipated final cost set out in the Cost Plan. Cost reporting is to facilitate, always, the best possible estimate of the final cost of the project and the associated cash flow. The following processes will always be implemented:
- all decisions during construction periods will consider cost impact as part of the assessment process
 - decisions with the potential to result in a positive impact on cost will be subject to Change Control
 - the Project Team will work together to generate the Cost Plan as the baseline and rigidly adopt the change control procedure for the development
 - cost reports are to include an updated change history, showing full details of each change including the originator

12 Health and Wellbeing, including Health and Safety Implications

12.1 Turner and Townsend Advisory has been appointed to act as CDM advisor for each scheme, and the nominated contractor (when appointed) will act as Principal Designer. The Principal Designer has an important role in influencing how risks to health and safety are managed throughout the project as design decisions made during the pre-construction phase have a significant influence in ensuring the project is delivered in a way that secures the health and safety of everyone affected by the work. The Principal Designer will:

- plan, manage, monitor and coordinate health and safety in the pre-construction phase. In doing so they must take account of relevant information that might affect design work carried out both before and after the construction phase has started
- help and advise the client in bringing together pre-construction information, and provide the information needed to carry out their duties
- work with any other designers on the project to eliminate foreseeable health and safety risks to anyone affected by the work and, where that is not possible, take steps to reduce or control those risks
- ensure that everyone involved in the pre-construction phase communicates and cooperates, coordinating their work wherever required

13 Human Rights

13.1 The contractor has legal obligations to comply with the Modern Slavery Act and our Modern Slavery Policy. Contractor will support their supply chain by providing them with advice and guidance with regards to the 'Right to Work' process.

14 Sustainability and Energy Measures

14.1 We are closely working on driving the sustainability of the new build programme including an aim to lower carbon use and – ideally – deliver low or zero carbon homes going forward. On the Phase One schemes we are working with both the Sustainability Team and contractor to find ways of minimising CO2 emissions both in the final build and during construction.

14.2 The schemes have been designed to meet the requirements of the Council's Local Plan focussing on using less energy, supplying energy efficiently and renewable energy to achieve at least 35% reduction in regulated carbon dioxide emissions plus an off-set contribution for the "remaining regulated carbon dioxide.

14.3 The design process has used Passivhaus principles as best practice for meeting low energy design. The schemes would not seek Passivhaus certification because of the location of the sites and the linked restrictions, but it was beneficial to use these principles in the design process to achieve low energy buildings.

14.4 We will continue to focus on delivering sustainable developments that enhance the well-being of people who live in or near them and also help to protect natural resources. The project team will work together to achieve environmental best practice and (where reasonable and practical) follow the principles below:

- reduce waste and the consumption of resources materials, fuel and energy
- reduce or eliminate the release of polluting agents into the environment
- influence and control the design to minimise the environmental impact of materials production, use and disposal
- positively influence the environmental effects of raw material sourcing
- enhance the living, working and leisure environment of employees
- collect information from trade and specialist contractors and assess and validate their environmental performance.

Vjosa Bytyqi
Senior Project Manager

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

NONE

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Mandatory clearance requirements for all Key and Executive Decision reports

Cleared by Finance (officer's initials)	LS
Cleared by Director of Law (officer's initials)	KS
Cleared by Communications (officer's initials)	NT