

Item 3

ITEM NO

REPORT TO CABINET

1ST NOVEMBER 2007

**JOINT REPORT OF CHIEF EXECUTIVE
DIRECTOR OF HOUSING AND
DIRECTOR OF RESOURCES**

HOUSING, LEISURE AND CULTURE AND STRATEGIC LEADERSHIP PORTFOLIOS

PROCUREMENT OF CONSTRUCTION SERVICES 2008-2013

1. SUMMARY

- 1.1 The purpose of this report is to seek Cabinet approval to appoint a strategic partner to undertake construction works from February 2008 – January 2013. The methodology used to process the Council's housing and associated construction related works was reported to and approved by Cabinet in March 2006, October 2006 and June 2007. Approval was given to provide construction works for 5 years (plus a further 2 years subject to performance) using strategic partnering principles.
- 1.2 The main drivers for using this method are to mitigate the issues currently facing the Council:-
 - Securing value for money, achieving efficiency gains and efficient service delivery
 - Achieve 3 star status
 - Address issues around diminishing workload base for staff
 - Meet challenges of KLOE's, CPA and other external inspections
- 1.3 The procurement strategy adopted and tendering process has been concluded, this report provides details and results of the tender evaluation, which includes assessment of quality, cost and affordability.
- 1.4 This report also sets out a series of Human Resources (HR) issues including the legal implications of the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006 and the arrangements for applying these regulations in transferring Council employees to the preferred partner.

2. RECOMMENDED

- 2.1 That Mears Limited be appointed as Strategic Construction Partner for 5 years (with a 2 year option to extend subject to performance).
- 2.2 That the employee-related contractual commitments provided by Mears Limited (detailed in Section 5) be incorporated within the contract.

- 2.3 That the promises and pledges given by Mears Limited and referred to in Section 4 be incorporated within the contract.
- 2.4 That the Director of Housing, Director of Resources and Head of Organisational Development make the necessary arrangements to proceed with agreeing a mobilisation plan with Mears Limited.
- 2.5 That the processes (detailed in Section 6) for dealing with the HR implications of this contract be approved.
- 2.6 That the Council provides an appropriate guarantee to the Durham County Council Pension Fund in respect of any pension fund deficit that may arise as a result of the implementation of this partnership arrangement.

3. PROCUREMENT OF CONSTRUCTION SERVICES 2008-2013

- 3.1 Following the appointment by the Council of Elliott Dent as Partnering Facilitators/Advisor to assist in the procurement of a Partnering Contractor, an Assessment Panel was formed during the Pre-Qualification Questionnaire assessments period, and this team continued through to the full bid process. This ensured continuity and that a thorough appraisal was undertaken of the quality submissions. This team consisted of the following:-
 - Director of Housing
 - Head of Property Services
 - Head of Organisational Development
 - Head of Financial Services
 - Team Leader - Property Management
 - Senior Tenant Participation Officer
 - Representatives of Tenants Housing Services Group
 - Member of Residents Federation
 - Partnering Advisor
- 3.2 A detailed Tender Document was issued to tenderers on 6th July 2007: The documents and tender process complied with the Council's Contract Procedure Rules and EU Procurements Rules. Work included within this contract includes the following: -
 - Responsive Repairs to Council Houses, Green Lane Offices, shops and other housing related assets
 - Housing Capital Programme Improvements
 - New build Housing as part of Regeneration Master Plan
 - Group Repair Schemes
 - Extension and refurbishment to Spennymoor Leisure Centre to create and Arts Resource Centre.
- 3.3 From a long list of 14 submitted Pre-qualification Questionnaires Cabinet, approved in June 2007, the following five companies were invited to tender (in alphabetical order):-

- Keepmoat (Frank Haslam Milan)
 - Kier
 - Mears
 - Mitie
 - Rok
- 3.4 The tender required a Proposal to be returned in two separate parts; A Qualitative Proposal which addressed twelve specific questions; and a Financial Proposal which responded to a request for detailed costs pertaining to the full range of services outlined in the scope of the Contract. The tender brief also included matters, which need to be in place and are in accordance with the Council's Constitution e.g. Contract Bond, Confidentiality Agreement and Certificate of Non Collusive Tendering.
- 3.5 The tender return date was Tuesday, 14th August 2007, however following a number of requests for an extension; this was extended to Tuesday, 28th August 2007 allowing for an eight-week tender period in total.
- 3.6 All tenderers submitted their Proposal in accordance with the conditions set out in the documents. All submissions were complete and compliant with the tender conditions and were therefore included in the assessment process.

4. ASSESSMENT PROCESS

- 4.1 The Tender Document explained that the assessment would be carried out on a Best Value basis with the Quality Proposals being assessed independently from the Financial Proposals so that one could not influence the other.
- 4.2 The weighting of the Quality/Price Proposals consisted of the following split; 60% Quality including 10% pertaining to the mid tender visits and 40% Price. Contractors were also advised that the quality assessment would be based on the following twelve areas:-
- Proposed Team
 - Implementation Plan
 - Communication Plan
 - Asset Database
 - Supply Chain Arrangements
 - Risk Management
 - Open Book Accounting
 - Achieving 3 Star Status
 - Customer Care
 - Recruitment and Training
 - Affordable/carbon reduced new homes
 - Whole life costs
- 4.3 On 26th and 27th July 2007, the Assessment Panel visited each tenderers premises to meet their proposed team for the Contract and discuss their general approach to the bid together with any clarifications on the requirements of the Bid. These visits contributed 10% to the quality assessment of the suitability of the Contractors.

- 4.4 The quality assessments were done in parallel to a detailed cost analysis. Submitted costs were assessed over three and five years. This method was used, as contractors were required to provide fixed prices for three years but given the life of the project is five years these had to be estimated forwards. All of the tenderers submitted comprehensive proposals and all submissions were of high quality.
- 4.5 To allow for a full comparison tendered schedule of rates have been applied to frequencies and anticipated works over the project including estimates for Spennymoor Arts Resource Centre, Group Repair Works and new house building. Tenderers also identified one off costs for contract establishment and employee transfer issues.
- 4.6 The total of submitted costs have been measured against forecast Council budgets over the five-year contract period. This is considered a crucial aspect of the analysis as it demonstrates affordability. Residual costs that will still need to be met by the Council post transfer have also been included to create a whole life cost comparison.
- 4.7 Taking all of these into account costs supplied by Mears Limited are within estimated Council budgets over the five-year contract period. An estimated saving to the Council over five years has been calculated at around £2.5 million, approximately 3% of the total contract value of £85 million.
- 4.8 One factor to be determined will be consideration of the future use of Chilton Depot by the contractor and the Council for delivery of this project. This matter will be subject to a feasibility study to be undertaken with the contractor following appointment and in the meantime Mears Limited will use the depot as its main base in the Borough.
- 4.9 Applying cost and quality issues the tender submitted by Mears Limited is the Most Economically Advantageous and represents improved quality at a forecasted reduced cost. On the basis of the scoring methodology used the combined cost and quality tender submitted by Mears Limited scored almost 14% higher than the second best tenderer.
- 4.10 It should be noted that Mears Limited have confirmed that if they were to be successful they would provide a number of pledges to the Council, which will include for example:-
- High levels of customer satisfaction (95%)
 - Achieve 3 star status in two years
 - Establish a Training Centre; train one apprentice per £1M turnover
 - Address poverty issues with residents and reduce their spend on energy
 - Plan, document and demonstrate continuous improvement.
 - A further project /initiative to be determined by the Tenant Group
- 4.11 A further part of Mear's submission makes reference to additional efficiencies that can be expected to be achieved over the contract period. These include: -
- 3% reduction in the number of responsive repairs.

- Moving towards more favourable commercial terms by moving away from inefficient Schedule of Rates mechanisms of valuing work to a fixed price per property. This will provide more cost certainty and will also give significant savings in administration. The prices used in the cost model do not take this expected saving into account at this stage.
- Void turnaround time of ten days. (a reduction of 5 days on current turnaround time).
- The contractor has also offered a 5% year on year overall efficiency saving on all works. Mears Limited also stated in their submission how they will achieve these saving levels.

4.12 Following this detailed cost and quality assessment it is recommended Mears Limited be appointed as Strategic Partnering Contractor to this project and a detailed Mobilisation Plan be agreed and implemented.

5. CONSULTATION

5.1 The recognised trade unions (UNISON, UNITE, UCATT and GMB) have been consulted extensively on the procurement of construction services for more than eighteen months via a process that has involved over 20 formal trade union meetings at all levels of the Council's recognised machinery. This process has also been supplemented by briefings of affected employees by the Director of Housing, Head of Property Services, Head of Organisational Development and the Head of Pensions at Durham County Council.

5.2 Notwithstanding this very detailed and comprehensive consultation process the recognised trade unions recently restated their opposition to the concept of construction and housing partnering, their preference for the retention of an in-house service, and their concern over the speed of the process. As a consequence Cabinet's consideration of this report was deferred and a special meeting of the Corporate Consultation Panel was convened at which trade unions sought a series of contractual commitments and accepted an offer from the Chief Executive to address all affected employees directly.

5.3 The Chief Executive, Director of Housing, Head of Property Services and Head of Organisational Development then met the preferred partner and secured the following contractual commitments throughout the life of the contract: -

- Honouring of all existing terms and conditions
- Honouring future local government pay awards
- No compulsory harmonisation of pay and conditions less favourable than existing terms
- No compulsory redundancies
- Attaining LGPS Admitted Body Status (considered certain by DCC)
- Honouring existing trade union recognition

It has further been agreed with all recognised trade unions that prior to transfer each transferee will receive written confirmation of their transferring terms and conditions of service, including information on all Council policies applicable on post transfer and confirmation of Admitted Body Status.

The communication outlined above will flow to all employees

- 5.4 Having secured these commitments, the Chief Executive then addressed affected employees and explained the implications of what had been secured. On the basis that these contractual commitments will be incorporated into the agreement between the Council and the preferred partner, all trade unions whilst restating their general concern about partnering have confirmed their willingness to cooperate and play a full and meaningful part in the transition process.

6. HUMAN RESOURCE IMPLICATIONS

- 6.1 The procurement of construction services process has significant HR implications in that it constitutes the legal transfer of an economic entity between the Council and its preferred partner. As such it falls within the scope of the TUPE Regulations 2006. It has therefore been necessary to identify employees assigned to the economic entity whose employment will potentially transfer. Details of these employees have been used to compile an Indicative TUPE List (ITL).

- 6.2 Subject to Cabinet's approval of the preferred partner it will be necessary to refine this ITL into a Final TUPE List (FTL) in consultation with recognised trade unions and the preferred partner. This process will involve three stages as follows: -

6.3 Stage 1 – Residual Structure

Management Team has previously approved a revised residual establishment structure for Housing Property Services Division. This revised structure has been designed to enable the Council to manage its side of the housing partnering contract.

A system of prior consideration has been developed and agreed by the Head of Organisational Development in consultation with recognised trade unions through which employees on the ITL will be considered for posts on the residual structure. A comprehensive document detailing the full process including methods for resolving disputes has also been prepared by the Head of Organisational Development. However, in summary, under this system posts on the previous Housing Property Services establishment will be compared to those on the revised establishment by the following panel:-

- Head of Organisational Development (Independent Chair)
- Human Resources Manager (Strategy)
- Director of Housing
- Director of Resources
- UNISON Representative (x2)

This panel will determine whether posts on the amended structure are unchanged, partially changed, substantially changed or new then following appropriate recruitment and selection arrangements, a number of affected employees will be appointed to posts on the residual structure and will therefore be removed from the ITL.

6.4 Stage 2 – Employment Longevity Test

A further refinement of the ITL will be made at this stage to identify those employees whose posts may have been made redundant had the Council not decided to secure a strategic partner and in doing so secure their continued employment via the application of the TUPE Regulations 2006. This issue has been discussed with trade union representatives and employees throughout the formal consultation process and has become known as the Employment Longevity Test.

On this basis (and if partnering progresses), Early Retirement/Voluntary Redundancy (ER/VR) requests will be sought and considered for a limited number of employees. These will be dealt with in accordance with the Council's retirement policies with the Director of Resources and Head of Organisational Development dealing with requests ahead of their formal consideration by the Employment Issues Panel. All costs will be met from the contract saving. However, reduction in transferring posts could have an advantageous impact on overall contract costs and the implications of this will be discussed with Mears Limited.

6.5 In assessing the overall impact of the awarding of this contract it is not expected that there will be a significant impact on corporate support services. However, this position will be kept under review.

6.6 Stage 3 – Final TUPE List (Measures and Due Diligence)

In accordance with the TUPE Regulations 2006, the Council and its recognised trade unions will need to agree a Final TUPE List (FTL) and a series of employment-related measures with the appointed partner. In practice those eligible employees whose applications for ER/VR are approved by the Employment Issues Panel will be removed from the ITL. Initially, outline employment details of all employees on the ITL will be disclosed to the appointed partner and appropriate access will be granted to employees on the FTL during the contract mobilisation period.

6.7 The process of appointing a strategic partner will involve a series of meetings and discussions with employees, trade unions and Mears Limited and so it is proposed that following consideration of this report by Cabinet that a detailed mobilisation plan be agreed reflecting these HR implications.

7. FINANCIAL IMPLICATIONS

7.1 The financial resources available for the HRA and General Fund elements of the project are covered in the Medium Term Financial Plan approved by the Council in June 2006. The availability of further external funding is currently being explored for New Build Homes and the 'Arts Resource Centre' aspects of the contract. A future progress report will be presented to Management Team and Cabinet in due course.

7.2 The delivery of an efficient, value for money service to tenants is a key aspect of the decision being requested in this report. The delivery of works totalling contract value of £85 million has been analysed in great detail and forecast savings of around 3% have been identified.

- 7.3 Additional savings should also accrue by the delivery of promises and efficiencies outlined by the preferred partner as detailed in section 4 and 6 of this report.
- 7.4 There are residual costs to the Council associated with this contract including potential ER/VR payments that have been fully considered as part of the whole life cost exercise. Whilst they are affordable there will be some impact on different parts of the organisation and these will need to be reflected in budget determination for 2008/09.
- 7.5 Achievement of Admitted Body Status to the Durham County Council Local Government Pension Fund is a critical element of the achievement of this arrangement. This does create a change to existing arrangements and will require the authority to underwrite existing deficiencies by way of a guarantee to Durham County Council as administrator of the fund.
- 7.6 In anticipation of a request from the successful partner to seek Admitted Body Status the Pension Fund has already given the County Treasurer authority to make the necessary arrangements to expedite any such request, subject to the Partner agreeing to meet the requirements of the appropriate Regulations and to the provision and maintenance of a suitable Guarantee Bond.
- 7.7 As an option to the requirement for the Partner to purchase a Bond (and subsequently seek to recover the cost of the premium from the Council) the Pension Fund is willing to accept a Guarantee from this Council that in the event of the Partner becoming insolvent, being wound up or going into liquidation, the Council would meet any shortfall on the Pension Fund.

8. OTHER MATERIAL CONSIDERATIONS

Community Strategy and Corporate Plan

- 8.1 The procurement approach outlined within this report clearly fits within the Council's approved key policy framework for the delivery of Decent Homes Standard and Asset Management of the Housing stock. In particular, it supports the delivery of the Council's aim to secure quality affordable housing and promoting safer neighbourhoods within the Borough.

Equality and Diversity

- 8.2 The Organisational Development Section will continue to ensure that the decision making process in respect of inclusion on the FTL and possible ER/VR eligibility are applied fairly and consistently to all employees irrespective of belief/religion, age, disability, gender, ethnicity or sexual orientation. In accordance with the Council's statutory duty we will be monitoring the contractor to ensure compliance with the above matters.

Risk Management

8.3 Those key risks associated with this contract relate to the non-achievement of Decent Homes Standard and Asset Management of the Housing stock as required by the CLG. The procurement strategy set out in this report will ensure appropriate arrangements are in place to deliver the programme and achieve Decent Homes Standard by December 2010, demonstrate value for money and achieve savings and improvements in service delivery as identified by KLOE's and the Gershon Report. The partnering proposals for 2008 and onwards in this report will assist in mitigating the imbalances between the needs of the programme and the skills of the workforce. Other Risk Management issues, which have been addressed in the tender analysis include:-

- Failure to improve service standards
- Failure to achieve Gershon savings
- Achievement of KLOE's
- Building cost inflationary pressure
- Financial resources available over the period of this strategy
- Pressure on the supply chain
- Failure of the company, requiring the Council to meet the pension fund guarantee

These risks will be monitored as part of pre and post implementation: -

- Mobilisation Plan and achievement of critical activities
- Continuation of consultation with staff, tenants and trade unions
- Failure to achieve 3 star service recognition

The actions set out in this report will also mitigate the risk of failure to comply with legal consultation requirements, particularly in respect of inclusion/exclusion on/from the Final TUPE List.

Social inclusion

8.4 Every effort will be made to ensure that the issue of social inclusion will be taken into account throughout the delivery of the procurement of construction services as detailed in this report. The ultimate aim is to provide high quality services to all tenants.

Legal and Constitutional

8.5 The procurement report was prepared in accordance with the Council's Constitution and EU Procurement Rules. No other legal or constitutional implications have been identified. Appropriate contract selection will be used as part of the contract agreement. It also deals with issues linked directly to the requirements of the Transfer of Undertakings (Protection of Employment) Regulations 2006.

Health and Safety

- 8.6 There are no additional health and safety implications over and above those for existing staff or contractors when undertaking construction works. Suitable and appropriate contract administration and management arrangements are in place to ensure all health and safety risks are managed.

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Wards: All Wards

Key Decision Validation: Expenditure Over £100,000

Background Papers:

Report to Council February 2006 Budget Framework 2006-2007
Cabinet Report June 2006 - Medium Term Financial Plan
Repairs and Maintenance Strategy and Construction Related Procurement Strategy and Toolkit (June 2003)
Delivering better services for Citizens (Byatt 2001)
Reports to Cabinet 16th March 2006, 30th November 2006 and 21st June 2007 – Procurement of Construction Services etc.
Regeneration Master Plan
SBC Procurement Strategy 2003-2006

Examination by Statutory Officers:

	Yes	Not Applicable
1. The report has been examined by the Councils Head of the Paid Service or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. The content has been examined by the Councils S.151 Officer or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. The content has been examined by the Council's Monitoring Officer or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. The report has been approved by Management Team	<input checked="" type="checkbox"/>	<input type="checkbox"/>