

LONDON BOROUGH OF HACKNEY
CABINET PROCUREMENT COMMITTEE

Monday, 7 December 2020

RECORD OF DECISIONS TAKEN

This document outlines the decisions taken at the above Cabinet Procurement Committee meeting.

Unless otherwise indicated, executive decisions listed in this document will come into force and may then be implemented 5 working days after publication of this document unless the decision is called in. During that period the Director of Legal & Governance

may call-in a decision for scrutiny if so required by no fewer than 5 Members of the Council (Part 4 of the Council's Constitution; Scrutiny Procedure Rules: Call-in Procedures).

Date of Publication:

8 December 2020

Last Date for Call-In:

15 December 2020

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7. Extension of Temporary Accommodation Dynamic Purchasing System - Business Case/Contract Award - Key Decision No. FCR R.23

RESOLVED:

That approval be given to to extending the current Temporary Accommodation DPS for a period of up to 36 months, from January 2021 to January 2024.

RELATED DECISIONS

The current Dynamic Purchasing System was procured in 2016 with the Contract Award Report agreed at Cabinet Procurement Committee in January 2017.

OPTIONS APPRAISAL AND BUSINESS CASE (REASONS FOR DECISION)

The DPS was procured in 2016, to replace two framework agreements (one each for stage 1 and stage 2 accommodation) which had been the source of temporary accommodation suppliers for the Council. This model offered an ineffective solution, as Frameworks are closed after the tender process, restricting the service to only those providers appointed to the Framework. The nature of the accommodation needs in Hackney meant that suppliers were required urgently and this resulted in a large amount of off contract spend as officers used non Framework providers to meet urgent need, which was either non compliant (under Council Contract Standing Orders [CSOs], which state spend must be covered by a contract or a STA), or covered by a large number of Single Tender Actions (STAs).

The Dynamic Purchasing System model offered a resolution to this issue, as suppliers can join a DPS at any stage of its duration, and can try again if their application fails. This allows for the service to encourage more suppliers to join the DPS, offering a wider variety of accommodation options, giving a more compliant solution and reducing off contract spend and STAs. There have been issues with the successful execution of the DPS model, which are set out in the lessons learned section of this report

ALTERNATIVE OPTIONS (CONSIDERED AND REJECTED)

Build A Bespoke Management System In House

This option was rejected for two reasons, firstly the significant cost and resources required from the Council to develop and build a bespoke in house system. Secondly, any management system would need to integrate with the plethora of legacy systems that the service currently uses making any development extremely complex. As the systems currently used within the service are due to be subject to review it would not be an effective solution to develop a system to fit within them.

Purchase ADAM Or Another Temporary Accommodation Property Management Software Solution.

The ADAM product can either be purchased and utilised as a direct replacement for the DPS or can be joined as part of the WREN Group (Waltham Forest, Redbridge, Ealing and Newham).

Utilising the ADAM solution through the WREN Group has the following advantages:

- Councils use many common suppliers and 49 of our suppliers are already on the ADAM system. Our total spend with these suppliers was £22,847,882 in 19/20. This is more than the 23 that are currently on our own DPS with whom we spent £18,090,087 in 19/20.
- ADAM supports suppliers through the application process. Removing the need for the time consuming chasing, evaluating and scoring.
- Once a supplier is approved available properties are loaded onto the system for Councils to book. Currently this is all done manually via emails between various officers and suppliers.
- All the relevant safety certificates are also uploaded with the property and the system provides prompts for when these are due to expire. Again these are currently provided manually via email exchange with the supplier. Documents are being stored on google drives and logged on a spreadsheet to track expiry dates.
- Payments are automatically adjusted for overpayments utilising the booking dates entered. Payments currently have to be manually adjusted.

The main issue regarding potential use of ADAM is the combination of legacy systems and manual processes that are currently used within the Benefits & Housing Needs Service.

The Service currently has an inhouse (unsupported) legacy system known as Temporary Accommodation Payment to Landlord System (TAPL). This is a hybrid booking and payment system. The system was designed to make payments and the booking part was tagged on afterwards. This has resulted in a situation where the booking element is not designed to deal with the current workload of the Temporary Accommodation Team.

TAPL is used as the most accurate source of temporary accommodation information for reporting and reconciliation. As ADAM doesn't carry out all the functions that TAPL does, introducing this would lead to double handling, with data needing to be entered twice, into the two separate systems.

ADAM is designed purely to procure, book and make payments for temporary accommodation from private providers whereas TAPL is utilised to make payments for void Council properties used for temporary accommodation and leased properties.

This option was rejected as the research carried out into using ADAM (or an alternative system, if available as the market is extremely small) highlighted the need for clear, effective integrations between ADAM / the system and other Hackney systems, such as payments and housing allocations, in order

to achieve the best results. As set out above, there are a large number of legacy systems, undertaking different functions which would all need to be integrated with ADAM in order to make the system viable. However these integrations would not in some cases be possible, or cost effective, and a major review is due to take place on all systems, in order to find the best and most effective solution for the service area. Following the outcome of the review and any changes implemented, a clearer route regarding integrating with a management system such as ADAM will become clear.

8. Provision of Residential Sales Agent Service for the sale of new residential property at The Makers (*formerly known as the Nile Street development*) - Contract approval - Key Decision No FCR R25

RESOLVED

That approval be given to the award of contract for the provision of residential sales agency services to Service Provider A for the unreserved residential property at The Makers (formerly known as the Nile Street development).

RELATED DECISIONS

Cabinet Resolution of 21 July 2014 (Key Decision FR J47): Cabinet resolved under Item 13.1.2 to approve the strategic developments at Nile Street and Tiger Way and to authorise the Corporate Director of Finance and Resources to set up such governance arrangements that are necessary for the developments.

As part of delivery and marketing arrangements for the residential element of these mixed-use schemes, residential development and branding consultants Londonewcastle Capital Limited were appointed by Hackney Schools for the Future 2 Limited (HSF2L) with a 'head' contract between HSF2L and the Council. Cabinet authorised on 12 April 2016 the signing and sealing of the Development and Branding Agreement with HSF2L.

Cushman and Wakefield (CW) were awarded the Sales Agent contract for the Nile Street and Tiger Way developments on 13th December 2016 by Cabinet Procurement Committee (CPC), ref: FCR N3 Sales Agent Services.

On 19 April 2017 CPC resolved that:

- The Group Director of Finance & Corporate Resources be given the delegated authority to approve all legal and financial requirements necessary to set up a Management Company with limited liability for each of the Nile Street and Tiger Way developments with the responsibility of managing the maintenance and operation of the buildings on these developments together with any governance arrangements required for the developments; to ensure they are kept

in good condition to the satisfaction of the occupants to manage the billing and collection of various charges to be paid by the occupants of the buildings and discharge all statutory landlord obligations as required.

- The Group Director of Finance & Corporate Resources and the Director of Legal Services be given the delegated authority to approve all legal and financial requirements necessary to ensure that the Council retains the freehold interest of the land and to grant a 999-year head lease to the respective Management Company for each development and for the Management Company in turn to grant 999-year sub-leases of the Residential Units.

On 11 August 2020 the Hackney Procurement Board considered the Business Case and approved:

- the re-procurement for the provision of a residential estate agency service for the sale of new Residential Units at The Makers using a compliant framework as a route to market.
- the proposed route to market being a mini-competition under the Homes England - Framework Agreement - Property Professional Services Framework 2018-2022.

REASONS FOR DECISION/OPTIONS APPRAISAL.

The requirement for the decision to award a contract for sales agency services was triggered by a change of national corporate strategy by the incumbent agent (Cushman and Wakefield). The unexpected termination of the current sales agency contract requires the Council to procure a replacement Sales Agent in the shortest possible time so that service continuity can be maintained.

It is imperative that sales of the remaining Residential Units progress in order to recover the capital investment in the development and reduce the operating costs to the Council for any vacant Residential Units (Void Costs).

The Service Provider's fees will be calculated as a proportion of the agreed sales price for a Residential Unit, therefore the contract value for the sale of the remaining units is subject to market conditions and is therefore an approximation. However, it is anticipated that the contract value will be in the region of £1,800,000 and £2,500,000 in fees.

The value of the remaining fees is forecast to exceed the Public Contracts Regulations 2015 (PCR) threshold for Services, and in accordance with legal opinion from Bevan Brittan, a new PCR-compliant re-procurement was determined to be necessary.

The approved Business Case set out the case for:

- The continued use of a Sales Agent to sell the remaining high value properties at The Makers development in a difficult market place and achieve the base sales prices necessary to accomplish the Funding and Investment Strategy (FR J47) for the Schools Estate.
- Selecting a compliant procurement route that has suitable Service Providers that will promote The Makers' image and branding. It is also necessary to employ the services of a sales agency that has an established brand and reputation consummate with high quality London property. The sales agency should have national and international coverage and corresponding client databases to maximise the access to potential purchasers.

Alternative delivery and procurement options were considered and assessed in the Business Case and lessons from the contract with CW were reflected upon. The Business Case's options appraisal re-confirmed that the original strategy remains valid and preferred: to procure an external Sales Agent with market-leading expertise in the sale of Residential Units of the quality demonstrated at The Makers.

Once the analysis had re-confirmed the need to re-procure an external Sales Agent to continue to deliver the Sales and Marketing Strategy, the choice of procurement route was straightforward. There are only a handful of agents specialising in the sale of high-value residential properties within the UK and internationally, and even fewer PCR-compliant frameworks facilitating access to these organisations.

Procurement Route Appraisal: The Business Case confirmed that the preferred option was to procure the services under the Homes England Property Professional Framework 2018-2022 (HEPP) via a mini-competition with the Council requiring the Service Providers on the framework to submit competitive proposals against an outcome-based performance specification. The framework also meets the key drivers for the procurement of a new replacement Sales Agent and is of a low risk procurement.

Homes England is a new agency established from the Homes and Communities Agency. The Homes and Communities Agency Framework Agreement provided the compliant route to market for the initial Sales Agent procurement in 2016.

The HEPP is the most appropriate route to market as it provides access to top-quality organisations specialising in the selling of high-value residential properties within the UK and internationally.

The Council can be confident that the majority of the Service Providers on the HEPP will have the capability, capacity expertise and experience to support the needs of the Council.

The performance of the Service Providers on HEPP framework is monitored by Homes England. The Council is encouraged to report back poor or non-performance, thus incentivising the Service Provider(s) beyond the remit of the contract between the successful Service Provider (the appointed Sales Agent) and the Council.

In summary, the measurable benefits of using the HEPP are:

- Offers the Council a compliant route to market in as short a time as possible;
- The Council is actively supporting the UK public sector's collaborative procurement initiatives;
- Provides the Council access to the most appropriated Service Providers via the framework agreement;
- Has the greatest number of Service Providers who are most able to meet the needs of the Council, thus the Council will enjoy best value for money in terms of cost and quality of service;
- The Council will enjoy no fee/charges for access to the Homes England's framework and tendering portal (ProContract);
- Homes England has already undertaken the pre-selection due diligence;
- The HEPP framework consists of a substantial number of suitable sales agents for the East/Central London market;
- The Council's project team is supported by the Homes England procurement team in managing the tender process via Homes England's ProContract portal.

The Council, as freeholder of the site and sole owner of the Makers Management Company (holder of the head lease), has the legal power to appoint a Sales Agent and dispose of the leaseholds. As a local Authority, the Council has the right to use the HEPP framework, this has been independently verified by the Project.

ALTERNATIVE OPTIONS (CONSIDERED AND REJECTED)

The following alternative service delivery and procurement options were considered and rejected. Please see the Business Case for detailed analysis of options.

- Do nothing;
- Assigning the benefit of the CW contract to a Third Party sub-agent as permitted under the terms of the contract;
- The use of the Council's in-house sales services 'Hackney Sales';
- Insourcing (self-delivery) through the recruitment of a dedicated professional individual;
- Single Tender Action;
- Procurement of Sales Agent via a PCR (OJEU) Open/Restricted Procedure tender process;

- Procurement of Sales Agent via Crown Commercial Services Framework – Estate Professional Services RM3816: National Sales - Lot 1, mini- competition;
- Procurement of Sales Agent via Crown Commercial Services Framework – Estate Professional Services RM3816: London and the South East - Lot 2c (CCS Lot 2c), mini competition.

Two potential options for insourcing were considered: the engagement of Hackney Sales, and self-delivery by recruiting a suitable individual. These were rejected for the following reasons:

The use of Hackney Sales - Following consultation with Head of Sales & Marketing, Hackney Sales declined the opportunity on the basis that they do not currently have the experience, resources or database of clients to sell the type of Residential Units at The Makers. Insourcing through the recruitment of a dedicated professional individual -

- Lack of in-house management expertise, with the short-term nature of the project providing no opportunity to develop these;
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- Cost, timescales and management involved in the recruitment of staff not viable;
- Property portal procurement challenges;
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- Lack of corporate support from the Sale Agent in terms of market insight and research.
- The short-term, fixed nature of the project.

- 9. Selection of a contractor for the construction of Primary Care Surgeries at 1.Land to rear of 2-28 Belfast Road, London N16, and 2. The Portico, 34 Linscott Road, London E5. - Business case approval - Key Decision No FCR R.22**

RESOLVED

That approval be given to the procurement of a contractor using the EU Restricted Procedure for works at:

1. Land to Rear of 2- 28 Belfast Road, London N16 6UH – New Build

2.The Portico Building, 34 Linscott Road, London, E5 0RD - Repair and refurbishment of existing Grade II listed building and new build extension.

RELATED DECISIONS

City & Hackney CCG & Hackney Council – Capital Projects – Appointment of Professional Team & Procurement of Project Manager – Made by The Director of Strategic Property Services, dated 20th October 2019.

City & Hackney CCG & Hackney Council – Capital Projects – Appointment of Professional Team & Procurement of Cost Consultancy Services – Made by The Director of Strategic Property Services, dated 11th February 2020.

City & Hackney CCG & Hackney Council – Capital Projects – Appointment of Professional Team & Procurement of Design Team – Made by The Director of Strategic Property Services, dated 27th February 2020.

Primary Care Capital Projects - Cabinet Report. The Cabinet report is being considered by Cabinet at its sitting on 30 November 2020. (A link will be provided to the finalised Cabinet report and Cabinet decision when available).

The Project is reported to The Primary Care Capital Projects Governance Board which sits quarterly.

OPTIONS APPRAISAL AND BUSINESS CASE (REASONS FOR DECISION)

This report outlines the process for procuring a principal contractor for each site:

- 1.Land to Rear of 2- 28 Belfast Road, London N16 6UH - Cazonove Ward.
- 2.The Portico, 34 Linscott Road, London, E5 0RD - Lea Bridge Ward.

The Council wishes to develop both sites as Primary Care Surgeries and to procure a principal contractor to deliver each project.

ALTERNATIVE OPTIONS (CONSIDERED AND REJECTED)

Procuring through a Framework was considered. However, this was rejected due to concern about narrowing the market. There are a number of NHS frameworks open to local authority use and the professional team was appointed through the use of the NHS SBS framework. However when it comes to construction the frameworks tend to concentrate on larger contractors with the emphasis on large scale acute care contracts.

An Open Procedure was also rejected as it was felt that the burden placed on tenderers via this route would limit the response.

A Competitive Procedure with Negotiation as provided for in the Regulations was also rejected as more preparatory work and additional market testing would be required, taking longer than other standard procurement options at greater cost. This would, therefore, delay the start of the procurement. A negotiated process can still be moved to if the tenders received are over the cost plan.

The recommendation is to use the EU Restricted Procedure procurement route in order to give the widest range of suitable local contractors the opportunity to tender, and also provide a “framework” in which best value can be obtained in terms of both price and quality.

Please see exempt Appendix 2: Rider Levett Bucknall (RLB): Contractor Procurement Proposal which reviews in more detail all the options considered and their recommendation to proceed with the EU Restricted Procedure route.

10. Information Item - Addendum report The General Construction Consultancy framework (Framework 2) - (Item originally considered at Cabinet Procurement Committee - 9 November 2020 - Item 12 FCR R.15)

RESOLVED

That the report be noted..

Exempt Items Item 14-17

The exempt appendices detailed in Items 14-17 in relation to Item 6, 8, 9 and 10, above were noted and agreed without discussion.

Duration of meeting - 18.00hrs - 18:25hrs.