



UPDATE ON THE SELECTION OF A CONTRACTOR FOR THE CONSTRUCTION OF MIXED TENURE HOMES AT KINGS CRESCENT ESTATE - PHASES 3&4	
Key Decision No - CE S077	
CABINET PROCUREMENT AND INSOURCING COMMITTEE 11 APRIL 2022	CLASSIFICATION: Open with exempt appendices If exempt, the reason will be listed in the main body of this report. By Virtue of Paragraph(s) 3, Part 1 of schedule 12A of the Local Government Act 1972, appendix 1-3 is exempt because it contains information relating to the financial or business affairs of any particular person (including the authority holding the information) and it is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
WARD(S) AFFECTED Brownswood	
CABINET MEMBER Deputy Mayor Guy Nicholson	
KEY DECISION Yes REASON Spending	
GROUP DIRECTOR Ajman Ali, Group Director, Neighbourhoods and Housing	

1. CABINET MEMBER'S INTRODUCTION

- 1.1. At its meeting in July 2011 the Council's Cabinet agreed the Estate Regeneration Programme (ERP). The Cabinet report outlined the Council's approach to the development of a strategy for the delivery of high quality new build homes and improved living standards across a number of Council owned estates in the Borough. The ERP was updated and approved by Cabinet in March 2014 and again in October 2015. A further update was more recently provided and approved by Cabinet in April
- 1.2. In approving the ERP, the Cabinet agreed to a portfolio approach to housing regeneration to counter the lack of Government grant available to build much needed new Council homes. This approach enables the Council to combine the development value of schemes which have the potential to generate a surplus with those that require a net investment. The value created by the outright sale and shared ownership homes to be delivered at Kings Crescent will help to fund the delivery of new social rented Council homes within the scheme, the refurbishment of existing homes at Kings Crescent, the new community facilities on the estate and make a contribution to genuinely affordable Council housing delivery across the ERP.
- 1.3. Through this self-funded, self-delivery model the Council has already built 115 high quality Council homes for social rent and shared ownership in the first phases of the regeneration at Kings Crescent, alongside major improvements to more than 100 existing homes and communal spaces on the estate, all this achieved by working in close partnership with residents. The recommendations in section 3, if approved, will complete the transformation of the estate and deliver the remaining new homes for Kings Crescent and residents of the estate.
- 1.4. Across all of its new housing developments the Council is committed to maximising the delivery of genuinely affordable Council homes; and I am delighted that, following design revisions and the new homes funding secured from the Mayor of London, the Council can now provide an additional 28 Council homes for social rent, bringing the total number of new Council homes on Kings Crescent to 107 overall, and ensuring the external refurbishment of 275 existing homes on the estate.

2. GROUP DIRECTOR'S INTRODUCTION

- 2.1. The Estate Regeneration Programme is based on the delivery of mixed tenure developments. Based on current market conditions the Programme is forecast to be self-funding, but each individual scheme is subject to robust financial viability testing. This report seeks authority to enter into contract with a preferred contractor to undertake the main works for Kings Crescent Phases 3&4, which will complete the estate regeneration by the provision of 28 homes for social rent, 75 homes for shared ownership and 116 homes for private

sale, along with a community facility, commercial and workspace unit, the external refurbishment of 174 existing homes, and associated public realm and landscaping works.

- 2.2. In line with the provisions of the Contract Standing Orders, the award of contract was presented to the Cabinet Procurement and Insourcing Committee (CPIC) for consideration and approval at its 6 December 2021 meeting. The recommendation was made on the basis of both cost and quality.
- 2.3. Since the approval, a Section 20 leaseholder consultation process has been completed. However, as set out below, as a result of significant and rapid changes in the construction industry, a contract based upon the Best and Final Offer submission dated 30 September 2021 submitted by the selected bidder, could not be entered into by the Council and the bidder.
- 2.4. Following legal advice, the Council re-opened the Invitation to Submit Final Tenders stage of the process, to allow the bidders who submitted a final offer in September 2021 the opportunity to reprice their submission.
- 2.5. Due to the prevailing volatile and inflationary market conditions, it is considered prudent to secure a contract with the selected bidder in the shortest period following completion of the re-opened Invitation to Submit Final Tenders stage and the necessary new Section 20 leaseholder consultation. To that effect, this report seeks approval to delegate authority to award and enter into the contract as set out below at Section 3.1.

3. RECOMMENDATION(S)

Cabinet Procurement and Insourcing Committee is recommended:

- 3.1. **To delegate the approval of the Contract Award for Kings Crescent Phases 3&4 to the Group Director, Climate, Homes and Economy in consultation with the Group Director, Finance and Corporate Resources.**

4. RELATED DECISIONS

- 4.1. At its meeting of 18 July 2011 the Council's Cabinet agreed the Estate Regeneration Programme. The Programme was updated and approved by Cabinet in March 2014 and again in October 2015. A further update was provided and approved by Cabinet in April 2019.
- 4.2. At its meeting on 18 July 2016 the Council's Cabinet agreed the Sales and Marketing Framework, authorising the Director of Regeneration to implement the Sales and Marketing Framework in relation to shared ownership and outright sale disposals for both the Estate Regeneration and Housing Supply Programmes, and authorising the Director of Strategic Property and the

Director of Regeneration to dispose of leasehold and freehold interests in the shared ownership and outright sale homes developed or to be developed as part of those Programmes.

- 4.3. An outline application for the refurbishment of existing buildings and the erection of new buildings ranging from four to 12 storeys equating to a maximum of 765 residential dwellings, retail, café/restaurant, community centre, and a multi-use games area was given Planning Consent on 26 November 2013 (Planning Ref 2013/1128). Phases 1&2 comprised 79 social rent, 36 shared ownership and 158 outright sale new build homes, the external refurbishment of 101 existing homes and 629m² of retail/cafe/restaurant space together with associated landscaping. Phases 3&4 were granted in outline with all matters reserved apart from an estate access road. The outline element provided parameters for a series of new blocks, external refurbishment of 174 existing homes and a further 500 m² retail/cafe/restaurant/leisure space and 240m² of community centre floorspace.
- 4.4. A detailed planning application for Phases 3&4 received full consent in July 2021. The consent enables the Council to increase the amount of housing to be delivered in comparison to the masterplan and set down in the Overarching Estate Regeneration Programme Unilateral Undertaking (UU) which was agreed by the Planning Sub-Committee in April 2014.
- 4.5. The masterplan scheme front-loaded the provision of 79 social rent homes for all phases. The consented mix for Phases 3&4 now consists of 28 homes for social rent, 75 shared ownership and 116 outright sale homes. The consented scheme for 219 homes represents an increase of two homes, and the overall mix of homes has been improved to include 28 additional social rent homes. Overall, there are four fewer shared ownership homes and 22 fewer outright sale homes than the masterplan.
- 4.6. The Council's (then) Cabinet Procurement Committee (CPC) approved the business case for the selection of a contractor for the construction of mixed tenure housing at Kings Crescent Phases 3&4 on 8 July 2019.
- 4.7. At its meeting on 6 December 2021 Cabinet Procurement and Insourcing Committee (CPIC) approved the proposed selection of a bidder to construct the scheme, who had submitted the most economically advantageous tender.

5. OPTIONS APPRAISAL

- 5.1. This report outlines the process for procuring a main contractor using a Competitive Procedure with Negotiation procurement route, and entering into a single stage design and build contract for Kings Crescent Phases 3&4. The Council wishes to continue the phased development of Kings Crescent as an exemplary housing, community and commercial scheme and to procure a

main contractor to deliver the project. The contractor will be appointed to take the project forward from RIBA stage 3+.

- 5.2. The parcel of land to be developed at the Kings Crescent site has been cleared since the last demolition in 2013. The development of the site represents an opportunity to complete the regeneration of Kings Crescent which, apart from the introduction of new-build mixed tenure homes, also provides for refurbishment of existing blocks, improved amenity space, public realm improvements, replacement community space, new commercial space and new office/workspace.
- 5.3. Kings Crescent Phases 3&4 comprises the following:
- 116 outright sale homes
 - 75 shared ownership homes
 - 28 social rent homes
 - 2 Refurbishment works to existing blocks (174 homes)
 - A new community facility
 - 480m² of retail commercial space
 - 500m² of office/workspace
 - Associated public realm and landscape works including improved facilities for play and recreation.
- 5.4. In addition to the works described in 5.1.3 the Council has incorporated a general repairs, maintenance and component renewal to the package of works in line with the provisions of the Housing Asset Management Strategy. This includes external works, works to communal areas and works to specialist mechanical and electrical services as identified by condition surveys, to be undertaken prior to works commencing. The budget for this work, allowed for in the Housing Asset Management Strategy, will be apportioned to this Regeneration scheme. This ensures a joined-up approach to capital investment, reduces overall disruption to residents and should offer better value for money compared to undertaking works separately.
- 5.5. Bidders were required to offer a single contract price for building out the whole of the scheme. A period of negotiation, based upon prescribed criteria defined by Hackney Council, was built into the procurement process. The form of contract to be used will be a JCT Design and Build Contract with Hackney Council amendments.
- 5.6. A construction cost plan was prepared for the Council by its Quantity Surveyor, setting out the estimated costs of construction. Please refer to Exempt Appendix 1.
- 5.7. The estimated costs were based on RIBA Stage 3 (planning application stage) proposals. A pre-tender stage estimate was based on developed designs (Stage 3+) and issued in September 2019. The tendered construction costs are set out in the Tender Report at (exempt) Appendix 1.

- 5.8. The cost of the scheme will be funded from sales receipts of the outright sale properties, the first tranche equity sales of the shared ownership properties, and GLA funding, as well as the future rental income from the social rented and shared ownership properties. In line with the Programme's portfolio approach, the projected scheme surplus will be used to cross-subsidise the Programme.
- 5.9. It is recommended that the Council will act as developer for the outright sale and shared ownership homes, marketing and disposing of them in line with the Council's approved Sales and Marketing Framework.
- 5.10. With 116 outright sale properties currently valued at £68m, this exposes the scheme, Programme and the HRA to an increased financial risk. In addition, the 75 shared ownership homes are currently valued at £43m, with forecast first tranche equity sales of £11m. To spread this sales risk it is intended to phase the release of the outright sale units.
- 5.11. A market review and marketing strategy will be produced for each sales phase, with authority to proceed to market properties delegated to the Group Director of the Chief Executive's Directorate and Group Director of Finance and Corporate Resources.
- 5.12. At current market values only a proportion of the outright sale homes would be eligible for buyers under the Government's Help to Buy Shared Equity scheme. This scheme has been significantly beneficial to sales progress with recent schemes and therefore is a consideration. Furthermore, it is not known at present whether the Government will continue funding Help to Buy after 2023.
- 5.13. Should sales not achieve the forecast values, or in the case of reservations being slower than expected, alternative strategies (as set out in the Risk Section below and which are not included in the current Sales and Marketing Framework) will need to be considered to maintain the viability of the scheme, Programme and HRA, some of which may require Cabinet approval.

6. PROJECT PROGRESS

6.1. Development since CPIC approval

Section 20 Notices to leaseholders for Major Works

6.1.1 Project progress regarding the following items is set out at Section 6 of the report approved at CPIC in December 2021 (Key Decision NH R53):

- Section 20 consultation for major works;
- Council buybacks;

- The procurement process from the issue of Invitation to Participate to the evaluation following Best and Final offer stage;
- Scheme design stages;
- Planning consent and amendments;
- Sales and marketing; and,
- Stakeholder consultation.

GLA grant funding

6.1.2 The intention was to achieve a start on site for the main contract works in March 2022 and to draw down GLA grant funding within the 2021/22 year. However, this has not been possible due to the circumstances outlined in this report. Discussions are underway with the GLA in respect of reprofiling the grant funding to 2022/23 or seeking alternative funding. These discussions will need to be concluded before the contract can be entered into.

Project Risks

6.1.3 The cost of the construction works and the income received from the sale of the shared ownership and outright sale homes are the major elements of the overall project finances, and factors relating to these are therefore the key risks that need to be mitigated and managed throughout the project.

Risk	Likelihood	Impact	Overall	Action to avoid or mitigate risk
	L – Low; M – Medium; H - High			
Financial/Programme: Contractor going into liquidation during construction.	L	H	M	Initial finance checks on all participating bidders have been carried out as part of the tender process. The requirements for a Parent Company Guarantee have been included within the contract particulars.
Financial/Programme: Covid-19 leading to programme delays.	L	M	M	The necessary Covid guidelines have been incorporated in the contractor's set-up and evaluated as part of their quality response.
Financial:	M	M	M	Sales valuations, provided by an

<p>Projected market values are not achieved due to a downward movement in the overall or local market.</p>			<p>independent surveyor and used for the financial appraisal. These have been reviewed and endorsed by the Council's Sales and Marketing team.</p> <p>Value increases are not assumed within the financial appraisal, but due to the anticipated length of the construction programme there is potential for the market to strengthen before outright sales homes are released.</p> <p>The scheme's 116 outright sale properties are valued at £68m, exposing the scheme, programme and HRA to financial risk. In addition, the 75 shared ownership properties are valued at £43m, with a forecast first tranche equity sales value of £11m.</p> <p>To spread the sales risk it is intended to phase the release of the outright sales properties.</p> <p>A market review and market strategy will be produced for each phase, with authority to proceed to market properties delegated to the Group Director,</p>
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				Chief Executive's directorate and Group Director of Finance and Corporate Services.
<p>Financial: Unable to sell all of the outright sale homes and generate the expected sales values.</p>	L	H	M	<p>There is an option to phase the sale of the outright sales homes through the construction phasing. The sales and marketing strategy also has a series of exit strategies to assist in this scenario:</p> <ul style="list-style-type: none"> • Sell some homes to the Council's Housing Company for letting as Hackney Living Rent (HLR) or Market Rent homes. • Convert some of the outright sale homes to shared ownership (subject to demand). • Sell some units to an individual investor or private rented sector operator.

<p>Financial: Unable to sell all of the shared ownership homes and generate the expected or required income for the Council.</p>	L	M	M	<p>Shared ownership could be converted to a rental product including Hackney Living Rent should the property market not be suitable for large scale disposals.</p>
<p>Financial/Reputational: Quality of the scheme does not meet expectations resulting in reputational damage and or increased cost to the Council.</p>	L	H	M	<p>Detailed tender documentation has been provided to bidders to ensure that the proposals are delivered as designed and specified.</p> <p>The preferred bidder has confirmed that it will retain all of the design practices. Their team has produced a high quality design proposal and understands the Council's vision for the project. Their retention will ensure the continuity of project knowledge and helps to ensure the quality of the design is carried through into delivery.</p> <p>During the delivery stage, the Employer's Agent team, including the Site Inspectors and the Clerk of Works will carry out regular site inspections to ensure work is completed in line with the specification documents.</p>

				Stringent Key Performance Indicators (KPIs), monitoring the quality of delivery, have been included within the contract. See 9.2.1.
Programme/Financial: Complexity of site or construction lead to increased cost and project delays	M	M	M	<p>Detailed tender documentation including extensive survey and site investigation information has been provided.</p> <p>A capped price: provisional sums for utility connections and diversions for most elements of the tender have been secured.</p> <p>The recommended bidder has demonstrated a thorough understanding of project risks, complexities and constraints as part of their tender submission, and in particular their risk assessment and programme.</p>
Programme/Financial: Option to tax the blocks containing the commercial space, particularly the B1 workspace, restricts the ability to attract start-ups, risking the lettability of the space.	M	L	L	Model the impact of reducing rents to accommodate the VAT potentially chargeable on the B1 workspace.

Programme/Financial: Increasingly high construction price inflation prohibits the selected bidder from committing to a tendered price during the period between selection and contract signature.	M	H	H	Delegated authority from CPIC will provide for the contract to be entered into promptly and will allow flexibility to select the second tenderer if necessary.
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7. SUSTAINABILITY ISSUES

7.1. Procuring Green

7.1.1 The scheme will provide high quality housing, workspace, retail, and community space, as well as new and improved landscaping and public realm, enhancing the ecological value and biodiversity of the project. The scheme also aligns with the Council's Transport Strategy and TfL's Healthy Streets Indicators, aiming to prioritise walking and cycling, providing safe environments with opportunities for play, shade and shelter, and opportunities to rest in a clean environment

7.1.2 The energy strategy meets the London Plan and Hackney Local Plan policy standards on energy by:

- Reduction in carbon emissions against Building Regulations Part L 2013 by 37.9% for residential, 26.7% for non-domestic (36.5% combined) achieved by:
 - Enhanced U-values of walls, floors, roofs and windows;
 - Improved air tightness through reduced air permeability rates;
 - Reduced need for artificial lighting;
 - Incorporation of low energy light fittings;
 - Incorporation of mechanical heat and ventilation recovery system (MHVRs);
 - Incorporation of advanced lighting and space conditioning controls;
 - Incorporation of heat and electricity consumption devices for individual homes;
 - Minimising internal heat generation through energy efficient design;
 - Reducing the amount of heat entering the buildings during summer through orientation of the glazing, external shading and the provision of internal blinds;
 - Consideration of the carbon dioxide emissions associated with gas-boilers;
 - Supplying energy efficiently by connecting to the estate-wide combined heat and power (CHP) system which will enable potential link-up with district heat network;

- Provision of photovoltaic panels (PVs); and
- Achievement of BREEAM 'Excellent' rating on the community and commercial spaces.

7.1.3 The London Plan and Hackney Planning Policy standards on sustainability are achieved by:

- Effective Resource Management
 - Re-use of vacant and developed land with an effective layout and scale;
 - Efficient design of the massing and internal layouts;
 - Enhanced ecology and biodiversity with associated landscaping;
 - Use of responsibly sourced materials with low embodied carbon and
 - Specification of water efficient fittings, limiting water consumption.
- Adaptation to Climate Change
 - Provision of passive and active design to address overheating and demand for active cooling;
 - Incorporation of Sustainable Urban Drainage Systems measures to address future risks of flooding.
- Pollution Management
 - Adoption of a Site Waste Management Plan to reduce waste and pollution during the construction period;
 - Adoption of suitable noise mitigation strategies including the provision of refuge areas for residents.

7.1.4 The scheme proposals have been designed and coordinated to connect into the existing energy centre completed in Phases 1&2. The CHP system and high efficiency boilers have been designed to take the load from connection to Phases 3&4 when designed and constructed.

7.1.5 The new-build element of the scheme will be car-free with substantial provision for cycle parking, a car club space and electric vehicle charging points.

7.1.6 The scheme will deliver homes which meet current regulatory requirements relating to sustainability, including Building Regulations and the London Mayor's Housing Supplementary Planning Guidance.

7.1.7 During the pre-commencement phase of the building contract, the site will be tested for contamination and remediated appropriately.

7.1.8 The recycling of construction waste and the development of a Site Waste Management Plan are mandatory. The contractor will be obligated to minimise construction related disruption, for example dust nuisance to residents and neighbouring buildings.

7.2. Procuring for a Better Society

- 7.2.1 The appointed contractor will be required to provide local training and employment opportunities, for which a number of KPIs have been established. KPIs will be monitored regularly at site meetings. The contractor and Employer's Agent will provide information that will form the basis of each score, which will be documented at each meeting.
- 7.2.2 The appointed main works contractor will provide a draft Employment and Skills Plan to the Council for approval prior to works commencing on site. They will also prepare and implement an active programme for recruitment in order to achieve a local labour target of 25%. Under the terms of the contract the contractor must employ at least one apprentice per £2m of construction contract value, which reflects the Unilateral Undertaking requirement, and as previously agreed by CPC.
- 7.2.3 As part of the Unilateral Undertaking a sum of £101,234 will be paid as a planning obligation to Hackney Works, as a contribution towards the cost of training and supporting out of work residents into jobs during the construction of the development. A further sum of £55,558 will be paid as a contribution towards facilitating local people into end use ('operational phase') jobs provided through the operation of the commercial floorspace.

7.3. Procuring Fair Delivery

- 7.3.1 Tender documents issued to each bidder were identical, giving them equal opportunity to review and respond. Throughout the tender process bidders submitted clarification questions. Where a clarification was not commercially sensitive, the clarification and the Council's response was anonymised and issued to all bidders.
- 7.3.2 Each bidder was asked to comply with the Council's requirements with regard to the specification, local labour, employment and skills, and Fair Payment Charter. The preferred bidder has agreed to the Council's targets in these areas, including payment of the London Living Wage to all employees - a commitment also extended to their sub-contractor supply chain - and cooperation with Hackney Works to promote diversity in their workforce.
- 7.3.3 KPIs have been agreed with the contractor and will be scored at agreed intervals during the construction period. More information on KPIs can be found in section 9.2.1 below.

7.4. Equality Impact Assessment and Equality Issues

- 7.4.1 The Council is committed to building new homes that are adaptable to the varying needs of occupiers over time and that will enable people to live independently in their homes for longer.

7.4.2 22 homes (10% of the new build homes) are designed to wheelchair adapted standard, as set out in Part M4(3) of the Building Regulations. All other homes have been designed to be wheelchair accessible, meeting the requirements set out in Part M(2).

8. PROCUREMENT PROCESS & EVALUATION

8.1 Initial Tender Process

8.1.1 The procurement route undertaken for the new build and refurbishment works was via an OJEU Competitive Procedure with Negotiation. This comprised:

- (i) Selection Questionnaire
- (ii) Invitation to Participate.

8.1.2 The Evaluation Panel for the tender process comprised:

- Project Manager, Regeneration (LBH)
- Employer's Agent (acting on behalf of the Council)
- Quantity Surveyor/Cost Consultant
- Head of Regeneration Strategic Design (LBH)
- Resident Representatives (for selected quality questions).

8.1.3 The procurement process was managed and coordinated by members of the Procurement team.

(i) Selection Questionnaire (PAS 91)

8.1.4 The PAS 91 was published on the Council's e-tendering portal, ProContract on 3 July 2020, inviting interested contractors to express an interest in tendering for the works contract at Kings Crescent, by responding to the PAS 91.

8.1.5 Six responses were received and evaluated.

8.1.6 All submissions provided responses to the Pass/Fail sections, and the project specific/qualitative questions appropriately. Their responses were evaluated on the following criteria:

- The contractor's eligibility to bid;
- Financial and economic capacity to undertake the contract;
- Experience in the delivery of high quality development including, external refurbishments and high quality landscape and public realm;
- Experience of working with key stakeholders and existing communities in urban and constrained environments;
- Their track record of good construction practices; and
- Their track record of client and customer satisfaction including defects management.

8.1.7 On conclusion of the evaluation of the PAS 91 submissions, three bidders were invited to participate in the tender.

(ii) Invitation to Participate

8.1.8 The Invitation to Participate (ITP) documents were published on the e-tendering portal, ProContract on 12 October 2020. Contractors were originally required to submit bids by 25 January 2021. An extension was granted upon requests, until a final tender deadline was issued for 8 February 2021.

8.1.9 All three invited contractors submitted tender responses.

8.1.10 As previously agreed by CPC, the tenders were evaluated on the basis of 30% quality and 70% for price.

Tender evaluation

8.1.11 Following submission of their bids, clarifications on the submissions were raised with any bidders via ProContract, by the EA and Quantity Surveyor, to clarify any errors in the tenders submitted or any apparent inconsistencies prior to the evaluation process.

Quality Evaluation - 30%

8.1.12 For the Quality element, bidders were required to set out eight Method Statements addressing the following quality criteria:

- Programme;
- Project delivery;
- Project risks;
- Site logistics;
- Design team and integrity of design;
- Community engagement;
- Local employment, training, and supply chain; and
- Added value.

8.1.13 A commitment to paying the London Living Wage was a pass/fail criterion.

8.1.14 The evaluators also undertook site visits to two completed projects put forward by each bidder.

Price Evaluation - 70%

8.1.15 Tender prices were scored using the published pricing evaluation methodology; whereby the lowest priced bid achieves the highest score of 70%, with all other prices scored relative to the highest prices.

- 8.1.16 The prices were also assessed against the pre-tender estimates that had been prepared by the project QS.
- 8.1.17 All of the tenders received exceeded the pre-tender cost plan, ranging between 5% and 14%, and were thereby not compliant with the ITP on the basis of the financial key performance indicators.
- 8.1.18 In addition, the three bids included provisional allowances related to ground conditions, utility connections and diversions, and did not comply with the requirement for an all inclusive fixed price for the delivery of the scheme.
- 8.1.19 A summary of the quality and price scores for each tender, and the respective total overall scores are set out in the table below:

	Quality (30%)	Price (70%)	Total (100%)
Bidder A	19.20	70.00	89.20
Bidder B	22.17	69.23	91.40
Bidder C	19.53	63.32	82.85

- 8.1.20 The Council did not receive any bids within its budget, or without caveats to the price.
- 8.1.21 The Council wrote to bidders on 9 April 2021 informing them that, under the terms of the Invitation to Participate, that the Council was able to exercise its right to proceed to the negotiation stage.

8.2 Negotiated Stage

- 8.2.1 On 22 April 2021, the bidders were informed of the next steps in the negotiation, as well as the main issues and project areas for discussion and review.
- 8.2.2 One of the three contractors confirmed that they did not wish to proceed to participate in the negotiation process after receiving information on the process.

Negotiation

- 8.2.3 The two remaining bidders participated in six rounds of negotiation meetings between 6 May 2021 and 5 August 2021.
- 8.2.4 A schedule of cost saving proposals was agreed with the respective bidders.

8.2.5 During the negotiation phase meetings, the risks associated with compliance with the anticipated Fire Safety Bill were considered in depth. The Council considered the risks of alternative routes to compliance with Building Regulations for fire safety, and opted to amend the strategy and confirmed the change in requirements with the respective bidders.

Invitation to Submit Final Tenders (ISFT)

8.2.6 The Council sought to conclude the tender process by inviting contractors' final tenders for including:

- The value engineering proposals agreed with respective bidders;
- The revised fire strategy requirement to comply with forthcoming fire safety and Building Regulations requirements;
- Inclusion of the Council's requirements for use of Building Information Modelling processes.

8.2.7 The ISFT was published on ProContract on 17 August 2021.

8.2.8 Two tenders were received on 30 September 2021.

8.2.9 The Evaluation Panel for the ISFT submissions tender comprised the same evaluators as that for the original ITP (see 8.1.2), apart from resident representatives. The tenders were awarded in accordance with the original Invitation to Tender award criteria, apart from the additional criterion of compliance with the revised fire strategy.

Quality Evaluation - 30%

8.2.10 As for the initial Invitation to Tender, for the Quality element of the ISFT, bidders were required to set out eight Method Statements addressing the following quality criteria:

- Programme;
- Project risks;
- Site logistics;
- Design team and design integrity;
- Community engagement;
- Local employment, training and supply chain; and
- Added value.
- Commitment to paying the London Living Wage (pass/fail criterion).

8.2.11 Site visits were undertaken to two completed projects of the respective bidders, however the findings were not taken into account.

8.2.12 Quality responses were evaluated by the panel and scored based on the tender evaluation methodology set out in the ISFT. The moderation of quality scores was concluded at a moderation meeting on 12 October 2021.

Price Evaluation - 70%

8.2.13 Fixed price quotes for utility connections and diversions were not provided by bidders.

8.2.14 As recommended by the project Employer's Agent, bidders were therefore instructed to include a provisional sum defined by the project's Quantity Surveyor (QS) for this element within their tender proposal, but were required to submit fixed prices for all other elements of the tender.

8.2.15 The prices were scored using the published pricing evaluation methodology: whereby the lowest priced bid achieves the highest score of 70%, with the other price scored relatively to the highest scored price. Prices were also assessed against the pre-tender estimates prepared by the project QS.

8.2.16 A summary of the quality and price scores for each tender, and the respective total overall scores are set out in the table below:

	Quality (30%)	Price (70%)	Total (100%)
Bidder A	25.59	70.00	95.59
Bidder B	26.73	67.95	94.68

8.3 Update since the project was presented to CPIC (December 2021):

8.3.1 Originally the preferred bidder was selected using the award criteria and scoring methodology set out in the ISFT. Bidder A's bid achieved the highest score overall in quality and price combined. Their responses to the tender demonstrated an excellent understanding of the project's constraints and risks; a good approach to health and safety; minimising disruption; communicating well with stakeholders; and providing employment and skills opportunities. As such, their bid was deemed the most economically advantageous tender (MEAT).

8.3.2 The requirement for a parent company guarantee was included in the proposed contract to mitigate the risk of Bidder A failing to perform contractual obligations or becoming insolvent. This is a typical requirement for new build development projects.

8.3.3 A full analysis of the bids is included in exempt Appendices 1 and 2.

- 8.3.4 It was recommended that the contract for the main works at Kings Crescent was to be awarded to Bidder A, commencing on site in Summer 2022, with a projected completion date of Summer 2025. The award of contract was to be subject to the successful completion of the Section 20 consultation period.
- 8.3.5 The Standstill period expired in January 2022. Simultaneously the Section 20 consultation process was implemented, ending on 20 January 2022. However, during a period of pre-contract discussion, Bidder A confirmed their inability to commit to their tender price submitted as part of the BAFO process.
- 8.3.6 Acting on legal advice, Bidder A was requested to confirm their position. In March 2022 Bidder A confirmed that they were not able to enter into a contract based upon their BAFO submission.
- 8.3.7 On further legal advice, Bidder B was subsequently asked if their BAFO tender would be held until August 2022. Bidder B confirmed that they could not do so
- 8.3.8 Following confirmation that neither bidder would enter contract at the price agreed in the BAFO submission, the Invitation to Submit Final Tenders (ISFT) has been re-issued, which will allow the bidders to re-price their submissions valid to 31 August 2022. All costs associated with delivery of the project and inflationary changes are to be incorporated within the re-priced BAFO submission.
- 8.3.9 The ISFT has been re-opened on the basis that:
- The existing quality scores will be added to the score for the final resubmitted price to calculate an aggregated overall score (i.e. quality scoring will not be reopened);
 - The agreed contract terms and conditions are to remain unchanged; and,
 - The bidders are required to hold their tendered price until 31 August 2022 to enable the completion of the new Section 20 leaseholder consultation process and for the award and entry into the contract.

9. CONTRACT MANAGEMENT ARRANGEMENTS

9.1 Resources and Project Management (Roles and Responsibilities):

- 9.1.1 The necessary resources and skills to ensure that the project will be successfully managed have been identified and are either available within the Council or have been procured externally.
- 9.1.2 The project will be managed by a Project Manager in Regeneration who will be overseen by the Estate Regeneration Head of Service. The project delivery team is:

- Project Sponsor - Director, Regeneration
- Project Head of Service – Head of Estate Regeneration Programme
- Project Lead – Project Manager, Estate Regeneration Programme
- Design Advice – Strategic Design Team
- Employer’s Agent
- Cost consultants/Quantity Surveyor.

9.1.3 During the pre-construction and construction periods, the Kings Crescent Phases 3&4 project will be managed on a day-to-day basis by the Project Manager in the Council’s Estate Regeneration team. The building contract will be administered by the Council’s Employer’s Agent. The Employer’s Agent and Quantity Surveyor team will carry out monthly valuations of works completed on site and certify the value of these works. During the Pre-Construction Phase, the Employer’s Agent will attend contract Design Team Meetings, which will be programmed by the contractor, but are likely to take place at least monthly (or as required) in order to meet the contract programme.

9.1.4 The contractor’s project manager and construction contract manager will report monthly to the Council’s Project Manager, with updates provided regularly to the Council’s Director, Regeneration as project sponsor. The Employer’s Agent will also act as Clerk of Works to ensure that a comprehensive monitoring service is provided to the Council, to make sure that the quality of workmanship and finishes of the homes and public realm are delivered as intended.

9.1.5 It was anticipated that the start on site of Kings Crescent Phases 3&4 would occur in Summer 2022. A revised schedule of milestones and dates reflecting the reopening of the tender is summarised in the table below. This timeline is subject to the discharge of pre-commencement planning conditions and the successful completion of the new Section 20 Stage 2 consultation.

Key milestones and dates	
Report to CPIC seeking approval to delegate the Award of the Contract for main works	11 April 2022
Return of re-priced best and final tender	14 April 2022
Standstill letter issued	3 May 2022

Standstill period	3 - 13 May 2022
Section 20 notices issued	16 May 2022
Section 20 consultation period ends	17 June 2022
Proposed contract signing	23 June 2022
Proposed start on site (new build construction)	Winter 2022/23
Practical Completion	Winter 2025/26

9.2 Key Performance Indicators

9.2.1 The key performance indicators (KPIs) that have been included in the tender documentation and on which the contractor will be assessed, are as set out in the table below:

KPI subject	Measurement	Monitoring method & info responsibility	Metric
Programme	Total days ahead or delayed	Contractor to update the programme on a monthly basis and provide reasons for delays. EA to assess the Contractor report and provide own final monthly review.	Nr. of days
	Accuracy, timelessness, and quality of Contractor's programme/ delay reporting	EA to assess monthly	Qualitative assessment
Cost	Divergence between original cumulative forecast and last valuation.	Contractor to make applications. EA to report monthly.	£ difference on total gross value

	Divergence between application and agreed valuation (or Pay Less Notice amount)	EA to value and report monthly	£ difference on total gross value
	Divergence between last monthly forecast and last valuation	Contractor to make applications. EA to report monthly.	£ difference on total gross value
Change Control	Contractor proposed changes – Quality and timeliness design, time and cost information	EA to assess monthly	Qualitative assessment
	Employer proposed changes – Responsiveness of design and cost information (including detail and breakdowns)	EA to assess monthly	Qualitative assessment
Quality of Construction	Assessment of site inspector report – seriousness of quality concerns identified.	EA to assess monthly	Qualitative assessment
	Assessment of Contractor response to remediating site inspector concerns	EA to assess monthly	Qualitative assessment
	Defects – number remedied within timeframes	Contractor and LBH to provide information to EA for monitoring and report monthly from practical completion	Nr of defects
Design	Timeliness of general design information release to allow sufficient time for Employer review	Contractor to report days early or delay from information release schedule targets. EA to check and report	Qualitative assessment

Health and Safety	Qualitative assessment of Contractor H&S approach including site assessment by PD and response to H&S concerns including accidents and near misses	Contractor to provide own H&S assessments and information. EA and PD to assess	Qualitative assessment
Waste Management	Percentage of waste diverted from landfill	EA to assess monthly	% diverted
	Initiatives undertaken to minimise waste arising from deliveries to site	EA to assess monthly	Qualitative assessment
Employment and Training	Percentage of local labour (aiming for 30%)	Contractor to provide monthly labour return	Target met/ exceeded
	Number of apprentices	Contractor to provide monthly labour return	Target met/ exceeded by what percentage
	Confirmation of London Living Wage	Contractor to report monthly on checks and confirm London Living Wage compliance	Yes/ No
	Quality of engagement and communication with Hackney works	Contractor and Hackney Works (through LBH Project Officer) to report. EA to assess	Qualitative assessment
Neighbour Satisfaction	Number of complaints, and quality of response	Contractor to provide information. EA to assess monthly	Qualitative assessment
	Initiatives undertaken by the Contractor to ensure engagement and communication with neighbours.	Contractor to provide information. EA to assess monthly	Qualitative assessments

Supply Chain Management	Fair payment of subcontractors	Days behind or ahead of payment schedule and total value of arrears	Qualitative assessments
	Fair payment of subcontractors	Percentage of contractors paid on or before time provided each month	Qualitative assessment

10. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES

- 10.1 Kings Crescent Phases 3&4 is the second part of the London Borough of Hackney's regeneration of the southern section of the estate. There was an earlier redevelopment to the western end of the estate by Circle, in the 1990s. The first phase of estate regeneration, Phases 1&2, delivered 273 new homes and refurbished 101 existing homes. The contract award for that phase of development was the first of the new phase of Hackney Regeneration and followed the 'Hackney Model' contract structure. This transferred the sales risk to the developer, and included an overage agreement. As a result of rising sales values, the scheme benefited from a sales uplift, shared 50/50 with the developer under the terms of the overage agreement. These additional funds, combined with a contingency underspend, have been transferred to Kings Crescent Phases 3&4 to fund additional social housing.
- 10.2 Kings Crescent Phases 3&4 will deliver 28 homes for social rent, 75 homes for shared ownership and 116 homes for outright sale, along with a community facility, commercial and workspace unit, the external refurbishment of 174 homes, and associated public realm and landscaping works. The original planning permission for Phases 3&4 did not include homes for social rent, however the transfer of a 'surplus' from Phases 1&2, combined with affordable housing grant from the GLA, and the use of offsite affordable housing planning contributions (Section 106 funds) has enabled the provision of additional homes for social rent.
- 10.3 The original appraisal structure assumed the use of the 'Hackney Model' including a development agreement with a development partner, similar to Phases 1&2. However, since Phases 1&2 the Council has developed its own in-house sales team, and the housing and construction market has changed, such that the development partners were taking less risk on future increases in house prices, and therefore it was beneficial for the Council to take on the sales risk in consideration for the allowance for 'developers profits', typically 25%. Consequently the appraisal included an allowance for sales contingency.

- 10.4 As the scheme design and cost plan was developed, the viability of the scheme was challenging, mainly due to the refurbishment of the existing housing, and the commercial and community spaces being developed in the scheme. In addition, there were some design features that increased scheme costs above the appraisal assumptions. To mitigate these additional costs, the sales contingency was reviewed in line with increases in sales values and the realisation of the sales values achieved in Phases 1&2.
- 10.5 The pre-tender estimate included an estimated tender price as set out in exempt Appendix 1. The scheme has other development costs and sales receipts from outright sale and shared ownership disposals. The scheme also received other funding, as set out in paragraph 10.2. Including future rental income, the scheme is estimated to deliver a positive Net Present Value (NPV). The original tenders, returned in February 2021, were above the pre-tender estimate and work was done to reduce cost through value engineering, but also to accommodate the changing fire safety strategy within the design and include Building Information Modelling. Whilst it was recognised the pre-tender estimate had not been achieved from the value engineering, the scheme could be delivered within the project budget, including contingencies.
- 10.6 The scheme was resubmitted to the contractors for Best and Final Offers which were returned in August 2021. During this time, Brexit and Covid had impacted on the construction market and the Council was aware of tender price increases of 10-20% being received by both other Councils and other Council departments.
- 10.7 Further Finance comments are set out in exempt Appendix 3.

11. COMMENTS OF THE DIRECTOR OF LEGAL, DEMOCRATIC AND ELECTORAL SERVICES

- 11.1 On 8 July 2019 Cabinet Procurement Committee agreed a Business Case in respect of a tender process for the selection of a contractor to undertake the works at the Kings Crescent Phases 3&4 development. Therefore in accordance with Contract Standing Order 2.7.10 the decision to award the contract will be with the Cabinet Procurement and Insourcing Committee.
- 11.2 Paragraph 2.2 ii) of the Cabinet Procedure Rules states that “If the Elected Mayor delegates functions to a Committee of the Cabinet, unless they direct otherwise, the Committee may delegate further to an officer”. Cabinet Procurement and Insourcing Committee, as a committee of the Cabinet, is therefore permitted to delegate to an officer the decision to agree the award of the main works contract in this Report.
- 11.3 The Council is using the Competitive Procedure with Negotiation under Regulation 29 of the Public Contracts Regulations 2015 to make the award of

contract for the main works, and details of the procurement process being undertaken are set out in this Report.

12. COMMENTS OF THE PROCUREMENT CATEGORY LEAD

- 12.1 This procurement was completed under the Competitive Procedure with Negotiation, and it has been supported by internal and external legal teams.
- 12.2 Due to the market conditions the Council was unable to enter in contract with the preferred bidder. The market is finding it difficult to hold pricing within its supply chain and prices remain volatile. The risk of delay may result in the contractors not entering into contract, which could lead to reputational damage particularly in respect of Section 20 and resident consultation.
- 12.3 Bidders had offered social value as part of their bid submission and demonstrated their understanding of the importance of resident engagement. This is covered in the next stage of the procedure as well as their commitment to a quality scheme.
- 12.4 A standstill period will be run in accordance with the Regulations.
- 12.5 The form of the contract will be the JCT Design and Build Contract 2016 with Hackney amendments.

APPENDICES

Appendix 1 (Exempt) - Tender Report 21 November 2021- Kings Crescent 3&4

Appendix 2 (Exempt) - Kings Crescent 3&4 Tender Update report.

Appendix 3 (Exempt) - Comments of the Group Director of Finance and Corporate Resources

EXEMPT

By Virtue of Paragraph(s) 3 Part 1 of schedule 12A of the Local Government Act 1972 this report and/or appendix is exempt because it contains and it is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Information relating to the financial or business affairs of any particular person (including the authority holding the information)

BACKGROUND PAPERS

In accordance with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) England Regulations 2012 publication of Background Papers used in the preparation of reports is required

Selection of a contractor for the construction of mixed tenure homes at Kings Crescent Phase 3&4 - Cabinet Procurement and Insourcing Committee 6 December 2021.

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