

**CABINET PROCUREMENT & INSOURCING COMMITTEE**

**BUSINESS CASE (INSOURCING OR OUTSOURCING DECISION)**

<b>Title of Report</b>	Procurement of a Design and Build Contractor for Fairbank Estate, Hoxton N1  General Exception
<b>Key Decision No.</b>	CHE S319
<b>CPIC Meeting Date</b>	8 April 2024
<b>Classification</b>	Open with exempt appendices  By Virtue of Paragraph(s) 3. Part 1 of schedule 12A of the Local Government Act 1972, appendices [number] are exempt because they contain 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.
<b>Ward(s) Affected</b>	Hoxton West
<b>Cabinet Member</b>	Deputy Mayor Guy Nicholson
<b>Key Decision</b>	Yes  Spending
<b>Group Director</b>	Rickardo Hyatt, Group Director for Climate, Homes and Economy
<b>Contract Value, <u>both</u> Inclusive of VAT and Exclusive of VAT (for the duration of the contract including extensions)</b>	EXEMPT
<b>Contract Duration (including extensions e.g. 2 yrs + 1 yr + 1 yr)</b>	7 months (PCSA) plus 36 months build contract (estimated)

## **1. Cabinet Member's Introduction**

- 1.1. Since 2011, when Hackney's in-house, not-for-profit house building programme was reaffirmed by Cabinet, the Council has met austerity head on and responded to government under-investment to fund and build much needed new Council homes for social rent. This innovative cross-subsidy model enabling the building of new Council homes has subsequently been adopted by Councils across the UK.
- 1.2. At its meeting in February 2016, the Council's Cabinet agreed the Housing Supply Programme (HSP). The Cabinet report outlined how the Council will make best use of its land by building new social rented and low-cost home ownership homes on a range of unused or under-occupied sites across the Borough, subsidised by homes built for outright sale in the absence of any Government funding to build Council housing for social rent. The Programme is on track to deliver more than 600 new homes, with at least half for social rent and shared ownership.
- 1.3. In approving the Programme, Cabinet agreed to a portfolio approach that encompasses the whole Housing Supply Programme, as opposed to a site-by-site approach. This approach enables the Council to combine the development of schemes which require a net investment with those that have potential to generate a surplus.
- 1.4. Despite the challenges caused by Brexit and the coronavirus pandemic, by May 2022 the Council had started, completed or received planning permission for 1,984 new homes. You can visit and see these often award-winning new Council homes at King Edward's Road, Colville, Aikin Court, Bridge House, St Leonard's Court, Frampton Park, Tower Court and in Clapton Park, with hundreds of families across Hackney benefiting from this investment.
- 1.5. During the latter part of 2022, the Housing Supply Programme delivered new homes at Mandeville Street and Daubeney Road and completed the refurbishment of 16 homes for Hackney Living Rent at Gooch House. Construction work is underway for new homes at Wimbourne Street and Buckland Street, with other HSP schemes progressing to the main contractor procurement stage.
- 1.6. In January 2021, the planning application for Fairbank Estate was agreed by the Planning Sub-Committee. The approval was for 73 new homes, 3 commercial/retail units, community room plus associated landscaping and public realm improvements on the Fairbank Estate.
- 1.7. Since the planning application was approved, we have encountered economic challenges caused by Brexit, the coronavirus pandemic, the cost of living crisis, and a number of statutory and regulatory changes for new homes around fire safety and sustainability, which have all combined

to drive up the average cost of a new Council home on Council-owned land. Following input gathered during a round of soft market testing in the summer of 2023, the scheme has been redefined to respond to these challenges. The revised proposals, which have been endorsed in-principle by the Local Planning Authority as an amendment to the extant permission, provide the same unique, high quality Hoxton character whilst addressing viability challenges, de-risking the proposal and achieving new Building Safety standards. The development has been designed to be tenure blind and a contractor will be sought that can produce a high quality scheme.

- 1.8. A new residents room will be built in the Fairbank Estate which will enable residents and community groups to meet in a modern, purpose built building, and encourage greater community engagement across the estate. There will also be significant public realm improvements as part of the development which will make the area safer and more attractive for residents of all ages.
- 1.9. The construction of Fairbank Estate will bring opportunities for employment and skills training, and benefits to the wider community through investing in local people via apprenticeships and work placement opportunities and prioritising local people for jobs that are brought about by the construction process.
- 1.10. The proposals laid out in this report demonstrate how the Council intends to mitigate the increased costs associated with building materials and labour inflation, and meeting new building regulations, through the main contractor procurement process. This will result in delivering much needed housing that has a positive impact on the local area. I therefore commend this report to Cabinet Procurement and Insourcing Committee.

## **2. Group Director's Introduction**

- 2.1. The Council has operated a successful regeneration and house building programme for more than a decade. Since April 2011, we have completed 1,515 new and refurbished homes. These include 522 for social rent, 24 for Hackney Living Rent, 154 for shared ownership and 815 outright sale homes in order to help pay for the affordable housing and other public infrastructure in the absence of sufficient government funding.
- 2.2. As well as providing high quality additional and upgraded homes, we have invested in new and improved community, public and work spaces on our housing estates - making sure the benefits of these projects are felt by both existing and new residents. Further, the Council has worked closely with our construction partners to maximise the training and employment opportunities for residents, and support for local businesses and community groups.

- 2.3. This report seeks approval to commence the procurement process for a principal contractor for the development of mixed tenure housing on the Fairbank Estate in the Hoxton West Ward. Landscaping and public realm works will also be undertaken as part of the contract.
- 2.4. This process will ensure that the Council selects a suitable contractor on the basis of cost and quality, utilising a two-stage procurement process with Pre-Construction Services Agreement. This approach will allow the Council to harness the contractor's buildability expertise and access to supply chains, which will support further design updates to ensure regulatory compliance and secure further cost savings through value engineering.

### **3. Recommendations**

**Cabinet Procurement and Insourcing Committee is recommended to:**

- 3.1. **Agree to the procurement of a two-stage design and build contract with a Pre-Construction Services Agreement (PCSA) using the Notting Hill Genesis Framework Development Contractors Lot which is compliant with Regulations 26(4) of the Public Contracts Regulations 2015 to deliver the Fairbank Estate housing regeneration project.**
- 3.2. **Delegate authority to the Group Director - Climate, Homes and Economy, in consultation with the Group Director of Finance and the Acting Director of Legal, Democratic and Electoral Services to:**
  - a) **Enter a Pre-Construction Services Agreement (PCSA), which may include but is not limited to work relating to design, value engineering, surveys, utilities, demolition and enabling works.**
  - b) **Enter into a main building contract and if appropriate any preceding or parallel demolition or enabling works contract with the preferred contractor or one or more suitable specialist early works contractors, upon satisfactory completion of the Pre-Construction Services Agreement (PCSA stage), or equally; and**
  - c) **Should a position representing acceptable performance and/or value for money not be reached with the preferred contractor at any point during or upon conclusion of the Pre-Construction Services Agreement (PCSA) stage, to enter into the contracts described at (a) and (b) above, as appropriate, with the reserve bidder appointed during the first stage of the two stage tender.**

### **4. Related Decisions**

- 4.1. At its meeting of 29 February 2016 the Council's Cabinet approved the Housing Supply Programme (HSP).

- 4.2. At its meeting on 18 July 2016, the Council's Cabinet approved the Sales and Marketing Strategy for shared ownership and outright sales disposals within the Estate Regeneration Programme (ERP) and the Housing Supply Programme (HSP). The Sales and Marketing Strategy authorises the Director of Regeneration (now the Strategic Director - Economy and New Homes) to implement the Sales and Marketing Framework.
- 4.3. The strategy also gives authority to both the Director of Strategic Property and Strategic Director of Regeneration (now Economy, Regeneration and New Homes), to dispose of leasehold and freehold interests in shared ownership homes and outright sale homes (developed, or to be developed) as part of the HSP and ERP.
- 4.4. In October 2020, CPIC previously gave approval for the Council to go out to tender for the main build contractor to deliver the new homes on the Fairbank Estate (please see [previous report](#)). However, the procurement was subsequently terminated, following the receipt of tenders which were significantly above the viable envelope.

## **5. Options Appraisal And Business Case (Reasons For Decision)**

### **Overview of the Fairbank Estate project**

- 5.1. The Fairbank Estate project is a mixed tenure housing development that forms part of the Housing Supply Programme. It is located in the Hoxton West Ward in the London Borough of Hackney. This report outlines the proposed process for procuring a principal build contractor to deliver this new housing, along with associated landscaping and public realm works.
- 5.2. The site is located along East Road and is bounded by Murray Grove to the north. It is occupied by a 20 storey Council-owned tower block, Thaxted Court, which is to remain occupied during construction and a two storey garage block, which is to be demolished. The western part of the site has a lower level car park that surrounds Thaxted Court. A low rise block, Halstead Court, is to the south of the site. The site sits directly over two Network Rail underground tunnels, which adds a level of complexity and risk to delivery of the project.
- 5.3. The original scheme design for Fairbank Estate was submitted for approval to the Planning Authority in November 2020. The application received approval from the Planning Sub-Committee in January 2021.
- 5.4. The scheme previously went to CPIC in October 2020 for approval to commence a single stage competitive tender procurement exercise using Lot 2 of the Southern Housing Group Framework. In November 2020, the procurement was launched for the selection of a principal contractor to deliver the scheme. However, the tender returns subsequently received were significantly over budget and in the autumn of 2021, the procurement was terminated and put on hold as the project was deemed non-viable.

- 5.5. A significant amount of work has taken place over the past two years to improve the financial viability, risk profile and deliverability of the scheme. The Housing Regeneration team carried out a no-stone-untuned review of the project to identify weaknesses in the original planning scheme and tender, along with addressing new regulatory requirements and introducing a range of changes to create a more affordable, deliverable project. In October 2022, construction consultancy AECOM was appointed to review the scheme and have since made a number of recommendations to secure design efficiencies and reduce costs.
- 5.6. The principal drivers of the hitherto unacceptable cost and viability position were identified as:
- Insufficiently de-risked site at the point of works tendering, particularly in respect of ground investigations, substructure design and statutory approvals to build above the Network Rail tunnels;
  - Unsuitability of a single stage Design & Build procurement in light of the above, leading to unrealistic risk transfer to contractors and therefore significant risk charging by bidders;
  - Inefficient residential arrangements with small floor plates leading to relatively low net-to-gross and high wall-to-floor ratios throughout and particularly in the west block;
  - Design complexity generally, and most especially in building envelopes and the provision of a basement for storage and plant.
  - Over-specification against brief standards, for example through the use of triple glazed windows both where needed for acoustic attenuation but also throughout.
  - Non-compliance with new building safety requirements for second stairs in residential buildings above 18 metres (from external ground to highest habitable level).
  - Risk of non-compliance with current building regulations regarding environmental performance, particularly overheating and ventilation.
- 5.7. Throughout 2023, the project team worked closely with Lynch Architects and Pell Frischman engineers, the incumbent design team, to explore and incorporate the outcomes of the scheme review through a range of revised design options with the principal objective being, to significantly improve the viability, compliance and deliverability of the extent scheme whilst preserving the overall design intent and housing offer, primarily by:
- Seeking value engineering cost savings and a more efficient residential arrangement whilst protecting the overall design intent (three blocks around Thaxted Court and a new public realm);
  - De-risking delivery particularly in respect of the subsurface rail tunnels and the scope and magnitude of changes to the extant planning permission;

- Future-proofing against recent and emerging regulatory change, particularly building safety.
- 5.8. The build costs and valuations relating to each proposed design were updated, taking into account predicted interest rates, sales price changes and tender/build cost inflation. A preferred option was agreed at a 'Way Forward' meeting with the Housing Regeneration and Delivery management team in August 2023.
- 5.9. The proposed scheme consists of three six storey buildings providing around 70 new homes, 2 ground floor commercial/retail units and a residents room. There will continue to be a new public realm introduced at street level, replacing the sunken car park with new landscaping, playspace, and some re-provided car parking.
- 5.10. Further design development will take place during the Pre-Construction Services Agreement (PCSA) stage with the benefit of contractor buildability, technical and supply chain input, to arrive at a final design which the extant planning decision will be amended to.
- 5.11. This report seeks agreement from CPIC to commence the procurement of a main build contractor for this scheme, via a two stage procurement process with a Pre-Construction Services Agreement (PCSA). The form of contract for the PCSA will be the Joint Contracts Tribunal (JCT) Preconstruction Services Agreement (General Contractor) 2016 with London Borough of Hackney amendments. The form of contract for the main build works will be a Joint Contracts Tribunal (JCT) Design and Build Contract 2016 with London Borough of Hackney amendments. The details of the procurement process are set out in 5.23-5.36.
- 5.12. The outsourcing route is recommended because the Council does not have the capability to carry out major capital construction works in-house.
- 5.13. The Council will meet the full development costs of the scheme and act as developer for the social rent, shared ownership and outright sale homes. The Council's established Sales and Marketing Team shall market and sell the shared ownership and outright sales homes under the 'Hackney Sales' brand, following the established sales policy including first dibs for local buyers.
- 5.14. The estimated costs for the construction of this option have been provided by AECOM and can be found in **Exempt Appendix 1 - Cost Estimate**. Bidders will be required to submit a contract price for the construction of the enabling and demolition, main build works and landscaping.
- 5.15. The Council will meet the full development costs of the scheme and act as developer for the social rent, shared ownership and outright sale homes. Further design work will be required under a Pre-Construction Services Agreement (PCSA) to further develop the scheme to respond to updated

regulatory requirements and to secure further savings through value engineering.

5.16. This report seeks agreement from CPIC to commence the procurement of a main build contractor for this scheme, via a two stage procurement process with a Pre-Construction Services Agreement (PCSA). The form of contract for the PCSA will be the Joint Contracts Tribunal (JCT) Preconstruction Services Agreement (General Contractor) 2016 with London Borough of Hackney amendments. The form of contract for the main build works will be a Joint Contracts Tribunal (JCT) Design and Build Contract 2016 with London Borough of Hackney amendments. The details of the procurement process are set out in 5.35-5.43.

5.17. The outsourcing route is recommended because the Council does not have the ability to carry out works to build new homes in house.

5.18. **Benefits Realisation and Lessons Learnt**

5.19. As noted above, the Council previously conducted a procurement exercise for a contractor to deliver this scheme via as a single stage competitive tender based on a JCT Design and Build Contract 2016. However, the tender returns were significantly over budget and resultantly, the procurement was terminated as the project was deemed non-viable.

5.20. To understand what had happened and to try and learn from the tenderers, the project team held feedback meetings with the contractors who were involved with the tender process. All of the contractors were positive about going forward with a new two stage tender, the first stage having a Pre-Construction Services Agreement. (PCSA).

5.21. The key reason why all the contractors were keen to proceed with a two stage Design and Build procurement process was to enable early contractor engagement so that they could use their experience, expertise, and supply chains to make the scheme more economic and efficient and to mitigate risks. This included, but was not limited to:

- Engaging with Network Rail on the monitoring, permissions, and loadings on the rail tunnels
- Engaging with the design team and their supply chain to find more cost-effective solutions
- Reducing programme time and preliminaries
  - Preliminary costs are directly related to programme length and project complexity. If the programme is shortened, the preliminary costs will be reduced. Similarly, if the complexity is reduced, the preliminary costs will be reduced
  - Tendered preliminary costs at Stage 1 should reduce over that stage to be considerably reduced by these exercises to a much lower cost at the beginning of Stage 2



5.22. The failed/aborted previous tender exercise revealed that on complex sites such as Fairbank and in the current market i.e post Brexit, post COVID-19 and amongst hyper-inflation, a single stage fixed price tender is unsuitable as it resulted in excessive risk pricing. It was therefore concluded that following a two stage procurement process utilising a PCSA would enable the Council to get the best out of the contractor and set the project up for a successful delivery before we commit to a full JCT Design and Build contract. It also allows the contractor to optimise the conditions, mitigate risks and plan all the necessary processes for their supply chain, management, and project delivery. It gives the best chance of a successful outcome for all involved, which is why all the contractors feedback post termination favoured this route going forward.

5.23. **Strategic Context**

5.24. The Council's Housing Supply Programme (HSP) was agreed by Cabinet at its meeting on 29 February 2016.

5.25. The HSP seeks to make best use of Council land by building new social rented and low-cost home ownership homes on a range of unused or under-occupied sites across the borough. The Fairbank Estate scheme is part of this programme.

5.26. A key role of the programme is to support the Council's Sustainable Community Strategy (SCS) 2018 - 2028. The Council's SCS has five priorities. The proposed scheme will contribute to these priorities, as follows:

- **Priority 1: 'A borough where everyone can enjoy a good quality of life and the whole community can benefit from growth'** is evidenced through the proposals to transform the public realm on the Fairbank Estate. Additionally, the proposals for Fairbank Estate are for the provision of 70 new homes, with a planning compliant tenure mix.
- **Priority 2: 'A borough where residents and local businesses fulfil their potential and everyone enjoys the benefits of increased local prosperity and contributes to community life.'** The proposals include a new community room and commercial/retail units which will make a contribution to the local community by providing facilities. Additionally, the Council's commitment to fair delivery will apply to this procurement. In accordance with the Sustainable Procurement Strategy, the successful tenderer will be required to offer wages and benefits that meet relevant industry benchmarks and nationally required standards, and to ensure pay

rates are at least equivalent to the London Living Wage. They will also be required to offer jobs, training and apprenticeship opportunities for local people, with requirements enshrined within the planning Unilateral Undertaking.

- **Priority 3: ‘A greener and environmentally sustainable community which is prepared for the future greener and environmentally sustainable community’** will be met through enhanced ecology and biodiversity brought about by the associated landscaping on the estate, substantive measures to reduce carbon dioxide emissions through the provision of GRC cladding and the use of Air Source Heat Pumps (ASHP), passive and active design measures to address overheating and energy demand for cooling, adoption of noise and waste mitigation strategies and the inclusion of Sustainable Urban Drainage Systems (SUDS).
- **Priority 4: ‘An open, cohesive, safer and supported community’**  
The provision of new homes will promote mixed communities in well-designed neighbourhoods, where people can access high quality affordable homes. The provision of improved landscaping and play areas, as well as employment and training opportunities, are in line with this priority.
- **Priority 5: ‘A borough with healthy, active and independent residents’** The proposed improvements to the public realm will help create a healthy and safer neighbourhood which is pedestrian, cyclist and child friendly.

#### 5.27. **Preferred Option**

5.28. The pre-tender estimate for the works is above the UK Public Procurement Threshold for Works of £5,372,609 and is subject to the Public Contracts Regulations 2015. This means that the opportunity must be advertised on Find a Tender or procured from a suitable framework contract.

5.29. The preferred option is to procure a construction contractor using a two stage tendering process through the Notting Hill Genesis framework which is compliant with the current regulations applicable to the Public Sector namely, the Public Contracts Regulations 2015.

#### **Framework selection**

5.30. A thorough evaluation of procurement options has been conducted, including one round of feedback meetings, following the unsuccessful

tender in 2021 and two rounds of Soft Market Testing (SMT) discussions in 2023, to determine the most suitable delivery model, contractor/partner type, and tier for the project. The considerations encompassed the utilisation of the Hackney Development Agreement and feedback from the first round of SMT, indicating that the project's relatively small size contrasts with its high complexity level.

5.31. Following the previous failed round of procurement it became apparent that an SME contractor lacks the capacity to manage the risks and intricacies involved with this scheme, while larger national contractors are not drawn to projects of this scale as it is considered too small and the larger contractors are likely to have high overheads and profit margins which would be unsustainable for the Council on a scheme of this size. Consequently, the favoured contractor profile for Fairbank is considered to be a regional partnerships contractor operating in a Design and Build capacity. The second round of SMT therefore focused on this profile of contractor and they responded by demonstrating a strong degree of interest. The procurement review identified the Notting Hill Genesis framework route as providing the optimal means to access this contractor profile, at no cost to the council for its use.

5.32. In order to select a framework to use for this procurement exercise, six compliant frameworks that the Council has access to were reviewed, and a decision to use the Notting Hill Genesis framework was agreed for the following reasons:

- **Best Value for Money** - There are no fees or charges associated with the use of this framework including at call off. The rates in the pricing schedules have been assessed by a third party and are competitive when compared with other suppliers on this framework, as well as on other frameworks.
- **Running Times** - There is sufficient running time on the framework to ensure the contract will not expire prior to the completion of the project.
- **Appropriate Services Available** - The framework provides the appropriate Lot with the services required, with access to a pre-qualified supplier pool of specialist suppliers.
- **Suite of documents** - The service specifications and templates provided on this framework are in alignment with those used by the Council, and our Legal Services team have confirmed that they are content with the call-off contract and terms.
- **Expedient** - The framework access agreement has recently been signed and, as this framework is already in use by the Council, this will allow the procurement of these services to be expedited making the process time-efficient.
- **Previous engagement with contractors / contractor knowledge of the project** - During the SMT exercises, we engaged with a number of contractors who have become familiar with the project and

have posed suggestions for improving the viability of the scheme; these contractors are all listed on the framework. This familiarity with the scheme will enable the Council to progress quite quickly with the project introductions and should minimise clarifications during the tender period which in turn will save time.

- **Suitability of contractor profile** - As noted above, the most suitable type of contractor for this scheme is a regional partnerships contractor operating in a Design and Build capacity and this framework includes a strong list of contractors who meet this profile.

5.33. The list of frameworks which were reviewed can be found in **Exempt Appendix 2 - List of Compliant Frameworks Considered.**

Two stage tendering route

5.34. Fairbank Estate has well developed designs however, the designs are currently not fully integrated and commensurate with RIBA Stage 3+ and therefore at a level where it would be possible to commence a single stage tender without receiving tender returns which include significant risk charging. The project also includes a number of complexities including:

- Twin Network Rail subsurface tunnels located beneath the developable area, with associated loading constraints and monitoring requirements;
- The need for continuing liveability of, and safe access and egress to/from, existing homes within Thaxted Court throughout construction, mitigating impacts on existing residents;
- Civil engineering requirements to create a street-level public realm from the current estate ground profile which is sunken and bridged, with significant retaining structures.

Professional advice from our Employer's Agent has therefore recommended that due to these complexities a two stage tendering process is more suited to the scheme.

5.35. Two stage tendering involves an early but limited appointment of the contractor with a negotiated price for the contract taking place at the second stage. It can be more suited to design and build projects where there is a need to undertake work that cannot be fully specified at the design stage, for example major changes to underground utilities or detailed design work that is only possible following intrusive investigations. The second-stage tender can therefore be based on more complete information and a better understanding of the scope of works, so the final account should be closer to the contract sum.

- 5.36. In January 2024, an Expression of Interest (EOI) was issued to the 26 contractors listed on the Notting Hill Genesis framework development contractor list. 10 contractors indicated that they would be interested in tendering for Fairbank Estate. Full details of the contractors on each framework and their responses, is shown in **Exempt Appendix 3 - List of Framework Expression of Interest (EOI) Responses**.
- 5.37. Whilst the full costs of delivering Fairbank Estate may not be tested at the first stage of the tender process, the contractor's Preliminaries, Overheads and Profit (OHP), design and management costs for the scheme will be evaluated and agreed at the first stage, enabling the preferred contractor to be invited, subject to approval, to price the works packages for the scheme under a Pre-Construction Services Agreement (PCSA), locking in the pre-agreed rates from the first stage tender process.
- 5.38. In the first stage of a two-stage process, the project design is provided and contractors then compete for preferred contractor status. This involves submitting a price for assisting the customer in designing the building, together with a schedule of rates including an overhead and profit percentage that will be used to form a fixed price for the complete works during stage two of the tender process. This is a shorter, less labour-intensive process for bidding contractors and only the preferred bidder is taken forward to the next stage. The chosen contractor then assists in the design and development of the construction issue drawings, helps to develop workable method statements and develops relationships with the supply chain to gather critical information for the scheme to be constructed. Once these elements are resolved during stage one of the process, the contractor then enters into a detailed contract negotiation to agree the final price, the contract conditions and the agreed programme.
- 5.39. Within the second stage, the contractor would implement the tendering protocol and seek to obtain a net build cost made up of 90-100% of the sub-contract works being competitively tendered on an open book basis. When a net build cost is agreed for the scheme, the contractor would then apply its preliminary costs and overheads and profit to form the build cost for the site. Two-stage tendering will provide the Council with a delivery partner, which shall benefit from pre-agreed overheads and profit and management costs while delivering the scheme at actual market costs. On this basis, neither the Council nor the delivery partner should be at unnecessary risk of either over or under-pricing risk due to possible market fluctuations. By implementing the tendering protocol, the contractor is required to demonstrate that it has satisfactorily secured a competitive build cost for the scheme.
- 5.40. The advantages of a two-stage approach are significant for Fairbank Estate due to the complexities of the site. The Council will benefit from the technical expertise of the contractor at a much earlier stage, and the contractor has the opportunity to engage with the supply chain to value

engineer the project, address the complexities of a scheme, contribute towards the final design and develop innovative solutions which can improve buildability and programme efficiency. By sharing their own expertise, engaging with suppliers in a clear and transparent way, and working collaboratively as part of a seamless team, the contractor can look to reduce overall delivery costs and set realistic timescales.

- 5.41. Two stage procurement is a way to bring cost and programme certainty for Hackney, and the two-stage procurement process promotes collaborative working and significantly de-risks the project for all stakeholders, providing greater cost and programme certainty as the design has been fully developed collaboratively between all parties. Critically, this incorporates innovation, modern methods of construction opportunities and buildability advice from the contractor and their supply chain.
- 5.42. The two stage tender process also enables the Council to work with potential contractors on some of the greater complexities in the delivery of Fairbank Estate at the pre-construction stage, for example: liaison with Network Rail to obtain the relevant approvals, permissions and monitoring of the twin subsurface tunnels located beneath the site, resolve logistical issues relating to facilitating continuing liveability of, and safe access and egress to/from existing homes within Thaxted Court throughout construction and resolving civil engineering requirements to create a street-level public realm from the current estate. This means that, unlike via a single stage tender route, the risk is not priced in, resulting in inflated tender returns.
- 5.43. Delegated authority has been requested due to the pressures in market volatility, including continued and steady increases in construction costs and the necessity of taking an agile approach to procurement in order to secure best value for the Council and ensure delivery of much needed affordable homes. The delegation of authority will allow the project team to take swift action to procure an alternative contractor if, during the PCSA period, it becomes clear that the anticipated costs for the main works contract will not be financially viable. The delegation of authority will ensure that the costs for the main works contract can be agreed in a timely fashion, reducing the risk that programme delays due to going back to CPIC lead to the contractor increasing their price for the works. The project team is committed to ensuring that CPIC is kept up-to-date and will provide a briefing note to CPIC for information once the main works contract has been agreed. Ongoing updates will also be provided at the Capital Asset Steering Board, and quarterly Housing Lead Member briefing sessions.
- 5.44. **Alternative Options (Considered and Rejected)**
- 5.45. The most recent Cost Estimate for Fairbank Estate is included as **Exempt Appendix 1** to this report and is above the Find a Tender threshold set out in the Public Contracts Regulations 2015. The Council's preferred option

is to appoint a contractor via a PCSA and a JCT 2016 Design and Build contract, with Hackney amendments. As a Contracting Authority, the Council must comply with the 'Find a Tender' procurement processes and so will need to either tender through this portal, in line with the prescribed timescales and regulations, or through a framework which was set up in line with the UK regulations. A number of alternative procurement routes have been considered to achieve these requirements. The matrix of time, risk and cost has been used to consider each method.

5.46. A single stage approach can produce a number of benefits, but also carries a number of inherent risks. It would enable the Council to obtain an early contractual commitment on price, but should it become necessary to make any changes to the brief post-tender this can undermine the original lump sum tender. The single stage approach provides the potential for a clear risk allocation between the client and contractor, but this may be undermined if the contractor's assessment of cost, programme or working method is initially incorrect. The single stage approach provides the opportunity for the Council to set a clear timetable, but the need to clarify proposals, which is often required, can extend the intended timescale. In addition, receipt of tenders above budget could delay the project as redesign and re-pricing must be completed before the contract sum is agreed. These inherent shortcomings were apparent in the earlier single stage tender of Fairbank Estate.

5.47. There are a number of routes that can be used which comply with the EU legacy procurement processes in accordance with The Public Contracts Regulations 2015. These are set out below in more detail. However, these procurement routes are lengthy in terms of the time required, often taking over a year from commencement to appointment. As a result of the ambitious programme Fairbank Estate is aiming for, these tendering options have been rejected:

- **Open procedure** - This is where the Invitation to Tender is issued and any contractor can respond. This is not considered suitable for Fairbank Estate as it might result in a large number of tenders being received, making the assessment process longer and more difficult than necessary, whilst not adding any extra value to the process.
- **Restricted procedure** - This is where a Standard Questionnaire is issued, and only those contractors who pass the qualification criteria are invited to submit a tender. This allows a robust process but tends to take an extended period - often taking a year from commencement to appointment. Therefore, there is not sufficient time within the Fairbank programme to use this procurement route.
- **Competitive dialogue procedure** - In this option there is a qualification process and those who qualify are invited to take part in a dialogue process. When the dialogue process is complete, final tenders are invited. This is used where there is more than one

option, or a series of options relating to the resolution of one particular issue. Competitive Dialogue is generally used when clients are unable to specify their requirements or cannot assess without in-depth dialogue what the market can offer in terms of technical, financial or legal solutions. It is most helpful for procuring innovative projects, or projects involving complex and structured financing. Since the Fairbank Estate project already has Planning Permission with most of the parameters defined, Competitive Dialogue is not the most efficient approach to procurement.

- **Competitive Procedure with Negotiation procedure** - In this option there is a qualification process and short-listed contractors are invited to take part in a negotiation process. Again, this is felt to be too onerous for use on Fairbank Estate and would risk the project missing key milestones such as a start on site in October 2025.

5.48. The option to not appoint a reserve bidder has been considered and rejected, as having a reserve bidder enables the Council to retain some competitive tension with the preferred bidder; and, provides a procurement-compliant alternative to the preferred bidder in the event that the design/price is not in line with the Council's budget and expectations for the project.

5.49. **Success Criteria / Key Drivers / Indicators**

5.50. The Fairbank Estate development will deliver much needed affordable housing for social rent and shared ownership, as well as homes for outright sale.

5.51. Success will be measured by:

- Building high quality new homes and landscaping that improves the neighbourhood and promotes mixed communities;
- Practical completion of the proposed homes and landscaping work achieved by the agreed practical completion date;
- Maximising the capital receipt generated by the sale of the outright sale homes, which will help to pay for social rented homes in the Housing Supply Programme;
- Delivering affordable homes that respond to local need;
- Ensuring that build costs represent value for money whilst maintaining quality;
- Delivery of employment and training benefits to the local community;
- Resident satisfaction; and
- The successful integration of the new development to the benefit of those living on the estate and working in the area.



5.52. **Whole Life Costing/Budgets**

5.53. The Council's Housing Regeneration and Delivery service has, in consultation with Housing Services and other relevant departments, produced a standardised New Build Housing Design Specification for new build homes and landscaping, which takes into account whole life costs of new build properties. The Fairbank Estate scheme has been designed to Version 5, but Version 6 has recently been published and the Fairbank Estate scheme will be updated as far as possible to align with this version.

5.54. The New Build Housing Design Specification will form part of the Employer's Requirements for this project alongside the full set of tender drawings, design team specifications and contract particulars.

5.55. The Council will take on the management and maintenance of the new homes once complete. In approving the design specification Housing Services has considered both the requirements and the costs of future maintenance and management.

5.56. The Cabinet approval for the Housing Supply Programme requires projects to break even. The Fairbank Estate scheme does not currently break even, however additional funding for the scheme is being sought from various sources and additional value engineering is to be carried out under the Pre-Construction Services Agreement (PCSA). It is anticipated that the value of the PCSA agreement will be approximately 5% of the estimated cost for the main works contract. The estimated cost for the main works contract can be seen within **Exempt Appendix 1 - Cost Estimate**. One of the outputs from the PCSA period will be a buildable design that is compliant with planning and regulatory requirements, so costs will not be abortive.

5.57. **Policy Context**

5.58. The provision of genuinely affordable housing is a key objective of the Council. A Cabinet report in October 2015 presented an update on the delivery of the Estate Regeneration Programme and introduced an outline proposal for the new Housing Supply Programme (HSP). This new, Council-led initiative was introduced to contribute to meeting the commitments of the 2014 Mayoral manifesto, including building new affordable homes for local people, with a focus on social rent and shared ownership.

5.59. In February 2016, Cabinet approved the HSP, which aims to deliver high quality, affordable homes on Council-owned sites. It is currently due to deliver over 600 new homes, with at least half for social rent and shared ownership.

5.60. The HSP supports the Council's Sustainable Community Strategy (SCS) 2018-2028, further details of which were provided in paragraph 5.26.

5.61. Hackney's Local Plan 33 (LP33) also seeks to maximise opportunities to supply genuinely affordable housing on new developments, subject to viability and site context.

#### **5.62. Consultation/Stakeholders**

5.63. Extensive consultation has previously been undertaken with local stakeholders, including Ward Councillors and local residents. These were in the form of public engagement events and meetings at various stages of the project prior to planning submission. Statutory consultation was undertaken as part of the planning application and the full scheme was presented at the Planning Sub-Committee in January 2021.

5.64. Recently, consultation with stakeholders has been limited, but local residents and Ward Councillors have been kept up-to-date with regard to the planned way forward for the scheme, including through newsletter updates.

5.65. Key stakeholders include:

- Supporting Residents Group of Fairbank Estate (SRG)
- Local residents including tenants and leaseholders of neighbouring buildings
- Hoxton West Ward Councillors
- LBH staff managing and maintaining the estate.

5.66. Officers will continue to consult with local residents and other key stakeholders throughout the key stages of the project.

#### **5.67. Risk Assessment/Management**

5.68. The cost of the construction works represents a major element of the overall project expenditure. The form of procurement proposed provides access to a large pool of pre-qualified contractors.

5.69. A value engineering exercise will be undertaken during the PCSA period to improve the financial performance of the scheme.

5.70. The project risk register for the Fairbank Estate scheme is currently being updated.

5.71. This project has been assessed as **high risk**. Individual risks relating to the project are set out below, alongside mitigations.

Risk	Likelihood	Impact	Overall	Action to avoid/mitigate risk
Inability to deliver the project within the required LBH Gateway parameters of a break even NPV position.	High ▾	High ▾	High ▾	<ul style="list-style-type: none"> <li>- Project has been reviewed by external consultants (AECOM and Inner Circle) and their recommendations acted on, leading to a redesigned scheme which is more efficient.</li> <li>- Additional funding is being sought from the GLA at the rate of £220K per social rented unit</li> <li>- Two stage procurement with PCSA recommended to allow access to contractor design and buildability knowledge and supply chains.</li> <li>- Additional grant funding sources will also be explored including the Brownfield Land Release Fund 2, round 3.</li> </ul>
Tenders returned over budget.	High ▾	High ▾	High ▾	<p>The tender documentation package will be thorough, concise and robust in order to minimise the risk of over pricing. We will be implementing firm protocols and intervention points which include the identification of and possibility to switch to a reserve bidder. Additionally the Council's maximum budget will be clearly communicated to the contractor and adherence to the budget will be monitored throughout the PCSA period. If necessary, to achieve the agreed Cost Plan, value engineering will take place as part of the second stage of the tender process and interrogation of the priced works packages by the Employer's Agent team, ensuring that viability of the scheme is achieved, without compromising the quality of the design.</p> <p>All prices will be benchmarked by the Council's Employer's Agent (EA) against BCIS information and other in-house information that they hold on</p>

				<p>similar projects.</p> <p>The EA will interrogate the prices received and where necessary ask for the contractor to justify anything that appears inflated. Since the work packages will be priced on an open book basis as part of the second stage of the tender process, it will be possible to examine the entire measured works thoroughly and, subject to their approval, move the project to site more quickly after the tender period has concluded. A quality question will be included in the tender pack relating to innovation, to enable the bidding contractors to suggest cost savings which the project team can decide whether or not to accept.</p>
Potential financial impact of economic conditions including inflation, Brexit, Covid-19 and a short supply of labour and trades in the market.	High ▾	High ▾	High ▾	<ul style="list-style-type: none"> <li>- Market engagement taking place with contractors, including through soft market testing.</li> <li>- Updated valuations have been provided for the scheme, alongside updated costs.</li> <li>- Two stage procurement with PCSA will give access to contractor supply chains.</li> </ul>
Potential for compromised sales values in the West building due to tenure strategy and cooling property market.	Medium ▾	Medium ▾	Medium ▾	<ul style="list-style-type: none"> <li>- The scheme has been reviewed by an external development adviser and a robust Sales and Marketing Strategy will be in place, led by Hackney's Sales Team.</li> <li>- Regular updates on the market are provided through the programme-wide development adviser contract.</li> </ul>
Resident opposition to the development.	Medium ▾	Medium ▾	Medium ▾	<ul style="list-style-type: none"> <li>- Residents are kept informed via newsletters.</li> <li>- Further engagement to be arranged with residents once the delivery route has been agreed.</li> </ul>
Rejection of planning amendments.	Low ▾	High ▾	Medium ▾	<ul style="list-style-type: none"> <li>- Informal engagement regularly takes place with Planning</li> </ul>

				colleagues to ensure awareness of current challenges and likely required scheme amendments. - Formal engagement with Planning via pre-application process.
Bidders do not submit tenders.	Low ▾	Medium ▾	Medium ▾	The use of a framework means that it has been possible to carry out a soft market test to identify the level of interest among contractors, establishing a positive response rate from the preferred framework for a two stage tender process.
Contractor goes into liquidation during construction phase	Low ▾	High ▾	Medium ▾	The framework provider will have carried out financial checks prior to allowing the contractor to become a member. Updated information will be requested as part of the procurement process which will also be scrutinised by Hackney's Finance Team. The Council and the contractor will enter into a performance bond which will pay out up to 10% of the Contract Sum if the Contractor becomes insolvent. In addition, the contractor will be required to provide a parent company guarantee which offers security in the event of a default on a contract by a contractor that is controlled by a parent company (or holding company). Typically, such a default might be caused by the insolvency of the contractor. The NHBC defects warranty has insolvency provisions up to 10% of the Contract Sum.
Quality of the scheme does not meet expectations	Low ▾	High ▾	Low ▾	The detailed tender documentation – the drawings, specifications and Employer's Requirements (developed with the input of Housing Services) provide a robust framework to ensure that the proposals are delivered as designed and

				<p>specified.</p> <p>There is the potential for the existing architects to have ongoing involvement in the scheme as a client-side advisor. A preference for the contractor to retain the architects will be stated in the tender documents. The Council has appointed an Employer's Agent team and a Clerk of Works will be appointed during the construction phase. The Employer's Agent Scope of Services clearly communicates the Council's aspirations for achieving high quality new schemes, with a rigorous monitoring role to be undertaken in order to deliver quality and minimise defects.</p> <p>The JCT Design and Build Contract 2016 contains standard clauses which provide the Employer with remedies if work or workmanship is not in accordance with the Contract.</p>
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5.72. **Insurance**

5.73. The successful tender will be required to hold the following levels of insurance and these have been discussed with the Insurance Team:

- £20 million contractors all risks insurance
- £10 million employer liability insurance
- £20 million professional indemnity insurance, being for a single claim or series of claims
- £20 million public liability insurance

5.74. **Market Testing (Lessons Learnt/Benchmarking)**

5.75. Soft market testing meetings were held in June 2023 and December 2023 and all contractors confirmed that they consider a two stage procurement approach to be the most suitable for the scheme, given the design amendments required and due to the liaison required with Network Rail to obtain permissions and establish monitoring procedures. Contractors who responded acknowledged the advantages of the scheme redesign for cost and buildability, and in some cases suggested further value engineering opportunities which will be reviewed at the PCSA stage.

- 5.76. Further soft market testing was undertaken in January 2024 via the preferred, Notting Hill Genesis framework. Generally, the level of interest in tendering for this scheme via a two stage process was high with 10 contractors expressing interest. Contractors are more willing to actively participate in the tendering process when they know that there is limited competition therefore we will be shortlisting a maximum of 5 contractors from the EOI to invite to tender. Some contractors noted that their bidding resources are limited and that the timing of the procurement will influence whether they are able to bid. This will be taken into consideration when issuing the tender, with the Housing Regeneration and Delivery team coordinating the issue of tender opportunities across the division.
- 5.77. The Regeneration Strategic Design team and Employer's Agent have also considered the potential tenderers, and confirmed that the proposed tender list provides suitable competition and the contractors are competent. Overall the professional advice, based on recent market experience, is that the proposed tender list should produce a positive result.
- 5.78. There have also been lessons learnt from another HR&D scheme that has been tendered through a two stage procurement. These relate to choosing an alternative contractor following the PCSA, after concerns that value for money was not being offered by the incumbent contractor. Not being able to procure a new contractor quickly due to the need to produce a business case and seek CPIC approval for a new procurement strategy, has had programme and financial repercussions. For this reason, delegated authority is being sought to award the contract to the reserve bidder should a position representing acceptable performance and/or value for money as set out in the ITT not be reached by the preferred contractor at any point during or upon conclusion of the PCSA stage. This approach will minimise potential disruption to the programme and will ensure the contractor demonstrates to the council at agreed stages that they are satisfying the conditions that form part of the PCSA.
- 5.79. **Savings**
- 5.80. The Fairbank Estate project will deliver new, high quality homes and associated public realm improvements, and contribute to the regeneration of the borough. This will ensure better value for money for Hackney residents and provide the basis for the Council to continue delivering a cost effective housing management service through reduced maintenance costs. Furthermore, utility costs will be lower due to the efficiency of the buildings which are designed to meet both current and future needs of residents.
- 5.81. As part of the tender process, contractors will be asked for their options for innovation, which will include an element of cost reduction and removing risk. This will provide added value to the Council.

- 5.82. The provision of new social rented homes at Fairbank Estate will allow existing Fairbank Estate residents who are in the urgent housing need band to have 'first dibs' on new properties that will meet their needs. This approach is set out in the Local Lettings Policy 'Keeping Communities Together'. This will free up housing on the estate, with any remaining homes then available to residents on the Council's housing register and will also contribute to alleviating temporary accommodation costs.

## **6. Income Generation**

- 6.1. Ongoing rents from the new social rented homes and the rents on unsold shares of the shared ownership homes will contribute towards future management and maintenance of the homes and public realm. In addition, the value of outright sale homes will cross-subsidise the cost of building the homes for social rent.

## **7. Sustainability Issues and Opportunities, Social Value Benefits**

### **7.1. Procuring Green**

- 7.1.1. The Council is committed to delivering procurement of works in accordance with the Sustainable Procurement Strategy, which engages with fair, sustainable practice that seeks to benefit the local community and minimise any negative environmental impacts of goods, services and works contracts procured.
- 7.1.2. The development will be car-free, apart from existing residents with existing parking permits, with substantial provision for cycle parking, car club space provision and electric vehicle charging points, encouraging Sustainable transport. In addition, the project will be delivering new and upgraded, attractive pedestrian and cycle routes across the site.
- 7.1.3. Sustainability is a fundamental part of the scheme and is in line with the Council's Zero Carbon commitment. The scheme will provide high quality, energy efficient homes that meet current regulatory requirements, including Building Regulations and the London Mayor's Housing Supplementary Planning Guidance. An Energy and Sustainability Assessment has been produced, which summarises the proposed energy strategy for the scheme. The new homes have been designed with Air Source Heat Pumps (ASHP) to achieve the required energy levels in accordance with current London Plan energy targets. The scheme will include use of Sustainable Urban Drainage (SUDS) rainwater harvesting and green roofs.
- 7.1.4. During the demolition and enabling works, the soil on the site will be tested for contamination and remediated appropriately.



- 7.1.5. The main contractor will be obligated to minimise construction-related disruption to residents and neighbouring buildings including Thaxted Court and Halstead Court. They will be required to discharge and comply with the construction-related planning conditions relating to the development. These include providing a Demolition & Construction Management Plan and sustainable drainage particulars. Both must be signed off by Hackney Council in its role as Local Planning Authority. The contractor must also ensure that noise generated by plant and equipment be at least 5DB below pre-existing background levels as determined by BS4142.
- 7.1.6. Quality performance indicators covering environmental issues will be included in the contract to ensure adherence to green procurement practices. These will include 'waste volume diverted from landfill' and 'initiatives undertaken to minimise waste arising from deliveries to site'.
- 7.1.7. The Fairbank Estate site falls under the Ultra Low Emission Zone (ULEZ). In order to reduce the impact on air quality during the construction phase, development proposals must demonstrate how they plan to comply with the Non-Road Mobile Machinery Low Emission Zone and reduce emissions from the demolition and construction of buildings following best practice guidance.

## 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 Key Performance Indicators (KPIs) have been established as below:
- Number of apprentices
  - Number of paid work placements
  - % local labour
  - Confirmation of London Living Wage
  - Quality of engagement, reporting and communication with Hackney Works
- 7.2.2. The contractor and Employer's Agent will provide the information that provides the basis of each score and the KPIs will be monitored at site meetings.
- 7.2.3. The contractor will be required to use reasonable endeavours to source materials from local suppliers and manufacturers and will be encouraged to use small, medium, ethnically diverse and female led businesses within its supply chain.
- 7.2.4. The appointed main works contractor will be required to provide a draft Employment and Skills Plan to the Council for approval prior to works commencing on site. They will also be required to prepare and implement an active programme for recruitment in order to achieve a local labour

target of 25%. In line with the Unilateral Undertaking obligations, the contractor must employ at least one apprentice per £2 million of construction contract value. An option to price for meeting the aspiration of one apprentice per £1 million of contract value will also be included in the tender documentation so that a comparison can be made.

7.2.5. The contractor will be required to provide a quarterly local labour return and must notify the Council's Hackney Works Team of any vacancies for employees, self-employed labour, subcontractors and any other form or type of employment or service arising from the construction of the development. The contractor will be required to work with the Council's Inclusive Economy Officer and seek to create jobs that meet local skills gaps or roles in the green economy. The Council will monitor progress via the quarterly reporting cycle.

7.2.6. The preferred bidder will be required to pay all employed staff and sub-contractors the London Living Wage, for the term of the contract.

### 7.3. **Procuring Fair Delivery**

7.3.1. The principles of procuring fair delivery include: fulfilling our public sector equality duty; following ethical practices such as Fair Trade; paying the London Living Wage; tackling modern slavery and human trafficking and ensuring that communities, suppliers and workforces are diverse.

7.3.2. The tender documents that will be issued to each tenderer will be identical, and each tenderer will be given the same opportunity to review and respond. Tenderers will be given the opportunity of submitting clarification questions through the bidding process. Where a clarification is not commercially sensitive, the clarification and the Council's response will be anonymised and issued to all bidders.

7.3.3. The Council is committed to ensuring that workers' rights are preserved in the context of fair and prompt payment to subcontractors and bidders will be required to agree to the Council's targets around local labour, employment and skills. The contractor will be required to commit to stringent health and safety protocols on site and relevant KPIs will be scored during the construction period.

7.3.4. KPIs will be agreed with the contractor and will be scored at agreed intervals during the construction period. KPIs will include 'Assessment of the quality and timeliness of response to residents' and 'Assessment of compliance with contractor's own Community Engagement targets as set out in Qualitative Bid Submission'.

### 7.4. **Social Value**

7.4.1. The successful contractor will be required to provide the mandatory social value requirements set out in Section 7.2. They will also be encouraged to offer additional social value within the quality section of their bid.

7.5. **Equality Impact Assessment and Equality Issues**

7.5.1. The HSP is building new mixed communities that are well integrated with surrounding areas and have well designed affordable homes for social rent and shared ownership, as well as creating safer, more attractive environments.

7.5.2. 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. The housing mix for the Fairbank Estate development has been considered in line with housing needs of the Fairbank Estate and neighbouring Provost Estate. The development contains 7 homes that meet Part M4(3) – ‘wheelchair user dwellings and adaptable dwellings’ and 63 homes that meet the M4(2) requirements. The wheelchair adaptable homes which will be allocated on the basis of housing need to those requiring a wheelchair adaptable property.

8. **Proposed Procurement Arrangements**

8.1. **Procurement Route**

8.1.1. The recommended procurement route is through a framework that is compliant under the Public Contracts Regulations 2015. The Notting Hill Genesis Framework has been set up to be compliant with all requirements in terms of timescale and process.

8.1.2. Significant effort has been made to de-risk the project and site for development and make it an attractive opportunity for potential bidders. This includes completion of surveys including but not limited to the completion of Network Rail surveys, statutory and services surveys, asbestos surveys, geo-technical surveys and topographical surveys.

8.1.3. The full scheme received planning permission in January 2021 and a five year implementation period has been agreed by Planning. It is anticipated that the consented scheme will be amended by Non-Material Amendment (NMA) and Section 73 submissions to take into account updates to the scheme, including tenure mix and design changes.

8.1.4. The procurement route via a PCSA and two stage tender will enable the scheme to be de-risked by ensuring design compliance with new and emerging regulations prior to the full construction contract being let.

8.2. **Resources, Project Management and Key Milestones**

<b>Key Milestones (Indicative)</b>	
Closing date for Expressions of Interest	February 2024
Regeneration Gateway 2a approval	February 2024
Business Case Report to CPIC for approval of the procurement strategy	April 2024
Issue Tender	April 2024
Tender Returns (1st stage)	May 2024
Tender Evaluation (1st stage)	June 2024
Award of Contract (PCSA only)	July 2024
10 day standstill period	10 days after tenderers are informed of the outcome
Report on award of PCSA reported to CPIC for information	August 2024
Finalise 2nd stage	March to May 2025
Delegated authority report (2nd stage) considered by Group Directors	June/July 2025
Report on award of contract (2nd stage) reported to CPIC for information	August 2025
Mobilisation period	August to September 2025
Start on site / Contract start	October 2025

### 8.3. **Anticipated contract type**

8.4. The contracts will be a JCT 2016 Pre-Construction Services Agreement and a JCT 2016 Design and Build Contract, incorporating the London Borough of Hackney's schedule of contract amendments. The suite of documents will include the Hackney New Build Design Specification V6 as an appendix to the Employer's Requirements.

8.5. The recommended procurement route is through a framework that is compliant under the Public Contracts Regulations 2015. The Notting Hill Genesis Framework has been set up to be compliant with all requirements in terms of timescale and process.

8.6. At the first stage, bidders will be asked to return a quality response and a finance response. The quality criteria will include the following:

- Construction Programme including enabling works
- Project Delivery including site logistics, project team and key personnel
- Proposed Design Team
- Maintaining Integrity of Design
- BIM expertise
- Health and Safety

- Sustainability
- Community Engagement
- Local Employment, Training and Supply Chain
- London Living Wage compliance.

8.7. The finance criteria will include the following:

- Preliminaries, including project particulars and conditions of contract
- Design and management fees, indicative of pre and post construction stages
- Overheads and profit
- Contractor financial assessment

8.8. The Cost:Quality weighting for the submission will be 40:60 and tenderers will be required to provide both a cost submission and a quality submission. This weighting reflects the fact that at PCSA stage the value of the contract is relatively low, but the required quality of the work to be undertaken within that contract is high. The risk of a high second stage cost will be mitigated through the open book approach to cost review during the PCSA period. This will allow the Council to utilise the expertise of their appointed Quantity Surveyor to scrutinise the contractor's costs and profit margins in relation to the works packages, to ensure that the Council gets best value.

8.9. The winning bidder will be appointed as the preferred bidder and will enter into a PCSA with the intention of entering into a JCT contract upon the successful completion of the PCSA. The second placed bidder will be appointed as the "reserve bidder". Should the preferred bidder not complete the design and development activities in line with the Council's requirements (as set out in the tender documents) and the ensuing PCSA, the Council will terminate Bidder A's appointment as preferred bidder and will enter into a PCSA with the reserve bidder in order to progress the project.

8.10. This report seeks authority to be delegated to the Group Director, Climate, Homes and Economy, in consultation with the Group Director of Finance and the Director of Legal, Democratic and Electoral Services to appoint the reserve bidder, should a position representing acceptable performance and/or value for money not be reached by the preferred contractor at any point during or upon conclusion of the Pre-Construction Services Agreement (PCSA) stage. The justification for the request for delegated authority is set out at 5.43 but in summary, it allows the project team to minimise disruption to the build programme, secure best value and ensure delivery of much needed affordable homes and to meet the associated manifesto commitments. Returning to CPIC for approval would add additional months to the process, which in the context of continued construction cost inflation, would ultimately represent an additional cost to the Council. The proposed approach will mitigate against the risk of unaffordable scheme costs at the conclusion of the PCSA and

commencement of the second stage of the contract. Regular progress updates on the scheme will be provided to Members via the Capital Asset Steering Board. Tenders will be assessed by the Council's evaluation panel. The financial information submitted in the pricing document will be assessed and benchmarked against the Build Cost Information Service (BCIS) in order to verify the details of the tender, interrogate the financial information submitted and examine the assumptions made.

8.11. The evaluation team will consist of:

- Head of Housing Regeneration and Delivery (South)
- Project Manager
- Project Officer
- Head of Regeneration Strategic Design
- Finance Advisor
- Employer's Agent.

8.12. Advisors to the evaluation team will be the following:

- Procurement: Procurement Category Lead and Procurement Category Manager
- Legal Services: Procurement and Property lawyers

8.13. **Sub-division of contract into Lots**

8.14. Due to the value and type of contract, it was not considered feasible to divide the contract into Lots.

## **9. Contract Management (and Mandatory Use of the Contract Management System) & Service Management for Insourcing**

9.1. The procurement opportunity was advertised to all of the contractors listed on the Notting Hill Genesis framework via ProContract. This was initially through the Expression of Interest process, following which five contractors will be shortlisted and invited to participate in the Invitation to Tender stage.

9.2. 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.

9.3. The project will be managed by a Project Manager in Housing Regeneration and Delivery team who will be overseen by the Head of Housing Delivery - South. The project delivery team is:

- Project Sponsor – Assistant Director, Housing Regeneration and Delivery
- Project Head of Service – Head of Housing Delivery - South

- Project Lead – Project Manager, Housing Regeneration and Delivery
- Project Support - Project Officer, Housing Regeneration and Delivery
- Design Advice – Regeneration Strategic Design Team
- Employer’s Agent
- Cost Consultant/Quantity Surveyor.

9.4. During the pre-construction and construction periods, the Fairbank Estate project will be managed on a day-to-day basis by the Project Manager in the Council’s Housing Regeneration and Delivery team. The building contract will be administered by the Council’s Employer’s Agent. Risk, issues and lessons learnt logs will be maintained and regularly updated. Regular meetings with the Employer’s Agent and other consultants will take place as required during the PCSA stage. Monthly site meetings with the contractor will take place following start on site. The Council will hold quarterly review meetings with appointed consultants.

9.5. Decisions and change control will be undertaken in line with agreed governance procedures and contract management policies. The Quantity Surveyor will carry out monthly valuations of the works completed on site and will certify the value of those works. Project success will depend on the contractor finishing on time, to budget, and to the required quality standards.

**9.6. Key Performance Indicators (including for Insourcing)**

9.7. The main KPIs for the project will be established to monitor the following:

- **Programme** - these are KPIs which specify the agreed time to be taken to complete the build and measure the actual number of days taken to reach key milestones against the number of days agreed in the programme.
- **Cost** - these KPIs will set out expected spend against an agreed budget. It is another mechanism to check whether the build is taking place in line with the agreed timetable. The Employers’ Agent will report on a monthly basis on the gross value of monthly payments and total payments to date against the agreed payments schedule.
- **Change Control** - this is a set of KPIs that help ensure any change requests are both appropriate and sought in a timely manner. A number of aspects of the change control process will be assessed by the Employers’ Agent on a monthly basis and marked out of a maximum score of 5.
- **Quality of Construction** - these KPIs provide a measure of the quality of the construction. The Employers’ Agent and Clerk of Works will provide a monthly report with an assessment of quality out of 5.
- **Health and Safety** - these KPIs monitor any safety issues related to the site. This will consist of a monthly report of the number of near misses, the number of RIDDOR incidents and a qualitative score out of 5.

- **Employment** - these KPIs measure the number of apprentices, the number of Adult Improvers, the percentage of Local Labour being used and confirmation of paying at least the London Living Wage. There will be a monthly report of the actual outputs for these elements compared to the anticipated outputs.
- **Community Engagement** - these KPIs measure any dissatisfaction expressed by local residents regarding the build and will assess any positive engagement on the part of the contractor. The contractor will be required to be part of the Considerate Constructor Scheme. The contractor will report on the number of complaints and a qualitative assessment out of 5 will be provided to the responses to complaints on behalf of the contractor and the contractor's compliance with their own policies.
- **Environmental** - this KPI measures any waste diverted from landfill and will set the minimum standards required in this respect. The contractor reports monthly as per tipping certificates against own target given in the Qualitative Bid Submission.

9.8. Resident satisfaction with the new homes will be assessed via post-occupancy evaluation surveys after a period of occupation of their new homes.

## 10. Comments Of The Interim Group Director Finance

10.1. The report recommends the use of a two-stage tender with Pre-Construction Services Agreement (PCSA) for the selection of a main construction contractor. At the reconvened Gateway 2A, the viability position is at a level that can't be accepted financially and the PCSA period will therefore need to be used to bring the costs down to an acceptable level, before actual construction works can commence. The position will be reviewed at Gateway 2B after the PCSA period has ended.

10.2. Soft market testing has been carried out by the team and a two stage with PCSA is the preferred tender route for most prospective bidders. The benefit of a PCSA in this circumstance is that the required design changes to make the building compliant with recent regulatory requirements can be worked through with the contractor. Working collaboratively and looking at value engineering and design changes to make the design more 'buildable' can also be worked through during the PCSA period, in the hope that the required cost savings can be achieved. On the flip side of this, the winning contractor at PCSA stage may not be highly incentivised to identify savings, so this will need to be managed carefully alongside our external Employer's Agent to ensure we are achieving best value for money.

10.3. The report recommends a scoring weighting of 60/40 in favour of quality. This is a low price weighting compared to what is usually used when awarding construction contracts, which are often weighted in favour of



price by at least 60%. The logic for this current split is that the actual work package costs should be similar between bidders, assuming an open book and close working relationship and that quality is more important to measure at PCSA stage. The risk of this is that a high cost contract is going to potentially be awarded based on a low price weighting. The difficulty of scoring PCSA's is that the main cost elements cannot actually be scored at this stage and therefore consideration needs to be given to alternative options should the final costs be above budget after the PCSA period has ended.

- 10.4. It should be noted that on previous council development projects, the 60/40 quality/price ratio has been used for similar two stage tenders with PCSA's and this is also the case with other projects within the same programme that are going out to Procurement at a similar time.
- 10.5. The cost of the PCSA is estimated to be around 5% of the main works contract. Whilst this is at risk until construction starts, part of the spend will relate to design development, which won't need to be repeated if alternative delivery partners need to be sought after the PCSA period.
- 10.6. The selection of a framework instead of an open tender has the benefit of speed and should ensure a quicker route to contract award, with the added financial benefits of completing the project sooner. However it does result in fewer contractors being able to bid, with the risk that lower priced bids may be missed out on.

## **11. VAT Implications on Land & Property Transactions**

- 11.1. The construction of the new homes should be zero rated for VAT purposes but if any VAT is incurred it will relate to the supplies the Council will make from the site so if the properties are to be HRA any VAT that is incurred on the costs will be recoverable in full. If the properties are sold or a long lease granted (in excess of 21 years) the supply will be zero rated and hence any VAT incurred on costs will be recoverable in full. If there is shared ownership, the first payment will be zero rated with the subsequent rental payments exempt from VAT so any ongoing maintenance costs etc will be exempt input tax and will need to be included in the Council's partial exemption calculation.
- 11.2. The refurbishment works on the existing Thaxted Court Tower and the public realm works (where this is not part of the dwellings) will incur VAT at the standard rate. Any VAT incurred on the public realm works will be recoverable in full as attributable to a non-business supply of open space. The VAT on the costs of refurbishing Thaxted Court Tower will relate to the supplies made from the property so if these are HRA rents etc, the VAT will be recoverable in full. If any of the works are charged on to owner occupiers where they have acquired under the right to buy, the recharge of any costs will be non-business (assuming they are works to shared areas) on the basis the recharge follows the liability of any ground rent.

**12. Comments Of The Acting Director, Legal, Democratic & Electoral Services**

- 12.1. This Report has been assessed as High Risk. Paragraph 2.18 of Contract Standing Orders states that all procurements with a risk assessment of “High Risk” will be overseen by Cabinet Procurement and Insourcing Committee and therefore this Business Case Report is being presented to Cabinet Procurement and Insourcing Committee for approval.
- 12.2. The value of the works in this Report is above the current threshold of £5,372,609 under Regulation 5 of the Public Contracts Regulations 2015. However it will not be necessary to publish a high value notice in respect of the procurement of these works as it is proposed to undertake a mini-competition under the Notting Hill Genesis Framework Development Contractors Lot to appoint a contractor for the Fairbank Estate housing regeneration project. Use of a framework would be subject to the provisions of Regulation 37 of the Public Contracts Regulations 2015 which allow a contracting authority to acquire supplies or services from a centralised purchasing body. The Council is entitled to use this framework under the provisions of Regulation 33(5) of the Public Contracts Regulations 2015 which states that frameworks may be used by “contracting authorities clearly identified for that purpose in the call for competition or the invitation to confirm interest”.
- 12.3. The proposals in this Report require the initial engagement of a contractor by the Council under a Pre-Construction Services Agreement (PCSA). The award of contract for the PCSA is proposed to be delegated to the Group Director, Climate Homes and Economy, in consultation with the Group Director of Finance and the Director of Legal, Democratic and Electoral Services. Paragraph 2.4 of the Cabinet Procedure Rules states that “If the Elected Mayor delegates functions to a Committee of the Cabinet, the Committee may delegate further to an officer, except where the Elected Mayor has said that they are not allowed to delegate further”. 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 PCSA. The scope of the PCSA may include, but is not limited to, work relating to design, value engineering, surveys, utilities, demolition and enabling works.
- 12.4. In addition, authority is sought in this Report to delegate authority to the Group Director, Climate Homes and Economy, in consultation with the Group Director of Finance and the Director of Legal, Democratic and Electoral Services to enter into a main building contract and if appropriate any preceding or parallel demolition or enabling works contract with the preferred contractor or one or more suitable specialist early works contractors, upon satisfactory completion of the PCSA stage.

- 12.5. The procurement process involves the appointment of the second placed bidder as a reserve bidder. In the event of the Council and the winning bidder not agreeing a final contract sum for the main works contract the Council would seek to appoint the reserve bidder under a PCSA and work with the reserve bidder to agree a final sum. This approach will require the Council to follow a very specific process to ensure compliance with its obligations regarding transparency and contract award as set out in both the terms of the applicable framework agreement and the procurement regulations.

### **13. Comments Of The Procurement Category Lead**

- 13.1. This report presents a two stage works procurement and contracting model, consisting firstly of a Pre-construction Service Agreement (PCSA) to appoint a contractor for early engagement in developing the works programme. Award of this part of the contract is delegated to the Group Director, Climate Homes and Economy, in consultation with the Group Director of Finance and the Director of Legal, Democratic and Electoral Services. In addition, the report recommends the second stage 'main contract' award following completion of the PCSA is delegated to the Group Director, Climate Homes and Economy, in consultation with the Group Director of Finance and the Director of Legal, Democratic and Electoral Services.
- 13.2. In the event the second stage 'main contractor' appointment cannot be concluded with the PCSA appointed contractor, the Service seeks delegation to the Group Director, Climate Homes and Economy, in consultation with the Group Director of Finance and the Director of Legal, Democratic and Electoral Services, to appoint the reserve bidder in line with the client's requirements (as set out in the tender documents).
- 13.3. A fixed lump-sum price, design and build contract following an 'open book' exercise is proposed at the PCSA stage.
- 13.4. For the second part of the tender exercise the Council will develop and promote best practice through two stage open book tendering that includes a performance management approach and a greater focus on local requirements.
- 13.5. This Business Case recommends a Public Contracts Regulations 2015 compliant call-off the Notting Hill Genesis Framework Development Contractors Lot to deliver the Fairbank Estate housing regeneration project.
- 13.6. The top ranked bid from a 60% / 40% Quality and Cost weighting split will be recommended to enter into a Pre Construction Services Agreement.

- 13.7. Requirements to meet the Council's policies on London Living Wage and apprentices will be included. In tendering, Social Value will be assured and KPI's measures incorporated.
- 13.8. This exercise will be conducted with the support of the Council's Construction and Environment procurement category manager, using the Council's e-tender facilities.

**APPENDICES**

Exempt Appendix 1 - Cost Estimate

Exempt Appendix 2 - List of Compliant Frameworks Considered.

Exempt Appendix 3 - List of Framework Expression of Interest (EOI) Responses

**EXEMPT**

By Virtue of Paragraph(s) 3 Part 1 of schedule 12A of the Local Government Act 1972 these appendices are exempt because they contain 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.

**BACKGROUND PAPERS**

None

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