

Supplementary Committee Agenda



**Epping Forest
District Council**

Council Housebuilding Cabinet Committee Tuesday, 19th January, 2016

Place: Council Chamber, Civic Offices, High Street, Epping

Time: 7.00 pm

Democratic Services: J. Leither (Governance Directorate)
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**6. COUNCIL HOUSE-BUILDING PROGRAMME (PHASE 2) - ACCEPTANCE OF
TENDER (Pages 3 - 56)**

(Director of Communities) To consider the attached report (CHB-010-2015/16).

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Report to the Council Housebuilding Cabinet Committee



Report reference: CHB-010A-2015/16
Date of meeting: 19 January 2016

**Epping Forest
District Council**

Portfolio: Housing

Subject: Acceptance of Tender – Council House-building (Phase 2)

Responsible Officer: Paul Pledger (01992 564248)

Democratic Services: Jackie Leither (01992 564756)

Recommendations/Decisions Required:

- (1) That Mullalley & Co Ltd be awarded the contract for the construction of 51 new affordable homes at Burton Road, Loughton, which forms Phase 2 of the Council's House-building Programme, for the adjusted Tender Sum of £9,847,179.00, being the second lowest tender received.

Executive Summary:

The Cabinet Committee will be aware from a separate report on the agenda that tenders were received from 5 out of 6 tenderers for the construction of 51 new affordable homes at Burton Road, Loughton. These tenders have been analysed by Pellings LLP, the Employers Agent acting on behalf of the Council's Development Agent East Thames, who have recommended that Mullalley & Co Ltd be awarded the contract for the adjusted tender sum of £9,847,179.00 based on a Design and Build contract with a contract period of 105 weeks.

Reasons for Proposed Decision:

The Council House-building Cabinet Committee has agreed to tender the works using the East Thames Framework Agreement, based on a Design and Build Contract. Therefore, this tender exercise satisfies that decision and has been undertaken in line with the Council's Development Strategy and the Council's Contract Standing Orders.

Other Options for Action:

1. To appoint United Living Ltd, being the lowest tender received in the adjusted sum of £9,764,651.00. However, there is a risk that this tender sum will increase to the point it will exceed the second lowest tender once all of the qualifications included by United Living Ltd are costed during the contract period.
2. To appoint any of the other Contractors that submitted a tender
3. Not to undertake the works. However, this would not deliver any new affordable homes for applicants on the Council's waiting list but would also jeopardise the Council's 1-4-1 receipts and £500,000 of HCA grant.

Report:

1. Elsewhere on the Agenda, the Cabinet Committee will be aware that following a tender exercise for Phase 2 of the Council's house-building programme at Burton Road, Loughton 6 Contractors were invited to tender to construct 51 new affordable homes based on a Design and Build contract, with a pre-tender estimate of £8,150,000. Five out of six tenders were received and were registers as below:

Tenderer	Place	Tender Sum
United Living (South) Ltd	1	£9,499,651.00
Mulalley & Co Ltd	2	£9,740,241.00
Durkan Ltd	3	£10,264,909.00
Galliford Try Partnership Ltd	4	£11,201,432.00
Higgins Construction Plc	5	£11,927,356.00
Hill Partnership Ltd		Did not Tender

2. The tender documents made it clear that the Council was not obliged to accept the lowest tender.

3. Arithmetical checks were carried out by Pellings LLP on all of the tenders received, and in view of the significant price difference between the second lowest and the three other tenders, only the two lowest tenders were analysed in detail.

4. The tenders submitted by United Living (South) Ltd and Mulalley & Co Ltd as lowest and second lowest respectively each included a number of qualifications and pricing omissions, which were discussed during post-tender interviews co-ordinated by Pellings LLP where East Themes staff, Council Officers and the Housing Portfolio Holder also attended.

5. Neither United Living Ltd or Mullalley & Co Ltd were prepared to lift these omissions and qualifications without a pricing review, therefore each were asked to review these and submit a revised unqualified tender sum. These are as follows:

Tenderer	Original Tender Sum	Adjusted Tender Sum	Variation
United Living (South) Ltd	£9,499,651	£9,764,651	+£265,000
Mulalley & Co Ltd	£9,740,241	£9,847,179	+£106,989

6. The difference between the lowest and second lowest is now £82,528 (0.84%)

7. United Living Ltd have provided costs as requested albeit by including provisional sums. However they have qualified this further and included in their tender clarifications that they *"have only been able to price based on the information provided with the tender. This information is in some cases not yet complete and requires further development before we are able to provide a complete / competitive price."* This represents a financial significant risk as the prices submitted may increase to a point they exceed that of the second lowest tender.

8. Mullalley & Co Ltd on the other hand has complied with the request to provide an unqualified tender, again through the use of provisional sums, with the exception of pricing for the treatment or removal of any contaminated ground found on the site. Based on soil

surveys undertaken prior to tender where no contamination was found, this represents a low risk according to Pellings LLP.

9. The pre-tender estimate was £8,125,000, which was based on Q2 2015 rates without any inflationary uplift. The lowest tender as originally received is around 16% above the estimated cost and it is Pellings LLP view this is due to a number of inflationary pressures affecting the construction sector. These include an upward pressure on materials costs, labour costs continuing to rise due to a combination of lack of skills and resource, and an increasing availability of work for sub-contractors, in particular for housing developers, who are able to absorb increased costs due to the strength of the housing sale market. Main contractors are therefore in a position of having to both anticipate increased cost levels and cover their financial position, should this upward trend continue over the contract period which current industry forecasts anticipate will be the case.

10. The contract was tendered based on a 20 month contract period (87 weeks). United Living have based their price on this contract period. However, Mullalley & Co Ltd have based their tender on a longer contract period of 24 months (104 weeks), with a completion date in March 2018, but have indicated that it may be possible to complete the works sooner. A longer contract period allows Mullalley & Co Ltd more time to put in place the resources needed to complete the works and reduce their risk of incurring any liquidated and ascertained damages should the contract period not be met. This does however mean a loss to the Council of around £130k in rent for this extended period.

11. Based on the recommendations as set out in the CONFIDENTIAL tender evaluation report prepared by Pellings LLP who considers Mullalley and Co Ltd revised Tender of £9,847,179.00 + VAT (with a per m2 rate of £2,311) as bona fide and believe it offers value for money. Therefore it is recommended that Mullalley & Co Ltd be awarded the contract for the construction of 51 new affordable homes at Burton Road, Loughton, which forms Phase 2 of the Council's House-building Programme, for the adjusted Tender Sum of £9,847,179.00, being the second lowest tender received.

12. Once appointed, it is recommended that Pellings LLP enters into discussions with Mullalley & Co Ltd with a view to completing the works sooner and possibly sharing any savings in reduced preliminary costs.

13. Detailed financial checks were carried out by East Thames prior to the tenders being issued. A summary of the outcome of the credit check and a summary of the outcome can be found at appendix 1 of this report. The Director of Resources has been consulted on the evaluation and results of the financial checks. A written response will be available for Member at the meeting.

Resource Implications:

£9,847,179.00 funded from £500,000 HCA Affordable Housing Grant, 1-4-1 RTB receipts (30% of the total works costs not funded by HCA Grant), and the balance from accrued S.106 contributions and existing Capital funding set aside for Council house-building.

Legal and Governance Implications:

The tenders have been sought from the East Thames Group's EU compliant Framework of Contractors, which has been adopted by the Council.

Safer, Cleaner and Greener Implications:

The new affordable Council homes are to be constructed to "Secure By Design" standards,

Lifetime Homes Standards and will meet the Code for Sustainable Homes level 4.

Consultation Undertaken:

Each of the local Ward Councillors and Residents has all been consulted at the Feasibility stage and at Planning application stage.

Background Papers:

1. Council House-building Cabinet Committee report on the feasibility studies for the Phase 2 development at Burton Road, Loughton.
2. CONFIDENTIAL Tender Evaluation Report provided by Pellings LLP

Risk Management:

A Programme wide Risk Register has been developed and is monitored by the Cabinet Committee. A site specific risk register has also been developed, which has identified risks such as contaminated land and diversion of public rights of way and bus stands. These risks are being managed through the inclusion of specific measures in the contract, and applications to divert the rights of way and bus stands have been registered with Essex County Council.

The tenders sought have been based on a Design and Build Contract, with the expectation of tenderers submitting unqualified tenders to give the Council surety of cost. However, some elements of the tender sums are priced by way of provisional sums, which are an attempt to include a reasonable allowance for unforeseen matters, such as utility services, contamination and external works outside of the site boundary.

Due Regard Record

This page shows **which groups of people are affected** by the subject of this report. It sets out **how they are affected** and how any **unlawful discrimination** they experience can be eliminated. It also includes information about how **access to the service(s)** subject to this report can be improved for the different groups of people; and how they can be assisted to **understand each other better** as a result of the subject of this report.

S149 Equality Act 2010 requires that due regard must be paid to this information when considering the subject of this report.

Within the Housing Service Strategy, it has been identified that the target groups that are affected by the Council's house building programme are people in need of:

- Affordable Housing,
- Homelessness assistance,
- Supported housing for special needs groups,
- Owners and occupiers of poor condition housing
- Council and housing association tenants.

From that, it was identified that generally, there is an under provision of suitable accommodation for nearly all target groups. This has been reaffirmed in the most recent Strategic Housing Market Assessment.

Decision making is affected by funding and other factors, such as the availability of building land suitable for particular groups e.g. the elderly or young families.

There is no evidence of unlawful discrimination in relation to the provision of affordable housing.

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Burton Road, Debden

Addendum to Tender Report

Financial Checks of Tendering Contractors

Financial checks of tendering contractors were undertaken prior to tender action (October 2015). These were undertaken through 'Company Watch' and full details are available on request.

Each report calculates an 'H' score being the measure of a company's overall financial health, and is derived from an appraisal of seven criteria, being:

- Profit
- Liquidity
- Working capital
- Current asset cover
- Equity base
- Current liabilities
- Debt

A score is then derived out of 100. It is recommended that the 'warning trigger' is for scores of 25 or less.

A risk rating is also given, of 1-10, with the risk score the lower the better.

The following summary scores were given;

Contractor	H Score	Risk Rating	Other Comments
Durkan Ltd	68	3	-
GallifordTry	35	7	-
Higgins Construction plc (tenderer)	51	5	-
Higgins Group plc (Parent company to tenderer)	29	7	-
Mulalley & Co Ltd (tenderer)	82	1	-
Sherrygreen Ltd (Parent company to above tenderer)	83	1	-
United House Development Ltd *	24	8	Low credit limit
United House Group Holdings Ltd * (Parent company to above)	5	10	"more detailed enquiry advised"

* It should be noted that the actual tenderer was United Living Limited, a recently formed company essentially structured from a merger of United House Limited and Bullock Construction. A separate financial report for this company is being procured.

It can therefore be seen that financial checks gave no cause for concern with the exception of that provided for United House Ltd, and it is noted that the actual tendering contractor is a newly-formed company for which updated financial information is awaited.

It is also felt prudent to provide an updated report for the recommended contractor (Mulalley Ltd) and this report is also currently being sought by East Thames Group.

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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