

Report to Cabinet



**Epping Forest
District Council**

Report Reference: C-068-2011/12.

Date of meeting: 12 March 2012

Portfolio: Housing

**Subject: Development Agent for Council Housebuilding Programme – Pre-
Qualification Questionnaire (PQQ)**

Responsible Officer: Alan Hall (01992 564004).

Democratic Services: Gary Woodhall (01992 564470).

Recommendation:

(1) That the Pre-Qualification Questionnaire (PQQ) - required under EU Procurement Regulations - for the appointment of the Council's Housing Development Agent, attached as an Appendix, be approved.

Executive Summary:

The Cabinet has previously agreed its approach to the introduction and implementation of a new Council Housebuilding Programme. A key element is the appointment of a suitably-experienced organisation, through a competitive process, to act as the Council's Development Agent to provide and co-ordinate all professional building services.

Since the total value of the Development Agreement will be in excess of the EU Procurement Threshold for Services, it is necessary to follow the EU (Restricted Procedure) procurement process to appoint the Development Agent.

Interested organisations will be required to complete a Pre-Qualification Questionnaire (PQQ), from which a shortlist of 5-7 suitably-experienced organisations will be selected to provide detailed tender submissions.

A PQQ has been produced by the Council's consultant, in consultation with Council housing and procurement officers and the Essex Procurement Hub. The Cabinet has previously determined that it wishes to approve the PQQ (including the selection criteria). The main proposed PQQ is therefore attached as an Appendix for approval.

Reasons for Proposed Decision:

Since the total value of the Development Agreement will be in excess of the EU Procurement Threshold for Services, interested organisations will be required to complete a Pre-Qualification Questionnaire (PQQ).

Other Options for Action:

To agree different criteria for the PQQ. However, the Cabinet is asked to note that the rules around PQQs for contracts administered under EU Procurement Regulations are strictly governed, and they can only include certain information that enables a contracting authority to produce an appropriate shortlist.

Report:

Background to the role of the Development Agent

1. At its meeting on 5 December 2011, the Cabinet agreed its approach to the introduction and implementation of a new Council Housebuilding Programme, based on the construction of around 20 new homes each year for at least 6 years. A key element of the approach is the appointment of a suitably-experienced organisation to act as the Council's Development Agent for an initial four-year period, with options to extend the Agreement for three further individual years.

2. The Development Agent will provide and co-ordinate all professional building services, including: financial, architectural, employers agency, quantity surveying, cost consulting, planning supervision, engineering, surveying, town planning, construction management and supervision, and project management. Most suitably-experienced organisations already have framework agreements in place with consultants to provide this myriad of services.

3. The Council will enter into a Development Agreement with the selected Development Agent and, in return for a fee (generally based on a percentage of the works cost for each development, but in accordance with a comprehensive tendered/agreed fee structure, the Development Agent will provide a full development service on behalf of the Council. It will use its existing framework agreements and contracts with its appointed consultants to provide the Development Team to undertake the development process.

4. Once the Development Agent has been appointed, it will work with officers to formulate a Development Strategy for the Council, setting out the proposed approach to planning, funding and delivering the Housebuilding Programme, including the approach taken and the assumptions used for development appraisals, for adoption by the Cabinet.

5. The Development Agent and its Team will then undertake detailed Development Appraisals for each of the identified sites, which will assess whether or not an identified site has development potential, the expected costs and the anticipated income. Once proposed development packages have been approved by the Cabinet, the Development Agent and its Development Team will then produce all the drawings and plans, together with the required supporting documentation, to seek planning permission from the Council and, if possible, capital funding from the HCA on the Council's behalf.

6. Once planning permission and any funding approval has been obtained, the Development Agent will undertake a tendering process to appoint the building contractor to undertake the works, and will then supervise the construction process and the building contract, all in accordance with the Council's Contract Standing Orders.

7. The Council will pay the Development Agent for both its own and its consultants' services under the Development Agreement. Since the Council will only have contracts with the Development Agent and the works contractors, the Council will have no automatic contractual relationship with the Development Agent's consultants, whose work will affect the integrity of the buildings into the future. Therefore, through the contract with the Development Agent, all the Development Agent's consultants will be required to provide the Council with collateral warranties which, if necessary, would enable the Council to take legal action against a consultant direct if problems arise in the future due to the professional negligence of the consultant, in the same way as the Council would be able to if it had a direct contractual relationship with the consultant itself.

8. In order to seek grant funding from the Homes and Community Agency (HCA) for the Council's Housebuilding Programme, the Development Agent will be required to seek development partner status from the HCA (through a PQQ process) on behalf of the Council,

and then seek to make, and have an “offer” accepted by, the HCA to provide grant funding - in return for the delivery of a specified number of affordable homes.

The Pre-Qualification Questionnaire Process

9. The Development Agent is being appointed through a competitive tendering process. Since the total value of the Development Agreement (which includes the costs of the Development Agent’s consultants) will be in excess of the EU Procurement Threshold for Services, it is necessary to follow the EU (Restricted Procedure) procurement process to appoint the Development Agent.

10. The Development Agent will be selected based on the most economically advantageous tender (MEAT) to the Council, taking account of both price and quality. The Cabinet has previously agreed that up to three tenderers that appear to provide the most economically advantageous tenders will be invited to give presentations to, and have an interview with, a Selection Panel comprising members and officers. The Selection Panel will then recommend an appointment to the Cabinet.

11. In view of the potential number of applicants, interested organisations will complete a Pre-Qualification Questionnaire (PQQ) - from which a shortlist of 5-7 suitably-experienced organisations will be selected (in accordance with Contract Standing Orders), using a pre-determined criteria, and invited to provide detailed tender submissions.

12. The required advert inviting expressions of interest for the appointment was placed in the Official Journal of the European Journal (OJEU) shortly after the December Cabinet meeting, in January 2012. PQQs will be issued to all those expressing an interest, during week commencing 26 March 2012. At the time of writing (mid-February), 65 expressions of interest to complete PQQs have been received, although it is anticipated that a substantial number of applicants will not have the required experience or the required network/framework of consultants to meet the Council’s requirements.

13. A PQQ has been produced by the Council’s consultant, in consultation with Council housing and procurement officers and the Essex Procurement Hub. The Cabinet has previously determined that it wishes to approve both the PQQ (including the selection criteria) and the selection criteria for the main tender exercise, prior to both the PQQ and the main Invitation to Tender being sent to interested and (for the ITT) subsequently selected organisations.

14. Accordingly, the proposed PQQ is attached as an Appendix for approval. The Cabinet is asked to note that the rules around PQQs for contracts administered under EU Procurement Regulations are strictly governed, and they can only include certain information that enables a contracting authority to produce an appropriate shortlist.

15. The Cabinet has also previously agreed that the Housing Portfolio Holder should be involved with the evaluation of the PQQs, which is being arranged.

Project Plan

16. The key dates for the appointment process are as follows:

- Issue PQQ Packs w/c 26 March 2012
- Cabinet approval to Selection Criteria for main tender 23 April 2012
- Closing Date for receipt of PQQs w/c 8 May 2012
- Issue Invitations to Tender (ITT) w/c 11 June 2012
- Closing Date for Tenders w/c 23 July 2012
- Selection Interviews w/c 3 September 2012

- Cabinet approval to appointment 10 September 2012
- Contract commences w/c 5 November 2012

Resource Implications:

Development fees estimated at around £1.6m over 6 years.

Legal and Governance Implications:

EU Procurement Regulations.

Safer, Cleaner and Greener Implications:

Part of the selection criteria includes the evaluation of the organisation's Health and Safety Policies.

Consultation Undertaken:

None.

Background Papers:

Housing Policy File H496.

Impact Assessments:

Risk Management

The main risk is that the Evaluation Criteria for the PQQ is not sufficient or appropriate to ensure that a suitably-experienced organisation is appointed at the end of the process. It is therefore important to ensure that the Evaluation Criteria covers sufficient key aspects, to enable that a shortlist can be compiled of the organisations best placed to provide the Council with the most effective service.

Equality and Diversity

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? N/A

What equality implications were identified through the Equality Impact Assessment process?
None.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A.