

Report to the Cabinet

Report reference: C-035-2012/13
Date of meeting: 3 December 2012



Portfolio: Housing

Subject: Council Housebuilding Programme – Appointment of Development Agent

Responsible Officer: Alan Hall (01992 564004).

Democratic Services Officer: Gary Woodhall (01992 564470).

Recommendations:

(1) That East Thames Group be appointed as the Development Agent for the Council's Housebuilding Programme and awarded a contract for four years (with the option to extend for three further years), being the most economically advantageous tender received on the basis of the Cabinet's previously-agreed Selection Criteria, with a Tender Sum of £1,582,500; and

(2) That Orbit Homes (2010) Ltd be selected as the Council's Reserve Tenderer and that, should it not be possible to enter into contract with East Thames Group for some reason, Orbit Homes (2010) Ltd be appointed as the Council's Development Agent for its Council Housebuilding Programme and awarded a contract for four years (with the option to extend for three further years), being the second most economically advantageous tender received, with a Tender Sum of £1,622,000.

Executive Summary:

The Cabinet has previously agreed to appoint a Development Agent to provide all development, project management and professional building services for the Council's new Housebuilding Programme. The Cabinet has also agreed the terms of the appointment and the Selection Criteria to be used to determine the most economically advantageous tender, at both the Pre-Qualification Questionnaire (PQQ) Stage and the Tender Stage.

Following the PQQ process, six suitably-experienced organisations were invited to tender for the Council's Development Agency Service. Two tenderers withdrew during the Tender Period, and four tenders were received by the Closing Date.

The price and quality of the tenders have been evaluated using the Cabinet's agreed Selection Criteria, which included the provision of formal Presentations by each of the tenderers to the Selection Panel, previously appointed by the Cabinet, comprising members and officers.

As a result of the tender evaluation process, the Selection Panel recommends as set out above.

Reasons for Proposed Decision:

The Council has previously agreed that the appointment should be based on the most economically advantageous tender.

Other Options for Action:

Not to make an appointment and undertake another tender exercise.

It should be noted that the Cabinet is not able to appoint another tenderer without good reason, since the tender exercise is subject to the strict EU procurement rules and the Council's decision could be subject to challenge if it does not comply with its pre-determined Selection Criteria and the Invitation to Tender issued to all tenderers.

Report:

1. At its meeting on 5 December 2011, the Cabinet agreed its approach to the introduction and implementation of a new Council Housebuilding Programme, initially based on the construction of around 20 new homes each year over a 6 year period. Sufficient budget provision was subsequently included within the Housing Capital Programme to fund the Housebuilding Programme.

2. The approach agreed was to appoint a suitably experienced organisation, through a competitive process, to provide a Housebuilding Development Agency Service for the Council for up to 7 years (comprising a 4 year contract with the option to extend for three further years). The Development Agent will provide all development, project management and professional building services, including: architectural, employer's agency, quantity surveying, cost consulting, planning supervision, engineering and surveying, but excluding works construction.

3. The Development Agent will also formulate a Development Strategy for adoption by the Cabinet, setting out the proposed approach to planning and delivering the Housebuilding Programme, and will seek Investment Partner status for the Council from the Homes and Communities Agency (HCA), in order to be able to seek funding from the HCA in the future. The appointment also includes the procurement and supervision of works contractors to construct the properties.

4. The Cabinet also determined that, following the receipt of Expressions of Interests from organisations to be considered for the selection of Development Agent (in response to the advert placed in the Official Journal of the European Union (OJEU)), the Cabinet itself should approve both the Pre-Qualification Questionnaire (PQQ) to be used for short-listing applicants to be invited to tender down to 5-7 organisations and the Selection Criteria to be used to appoint the successful tenderer based on the detailed tender submissions received. The Cabinet also agreed that the Housing Portfolio Holder should be involved in the PQQ shortlisting process itself, and appointed a Selection Panel - comprising members and officers - to recommend an appointment to the Cabinet, following a formal technical appraisal of each tender and a Presentation by each tenderer to the Selection Panel.

5. At its meeting on 12 March 2012, the Cabinet agreed the content of the PQQ, including the associated PQQ Selection Criteria and, at its subsequent meeting on the 23 April 2012, the Cabinet also agreed the Selection Criteria for the main tender exercise.

6. A total of 63 Expressions of Interests were received to the advert placed in the OJEU, which resulted in 13 completed PQQs being received. Following a detailed assessment/scoring of each PQQ, using the Cabinet's agreed Selection Criteria and a formal validation/moderation process involving the Housing Portfolio Holder, 6 organisations were shortlisted to provide detailed tender submissions.

7. The formal Invitation to Tender was issued on 27 July 2012, with a Closing Date of 7 September 2012. The tender submissions were opened by the Housing Portfolio Holder on 12

September 2012. In the event, two tenderers withdrew during the Tender Period, resulting in four tenders being received (from three housing associations and one private organisation).

Tender Evaluation

8. The Cabinet has previously determined that the Development Agent should be selected based on the most economically advantageous tender (MEAT) to the Council, taking account of both price and quality. The Cabinet agreed that the weighting between quality and price should be set at 60% (quality) and 40% (price).

Price Assessment

9. The Cabinet's agreed Pricing Structure comprises the following 4 elements, for which each tenderer was asked to state a sum or a percentage in their tender:

(a) **Feasibility Stage** – A lump sum for each site, to undertake Technical and Financial Appraisals.

(b) **Planning Stage** – A percentage of the works cost for each site, to undertake all the required work up to and including the receipt of Planning Permission.

(c) **Post-Planning Stage** - A percentage of the works cost for each development package (i.e. to develop a number of individual sites), to procure the works contractor through the invitation of competitive tenders and to supervise and project-manage the construction process, up to the end of the Defects Liability Period.

(d) **Additional Services** – A lump sum to formulate the Council's Development Strategy and to apply for Investment Partner status with the HCA on behalf of the Council.

10. Each price element (lump sums and percentages) was then applied to the Cabinet's pre-determined estimates of average works costs and the likely numbers of sites and development packages that will come forward over the 6 year Housebuilding Programme (in respect of (a)-(c) above).

11. This process resulted in an overall (notional) tender sum for each tenderer over the maximum seven-year period of the contract. A score was then applied to each tender, with the lowest tender receiving the maximum score of 40, and the other tenders receiving scores in proportionate relation to the lowest tender.

12. Each of the tenderers' Pricing Schedules were checked by the Council's Development Consultant, John Bigby Housing Consultants. This identified two errors within the Pricing Schedule submitted by Mace Ltd, as follows:

(a) **Feasibility Stage Price** – As explained in Paragraph 9 above, the Invitation to Tender required tenderers to provide a lump sum for each site at the Feasibility Stage, to undertake Technical and Financial Appraisals. However, the price submitted by Mace Ltd was made up of a combination of a fixed price element and a percentage element (of the works cost) for each site, which was contrary to the tender instructions.

This was queried at the Interview Stage (see Paragraph 15 below). In response, Mace Ltd clarified that its tender price element for the Feasibility Stage amounted to a lump sum of £17,700 per site.

(b) **Planning Stage Price** – Mace Ltd also made an error within its Pricing Schedule, relating to its tender price element for the Planning Stage. The price stated for the Planning Stage was 4% of the estimated works cost, resulting in a notional tender price element stated by Mace Ltd of £2,000,000 for the Planning Stage (based on the Council's pre-determined estimate of the works cost per site and the no. of sites for tender evaluation purposes). However, a fee of 4% would result in a tender price of £1,000,000.

This was queried with Mace Ltd, who responded by stating that it stood by its tender price element of £2,000,000, but that its stated price of 4% of the works cost was erroneous and should have been 8%.

13. The outcome of the evaluation process for the price element is detailed at Appendix 1 (which includes the pre-determined estimates of works costs and nos. of development sites and packages, as well as the Council's Pre-Tender Estimate). The outcome is summarised below:

Price Assessment			
Tenderer	Notional Tender Sum	Score Calculation	Price Score
East Thames Group	£1,582,500	Maximum Score	40.0
Orbit Homes (2010) Ltd	£1,622,000	$(1582.5 \times 40) / 1622$	39.0
Affinity Sutton Group	£2,062,000	$(1582.5 \times 40) / 2062$	30.7
Mace Ltd	£4,077,000	$(1582.5 \times 40) / 4077$	15.5

Quality Assessment

14. In order to assess the Quality element of the tenders received, as part of the Invitation to Tender (ITT), tenderers were asked to provide detailed information on 7 key aspects of the Development Agent role and were also required to give a Presentation to the Selection Panel on a further key area. Each of these 8 key aspects was scored (between 0-5) and the weighting previously agreed by the Cabinet for each aspect was applied to each score. The key aspects assessed and their weightings were as follows:

Area Assessed	Weighting (%)
Approach to Development Strategy	5.0 %
Approach to achieving HCA Development Status for the Council	7.5 %
The Development Team – Including leadership, composition of the Team, experience/competency, business continuity etc.	10.0 %
Approach to communication / relationship management with the Council	5.0 %
Approach to risk management	5.0 %
Approach to the project delivery	12.5 %
Approach to programme management	5.0 %
Presentation	10.0 %
Total	60.0 %

15. The Technical Assessment of the Quality Submissions was undertaken by an Evaluation Panel, comprising the Director of Housing, Assistant Director of Housing (Property) and the Council's Development Consultant. Each member of the Evaluation Panel independently scored each tender submission, and then met to moderate the individual scores and to agree provisional unified scores. Following this exercise, interviews were then held with each of the tenderers to clarify any queries resulting from their submissions, and final unified scores were agreed by the Evaluation Panel.

16. Following the Technical Assessment, formal Presentations were then given by each of the tenderers, on a pre-determined subject, to the Selection Panel appointed by the Cabinet, comprising the Housing Portfolio Holder, Chairman of the Housing Scrutiny Panel, Director of Housing, Assistant Director of Housing (Property) and John Bigby (Development Consultant). The Presentation had a weighting of 10%.

17. The detailed outcome of the Quality Assessment is provided at Appendix 2, and is summarised below in ranked order:

Quality Assessment	
Tenderer	Score
East Thames Group	49.5
Orbit Homes (2010) Ltd	44.5
Mace Ltd	42.5
Affinity Sutton Group	38.5

Recommended Appointment

18. Applying the assessments for both price and quality, the overall tender assessment results (in ranked order) are as follows:

Overall Assessment (Price and Quality)	
Tenderer	Score
East Thames Group	89.5
Orbit Homes (2010) Ltd	83.5
Affinity Sutton Group	69.2
Mace Ltd	58.0

19. As can be seen, the submission from East Thames Group has been assessed as the most economical advantageous tender overall, based on the Cabinet's agreed Selection Criteria. The Selection Panel therefore recommends that East Thames Group be appointed as the Council's Development Agent, with Orbit Homes (2010) Ltd identified as the reserve (should it not be possible to enter into contract with the preferred tenderer for some reason).

20. Under EU Procurement Regulations, following the Cabinet's decision there is a three-week "stand still" (Alcatel) period, after which the contract can be entered into. Therefore, it is envisaged that the contract will be signed and commence in January 2013.

Resource Implications:

Estimated at £1,622,000 over the maximum 7-year period of the contract, based on the Cabinet's pre-determined estimates of average works costs and the likely numbers of development sites and development packages that will come forward over the 6-year Housebuilding Programme.

The actual cost will be dependent on the actual works costs and the actual numbers of sites and development packages that come forward.

Legal and Governance Implications:

The EU Procurement Regulations have been followed, since the contract will be above the EU threshold for Services.

Safer, Cleaner and Greener Implications:

Since many of the potential development sites are difficult-to-let garage sites that are unsightly and attract vandalism and anti-social behaviour, their development for housing should make them safer, cleaner and greener.

Consultation Undertaken:

The Tenants and Leaseholders Federation has previously been consulted on the concept of introducing a Council Housebuilding Programme, which it supports.

Background Papers:

- (a) Invitation to Tender
- (b) Tender Report by John Bigby Housing Consultants

Impact Assessments:

Risk Management

The key identified risks, together with the proposals for mitigation, were included within the report from the Housing Scrutiny Panel to the Cabinet at its meeting on 5th December 2011, when the Cabinet agreed to undertake the Council Housebuilding Programme.

These key identified risks and proposals for mitigation are reproduced below, and will be included within the Housing Risk Register, with the highest risks included within the Council's Corporate Risk Register:

Risks	Mitigation
Contractual risks associated with a modest sized building programme	<ul style="list-style-type: none">• Ensure that the appointment of both the Development Agent (and its consultants) and, subsequently, contractors are robust, and include an appropriate element of assessment of the parties' ability to undertake the roles and their quality• Ensure Evaluation Criteria at PQQ and Tender Stage are comprehensive, with key factors weighted appropriately• Ensure that the Council's risks are minimised through the legal agreements• Consider the use of use of external legal specialists• Ensure that the Development Agent and consultants have sufficient Professional Indemnity Insurance
Significant budgetary overspends for construction works and/or fees	<ul style="list-style-type: none">• Ensure robust consideration of development appraisals in the first instance• Include sufficient provision for contingencies• Ensure effective project management arrangements, to include identification of potential overspends early• Report to Cabinet quarterly on progress (works and costs)

<p>Development Agent does not perform to a satisfactory standard</p>	<ul style="list-style-type: none"> • Ensure that the appointment of the Development Agent and its consultants properly assesses the housing associations' ability to provide a good standard • Appoint the Development Agent on the basis of price and quality • Ensure Evaluation Criteria at PQQ and Tender Stage are comprehensive, with key factors weighted appropriately • Ensure that the Development Agent and consultants have sufficient Professional Indemnity Insurance • Include appropriate provisions within the Development Agent's contract to deal with unsatisfactory performance, including contract determination
<p>Contract with the Development Agent is terminated whilst projects/works are in progress</p>	<ul style="list-style-type: none"> • Ensure collateral warranties are in place with the Development Agent's consultants, to enable EFDC to appoint them direct • Ensure that the Development Agent and consultants have sufficient Professional Indemnity Insurance • Ensure the Asst. Director of Housing (Property) and proposed Senior Housing Officer (Dev't) are sufficiently involved with the progress of projects to take over the co-ordination and management, and supervision of consultants
<p>Worked-up schemes do not receive planning permission, or have to be aborted for other reasons, incurring abortive costs</p>	<ul style="list-style-type: none"> • Ensure involvement of planning officers at early stages and ongoing, to receive advice on the planning merits • Ensure development feasibility studies are sufficiently detailed and robust to identify potential site problems • Ensure a sufficient revenue budget to cover the cost of abortive work

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 – But an EQA has been undertaken for Housing Strategy and Development (which covers this issue)

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

EFDC Development Agent Tender Return: Price

ASSUMPTIONS	Sites/Packages	Works Value
Feasibility	60	N/A
Planning	50	£500,000
Post Planning	6	£2,500,000
Dev. Strategy	1	N/A
HCA Partner	1	N/A

TENDERS	Pre Tender Est.	Affinity	E Thames	Mace	Orbit
Feasibility	£500	£1,500	£1,375	£17,700	£650
Planning	5.000%	5.196%	2.196%	8.000%	4.400%
Post Planning	5.000%	4.320%	6.300%	4.600%	3.200%
Dev. Strategy	£2,000	£15,000	£3,000	£250,000	£3,000
HCA Partner	£2,000	£10,000	£3,000	£75,000	£0

RESULTS	Pre Tender Est.	Affinity	E Thames	Mace	Orbit
Feasibility	£30,000	£90,000	£82,500	£1,062,000	£39,000
Planning	£1,250,000	£1,299,000	£549,000	£2,000,000	£1,100,000
Post Planning	£750,000	£648,000	£945,000	£690,000	£480,000
Dev. Strategy	£2,000	£15,000	£3,000	£250,000	£3,000
HCA Partner	£2,000	£10,000	£3,000	£75,000	£0
TENDER PRICE	£2,034,000	£2,062,000	£1,582,500	£4,077,000	£1,622,000

EFDC Development Agent Tender Return: Overall Scores (Price and Quality)

Price

Tenderer	Tender Price	Calculation	Price Score
East Thames	£ 1,582,500	Maximum Score	40.0
Orbit	£ 1,622,000	1582.5/1622x40	39.0
Affinity Sutton	£ 2,062,000	1582.5/2062x40	30.7
Mace	£ 4,077,000	1582.5/4077x40	15.5

	Q1-5%	Q2-7.5%	Q3-10%	Q4-5%	Q5-5%	Q6-12.5%	Q7-5%	Q8-10%
Quality (Actual)	Devt. Strategy	HCA Partner	Team/Leadership	Communication	Risk Management	Project Delivery	Programme Mgt.	Presentation
East Thames	5	5	4	4	3	4	4	4
Orbit	3	3	4	4	3	4	4	4
Affinity Sutton	4	4	4	2	3	3	2	3
Mace	4	3	4	4	4	4	4	2

	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Total Quality Score
Quality (Weighted)	Devt. Strategy	HCA Partner	Team/Leadership	Communication	Risk Management	Project Delivery	Programme Mgt.	Presentation	
East Thames	5	7.5	8	4	3	10	4	8	49.5
Orbit	3	4.5	8	4	3	10	4	8	44.5
Affinity Sutton	4	6	8	2	3	7.5	2	6	38.5
Mace	4	4.5	8	4	4	10	4	4	42.5

Total Tender Score	
East Thames	89.5
Orbit	83.5
Affinity Sutton	69.2
Mace	58.0