

This Report will be made public on 23 July 2019

Report Number **C/19/16**

To: Cabinet
Date: 31 July 2019
Status: Key Decision
Responsible Officer: Sarah Robson - Assistant Director Strategy,
Performance & Communications
Cabinet Member Cllr David Godfrey

SUBJECT: GAS SERVICING AND HEATING INSTALLATIONS
CONTRACT

SUMMARY:

The former contractor for gas servicing and heating installations, P&R Installation Company Ltd (P&R), triggered a no fault break clause under the terms of the contract with a termination date 3/7/19. The four councils, with DDC acting as the lead, started the procurement for a new contract. This report details the outcome of this procurement process and makes a recommendation for reward. The report also outlines risk controls to be implemented by East Kent Housing to improve the management of the next contract.

REASONS FOR RECOMMENDATIONS:

Cabinet is asked to agree the recommendations outlined below: -

- a) The council needs to have in place heating servicing and maintenance services for its tenanted properties.
- b) A procurement exercise has been completed with a recommendation to award.
- c) Weaknesses in East Kent Housing's management of the heating contract have been identified. These need to be addressed for the next contract.

RECOMMENDATIONS:

1. To receive and note report C/19/16.
2. To award the contract to Company A subject to the risk mitigation measures set out in 5.5.

- 3. To agree an additional budget provision of £ 93,201 as set out in 5.6 and 5.7 to be funded from the Housing Revenue Account for contract management improvements to be implemented by EKH.**

1. BACKGROUND

- 1.1 The previous gas servicing and heating installations contract was awarded to P&R Ltd in April 2017. On 2 April 2019 P&R gave formal notice of their intention to terminate the contract bringing it to an end on 3 July 2019. Leading up to termination there were already problems with the service that P&R were delivering. These problems accelerated once the notice of termination was given resulting in the council, through East Kent Housing, appointing interim contractors to meet the shortfall in service, notably in the provision of Landlord Gas Safety Records (LGSR).
- 1.2 After notice of termination was given a procurement process was started for a new contractor. This was overseen by Dover District Council on behalf of the four authorities.
- 1.3 The recommendation from this procurement process was to award to Company A. This recommendation comes with additional risk mitigation actions, which are discussed below. At the request of East Kent Housing as this is a four-way procurement process we have been requested to keep the bidders anonymised until all formal approval processes have been completed.
- 1.4 Following approval to award a mandatory 10-day standstill period will be implemented between the notification of the award decision and the signing of the contract. This can only be started when all four participating councils have confirmed the award. A contract award decision must be open to review before the contract conclusion and therefore this period provides all tenderers the opportunity to review and legally challenge the contract award decision.
- 1.5 The proposed contract is also a long term agreement to which section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 apply it will be necessary to follow the notice/consultation processes prescribed in those regulations and to have regard to any observations received prior to awarding the contract. The Section 20 process will be administrated by East Kent Housing.

2. CONTRACT SPECIFICATION

- 2.1 The new contract was originally scheduled to run from 3 July 2019 until 31 March 2022 with an option to extend for a further 12 Months. The start date will now be amended from the point of approval subject to the legally required standstill period.
- 2.2 All of the Council's residential properties will be covered by the new contract which will provide for:-
 - New heating system installations
 - Boiler replacements
 - Annual servicing
 - Gas safety checks
 - Heating and hot water installation maintenance
 - Water hygiene checks/legionella testing

2.3 The majority of existing heating systems use gas fired boilers but there a small number of oil, solid fuel and electric systems. The contract will cover all these fuel types.

3. PROCUREMENT PROCESS

3.1 The procurement process commenced in April 2019 and followed the requirements of the Public Contract Regulations 2015 with an open advertisement being issued through the OJEU (Official Journal of the European Union).

3.2 The procurement exercise looked to appoint one contractor to undertake the services in their entirety for the Councils. Contracting arrangements will be direct with each of the individual Councils resulting in individual contracts being entered into between the successful supplier and each of the Employers for subsequent use by EKH acting on behalf of these Councils within their respective areas of operation.

3.3 In addition to the notices issues through OJEU, a tender notice was also published via the Kent Business Portal and the Government's Contract Finder web-site.

3.4 The councils received 6 compliant tender submissions in May.

4. EVALUATION OF TENDERS

4.1 The tender was evaluated on a 50% price and 50% quality basis.

4.2 An initial evaluation process looked at the bidder's commercial, technical and financial competencies to meet the minimum criteria of the contract. The price of each bid was assessed and scored in comparison to the other bids received. The quality of service provision was evaluated by a panel including staff from EKH, the councils' procurement teams and two tenant representatives.

4.3 The scoring from the pricing and quality evaluation were combined and the final ranking of tenderers is as follows: -

| Company | Total Score | Rank |
|-----------|-------------|------|
| Company A | 83.00% | 1 |
| Company B | 74.10% | 2 |
| Company C | 70.92% | 3 |
| Company D | 66.41% | 4 |
| Company E | 65.33% | 5 |
| Company F | 57.18% | 6 |

4.4 The total contract price was estimated at £ 1,142,764 per annum for FHDC. This includes a fixed cost for annual servicing, a variable cost based previous volumes for additional maintenance and an installations programme estimated at £ 649,330.

5. DUE DILIGENCE AND RISK MITIGATION

- 5.1 The first ranked bidder was Company A who hold contracts with other social landlords and public sector bodies. Their bid scored highly both in terms of price and quality. There were however two concerns raised, firstly the company has no current operation in East Kent so it would need to establish its service here from the ground up. The second concern was that the total price of the contract was significantly less than the next best ranked bidder and the overall average bids received. For comparison the bid price was also less than the previous contractor, who had given lack of profitability as one of the reasons for termination.
- 5.2 In response to these concerns further three rounds of clarifications were sent to Company A covering: -
- Clarification that the pricing offered will achieve the full requirements of the specification.
 - Information related to other contracts within the South East region.
 - Clarification that the contract duration, first year fixed price and mechanism thereafter for annual adjustment contained within the contract have been fully understood and taken into account.
 - Additional analysis of boiler pricing, cost comparison of schedule of rates with the current service provider and understanding of the need to provide full certification under the terms of the specification.
 - Additional analysis of tender rates for domestic servicing and maintenance and how these rates will be achieved for the entire duration of the contract
 - Reference and credit checks completed and found to be acceptable.
 - Clarification of contract mobilisation, staffing, local site accommodation and customer call handling arrangements.
 - Analysis of the impact that 40-50% growth of existing business operation will have.
 - Company accreditation.
 - TUPE arrangements.
- 5.3 Company A gave a comprehensive response to all additional clarifications. The council separately obtained legal advice on whether there was sufficient grounds under the Public Contract Regulations 2015 to exclude Company A on grounds of an abnormally low tender. The advice received concluded there was not sufficient legal grounds to consider the bid abnormally low and to exclude on that basis. An award to another bidder could result in a legal challenge.
- 5.4 Regardless of the outcome of this tender there would need to be improvements by EKH in the contract monitoring and overall management of the next heating contract. The concerns around the bid price only reinforces the need for improved contract management and risk controls.
- 5.5 The council has already identified to EKH the following measures that it will need to adopt: -

- The contract to include a Parent Company Guarantee.
- The bidder to be firmly advised at contract award stage that service failure will result in contract termination.
- EKH to provide details of staff structure and responsibilities for general contract management and specifically for managing the heating contract.
- EKH to either directly manage or at a minimum have direct access to property database with LGSR records.
- 10% customer call back check of servicing works by EKH to be used in customer satisfaction survey. 20% EKH surveyor check of installation works.
- EKH directly manage the heating contract with a separate professional external auditing function.
- EKH to review process of invoice sign offs to ensure that rates used are as per contract. Regular internal audit 'dip test' of invoices.
- Monthly contract management meetings with the heating contractor. Client officers to continue to be represented at core group and minutes circulated to all client officers.
- As per JCT requirements any instructions done as formal notices agreed by the senior responsible EKH manager.
- No variations to contract or schedule of rates without council agreement as per CSOs.
- EKH to work on service mobilisation plan with contractor. Interim servicing arrangements to continue as back up until the new service is fully operational.
- EKH to report 4 months before end of 1 year period with recommendation to terminate and re-procure or to continue the contract.
- EKH to report on LGSRs and other heating systems on a weekly basis. EKH to confirm that figures have been audited and represent an accurate position.
- EKH to identify additional resources to support the above.

5.6 EKH have indicated that they will require the following resources to provide the level of contract management assurance required by the four East Kent Authorities.

- 1 Gas Contract Manager (post already in structure).
- 1 Quantity Surveyor to manage the financial aspect of the contract and to provide assurance to Councils financial monitoring and auditing is being undertaken (new to structure).
- 1 Clerk of Works to undertake 20% post inspections (new to structure).
- 5 Technical Administrators, one being senior (new to structure).
- Software to auto read and check LGSRs. Estimated cost £29,302 per year. EKH advises that this can also auto read electrical ECIRs and so would have an additional benefit.

5.7 The additional budget required for the staffing and services listed above is £372,804. This would be paid as an uplift to the management fee and would be split equally costing £93,201 per authority.

6. OPTIONS

6.1 Option 1 is to award the contract to the highest ranked bidder Company A. This is the recommended option subject to confirmation and action by EKH to adopt the risk mitigation measures identified above.

6.2 Awarding to another bidder is not an option for the reasons previously given due to the risk of legal challenge.

6.3 If Company A decline the award the recommendation would be to appoint the next placed bidder, Company B.

6.4 Option 2 is not to award and to start a new procurement. This would mean extending the interim contract arrangements. This is not recommended as there is a need to get the heating servicing arrangements onto a stable long-term basis.

7. RISK MANAGEMENT ISSUES

7.1 The risk management are discussed in part 5.

| Perceived risk | Seriousness | Likelihood | Preventative action |
|------------------------|-------------|------------|---|
| Contractor Performance | High | Medium | <p>Actions listed in 5.5 notably: -</p> <ul style="list-style-type: none"> • The bidder to be firmly advised at contract award stage that service failure will result in contract termination. • EKH to provide details of staff structure and responsibilities for general contract management and specifically for managing the heating contract. • EKH to either directly manage or at a minimum have direct access to property database with LGSR records. |

| | | | |
|----------------------------|--------|------|---|
| | | | <ul style="list-style-type: none"> • 10% customer call back check of servicing works by EKH to be used in customer satisfaction survey. 20% EKH surveyor check of installation works. • EKH directly manage the heating contract with a separate professional external auditing function. • EKH to work on service mobilisation plan with contractor. Interim servicing arrangements to continue as back up until the new service is fully operational. EKH to report 4 months before end of 1 year period with recommendation to terminate and re-procure or to continue the contract. • EKH to report on LGSRs and other heating systems on a weekly basis. EKH to confirm that figures have been audited and represent an accurate position. |
| Contractor Financial Model | Medium | High | <p>Actions listed in 5.5 notably: -</p> <ul style="list-style-type: none"> • The contract to include a Parent Company Guarantee. |

| | | | |
|--|--|--|--|
| | | | <ul style="list-style-type: none"> • EKH to review process of invoice sign offs to ensure that rates used are as per contract. Regular internal audit 'dip test' of invoices. • Monthly contract management meetings with the heating contractor. Client officers to continue to be represented at core group and minutes circulated to all client officers. • As per JCT requirements any instructions done as formal notices agreed by the senior responsible EKH manager. • No variations to contract or schedule of rates without council agreement as per CSOs. |
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7. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

7.1 Legal Officer's Comments (NE)

The nature and value of these services are such that they are subject to the tendering requirements of the Public Contract Regulations 2015 (PCR15). This report confirms that, as required by law, tenders were sought from contractors following an EU procurement exercise and that the most economically advantageous tender is recommended for acceptance. There were concerns regarding the abnormally low tender submitted by Company A however, external legal advice was obtained at it was found that there were insufficient grounds to exclude the contractor on the basis that the bid was abnormally low.

As the report notes as part of the contract process, there will need to be a standstill period of a minimum of 10 calendar days between notification of the successful contractors that they have won the contract and the award of the contract to the contractor so as to allow unsuccessful contractors the opportunity to challenge (if they decide to) the award of the contract.

Legal will be involved in the negotiation and completion of the JCT agreement

7.2 Finance Officer's Comments (CI)

The current budget for 2019/20 for gas servicing and heating installations is £906,580. This is lower than the proposed annual contract amount of £1,142,764, although this does include some variable elements. Any additional budget requirements in 2019/20 will be factored into budget monitoring projections and the additional budget for future years will be addressed in the budget setting process for 2020/21.

The additional £93,201, requested from EKH will also need to be addressed through budget monitoring and budget setting processes.

7.3 Diversities and Equalities Implications

There are no equalities implications.

8. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting

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The following background documents have been relied upon in the preparation of this report – N/A