

## LONDON BOROUGH OF CROYDON

<b>REPORT:</b>	<b>COUNCILLOR DELEGATED KEY DECISION</b>	
<b>DATE OF DECISION:</b>	<b>19 July 2024</b>	
<b>REPORT TITLE:</b>	<b>REGINA ROAD DEMOLITION - PROCUREMENT STRATEGY FOR THE DEMOLITION OF TOWER 1, NOS. 1 TO 87 (PHASE 1A), AND TWO ADJACENT BLOCKS OF MAISONETTES, NOS. 89 TO 99 AND 101 TO 123 REGINA ROAD (PHASE 1B) – PART A</b>	
<b>CORPORATE DIRECTOR:</b>	<b>Susmita Sen - Corporate Director of Housing</b>	
<b>LEAD OFFICER:</b>	<b>Kelly Harris – Interim Regina Road Project Director Email: <a href="mailto:kelly.harris@croydon.gov.uk">kelly.harris@croydon.gov.uk</a></b>	
<b>LEAD MEMBER:</b>	<b>Councillor Lynne Hale, Deputy Executive Mayor and Cabinet Member for Homes</b>	
<b>DECISION TAKER:</b>	<b>Councillor Lynne Hale, Deputy Executive Mayor and Cabinet Member for Homes</b>	
<b>AUTHORITY TO TAKE DECISION:</b>	<b>Delegated authority through the Annual procurement Plan; agreed at Cabinet March 2024</b>	
<b>KEY DECISION?</b>	YES	Decision incurs expenditure over more than £1,000,000 Key Decision 0624H <i>See also Part B</i>
<b>CONTAINS EXEMPT INFORMATION?</b>	YES	Public with exempt Part B Report This Report forms the basis of a competitive procurement – release of its contents before the issue of the Invitation to Tender will likely invalidate that competition.  <b>Grounds for the exemption:</b> Exempt under paragraph 3 of Schedule 12A of the Local Government Act 1972 as it relates to the financial or business affairs of any particular person (including the authority holding that information) and the public interest in withholding disclosure outweighs the public interest in disclosure.
<b>WARD/S AFFECTED:</b>	South Norwood	

**SUMMARY OF THE REPORT**

- 1.1. To approve this procurement strategy for the demolition and clearance of the first tower, nos. 1 to 87 Regina Road (Phase 1a), and the two blocks of adjacent maisonettes, nos. 82 to 99 and 101 to 123 Regina Road (Phase 1b).

- 1.2. The demolition and clearance of the tower and the maisonettes are essential to the progress of the Regina Road redevelopment scheme and will enable the council to meet the requirements of the GLA funding programme.
- 1.3. The outcome of this procurement will be to award a single contract for phases 1a and 1b to demolish and clear the first main phase of the Regina Road site for the re-development, leaving a clear, restored and level site.
- 1.4. A fixed price with provisional sums is being sought. A provisional sum is an allowance (best estimate) calculated by the Quantity Surveyor, that is inserted into the tender documents for a specific element of the works that is not yet defined in enough detail for tenderers to price accurately. This allows a cost consideration to be included in the tender process, whilst retaining control over the spend of this item, in terms of both expenditure and timing.
- 1.5. The aim is to conclude the procurement and enter a contract, as detailed in the timetable, with site possession granted to the demolition contractor as soon as possible thereafter. The contract is likely to be concluded within 12 months, subject to the successful contractor's programme being adopted.
- 1.6. The procurement is to be conducted under the Notting Hill Genesis Framework, demolition & Enabling Works (Complex) Framework / contract Notice 2019/2 209-509321. This being under Regulation 33 – frameworks – of PCR2015
- 1.7. The UK's Competition and Markets Authority (CMA) concluded a long-running investigation into bid-rigging and illegal cartel agreements within the demolition industry. The Competition and Markets Authority has confirmed that the firms are now compliant with competition law and can be considered for future tendering opportunities, given the strong sanctions imposed and the firms' cooperation during the investigation.

## **2. RECOMMENDATION**

### **For CCB:**

- 2.1. For the reasons set out in the report, the Contracts and Commissioning Board (CCB), with approval from the Cabinet Member for Finance, is requested to approve the recommendations in this report to the Cabinet Member for Homes and Chair of CCB respectively.

- 2.2.** The Chair of CCB is recommended to approve a waiver, under regulation 19 of the Tenders and contracts Regulations, of Regulation 23 Standard contract Clauses to use the JCT (2016) Standard Building contract Without Quantities, terms and conditions, with amendments from LBC Legal.

**For Cabinet Member:**

- 2.3.** The Cabinet Member for Homes is recommended by the contracts and Commissioning Board to approve the procurement strategy for the procurement of the Regina Road demolition and clearance contractor, including asbestos removal, via a mini-competition under the Notting Hill Genesis framework for a duration of up to 12 months and with an estimated total value stated in the Part B report. The contract period will be dependent upon project progress.

**3. BACKGROUND AND DETAILS**

- 3.1.** The demolition and clearance of the tower and the maisonettes are essential to the progress of the Regina Road Estate redevelopment and to provide evidence of progress to GLA funding.
- 3.2.** The outcome of this procurement will be to award a single contract for Phases 1a and 1b to demolish and clear the first third of the Regina Road site for the re-development, leaving a clear, restored brownfield site such that building can commence. The work entails scaffolding, the removal of asbestos, progressive demolition by floor, and then either removal to structural slab, or removal of the structural slab (the first tower is not piled), c. 1m grubbing and then structurally stabilising the site upon which the tower sits, as well as the removal of spoil – thereby leaving a clean ‘virgin’ site for the new construction.
- 3.3.** Included in this work is an instruction for the demolition contractor to remove and store half a dozen selected wall or floor panels and wall floor joists to a safe off-site location such that the Building Safety Programme (BSP) can separately make their own investigations away from the site. This will assist greatly in informing the BSP as to the probable make-up and condition of 12 other similar tower blocks in the borough, and findings will also be provided to the Building Research Establishment to assist with the national picture.
- 3.4.** Input into the requirements in the ITT has been provided by the project’s demolition consultant, Michael Barclay Partnership (MBP). The option of separating the asbestos and demolition contracts was considered. This was rejected as it would create a major reliance risk inherent in having two contractors. Any delays arising from the Asbestos contract would lead to

complexity in holding that contractor to legal obligations and also consequential delays to the separate demolition contract. Integrating the two contracts was identified as providing a more efficient and administratively simpler contract where a single contractor could be held to account. There was a further compelling reason in that much of the tower's asbestos is embedded in screed and concrete, making it impractical to separate the two tasks.

- 3.5. The proposed procurement approach allows for the council to target a framework of appropriate specialist contractors able to demonstrate their ability to execute a demolition of this complex nature.
- 3.6. This process will allow the council to deliver Value for Money (VFM) efficiently whilst accessing competition.
- 3.7. The Framework allows the council to use its preferred form of contract, JCT 2016 Standard with the Council amendments, as drafted by the LBC Legal Team.

#### 4. PROCUREMENT APPROACH

- 4.1. The options for the delivery of this procurement have been explored and are set out in Table 1 below.

**Table 1 – Procurement Options**

Option Summary	Pros	Cons
Do nothing.  <b>(Not recommended)</b>	None.	The Project cannot proceed without demolition. The alternative is to include demolition into a forthcoming planning application and to rely on that permission being granted. This would place the entire project at risk and would likely result in reconsideration of the GLA grant funding.
Delay and absorb into the master construction contract.	Would possibly introduce an economy of scale.	This would entail a very significant delay in the Project and would obviate any visible demonstration of progress which would result in the erosion of trust

Option Summary	Pros	Cons
<b>(Not Recommended)</b>		with the LBC's Cabinet and that which has been carefully cultivated with residents. This would put the whole project at risk and would likely result in the reconsideration of the GLA funding grant.
Use an existing contract or relationship <b>(Not Recommended)</b>	This would be rapid (were there such a contract arrangement), with a known first party.	There is no such contract available with a specialist demolition contractor.  Utilising the LBC'S general contractor would add risk as none have the deep expertise necessary.
In-house delivery	None	There is no in-house expertise.
Competition through an Open or Restricted procedure <b>(Not Recommended)</b>	This approach may capture more of the market	This approach would increase the time needed to go to market and may not result in strong responses from the specialised demolition suppliers.
Framework – Direct award	offers a compliant and swift route to market	A direct award may not give the necessary evidence that the LBC is obtaining Value for Money (VFM)

Option Summary	Pros	Cons
<p>Framework: selecting a demolition contractor by a competitive ITT.</p> <p><b>Recommended</b></p>	<p>This route is the optimal path as it allows:</p> <ul style="list-style-type: none"> <li>- Access to a prequalified group of bidders,</li> <li>- Is compliant under the PCR2015, Regulation 33;</li> <li>- Is rapid compared to other Procedures</li> <li>- Allows competition.</li> </ul>	<p>A Framework competition allows a compliant route. However, access to the marketplace is restricted to those already a member of the Framework.</p>

### Preferred Approach: Framework Selection

- 4.2.** The selection of the Framework entailed thorough desk-based research conducted by the procurement and project team, with advice from MBP. MBP provided a long-list of firms they considered would be most suitable.
- 4.3.** This analysis work resulted in approx. 20 demolition contractors; Procurement & Commercial officers cross-referred all contractors to establish which frameworks best matched the LBC's needs.
- 4.4.** The desk-based analysis identified eleven frameworks, each with advantages and disadvantages. The criteria for selecting the most suitable Framework were:
- 4.4.1. Being specialist in terms of skills and experience in demolition
  - 4.4.2. Allowed a choice of terms and conditions with the LBC's amendments, such that the Council has flexibility over prescribed T&Cs
  - 4.4.3. Framework charges need to provide good value for money
  - 4.4.4. Being accessible to the Council with minimal delay
- 4.5.** Commercial frameworks as well as Buying Consortia were considered. The order of preference of frameworks following the analysis were:

Notting Hill Genesis (NHG)  
 Crown Commercial Services  
 South East Consortium  
 Communities and Housing Investment Consortium  
 NHS Shred Business Services  
 ProcurePublic  
 ESPO  
 Pagabo  
 Fusion 21  
 SCAPE  
 Efficiency East Midlands Framework/DPS

- 4.6.** Following evaluation of all the above frameworks, the Notting Hill Genesis framework was clearly the most suitable as they have a good spread of suppliers with the required experience and expertise. Furthermore, the suppliers have specific expertise in residential demolition (as opposed to industrial).
- 4.7.** It has been confirmed that there are no fees for using this Framework.
- 4.8.** The initial term of the NHG demolition and Enabling Works (Complex) Framework was September 2019 – September 2023, which was then extended (in line with provisions in the contract notice) until September 2027.
- 4.9.** It is proposed to invite all qualifying tenderers of the Notting Hill Genesis Framework Lot: demolition & Enabling Works (Complex) Framework / contract Notice 2019/2 209-509321.

**Table 2 – Notting Hill Genesis Framework Lot Supplier List**

Number	Notting Hill Genesis Supplier List
1.	Coleman & Company
2.	Erith Contractors
3.	Hughes and Salvidge

4.	John F Hunt
5.	Morissroe Demolition (previously Cantillon Limited)*
6.	O'Keefe Construction
7.	Keltbray

- 4.10. \*Cantillon Limited were purchased from administration and remain a qualified Framework member as Morissroe demolition. A further company, The Squibb Group, were excluded due to their liquidation in late 2023.

### Background to Bid Rigging

- 4.11. The UK's Competition and Markets Authority (CMA) concluded a long-running investigation into bid-rigging and illegal cartel agreements within the demolition industry. As part of its infringement decision issued on 23 March 2023, the CMA fined 10 demolition contractors a total of £59.3 million. The firms, including Keltbray, McGee, and Erith, were found to have colluded on prices when submitting bids for contracts worth over £150 million between January 2013 and June 2018.
- 4.12. Rather than competitively bidding, the CMA found that the 10 firms "were colluding on prices through illegal cartel agreements" and that their "bids were rigged, deceiving the customer that they were competitive when that was not the case." Five of the firms were also discovered to have made "compensation payments" where the designated "winning bidder" financially compensated the "losing bidder" for submitting a deliberately priced losing bid.
- 4.13. In addition to the significant fines, the CMA also disqualified three directors involved in the anti-competitive practices. The CMA stated that the enforcement actions served as a "clear warning" that it would not tolerate such behaviour that harms businesses and taxpayers.
- 4.14. However, the Competition and Markets Authority has confirmed that the firms are now compliant with competition law and can be considered for future tendering opportunities, given the strong sanctions imposed and the firms' cooperation during the investigation.

### Timetable

**Table 3 – Demolition Contract Procurement Timetable**



<b>Procurement Timetable</b>	<b>Date</b>
Final review of Draft ITT completed and NHG arrangements agreed about issuance (via LBC InTend)	08/07/2024
Procurement strategy report approval granted	19/07/2024
Procurement approval standstill period ending	26/07/2024
Planned issue of the ITT	26/07/2024
Site visits – accompanied and minuted	02/08/2024
Bidder Clarification Questions Closes	09/08/2024
Competition closes – bids received	23/08/2024
Procurement undertake initial compliance checks of submissions	23/08/2024
Evaluators complete scoring	12/09/2024
Moderation closed and qualified	12/09/2024
Award report issued to Project Director and Head of Procurement (first draft)	26/09/2024
Success and failure letters completed	07/10/2024
Award Report approved	18/10/2024

## 5. ITT

5.1. The ratios for this procurement were mandated in the Cabinet Approvals of May 2023. The award criteria are:

5.1.1. 50% Technical:

- 40% content questions
- 10% social value (of which 6% is qualitative social value and 4% is quantitative social value)

5.1.2. 50% Commercial (Price):

- Made up of the price against the Excel spreadsheet after adjustment for Premier Supplier Programme (PSP).

### Technical Criteria: Content questions

- 5.2. The content elements of the technical criteria will be scored according to the table below.

**Table 4 – Content Questions (40%)**

<b>Criteria</b>	<b>Weighting %</b>
Site Methodology and Structural Challenges	8%
Unexpected Structural Challenges	6%
Risks: Solutions and Mitigations	5%
Programme: Gantt Chart and Commentary	8%
Team and Resources	7%
Resident Engagement and Satisfaction.	6%

**Technical Questions: Social Value (10%)**

- 5.3. The social value element of the technical criteria will be based on the Mayor’s priorities and also incorporate requirements set out in the Public Services (Social Value) Act 2012.

**Commercial Criteria: Pricing Questions (50%)**

- 5.4. Mandatory pass/fail commercial questions will include robust financial questions to ensure supplier viability over the project’s duration.
- 5.5. The arrangement of pro-rata scoring for pricing is set out in Volume 1 of the ITT, where the lowest priced bidder is awarded 50%.
- 5.6. The basis of tender will be a fixed price with provisional sums. Volume 3 of the ITT includes the pricing criteria. Provisional sums have been reviewed by the Council’s appointed Quantity Surveyor is included in this section. The provisional sums are elements of the demolition that have not been specified in enough detail for tenderers to accurately price. The provisional sums allow the Council to factor in a cost consideration for matters that are not fully known, into the tender process. This enables the Council to retain control over the spend of this item, both in level of expenditure and timing.
- 5.7. The pricing sheet (a Microsoft Excel document) will provide the template for the price return. The pricing sheet will provide transparency of each of the major component items such that any Commercial Change Control Process (CCCP) can fully control any variance.

## **Contractual Terms and Conditions**

- 5.8.** The contract will be a form of JCT with amendments as authored by the LBC's legal team and will form Volume 5 of the ITT. The draft contract will be issued with the ITT and following a period for clarifications, will become the basis of tender for the ITT.
- 5.9.** The contract is proposed to contain the following Key Performance Indicators:
- 5.9.1. KPI 1: Quality/safety of asbestos removal
  - 5.9.2. KPI 2: Adherence to plan as submitted within the Tender.
  - 5.9.3. KPI 3: Adherence to mandatories within the Client Requirements (Volume 3 of the ITT) including Sections 60 and 80, Commitments – such as noise, dust, vibration, working hour limits etc.
  - 5.9.4. KPI 4: Achievement of Social Value obligations.
- 5.10.** The contract will be managed and operated by the Regina Road Project Team. Operational and strategic management meetings on contractor performance will be held monthly, quarterly, and managed through a suite of KPIs.
- 5.11.** The appointed Quantity Surveyor, Pellings LLP, will support the Project Team with the contract, as will the appointed demolition Consultancy advisors the Michael Barclay Partnership.
- 5.12.** The contract will be managed using a stringent Change Control Process in line with best practice. Payment terms will be 30 days from invoice or defined milestone. The Premier Supplier Programme (PSP) will be offered within the ITT.

## **Premier Supplier Programme (PSP)**

- 5.13.** The PSP, under Oxygen Finance, will be incorporated in the new contract as an offer to bidders. PSP template wording will accompany the ITT documents, to ensure all bidders have a 'level playing field'

## **6. EVALUATION, MODERATION & AWARD PROCESS**

- 6.1. Evaluation and Moderation will be led by the Council's Procurement & Commercial team in compliance with Regulation 67 PCR 2015. All evaluators will be trained. The process and criteria together with the scoring schema are set out within Volume 1 the ITT. They are wholly compliant with PCR2015, the LBC TCRs and the Framework.
- 6.2. No model answers or additional criteria will be used by evaluators beyond that contained in the ITT (Regulation 67)
- 6.3. Any tender that scores a '0' or '1' for any question shall fail and be immediately excluded. Any bidder who fails one or more of the five mandatory questions (as well as other Regulations such as an Abnormally Low Bid [Reg 69]): two questions and four declarations, shall after the relevant assurance and double-checking be excluded before scored evaluation.
- 6.4. Scoring will be in line the normal LBC schema scored from zero to five (0-5). Robust record keeping will be adhered to, as is normal practice.
- 6.5. Under PCR 2015 a Regulation 84 Report will be issued following contract award as it is required for all contracts awarded following a formal procurement process (including contracts called off a framework via a mini competition).

**7. CONTRACT MANAGEMENT**

- 7.1. The contract will be managed and operated by the Regina Road Project Team. Operational and strategic management meetings will be held monthly, quarterly, and on contractor performance managed through a suite of KPIs.
- 7.2. The appointed Quantity Surveyor, Pellings LLP, will support the Project Team with the Contract, as will the appointed Demolition Consultancy advisors the Michael Barclay Partnership.
- 7.3. The Contract will be managed using a stringent Change Control Process in line with best practice.
- 7.4. Multiple bidders have been sanctioned for cartel activity by the CMA, the Regina Road Project team will closely monitor the contract, ensuring up-to-date financial reports are sought and regular communication with the framework holder to monitor changes or unusual activities.

**8. RISKS AND MITIGATIONS**

**Table 5 – Demolition Contract Procurement Risks and Mitigation**

Risk	Mitigation
<b>Procurement Process</b>	

Risk	Mitigation
That a single, few or no bidders respond, or submit a tender	Advanced notice has been sent out, and all suppliers have confirmed an interest. However, the timetable is very compressed and procurement & Commercial has already raised this risk with the Project Team.
That a single bid effectively creates a monopoly position and may not deliver optimum Value for Money.	<p>Should only one bidder provide a tender, then this could be accepted under PCR2015.</p> <p>The appointed project Quantity Surveyor (QS), Pellings, are developing a benchmark price. If a single bid were to be deemed excessive then the probability is that another procurement would be needed which would entail a significant delay. It should be noted that in that event, the possibility of a single bid would remain.</p>
Multiple strong bids are received and require more time for evaluation.	<p>A back-up plan has been produced and the Project Team has been advised of likely delay if all potential bidders submit a tender, due simply to the volume of work.</p> <p>Delay is likely because of significant resourcing demands for evaluation and moderation.</p>
A long sign-off process leads to a delay in the award	The procurement Team are proactively navigating the route to approvals. The Project Board has a role to play in giving high level governance support to help prioritise approvals.
There is a dead-heat or near dead-heat on scores	The Project team will ensure robust record keeping of the evaluation process and moderation process, including clear details of reasoning.

Risk	Mitigation
	Legal advice will be sought in the event that this risk materialises.
<b>Legal and Procurement Law Compliance</b>	
Bidders questions or clarifications reveal as-yet unknown issues which lead to delay	Peer review of the ITT, together with LBC Legal in respect of the contract terms, LBC Finance and Pellings are assuring elements of the ITT in order to limit such events. The demolition Consultants MBP are also providing an additional tier of assurance. The risk cannot be fully eliminated, but the assembled expertise means it has been reduced as far as is possible.
A legal challenge results in delay.	The procurement is being staffed with the requisite resources and highly competent, qualified professionals. There is a strong interlock with LBC Legal to ensure that any risk of challenge is appropriately mitigated.
<b>Commercial, Financial and VFM</b>	
The prices received are excessively high and/or fail to deliver VFM against the Quantity Surveyor's benchmark	The ITT is a competitive process and is therefore expected to result in competitive pricing.
<b>Reputational, Governance and Political</b>	
Why has LBC run a competition including firms convicted of participation in a cartel?	<p>Legal advice has been obtained and the Notting Hill Genesis Framework Team has shared their process of 'self-cleaning' across each bidder involved with the Competition and Markets Authority. This including half yearly compliance updates from each bidder.</p> <p>'Self-cleaning' is set out as being legally acceptable under PCR 2015.</p>

Risk	Mitigation
	<p>The self-cleaning regime provides that a company convicted of an offence will not be precluded from participating in a procurement tender if it can demonstrate that it has put in place effective measures to remedy the consequences of any criminal offences or misconduct and ensure that the conduct will not recur.</p>
<p>Reputational risk: Why has the LBC contracted with a firm involved in a fatal accident within the past ten years?</p>	<p>Health and Safety will be assessed as part of the tender process. Whilst one of the bidders is known to have been involved in a fatal accident in 2016, other bidders may also have reportable accidents.</p>
<p><b>Resident resistance</b></p>	
<p>Demolition is inevitably dirty, dusty, noisy and creates lorry traffic</p>	<p>The ITT contains mandated 'pass/fail' acceptance of various standards including the Sections 60 and 80 requirements of working, and therefore mandates the highest standards.</p> <p>There are also Resident Engagement questions within the ITT which explicitly addresses how the bidder would minimise disruption.</p>
<p><b>Delivery including Programme</b></p>	
<p>The Client Requirements – Volume 3 of the ITT – assumes the building is safe to demolish, based on the work of the demolition Consultant and the planned Surveying work by the Building Safety and Compliance Team.</p>	<p>Work is ongoing on inspections and surveys to establish that it is highly likely that the tower is safe to progressively demolish, and this forms the LBC has commissioned a leading demolition Consultant MBP to advise.</p>

Risk	Mitigation
	At this stage the Project Team considers it has taken all the steps it can to progress based on the assumptions in the ITT: that the tower is safe to demolish.

## 9. CONSULTATION

The Project involves extensive resident engagement led by the Regina Road Project Team. This has involved in working with, listening to, and obtaining direct feedback from estate residents.

## 10. COUNCIL POLICIES

- 10.1. All standard Council policies are mandated in the ITT's Requirements and contract.

### Real Living Wage (RLW)

- 10.2. The Council will include a requirement for all staff to be paid no less than the RLW, as defined by the Living Wage Foundation.
- 10.3. At the point of issuing the Tender, If RLW has not yet been fully implemented, then the Council will revert to London Living Wage.

## 11. CONTRIBUTION TO EXECUTIVE MAYOR'S BUSINESS PLAN

- 11.1. This Report, its recommendations and the procurement support the following priorities as set out in the Mayor's Business plan:
- 11.1.1. To deliver the Regina Road Redevelopment Project, which is a Key Objective
  - 11.1.2. To make Croydon a cleaner, safer and healthier place; "a borough we're proud to call home"

## 12. IMPLICATIONS



## **12.1. FINANCIAL AND COMMERCIAL IMPLICATIONS**

- 12.1.1. The maximum total value of the contract can be supported within the Regina Road budget. Following the issue of the tender documents, the Annual Procurement Plan (APP) will be updated to reflect any revised costs. See *also Part B*.
- 12.1.2. **The contract award will return for separate and explicit approval before any money is spent on the this requirement.**
- 12.1.3. Within the ITT there will be mandatory pass/fail financial questions for each bidder to complete for evaluation by both procurement and Finance.

### **Essential Spend Criteria**

- 12.1.4. This is capital HRA spend. However, it is considered as essential because this project falls under the following criteria:
  - 12.1.4.1. Expenditure required to deliver the LBC's provision of statutory services at the minimum possible level. This is to avert or mitigate a serious health and safety incident or accident and to enable the LBC to function and carry out its duties and to fulfil statutory obligations.
  - 12.1.4.2. Urgent expenditure required to safeguard the vulnerable citizens.
  - 12.1.4.3. Under the criteria within Section 115(6A) of the Local Government Finance Act 1988, this proposed expenditure prevents the LBC's financial situation from getting worse. This is because, if the LBC fails to comply with its statutory duties by failing to deliver this service as outlined, this could result in substantial claims being made against the LBC.

Comments approved by Orlagh Guarnori on behalf of the Director of Finance. Date 02/07/2024.

## **12.2. LEGAL AND COMPLIANCE IMPLICATIONS**

- 12.2.1. The Council has the power to enter into contracts with third parties pursuant to its functions as provided for under section 1 of the Local Government (contracts) Act 1997. The LBC also have the power to do anything that individuals generally may do pursuant to section 1 of the Localism Act 2011.

- 12.2.2. The Executive Mayor has the power to exercise executive functions pursuant to S9E of the Local Government Act 2000 and has the power to delegate those functions.
- 12.2.3. At present the delegations in the LBC's Tenders and contracts Regulations have been superseded by the Executive Mayor's Scheme of Delegation following the introduction of the Mayoral Model and the specific delegations in the annual procurement plan approved by the Executive Mayor in Cabinet. The Executive Mayor has delegated to the Corporate Director of Housing authority to make the decision upon recommendation from the CCB pursuant to the annual procurement plan.
- 12.2.4. The LBC is under a duty to comply with the Public contracts Regulations 2015 (PCR) when entering into regulated contracts. The proposed procurement strategy is a call-off from a framework agreement following a mini-competition. The use of framework agreements is set out in Regulation 33 of the PCR. The LBC should comply with the requirements of the PCR and any other requirements included within the established framework. The procurement comments set out in this report confirm compliance.
- 12.2.5. In relation to the potential award to a contractor who has previously been convicted of cartel activity for illegally colluding to rig bids, this is not currently a mandatory exclusion ground under Regulation 57(1) PCR but is a discretionary exclusion ground under Regulation 57(8)(c). In any event, the Council is seeking to call-off from an existing framework agreement and the exclusion grounds would have applied at the point of award of the framework agreement. The framework provider has, therefore, sought to implement a 'self-cleaning' process following the provisions of Regulation 57(13) where an economic operator can provide evidence that they have taken measures to demonstrate their reliability, such as paying compensation, collaborating with investigating authorities and taking organisational measures to prevent further criminal offences. The framework provider has been able to be sufficiently assured and is continuing with monitoring. The options considered in this report explain the alternatives to using this framework and/ or excluding specific bidders involved in cartel activity, which is considered to risk resulting in a lack of competent bidders.

Comments approved by the Head of Commercial & Property Law, Kiri Bailey, on behalf of the Director of Legal Services and Monitoring Officer. Date 04/0724.

### **12.3. EQUALITIES IMPLICATIONS**

- 12.3.1. The Council has a statutory duty to comply with the provisions set out in Sec. 149 of the Equality Act 2010. The LBC must therefore, in the performance of its functions, have due regard to:
- (a) the elimination of discrimination, harassment, victimisation, and any other conduct that is prohibited by or under the Act.
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 12.3.2. The department has collated some data on protected characteristics at Regina Road and now hold some data on ethnicity, sex, sexual orientation and religion. During the consultation, efforts were made to pay due regard to all equality characteristics by ensuring that the consultation was accessible to all residents - in particular those who may not have English as a first language and residents who are non-neurotypical.
- 12.3.3. The EQIA produced in November 2022 is a live document and has been updated by Housing and this was last reported to Cabinet on 22 March 2023 to help comply with the Equalities Act 2010. There have already been improvements on the collection of data regarding protected characteristics. Conclusions drawn from Equality Analyses helps us to better understand the needs of all our communities, enable us to target services and budgets more effectively. This is attached as Appendix 1.
- 12.3.4. The Project Team is paying particular attention to all impacts and disruptions to residents of both demolition and some three to four years of construction. A workstream is being put in place spanning all disciplines spanning these challenges including traffic, noise, dust, vibration and lighting and other factors.

Comments approved by Ken Orlukwu, Senior Equalities Officer, on behalf of Helen Reeves, Head of strategy & Policy. Date 02/07/2024

## **12.4. HUMAN RESOURCE IMPLICATIONS**

- 12.4.1. As this is an award of a new contract with no TUPE or ARD implications, there is not considered to be any HR impact arising from this report.

12.4.2. If any HR issues do arise, they will be managed under the LBC's Corporate Policies and Procedures.

Approved by: Jennifer Sankar, Head of HR Housing & SCRER Directorate, for and on behalf of Dean Shoesmith, Chief People Officer. Date: 02/07/24

## **12.5. ENVIRONMENTAL IMPACT AND CONSIDERATIONS**

12.5.1. There will be unavoidable adverse environmental impacts expected from the scheme in terms of carbon emissions. A mitigation plan is embedded in the project, led by the Architect and supported by Quantity Surveyor, as well as the work of the Mechanical and Electrical Engineers. This includes minimising emissions at all stages of the demolition and construction. Ensuring LBC buildings are safe helps mitigate environmental risks.

Approved by: Susmita Sen, Corporate Director of Housing. Date: 19/07/24

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## **12.6. CRIME AND DISORDER REDUCTION IMPACT AND CONSIDERATIONS**

12.6.1. There is no adverse crime and disorder impact expected from carrying out these works. Ensuring LBC buildings are safe helps mitigate crime and disorder risks.

12.6.2. The successful bidder will have committed to delivering crime and anti-social behaviour initiatives as part of their commitment to Social Value.

Approved by: Christopher Rowney & Kristian Aspinall (Director of Culture & Community Safety - Culture & Community Safety). Date: 02/07/24.

## **12.7. DATA PROTECTION IMPLICATIONS AND CONSIDERATIONS**

12.7.1. A Data Protection Impact Assessment was completed on 28 November 2022, and this was agreed by the Data Protection Officer on 9 December 2022 in relation to the data to be collected up to and including the ballot.

12.7.2. This contract will hold no resident data and minimal personal data and therefore will be covered adequately by the LBC's standard T&C's which will be contained in the contract, Volume 5.

Approved by: Susmita Sen, Corporate Director of Housing. Date: 19/07/24

## **12.8. PROCUREMENT IMPLICATIONS AND CONSIDERATIONS**

12.8.1. The Procurement & Commercial team has supported this procurement process throughout and are content that the process followed through the Notting Hill Genesis Framework is compliant with both PCR and the LBC's Tenders and contract Regulations. The details of the procurement process are detailed in the Report.

12.8.2. The Regina Road Project Team and Strategic Corporate procurement team are satisfied that the Framework and process proposed in this Report and the ITT represent both compliance and value for money.

Approved by: Matthew Devan, Strategic procurement Manager on behalf of the Head of procurement. Date 31/05/24.

## **12.9. APPENDICES**

NOT APPLICABLE / NONE SUPPLIED

## **12.10. BACKGROUND DOCUMENTS**

NOT APPLICABLE / NONE SUPPLIED

## **12.11. SPEED TO MARKET**

NOT APPLICABLE

## **CONTRACT OFFICER**

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