

BIRMINGHAM CITY COUNCIL**PUBLIC REPORT**

Report to:	CABINET
Report of: Date of Decision:	STRATEGIC DIRECTOR OF ECONOMY 28th JUNE 2016
SUBJECT:	SUPPORTING SMALL AND MEDIUM-SIZED ENTERPRISES- A TENDER STRATEGY FOR ESTABLISHING THE BIRMINGHAM MUNICIPAL HOUSING TRUST DYNAMIC PURCHASING SYSTEM (P0303)
Key Decision: Yes	Relevant Forward Plan Ref: 001462/2016
If not in the Forward Plan: (please "X" box)	Chief Executive approved <input type="checkbox"/> O&S Chairman approved <input type="checkbox"/>
Relevant Cabinet Member(s):	Councillor Peter Griffiths, Cabinet Member for Housing and Homes and Councillor Majid Mahmood, Cabinet Member for Value for Money and Efficiency
Relevant O&S Chairman:	Councillor Victoria Quinn, Chair of the Housing and Homes Overview and Scrutiny Committee and Councillor Mohammed Aikhlaq, Chair of the Corporate Resources and Governance Overview and Scrutiny Committee
Wards affected:	All

1. Purpose of report:
<p>1.1 To provide details of the tender strategy and process for the establishment of a regional collaborative Dynamic Purchasing System (DPS) for the Birmingham Housing Municipal Trust (BMHT) to build new homes on designated small sites (up to 15 units) for a four year period commencing on 1st November 2016. This DPS is aimed at supporting small and medium sized house-builders located in and around Birmingham and will also be available to other local authorities in the West Midlands Combined Authority area and also adjacent authorities wishing to use it.</p> <p>1.2 To set out the preferred procurement routes available for future BMHT schemes based upon their size and/or contract value.</p>

2. Decision(s) recommended:

That Cabinet:

- 2.1 Approves the strategy and the commencement of tendering activity for the provision of a regional collaborative DPS for the procurement of construction contractors for the Birmingham Housing Municipal Trust (BMHT) to build new homes for social housing and/or outright sale on designated small sites (up to 15 units) in accordance with the requirements and approach outlined in Section 5 of this report.
- 2.2 Delegates authority to the Strategic Director for Economy in conjunction with the Assistant Director of Procurement, the Strategic Director of Finance and Legal (or their delegate) and the City Solicitor (or their delegate) to appoint providers onto the DPS following completion of the pre-qualification tendering process
- 2.3 Delegates authority to the Strategic Director of Economy, in conjunction with the Assistant Director of Procurement, the Strategic Director of Finance (or their delegate) and the City Solicitor (or their delegate) to appoint, as and when required, new providers onto the DPS where they meet the selection criteria set by the Council.
- 2.4 Approves the future procurement routes for BMHT schemes as set out in 5.7.

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3. Consultation

3.1	<u>Internal</u>
3.1.1	Officers from Legal and Democratic Services, Finance and Corporate Procurement have been involved in the preparation of this report.
3.1.2	The Acting Strategic Director of Place has been consulted on this report and is in agreement with the recommendations.
3.2	<u>External</u>
3.2.1	Acivico Ltd is currently delivering a number of BMHT schemes and has been consulted and is in agreement with the recommendations in the report.
3.2.2	Arcadis LLP and Capita Property Ltd, currently provide Lead Consultant/Technical Advice for the BMHT programme have input into the tender strategy and their representatives will be part of the tender evaluation panel to provide technical support.
3.2.3	In order to stimulate the market and encourage small and medium-sized companies to tender for this opportunity, the Council will engage with both the National Federation of Builders (NFB) and SMEs that have previously indicated a wish to provide these services to the Council and the wider West Midlands area.
3.2.4	Other Local Authorities within both the West Midlands Combined Authority and several from the wider Midlands area have been advised of the proposals to create a Dynamic Purchasing System arrangement and are keen to be offered the opportunity to use this for similar schemes.

4.	Compliance Issues:
4.1	<u>Are the recommended decisions consistent with the Council's policies, plans and strategies?</u>
4.1.1	<p>The development of new homes for a growing city is a key objective of the Council Business Plan and Budget 2016+. The development of new affordable housing within the City is in accordance with a number of the Council's key priorities, including:</p> <p><u>A fair city</u> - to tackle inequality and deprivation, promote social cohesion across all communities in Birmingham, and ensure dignity, in particular for our elderly and safeguarding for children – by providing new affordable homes, apprenticeships and bursary programme placements.</p> <p><u>A prosperous city</u> - to lay the foundations for a prosperous City, built on an inclusive economy – by stimulating the construction industry through the Council's housing building programme.</p> <p><u>A democratic city</u> - to involve local people and communities in the future of their local area and their Public Services – by consulting communities about proposals for new development and ensure that new homes meet local needs and localised targeting of training, education and employment initiatives to complement the house-building programme.</p>
4.1.2	<p><u>Birmingham Business Charter for Social Responsibility (BB4CSR)</u></p> <p>Compliance with the BB4CSR is a mandatory requirement that will form part of the conditions of this contract. Tenderers will submit an action plan with their tender that will be evaluated in accordance with 5.5.4.2 and the action plan of the successful tenderer will be implemented and monitored during the contract period.</p>

4.2 Financial Implications

- 4.2.1 The DPS will not commit the Council to any particular level of spend until individual contracts are awarded. Spend will be met from the BMHT capital programme as part of the HRA Business Plan that is approved annually by City Council, subject to any changes that arise in national policy on the provision of social housing by local authorities.
- 4.2.2 The estimated spend through this DPS is £10m per annum for the duration of the DPS as a part of the overall BMHT programme within the HRA capital programme.
- 4.2.3 The costs of the administration of the DPS will be met from within the approved annual staffing and operational budgets of the service.

4.3 Legal Implications

- 4.3.1 As the Housing Authority, the relevant legal powers relating to the discharge of the Council's statutory function to provide for its housing need are contained in Section 9 of the Housing Act 1985.

4.3.2 Pre-Procurement Duty under the Public Service (Social Value) Act 2012

The service being procured aims to improve the economic, social and environmental well-being of the residents of Birmingham by way of the provision of affordable social housing to meet local needs and to support housing growth across the city. Consideration of whether to undertake a consultation exercise was discussed during the planning stage and it was agreed that this would not be required as tenderers will be asked how their bid addresses social value as part of the evaluation and no additional stakeholder consultation was required. Consideration also included how this procurement exercise might improve the social and economic well-being of the city and this will be achieved by assessing social value at the evaluation stage and through adoption of the Birmingham Business Charter for Social Responsibility principles.

4.3.3 Information Management

This contract relies on information relating to buildings. This therefore means that there are no significant information management issues to be addressed.

4.4 Public Sector Equality Duty

- 4.4.1 There are currently around 25,000 people on the Council's waiting list for affordable housing. Many of these people live in overcrowded conditions across the housing sector. Evidence from allocating properties previously developed under the BMHT banner has revealed the extent of this problem, many families being allocated from accommodation that was too small for their needs.
- 4.4.2 Through the BMHT programme, the Council provides homes that reflect the Strategic Housing Market Assessment for Birmingham with an emphasis on 2 bedroom houses and 4+ bedroom houses. Whilst there is a clear driver for family homes (and these make up the majority of the new development programme) the programme also looks to meet other needs, such as people without children and elderly residents who wish to down-size from under-occupied homes. Local need, site restrictions and financial viability are taken into account when determining the exact mix of homes and typologies to build on each site.

4.4.3 The BMHT Delivery Plan for 2015-20 included an Equality Impact Analysis and was agreed by Cabinet in December 2014 which operates city-wide. It includes areas where different cultural requirements will need to be reflected in the design of the homes provided. Feedback from previous schemes delivered has been utilised and these will be used in developing the schemes outlined within the BMHT Delivery Plan. New property archetypes need careful consideration in terms of construction affordability and value for money and have now been refined into the BMHT Standard House Types catalogue. The Council's house building programme represents a unique opportunity to break the mould of repetitive market house types and meet the specific needs of its diverse population.

5. Relevant background/chronology of key events:

5.1 Background and Service Requirements

5.1.1 On 8th December 2014, Cabinet agreed to a 5 year development programme for the Council's new build programme comprising over 2,000 new homes for a period from 2015 to 2020.

5.1.2 The award of a BMHT Contractor Framework Agreement 2012-15 was approved on 5th April 2012 by the former Cabinet Committee (Property) and following a one-year extension that was built into this agreement, expired on 31st March 2016. Nine contractors were awarded framework agreements against the following lots:

Lot 1	For either rented or outright sale dwellings only
Lot 2	For cross subsidy mixed tenure schemes
Lot 3	For large scale mixed tenure schemes which cover a number of phases over a number of years

Each Lot was further split into sub-lots to cater for the different sizes of schemes required. A maximum of 6 contractors were selected for each band.

There have not been any procurement exercises for housing development undertaken since the expiry of the framework agreement in March 2016, however new sites are currently being developed up to a planning application stage in order for them to come forward for Cabinet approval in Autumn 2016.

5.1.3 The previous framework agreement has been successful over the 4 year period for the procurement of BMHT schemes. However, as the housing market has recovered following the 2008 downturn, many of the framework contractors have been now pursuing work elsewhere. Consultation with these larger contractors has indicated that a number of these firms would not tender for BMHT schemes of a lower value or size. As a consequence, a framework agreement for lower value and size schemes is required to attract smaller companies with the capacity to undertake this work and who can deliver value for money by having lower operating costs.

5.1.4 The cost of construction continues to rise, placing additional pressure on the Council to ensure value for money is obtained on delivering its house-building programme. Schemes with a small number of units are the greatest challenge due to the associated costs of site set-up and often have site specific issues to address such as topography, land contamination and protecting and retaining mature trees. Larger contractors have greater overheads and higher profit margins set by their executive boards and are increasingly not tendering for these smaller schemes as these do not fit with their corporate strategy. These types of organisations are looking for larger sites or programmes of work to make best use of their resources and maximise their buying power.

5.1.5 The development of larger BMHT schemes will be undertaken via a competition exercise called off a framework agreement such as Constructing West Midlands (CWM) or the Homes and Communities Agency Delivery Partner Panel (DPP) or full OJEU process as appropriate and will be subject to further reporting for each specific project in line with the Council's governance. This is set out in 5.7 of this report.

5.2 Outcomes Expected

5.2.1 The following outcomes are anticipated as a result of the proposed procurement process to be carried out:

- Efficiencies realised by reducing the number of full tendering exercises to be carried out.
- Greater value for money opportunities through updated pricing and contractual arrangements
- Full visibility of spend against this category in the Council and an integrated contract management activity to realise value through efficiencies and improvements.
- Attractive to small, local firms who wish to build homes for the Council
- Provide a value for money way for delivering smaller schemes
- Reduced risk in the engagement of contractors
- Consistency in the implementation and delivery of works
- Manage the supply chain and contract packaging to support local contractors and suppliers
- Continue with the existing work already carried out by contractor's commitment to support local people in obtaining employment and apprenticeship opportunities including the inclusion as a contract condition for the payment of Building Birmingham Scholarship Levy
- Social value outcomes relevant and proportionate to the housing development scheme being procured

5.3 Market Analysis

5.3.1 The construction market is mature and well established with contractors ranging from small and medium enterprises up to large multi - national organisations. Market consultation has indicated that although larger organisation have the opportunity, it is unlikely that they will tender for this contract. Further details of the market analysis are in paragraphs 5.1.3 and 5.1.4

5.4 Procurement Options

5.4.1 Tender each contract on an individual basis – There are benefits as prices will reflect current market conditions and the latest corporate requirements can be included for each tender exercise. However, these benefits are outweighed by the risk of increased prices as market conditions change, consistency in delivery and the time and resources required would not be prudent use of Council funds or be an attractive proposition for potential suppliers.

5.4.2 Tender for a contractor to deliver the remainder of the Capital Programme – There are 4 years remaining for the delivery of the capital programme for housing development. This option has been discounted on the basis that this option could only be delivered by a larger organisation who would not be interested in the smaller schemes for the reasons stated in 5.1.3 and 5.1.4.

5.4.3 Tender for a framework agreement for Birmingham only – There are benefits as prices will reflect current market conditions and the latest corporate requirements can be included. However, there are more benefits from opening up the framework agreement to other public sector bodies than by tendering on a Birmingham only basis. These benefits are detailed below in 5.4.4.

5.4.4 Tender for a DPS with the Council acting as lead authority – a DPS is an entirely electronic procurement approach for setting up and maintaining an ‘approved list’ of contractors and suppliers. A DPS is set up using the restricted procedure under the Public Contract Regulations 2015 (PCR 2015) and further in accordance with Regulation 34 of the PCR 2015. The benefits include increased purchasing power, better collaboration and shared knowledge between authorities, reduced tendering time and resources for both authorities and suppliers. This is the recommended option to tender for a DPS, available for access to other public sector bodies, primarily in the West Midlands region.

5.4.5 Opt into a collaborative framework agreement. The following framework agreements are in place that may be suitable to use:

- Constructing West Midlands (or its replacement)
- Homes and Communities Agency Delivery Partner Panel (DPP)
- SCAPE
- Northern Housing Consortium

Although these are suitable to use, the framework providers are all large organisations and the same issues as stated in paragraph 5.1.3 would result if this option were proposed, therefore it is rejected as the sole procurement methodology. Also, this option would not offer the opportunity for small, local house-building firms to tender for schemes which they have the capacity to undertake and which the Council wishes to support.

5.4.6 Tender for a contract to cover the entire 5 year capital programme – there are benefits to awarding a contract to one organisation such as economies of scale, consistency and programme management. However, this option has been discounted as large organisations that may have the capacity and project management skills to undertake the programme are not interested in schemes of the size required as evidenced recently when tenders have been sought. They are being selective in the schemes they are interested in tendering for and therefore there would be a significant risk to the delivery of the programme with this option. Smaller companies do not have the capacity or organisational ability to manage a programme of this size.

5.5 Procurement Approach

5.5.1 Duration and Advertising Route

The DPS will be for a period of four years and a call for competition will be advertised in the Official Journal of the European Journal, Contracts Finder and on the www.finditinbirmingham.com website stating that a DPS is to be established.

5.5.2 Procurement Route

The requirement will be to set up a DPS following the restricted procedure with Birmingham City Council acting as a central purchasing body for other public sector bodies in the West Midlands. A rebate will be paid by the suppliers for any non-BCC spend through the new DPS. The DPS will operate as an ‘open system’ in that new suppliers can at any time during its 4 year duration apply to join the DPS. The DPS is a two-stage process. Firstly, at the initial set up stage (PQQ), all suppliers who meet the

selection criteria and are not excluded must be admitted to the DPS. Individual contracts are awarded during the second stage. In this stage, all suppliers on the DPS (or the relevant category or Lot within the DPS) are invited to bid for the specific contract. Submitted bids at stage 2 will be considered in accordance with the restricted procedure and evaluated against the award criteria set out in the OJEU contract notice and supplemented by more precise criteria in the specific Invitation to Tender (ITT)

Using the DPS procedure will give SMEs and new entrants the opportunity to tender for the Council's housing development procurement exercises where previously they were excluded.

5.5.3 Scope and Specification

5.5.3.1 The DPS will be tendered by lots as follows and will reflect the ability of each organisation to satisfy the financial capacity and risk management criteria for the level of contract value it is bidding for :

Lot No.	Indicative No. of Properties**	Method of Award	Indicative Contract Value
1	2-3	Further competition	Up to £600,000
2	4-8	Further competition	£500,000 - £1,600,000
3	9-15	Further competition	£1,000,000 – £3m*

* Note that the EU works threshold is currently £4.3m

** assumptions reflect different types of properties being planned eg. from one bedroom flats to 4/5 bedroom houses

Tenderers may bid for all lots, subject to meeting the specified criteria.

5.5.4 Tender Structure (Including Evaluation and Selection Criteria)

The structure of the tender will be as follows:

- Stage One – Pre- Qualification Stage (PQQ) and entry on to DPS Approved Supplier List
- Stage Two – Further Competition Exercise (procuring under the DPS)
- Stage Three– Scheme-Specific Contract Award (award of call-off contract using a JCT building contract)

5.5.4.1 PQQ Stage

The PQQ will require tenderers to complete a pre-qualification questionnaire which requires the following to be fully answered. The documents will be available electronically for new entrant suppliers to access for the duration of the DPS of 4 years. Suppliers whose submissions have been rejected at any stage will also have the opportunity to modify their return if their circumstances have changed.

Pass / Fail

- Supplier Information
- Grounds for Mandatory Exclusion
- Grounds for Discretionary Exclusion (Part 1 and Part 2)
- Economic and Financial Standing
- Technical and Professional Ability

- Additional Selection Questions
 - Environmental Management
 - Insurances
 - Compliance to Equality Duties
 - Health & Safety
 - Sign up to the Birmingham Business Charter for Social Responsibility
 - Experience and Competence
 - References

Tenderers that pass the selection criteria will be admitted to the DPS and entitled to submit bids at the Invitation to Tender stage.

5.5.4.2 Invitation to Tender Stage

Individual procurement exercises will be undertaken for specific projects using the following evaluation criteria of 30% quality, 20% social value and 50% price. These ratios were established having due regard to the corporate document 'Advice and Guidance on Evaluating Tenders'.

Quality (30%)

Criteria	Overall Weighting	Sub-Weighting
Project Specific Criteria	100%	20%
Design Quality & Specification		10%
Management of Programme		25%
Organisational Management & Resources		20%
Health & Safety		25%

Tenderers who score less than 60% of the quality threshold i.e. a score of 300 out of a maximum quality score of 500 may not take any further part in the process.

The ITT will set out that interviews may be required to understand and to clarify any questions or concerns arising from the written evaluation stage.

Social Value (20%)

Criteria	Overall Weighting	Sub-Weighting
Local Employment	100%	25%
Buy Birmingham First		20%
Partners in Communities		20%
Good Employer		15%
Green and Sustainable		10%
Ethical Procurement		10%

Tenderers will be expected to submit their proposals on how they intend to deliver social value. Responses will be scored against a pre-determined evaluation model and evaluated in accordance with their submission.

Tenderers who score less than 40% of the social value threshold i.e. a score of 200 out of a maximum social value score of 500 may not take any further part in the process.

Pricing (50%)

Tenderers will be expected to price against a pre-determined specification for each project

Combined Price/Quality/Social Value Evaluation

The evaluation process will result in comparative price, quality and social value scores for each tenderer. The maximum quality score will be awarded to the bid that demonstrates the highest for quality, the maximum price score will be awarded to the lowest acceptable price and similarly the maximum social value score will be awarded to the bid that demonstrates the highest social value. Other tenderers will be scored in proportion to the maximum scores in order to assess value for money. The weighted scores will be added together to determine the successful bid.

5.5.5 Evaluation Team

The evaluation of the written quality responses and the further bidding process will be undertaken by officers from the Economy Directorate, representatives from Lead Consultant/Technical Advisors and supported by Corporate Procurement Services

5.5.6 Allocation of Work

Individual contract awards from this DPS will be the subject of future Full Business Case reports that will be approved by the relevant decision maker.

5.6.1 Risk

The CPS approach is to follow the Council Risk Management Methodology and the Category Team is responsible for local risk management. CPS maintains a risk management register and documentation relevant for each contract. The risk register for housing developments has been jointly produced and owned by CPS and BMHT with arrangements being put in place to ensure operational risks are mitigated.

5.6.2 Indicative Implementation Plan

Cabinet Approval (Strategy)	28 th June 2016
OJEU Notice Issued	22nd July 2016
Clarification Period	25th July to 19 th August 2016
PQQ Deadline Submission	26th August 2016
Evaluation Period	30th August to 16 th September 2016
Delegated DPS entry confirmed	13th October 2016
DPS Award	17th October 2016
DPS commences	1st November 2016

5.6.3 Service Delivery Management

5.6.3.1 Contract Management

The contract will be managed operationally by the Head of Housing Development and commercially by the Contract Manager – Contract Management Team, Corporate Procurement Services.

5.6.3.2 Performance Measurement

Key performance indicators for the delivery of individual contracts will be included

in the documentation for each Further Competition exercise.

5.7 Future Procurement Routes for the BMHT Delivery Plan

The DPS will complement other proposed procurement routes for the BMHT delivery plan. The most appropriate route will be selected dependent upon the size, value and complexity of the scheme to be developed. These routes are set out below:

Contract Value	Proposed Procurement Routes
Up to £500,000	DPS or non-OJEU procurement process
£500k to £1m	DPS, CWM or non-OJEU procurement process
£1m to £4.3m	DPS (up to £3m) CWM, HCA Deliver Partner Panel or non-OJEU procurement process
Above £4.3m	CWM, HCA DPP or OJEU procurement process

6. Evaluation of alternative option(s):

6.1 The procurement options appraisal is set out in paragraph 5.4.

7. Reasons for Decision(s):

- 7.1 To enable the tendering process to commence for a regional collaborative Dynamic Purchasing System for housing development.
- 7.2 To enable further reports outlining specific sites for BMHT development to come forward in due course.

Signatures:

Date:

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Cllr Majid Mahmood
Cabinet Member for Value for Money and Efficiency

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Cllr Peter Griffiths
Cabinet Member for Housing and Homes

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Waheed Nazir
Acting Strategic Director of Economy

List of Background Documents used to compile this Report:

1. Cabinet 8th December 2014 - Approved BMHT Delivery Plan 2015-2020.

List of Appendices accompanying this Report (if any):

None