

## **Committee: Cabinet**

**Date: 19 June 2023**

Wards: All

### **Subject: Award of contract for the Disabled Facilities Grant Funded Adaptations Service**

Lead officer: Lucy Owen, Executive Director, Housing & Sustainable Development; John Morgan, Executive Director of Adult Social Care, Integrated Care & Public Health

Lead member: Councillor Andrew Judge, Cabinet Member for Housing and Sustainable Development; Peter McCabe, Cabinet Member for Health and Social Care

Contact officer: Elliot Brunton, Interim Head of Housing Needs & Strategy

#### ***Exempt or confidential report***

*The following paragraph of Part 4b Section 10 of the constitution applies in respect of information within this appendix and it is therefore exempt from publication:*

*Information relating to the financial or business affairs of any particular person (including the Authority holding that information).*

*Members and officers are advised not to disclose the contents of the appendix.*

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#### **Recommendations:**

- A. The Council approve the award to Bidder A (as detailed in the Confidential Appendix to this report) a contract for provision of the Disabled Facilities Grant (DFG) Funded Adaptations Service for a period of 3 years from 4<sup>th</sup> September 2023, with an option to extend for up to two further years at the discretion of the Council.
  - B. In accordance with Contract Standing Orders (CSO 24.3) that authority be delegated to the Executive Director of Housing & Sustainable Development to exercise, in consultation with the Cabinet Member for Housing and Sustainable Development, the Council's option to grant one or more extensions of the contract term for any period up to two further years beyond the expiry of the initial contract term on 3<sup>rd</sup> September 2026.
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## **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1. The purpose of this report is to seek the approval of Cabinet for the award of the contract for the provision of the Disabled Facilities Grant (DFG) Funded Adaptations Service to Contractor A following a single stage tender process.
- 1.2. This new contract will be for an initial period of 3 years from 4th September 2023, with an option at the discretion of the Council to extend the term for a further period or periods of any duration up to a maximum two years in total.
- 1.3. The bid sum relates to the contractor operating the service on behalf of the Council, in effect operating as the Council's Home Improvement Agency. The bid excludes the cost of the annual disabled adaptations works which is also paid for out of the annual allocation from the Department for Levelling Up, Housing and Communities (DLUHC), currently, around £1.4m annually.

## 2 DETAILS

- 2.1. Borough and District Councils have a statutory responsibility, under the Housing Grants, Construction and Regeneration Act (HGCR) 1996 to award Disabled Facilities Grants and provide a service which delivers these in line with the legislation. These grants enable people with disabilities to have adaptations installed in their homes to improve access into and around their homes. These mandatory grants must be delivered in accordance with the guidance set out by the Ministry for Housing, Communities, and Local Government (MHCLG).
- 2.2. The DFG is a means tested capital grant which can contribute towards the cost of providing equipment in or adapting a home, for example by installing a stair lift, creating a level access shower room, widening doorways, providing ramps and hoists or creating a ground floor extension. DFG funded services are increasingly being used to provide a wider range of solutions to the problems people face in their home and to prevent the need for those affected by disability to go into care or require other statutory service interventions such as hospital services. A maximum limit of £30,000 applies to mandatory DFGs.
- 2.3. The Council receives an annual grant from government to fund DFG services. In 2023/24 the allocation is £1.4m. The DFG allocation forms part of the Better Care Fund (BCF) allocation. The BCF was established in 2015 to join up NHS, social care, and housing services so that older people, and those with complex needs, can manage their own health and wellbeing and live safely and independently in their communities for as long as possible. The BCF requires local authorities to pool budgets with strategic health partners to achieve BCF Plan health and social care outcomes. The cost of the contract is fully covered by the DFG grant allocation.
- 2.4. The provision of DFG services in Merton is contracted to Sutton Staying Put (SSP), the improvement agency of Sutton Council, and CBS Adaptation Design (CBS), a private company. These two organisations in effect operate as Merton's Home Improvement Agency (HIA). Current arrangements have been in place for many years without re-procurement during that period. Following a review of the DFG service in 2021 recommendations for a new service and procurement of a new contract were recommended.
- 2.5. The new service delivery model will address the issues identified in the DFG Review and will produce a more efficient, effective and transparent service with a focus on delivering:
  - Improved monitoring and performance management
  - Improved works completion timescales
  - Demonstrable value for money of HIA service delivery
  - Improved customer outcomes
- 2.6. Under current arrangements the HIA submits invoices for its fees (OT, surveyors etc) with the invoices from the adaptations contractors, such as lift or disabled bathroom installers, and the Council pays the HIA and the contractors directly. Procedures will be developed under the contract management arrangements to ensure that contractor works and associated

invoices are subject to checks and sign-off, including site inspections commensurate with the value of the works.

- 2.7. The new contract requires the supplier to operate a compliant contractor selection system for jobs raised (a Dynamic Purchasing System, or industry standard system such as Constructionline). In addition, a quality control and complaint management process are a contract requirement. These measures will improve transparency and enable the Council to achieve value for money. The system is required to be auditable and will be monitored by officers as part of the contract management arrangements.
- 2.8. The contract will be subject to periodic monitoring reviews and an annual performance review and performance will be reviewed prior to consideration of extending the contract beyond the initial 3-year period.
- 2.9. The procurement did not anticipate financial savings. This is because the funding for mandatory DFG work is funded by the annual DFG grant allocation within the Better Care Fund (BCF). The new DFG contract expenditure will be within the envelope of the grant allocation which has been continually underspent for years.
- 2.10. A major part of DFG spend relates to contractor works and equipment supplies and given the increased costs associated with construction and related supplies both prior to and subsequent to the cost of living crisis, savings were not envisaged. In addition to this situation a Housing Assistance Policy has recently been produced, which if adopted will enable the Council to provide disabled adaptations and related services in line with discretionary powers. This will lead to increased expenditure for a range of needs that are not currently met under the mandatory DFG adaptations requirements. The anticipated increased expenditure will be contained within the overall envelope of the annual DFG grant allocation. For these reasons financial savings were not able to be identified.

#### Tender Process

- 2.11. The 'Open Tender' route to market was chosen specifically to reach as many interested parties as possible. The Council also published a Prior Information Notice (PIN) in advance of going out to tender. This was to try to garner as much interest as possible in this tender opportunity. A single stage 'open' procedure, as set out in the Public Contract Regulations 2015 (SI 2015/102) ("PCR 2015"), was used for the purpose of this tender exercise.
- 2.12. In accordance with the requirements of that procedure, potential contractors were requested to bid for the proposed contract following the publication of a Contract Notice (2022/S 000-033462) on 25<sup>th</sup> November 2022. The tender opportunity was advertised to interested bidders via the Find a Tender service (FTS), the Contracts Finder website, and through the London Tenders Portal. The tender process was conducted electronically using the portal.
- 2.13. The publishing of the tender opportunity coincided with Bank Holiday periods. When publishing a tender opportunity over Bank Holiday periods, best practice is to allow additional time for prospective bidders to submit bids, as was the case with this tender opportunity. The standard time frame

for tenders of this value is 30 calendar days; the Council originally allowed for 40.

- 2.14. During the start of Merton’s tender process, bidders are able to submit clarification questions and it is via this process that a bidder requested an extension to the submission deadline. This request was approved, and an additional seven days granted. Bidders therefore had 47 days in which to submit a bid. This extension was applicable to all prospective bidders. Given the information obtained from the market, prior to going out to tender, it is believed that had the tender publishing period been moved to avoid Christmas and New Year, the outcome would not have differed significantly.
- 2.15. Organisations were invited to submit a bid based on the cost of the provision of a range of disabled adaptations and related services reflecting the needs of the community. Bidders were required to submit a detailed cost analysis setting out the financial structure of their bid pricing. This included detail of the breakdown of their wage and overhead costs. Bidders were also requested to provide detailed method statements explaining how they would deliver these services.
- 2.16. Bidders were required to submit as part of their tender submission a proposal in regard to adding Social Value. In addition, they were advised of the Council’s commitments under its Climate Emergency Action Plan and required to set out in their bids how they proposed to assist the Council achieve its Plan objectives.
- 2.17. The Tender stipulated that the contract would be awarded to the bidder whose tender was judged to be the most economically advantageous based on price and quality criteria. As set out in the table below, 55% of the evaluation was based on quality considerations, 5% based on proposals relating to the delivery of social value objectives, and 40% on the assessment of price.

<b>Published Award Criteria</b>	<b>Weighting</b>	<b>Sub Criteria Weighting</b>
<b>Technical &amp; Quality</b>	<b>55%</b>	
Demonstrable ability to deliver a wide-ranging disabled adaptations service;		10%
Ability to provide adaptations for children with complex needs		8%
Methodology		10%

Managing Contractor relationships		7%
Service Mobilisation Project Plan		10%
Approach to Work Contractor Selection Process		10%
<b>Social Value</b>	<b>5%</b>	
Social Value Charter		5%
<b>Price</b>	<b>40%</b>	

2.18. The qualitative criteria were assessed across a range of operational areas and took into account the issues identified within, and the recommendations arising from, the DFG Review. The invitation to tender detailed the agreed scoring methodology for potential bidders.

2.19. Bidders were also informed that the terms of the Transfer of Undertakings (Protection of Employment) Regulations 2006 were likely to apply (“TUPE Provisions”).

2.20. The tender was published on 25<sup>th</sup> November 2022 and the return date for tenders was stated as 4<sup>th</sup> January 2023. Following a potential bidder’s request for an extension of the submission deadline, to take account of organisation closure over the Christmas and New Year holiday period the submission deadline was extended to 11<sup>th</sup> January 2023.

2.21. Forty-nine expressions of interest were received and ten suppliers indicated the intention to respond. However, only one supplier submitted a bid within the deadline. A further clarification question was posted on the portal requesting the reasons why the organisations that had stated the intention to bid, did not do so. Three organisations responded with a variety of reasons for not submitting bids, including not supplying the ranges of adaptations required, insufficient time to submit a bid, and restrictive requirements of the bid such as the TUPE provisions.

### Tender Evaluation

2.22. Bid evaluation was undertaken in four stages, firstly an initial review of the bids to check completeness, compliance, and to assess any grounds for exclusion. Bids were reviewed against the mandatory and discretionary grounds for exclusion and on their turnover and experience of delivering a disabled adaptations service. This was followed by the second stage, a detailed consideration and scoring of written quality. The third stage of the evaluation was moderation with all evaluation panel members, chaired by a Category Advisor from the Commercial Services team, and the fourth stage was the social value and prices submissions.

- 2.23. The evaluation process was supported and overseen by the Category Advisor from the Council’s Commercial Services team, ensuring that scoring against the evaluation criteria was consistent across the process.
- 2.24. The evaluation team individually assessed each tender and scores were awarded to the bidder in respect of the evaluation criteria. Following a moderation exercise, to achieve a consensus score for the bid, final scores based on written submissions were confirmed.
- 2.25. Following the conclusion of this process, the evaluation team determined that Bidder A satisfied the requirements in respect of the published criteria, and it is recommended the Council awards the contract to this company.

**3 ALTERNATIVE OPTIONS**

- 3.1. The alternative options that were considered are set out below.

Option	Advantages	Disadvantages
1. Do not enter into a contract / withdraw service	None	The Council would be unable to provide an adaptations service in line with its statutory duties.
2. Roll-on existing contracts without going out to the market	Avoidance of expenditure and committing staff resources in a new procurement process.	Failure to demonstrate value for money, delivery of good practice compliance. The current contracts have run for many years without retendering. Continuing these contracts would mean failure to address concerns identified in the previous DFG Review.
3. In-house provision	Would enable the Council to provide a service consistent with good practice guidance, and have control over resource allocation, and quality compliance management.	Staffing and other resource costs, including set up of required IT systems and sub-contractor selection systems, would not deliver value for money.

- 3.2. The options of not providing the service or allowing the current arrangements to continue were not tenable. Consideration was given to repeating the tender exercise with the aim of increasing the number of bidders for the contract. However, based on feedback obtained from companies that initially expressed an intention to bid and subsequently did not, it is unlikely that the outcome would have been different, considering the profiles of those companies.
- 3.3. It is unlikely that going back out to the market will result in a substantially larger number of bids being submitted by providers capable of delivering the

Council's requirements. Market research to date has indicated that there is limited interest in the contract from companies that meet the Council's requirements. One of the current suppliers, Sutton Staying Put, made it clear some time ago that they were not interested in providing the service any further.

- 3.4. For the reasons set out above, the Council can show that it has engaged with the market to maximise opportunities for suitable companies to express an interest and bid for the contract, and has demonstrated a value for money approach.
- 3.5. South West London Health Trusts work across different local authority boundaries and work with other suppliers contracted by the relevant local authorities delivering similar services in those areas. Consideration was given to exploring opportunities and possible economies of scale working with other organisations. However, given what is known about the market and the limited interest from other suppliers in delivering the services for Merton, there would be very limited interest from other suppliers in taking on work required under this contract. This situation was evidenced by the Sutton Staying Put's decision's not to continue delivering this type of work for the Council.

#### **4 CONSULTATION UNDERTAKEN OR PROPOSED**

4.1. The following consultation has been undertaken:

- Head of Housing & Strategy C&H
- Head of Direct Provision C&H
- Head of Commercial Services
- Service Financial Adviser
- SLLP
- Housing Environmental Team Manager C&H
- Prevention & Recovery Service Manager
- Occupational Therapy Manager C&H

#### **5 TIMETABLE**

- 5.1. The new contract is expected to commence on the 4<sup>th</sup> of September 2023.
- 5.2. The award of this contract is subject to observing a 'standstill' period. However, as only one bidder is involved in the process, under Reg 86(5b) of the PCR15, no standstill period is required. Accordingly, the contract can be formally awarded to the successful bidder with a mobilisation plan to be put into effect to enable the transition from the current suppliers to the new supplier, enabling the contract to commence on 4th September 2023.

#### **6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

- 6.1. A credit check was carried out and the recommended total value of contracts for this supplier is set out in the confidential Annexe.

## **7 LEGAL AND STATUTORY IMPLICATIONS**

- 7.1. The details of the Tender Process and Tender Evaluation set out at paragraphs 2.5 to 2.17 of this report and related Exempt Appendix evidence full compliance with the Council's Contract Standing Orders (CSOs) 19.4.1 and Regulation 27 of the Public Contracts Regulations 2015. Accordingly, it would be lawful to approve the award of contract to the Preferred Bidder.
- 7.2. Once approved, a Contract award notice is required to be published and information about the award of the Contract must also be published on Contracts Finder. The responsible officer must also ensure that the details of the completed contract are entered onto the Council's contracts register.
- 7.3. It is stated that TUPE is likely to apply therefore the responsible officers should ensure that the Council's Human Resources department and/or SLLP's Employment Team are consulted to ensure that the Council discharges any duty it may have to transferring staff.
- 7.4. Section 9E of the Local Government Act 2000 would permit the recommended delegation. In exercising the option to extend the contract, the requirements of CSO 27 must be met, in particular as relates to demonstrating that the extension will offer Value for Money to the Council and the contract continuing to meet the Council's requirements.

## **8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

- 8.1. The tender documentation submitted by the successful bidder was assessed against the threshold requirement to ensure bidders comply with current equalities legislation. This is intended to ensure that the contract was awarded to an organisation with equalities and diversity policies and practices in place, which would impact positively on the delivery of the service.
- 8.2. The Council required that bidders submit tenders confirming whether staff are paid the London Living Wage, and this has been confirmed by the successful bidder.
- 8.3. Within the tender, bidders were required to propose social value offers via the Council's social value charter, under 5 specific theme areas: Jobs, Growth, Social, Environmental, and Innovation. The social value offers submitted via the successful bidder will potentially generate social value to the London Borough of Merton. The value of which can be found within the Annex to the report.
- 8.4. The social value offers committed within the successful bid include, 'Support into work' assistance provided to unemployed people; Donations to local community projects, and Volunteering to support local community projects.

## **9 CRIME AND DISORDER IMPLICATIONS**

- 9.1. There are no crime and disorder implications arising from the recommendations contained within this report.

## **10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**



- 10.1. All organisations that are awarded contracts must have a health and safety policy and procedures for effective health and safety and risk management.
- 10.2. The EU procurement regulations allow a company to challenge a contract decision from a public body, especially on matters of procedure. To mitigate this risk a separate quality assurance role was established for an officer from Commercial Services to monitor the tender procedures.

## **11 ENVIRONMENTAL AND CLIMATE IMPLICATIONS**

- 11.1. The service will be delivered in accordance with the Council's Environmental Policy and other relevant policy and legislation. The successful bidder was required to demonstrate how their environmental policies align with the Council's policy, as part of the tender process.

## **12 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**

- 12.1 Exempt Annex to Report

## **13 BACKGROUND PAPERS**

- 13.1. Contract Standing Orders

## **Appendix A (Commercially Sensitive Information)**

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