

Report of: Asset Management and Regeneration

Report to: Chief Officer Asset Management and Regeneration

Date: 3 January 2019

Subject: Proposed Procurement of Contractor to Provide Hard Facilities Management Service at Merrion House

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s): Little London and Woodhouse		
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. This report advises the Chief Officer Asset Management and Regeneration of the options available to the Merrion House LLP (in which the City Council has a 50% interest) to procure a contractor to provide an integrated Hard Facilities Management Service, including mechanical and electrical services at Merrion House for an initial period of three years, but with the potential to extend the contract period for a further 2 years on an annual basis to a maximum of 5 years in total.
2. In accordance with the Council's Contract Procedure Rules 3.1.6 and 3.1.8, the report requests the Chief Officer Asset Management and Regeneration to approve that the procurement of the Hard Facilities Management Service by the Merrion House LLP (the LLP) will be via the Fusion 21 Compliance and Facilities Management Framework. A mini competition is to be conducted and, the evaluation criteria to be used to assess the suitability of the successful service provider to undertake the commission is to be based on a combination of price and quality, with the evaluation being split 60% price and 40% quality.
3. The Chief Asset Management and Regeneration Officer should note that as there is doubt as to whether the LLP is a 'permissible user' able to use the Fusion 21 framework for the procurement of such Hard FM services, the Council's Procurement and Commercial Services Section has advised that the mini competition using the Fusion 21 framework should be progressed on the basis that the City Council will be the contracting authority for the required service, but to make it known to bidders from the outset in an open and transparent manner, that the contract agreement for the

provision of the required services will be novated to the LLP within a defined period of the contract being awarded.

Recommendation

4. The Chief Officer Asset Management and Regeneration is requested to;
 - (i) Approve the Merrion House LLP's procurement of the Hard Facilities Management Service provider at Merrion House by using the Fusion 21 Compliance and Facilities Management Framework and, that the evaluation criteria to be used to assess the suitability of bidder's to undertake the commission is split 60% price and 40% quality.
 - (ii) Approve that the City Council will be the contracting authority for the required Hard Facilities Management Service, but noting that the contract agreement for such service provision will subsequently be novated to the Merrion House LLP.
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1 Purpose of this report

- 1.1 The purpose of the report is to seek the Chief Officer Asset Management and Regeneration's approval to the procurement by the Merrion House LLP of a Hard Facilities Management Service provider at Merrion House by using the Fusion 21 Compliance and Facilities Management Framework; that the evaluation criteria to be used to evaluate the bids to undertake the commission is split 60% price and 40% quality and, to authorise that the City Council will initially be the contracting authority for the required service, but noting that the contract agreement for such service will subsequently be novated to the Merrion House LLP.

2 Background information

- 2.1 The City Council's Executive Board at its meeting in July 2012 approved both the Heads of Terms provisionally agreed with Town Centre Securities (TCS) for the lease of the completed Merrion House development and, for the Council to acquire a 50% share in the ownership of the Merrion House LLP, which would own the completed Merrion House development. The Agreement for Lease and all supporting documentation between the Council and the LLP was completed in October 2013.
- 2.2 Executive Board at its meeting in July 2012 was advised that TCS was of the view that the Council should enter into a Service Charge Lease in order to ensure that the Council's maintenance/repairing obligations under the lease for its occupancy of Merrion House and warranties were maintained on the principle components of the completed Merrion House development namely, the repair and maintenance of the external envelope and roofs and, mechanical and electrical items. Executive Board was advised that there were financial benefits to the Council in discharging responsibility for the maintenance of the hard facilities elements of the building and, by dealing with such items via a service charge that the Council would minimise its dilapidation liability at lease expiry.
- 2.3 The Chief Officer Asset Management and Regeneration should note that under the terms of the Limited Liability Partnership Agreement (that formed part of the

supporting legal documentation agreed with the City Council and referred to in paragraph 2.2 above), the LLP is required to procure services in accordance with the principles of fair and open competition, value for money and, with reference to public sector accountability and procurement obligations.

3 Main issues

- 3.1 The LLP acknowledges that all consultant/contractor appointments need to comply with all applicable current Public Contracts Regulations when purchasing any goods or services to be used in relation to Merrion House given the Council's interest in the LLP. Against this background and, as the estimate for the provision of the Hard FM Services is estimated to be above the EU Services threshold (£181,302), the LLP needs to either procure the required services via an OJEU procurement exercise or use a third party framework agreement which has already been the subject of open market procurement.
- 3.2 Having regard to the procurement parameters detailed in paragraph 3.1 above, the following options have been considered for the delivery of the required Hard FM services:
- (i) **In House Service Provider;** The Council's in house service provider is currently not in a position to facilitate the provision of the required service.
 - (ii) **OJEU Procurement Process;** The Chief Officer Asset Management and Regeneration should note that whilst a Restricted OJEU process would fully meet the LLP's procurement requirements, the timescale required to undertake such a procedure would not guarantee that a contractor would be appointed and, be in place to assume responsibility for the provision of the service to coincide with the end of the current service provider's contract in July 2019. Any delay would place at risk the Council's obligations under the terms of its lease of Merrion House, the maintenance of warranties on key plant and equipment, with consequential financial implications for the Council.
 - (iii) **Fusion 21 Compliance and Facilities Management Framework:** There is the potential to run a mini competition using the Fusion 21 framework, which will ensure that the LLP complies with the requirements of Public Contracts Regulations, as the framework agreement itself was established using the OJEU procurement process (OJEU Contract Award Notice 2017/S 068-127841) and will also ensure that the procurement process is compliant with the Social Value Act (2012). Through accessing the Fusion 21 framework agreement, the LLP will be able to call upon procurement expertise and, source from a supply chain that is continuously monitored and, which has been both cost and quality checked. Use of the framework agreement would allow the successful bidder to be appointed in around 4 months, sufficient that they will be in place to assume responsibility from the current service provider in July 2019 via an orderly hand over process.
- 3.3 Having regard to the in house service provider's comments and, the timescale for the OEJU process, the procurement of a contractor to provide Hard FM services at Merrion House via the Fusion 21 framework agreement is considered to be the most appropriate solution. It is also proposed that officers from Fusion 21 will manage the procurement process on behalf of the LLP. They will run the mini

competition based on the LLP's requirements, manage clarification requests from bidders, coordinate the evaluation of tender submissions, prepare the tender report, issue the contract etc.

3.4 The evaluation panel established to assess tender submissions will comprise two representatives each from the City Council and Town Centre Securities.

3.5 The Chief Officer Asset Management and Regeneration in determining the procurement approach for the Hard FM service is also requested to approve the proposed evaluation criteria for the appointment of the contractor to undertake the commission which will be based on a price/quality combination, with the evaluation being split 60% price and 40% quality.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 The Council's Procurement and Commercial Services (PACS) has been consulted and advised that under Contract Procedure Rules 3.1.6 the delegated decision to undertake a procurement approach will be taken at the point that the procurement route is chosen and, subject to any project specific issues, this will normally be the main decision that all subsequent decisions flow from and, the evaluation criteria must be formally approved by the relevant Chief Officer respectively.

4.1.2 The LLP Board has been consulted and is supportive of the recommendations contained in the report

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 There is no expected impact on the protected equality characteristics and, therefore, it is not applicable for an EIA or screening form to be completed at this time.

4.3 Council Policies and City Priorities

4.3.1 The proposals contained in this report relating to the completed Merrion House development supports the Council's ambition to be the 'Best City Council in the UK' and fulfils its aspiration to make better use of its resources and, has enabled the Council to achieve savings through the rationalisation of its operational property portfolio.

4.4 Resources and Value for Money

4.4.1 The Chief Officer Asset Management and Regeneration should note that all costs and fees associated with the LLP's appointment of the Facilities Management Company will be recovered in full via a service charge from the Council under the terms of its lease of Merrion House from the LLP. Funding for the fees payable to the LLP will come from the budget provision held by Resources and Housing.

4.4.2 The City Council is a member of Fusion 21 and, as such, members pay nothing up front to use the framework agreement. Fusion 21 does, however, charge supply partners a management fee as a percentage of the contract value for each call off depending on the level of service required. The Fusion 21 fee is charged on the entire contract value (all years) and could amount to around £40,000 if the contract

was to run for the full 5 year period. Fusion 21 indicate the relevant fee for each project to supply partners, which the bidders more than likely pass on in part or whole to the contracting authority as part of their tender submission.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 The delegated decision to determine the procurement approach for the consultancy services detailed in the report should be taken in compliance with Contract Procedure Rules 3.1.6 and 3.1.8.
- 4.5.2 The decision which is the subject of this report is a Significant Operational Decision, but not subject to Call In.
- 4.5.3 The Fusion 21 framework agreement has been reviewed by PACS and, the Procurement Manager is satisfied that the framework agreement has been procured in accordance with Public Contracts Regulations 2015 and is not the subject of any challenge.
- 4.5.4 The use of a third party framework agreement by the relevant Chief Officer is fully in accordance with the Council's CPRs and, the terms of the Fusion 21 framework agreement is current, expiring on 31 March 2021. The terms and conditions of the framework agreement itself and any call-offs are considered acceptable to the Council.
- 4.5.5 In making their final decision, the Chief Officer Asset Management and Regeneration should note the above comments and be satisfied that the course of action chosen represents best value for the Council.

4.6 Risk Management

- 4.6.1 There is a risk that the fee proposal arising from the proposed mini competition may exceed the allowance for such fees contained within the Service's budget. This will only become apparent once the tender submissions have been received and the preferred bidder has been identified. If such a position were to arise it will form a revenue pressure on the Service that will need to be addressed.

5 Recommendations

- 5.1 The Chief Officer Asset Management and Regeneration is requested to;
 - (i) Approve the Merrion House LLP's procurement of the Hard Facilities Management Service provider at Merrion House by using the Fusion 21 Compliance and Facilities Management Framework and, that the evaluation criteria to be used to assess the suitability of bidder's to undertake the commission is split 60% price and 40% quality.
 - (iii) Approve that the City Council will be the contracting authority for the required Hard Facilities Management Service, but noting that the contract agreement for such service provision will subsequently be novated to the Merrion House LLP.

(iv) Background documents¹

None.

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.