

REPORTS FROM THE EXECUTIVE AND COMMITTEES TO COUNCIL

REPORT OF THE INVESTMENT BOARD

1 Asset Delivery Programme (ADP): Outcome of Procurement of a Development Partner and Final Business Case

- 1.1 This item of business was referred by the Investment Board on 17 March 2020 to Full Council with recommendations relating to approval of the tender report for the ADP, of the ADP final business case and appointment of the Preferred Bidder. An extract of the key elements of the report of the Assistant Director, Assets & Commercial to the Investment Board is appended.

2 RECOMMENDATION

2.1 It is proposed that Council **RESOLVES**

- (1) That the outcome of the procurement process as set out in the Tender Report be approved (exempt Appendix 1 to the report to the Investment Board).
- (2) That the Preferred Bidder as set out in the Tender Report (exempt Appendix 1 to the report to the Investment Board) be appointed for the Asset Delivery Programme.
- (3) That the Final Business Case (exempt Appendix 2 to the report to the Investment Board) be approved.
- (4) That authority be delegated to the Assistant Director Assets & Commercial in consultation with the Portfolio Holder for Enterprise to enter into negotiations with the Preferred Bidder identified to confirm financial commitments and other terms contained in the Tender Report and the Full Business Case and to report back to Full Council for final approval.
- (5) That £72,500 of unspent project budget is carried forward to 2020/21 and to agree additional budget of £214,900 to be funded from the Hard/Soft Infrastructure Reserve to fund the resources required to progress the Programme during 2020/21.

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ASSET DELIVERY PROGRAMME: OUTCOME OF PROCUREMENT OF A DEVELOPMENT PARTNER AND FINAL BUSINESS CASE

1 PURPOSE OF REPORT

- 1.1 This report submits the Tender Report (the “Tender Report”) for the Asset Delivery Programme for approval (Exempt Appendix 1) following the conclusion of the procurement phase of the programme.
- 1.2 This report also submits the Asset Delivery Programme Final Business Case (the “FBC”) for approval (Exempt Appendix 2).
- 1.3 The report recommends that the successful Bidder be appointed as the Preferred Bidder (the “Preferred Bidder”) as set out in the Tender Report. (Exempt Appendix 1) and provides an explanation of the next steps in the process.

2 INTRODUCTION

- 2.1 Further to the resolutions of the meeting of Investment Board (IB) on 5 September 2019 officers have now completed the competitive dialogue process to procure a development partner for the Asset Delivery Programme, (ADP).
- 2.2 As previously reported to IB, in common with most complex projects, the competitive dialogue process was the most appropriate procurement route to select a development partner. This is because the competitive dialogue process would legally allow the Council to influence the outcomes for each site alongside experienced Bidders, through dialogue, to work up innovative solutions to deliver the objectives of the ADP.
- 2.3 The competitive dialogue process also enabled the Council to share with the Member Working Group how the solutions were evolving and to share that feedback with Bidders throughout the process.
- 2.4 As previously reported, Bidders were required to develop their proposals in order to deliver the Council’s Output Specification, previously approved by the Investment Board on 5 September 2019.
- 2.5 The Output Specification is a device commonly used in major projects. An Output Specification does not specify the detail of how an authority expects a Bidder to achieve its requirement; instead the authority specifies what the output is expected to be. This gives Bidders the freedom to work with the procuring authority to develop the best route to those outcomes. The Output Specification for this Programme set out the Council’s required deliverables of the Programme i.e. what the Council was aiming to achieve from the

procurement. The Output Specification set out the ambition the Council has for its new operational buildings and the vision of how the Council will work going forward i.e. an emphasis on mobile and flexible working and the flexible use of space for staff, Members and the community. This document provided Bidders with information such as the Council's minimum requirements and also invited innovation from the market to bring forward optimum solutions for the spaces, based on good industry practice. Framing the Council's requirements in terms of an output (the "what"), rather than the mechanics of its delivery (the "how"), enabled Bidders to propose innovative solutions which met, and in some cases exceeded the Council's minimum requirements.

3 OUTLINE BUSINESS CASE

- 3.1 In accordance with best practice for projects of this type, an Outline Business Case (OBC) was drafted for this Programme. An OBC includes an options analysis and makes a recommendation as to a Preferred Option. An OBC then considers the envisaged outcomes, benefits and potential risks associated with the Preferred Option.
- 3.2 The OBC for this Programme was approved by Investment Board on 16 January 2019 and by Full Council on 19 February 2019. The Preferred Option as set out in the OBC set out a highly integrated set of projects delivered over a four-year period, anticipated to complete in spring 2023. The Programme set out the redevelopment of the Freight House (refurbishment and new build) as the Council's long-term office accommodation and civic space, as this in turn enabled the re-development of The Mill Arts & Events Centre site and the disposal of the existing Council owned accommodation on South Street, Rochford and the Civic Suite site in Rayleigh.
- 3.3 The Preferred Option in the OBC anticipated a reduction in future running costs (operation and maintenance) of c.£0.3m p.a. compared to the 'Do Minimum' option and therefore supported delivery of the Council's Medium Term Financial Strategy, as well as supporting wider transformational objectives as set out in the Council's Asset Strategy. The Preferred Option in the OBC proposed that the Programme would be predominantly financed from capital receipts realised from the disposal of surplus sites, and it was further anticipated that the residual capital funding requirement of c£0.6m would be met from Council reserves, with the possibility that some short-term borrowing may be required to manage cashflow requirements over the delivery phase of the Programme.
- 3.4 The OBC was a private and confidential document at the time it was considered by IB and Council, in order to ensure commercial confidentiality. It has since been published (with minor redaction) and is available on the Council's website.
- 3.5 Again, in accordance with best practice, the Council has prepared a Final Business Case (FBC). The purpose of the FBC is to revisit the OBC, record

the findings of the subsequent procurement activities, recommend a Preferred Bidder and detail arrangements for the successful delivery of the Programme from the Preferred Bidder. The FBC for the Programme is set out at Exempt Appendix 2

- 3.6 The OBC for the new offices within the Freight House was based on the Council adopting an agile working culture which would allow for a reduction in the desk to staff ratio, thus reducing the amount of office space needed.
- 3.7 A Local Partnerships Assurance Review of the ADP recommended that the Council implement a change management intervention through a “corporate change programme” to ensure that the Council can effectively deploy the new ways of working needed in the new building and ensure the Council maximises the financial benefits of the ADP. This was also endorsed by the recent Peer Review.
- 3.8 The ‘Connect’ Cultural and Transformation Programme was established to address this requirement and will deliver investment in new technologies and in the skills of the Council’s workforce. This will not only ensure flexible and agile working, but also improve the way the Council interacts with residents and delivers services, thereby ensuring the Council continues to deliver value for money in the future.

4 MEMBER WORKING GROUP AND PROGRAMME BOARD

- 4.1 Both the Member Working Group (MWG) and Programme Board (PB) have been important parts of the Council’s internal project governance and both have been kept fully apprised throughout the competitive dialogue process. The MWG has guided and shaped the development of the dialogue sessions (whilst retaining commercial sensitivity throughout the process) as officers were able to discuss with the MWG those emerging solutions, issues and principles underpinning the schemes that Bidders were bringing forward. This enabled Members to provide a steer to officers that, in turn, enabled officers to provide further guidance to Bidders on the Council’s requirements throughout the dialogue process. The Programme Board has provided oversight and direction to the more formal parts of the procurement process and ensured that the Programme remains on timetable.
- 4.2 Officers reported to both the MWG and PB on 20 December 2019 that after three successful rounds of competitive dialogue it was likely there would be at least one bid capable of acceptance, and that there were no outstanding issues or matters of substance remaining between the Council and the Bidders which would justify or demand continued dialogue. It was the recommendation, therefore, of the Senior Responsible Officer, that the competitive dialogue phase of this procurement process be formally closed, and the Bidders be invited to submit their final tenders for formal evaluation. The Member Working Group endorsed this view and the Programme Board agreed to close competitive dialogue following officers’ recommendations.

5 TENDER REPORT

- 5.1 The Tender Report provides a summary of the evaluation, moderation and weighting for each of the Bidders' final tender submissions. (Exempt Appendix 1).
- 5.2 After the selection stage, Bidders were invited to participate in the dialogue stage. Following closure of dialogue, Bidders were invited to submit their final tenders for the Programme. Following submission, their final tenders were assessed for completeness and compliance and then evaluated by officers in accordance with the published award criteria and methodology.
- 5.3 The award criteria as set out in the Tender Report were approved by Investment Board on 5 September 2019.
- 5.4 The scored evaluation of the submissions was undertaken by a team comprised of senior Council staff (finance, legal, commercial, planning, community and transformation) and professional advisers from Gleeds Advisory Ltd (technical advisers), Gleeds Cost Management Ltd (quantity surveyors), Dow Schofield Watts Business Planning (financial advisers), and the East of England Local Government Association (project management and peer support). The process of evaluation and moderation was undertaken in line with best practice as set out below. Each of the evaluators was selected to undertake the evaluation for questions which complemented their skill sets and areas of work, be it as an officer of the Council or professional external adviser. Evaluators scored final tenders individually at first but then all scores were moderated by all the evaluators assigned to the relevant question to achieve a consensus of scoring and accompanying reasoning for that score. The moderation was facilitated by a Gleeds advisor who had not been part of the live competitive dialogue process.
- 5.5 The Tender Report identifies the Bidder which scored highest against the criteria. The contract must be awarded to the successful Bidder, unless the procurement process is to be abandoned for some reason or a contract cannot be concluded with the successful Bidder. The proposed next steps with the successful Bidder are set out below at section 7

6 FINAL BUSINESS CASE

- 6.1 In accordance with best practice, the Council has prepared a Final Business Case (FBC). The purpose of the FBC is to revisit the OBC and record the findings of the subsequent procurement activities; the rationale for any changes to OBC assumptions and the impact, together with a recommendation for an affordable solution which continues to optimise value for money, and detailed arrangements for the successful delivery of the Programme from the recommended Bidder. The FBC for the Programme is set out at Exempt Appendix 2 and confirms that the Preferred Bidder's

solution still offers best Value for Money compared to the alternative 'Do Minimum' and 'Consolidate at the Mill' options evaluated at OBC stage.

6.2 The FBC is broken down into five different cases which are interconnected but distinct (namely, the Strategic, Economic, Financial, Commercial and Management aspects of the case) to ensure proposals:

- Are supported by a robust case for change – the 'Strategic Case';
- Optimise value for money – the 'Economic Case';
- Are commercially viable – the 'Commercial Case';
- Are financially affordable – the 'Financial Case'; and,
- Can be delivered successfully – the 'Management Case'

SUMMARY OF THE FIVE CASES OF THE FBC

6.3 The proposed Programme as set out in the FBC is comprised of a number of significant, complex and integrated projects. The information below is intended as a guide and should be considered in the context of the full information contained within that document.

STRATEGIC CASE:

6.4 The conclusion of the procurement process has identified a Preferred Bidder that the Council believes can deliver a solution which accommodates the strategic objectives set out at OBC stage. All the objectives set for the Programme are anticipated to be realisable, at FBC stage.

6.5 The Preferred Bidder has detailed a proposed Programme to be delivered over a 3-year period completing in Spring 2023. The critical project in this Programme is the redevelopment of the Freight House as the Council's long-term base, which in turn enables the development of The Mill Arts & Events Centre site and the redevelopment of existing accommodation on South Street.

6.6 Appendix D of the exempt tender report sets out supporting information from the Preferred Bidder in more detail.

ECONOMIC CASE:

6.7 The Outline Business Case established that the preferred option offered best Value for Money to the Council compared to other options including a "Do Minimum" option. This Final Business Case confirms that the proposed option still compares favourably to the alternative 'Do Minimum' and 'Consolidate at the Mill' options evaluated at OBC stage.

- 6.8 It is important to note that since the OBC was published the Council's thinking has developed further and become more refined.

COMMERCIAL CASE:

- 6.9 Commercially, the Council's preference in the OBC was to transfer as much risk to the developer as possible. Bidders were encouraged throughout the dialogue, and incentivised through the award criteria, to accept key commercial risks. So far within the process, it has been partially possible to meet this preference; however, reviewing and mitigating this position is a normal and key part of the Preferred Bidder process.

FINANCIAL CASE:

- 6.10 The OBC identified that the capital receipts resulting from the residential and commercial spaces created could fund a significant proportion of the new Council and community facilities. This remains the case although the anticipated capital funding gap has increased from c£0.6m to the sum set out in Exempt Appendix 2. Further details on the affordability of the proposed Programme are also set out in Exempt Appendix 2. The sum proposed by the Preferred Bidder remains commercially sensitive at this point, for legal reasons, until the formal Contract is finally concluded. The proposed sum will continue to be refined as designs are finalised, and negotiations on the terms of the commercial deal are concluded.
- 6.11 Throughout the dialogue phase, officers were able to seek feedback from the MWG. The MWG gave officers a clear direction on how the Council wished to proceed. Some of this feedback affected the Bidders' cost estimates from those assumed in the OBC and these are summarised below. The Preferred Bidder's response to these matters is reported in the Tender Report and FBC:
- The MWG proposed that the new community facility at the Mill Arts & Events Centre Site should be significantly larger than that originally identified in the OBC. This meant that the most appropriate design for the site was for Bidders to build a new standalone building. This had two financial consequences for the assumptions made in the OBC. Firstly, a bigger building will have greater ongoing running and maintenance costs (although this may be partly offset by income generated through public hiring of the building). Secondly, a new standalone building has increased the proposed capital build costs but at the same time reduced the size of the available space for commercial development; the inevitable consequence of which is to reduce the amount of capital receipts realisable at the site.
 - In order to preserve a significant amount of public car parking on the Mill Arts and Events Centre Site, the MWG required Bidders to provide an agreed minimum level of public car parking (not fewer than 100 spaces),

in their solution for that site. This requirement further reduced the amount of remaining space available for commercial development; which reduced the capital receipt available to the Council.

- A higher standard of internal fit-out for those sites which are going to be retained by the Council was agreed with Bidders during the dialogue phase. This gives greater certainty over the total costs to be borne by the Council because it is reflected in the overall price.
- Similarly, proposed improved environmental and sustainability measures should yield longer term benefits and savings to the Council and the environment; however, this increased the initial cost investment.

MANAGEMENT CASE:

6.12 The sequencing of the Programme within the agreed procurement documentation will ensure the Council can:

- Maintain operational continuity of Council services throughout the Programme.
- Provide community facilities in at least either Rochford or Rayleigh at all times, meaning both key sites cannot be developed concurrently.
- Bring forward activities that realise cash receipts to enable these to fund subsequent activities.

6.13 The demands of this Programme remain greater than any previously attempted by the Council, especially when considering the integrated nature of the Programme and the desire to execute it “at pace” to realise the financial benefits at the earliest opportunity. The Preferred Bidder has responded to this requirement and will offer the Council;

- Access to the skills, management/coordination expertise and delivery capacity necessary to allow the Programme to be executed in an optimal fashion.
- A retained high degree of control/influence on the Programme and its outcomes that could not be achieved through straightforward disposal arrangements.

7 NEXT STEPS

7.1 Upon Full Council approval of the recommendations within this report, all Bidders will be given formal feedback required by procurement law and a ten-day standstill period will be observed.

- 7.2 Once the Preferred Bidder is formally appointed by Full Council the next step would be for the Council to negotiate and finalise the contract in accordance with the terms and matters as set out in the Tender Report and FBC and within the parameters set out in the Public Contracts Regulations 2015. It is proposed that a recommendation is made to Full Council to seek delegation to finalise the terms of the contract to the Assistant Director Assets & Commercial, in consultation with the Portfolio Holder for Enterprise.
- 7.3 Upon conclusion of the negotiations of the Contract, a report will be submitted to Full Council for final approval and then the Contract will be executed and sealed.
- 7.4 Due to the success of the MWG and the Programme Board during the procurement process, it is proposed that these bodies will remain in place following the appointment of the Preferred Bidder. The terms of reference for the MWG and the Programme Board were set by Investment Board and it is proposed that these be refreshed and brought back to Investment Board in due course for formal adoption. The benefit of maintaining the MWG and the Programme Board is that these forums allow Members to engage directly with the Programme delivery phase.
- 7.5 The Council has commissioned a team of external professional advisers which have provided capacity and expertise to progress the Programme to this point. It is important that the Council retains these skills post the award of contract and into the implementation stage of the Programme, to ensure it can be successfully delivered. This includes professional legal and financial advice and project management support. This is a standard approach for complex projects of this type. Retaining advisers will allow for the transfer of key skills as the project translates into reality and will enable the Council to manage its contractual obligations effectively. The level of resource required is commensurate with similar projects of this scale and will be procured in accordance with the Council's financial and procurement regulations to ensure it represents Value for Money. The budgets set out in the table below detail the funds required to support the Programme during the next financial year.

| Cost type | Budget Agreed to FBC Stage £ | Budget carried forward from FBC stage £ | Total Budget Required 2020/21 £ | Additional Budget Required 2020/21 £ | Detail |
|-----------------------------|---------------------------------|--|------------------------------------|---|---|
| Technical Advice | 80,000 | - | 79,300 | 79,300 | Gleeds to be commissioned |
| Design Advice | 7,500 | 7,500 | 7,500 | - | Quantity Surveyor fee |
| Gateway Review Fee | 12,000 | - | - | - | LGA fee |
| Project Management Resource | 73,200 | - | 75,600 | 75,600 | EELGA to be commissioned to deliver Project Management, Quality Assurance and strategic advice |
| Asset Management Team | - | - | 35,000 | 35,000 | Backfilling of key officer to ensure intelligent client function can be developed and delivered |
| Legal Advice | 100,000 | 50,000 | 70,000 | 20,000 | Costs associated with negotiating and finalising the legal documents needed to progress the project |
| Finance Advice | 50,000 | 15,000 | 20,000 | 5,000 | Financial assurance and advice to ensure Value for Money is achieved |
| TOTAL | 322,700 | 72,500 | 287,400 | 214,900 | |

8 RISK IMPLICATIONS

- 8.1 Property development carries a number of risks which will need to be mitigated and reviewed by officers and external professional consultants as the contract terms are negotiated and finalised with the Preferred Bidder.
- 8.2 It should be noted that the Preferred Bidder has prepared a risk register setting out a proposed risk profile and the important aspects of this (such as the extent to which it meets the OBC anticipated position) are explored in greater detail in the FBC.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1 None.

10 ENVIRONMENTAL IMPLICATIONS

- 10.1 None.

11 RESOURCE IMPLICATIONS

- 11.1 The Financial Case for the proposed Programme was set out in the OBC and has been revisited and updated in the FBC. It is summarised at paragraphs 6.10 to 6.11 above.
- 11.2 A project budget of £322,700 to support delivery of the Programme to FBC stage was agreed in January 2019. Of this amount, £72,500 is expected to be unspent in 2019/20. It is requested to carry forward this amount and to agree additional budget of £214,900 to be funded from the Hard/Soft Infrastructure Reserve to ensure the successful completion of the project. This will give a total available budget to support the Programme of £287,400 in 2020/21.

- 11.3 These budgets will continue to be monitored to ensure that the Programme resources stay on track.

12 LEGAL IMPLICATIONS

- 12.1 The Council is required to comply with the Public Contracts Regulations 2015 (“PCR 2015”) in respect of the procurement. Anthony Collins Solicitors LLP and Gleeds have been appointed to advise on all aspects of the procurement process and will provide full support on the procurement and contract documents.
- 12.2 Challenge risk is inherent in any public procurement process, largely from Bidders who are excluded or unsuccessful during the process. The Council is working closely with Anthony Collins Solicitors to mitigate against the risk of procurement challenge to the greatest extent possible.

13 EQUALITY AND DIVERSITY IMPLICATIONS

- 13.1 An Equality Impact Assessment (EIA) has been completed and there are not considered to be any equality and diversity implications at this stage. Further EIAs will be undertaken as the project develops.