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## **ASSET DELIVERY PROGRAMME: PROCUREMENT DOCUMENTATION & DELIVERY PARTNER OPTION**

### **1 PURPOSE OF REPORT**

- 1.1 This report submits the Asset Delivery Programme (the “Programme”) procurement documentation for approval and seeks Member approval of the recommended delivery partner option for delivery of the Programme.
- 1.2 The report also submits the terms of reference for the Member Working Group and Programme Board for approval.

### **2 INTRODUCTION**

- 2.1 Further to the resolutions of the Investment Board on 16 January 2019 and Full Council on 19 February 2019 officers have begun the initial stages of the procurement phase of the Programme.
- 2.2 This phase of the Programme will see the Council undertake a procurement process to select a development partner, following which a Full Business Case will be prepared in consultation with the Member Working Group and Programme Board and thereafter submitted to Investment Board and Council for approval.
- 2.3 The Council is following the guidance of HM Treasury designed to take projects from initiation through to delivery: 1) Strategic Outline Case (SOC); 2) Outline Business Case (OBC) and 3) Full Business Case (FBC).

### **3 OUTLINE BUSINESS CASE**

- 3.1 The purpose of the (OBC) was to revisit the options identified in the SOC, to identify the ‘Preferred Option’ following more detailed appraisal; and to set out the emerging commercial case while confirming affordability and putting in place the management arrangements for the successful delivery of the Programme.
- 3.2 The OBC is not the final delivery plan; it sets the parameters and assumptions around which the next phase of the project planning will be based, that is, the procurement phase, culminating in the production of a Full Business Case.

### **4 LOCAL PARTNERSHIPS GATEWAY REVIEW**

- 4.1 As set out in the report to the Investment Board in January 2019, officers instigated a Health Check Review by Local Partnerships to provide assurance to the Programme. Local Partnerships is owned jointly by HM Treasury and the Local Government Association and offers professional support to public bodies in the review of strategic projects.

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- 4.2 Health Check Reviews are peer reviews carried out at a key point in the life of a project or programme. They are carried out by trained and experienced practitioners. Reviews consist of a series of interviews with stakeholders preceded by a key document review and followed by a short, focused report with findings and recommendations delivered to the Senior Responsible Officer (SRO). Health Check Reviews offer informed constructive challenge and recognise good practice, as well as setting out areas for improvement and recommendations for success.
- 4.3 At the conclusion of a Health Check Review, the review team prepares a report for the SRO which contains its findings, any recommendations that it wishes to make and a “Delivery Confidence Assessment” which is a RAG rated assessment of the review team’s confidence that the project/programme will be delivered as conceived. In the Asset Delivery Programme Health Check Review, the review team gave the Programme a Delivery Confidence Assessment of ‘Amber / Green’. This is a very positive outcome and it should be noted that very few projects receive the higher ‘green’ assessment through this process.
- 4.4 The review team found the Programme to be progressing well and, following exemplary project management principles from strategy inception, strategic outline case to outline business case. It also noted the rigour with which proposals had been produced. The report noted that the Council had identified where it had areas of inexperience in programmes of this magnitude and had brought in highly experienced external support where necessary to support officers.
- 4.5 The review team made some recommendations for officers to consider in order to ensure that risks do not materialise to threaten delivery. Officers are reviewing the recommendations to ensure they are addressed as required.
- 4.6 The report made a specific recommendation regarding the Council’s preferred partnership approach for a delivery vehicle. Specifically, the recommendation was: *To make time in the programme for a formal decision point as to the Council’s preferred partnership approach*. This is crucial as the procurement phase will be influenced by the decision taken and cannot progress until this is formally agreed. This point is covered in detail at section 8 of this report.
- 4.7 A further recommendation was made regarding the recruitment of an executive level appointee to bring expertise and challenge to the programme at Programme Board level. his role is now being fulfilled by a highly experienced advisor from the East of England Local Government Association as part of the assurance role set out in the report to the Investment Board in January 2019.
- 4.8 The review has been shared with all Members and discussed in detail with both the Member Working Party and Programme Board.

**5 TERMS OF REFERENCE**

- 5.1 The Member Working Group and Programme Board are crucial forums that provide a check and balance and critical friend input to the Programme direction at both operational and strategic level. Draft Terms of Reference have been developed for both groups and are set out in Appendices 1 and 2. The Terms of Reference have been designed to ensure clarity of purpose, role and outcomes.
- 5.2 These Terms of Reference must be approved in order to provide clarity and direction of purpose for the business to be transacted by these groups. Neither the Member Working Group nor the Programme Board are formal delegations of the Investment Board and accordingly neither have any mandate to make formal decisions on behalf of the Council.

**6 MEMBER WORKING GROUP**

- 6.1 The role of the Member Working Group prior to approval of the OBC was to assist in shaping the strategic direction of the Programme.
- 6.2 Since OBC, Officers have continued to hold workshops with the Member Working Group to inform the next stages of the procurement process. Specific workshops were held with the Council's external technical advisers, Gleeds and external legal advisers, Anthony Collins Solicitors. The workshops outlined the procurement process the Programme would follow to select a delivery partner. This included consideration of the Council's objectives, developing the evaluation criteria and reviewing the scoring and evaluation method. The output specification was also developed through this process.
- 6.3 The Member Working Group received a briefing from the Council's external legal advisers on the potential delivery partnership options for the programme. This advice is summarised below and is appended to this report in full. (Exempt Appendix 3)
- 6.4 The Member Working Group has indicated to officers that it is satisfied with the information contained within the procurement documentation. It has further indicated that the preferred delivery option of a contract with a development partner would provide the optimum mix of reward, risk and control to enable successful delivery of the programme to meet the Council's objectives.
- 6.5 As indicated in the Terms of Reference, the purpose of the Member Working Group will be to provide stakeholder input and feedback to support the development of the Programme through the procurement process.

**7 PROGRAMME BOARD**

- 7.1 As set out in the OBC and referred to above a Programme Board has now been established; this group is chaired by the Managing Director with the SRO and Project Manager in attendance and supported by various key

officers and external advisors as necessary. The Portfolio Holder for Enterprise and Portfolio Holder for Finance are key attendees of this forum. As indicated in the Terms of Reference, the Programme Board's purpose is to set the direction for the Programme, support the SRO in decision-making and oversee the overall progress of the Programme.

- 7.2 The Programme Board has indicated to officers that it is satisfied with the information contained within the procurement documentation. It has further indicated that the preferred delivery option of a contract with a development partner would provide the optimum mix of reward, risk and control to enable successful delivery of the programme to meet the Council's objectives.

## **8 DELIVERY STRUCTURE**

- 8.1 The Council, when advertising the procurement, must specify the form of development agreement that will be awarded to the successful development partner. The preferred delivery structure option as noted by Investment board on 16 January 2019 is to procure a development partner; the Council could then draw on their expertise and experience in this market.
- 8.2 It was recommended within the OBC that the self-build option be ruled out as this is a high-risk option for the Council and would require a significant amount of additional development expertise and resource. The Council does not currently have this capacity in-house and the recruitment of the extra resource required coupled with the additional risk this would bring to the development would be prohibitive.
- 8.3 It was further noted within the OBC that formal Joint Ventures (JV's) can be complex to establish and are often used when Local Authorities have a significant property portfolio or a major pipeline of development activity (e.g. 10 years). The Council has a number of development sites to take forward but would likely not necessitate the formation of a formal JV given the size of the development pipeline
- 8.4 The Council's legal advisor, Anthony Collins Solicitors, has provided a briefing note on the delivery options available to the Council. The note is attached at Exempt Appendix 3 and their advice is consistent with the OBC in recommending a development partnership as the preferred option.
- 8.5 A development partnership would be formed where the Council and developer are bound to a positive working relationship through contractual arrangements. This contract or framework development agreement would set out the obligations of all the parties from the start to the end of the Programme. The contracts would govern the planning, development, construction, disposals of sites and funding aspects of the Programme. The contractual model could be based on a development framework or a development contract and this is explored further in the following paragraphs.

**8.6 Single-Supplier Development Framework**

8.7 Frameworks arrangements involve two levels of contract:

- 1) The framework agreement – this is an umbrella agreement which governs how the parties work together and sets out the terms for contracts to be entered into between the parties over a period of time; and
- 2) The call-off contracts – these are specific contracts for the delivery of works and services which can be entered into at any time during the period of the framework agreement.

8.8 In the context of the Council's strategy, this would involve a single-supplier framework with individual 'call-offs' for each of the sites to be developed.

8.9 Frameworks can be beneficial where flexibility is important as it is possible to vary existing call-off contracts and create new ones during the framework period, which can be up to four years. This means that the Council would not be tightly bound to proceed with the development in the way it initially anticipated, even after the final tender stage, therefore allowing some flexibility in its requirements and programme.

8.10 For example, the Council could appoint its development partner under a framework and "call-off" a number of the sites as planned. The Council may then decide to vary how it wishes to deal with the remaining sites or could even decide that it no longer wishes to develop them or wants to use a different developer to do so.

8.11 The major drawback of using a framework for this Programme is that the Council would have to agree individual call-offs with the development partner, possibly after the tender process, and certainty of timely delivery of the entire programme could be lost or seriously jeopardised.

8.12 Given that the Council seeks to develop multiple sites with differing levels of commercial value the framework route would also entail a higher level of development risk. The development partner could refuse some of the sites or terminate the framework agreement before all stages of the development have been completed. As the funding of the Programme is highly integrated this would be significant risk to overall delivery.

**8.13 Development Contract**

8.14 A contract may be used to appoint the development partner. The contract would cover the entirety of the Programme and govern the relationship between the parties for the development of all sites.

8.15 The most significant benefit of this approach is the certainty it affords. The Programme would be carried out within the parameters set by the Council and contained in the development partner's final tender. This approach is particularly beneficial given that the Programme is formed of six sites, the

development of which is inter-linked and the Council therefore requires certainty that the entirety of the Programme can be delivered. In turn, certainty will also be attractive for prospective development partners.

- 8.16 It is important to note that using a contract means that the Council's requirements will need to be certain and there is little room to alter development proposals once the contract is awarded. For example, it would not be possible to add further sites into the Programme. It would also not be possible to use the development partner for further projects in the future.
- 8.17 The Council's requirements will be developed from an early stage in the procurement both in the procurement documents and in the legal Heads of Terms which form the basis of the development contract. The Heads of Terms will set out how the Council intends to work with a development partner and what the main terms of the contract will be.
- 8.18 As the success of the Programme relies upon all six sites being developed, the certainty of outcome that the contract route affords is likely to outweigh the benefits available under a framework. The Council's legal advisors have therefore recommended using a contract as the best way forward, provided that the Council continues to value certainty over flexibility.
- 8.19 The Council will use the competitive dialogue procedure to fully explore the proposals and innovations presented by developers and can hone its requirements at the final tender stage. This will ensure that the contract it ultimately enters into fully meets the Council's objectives for the entirety of the project.
- 8.20 It is therefore recommended that a delivery partner be appointed through the drafting of a contract and the heads of terms be developed in consultation with the Member Working Group and Programme Board.

## **9 PROCUREMENT**

- 9.1 As set out within the Commercial Case of the OBC the competitive dialogue process is the most appropriate procurement route to select a development partner given that the Council wishes to influence the outcomes for each site alongside experienced bidders through dialogue to work up innovative solutions to deliver the objectives for the Programme.
- 9.2 The procurement process will be undertaken in the following stages:

- **Soft Market Testing:** This allows the Council to test its proposals in the market before the formal procurement is commenced and it is now proposed to further extend this phase to ensure the maximum value can be gained from the Dialogue stage below. This will require an additional 4-6 weeks to be built into the timetable and will be reflected in a revised timetable to be reported to Investment Board once it has been finalised.
- **Pre-Qualification Stage:** Following the publication of the OJEU notice to the market the aim of the Pre-Qualification Stage is to check whether the organisations that have responded to the OJEU notice are capable of providing works. This involves assessing each organisation's skills, experience and past performance on similar projects. The top scoring organisations will be shortlisted and invited to engage in Dialogue with the Council.
- **Dialogue Stage:** The aim of the Dialogue Phase is to identify and define the best solution capable of satisfying the Council's requirements. The bidders will be invited to submit Outline Submissions which will be used to indicate and explain bidders' outline proposals and potential solutions and will be used by the Council to facilitate discussion at Dialogue meetings. Feedback will be provided to the Programme Board and Member Working Group to help shape the final submissions.
- **Final Tender Period:** – Bidders will be invited to submit their final tenders for assessment against the award criteria and evaluation methodology and the top scoring bidder will be selected by the Council to enter into the development agreement.
- **Award Stage:** Terms of progressing forward with the successful bidder are agreed and the development agreement is awarded.

9.3 There are five main documents, as set out below, which will be released when OJEU notice is published, referred to as the 'Procurement Documentation'. Site plans and high level legal and planning considerations for the sites will also be included.

#### **Output Specification (Exempt Appendix 4)**

This document sets out the Council's required deliverables of the Programme i.e. what the Council is aiming to achieve from the procurement. The Output Specification sets 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 of mobile and flexible working and the flexible use of space for staff, members and the community. This document will provide bidders with information such as the Council's minimum requirements and also invites 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, rather than the mechanics of its delivery, enables bidders to propose innovative solutions that might not have occurred to the Council.

**Pre-Qualification Questionnaire (PAS91) (Exempt Appendix 5)**

The Pre-Qualification Questionnaire (also known as a “PQQ”) is based on the standard form of questionnaire for the procurement of works – the PAS91. Its purpose is to check whether the organisations who have responded to the OJEU notice are capable of providing the works. It sets out a series of questions regarding the Council’s minimum requirements in relation to specific economic, financial, technical and professional criteria and asks organisations to self-certify that they are not subject to any grounds for exclusion from the process (e.g. criminal convictions). The PQQ then contains more detailed questions regarding organisations’ past experience which will be scored by the Council to rank and shortlist those organisations who will be invited to participate in Dialogue.

**Invitation to Participate in Dialogue (Exempt Appendix 6)**

This document (also known as the “ITPD”) sets out the terms of how the Council intends to manage the dialogue period, how the bidder will conduct themselves during the dialogue phase and invites bidders to submit outline submissions. The ITPD also defines the award criteria that will be the basis of the evaluation of final tenders.

This document will be available in draft form only at the start of the selection Pre-Qualification Stage in order to be open and transparent with the market.

**Invitation to Submit Final Tenders (Exempt Appendix 7)**

Once the dialogue process is closed (the timing of which is at the Council’s discretion) bidders will be required to submit final tenders which set out their definitive proposals for the Council to consider. The Invitation to Submit Final Tenders document (also known as the “ITSFT”) reaffirms the conditions set out in the Invitation to Participate in Dialogue and the award criteria that will be the basis of the evaluation of the final tenders.

This document will be available in draft form only at the Pre-Qualification Stage in order to be open and transparent with the market.

**Heads of Terms**

The Heads of Terms (also known as “HOT”) sets out a proposal for how the Council might work with a development partner and what the main terms of the development agreement will be. It covers key issues such as planning, phasing, funding, risk allocation and termination. The HOT will be used during Dialogue to facilitate discussion on proposals for the delivery structure and gauge feedback from bidders, who may also propose alternative ideas for the Council’s consideration.



**10 NEXT STEPS**

- 10.1 Once approved, the Procurement Documentation will be issued to the market: the PQQ in final form and the ITPD, ITSFT and OS in draft. The PQQ responses will then be evaluated, scored and moderated by officers and reported to the Programme Board as part of the Programme governance. A formal report will then be brought to Investment Board to present the outcome of the PQQ and approve final versions of the ITPD, ITSFT, HOT and OS prior to the Competitive Dialogue process being initiated.
- 10.2 Competitive dialogue is a crucial phase of the procurement process and will enable the Council to receive interim solutions to deliver the Council's requirements of the programme before the final tenders are submitted. These interim solutions (suitably anonymised to protect the integrity of the competitive process) will be shared with the Programme Board and Member Working Group with feedback being shared with the market to enable optimal solutions and innovation to be brought forward using the technical expertise and market knowledge of the bidders.

**11 RISK IMPLICATIONS**

- 11.1 Treasury Guidance and good practice dictates that projects of this magnitude should record and monitor risks throughout the various stages of business case refinement.
- 11.2 It should be noted that property development carries inherent risk; the Council should maintain a balanced risk profile which is commensurate with its appetite for risk.
- 11.3 The Risk Register is a live document and will be regularly reviewed at officer and Programme Board level. The register will capture key risks, risk owners, provide a RAG status and list mitigating factors.

**12 CRIME AND DISORDER IMPLICATIONS**

- 12.1 None.

**13 ENVIRONMENTAL IMPLICATIONS**

- 13.1 None.

**14 RESOURCE IMPLICATIONS**

- 14.1 The Financial Case for the proposed Programme was set out in the OBC. Further detailed financial analysis will be undertaken at FBC stage to ensure the Programme remains affordable and represents Value for Money to the Council.
- 14.2 As agreed by Investment Board previously, in order to deliver a programme of this size and complexity to FBC stage, resources will be required as

summarised in the table below. This includes professional advice and guidance such as legal, financial and project management resources to enable the procurement phase to be completed. The level of resource required is commensurate with similar projects of this scale and will be procured in accordance with the Councils financial and procurement regulations to ensure it represents Value for Money.

Cost Type	Detail	Total Budget Required £
Technical Advice	Gleeds to be commissioned to support the Programme to FBC stage	80,000
Legal Advice	Independent legal advice and evaluation of procurement options	100,000
Design Advice	Independent assessment of design proposals	7,500
Project Management Resource	2 days p.w. of PM support for 1 year plus 1.5 days p.m. of project assurance/strategic advice	73,200
Finance Advice / resource	Independent financial advice / additional resources to support evaluation	50,000
Gateway/Review Fee	LGA fee	12,000
		<b>322,700</b>

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

## 15 LEGAL IMPLICATIONS

- 15.1 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.
- 15.2 The procurement is required to be advertised in the Official Journal of the European Union ("OJEU") and Contracts Finder in accordance with the PCR 2015. However, if the UK leaves the European Union without a deal, the advertisement will need to be placed on a UK-wide web-platform in place of OJEU. Anthony Collins Solicitors have been instructed to draft the relevant contract notice and will advise on its advertisement at the time of publication.

- 15.3 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.

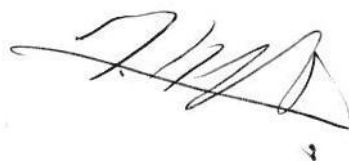
## **16 EQUALITY AND DIVERSITY IMPLICATIONS**

- 16.1 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.

## **17 RECOMMENDATION**

- 17.1 It is proposed that the Board **RESOLVES**

- (1) That the Pre Qualification Questionnaire be approved.
- (2) That the draft Output Specification be noted.
- (3) That the draft Invitation to Participate in Dialogue be noted.
- (4) That the draft Invitation to Submit Final Tenders be noted.
- (5) That a development contract be approved as the procurement route for appointing the Council's development partner.
- (6) That the terms of reference for the Member Working Group be approved.
- (7) That the terms of reference for the Programme Board be approved.



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### **Background Papers:-**

None.

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