

YEAR 2019/2020 REPORT NO.

**ACTION TO BE TAKEN UNDER
DELEGATED AUTHORITY**

OPERATIONAL DECISION OF:
Executive Director
Place

Agenda – Part: 1	KD Num: 4751
Subject: Procurement of Phoenix Wharf Clearance Contractor	
Wards: Upper Edmonton	

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<p>1. EXECUTIVE SUMMARY</p> <p>1.1 The London Borough of Enfield acquired the Phoenix Wharf site (2ha) Tow Path Road, London N18 3QX in July 2016.</p> <p>1.2 The Meridian Water Team has received a Responders Emergency Memorandum from the Environment Agency to remove the waste as it poses a fire risk which may have a serious impact on the surrounding area.</p> <p>1.3 This report seeks approval to procure a contractor to clear the rubbish mound.</p>
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<p>2. RECOMMENDATIONS</p> <p>It is recommended that the Executive Director – Place</p> <p>Approves the procurement of a Waste Contractor as set out in the report.</p>

3. BACKGROUND

3.1 The Site

- 3.1.1 The London Borough of Enfield acquired the Phoenix Wharf site (2ha) Tow Path Road, London N18 3QX in July 2016 with a tenant in place. The tenant provided waste transfer services.
- 3.1.2 The site is in the South East section of the Meridian Water Regeneration Area, accessed off the Cooks Ferry roundabout on the North Circular (A406) via Tow Path Road. The site area is 4.89 Acres (2ha) and made up of a mixed concrete and gravel based open ground, with no current use. The full address of the site is the Phoenix Wharf, off Tow Path Road, London N18 3QX.
- 3.1.3 The Environment Agency (EA) had granted a Waste Transfer Licence to the tenant but the occupant allowed the waste to accumulate instead of being transferred on. The tenant stopped responding to correspondence and subsequently went into liquidation. The EA served a Suspension Notice and the tenant was formal evicted in February 2018. The EA is now insisting that the site be cleared to prevent any fire risk.
- 3.1.4 The combustible material on site is estimated to be 14,500m³, made up of shredded rag, fibre, plastic, metal, rubber, metal, paper and card.
- 3.1.5 Until the site is passed on to a Development Partner for its long term use, the Meridian Water Team is responsible for the management and maintenance of the site. As part of the Councils meanwhile strategy, the Council has the obligation to ensure that the site is brought into beneficial use to contribute to the Meanwhile Strategy, which includes the generation of income to cover the cost of borrowing associated with the acquisition of the site. LBE Legal team have looked into the possibility of taking legal action against the previous tenant but has advised that there is little scope for a successful legal challenge.

3.2 Scope of Works

- 3.2.1 The objective of the works is to clear the site of the build-up of commercial waste at the demand of the Environment Agency.
- 3.2.2 The scope of works is for site preparation for future development as it's end use and to allow the site to be re-let and create income on a meanwhile basis until then.
- 3.2.3 ARUP Consultants have been commissioned to complete the technical details, engage & agree procedures with the EA. They will on this approval prepare tender documents with Council

Officers, evaluate tender returns and advise on successful tenderer, site support, H & S requirements and complete the role of CDM Co-ordinator.

3.3 Form of Contract

- 3.3.1 Advice on the appropriate form of contract will be sought from officers in the Council's Legal Services and Corporate Management and Construction Teams prior to publishing the tender documents on the London Tenders Portal

3.4 Procurement Process

- 3.4.1 The Procurement & Commissioning Board reviewed the business case and approved the procurement strategy in the Autumn of 2018. The procurement strategy is based on the procurement being for "Works" rather than Services. The OJEU threshold for "Works" is above the anticipated costs so we can therefore run a competitive tender process as there is no appropriate framework available.
- 3.4.2 The Council Legal team have stated that when procuring the contract, the Council must comply with the Public Contracts Regulations 2015 and its Constitution, including its Contract Procedure Rules. In order to for the proposed contract to properly be considered a works contract for the purposes of the Public Contracts Regulation 2015 (and therefore below the threshold for an OJEU compliant procurement exercise) officers must at least demonstrate that the site is designated for development and construction work will be undertaken on the site. Officers from the Council's Procurement Team have confirmed that they are satisfied with officers' procurement strategy.
- 3.4.3 The Meridian Water Team in consultation with LBE procurement and ARUP Consultants undertook a market test process to gain an estimate of cost, details can be found in Part 2.
- 3.4.4. All suppliers shortlisted for the requested tender will be contractors with registered Waste Transfer Licences authorised and monitored by the Environment Agency who have provided assistance with regard to the market testing. We are looking to approach at least 7 contractors with the aim of getting 5 competitive tenders returned.
- 3.4.5 The tender will be published on London Tenders Portal and suppliers will be given 14 days to respond. As part of the tender process all suppliers will be invited to attend a site visit. All clarification questions, including the questions asked during the site visits will be made public to all tenderers.

3.4.6 If approved, a further DAR will be submitted to recommend award to the preferred contractor.

3.5 Evaluation

3.5.1 ARUP Consultants have been commissioned to prepare a tender and evaluation process which will be published on the London Tenders Portal. See 3.2.3.

3.5.2 The bids will be evaluated on a set of published evaluation criteria based both on quality; including methodology, programme, health safety & environment, and on price on a 50%/50% basis.

3.6 Cost

See Part 2 of this report

3.7 Funding

3.7.1 An indicative budget has been identified for the waste removal see Part 2 of this report.

3.7.2 Procurement of a waste contractor is in line with the projected spend on the Meridian Water budget and will not impede planned activities funded from this budget.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 Do Nothing

This option would leave LBE open to prosecution from the Environment Agency for non-removal and will add to problems concerning incursions, contamination and possible fire risks to the area. This would also add to further complaints and discomfort suffered by the neighbouring tenants and land users including the Hastingwood Industrial Estate and Arriva Bus Station from dust, infestation and pollution.

4.2 Use In-House Contractors.

North London Waste Authority have been asked to quote to clear the waste but have declined firstly because they don't have the capacity to remove without screening, and secondly the Environment Agency will not allow a Permit to screen waste on site.

5. REASONS FOR RECOMMENDATIONS

5.1 To avoid prosecution from the Environment Agency.

5.2 Managing Agent, Glenny's are in negotiations with a potential beneficial uses tenant for the site. The lease will be processed in accordance with Property Procedure Rules. Heads of Terms will be agreed, and delegated authorisation will be sought.

- 5.3 The cleared site will open an alternative possible access route between Anthony Way direct to the Arriva Bus Depot, allowing a less circuitous course than the one currently proposed. This would help to secure temporary access for Arriva and other businesses needed once the Housing Infrastructure Funded Bridge across the River Lee Navigation is installed. Please note this is subject to other land interests and technical feasibilities.

6. COMMENTS FROM OTHER DEPARTMENTS

6.1 Financial Implications

See Part 2 of this report

6.2 Legal Implications

Dated 11 April 2019
MD

- 6.2.1 Section 1 of the Localism Act 2011 provides the Council with the power to do anything an individual may do, subject to a number of limitations. This is referred to as the "general power of competence". A local authority may exercise the general power of competence for its own purpose, for a commercial purpose and/or for the benefit of others. This general power of competence provides sufficient power for the Council to procure a contractor to undertake the works described in this Report.
- 6.2.2 In disposing and keeping waste, the Council must comply with the waste duty of care requirements set out in the Environmental Protection Act 1990 and the Waste Duty of Care Code of Practice. It is noted that the Environment Agency has directed that the Council remove the waste from the site and failure to do so may result in enforcement action being taken against it. Failure to comply with the waste duty of care is a criminal offence subject to an unlimited fine on conviction.
- 6.2.3 The Council must ensure that (following the award of contract) all reasonable steps are taken to ensure that when waste is transferred it is managed correctly throughout its complete journey to disposal or recovery. The Council must take reasonable steps to: (i) prevent unauthorised or harmful deposit, treatment or disposal of waste; (ii) prevent a breach by any other person to meet the requirement to have an environmental permit or a breach of a permit condition; (iii) prevent the escape of waste from its control; (iv) ensure that any person to whom waste is transferred has the correct authorisation; and (v) provide an accurate description of the waste when it is transferred to another person.
- 6.2.4 When procuring the contract, the Council must comply with the Public Contracts Regulations 2015 and its Constitution, including its Contract

Procedure Rules. In order for the proposed contract to properly be considered a works contract for the purposes of the Public Contracts Regulation 2015 (and therefore below the threshold for an OJEU compliant procurement exercise) officers must at least demonstrate that the site is designated for development and construction work will be undertaken on the site. Officers from the Council's Procurement Team have confirmed that they are satisfied with officers' procurement strategy.

- 6.2.5 In order to comply with the Council's Contract Procedure Rules, at least five quotations must be received via a formal tender process through the London Tenders Portal and that the selection process must be fair, transparent, proportionate and non-discriminatory. The Council must also comply with its obligations of obtaining best value, under the Local Government Act 1999.
- 6.2.6 Advice on the appropriate form of contract should be sought from officers in the Council's Legal Services and Corporate Management and Construction Teams prior to publishing the tender documents.

6.3 Property Implications

There are no direct property implications arising from the appointment of the waste contractor. However, it should be noted that security and fly tipping are part of the property costs and risks associated with the council's corporate landlord liabilities. These costs and risks need to be taken into consideration in terms of asset management of the Meridian Water assets in the future and appropriate actions taken to mitigate against their reoccurrence.

All property holding costs should be accounted for within the overall viability of the Meridian Water scheme.

6.4 Procurement Implications

- 6.4.1 All procurement must be undertaken in accordance with the Council's Contract Procedure Rules and the Public Contracts Regulations (2015).
- 6.4.2 All procurements above £1,000 must be undertaken using the London Tenders Portal, including uploading evidence of authority to procure and award, promoting to the Contracts Register, the uploading of contracts and contract management.
- 6.4.3 All awarded projects must be promoted to Contracts Finder to comply with the Government's transparency requirements.

7. KEY RISKS

- 7.1 Risk: The Environment Agency has raised concerns with the potential fire risk and have urged London Borough of Enfield to remove waste as soon as possible.
Mitigation: Award contract as soon as agreed.
- 7.2 Risk: Possible unknown materials within the waste mound.
Mitigation: The EA has undertaken some sampling as noted in 3.1.4. The pricing schedule proposed by ARUP has set quantities of different types of material to be removed against which each bidder gives a price. The price quoted is set and the quantity of material will be monitored by ARUP. However, should the quantities vary from those given by ARUP in the pricing schedule this could increase the overall cost of removal. Therefore, a contingency budget will need to be proposed once bids have been received.
- 7.3 Risk: Further incursions.
Mitigation: The successful tenderer is responsible for the site security until contract complete and handed over.
- 7.4 Risk: Success of the procurement strategy
Mitigation: A Market Testing process has taken place and there are at least 7 people who have shown an interest in bidding for the work. To meet the Councils own CPR's, we need 5 compliant bids returned. Indications are that this is likely. The Councils CPR's state how to proceed if we don't get the expected number of compliant bids returned.

8. INTERNAL DEPARTMENT IMPLICATIONS/CONSULTATION

N/A

9. IMPACT ON COUNCIL PRIORITIES – CREATING A LIFETIME OF OPPORTUNITIES IN ENFIELD

9.1 Good homes in well-connected neighbourhoods

Meridian Water will deliver good homes for all by providing different tenures, types and sizes to meet the diverse need of the community. In addition, it will create well managed open spaces making Meridian Water a key destination and a place where people want to live, work and play.

9.2 Sustain strong and healthy communities

Meridian Water will deliver new homes, jobs and infrastructure: both major new physical and transport infrastructure and social infrastructure including medical facilities, schools, nurseries, community centres, parks and gardens. There are considerable health benefits in removing the waste mound. Clean and green energy will be provided

by the Lee Valley Heat Network, which will ensure that the development is environmentally sustainable.

9.3 Build our local economy to create a thriving place

The removal of the waste will bring an improved amenity for local business on the East Bank. The new neighbourhood at Meridian Water will be designed to foster social cohesion through a series of physical and social interventions, such as direct pedestrian, cycle and other connections into existing neighbouring community for example Angel Edmonton; and position new community facility to encourage a mixed use by both existing communities and future new residents.

10. EQUALITIES IMPACT IMPLICATIONS

10.1. Equality and diversity considerations will continue to be integrated into the development and delivery work for Meridian Water to make sure they are embedded in the decision-making process and to avoid costly design changes.

10.2 Corporate advice has been sought regarding equalities and whilst there are no Equalities implications in agreeing the recommendations outlined in this progress report. It is recommended that as part of the review of the Meridian Water Project, the Meridian Water EQIA be reviewed and updated to embed Equalities and Diversity in the future procurement, design and delivery of the project. In addition to this it should be noted that any contracts awarded should include a duty on the successful applicant to assist us with meeting our obligations under the Equalities Act 2010.

11. PERFORMANCE AND DATA IMPLICATIONS

Delivery of a comprehensive regeneration scheme at Meridian Water is a corporate priority within the Council's Business Plan. Completion of the Masterplan and the delivery of phased infrastructure improvements including increased rail services, station improvements and new homes will help to meet the strategic priority: "a borough that attracts inward investment and supports sustainable regeneration and growth."

12. HEALTH AND SAFETY IMPLICATIONS

Our In-House Fire Safety Advisor is aware of the situation and supports our approach to clear the waste mound as soon as possible. The Meridian Water Project bringing widespread improvements in transport, accessibility, and comprehensive remediation of contaminated brownfield sites will have positive health and safety benefits for the local community and the future residents, workers and leisure users at Meridian Water, specifically if the waste mound were removed.

13. PUBLIC HEALTH IMPLICATIONS

A regeneration neighbourhood at Meridian Water will have far reaching public health benefits particularly from the promotion and expansion of public transport, namely a more frequent rail service, an expanded bus network and integrated walk and cycle routes. This together with extensive green space, water fountains and a positive urban environment will continue to well-being at Meridian Water. The development will include all necessary public health and community services from health clinics to nurseries. The public will greatly benefit from the removal of the mound.

Background Papers

None