

MUNICIPAL YEAR 2019/2020 REPORT

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

PORTFOLIO DECISION OF:

Cllr Nesil Caliskan, Leader

REPORT OF:

Executive Director
Place

Agenda – Part: 1

KD Num: 4751

Subject: Appoint Phoenix Wharf
Clearance Contractor

Wards: Upper Edmonton

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1. EXECUTIVE SUMMARY

- 1.1 The London Borough of Enfield acquired the Phoenix Wharf site (2ha) Tow Path Road, London N18 3QX in July 2016.
- 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.
- 1.3 This report seeks approval to appoint a contractor to clear the fly-tipping.

2. RECOMMENDATIONS

It is recommended that the Leader of the Council:

- 2.1 Approves the recommendation to appoint McGrath Bros (Waste Control) Ltd., as set out in this report, part 1 and 2.
- 2.2 Delegates authority to Legal Services on behalf of the Director of Law and Governance to enter into contract with McGrath Bros (Waste Control) Ltd., for the works described in this report.

3.1 The Site

- 3.1.1 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.
- 3.1.2 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 background of the purchase and reasons for the Councils requirement to clear this site were explained in an Operational Report KD 4751 approved in May 2019. In summary the site has been fly-tipped with commercial waste and the Environment Agency is now insisting that the site is cleared to prevent any fire risk.
- 3.1.4 Until the site is passed on to a Developer Partner for its 'long term use', the Council through the Meridian Water Team is responsible for the management and maintenance of the site. As an interim measure, the team 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.

3.2 Scope of Works

- 3.2.1 The objective of the works is to clear the site of illegal fly tipping and build-up of commercial waste at the demand of the Environment Agency.
- 3.2.2 The scope of the works is for site preparation for future development. Once cleared the site can be re-let and create income on a meanwhile basis to offset the interest incurred on acquiring the land and to contribute to the Councils revenue. Following this the area will be developed to form a new mixed-use community comprising of a range of housing sizes and tenures.

3.3 Form of Contract

- 3.3.1 JCT Contract has been prepared by the Corporate Maintenance and Construction Team for the commercial fly tip clearance at Phoenix Wharf site. A copy of the draft contract was uploaded to the London Tenders Portal at the time of tender.

3.4 Procurement Process

- 3.4.1 A business case was presented to the Procurement & Commissioning Review Board on 25/10/2018 and approved with an agreed action plan.

- 3.4.2 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.
- 3.4.3 The Meridian Water Team in consultation with Procurement & Commissioning Hub and ARUP Consultants undertook the procurement using the London Tenders Portal (ref DN370329).
- 3.4.4 There were 7 suppliers invited to respond to a quote. All suppliers were communicated and advised in advance of the published opportunity. All invited suppliers were local contractors with registered Waste Transfer Licences authorised and monitored by the Environment Agency.
- 3.4.5 The tender was published on London Tenders Portal and suppliers were given 3 weeks to respond. As part of the tender process all suppliers were informed of the ability to visit the site. Clarification questions raised were made public to all tenderers.

3.5 Evaluation

- 3.5.1 ARUP Consultants prepared a tender and evaluation process which was published on the London Tenders Portal.
- 3.5.2 5 out of 7 suppliers submitted their responses. The bids have been evaluated on a set of published evaluation criteria based on 30% quality and 70% on price.

3.6 Cost

- 3.6.1 See Part 2 of this report

3.7 Funding

- 3.7.1 The budget for the fly tip removal is covered from the Meridian Water Phoenix Wharf Clearance Budget, confirmed in the financial section of Part 2 of this report.
- 3.7.2 Appointment of the successful tenderer is in line with the projected spend on 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 further incursions, contamination and possible fire risks to the area.
- 4.2 Use In-House Contractors.

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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 tenant for the site. The projected income received by the Council for this will help to recover the cost of borrowing associated with the acquisition of the site and add to the overall Revenue income position for Meridian Water thereafter. The lease will be processed in accordance with Property Procedure Rules. Heads of Terms will be agreed, and delegated authorisation will be sought.

6. COMMENTS FROM OTHER DEPARTMENTS

6.1 Financial Implications

See Part 2 of this report

6.1 Legal Implications

MD 16th October 2019

- 6.1.1 Section 1 of the Localism Act 2011 gives the Council 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. The general power of competence gives the Council the sufficient power to enter into a contract for the works described in this report.
- 6.1.2 In disposing and keeping of 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 the Council to 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 subjected to an unlimited fine on conviction.
- 6.1.3 The Council must ensure that 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 unlawful 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.

- 6.1.4 The Council must comply with the Public Contracts Regulations 2015 and its Constitution, including the Contract Procedure Rules. In order for the proposed contract to properly be considered a works contract for the purposes of the Public Contracts Regulations 2015 (and therefore below the threshold for an OJEU compliant procurement process) 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 and Commissioning Team have confirmed that they are satisfied with the officers' procurement strategy.
- 6.1.5 Throughout the engagement of McGrath Bros (Waste Control) Ltd, the Council must comply with its obligations of obtaining best value, under the Local Government Act 1999.
- 6.1.6 All legal agreements arising from the matters described in this report must be approved in advance of contract commencement by Legal Services on behalf of the Director of Law and Governance. A performance bond or parent company guarantee or similar will be required.

6.2 Property Implications

AMS 15th October 2019 - No comments

6.3 Procurement Implications

AC 11th October 2019

- 6.3.1 The procurement was undertaken using the London Tenders Portal (ref DN370329).
- 6.3.2 A business case was presented to the Procurement & Commissioning Review Board on 25/10/2018 and approved with an agreed action plan.
- 6.3.3 The service must ensure that authority to procure has been obtained and must be uploaded onto the London Tenders Portal.
- 6.3.4 The award of the contract, including evidence of authority to award, promoting to the Councils Contract Register, and the uploading of executed contracts must be undertaken on the London Tenders Portal including future management of the contract.
- 6.3.5 The awarded contract 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: Further incursions.
Mitigation: The successful tenderer is responsible for the site security until contract complete and handed over. County Enforcement will then occupy and protect the site until hand over to the new tenant. Please also note that since gaining the Preventative Injunction from the High Court of Justice in May 2018 we have not had any further incursions.

7.3 Risk: Delays in completing works leads to an increased price.
Mitigation: Award contract as soon as agreed.

8. INTERNAL DEPARTMENT IMPLICATIONS/CONSULTATION

15th October 2019 – Data & Performance – No comments.

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. Clearing Phoenix Wharf will contribute to placemaking initially through Meanwhile use then the formation of a mixed-use community.

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. Clean and green energy will be provided by the Lee Valley Heat Network, which will ensure that the development is environmentally sustainable. Meanwhile use at Phoenix Wharf will deliver employment opportunities for residents.

9.3 Build our local economy to create a thriving place

The new neighbourhood at Meridian Water will be designed to foster social cohesion through a series of physical and social interventions, Meanwhile opportunities contribute to both “PlaceMaking” and employment. Clearing Phoenix Wharf will allow the site to offer Meanwhile activities until the site is developed out.

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

- 11.1 Delivery of a comprehensive regeneration scheme at Meridian Water is a corporate priority within the Council's Business Plan for 2016-2019. 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." Meanwhile and Placemaking activities will contribute to sustainable regeneration and employment opportunities.

12. HEALTH AND SAFETY IMPLICATIONS

- 12.1 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.

13. PUBLIC HEALTH IMPLICATIONS

- 13.1 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 enhance well-being at Meridian Water. The development will include all necessary public health and community services from health clinics to nurseries.

Background Papers