

London Borough of Enfield

Cabinet

16th September 2020

Subject: Appointment of a main contractor framework to carry out HIF works at Meridian Water

Cabinet Member: Cllr Nesil Caliskan

Executive Director: Sarah Cary

Key Decision: 5181

Purpose of Report

1. The purpose of this report is to seek approval for the entry by Council into a framework agreement with selected contractors in relation to the delivery of a programme of strategic infrastructure works at Meridian Water. The framework agreement will enable the Council to call off contracts for the delivery of Housing Infrastructure Fund (HIF) works at Meridian Water. Procurement approach was approved under delegation of Cabinet (see Background section).
2. It is envisaged that the majority of the works will be forward funded by the Council and reimbursed by the Housing Infrastructure Fund and will comprise phases instructed separately in accordance with the framework terms. The framework also enables the Council to call off works that are not funded by the Housing Infrastructure Fund. This report seeks further approval to award a Pre-Construction Services Agreement (PCSA) and, subject to satisfactory performance of PCSA obligations, a subsequent NEC4 construction contract for the first phase of works. The report also seeks approval to delegate authority to award subsequent contracts under the framework to the Programme Director - Meridian Water in consultation with the Acting Executive Director of Resources and Director of Law and Governance.

Proposal(s)

3. Approve the entry by the Council into a Contractor Framework Agreement with Bidder A, Bidder B and Bidder C (see Confidential Appendix for names of the bidders) in relation to the delivery of a programme of strategic infrastructure works at Meridian Water.
4. Approve the entry by the Council into a pre-construction services agreement (PCSA) (for the first phase or the whole package of works) in

accordance with the call-off provisions of the framework. The maximum contract value of the (first) PCSA is set out in the confidential appendix to this report.

5. Subject to satisfactory performance by that contractor of its obligations under the PCSA and availability of funding from MHCLG delegate authority to award the NEC4 contract under the framework to Programme Director - Meridian Water in consultation with the Lead Member for Meridian Water, Acting Executive Director of Resources and Director of Law and Governance. The estimated contract value is set out in the confidential appendix to this report. Should the Council consider to fund the first part or phase of works at its own risk in case HIF funding is not available (agreement not unconditional), a separate authority report will come forward to recommend a decision.
6. Subject to availability of sufficient funds, delegate authority to award subsequent variations to scope, PCSA and NEC contracts under the framework up to a value of £135m to Programme Director - Meridian Water in consultation with the Acting Executive Director of Resources and Director of Law and Governance.
7. Note that the expenditure is to be funded from within the Capital Programme and up to £116m is intended to be reimbursed from the Housing Infrastructure Fund (HIF funding). The Council will be required to forward fund any costs and, until the HIF Grant Determination Agreement is entered into and conditions to funding are satisfied, the Council will be funding at its own risk. The Council will be unable to claim HIF funding for any works completed after 31st March 2024 or for works which do not comprise part of the Council's HIF bid.

Reason for Proposal(s)

8. Strategic infrastructure including remediation, flood alleviation and construction of roads, bridges, utility infrastructure is required in the early stages of the programme to unlock further development at the Meridian Water scheme. The proposal will facilitate housing development, boost the local economy and employment, and contribute to the health and wellbeing of local communities.
9. It is intended that £116m of infrastructure works will be funded by the Housing Infrastructure Fund. It will be a requirement of HIF Grant Determination Agreement that the funding is claimed by 31st March 2024. The Council will be unable to claim HIF funding for any works completed after 31st March 2024. The Council therefore needs to appoint a contractor to commence the Strategic Infrastructure Works in time in order to claim 100% of the funding available to it. The works are estimated to take around 40 months on site to complete.
10. The framework approach allows the Council the flexibility to instruct specific works and services as and when they are required and doesn't commit the Council to instructing the individual works packages until a call-off contract

has been signed. At its meeting on 25th July 2018, Cabinet delegated to the Programme Director of Meridian Water (in consultation with the Director of Law and Governance) the decision to authorise the contractor procurement procedure for HIF delivery works. Procurement and Commissioning Board approved the procurement and agreed the proposed lean Competitive Dialogue Process with a two-stage contract approach (see operational report KD 4782 'MW Strategic Infrastructure – Contractor Procurement HIF non-rail'). See Background for details on procurement approach.

Relevance to the Council's Corporate Plan

11. Good homes in well-connected neighbourhoods

The recommendations in this report will enable the delivery of the strategic road infrastructure and flood alleviation works. The construction of these key pieces of infrastructure will unlock new housing development in Meridian Water.

12. Safe, healthy and confident communities

The scope of works does include several green spaces linking up with existing green spaces in the area and thereby enhancing the value of the local green infrastructure. The programme of works also includes cycling provision and enables leisure opportunities to be realised.

13. An economy that works for everyone

The delivery of strategic road and flood alleviation works will unlock the Meridian Water area and significantly increase accessibility of the site, especially by public transport. It is expected that increased accessibility will support local businesses, as well as attract new jobs and business growth in the area supporting Enfield residents and the local economy. As part of the procurement, bidders were asked specifically to explain how they will make best use of the opportunities created by the project to contribute to the delivery of sustainable social value outcomes. Their responses were evaluated as part of the scoring.

Background

Introduction

14. In July 2018, Cabinet Approved the scope of Housing Infrastructure Fund, a central government funding programme enabling a delivery of strategic infrastructure at the Meridian Water scheme (see Housing Infrastructure Fund Cabinet Report dated 25 July 2018 (KD 4711)). It also approved planning strategy for HIF delivery works and delegated authority to the Programme Director – Meridian Water to authorise procurement procedure.

15. In early December 2018 a funding bid of £156m for the Housing Infrastructure Fund (HIF) was submitted to central government by the GLA on behalf of Enfield Council. The Housing Infrastructure Fund is a government capital grant programme from the Ministry for Housing, Communities and Local Government (MHCLG) aimed to unlock housing sites and help deliver new homes.

16. The scope of works proposed for HIF funding includes rail enhancement works amounting to a value of circa £40m (HIF Rail Works, which are outside the scope of this procurement) and strategic road and flood alleviation works for a value amounting to circa £116m (HIF Site Works). These works are required as a first phase of strategic infrastructure to unlock housing delivery in Meridian Water. The delivery of the HIF Site Works (as well as additional non-rail infrastructure works not funded by HIF up to a possible total framework value of £135m) is the subject of this report, a separate authority report will come forward recommending appointing a rail contractor.
17. In August 2019 Central Government announced that Enfield Council have been successful in their HIF bid for the full amount of £156m, subject to agreement of detailed terms and satisfaction of funding conditions. Negotiations between MHCLG and the Council are at an advanced stage and it is anticipated that the Grant Determination Agreement will be signed by Q4 2020. At its meeting on 12th February 2020 Cabinet delegated authority to the Programme Director – Meridian Water (in consultation with the Director of Law and Governance) to finalise the terms of the grant agreement and it further delegated authority to the Director of Law and Governance to enter into the grant agreement with MHCLG.
18. All funding for the HIF works must be claimed before the 31st March 2024. The Council will not be reimbursed for any works that are completed after this date. To ensure timely delivery ahead of the funding deadline, contractors need to be appointed to the framework and the PCSA (for the first phase or the whole package of works) by October 2020. If the Council is unsuccessful in entering into HIF Grant Determination Agreement or satisfying conditions to funding, the scope and phasing of the works will need to be reviewed. The framework approach doesn't commit the Council to instructing all or any of the proposed works and in the event of no funding or part of the funding being secured, some works could still be called off under the framework, subject to available LBE budget.
19. Cabinet decision dated 12 February 2020 (KD 5085) delegated authority to the Meridian Water Programme Director in consultation with the Director of Law and Governance to enter into agreements for additional grants associated with Meridian Water infrastructure delivery.
20. The Grant Determination Agreement is in advanced draft and is expected to be entered into in Q4 2020. Report KD5085 will be coming forward to progress this. The Council holds regular briefings to update MHCLG on the programme, progress of procurement, design, and expected or obtained consents such as planning permission or the compulsory purchase order (CPO).

Team

21. The Meridian Water Team has appointed a civil engineering-led multi-disciplinary team with the expertise and experience to lead the HIF bidding process and support with the design, planning and procurement of the strategic road and flood alleviation works.

22. A separate procurement has been completed to appoint contract management services for this contract. This report (KD 5170) will ensure high quality project and cost management is applied to the construction contract.
23. The contractor procurement was carried out in close collaboration with the Council's internal Legal and Procurement teams and with the legal support of Trowers & Hamlins LLP. This to ensure the procurement process is carried out in compliance with OJEU and the Council's Contract Procedure Rules.

Scope of Works

24. The strategic road and flood alleviation works put forward for HIF funding comprise significant infrastructure works across the Meridian Water site (see Appendix 1 for indicative SIW Plan):
 - a. Strategic highways and junctions, including the Central Spine road;
 - b. Strategic bridges including bridges over the brooks, the Lee Navigation Canal and over the railway next to Leaside Road;
 - c. Strategic flood management works including the re-profiling of the section of the Lea Valley Regional Park and canalised brooks and specific green corridors and local park within the site;
 - d. Strategic utilities and drainage and off-site connections and reinforcement;
 - e. Enabling works, including demolition, site clearance, bulk earth-moving and construction of temporary accesses to existing businesses.
25. In addition to the strategic road and flood alleviation works put forward for HIF funding, further strategic infrastructure works have been identified that could be required during the lifetime of the framework agreement. Currently estimated value of HIF Funded works is £116m. There is scope in the framework to award £35m additional infrastructure works not funded by HIF (subject to a future Cabinet authority and available budget).
26. The scope of works put forward for HIF funding is worked up to the level of a Developed Design (RIBA Stage 3) and has been costed by an independent cost consultant.
27. At this stage of the project, some extents of the works are uncertain, and an appropriate contingency allowance has been included in the cost plan to cover the associated risks. The uncertainties are related to essential pieces of design information that are forthcoming:
 - a. Ground investigation surveys
 - b. Sustainable design requirements
 - c. WAML bridge

d. Substation placement

CPO

28. The scope of works includes work located on privately owned land. The landownership map is attached to the Confidential Appendix of this report. The Council aims to acquire third party land by private treaty, but it is acknowledged that the Council may be required to use its compulsory purchase powers to acquire the necessary parcels of land.
29. On 22nd January 2020 Cabinet (KD 4832) authorised a CPO for the delivery of Strategic Infrastructure Works (SIW) at Meridian Water, subject to delegations. In August 2020, making of the CPO was approved by Programme Director – Meridian Water. The CPO was made on 13th August 2020.
30. Negotiations with private landowners are progressing to acquire the land and/or interests required to carry out the HIF Works by private treaty. In parallel a CPO strategy and programme has been prepared and the CPO made, to make sure the Council can assemble required land in case agreement by private treaty is not reached. The Council currently secured ownership of circa 44 acres or 72% of the land within the CPO area that is to be acquired.
31. The CPO Programme is dependent on the adoption of the Area Action Plan, and the grant of planning permission for the HIF works and Phase 2. On 29th January 2020, the Council adopted Edmonton Leaside Area Action Plan (ELAAP). On 22nd July, planning permission was granted for the SIW application. On 24th March the Local Planning Authority resolved to grant planning permission for Phase 2 subject to several Section 106 agreement and Stage 2 referral process. No significant impediments are anticipated to satisfy these conditions.

Procurement Process and Contract Approach

32. Procurement and Commissioning Review Board approved the procurement and agreed a lean Competitive Dialogue Process with a two-stage contract approach. The Procurement process and contract approach was subsequently approved by the operational decision KD 4782 'MW Strategic Infrastructure – Contractor Procurement HIF non-rail'.
33. The framework approach allows the Council the flexibility to instruct specific works and services as and when they are required and doesn't commit the Council to instructing the individual works packages until a call-off contract has been signed. Trowers and Hamblins LLP have advised that the Framework approach is suitable for the scope of works, given that the funding, the exact design and the land acquisition will not have been confirmed at the point of commencing the procurement.
34. Contract Notice was issued on 31 October 2019. The procurement process was a Competitive Dialogue process to set up a framework of 3 providers. The Contract notice contained the 'Selection Questionnaire' (SQ) for return

on 9 December 2019 and the draft 'Invitation to Participate in Dialogue Documents', the purpose of the SQ was to enable a shortlist of bidders.

35. Four bidders returned selection questionnaire on 9 December 2019. The return was evaluated by senior officers in Enfield Council, including members of the Meridian Water Team and 'Corporate Maintenance & Construction Team' and Enfield external consultants. The evaluation was moderated by the Procurement and Commissioning Hub who also assessed the non-scored sections of the Questionnaire.
36. Four bidders were subsequently shortlisted to proceed to the dialogue stage. However, one of the suppliers declined to submit due to other commitments, therefore 3 contractors proceeded to the dialogue stage which was held between 17th February and 25th February 2020.
37. The Final Tender was issued on 27 March 2020 and returned on 15 May 2020. The tenders were evaluated against criteria below:

Criteria	Weight
Technical score	35%
Legal	10%
Sustainability	5%
Social Value	5%
Price (comprising 15% robustness + 30% pricing submission)	45%

38. The tender return was evaluated by panels comprising senior officers in the Meridian Water Team and Enfield's professional consultants. Separate evaluation panels were set up for the Technical Section, Legal, Social Value, Sustainability and Price. Panels were briefed in scoring.

Panels included:

- Meridian Water Delivery Director;
 - Highways representative;
 - Legal Services representative;
 - Specialist sustainability and social value officers in the Meridian Water team;
 - External consultants including: the project architect, engineer, landscape architect and the project manager.
 - Procurement oversaw the process and carried out moderation meetings on the tender returns to agree the scoring.
39. Three bids were received from acceptable bidders, all of which have relevant experience and are suitable to carry out the Strategic Infrastructure Works. All provided compliant bids and met the Council's minimum requirements. Bids received included technical responses on quality and resource, as well as proposed programmes, risk and opportunities registers, and sustainability component. The bidders provided a social value score using the social value portal and also

marked up the legal documentation for scoring. The bids received were high quality, demonstrating that the bidders had spent adequate time compiling the information.

- 40. See Confidential Appendix for scores.
- 41. See Confidential Appendix for Contract details.

Main Considerations for the Council

- 42. The proposal will positively contribute to the Council's priorities (see 'Relevance to the Corporate Plan').
- 43. Timing is essential to deliverability and funding of the proposal (see 'Reasons for the Proposal(s)'). The contractors need to be appointed at this time to provide enough time for satisfaction of funding conditions and unlock subsequent development.
- 44. The appointment is based on rigorous tender process and ensures the most economically advantageous proposition for the Council (see 'Background' and Confidential Appendix).

Safeguarding Implications

- 45. The recommendations in this report do not have any safeguarding implications. Pre-Construction Health and Safety Information was included in the tender information.

Public Health Implications

- 46. Meridian Water is poorly connected by public transport, walking and cycling and although the site lies adjacent to the North Circular Road and Meridian Way, a strategic north-south route, the central and eastern part of the site have no direct connection to the proposed railway station, the most important piece of new infrastructure. The intervention proposed for the development should address these site constraints and design-in foundations to prioritise walking and cycling. The infrastructure designs should be grounded on an urban structure that improves the environment and to encourage healthy lifestyle. The utilities corridor should also be designed to provide specs for smart technologies, introduce suitable energy infrastructure to help residents save energy bills and improve air quality.

Equalities Implications

- 47. The construction contracts will require compliance with the Council's Equality and Diversity Policy.

48. As part of the Selection Questionnaire, bidders were asked how their organisation has previously added Social Value to projects of similar size and scope, in particular with achievements and initiatives with respect to the outcomes such as: a workforce and culture that reflect the diversity of the local community; social Value embedded in the supply chain; vulnerable people are helped to live independently; more working with the community; and other. All bidders have passed Selection Questionnaire stage. All bidders had to be gold members of Constructionline. Constructionline members must pass a prequalification process which includes questions on equalities policies, confirms compliance with the Equalities Act 2010 and requests details of unlawful discrimination.
49. Impact on parties currently operating on the land where the SIW will take place was analysed through Equalities Impact Assessment (EQIA) in relation to the CPO. The initial EQIA was conducted in December 2019 internally by the Council, with a subsequent extensive review by external consultant Ottaway Strategic Management in March 2020. Both assessments identified no direct negative impact of the CPO. Please see KD 4832 (January 2020) Cabinet and (July 2020) Operational reports for details.

Environmental and Climate Change Considerations

50. Sustainability and climate change considerations were built in tender evaluation criteria:
 - a. Bidders were required to set out the practical approaches they will take to deliver best practice standards of sustainability and help achieve the key environmental sustainability outcomes for Meridian Water: Carbon positive (beyond net zero carbon emissions), Climate resilient, Radical increase in biodiversity, Zero waste & circular economy by design.
 - b. All Final Tenders were be required to confirm they are able to meet a minimum of CEEQUAL Very Good Rating (or equivalent). CEEQUAL is the international sustainability assessment, rating and awards scheme for civil engineering, infrastructure, landscaping and works in public spaces.
51. Planning Committee has reviewed the application for Strategic Infrastructure Works and noted that the development has regard to climate change and seek to address some of the key elements to delivering a sustainable development at Meridian Water by:
 - a. Proposing a comprehensive strategy to address flood risk;
 - b. Improving connectivity and opportunities for active travel thus reducing reliance on the motor vehicle;
 - c. enhancing the biodiversity value of the site through the naturalisation of part of Pymmes Brook and the creation of two new parks;

- d. provision of the necessary infrastructure to facilitate future connectivity to the decentralised energy network.
- 52. Tender was for construction only; however, it is agreed to move forward with design and construction award due to the amount of design which can still be done alongside a CEEQUAL assessor.
- 53. Currently the highest ranked bidder is targeting a score of 92% (over 90% is rated as excellent) prioritising management, pollution, resources, transport and innovation.

Risks that may arise if the proposed decision and related work is not taken

- 54. **The Council will need to fund (all or part of) SIW at its own cost.** If no contractor can be appointed to commence services/works in relation to the SIW, this is likely to mean that construction will be delayed such that works might extend beyond 31st March 2024 – the deadline for funding of costs by HIF grant. The Council will be responsible for meeting costs of works that extend beyond 31st March 2024.
- 55. **The Council may be required in future to pay back any HIF grant advanced and further funding may be withheld.** Infrastructure start on site and completion will be milestone dates in the HIF grant contract (GDA) so if the Council fails to meet these dates and MHCLG determines that such failure amounts to a breach of the Council's obligations, then the Council may be required to pay back any grant already advanced and further funding may be withheld.
- 56. **The Compulsory Purchase Order and HIF grant are put at risk.** The Council must evidence delivery of the scheme for the CPO – no appointment now may weaken the CPO case and jeopardise the CPO. It is a condition of HIF funding that the Council has assembled all the land in the infrastructure site to deliver the HIF works (SIW). Failure to make the CPO in time would highly likely result in HIF funding becoming unavailable.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

- 57. **Risk: The Housing Infrastructure Fund is not or only partially secured.**
The Council will be required to forward fund any costs and, until the HIF Grant is entered into and relevant conditions are satisfied, the Council will be funding at its own risk. Programme Director Meridian Water has a delegated authority to approve terms and conditions of the grant agreement. Cabinet decision dated 12 February 2020 (KD 5085) delegated authority to the Meridian Water Programme Director in consultation with the Director of Law and Governance to enter into agreements for additional grants associated with Meridian Water infrastructure delivery. Confirmation from Central Government on whether Enfield Council/GLA have been successful in securing the HIF funding is

expected in Summer 2021. Should none of the HIF funding be secured, the tendered works and the chosen procurement process will need to stop. **Mitigation:** HIF costs are included in the detailed budget for the Meridian Water Programme for the financial years 2020-2021 and 2021-2022 and the indicative 10-year budget. If HIF funding is not or only partially secured, the Council will look to secure GLA funding, private funding and/or council funding to fund the HIF Works. The officers are satisfied that the progress made to date provides confidence in satisfying outstanding HIF grant conditions by Summer 2021, with their terms and wording being continuously negotiated. None of the work undertaken as part of HIF delivery will be abortive and will contribute to strengthening the deliverability of scheme. If the amount of money available is materially lower, the scope of works for the strategic infrastructure works may be reviewed. The framework approach doesn't commit the Council to instructing all or any works and in the event of no funding or part of the funding being secured, some works could still be called off under the framework, subject to available LBE budget.

58. **Risk: Land in private ownership**

The scope of works includes works located on privately owned land. If land is not made available on time through acquisition, CPO or other contractual arrangements the full scope of works can't be carried out or delivery of works will be delayed. In the event that the Council proceeds with works prior to confirmation of availability of funding and possession via CPO, land ownership becomes a risk.

Mitigation: The Framework Agreement allows the Council to call off specific works and services if and when required and does not commit the Council to instructing works until call-off contract is signed. This allows the Council to only instruct work if and when land is available for the delivery of the proposed works. The bidders were provided with a phasing and constraints documents which structured the access dates and land ownership constraints set upon the SIW. The phasing will be structured to mitigate risk to the Council, committing it only to the works on land which is under the Council's ownership or rights.

59. **Risk: Limited competition**

Once the preferred Contractor is appointed under the PCSA and works contract, the main lever of competitive peer-to-peer competition is lost.

Mitigation: The framework documents include a number of mechanisms to help ensure value for money in the framework agreement (see KD 4782). Robustness of each bidder's financial offer has been ensured through the tender criterion. Furthermore, active contract management and cost scrutiny for the duration of the project will help ensure value for money for the Council. Key performance indicators (KPI) will be implemented to manage Call-Off Contracts, with a right to disqualify a Contractor in case of failure to achieve Project KPI. If the First Ranked contractor defaults on KPIs, there is an opportunity to appoint Second or Third ranked contractor through the cascade provisions in the framework contract.

60. **Risk: Uncertainty on design information**

At this stage of the project, some extents of the works are uncertain. The uncertainties are related to essential pieces of design information that are forthcoming: Ground Investigation Survey, Full planning consent the WAML Bridge and Substation.

Mitigation: An appropriate contingency allowance has been included in the cost plan to cover the associated risk.

61. **Risk: Financial security of the appointed bidder**

The appointed bidder will have weak financial standing, impairing capability to deliver set out scope of works. Contractor will become insolvent.

Mitigation: All suppliers have undergone rigorous financial evaluation. As part of the IIT stage an assessment of economic and financial standing has been carried out to ensure suppliers are financially sound. Services are called off in smaller parts and instructed as when needs are identified, rather than fixed fee instructions in lump sums. Under the Framework the contractors have agreed to ongoing financial monitoring to monitor the risk. Performance will be supported by parent company guarantees as these will be required during the PSCA and contract periods. In the event of insolvency, the framework structure allows the council to award contracts to other framework contractors more quickly and conveniently than if it were required to rerun a new procurement. Therefore, in case of financial failure of the company, the Council's risk of financial exposure is very low.

62. See Confidential Appendix for other risks.

Financial Implications

63. The report proposes the Council enter into framework agreement with 3 selected contractors for the delivery of a programme of strategic infrastructure works at Meridian Water. The report seeks further approval to award a pre-construction services agreement (PCSA) for the construction and delivery of the first phase of infrastructure works.

64. The framework agreement referred to in this report is for the non-rail infrastructure works which includes strategic road and flood alleviation works across the Meridian Water site. These works are estimated to cost £116m and will be funded from the £156m HIF grant from central government.

65. The Council has received notification from government that the HIF funding application was successful for the full amount of £156m and are now in the process of putting in place a funding agreement with central government. The funding agreement allows the Council to draw down funds in accordance with the requirements in the agreement. Until the funding agreement has been completed and signed off the Council is unable to draw down any funds for infrastructure expenditure incurred to date or in the future.

66. The total estimated cost of the non-rail HIF works is £116m, for which there is currently an approved budget of £77m. A request for additional budget approval of £39m will be required in a separate report to Cabinet and full Council for the remainder of the works. To date the Council has spent just under £7m on HIF works which will be reclaimed once the funding agreement is in place. In the event the funding does not materialise the HIF works may need to be paused and the programme of works reviewed and revised. This will allow the Council to understand the financial implications of reduced or less HIF funding and consider the revised proposals.
67. The infrastructure works are split into phases, with the works and total value for each phase yet to be determined. There are still some unknowns to determine the full scope of works for each phase, but these will become clearer once the timing for the CPO land acquisitions are certain and the funding agreement is finalised.
68. The Council opted for a framework approach to procuring a main contractor to allow the flexibility to instruct works as required. The advice from Trowers and Hamlins LLP was a framework approach is suitable for the scope of works, funding arrangements and to consider the exact design and land acquisition will not have been confirmed at the point of commencing procurement.
69. The framework approach also allows to appoint several contractors in a ranked order. If the First Ranked contractor defaults on project objectives, there is an opportunity to appoint Second or Third ranked contractor through the cascade provisions in the framework contract.
70. In total there were 3 bidders who responded to the ITT and they were evaluated in line with the criteria set out in paragraph 40 in this report. In total 45% of the submission was evaluated based on price (15% robustness and 30% pricing submission).
71. In addition to the criteria the Council re-visited the financial assessments performed on the bidders at the SQ stage in December-19 to update for any changes and understand the impact COVID19 has had on the financial standing of each of the bidders.
72. The financial assessments performed at the SQ stage involved reviewing the financial statements of the bidders to ensure they have enough capital and financial standing to deliver works for the full duration of the contract/framework. These assessments included having a minimum turnover of £270m (twice the contract value) and achieving a minimum score for ratios that covered profitability, levels of debt and cashflow.

In addition to the review of the financial statements the Council ran Equifax credit reports for each bidder and set up monitoring updates should there be any changes to any of the bidder's credit reports. The Council also commissioned an external company to perform an all-round financial review of each bidder which includes a qualitative assessment of

their financials, and an opinion on their financial standing and risk of solvency.

All the bidders met the minimum requirements for the financial assessments and there were no major concerns raised from the credit reports or opinions provided on the financial standing and risk of solvency for each bidder at the SQ stage.

73. The financial assessments were reviewed again at the ITT stage as one of the bidders had published updated financial statements and the economic climate had changed significantly as a result of the COVID19 Pandemic. In order to understand the impact the pandemic has had on the bidders the Council asked them to provide details on the impact the pandemic has had on their business, the mitigations they have put in place to manage the situation, to provide updated management accounts and any changes to their order book. The responses were passed onto the external company to review and provide an opinion.
74. The updated information demonstrated that each bidder had been impacted by the pandemic, but they had taken a range of actions to protect themselves, from raising capital through the financial markets to increasing their credit facilities with banks. All bidders have had to make changes to their working practices on sites which has caused delays but had allowed them to continue working preventing prolonged delays.
75. The updated information did not materially change the Council's opinion on each bidder's financial standing and risk of solvency as they all had robust balance sheets, manageable debt levels and strong order books. The updates demonstrated they have taken action to mitigate the financial effects of the pandemic which would allow them to continue to operate in a sustainable way.
76. Whilst the Council has taken measures to assess the financial standing of all bidders and currently have the opinion, they have sound financial standing and a low risk of solvency, the full effects of the pandemic are yet to be fully understood. The opinions are caveated with the unknown impact of the pandemic which could have a detrimental impact on the bidders in the future. The Council will continue to monitor the financial status of each bidder throughout the contract.

Legal Implications

MD 25th August 2020 (based on report circulated at 16:02 on 24th August 2020)

77. The Council has obtained advice from external legal advisors Trowers & Hamlins LLP throughout the procurement process.
78. Pursuant to section 8 of the Housing Act 1985, the Council is required to consider the housing conditions and needs in its area with respect to the provision of further housing accommodation. The Council has the power

under section 13 of that Act to lay out and construct public streets or roads and open spaces on land acquired by it for housing purposes. Furthermore, 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. It is therefore considered that the Council has sufficient powers for the Council to implement the proposals set out in this report.

79. Any procurement must be conducted in accordance with the Council's Constitution, including the Contract Procedure Rules, and the Public Contracts Regulations 2015. The procurement was carried out by way of a competitive dialogue procedure. A competitive dialogue procedure may only be used if (a) the needs of the Council cannot be met without adaptation of a readily available solution; (b) they include design or innovative solutions; (c) the contract cannot be awarded without prior negotiation because of the specific circumstances related to the nature, complexity or legal and financial make-up because of risks attaching to them; (d) the technical specifications cannot be established with sufficient precision. KD 4782 sets out the rationale for use of the competitive dialogue procedure. A note justifying its use must be retained for use in the report required pursuant to Regulation 84 of the Regulations. Officers consider that the procurement process was fair, transparent, proportionate and non-discriminatory. As a result of the competitive dialogue process, the final contract position will differ from that initially presented to bidders, with some level of risk being transferred back to the Council. Officers are satisfied that the final contract position of each bidder is commercially acceptable and reflects an acceptable level of risk transfer to the Council. This position will be reviewed throughout the framework period and when agreeing any call-off contracts with the framework contractors.
80. It is proposed that the Council procure a framework of contractors to deliver the infrastructure works. Frameworks are permitted by and governed by Regulation 33(2) of the Public Contracts Regulations 2015. A framework is considered suitable for this procurement because of the variable scope of the works. The contract documents, including the framework agreement, clearly and unambiguously set out the process by which works packages will be awarded and the circumstances in which contracts may be terminated. There is no obligation on the Council to offer any works packages to any framework contractor.
81. The Director of Law and Governance is satisfied that the form of Framework Agreement, the PCSA and NEC4 construction contracts contain sufficient mechanisms to protect the Council in the event of contractor failure including but not limited to the following:
 - a. the Council has discretion not to award a PCSA contract or an NEC4 contract to any contractor that has suffered a disqualification event, including in the event of insolvency or material alteration of financial

- circumstances or if there has been unsatisfactory performance of existing contracts;
- b. there are wide powers to terminate the construction contracts including in the event of contractor insolvency, deterioration in financial circumstances or unsatisfactory performance;
 - c. contractor(s) instructed under the PCSA or NEC4 contracts will be required to provide a parent company guarantee in respect of their performance obligations. The covenant strength of the respective parent companies has been reviewed and confirmed as sufficient by the Council's Finance team;
 - d. the financial standing of each contractor has been checked and confirmed as satisfactory by the Council's Finance team and will be continuously monitored throughout the duration of the construction contracts in accordance with best practice recommended in central Government's Outsourcing Playbook;
 - e. Having taken specialist advice, officers have confirmed that they are satisfied that the contract documents include adequate insurance, liability and indemnity provisions.
82. It is intended that the strategic infrastructure works will be primarily funded from the Housing Infrastructure Fund (HIF). Any works instructed before confirmation of availability of funding will be undertaken at the Council's risk. Officers must ensure continued compliance with obligations in the HIF grant agreement relating to the delivery of infrastructure works.
83. The Council must ensure value for money in accordance with the Best Value Principles under the Local Government Act 1999.
84. Officers must ensure that the phasing of the infrastructure works forming the subject matter of this report is consistent with the Council's contractual obligations in respect of other development activity at Meridian Water as well as the Council's obligations as landlord.
85. In the absence of private treaty, and subject to Cabinet's approval, it is proposed to use the Council's compulsory purchase powers to acquire sites necessary for the implementation of the strategic infrastructure works. Detailed legal implications relating to the CPO are contained in the Cabinet report and delegated authority reports dealing with such matters. Any works phasing plan will need to consider the Council's land ownership and the timetable for any acquisitions.

Workforce Implications

86. Meridian Water team will undertake internal staff restructuring and appointment to oversee and manage HIF infrastructure works.

Property Implications

87. There are no property implications arising directly from this report however it is anticipated that there may be future Property Implications as each section of the works progresses. Any future reports arising as a result of these proposals will need to be further reviewed and when property transactions are included Strategic Property Services will comment on the individual deals.

Other Implications

88. Procurement Implications

The procurement was undertaken using the London Tenders Portal (ref DN372948) under an OJEU process overseen by the Procurement and Commissioning (P&C) Hub.

The Prior Information Notice (PIN) for the contract was issued on 5 April 2019, followed by a Contract Notice on 31 October 2019. The procurement process was a Competitive Dialogue process to set up a framework of 3 providers.

Following the Selection Questionnaire evaluation, 4 bidders were shortlisted to tender, one bidder withdrew from the process citing other commitments.

Three bidders proceeded to Dialogue stage. The dialogue was held in two rounds, the first round was technical, financial and sustainability matters, the second round was legal matters. Following completion of Dialogue, the final tender was issued on 27 March 2020 and returned on 15 May 2020. The tender return was evaluated by panels comprising senior officers in the Meridian Water Team and Enfield's professional consultants. The financial section of the tender was evaluated by Enfield's professional consultants.

The award of the framework 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.

The awarded framework contract must be promoted to Contracts Finder to comply with the Government's transparency requirements. Any call-offs should also be uploaded to the London Tenders Portal.

Options Considered

89. Do nothing

Doing nothing would leave the Council without the strategic infrastructure and prevent phase delivery at Meridian Water delaying provision of much needed affordable homes.

90. Re-tender

The Council received three valid tender responses, which demonstrated a good understanding of the Council's requirements and value for money. Retendering the scope of services is unlikely to lead to better tender responses. Retendering would lead to a delay of the timings of the project, leaving the Council without the supplier to deliver strategic infrastructure and phase delivery at Meridian Water putting the funding agreement at risk.

Conclusions

91. Given the importance of completing infrastructure works in time for the Council's priorities, Meridian Water development and meeting HIF funding conditions, it is recommended to approve the framework and appoint the contractors for HIF works.

Report Author: Madi Mukhametaliyev
Principal Regeneration Officer
madi.mukhametaliyev@enfield.gov.uk
+44 (0)2081 323059

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Appendices

- Appendix 1: Strategic Infrastructure Works Plan

Background Papers

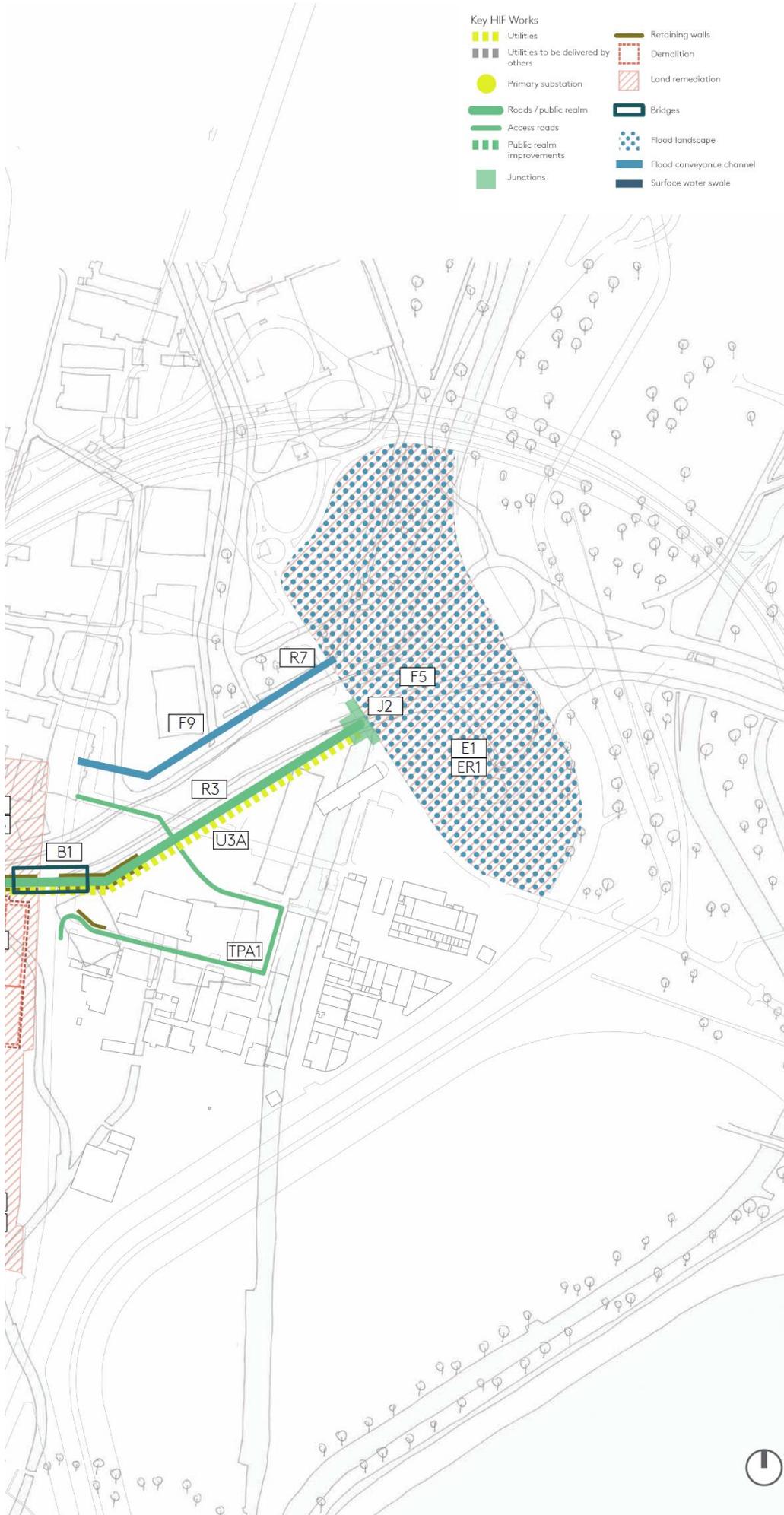
The following documents have been relied on in the preparation of this report:

- KD 4832
- KD 4782
- KD 5085
- KD 4711
- KD 5170

Appendix 1



Appendix 1



- Key HIF Works**
- Utilities
 - Utilities to be delivered by others
 - Primary substation
 - Roads / public realm
 - Access roads
 - Public realm improvements
 - Junctions
 - Retaining walls
 - Demolition
 - Land remediation
 - Bridges
 - Flood landscape
 - Flood conveyance channel
 - Surface water swale

- Full planning application for Strategic Infrastructure Works (SIW)
- Separate planning application

SIW Codes

- F1 Flood Alleviation Works to Pymmes Brook Wall
- F2 Brooks Park and River Naturalisation
- F5 Flood Alleviation Landscape (Edmonton Marshes)
- F9 Flood Conveyance Channel
- S2 Parkside Cycle Street Drainage
- S4A East-West Drainage
- S4B East-West Drainage
- S4C East-West Drainage
- B1 River Lee Navigation Bridge
- B2 Pymmes Brook North Bridge
- B4 Salmons Brook Bridge
- B5 Pymmes Brook south bridge
- B6 Leaside Road foot/cycle bridge, WALM crossing
- U1 Primary Sub-Station
- U3A Central Spine Road Utility Corridor
- U3C Northern Utility Connections
- U4A Leaside Link Road Utility Corridor
- U4B Parkside Cycle Street Utility Corridor
- R2 Central Spine Road (West)
- R3 Central Spine Road (East)
- R4 Leaside Link Road
- R5 Leaside Road Improvements
- R6 Glover Drive Improvements
- R7 Flood Conveyance Channel Highway Works to Harbet Road
- R8 Parkside Cycle Street
- J2 Central Spine Road - Harbet Road Junction
- J3 Leaside Link Road - Leaside Road junction
- J4 Leaside Link Road - Central Spine Road Junction
- J5 Central Spine Road - Glover Drive Junction
- J6 Leaside Link Road - Parkside Cycle Street Junction
- TPA1 Third Party Access Works - Development Zone 6
- TPA2 Third Party Access Works - Ikea
- D1A Demolition of BOC Sheds West
- D1B Demolition of BOC Sheds East
- D3 Demolition of Salmons Bridge
- R1 Relocation of Pymmes Bridge (Bailey Bridge)
- E1 Earthworks - Lee Valley Regional Park
- F5 Earthworks - Development Zone 5
- E6 Earthworks - Development Zone 4
- ER1 Remediation - Lee Valley Regional Park
- ER5 Remediation - Development Zone 5
- ER6 Remediation - Development Zone 4

Karakusevic Carson Architects

Project:
382 MW Strategic Infrastructure

Title:
Strategic Infrastructure Works - All

Drg No.
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Scale: 1:2500 @ A1
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