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London Borough of Enfield

Operational Report Part 1

Report of: **Simon Gardner, Regeneration Director – Meridian Water**

Subject: **Approval of a Deed of Variation with Vistry, Award of Concessions Contract and Lease to Operate the Enfield Skills Academy at Meridian Water**

Director: **Peter George – Director of Development (in consultation with the Leader of the Council)**

Ward: **All Wards**

Key Decision: **KD5384**

Purpose of Report

1. The purpose of this report is to request approval to commence development and planning for the operation of the Enfield Skills Academy. The academy will be built by the developer of Meridian One (Vistry), and operated by a qualified Managed Learning Provider, who tendered for the contract via London Tenders Portal.

Proposal(s)

2. This report seeks:
 - approval for the Council to enter into a concessions contract and ancillary documents [(including a license for the Managed Learning Provider to enter the site to undertake fit out works before commencement of the lease)] with a Managed Learning Provider ('the MLP'), identified as Bidder A in the Confidential Appendix 1, to operate the Enfield Skills Academy at Meridian Water. Approval of the final form of the concessions contract and ancillary documents to be delegated to the Director of Development in consultation with the Interim Director of Law and Governance
 - approval for entering a 5-year lease and ancillary documents (including a rent deposit deed) with the MLP, identified as Bidder A in the Confidential Appendix 1, for the purpose-built premises. Approval of the final form of the 5-year lease and ancillary documents to be delegated to the Director of Development in consultation with the Interim Director of Law and Governance

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- approval of the Deed of Variation ('the DoV') and ancillary documentation between the Council and Vistry, which provides for further contractual detail agreed after the drafting of the original Development Agreement as summarised in the body of this report. Approval of the final form of the Deed of Variation ('the DoV') and ancillary documents to be delegated to the Director of Development in consultation with the Interim Director of Law and Governance
- approve a budget of £1,200,000 to fund the Council's contribution towards the costs of construction of the Skills Academy, as approved by Cabinet on 16th September 2020 (KD 5174).
- approve the establishment of the Skills Academy Board and entry into such documents as are necessary to govern the operation of that board.

Decision maker to note:

- [1] all VAT, estimated at up to £322k must be recoverable by the Council by structuring the lease to ensure the criteria for disapplying the option to tax are not met
- [2] Rentals must be sufficient to meet the cost of loan interest, minimum revenue provision to repay the debt and other revenue expenditure for the full duration of all leases with rent reviews in place to ensure this is achieved

Reason for Proposal(s)

3. To benefit the Enfield and Edmonton community through better access to training and employment opportunities. The Skills Academy's objective is to create varied and accessible routes to education and employment for local people. This will also focus on targeting disadvantaged and under-represented individuals, in the diverse communities nearby.
4. To facilitate a skilled workforce to help build out Meridian Water as well as other new developments and retrofit initiatives across the borough. The Council is aiming to build 10,000 homes at Meridian Water, and a Skills Academy on site will help to inspire and train a workforce pipeline to deliver this.
5. To deliver new jobs as part of the socio-economic strategy for the Meridian Water regeneration area. The Council is aiming to create 6,000 quality jobs at Meridian Water, with 1,000 in construction. This aspiration can only be met if the workforce is suitably trained and skilled.

Relevance to the Council's Corporate Plan

6. **Good homes in well-connected neighbourhoods.**

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The Skills Academy will provide a facility for the Managed Learning Provider (MLP) to train and upskill a workforce to construct new homes at Meridian Water, and across the borough. It will also deliver skills in retrofit to improve the quality of existing homes and promote environmentally sustainable construction approaches.

7. Safe, healthy, and confident communities

The Skills Academy and its MLP will offer opportunities for local people to gain work experience, education, qualifications and to benefit from high quality employment generated by the development, with positive implications on safety, health and security of the community nearby. The Skills Academy will also provide a newly active facility at the bordering Edmonton, creating more footfall and discouraging anti-social behaviour.

8. An economy that works for everyone

The Skills Academy and MLP will play a key role in ensuring the benefits of development and economic growth at Meridian Water can be accessed by local and disadvantaged communities, through making training available to them at an appropriate level, with scope to develop and upskill.

Background

9. As part of the regeneration of Meridian Water, Enfield Council ('The Council') is seeking to create a Skills Academy at Meridian Water, which will train local people for jobs on the site, as well as across the wider construction supply chain in the Borough and across London and the Southeast.
10. At the 16th September 2020 Cabinet meeting, authorisation was given for a Skills Academy to be delivered at Meridian Water (KD 5174). At this meeting authority was delegated to the Meridian Water Programme Director (now with an expanded portfolio and called the Director of Development) in consultation with the Leader of the Council, to make all strategic and implementation decisions related to the Meridian Water Skills Academy within the budget set out in that report. Cabinet further delegated authority to the Director of Development to approve and enter into such amendments necessary (including variations to the Meridian One development agreement) to formalise such arrangements.
11. The Council and Vistry agreed to work together to bring forward the Skills Academy, with the Council providing up to £1.2m in funding, and Vistry £409,960, with the obligation to deliver the academy through their wider development at Meridian One. Planning permission was granted for the Academy on 28th October 2021 (application reference 21/02991/FUL). It was agreed to enter into a Deed of Variation to the original Development Agreement, which would set out the terms and obligations for both parties to deliver the Skills Academy. The final form of the Deed of Variation is close to being finalised at time of writing. The Deed of Variation:

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- requires Vistry to obtain planning permission for and construct the Skills Academy and to use reasonable endeavours to ensure Practical Completion of the Skills Academy by 31st August 2022;
 - provides that, following Practical Completion, Vistry's interest in the building lease in respect of the Skills Academy site will be surrendered to the Council, and the modular buildings and trades areas will be retained by the Council, for reuse elsewhere on the site should the Academy be relocated to a different plot;
 - determines how the costs of construction of the Skills Academy will be split between the Council (74.5%) and Vistry (25.5%). In the event that the costs of construction exceed the budgeted amount, there is no obligation on Vistry to construct the Skills Academy unless the Council agrees to pay the excess and
 - establishes the basis on which the Skills Academy will operate and be governed. A Skills Academy Board will be established before Practical Completion of the construction works and will initially consist of representation from the developers of Meridian One and Two (Vistry), the Strategic Infrastructure Works contractor and from the Council. The Council will have majority representation in line with its majority financial contribution and will always retain 52% voting rights. It is intended that, over time, additional representatives from developers and contractors engaged with the Managed Learning Provider, and delivering Meridian Water schemes, will join the board. The Board will be chaired by the Council's Director of Education.
12. The Managed Learning Provider has been procured through an open and transparent procurement, led by the Council with input from Vistry, this report summarises this procurement and seeks approval to appoint. A Concessions contract will be entered into, and draft Heads of Terms are included within the Confidential appendices which will inform the associated lease negotiation. The successful bidder was considered by evaluators to have offered the most economically advantageous proposal, and a guarantee of delivering the KPI's requested by the Council in terms of target groups and numbers of learners through the academy. Appendix 3 outlines the KPI's listed within the agreement. The Concession Agreement:
- Operates as an agreement for lease, e.g. an agreement for lease will be granted to the MLP following practical completion of the construction works. In the event that completion is delayed beyond 31st January 2023 then the Concession Agreement may be terminated by either party. The agreed heads of terms of the lease are appended to this report; and
 - Appoints the MLP to operate the Skills Academy for a 5-year term (unless terminated earlier for breach or if the MLP's turnover in respect of the site exceeds the current turnover threshold under the Concessions Contract Regulations, or if the MLP exercises their break option) and sets out the service and reporting requirements in this regard.

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- Approval of the Skills Academy Board will be required to terminate the Concessions Contract.
 - The MLP's obligations under the Concessions Contract will be guaranteed by a guarantor and one quarters rent deposit will be payable in respect of the lease. Approval for entering into the lease will be delegated to the Development Director in consultation with the Director of Law and Governance.
13. The Skills Academy will ensure that the intervention has a long-term legacy at Meridian Water, beyond the timescales for just the first phase, Meridian One. The Skills Academy will provide capacity for additional trainees and apprentices, sufficient to support the Meridian Water Programme for the next 8 years and possibly longer, including the Housing Infrastructure Funding strategic infrastructure works contracts, and the Borough's wider construction pipeline.
14. The Skills Academy will deliver employment, training, mentoring and engagement with local communities at an on-site hub with classrooms and practical working space. It will create opportunities for local people to gain work experience, qualifications and benefit from high quality employment generated by the development of Meridian Water. The Skills Academy will deliver a broad curriculum of skills related to the built environment, e.g., building design, sustainability, construction management, trades skills etc. It will focus on creating pathways to sustainable and well-paid employment, and pathways for residents to obtain higher level qualifications through apprenticeships and training courses. The Skills Academy will also provide an entry into build environment professions for groups more likely to suffer from worklessness, including the active targeting of young people not in education, employment or training, the long term unemployed, Enfield Council tenants, former SEND students, NEETS ages 18-24, care leavers, ex-offenders and ex-military personnel. The Skills Academy will also look to provide education and training that will benefit the wider community such as English as a second language training.
15. During August 2021 a procurement was launched on London Tenders Portal to seek a Managed Learning Provider (MLP) to operate the Skills Academy on a concession basis. The qualifying bids were assessed on the following criteria:
- Price – 20% (see Appendix 2 for details);
 - Qualitative criteria (see Appendix 2 for details):
 - Business plan – 10%
 - Recruiting Learners from Priority Groups – 5%
 - Pre-Employment Training, Work Placements and Job Brokerage – 20%
 - A Responsive Curriculum – 10%

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- Provision of Basic Skills Training and Community Use of the Skills Academy Facilities – 5%
 - Schools and Colleges Engagement Programme – 10%
 - Communications – 5%
 - Provision of Additional Basic Skills – 5%
 - Equality, Diversity & Inclusion – 10%
16. To evaluate the bids received, a panel was set up consisting of three Council officers and Vistry's Social Value Manager.
17. Bidder A received a higher weighted-average score. Their bid produced a 44.25% score for quality, 6.6% for equality and diversity, and a 20% score for price, giving a total score of 70.85%. Bidder B scored 49.5% for quality, 6.6% for equality and diversity, and 2.86% for price.

Bidder A is an established education provider with a solid track record of funded programmes in the local area, they are also able to offer the Council an economically advantageous proposal. They have committed to investing capital funds into the fit out of the asset. Background financial checks were undertaken prior to the qualitative submission review, to determine suitable financial standing and covenant strength.

18. Training providers were contacted prior to the tender being advertised to ascertain market interest in the opportunity. Two detailed bids and an expression of interest were received. The winning bid proposed a commercially comparable rent for a site of this size, as supported by the valuation provided by external surveyors. On the basis of the winning bid received, the site was valued at approximately £19.26 per square foot by an RICS qualified surveyor who found it comparable to values on similar sites and facilities nearby.

Main Considerations for the Council

19. The proposal will positively contribute to the Council's priorities (see 'Relevance to the Corporate Plan').
20. It is essential to appoint the provider now to enable target groups to be trained in time for the commencement of development phases at Meridian Water. The Meridian One development started on site in 2021.
21. The appointment is based on a rigorous tender process and ensures the most socially and economically advantageous proposition for the Council (see Confidential Appendix). The Council's Property Procedure Rules were not required as this procurement was taken to market through the London Tenders ProContract portal. Bids were invited from the Mayors Construction Academy list of approved quality marked training providers.

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Safeguarding Implications

22. Bidder A is an established education provider already operating in the Borough. As part of their lease documents we will embed their safeguarding practices and ensure they are reviewed as part of the Councils ongoing contract monitoring.

Public Health Implications

23. Unlocking job and apprenticeship opportunities for target groups will reduce pressures on mental and physical health outcomes associated with unemployment.

Equalities Impact of the Proposal

24. The Council specified in the instructions for tender that it seeks to ensure training and support opportunities for those groups furthest away from employment, which the bidders proposed to target:

- former SEND pupils,
- young people leaving care,
- ex Services Personnel,
- unemployed residents over 50 years of age,
- NEETs (ages 18-24) and
- young offenders
- adult ex-offenders.

25. The Council also asked bidders to set out their approach on creating new opportunities for under-represented and marginalised groups through the Skills Academy, as well as improving equality, diversity and inclusion in the workplace.

The bidders have confirmed they will seek to support groups with protected characteristics (including women, the LGBTQI community and people from minority ethnic backgrounds) through allocating recruitment, educational and project management resources. Bidders have identified potential partnering organisations with whom they will work to deliver this and referred to their successful experience of positive engagement.

Environmental and Climate Change Considerations

26. As part of the minimum requirements criteria, the bidders have provided a summary of their environmental sustainability strategy and set out how they will apply these to the operation of the Academy. Proposed measures include paperless communication, green procurement, low energy use and

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renewables, monitoring and reducing waste and emissions generated by the Academy and delivering green construction and retrofit courses.

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

27. See Confidential Appendix 1, Part 2 Report

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

28. See Confidential Appendix 1, Part 2 Report

Financial Implications

29. See Confidential Appendix 1, Part 2 Report

Legal Implications

30. The Council has the power under s1(1) Localism Act 2011 to do anything individuals may do provided it is not prohibited by legislation and subject to Public Law Principals. The Council has sufficient power to enter into the transactions described in this report. The decision taker must have regard to the general principle of ensuring value for money and ensuring a prudent use of local taxpayer resources.

31. A summary of the terms of the documents proposed to be entered into is given in the body of this report. The final form of the documents must be approved by Legal Services on behalf of the Director of Law and Governance.

32. In respect of the Deed of Variation to the Development Agreement, variations to contracts must comply with the provisions of the Public Contracts Regulations 2015. Regulation 72(1)(f) permits a modification where the value of that modification is less than 15% of the overall works value and less than the works threshold and the modification does not alter the overall nature of the contract. On the basis the total budget for the Skills Academy is £1,609,960 (exc VAT), then the proposed changes should fall within this limb. In addition, the variations proposed satisfy Reg 72(1)(e) which permits modifications which, irrespective of their value, are not substantial within the meaning of paragraph (8).

33. The estimated value of the Concessions Contract is below the current threshold set by the Concessions Contract Regulations (and in the event that threshold is exceeded there are provisions for early termination of the Concessions Contract and lease). Procurement of the Concessions Contract must comply with the Council's Contract Procedure Rules. The body of this report summarises how the procurement has been carried out.

34. The grant of lease must comply with the Council's Property Procedure Rules.

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35. Bidder A and the proposed guarantor are exempt charities. A review of each charity's governing documents must be completed to ensure it has sufficient power to enter into the transactions proposed.
36. The proposed contracting arrangements envisage that a guarantee will be provided. No details of the proposed guarantor have been provided. Officers must ensure due diligence is carried out into both Bidder A and their guarantor to ensure confidence that payment and performance obligations can be met.
37. The value of the transactions envisaged in this report exceed £500,000 and therefore the Council's key decision process must be followed.

Workforce Implications

38. No implications expected as the Skills Academy will be overseen within the existing officers' roles, in partnership with internal teams (Education, Economic Development, Social and Youth Services), the Council's main developer and contractor partners.

Property Implications

39. Under the Scheme of Delegation for Property Transactions the approval of all new lettings, including the grant of overriding lease(s) in respect of all such lettings following proper and appropriate request from any former tenant or guarantor, where the lease term is greater than 15 years and/or the cumulative value is over £500,000 the approval of the Executive Director of Place is required although this approval has been delegated to Director of Development Peter George.
40. As the accumulative value over the proposed lease term is over £500,000 this matter will also be a key decision.
41. Due to the nature of the proposal the transaction is deemed a concession and as such the transaction must be subject to the general principles of ensuring value for money, equal treatment, non-discrimination and the obligation of transparency.
42. It is noted that the proposed concession was advertised to the market through the London Tenders ProContract portal in accordance with the Council's Contract Procurement Regulations.
43. It is further noted that the proposed contract specifies that the MLP shall provide a parent company guarantee or a bond in favour of the Council, and that the guarantor shall execute the counterpart lease and deliver it to the Council. This thereby reduces the risk to the Council.

Other Implications

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Procurement Implications

44. Any procurement must be undertaken in accordance with the Councils Contract Procedure Rules (CPR's) and the Public Contracts Regulations (2015).
45. The procurement was undertaken using the London Tenders Portal (ref DN560132) and was managed by Procurement Services, the process was carried out fairly and transparently.
46. Two valid tenders were returned and were evaluated by members of the Meridian Water Team, the Council's Head of 'Post 16 Provision' and Vistry's Social Value Manager. A moderation meeting was held on 10 November 2021 where the scores and final comments were agreed.
47. In accordance with Clause 7 (Financial Security) of the Councils Contract Procedure Rules the Supplier must be required to provide sufficient security. Evidence of the form of security required, or why no security was required, must be stored and retained on the LTP for audit purposes. As the contract is over £500k the service must ensure that sufficient security has been considered.
48. The award of the contract, including evidence of authority to procure and the uploading of executed contracts must be undertaken on the London Tenders Portal including future management of the contract. The award will be promoted to the Councils Contract Register.
49. The awarded contract must be published on Contracts Finder to comply with the Government's transparency requirements.
50. The CPR's state that contracts over £100,000 must have a nominated contract owner in the LTP, and for contracts over £500,000 there must be evidence of contract management, including, operations, commercial, financial checks (supplier resilience) and regular risk assessment uploaded into the LTP.

Options Considered

51. **Use an alternative learning provider framework.** The GLA's Mayoral Construction Academy has established an accreditation process for training providers in Construction Skills, and there is no alternative framework. Equally, the Register of Approved Apprenticeship Training Agencies (ATA) accreditation has been applied regarding the provision of apprenticeships, and there is no alternative framework that can be used to identify suitable organisations who have the capacity to undertake the ATA function. Tendering organisations can include Approved ATA's within their bid as delivery partners, should they not be approved providers, on the Government's Register of Apprenticeship Agencies.

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52. **Re-tender.** The Council have informed several learning providers of the tender opening and already extended initial date for submissions from September to October 2021 to gather more submissions. It is unlikely that re-tendering would result in a bigger number or more advantageous submissions.

53. **Resource in house.** The Council do not currently have the necessary skills, services or resource in house to deliver a training academy of this scale and ambition.

Conclusions

54. Given the importance of the Meridian Water regeneration programme principally benefitting local people, it is essential to appoint a learning provider to accelerate opportunity for residents into training, apprenticeships and employment.

55. This report seeks approval from the Director of Development, in consultation with the Leader of the Council, to appoint the Managed Learning Provider, Bidder A as identified in the Part 2 report, Confidential Appendix 1.

The Concessions contract should be signed in tandem with the lease, and the Deed of Variation, final detail of which to be approved under delegated authority by the Director of Development in consultation with the Interim Director of Law and Governance.

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Appendices

- Appendix 1 - Confidential Appendix (Part 2 Report)
- Appendix 2 - Tender Qualitative & Pricing Criteria
- Appendix 3 - Concessions Contract KPI's

Background Papers

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

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Cabinet Pack, KD5174 Sep 16th, 2020