

London Borough of Enfield

Operational Report

Report of: Peter George, Director of Development

Subject: Meridian Water - Appointment of Legal Services support via NHS Legal Framework Lot 7 - Property Law

Executive Director: Sarah Cary, Executive Director Place

Ward: Upper Edmonton

Key Decision: KD 5420

Purpose of Report

1. To seek approval to award the Legal Services contract to support the delivery of Meridian Water between April 2022 and March 2025.

Proposal(s)

2. Approve the appointment of Bidder A to provide Legal Services to support development across Meridian Water for a 36 months term, with the option to extend for a period of up to 12 months (which would be subject to further approval). The services will support ongoing workstreams of Meridian Two, Meridian Three and Meridian Four with particular focus on future phases and Regeneration.
3. Authorise expenditure of up to £840k, which will be contained within the existing approved Meridian Water 2022/2023 (financial year) budget. Any further spend (up to the total contract value of £1.8m) in future years will be subject to future approvals on specific projects where external legal support is required.

Reason for Proposal(s)

4. The Council is seeking legal advice primarily in relation to Phase 2 and future phases of Meridian Water to support land, development, property, procurement and planning work. The following legal specialisms are required under this contract:
 - Property
 - Commercial and procurement
 - Construction

- Tax and state aid; and
 - Planning
5. The appointment of a highly experienced and skilled Legal Services team to manage multiple complex agreements and their interdependencies with other contracts and projects simultaneously will reduce the Council's related legal and commercial risks.

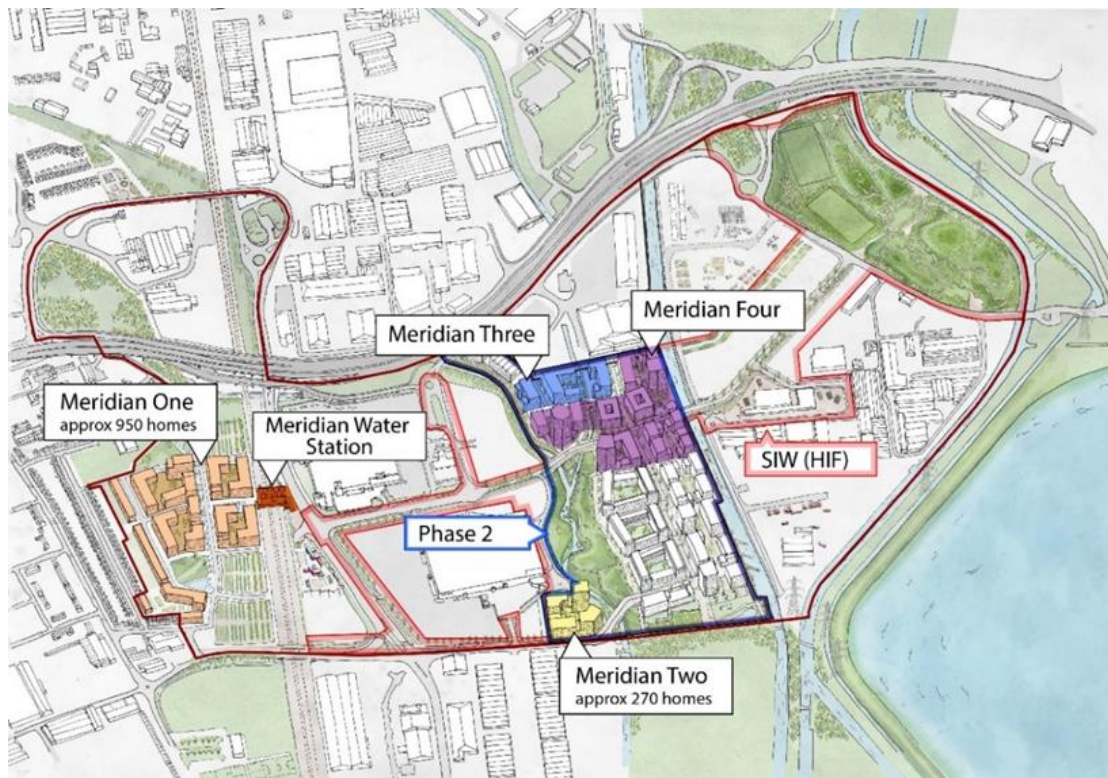
Relevance to the Council's Plan

6. Meridian Water is a key component in contributing to the vision, aims and priorities of the Council's Corporate Plan.
- *Good Homes in well-connected neighbourhoods:* Meridian Water will contribute to the Council continuing its pioneering approach to regeneration to create thriving, affordable neighbourhoods and places, and increasing the supply of affordable, quality housing options for ownership, social rent and private rent.
 - *Safe, healthy and confident communities:* Meridian Water aims to deliver on the Council's aims to improve public health and people's well-being. Along with new homes Meridian Water will deliver community and social infrastructure; new amenity spaces and open up access to the canals side.
 - *An economy that works for everyone:* Meridian Water will deliver new commercial premises and workspace. The appointment of the Legal Services Team will contribute to achieve a higher number of Social Value outcomes, including educational programmes and training opportunities.

Background

7. The Council is leading the regeneration of Meridian Water for the long-term benefit of local people and future generations through the delivery of new homes, employment and infrastructure. The Council is taking the lead on delivering a new neighbourhood designed to nurture economic, environmental and social sustainability which will deliver over 10,000 new homes, 6,000 jobs and at least 10 hectares of new parkland in the Lea Valley.
8. Work across Meridian Water is already well progressed with projects including Meridian Water rail station (opened in June 2019), the delivery of key infrastructure and the construction of the first residential units in Meridian One.
9. In March 2020 the Council's Planning Committee resolved to grant planning permission for the Outline Planning Application (OPA) (19/02718/RE3) for Phase 2 of Meridian Water to deliver circa 2,300 homes (plus 18,000 sqm of Purpose-Built Student Accommodation and Co-Living accommodation) as well as commercial, retail, social infrastructure, and public open spaces.

10. The latter stages of the masterplan are located on what is called the 'East Bank', which is currently Strategic Industrial Land and contains a significant number of meanwhile uses.



Meridian Water workstreams

Scope of Services

11. **Meridian Two.** In October 2021 the Council entered into a Development Agreement with Vistry Partnerships to deliver a 100% affordable scheme of circa 250 homes and 3,000m² of Council owned commercial space. The selected legal team will monitor the performance against the Development Agreement in the event that internal legal capacity is unavailable (the original Development Agreement was advised by LBE's legal services team). They will also advise the Council on potential variations to the agreement and on any further land or property related matters that may arise.
12. **Meridian Three.** The delivery route agreed for Meridian Three will be a land sale through a competitive bidding process. It is anticipated that the disposal will be conditional (Agreement for Lease) before drawing down the long lease for delivery. The appointed legal team may assist in the drafting of all agreements and negotiating terms of the agreement on behalf of LBE. The legal team will consider how Meridian Three interfaces with the wider masterplan, including landowner obligations.
13. **Meridian Four.** Meridian Four will comprise of circa 70% 'Build to Rent (BtR)' homes with 30% Affordable Housing including 'London Affordable

Rent (LAR) and 'London Living Rent (LLR)' homes and a small proportion of Market Sale homes. The selected legal team may:

- Support the procurement of a main contractor and advise on all negotiations to complete all related contractual agreements.
 - Work in conjunction with the Council's Build to Rent advisors and team as they market the site to potential Build to Rent investors. The legal team will be responsible for timely execution of all contractual documents, advising the Council as to ensure the deal is completed in the Council's best interest and all required terms are identified clearly and met.
 - Advise and support the Council on the delivery of affordable housing required on the M4 site
14. **Further land agreements in Phase Two.** The scope and delivery route of Meridian Five and any further parcels is not yet confirmed and could involve a Development Agreement, lease disposal or Joint Venture agreement. Legal advice will be required to determine the most advantageous route for the Council to facilitate delivery of further homes.
15. **'East Bank'.** Legal advice may be required to guide decision-making to unlock land parcels for early housing delivery.
16. Any other legal, land & property matters pertaining to support the delivery of development at Meridian Water, including but not limited to:
- Development Agreements and/or Joint Venture agreements for future development phases and/or variations to existing Development Agreements
 - Preparation of Build to Rent investment contract and all related negotiations and oversight Negotiation of contract agreements with Energetic
 - Main Contractor/s agreements – (either using call off contract or creation of bespoke contract)
 - Land and property disposals (Agreement for Lease and Headlease) including potential sale of affordable housing to Registered Providers
 - Review of compliance with GLA grant and other funding regimes
 - Land acquisition
 - Land rights and easements
 - Advisory role on
 - Procurement
 - Tax including SDLT
 - Planning matters
 - State Subsidy

Procurement Process

17. The Legal Services have been procured through the NHS Legal framework.
18. In determining which framework to use for this procurement, a key factor has been to ensure that the practices on the framework were specialists in Property Law which forms the majority of the work required under this contract. Having considered different frameworks, the NHS Legal Framework was selected in consultation with colleagues in procurement and legal teams. This framework was preferred due to the high quality of practices on the framework, concise process and procurement documents.
19. In January 2022, the Director of Development approved the procurement of the Legal Services for the delivery of Meridian Water through the NHS Legal framework.
20. Expression of Interest was issued through the London Tender Portal on 25th January 2022. Fifteen framework suppliers expressed an interest in the opportunity to tender.
21. The actual Instruction to Tender was issued on 4th February 2022. Two suppliers provided valid ITT submissions through the London Tender Portal on 4th March 2022.
22. As part of the evaluation process the Council assessed the economic and financial standing of the suppliers. The evaluation was carried out based on the past 2 years of financial accounts available on the Companies House website, or where the latest accounts were not available, based on information provided by the supplier.
23. In this case both bidders met the minimum financial requirements by scoring more than 50% and therefore were able to proceed further in the tender process
24. The evaluation of the proposals for this commission were based on a weighting of 70% Quality (including 10% Social Value; 5% Equality, Diversity and Inclusion) and 30% price.
25. Seven Council officers evaluated, including officers specialising in legal, social value and EDI, scoring the ITT responses in accordance with the evaluation criteria. The scores were moderated by the Council's Procurement Team.
26. The outcome of the evaluation is explained in Confidential Part 2.

Main Considerations for the Council

Delivering Meridian Water

27. The Council is acting as Master Developer to realise the comprehensive redevelopment at Meridian Water, securing a detailed planning permission, forward funding and appointing a contractor for the site wide

Strategic Infrastructure Works and securing Outline Planning Permissions for new mixed-use developments and procuring individual plot developers.

28. The Council has already invested significant resources, particularly in land assembly, remediation and enabling infrastructure works and, as Master Developer, will lead the design and the delivery of the scheme as a whole.
29. Of importance to the successful delivery of Meridian Water is the selection of a Legal team who not only understand development and can protect the Council's legal and commercial interests but can also understand the sensitivities of the Council undertaking the role of Master Developer. Part of the selection of Bidder A has been the consideration of their previous experience of delivering projects similar to Meridian Water for other local authorities and public bodies.
30. The Council expects an excellent standard of delivery, ensuring that quality services are delivered efficiently and effectively whilst providing value for money. Bidder A have demonstrated a good and clear system on how they will deliver efficient and effective services to achieve the Council's requirements, setting out processes to minimise unnecessary legal costs.
31. The appointed Legal team will be required to work in collaboration with the Council's in-house Legal team and the Meridian Water project teams. Bidder A have shown good examples of how they have collaborated with in-house legal teams across different large-scale projects in the past, ensuring robust knowledge transfer strategies were in place.
32. Meridian Water is a very ambitious and complex development project and Bidder A has addressed its legal requirements by bringing together an experienced team that comprises specialists in Property, Construction, Contract and Public law. This team gives the Council assurance that they will obtain the advice required on matters related to Development Partnerships, Commercial Property Agreements, and the procurement of Main Contractors, among others.
33. Bidder A has been subject to a fair and rigorous evaluation process considering their ability to provide Legal services on Meridian Water. Taking into account the different technical, commercial and Social Value considerations it is the view of the panel of moderators that Bidder A should be appointed to provide Legal services for Meridian Water.

Benefits to Meridian Water

34. Bringing on board Bidder A as Legal Team will be of direct benefit to the delivery of Meridian Water. They will bring knowledge and expertise acquired from other projects delivered in both the public and the private sector, reducing the legal and financial risks taken by the Council.

35. Bidder A will facilitate knowledge transfer to the Council's legal team and project team throughout the duration of the contract, improving in-house skills and resource embedded at the Council by:
- Welcoming members of LBE's legal staff by way of secondments into Bidder A's housing and regeneration teams
 - Coaching and mentoring key members of Meridian Water and LBE legal team
 - Sponsoring LBE team members to attend relevant market events and training sessions
 - Allowing LBE team members to meet informally with other Bidder 1 public and private clients

Benefits to Council Residents

36. A key driver for the project is the delivery of new homes and amenities within the borough. Appointing an external consultancy to provide Legal services will enable this delivery. It would not have been feasible to deliver a scheme of this scale exclusively through the Council's legal team due to the range of skills and level of resources required.
37. Bidder A has provided a robust social value proposal, supporting different initiatives to benefit residents of the borough, amongst them the provision of two full time employments and paid work experience placements to six students from low-income families.
38. Bidder A have also committed to provide support to help unemployed people into work by providing career mentoring, local school and college career talks and expert legal advice to Voluntary Community and Social Enterprises (VCSEs) and SMEs.

Safeguarding Implications

39. The recommendations in this report do not have any safeguarding implications.

Public Health Implications

40. The appointment of a Legal Services team does not have any public health implications.
41. Climate change has been described as the greatest threat to public health in the 21st Century. With that in mind, Meridian Water is committed to zero-carbon construction, renewable and sustainable resources and to generate more energy than it uses. This is in line with Enfield Council's pledge to become a carbon neutral local authority by 2030. The appointment of a legal services team will not affect environmental impact, and merely assist in delivering the development.

Equalities Impact of the Proposal

42. The Council has a duty to promote equality, diversity and inclusion, and it recognises the issue of diversity specifically within the construction sector.
43. The bidders' approach to Social Value and Equality, Diversity & Inclusion has been assessed as part of the tender process. Within their submissions, bidders were asked the following questions:
 - Provide a delivery plan for any Social Value measures (as identified through the Social Value Portal) which you propose to deliver for the project.
 - The Council has a duty to promote equality, diversity and inclusion and wishes to recruit staff and contract with organisations that reflect the Borough's diverse population, having a responsibility for ensuring equality of opportunity for under-represented groups. In relation to this contract provide a delivery plan describing the commitment your organisation will make to ensure that opportunities under the contract deliver the Council's equality objectives.
44. The tenders submitted in response to the Council's ITT were evaluated against price (30%) and quality (70%). 15% of the total score was attributed to Social Value and Equality, Diversity & Inclusion.
45. Bidders were asked also to complete Equality and Diversity monitoring forms to be submitted as part of their tender response, albeit the information included within the forms was not assessed.
46. Social Value and EDI are a major focus for Bidder A and the Social Value indicators they have committed to within the Social Value Portal (SVP) reflect this commitment to the London Borough of Enfield.
47. It has been concluded that an Equalities Impact Assessment (EQIA) was not necessary in this instance due to the nature of the contract and the fact that Social Value and EDI of the proposals were assessed as part of the procurement process.

Environmental and Climate Change Considerations

48. The Council has a goal to become carbon neutral by 2030 and in July 2018 the Cabinet declared a climate emergency. Meridian Water must seek to use zero-carbon construction, renewable and sustainable resources, generate more energy than it uses, foster active travel and support low-carbon communities.
49. Whilst the appointment of Legal Services does not have any direct environmental and climate change considerations the tender process sought to evaluate whether the bidders' corporate values in supporting such considerations were aligned with the Council's corporate values.

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

50. The appointment of an experienced and capable Legal Services consultancy to support the different workstreams at Meridian Water will reduce the risk to the Council of non-delivery, cost exposure, programme slippage, reputation in the market and poor agreements with partners. Not appointing the Legal Services consultancy will increase these risks.

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

51. The key risk in appointing Legal Services is that Bidder A does not deliver the services required by the contract to a suitable standard, within the project timelines and on budget.
52. Working with LBE's Legal and Finance Team, the designated Meridian Water team member will monitor the Legal Services contract closely.
53. The services will be reviewed according to the KPI included within the ITT.

Financial Implications (AL 5th April 2022)

54. This report is seeking approval to award a legal services contract to support the delivery of the Meridian Water project, from April 2022 for 3 years. The total value of the contract is £1.8m and will be drawn upon by the various workstreams within Meridian Water.
55. All legal work will be instructed through the Council's legal department, who will draw upon external legal support through this contract for specialist advice and additional resource.
56. Current estimate of spend for 2022/23 is £840k, which will be contained within the existing approved Meridian Water budget. Any further spend (up to the total contract value of £1.8m) in future years will be subject to future approvals on specific projects where external legal support is required.

Legal Implications

MD 30th March 2022 (based on version of report circulated on 25th March 2022)

57. Section 111 of the Local Government Act 1972 permits local authorities to do anything that is calculated to facilitate, or is conducive or incidental to, the discharge of their functions. The Council also has a general power of competence under section 1(1) of the Localism Act 2011 to do anything that individuals may do, provided it is not prohibited by legislation and subject to Public Law principles. The Council therefore has sufficient powers to enter into the contract as proposed in this report.

58. The estimated value of the contract is above the Public Contracts Regulations 2015 (the “**Regulations**”) threshold. The procurement of legal services must therefore comply with the Regulations as well as the Council’s constitution, including the Contract Procedure Rules. Both permit the Council to call-off from an existing framework if the framework terms permit. The resulting call-off contract must be based on the framework terms and officers have ensured that the rules of the framework have been followed. This report describes the competitive process used to select Bidder A.
59. The Council will be under no obligation to issue instructions to Bidder A for Legal Services. Any instruction made should first be approved by Legal Services, having regard to the Council’s obligation to ensure value for money.
60. The Contract Procedure Rules require that, where the anticipated value of the contract exceeds £1,000,000 the supplier must provide sufficient security. Where the supplier cannot provide security or it is decided to accept the level of risk, then the Executive Director of Resources must approve the financial risk prior to entry into the contract. The Executive Director of Resources must also approve any limitations on liability set out in the contract.
61. The form of contract has been approved by Legal Services on behalf of the Director of Law and Governance. The contract must be executed under seal, registered on the Corporate Contract Registered and the E-Tenders portal.
62. The anticipated contract value exceeds £500,000. Therefore, this is a Key Decision, and the Council must comply with its Key Decision procedure.

Workforce Implications

63. There are no workforce implications arising directly from this report.

Property Implications

64. There are no property implications arising directly from this report.

Other Implications

Procurement Implications (DM 4th April 2022)

65. The procurement was undertaken using the E-Tendering Portal (ref DN593444) in accordance with the Councils Contract Procedure Rules (CPR’s) and the Public Contracts Regulations (2015).
66. The tender was issued on 4 February 2022 to 15 bidders who had expressed an interest in tendering. Two tenders were received on 4

March 2022, and the evaluation was carried out by a carefully selected panel. Moderation meetings were held week commencing 21 March 2022. Procurement Services were involved in the procurement and the process was carried out fairly and transparently.

67. In accordance with the CPRs 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 E-Tendering Portal for audit purposes.
68. A contract of this size must have a proper contract management schedule and measurable KPI's. This is to ensure that the contract is delivered and value for money is maintained. 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 E-Tendering Portal including future management of the contract.

In accordance with the Councils CPR's the service must ensure that a Contract Manager is nominated and allocated to the procurement once uploaded onto the E-Tendering Portal, and that the monitoring requirements are adhered to. The awarded contract must be promoted to Contracts Finder to comply with the Government's transparency requirements.

Options Considered

69. The use of the Council's in-house Legal Team has been discounted as a viable option as there is not the specialism and resources to deliver internally.

Conclusions

70. It is considered that appointment of Bidder A has been robustly assessed with due regard to their technical competency and with due regard to ensuring that the Council obtains best value from their services.
71. It is considered that their appointment enables the successful and timely delivery of the Meridian Water project and should be authorised.

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Date of report 5th April 2022

Appendices

Appendix A Invitation to Tender Questions