



## London Borough of Enfield

<b>Title:</b>	MW HIF – Approval to award Employer’s Agent and Technical Assurance Services to support delivery of Strategic Infrastructure Works
<b>Report to:</b>	Sarah Cary – Executive Director Housing, Regeneration and Development
<b>Date of Report:</b>	28 June 2023
<b>Directors:</b>	Penny Halliday – Acting Director of Meridian Water
<b>Report Author:</b>	Pauline Albers, <a href="mailto:pauline.albers@enfield.gov.uk">pauline.albers@enfield.gov.uk</a>
<b>Ward(s) affected:</b>	Upper Edmonton
<b>Key Decision Number</b>	KD5591
<b>Implementation date, if not called in:</b>	Monday 7 August 2023
<b>Classification:</b>	Part 1 & 2 (Para 3)
<b>Reason for exemption</b>	

## Purpose of Report

1. Approval to award the Employer's Agent Services for the delivery of the Strategic Infrastructure Works in Meridian Water, which are funded by the Housing Infrastructure Fund.

## Recommendations

- I. Approve the appointment of Bidder A to provide employer's agent and Technical Assurance services for the delivery of the Strategic Infrastructure Works in Meridian Water through the Noting Hill Genesis Framework.
- II. Authorise expenditure for the scope of services and contingency costs set out within part 2 of this report.
- III. Note budget and funding sources for the expenditure (See Confidential Appendix)

## Background and Options

### Background

2. The HIF Street Works comprise of significant infrastructure works across the Meridian Water site:
  - Strategic highways and junctions, including the Central Spine road;
  - Strategic bridges including bridges over the brooks, the Lee Navigation Canal and over the railway next to Leaside Road;
  - 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;
  - Strategic utilities and drainage and off-site connections and reinforcement;
  - Enabling works, including demolition, site clearance, bulk earth-moving and construction of temporary accesses to existing businesses.
3. Anticipating a positive funding decision and the need to swiftly progress the HIF Street Works project following that decision, there is great importance to put together a highly skilled team to deliver the project. The appointment of an Employer's Agent is a lead role and key to successful delivery of the project, enabling the project to be delivered on time and on budget.
4. The newly appointed employer's agent will replace four incumbent suppliers on the project. It is considered that consolidating the services with one supplier will provide efficiencies and improve the project organisation to enabling swift delivery on site and adapt to the next project stage.

### Scope of Services

5. The proposed procurement is seeking to appoint supplier to provide employer's agent services, including client's agent, NEC project management during construction, design assurance services, commercial and claim management services to support the delivery of the Strategic Infrastructure Works (SIW).
6. The supplier will support the Council in discharge of their responsibilities as 'client', under the Council's contract with the Contractor responsible for carrying out the HIF works. The successful tenderer will therefore be required to fulfil specific duties for each of the project stages:
  - Construction stage; and
  - Handover & close-out stage.
7. In undertaking this role, the supplier will support the Council to ensure Contractor's activities align with the Council's ambitions for Meridian Water and achieve their intended outcomes. Owing to conditions of the Housing Infrastructure Fund, awarded to the Council for delivery of the strategic infrastructure HIF Programme of Work at Meridian Water, timely delivery of the works is particularly important and so activities should be persistently conducive to 'on time' and 'on budget' delivery of the works.

#### Procurement Process

8. In February 2023, Commercial Director Meridian Water approved the procurement of the employer's agent services for the delivery of the Strategic Infrastructure Works through the Noting Hill Genesis framework.
9. The estimated value of the scope of services exceeded the OJEU threshold and the procurement process was run as a two-stage procurement process:
  - 1) Expression of Interest (determine interest)
  - 2) Invitation to Tender (select successful supplier)
10. As part of the expression of interest stage early market engagement meeting were held with the interested suppliers. Five suppliers attended an early market engagement meeting with the Council's Project Team.
11. In total nine framework suppliers expressed an interest in the opportunity to tender for the employer's agent services. All suppliers that expressed an interest were invited to submit a tender response.
12. Of the nine suppliers that expressed an interest, three suppliers formally declined to tender during the tender period, one of them due to the inability to meet the timescales required. Two suppliers provided a valid ITT submission.

#### Tender Evaluation

13. The tenders submitted in response to the Council's ITT were evaluated against price 40%, quality 50% and Social Value 10% criteria to establish the most economically advantageous tender. Ten Council officers, including officers specialising in social value and sustainability evaluated the ITT

responses in accordance with the evaluation criteria and the scores were moderated by the Council's Procurement Services Team.

14. The outcomes of each evaluation stages are explained in part 2 of this report.

#### Contract

15. See part 2 of this report.

#### Costing and Funding

16. As part of the tender evaluation each of the bidders was asked to provide a breakdown of costs and detail is set out in part 2 of this report.
17. The cost related to this appointment is in line with the project budget and are eligible for HIF funding. The cost can be covered from the budget in the Meridian Water Capital Programme for HIF Street Works initially and will be reimbursed by HIF funding in arrears on a quarterly basis.

#### **Preferred Option and Reasons For Preferred Option**

18. It is considered that appointment of Bidder A to provide employer's agent services 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.
19. It is considered that their appointment enables the successful and timely delivery of the HIF Street Works and should be authorised.

#### **Relevance to Council Plans and Strategies**

20. The Strategic Infrastructure Works delivered through the HIF funding is key to unlocking the development of Meridian Water and contributes to the priorities of the Council's Corporate Plan:

##### *a. Clean and green places*

The Strategic Infrastructure Works improve the connectivity across the Meridian Water site, as well as to surrounding areas through the provision of new and restored blue-green spaces, delivering an uplift in biodiversity. The works also provide new pedestrian connections and cycle routes.

##### *b. More and better homes*

The Strategic infrastructure at Meridian Water is key to building more and better homes in Enfield. It is also key to delivering and driving investment to deliver growth in Enfield. Further to this, a key aim in the Council Plan is to complete government funded strategic infrastructure works for Meridian Water, which include a major new road and public park.

##### *c. Strong, healthy and safe communities*

The Strategic Infrastructure works underpin placemaking capability at Meridian water that will contribute to reducing reliance on cars and increasing walking, cycling and public transport at Meridian Water and it will also contribute to opportunities to visit and enjoy parks and open spaces.

*d. Thriving children and young people*

The Strategic Infrastructure works include the provision of green spaces designed to accommodate play areas and provide opportunities for informal recreation.

*e. An economy that works for everyone*

The Strategic Infrastructure Works at Meridian water are key to shaping the economy of Meridian Water and allowing the economic growth of Meridian Water to be filtered out to connecting areas throughout Enfield, attracting jobs, business growth and supporting Enfield residents and the local economy.

## **Financial Implications**

21. This report seeks approval to appoint Bidder A to provide employer's agent services, including client's agent, NEC project management during construction, design assurance services, commercial and claim management services to support the delivery of the Strategic Infrastructure Works (SIW).
22. The contract price is based on a fixed fee and a provisional sum for the provision of technical design assurance services. If there is change in the scope, brief or timing there will be a variation in cost which will require additional approval.
23. The total budget authorised and the remaining estimated budget following final accounts of the existing suppliers is set out in part 2 of this report. part 2 also details the amount that this report seeks approval to spend for.
24. The Council is currently awaiting confirmation of the additional £25m HIF funding request. If there is a change in scope, brief and timing or the final accounts of previous suppliers remaining budget, there will be no other budget available to fund any extra costs unless the £25m funding is available. Any additional cost will require additional budget approval.
25. The expenditure incurred under this contract will be fully funded by HIF. However, any additional cost will put pressure on the finite HIF funding available.
26. There is no change in the tax treatment of this contract in comparison to the previous suppliers. VAT is charged at 20%.

## **Legal Implications**

27. The Council 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. This power encompasses the power to enter into contracts. Section 111 of the Local Government Act 1972 permits local authorities to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of their functions.

28. The council must retain adequate budgetary provision to service the contract to be entered in. The Council is required to comply with the council's constitution and in particular the Contract Procedure Rules (CPRs) and to follow all the procedures required for the taking of key decisions. The council is also required to comply with the Public Contracts Regulations 2015 (PCR 2015) as the value of the award of this contract shall be above the procurement threshold for services contracts. It should be noted however that the Procurement Bill is currently making its way through parliament and when the Procurement Bill becomes law it will introduce a whole new regime of UK based procurement law that will replace PCR 2015. Officers should therefore seek legal advice when this happens.
29. Where the council uses an external framework agreement such as the Notting Hill Genesis Framework Agreement due diligence will need to be conducted of the framework in order to ensure that it covers the services to be procured and to ensure that Enfield Council are legally entitled to use the framework. Award of contracts under a framework agreement must be awarded in accordance with the procedures and terms and conditions set out under the framework agreement. Substantial modifications to the terms laid down in a compliant framework agreement are not allowed, and in particular regulation 33 of PCR 2015 that governs framework agreements must be complied with.
30. Where a contract value is over £1m CPR 7.2 provides that 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. Sufficient security shall take one of the following forms: (i) Parent company, ultimate holding company or holding company guarantee where their finances prove acceptable; (ii) Director's guarantee or personal guarantee where their finances prove acceptable; (iii) Performance Bond, retained funds or cash deposit; or (iv) Any other security as determined by Financial Management Services and/or Legal Services. CPR 7.4 provides For contracts over £1,000,000 where the Supplier cannot provide Security but the Council has no acceptable alternative provider or has decided to accept the level of risk, then the Executive Director of Resources must approve the financial risk prior to any award. In this case, this Authority Report must set out the reason why it is proposed that the contract should be awarded despite absence of security and what measures are to be taken to manage this risk.

## **Equalities Implications**

31. The Council has a duty to promote equality, diversity and inclusion, and it recognises the issue of diversity specifically within the construction sector.

32. The bidders' approach to Equality, Diversity and Inclusion has been assessed as part of the tender process. Within their submissions bidders were asked the following questions:
- Please provide a delivery plan describing the commitment your organisation will make to ensure that opportunities under the contract deliver the Council's equality objectives.
33. The tenders submitted in response to the Council's ITT were evaluated against price (40%), quality (50%) and social value 10%. Of the quality score 5% of the score was attributed to Equality, Diversity and Inclusion.
34. 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.
35. An Equalities Impact Assessment (EQIA) by Ottaway Strategic Management Ltd was commissioned by the Council to consider the impacts of the Meridian Water (Strategic Infrastructure Works) Compulsory Purchase Order. The EQIA concluded that there are no direct negative equality impacts identified against any of the protected characteristics. However, there are some groups with protected characteristics who are likely to experience proportionately higher consequences of the regeneration of Meridian Water and these are:
- White other staff, including Eastern European, Turkish and Greek;
  - BAME Staff;
  - Women in properties in third party ownership; and
  - Older members of the workforce potentially less able to re-engage in the labour market if their jobs are lost to the relocation programme.
36. The EQIA proposed several mitigation measures to address these indirect impacts which the Council intends to implement including the implementation of effective equalities monitoring by the Council and development and construction partners. The EQIA also acknowledges significant potential positive impacts of the regeneration of Meridian Water (including for example, new homes, social infrastructure and employment growth) and that these benefits will likely impact on all the aforesaid groups having protected characteristics.
37. An EQIA was also prepared by the Council's Strategic Planning Team to support the ELAAP submission. The planning application for Phase 2 and more recently the approval of the Meridian West Supplementary Planning Document was also subject to an EQIA. No substantive negative impacts to persons or groups with protected characteristics were identified.

**Environmental and Climate Change Implications (if any, delete if not relevant)**

38. 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.

39. Whilst the appointment of Employer's Agent services does not have any direct environmental and climate change implications the tender process sought to evaluate whether the bidders' corporate values in supporting such considerations were aligned with the Council's corporate values.

40. Bidder A's submission reflects their business as a Consultancy and they have been active in supporting their clients (including other local authorities) in reducing carbon consumptions within their development projects.

## **Other Implications**

### Procurement Implications

41. The tender was a call-off from Lot 9: (Employer's Agents) of the the Notting Hill Genesis (NHG) Development Consultants Framework. Due diligence was carried out by Procurement Services on the Council's ability to use the framework. The tender process commenced with an Expression of Interest, followed by the invitation to tender. Two tenders were returned and were evaluated by members of the Meridian Water and Finance Teams, moderation meetings were held on 3, 9, 10,11 and 12 May 2023 where the final scores were agreed.

42. Procurement Services were involved in the procurement and the process was carried out fairly and transparently.

43. The procurement was undertaken on the London Tenders Portal ref DN643725.

44. 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 of contract must be promoted to the Councils Contract Register.

45. The awarded contract must be published on Contracts Finder to comply with the Government's transparency requirements.

46. As the contract is over £1,000,000 the supplier must be required to provide sufficient security in accordance with Clause 7 (Financial Security) of the Councils Contract Procedure Rules.

47. All contracts over £100,000 must have a nominated contract manager in the London Tenders Portal. Contracts over £500,000 must show evidence of contract management of KPI's to ensure VFM throughout the lifetime of the contract.

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**Appendices**

None

**Background Papers**

None

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