

London Borough of Hammersmith & Fulham

Report to: Cabinet Member's Decision – Councillor Andrew Jones, Cabinet Member for the Economy

Date: 14/05/2020

Subject: Authority to Enter into a Pre-Construction Services Agreement (PCSA) with a Contractor to Progress the Town Hall Refurbishment and Fit-Out Contract

Report of: David Burns, Assistant Director - Growth

Responsible Director: Jo Rowlands, Strategic Director, The Economy Department

SUMMARY

The delivery of the Civic Campus Programme is to be split into two contracts to ensure the Council retain more control over the delivery of the Town Hall refurbishment as part of the programme. Both contracts were tendered together as one package such that consistency and efficiency across the site is maximised and the constraints of the overall site logistics would be managed by a single contractor. The Scope of Works for each contract is summarised in Section 1.8 of the report.

The Council will be responsible for the Contractor and accordingly be the employer under Contract A - the refurbishment of the existing Grade II Listed Town Hall building and fit out of the building (including a proposed extension). This report seeks approval to enter into a Pre-Construction Services Agreement (PCSA) with Ardmore Construction Limited in order to provide pre-construction services to the Council for the development of the design and construction of the Town Hall refurbishment and fit out as set out in Contract A. The cost to the Council in design fees and utilities diversions during this period will be £2.25m. The cost to the Council of the PCSA is £103,963.71. Both costs are part of the approved total budgets for the refurbishment and fit out of the Town Hall.

RECOMMENDATIONS

That the Council enters into a Pre-Construction Services Agreement (PCSA) with Ardmore Construction Limited to provide pre-construction services to the Council for the development of design of the Town Hall refurbishment and fit out as set out in `Contract A` the refurbishment of the existing Grade 2 Listed Building plus the fit out of the Town Hall (including Cat B fit out of the glass box vertical extension).

Wards Affected: Hammersmith

1. H&F PRIORITIES

Our Priorities	Summary of how this report aligns to the H&F Priorities
Building shared prosperity	The Civic Campus programme will be creating a new space for residents and the public within the West King Street area. This enables additional job opportunities through the s106 agreement; additional office space; and more genuinely affordable homes.
Doing things with local residents, not to them	Delivery of the wider Civic Campus programme will create a new public space to be enjoyed by all members of the local and wider community who have been engaged and consulted throughout the process.
Being ruthlessly financially efficient	A full technical review has been completed.
Taking pride in H&F	The refurbishment of the Town Hall will enable the delivery of the wider Civic Campus programme, creating a new and much improved space for residents and the public within the West King Street area.

FINANCIAL IMPACT

The full financial implications of the wider Civic Campus Programme were set out in the report to Full Council on 21 January 2019 as amended by any subsequent decision reports.

The cost of entering into the PCSA with Ardmore Construction is £103,963.71. The PCSA, design fees and utilities diversions will be met from the approved capital budget for the fit out and refurbishment of the Town Hall. In addition, the final tender price for the construction contract will need to be containable with the approved Town Hall refurbishment budget, or a report to Cabinet requesting additional budget will be required.

Given the scale of potential contract award for the construction contract, a credit check and review of Ardmore's finances has been carried out prior to the final design and tender price being submitted for the Council's consideration. A Creditsafe report was obtained for Ardmore on 30th March 2020. They have a credit score of 91 out of 100 which is deemed as very low risk. The suggested contract limit of £52.5m exceeds the estimated contract value and their latest turnover of £210m exceeds the Council's usual requirement of double the anticipated contract value.

The Legal implications have identified the contract has been drafted to mitigate the risk of any claim by Ardmore for losses but that this risk cannot be completely mitigated. Therefore, there is a risk that there may be a financial impact of any claim which cannot be estimated at this stage.

LEGAL IMPLICATIONS

Part 1

The Council's powers to enter into the contract arise under section 1 of the Localism Act 2011 and the incidental power under section 111 Local Government Act 1972.

Procurement: The appointment has been made via the A2D Framework. We have previously advised that the Council is able to access this framework to procure construction works/services. The A2D Framework has been established under the Public Contracts Regulations 2015. Whilst we did not advise on the selection of the preferred contractor for the project, or establishment of the A2D Framework we confirm that the scope of this appointment falls within that of the A2D Framework. We have not been made aware of any irregularity or challenge to either process.

Best Value: this report confirms the reasons as to why Ardmore was selected. The financial proposal was evaluated by the Council, Silvers and Currie & Brown with input from Silvers. This process will assist the Council to demonstrate how it has fulfilled its best value duty under Local Government Act 1999.

PCSA terms and commercial implications: Once entered into, the Council will be the 'Employer' under the Contract A PCSA and will be bound by the obligations within the PCSA ascribed to that party (the main obligation being paying the contractor fees of £103,963.71). Under the PCSA, LBHF may suspend performance of the services by Ardmore on 14 days' notices. LBHF will be liable to pay for services performed up to suspension (up to £103,963.71), reimbursable expenses (if any) and Ardmore's proper and necessary demobilisation costs (anticipated to be zero). LBHF may instruct remobilisation within 6 months, subject to payment of proper and necessary remobilisation fees (anticipated to be zero). If remobilisation is not instructed before expiry of that period, then Ardmore may (but is not obliged to) terminate the contract.

Alternatively, the Employer can terminate the PCSA at will on 14 days' notice. As above, LBHF will be liable to pay for services performed up to termination (up to £103,963.71) and reimbursable expenses (if any) and their proper and necessary demobilisation costs (anticipated to be zero).

The contract states that, following the termination of the PCSA, LBHF shall be free to instruct any other party or parties to carry out all or part of the PCSA services and shall not be liable to Ardmore for any loss of profit, loss of contract or other costs, fees, loss and/or expenses arising out of or in connection with any termination of all or part of the PCSA. However, despite this wording, the risk of such a claim is not one that can be completely mitigated (even though we excluded such a claim, if

omitted work is subsequently carried out by another contractor, there is a risk that a Court could find such loss payable anyway).

The Council's legal advisers for the project, Gowling WLG (UK) LLP, have reviewed and negotiated the legal terms and conditions of PCSA with A2DD so that they are in a form that is acceptable to the Council. The Council is not obliged to appoint the contractor under a building contract pursuant to the PCSA but, should it do so, the form of building contract is appended to the PCSA (albeit reasonable amendments are permitted). A loss of profit claim is expressly excluded in such an event.

Part 2

Part 1 of the Legal Implications addresses the Council's ability to call-off the A2 Dominion Framework and confirms that this has been procured in a manner that complies with the Public Contracts Regulations 2015 (PCR). This part of the Legal Implications will address compliance with the Council's Contract Standing Orders (CSOs).

Fees of £103,963.71 are payable to Ardmore Construction Limited for the provision of services under the Pre-Construction Services Agreement (PCSA), the fees of £2.25million in respect of the preparation of the designs for the works to be carried out under the main building contract and utility diversions will be incurred by the Council. Accordingly, this is regarded as a High Value Contract pursuant to CSO 16.1. CSO 18.1 requires a procurement strategy to have been approved for all High Value Contracts. The Cabinet decision of 3rd December 2018 approved the use of the A2 Dominion Framework for the refurbishment and Fit out of the Town Hall, therefore CSO 18.1 has been complied with.

As the value of the proposed PCSA is greater than £189,330 but falls below the existing threshold under the PCR of £4,551,413, CSO,19.1 provides that a suitable Framework or DPS should be used or, in the absence of an appropriate framework agreement, either a single-stage or two-stage tender procedure should be undertaken. Part 1 of the Legal implications confirm that the A2 Dominion Framework is appropriate for the pre-construction services sought and the intention to enter into the main building contract with Ardmore Construction Limited following completion of the services under the PCSA. Accordingly, the competition requirements under CSO 19.1 have been met.

The subject matter of this report is for the Cabinet Member for the Economy to decide pursuant to CSO 20.1, as the value of the PCSA exceeds £1.5 million. The decision-maker needs to be satisfied that the award of the PCSA is in the best interests of the Council.

The Council must publish this contract award that is based on a framework agreement, within a reasonable time, on Contracts finder in accordance with regulation 112 of the PCR. The Council must provide the name of the contractor, the date on which the contract was entered into and the value of the contract.

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BACKGROUND PAPERS USED IN PREPARING THIS REPORT

None.

DETAILED ANALYSIS

Proposals and Analysis of Options

Background

- 1 The proposed Civic Campus Programme (formally known as the West King Street Renewal Programme) will act as a catalyst for change, with the inclusion of open public realm to create public space, and shared spaces within the Town Hall to be utilised by the neighbourhood as a multi-purpose mixed use development, serving the greater community. The proposal will also attract more diversity of shops which will improve the retail offer on the High Street. This will create the opportunity for associated economic benefits, including increased footfall for local businesses, as well as wider commercial opportunities for businesses in the borough, with significant commercial contracts expected to be available as a result of the scheme.
- 2 In March 2018, Cabinet authorised the Council to enter into Heads of Terms with A2 Dominion Housing Association for a conditional land sale to enable the regeneration of the Town Hall site and West King Street along with several enabling actions to progress the regeneration.
- 3 On 3rd December 2018, Cabinet agreed that the Council would enter into a conditional land sale agreement, and that the conditional land sale would be

to a corporate JV formed of the Council and A2DD, as opposed to A2DD in isolation. Cabinet also agreed a number of recommendations to Full Council in January 2019 relating to the approval of:

- The proposed Joint Venture (JV) partnership with A2Dominion Developments Ltd (A2DD);
- The subsequent conditional sale of Council land to the JV partnership;
- The provision of development funding to the JV partnership;
- Budgets to fund the refurbishment and fit out of the Town Hall;
- The leasing of commercial properties in Hammersmith to facilitate a full decant of the Town Hall site; and
- Budgets to fund the furniture and fit out works required in the decant properties (including contingency allowances).

4 On 21st January 2019, Full Council agreed the total budgets for the refurbishment and fit out of the Town Hall.

5 The Council has now entered into a 50:50 Joint Venture (JV) partnership with A2Dominion Housing Association's development arm, A2Dominion Developments Ltd. (A2DD) for the purposes of delivering the Civic Campus Programme and entering into a conditional land sale agreement. The JV vehicle will carry out and fund all elements of new build works under the terms of the conditional land sale agreement.

6 The delivery of the Civic Campus Programme is to be split into two contracts. Both contracts were tendered together as one package, such that consistency and efficiency across the site will be maximised and the constraints of the overall site logistics would be managed by a single contractor.

7 The contract structure is summarised below:-

- Contract A

The refurbishment of the existing Grade 2 Listed Building plus the fit out of the Town Hall (including Cat B fit out of the glass box vertical extension); and

- Contract B

- Block C - re-use of existing basement, construction of 7 storey residential block of affordable tenure with A1/A3 at ground floor.
- Block B – 4 screen cinema in basement, with restaurant/café, cinema foyer and office block entrance at ground floor and 7 stories of B1 office accommodation fitted out to Cat A.
- Block A - basement construction housing central energy centre feeding overall development (including Town Hall), parking, refuse, bike storage and dry gym, construction of 6 storey residential block of mixed tenure with an element of B1 affordable office space at ground floor fitted out to Cat A.

- Block D - basement construction, construction of 6 storey mixed tenure residential block.
- Town Hall Vertical Glass Box extension completed to CAT A fit out.

Do Nothing

- 8 Having agreed to pursue Contract A and Contract B, the do nothing option would delay delivery of the scheme.

Procurement Strategy

- 9 A number of procurement routes were considered for the delivery of these works. Negotiated, Single Stage and Two Stage options were considered for an earlier start on site, but this would not provide any advantage if the commencement of works were constrained by the completion of the demolition.
- 10 Both the Negotiated and Two Stage options fix price certainty later in the process than Single Stage but will provide an extremely robust contracting price with the contractor being involved before the design is finalised; allowing input on aspects such as surveys, buildability and construction logistics to drive efficiency into design and delivery. With both of these options, a contractor will be engaged early to help finalise the later stages of design and give price certainty. By selecting a contractor early to work through the design, the element of price uncertainty is reduced upon completion of the contract sum as only one contractor will be involved at this stage after selection for the pre-construction services.
- 11 Single Stage tender, based on a comprehensive design and tender package, will enable competitive lump sum fixed price tenders to be obtained, with the contractor taking on any risk of errors. With a single stage process, the competition drives efficient pricing however contractors will include uplifts for risk and unknown, which would be avoided if the design is more developed and the contractor has a better understanding of the scheme. Following a considered market engagement process, given the complexity of the Town Hall, most contractors confirmed they would only tender if the Town Hall was bid as a Two Stage tender to enable them to better understand risk.
- 12 Given the complexity and risk involved in sensitive projects such as the refurbishment of the Town Hall, combined with the Councils need for better cost certainty and fixed timeframe for delivery, a Two Stage procurement, with a PCSA at Stage One, followed by JCT Design and Build contract at Stage Two, was proposed as the most appropriate strategy for the scheme.
- 13 During the PCSA, the contractor will have deliverables in the following project areas:
- Design Development
 - Construction Method Statements
 - Site Logistics
 - Productivity and Energy Efficiency

- Health, Safety & Welfare
 - Procurement
 - Planning & Programming
 - Cost Advice
 - Investigation Works
- 14 The contractor will engage with its supply chain during the PCSA period, allowing cost certainty to be provided based on a greater amount of design, construction, logistics and supply chain information.
- 15 Procuring the scheme in this way will ensure that a variety of risks related to the construction work are greatly reduced, protecting programme and budget.
- 16 It was proposed to utilise A2Dominion contractor frameworks which was set out in the 3rd December 2018 Cabinet report. A number of contractors in the framework were confirmed to have the capability and capacity to tackle all aspects of the project and as such, it was important to engage these contractors particularly in pre tender discussions, and establish a suitable pre-qualification process to ensure the most suitable contractors are tendering for the opportunity.
- 17 With a key requirement for the project in the public interest to achieve cost certainty, delivering the required quality and achieving an early start on site immediately after the demolition contract completes, the suggested route was as follows:-
- a) Soft market testing of the Contractors from the A2Dominion Framework;
 - b) Undertake a questionnaire led pre-qualification process to select the tender list, based on a Two Stage tender process;
 - c) Run an Invitation to Tender (ITT) exercise based on a partially completed design with pre-qualifying contractors on the initial tender list, in line with the A2D Framework and based on evaluation criteria of 60% quality and 40% price;
 - d) Have the Council's Cost Consultants (Silver DCC), verified independently by the Council's Technical Advisers (Currie & Brown), undertake a Contract Sum Analysis (CSA) to evaluate price in line with the ITT;
 - e) Form independent panels from A2D, Silver DCC and the Council to evaluate quality in line with the ITT;
 - f) Appoint a contractor under a PCSA for construction for buildability and logistics advice, and to negotiate the remaining provisional sums in the ITT;
 - g) If PCSA services acceptable and price negotiation successful, enter into second stage of contract with contractor following financial close;

18. Demolition contract to be procured separately from the main contract works to enable further time for design development whilst capturing the opportunity to demolish the Town Hall Extension early in the programme.

Mini Competition/Framework

19. Framework arrangements are becoming more popular within the Public Sector as they represent a 'smarter' way of purchasing rather than placing 'one-off' orders. They drive competition to get onto the framework and with the potential for long term work the Market puts forward more commercially competitive rates than a one-off contract would attract. As Public Sector resource diminishes, utilising a framework can save significant time and money, whilst still delivering a service specified to local requirements, and supporting local decision making and accountability. Benefits of using Frameworks include:-

- Fast, efficient, easy to use OJEU compliant procurement frameworks that remove the need to undertake costly and time-consuming full OJEU procurement processes;
- Significant reduction in procurement timescale from six-nine months to as little as 4 weeks;
- Reduced procurement costs;
- Robust agreements resulting from thorough professional due diligence;
- Pre-agreed terms and conditions – Funds simply 'call off' the framework to meet their requirements;
- Detailed and easy to use guides, support and templates;
- Frameworks are based on large volume buying;
- Reduced transaction costs;
- Long-term relationships;
- Performance measurement systems – designed to encourage continuous improvement and to verify that public money is being used wisely; and
- Better Social Value and Greater Community Wealth.

Direct Appointment

20. The direct appointment of a contractor would offer swift mobilisation and delivery required in order to protect the project's critical path and vacant possession dates. However, the value of the works is more than the EU procurement threshold, and therefore a direct appointment can be ruled out in compliance with Procurement Regulations 2015.

Tender Process

21. The Council's legal advisers for the project, Gowling WLG (UK) LLP, provided confirmation regarding the legality of using the A2D Framework for Contract A

in Section 8.34 of the Exempt Cabinet report, which was agreed on 3rd December 2018.

- 22 Having regard to the current European Union Procurement Regulations, and the anticipated level of any awarded contract, only contractors from A2D's current Contractors Framework were considered for selection. A mini competition tender process was followed under the Framework.
- 23 Tenderers were selected to participate in an Invitation to Tender (ITT) further to an Expression of Interest (EOI) process. The EOI was issued to A2D Framework Contractors on 21st June 2019 and returned on 5th July 2019.
- 24 Seven contractors were issued with the EOI and three provided responses by the 5th July 2019 deadline. Following an evaluation process, three contractors were selected and invited to tender.
- 25 Tender documents were issued electronically on the 4th October 2019, stating a tender return deadline of 12 noon on Monday 16th December 2019. The tender return deadline was subsequently extended by 2 days to Wednesday 18th December 2019, following requests by the tenderers.
- 26 Three tender submissions were recorded as received by A2Dominion's Governance team, with representatives from LBHF and Silver in attendance, all in accordance with the submission deadline criteria. All three tenders were reviewed by members of the professional team and programme managers. The cost and quality ratio for assessment was set at 40:60 respectively.
- 27 Following detailed evaluation in accordance with the ITT criteria, Ardmore have been ranked in 1st place for both quality and price. A detailed review of Ardmore's submission and post tender query responses was completed. The project team have also carried out a post tender interview, and are satisfied that Ardmore have a full understanding of the scheme and what is required.
- 28 Ardmore will charge £103,963.71 in fees to the Council for the PCSA period. The fee was included as part of the tender evaluation process. This will be drawn down from the budget previously approved by Cabinet on 3rd December 2018.
- 29 The cost to the Council in design fees and utilities diversions during this period will be £2.25m. This will be drawn down from the budget previously approved by Cabinet on 3rd December 2018.
- 30 Officers and the Programme Team are satisfied that Ardmore's proposed team have the capability to deliver the scheme and they have provided case studies of successfully completed schemes of similar scale and complexity. Ardmore's proposed programme meets or exceeds the required sectional completion dates.

- 31 Based on the above, it is recommended that Ardmore are appointed as the contractor for both Contract A and Contract B under a PCSA. The Council will appoint for Contract A and the JV will appoint for Contract B.
- 32 There is no obligation for the Council to enter into the main construction contract with Ardmore, should performance during the PCSA period or price negotiations be unsatisfactory to the Council.

Reasons for Decision

33. In December 2018, Cabinet approved the overall budget for the West Kings Street Renewal programme, and agreed that a JV would be formed with A2Dominion. Following a contractor procurement exercise through the A2Dominion Contractor framework, the contractor, Ardmore, has been successful in the procurement. However, to enable stage one of a two-stage procurement process to commence formally, the JV is required to enter into a PCSA for Contract B and the Council is required to enter into a PCSA for Contract A.
34. For the avoidance of doubt, this approval is only for the commencement of pre- construction services between March and July 2020. A further approval will be requested to enter into the main construction contract once design and costs have been agreed in July 2020.

Equality Implications

35. It is not anticipated that there will be any negative impact on any groups with protected characteristics, under the terms of the Equality Act 2010, from the approval of entering into the PCSA (as set out in the Recommendations).

Implications verified/completed by: Fawad Bhatti, Social Inclusion Policy Manager, tel: 07500 103617.

Risk Management Implications

36. Decision is required following competitive tendering of the service as noted in 8.6 of the report. This is to ensure that complexity and risks are being managed in accordance with a programme of this size and nature.

Implications verified/completed by: Michael Sloniowski, Risk Manager tel: 020 8753 2587.

Implications for Local Business

37. There will be no impact on local businesses - we would always try and involve local businesses in the supply chain wherever possible.

Implications verified/completed by: These comments have been verified by Alben Karameros tel: 07739 316 957.

Commercial Implications

38. Covered in Legal Implications section.

Property Implications

39. The Council entered into a Commercial Land Agreement (CAL) on 31 March with the LLP. There are a number of conditions precedents before the contract becomes unconditional. The Council is committed for the new HTH and its roof top extension to be completed by April 2022. The PCSA for contract A will assist in ensuring the programme remains on track. The tender process ensured the appropriate professional indemnities are in place that reflect the listed building status. The contract with PCSA will need a licence granted to allow Ardmore to access the property during the contract period.

Implications verified/completed by: Nigel Brown, Head of Asset Strategy and Property Portfolio.

Consultation

40. Consultation for the wider Civic Campus Programme has been outlined in previous reports.