

Item No.	Classification: Open	Date: 28 April 2017	Decision Taker: Chief Executive
Report title:		Gateway 2 - Contract Award Approval Revitalise Peckham Rye Stage 2 Tender return for main contract award	
Ward(s) or groups affected:		Nunhead and Peckham Rye	
From:		Head of Regeneration – Capital Works & Development	

RECOMMENDATION(S)

That the Chief Executive

1. Approves the award of the design and build contract for Revitalise Peckham Rye to Neilcott Construction Ltd for £2,897,794, and a contingency amount as detailed in the closed report, for the main works over a contract period of 46 calendar weeks commencing in May 2017 and completing in March 2018.

BACKGROUND INFORMATION

2. Revitalise Peckham Rye is a project which will significantly upgrade the play and sports facilities in Peckham Rye Park and Common.
3. In November 2014, following an extensive consultation process and the resulting programme level brief, Cabinet approved the strategy with an associated budget to provide:
 - A modern, fit for purpose playroom
 - Football changing rooms
 - A large, high quality playground
 - A more appropriately located car park and the removal of contaminated waste)
4. At a cabinet meeting in February 2017, the project budget of £4.02m was increased by £150k to allow for additional work to remove a pathway in a state of disrepair and to widen an existing cycle path within the common taking the total budget for the project to £4.17m.
5. A full breakdown of the total budget including contingency is set out in paragraph 6 of the closed report.
6. Planning approval for Phases 2, 3 and 4 was confirmed on 24 January 2017.

Procurement project plan (Key Decision)

Activity	Completed by/Complete by
Forward plan for Gateway 2 (main contract)	Completed
Briefed relevant Cabinet member (over £100k)	Completed
Approval of Gateway 1: Procurement Strategy Report	11/10/2016
Completion of tender documentation	11/10/2016
Invitation to tender – Stage 1	12/10/2016
Closing date for return of tenders – Stage 1	25/11/2016
Completion of evaluation of tenders – Stage 1	12/12/2016
DCRB Review Gateway 2: Contract award report (PCSA)	20/12/2016
Approval of Gateway 2: Contract Award Report (PCSA)	09/01/2017
Contract award (PCSA)	10/01/2017
Add to Contract Register	10/01/2017
Publication of award notice on Contracts Finder	10/01/2017
Contract start	10/01/2017
Contract completion date	31/03/2017
Employer's Requirements issued	10/01/2017
Stage 2 return	03/04/2017
Completion of evaluation of Stage 2 return	21/04/2017
DCRB Review Gateway 2: Contract award report (Main Contract)	24/04/2017
Notification of forthcoming decision – Five clear working days	28/04/2017
Approval of Gateway 2: Contract Award Report (Main Contract)	09/05/2017
Scrutiny Call-in period and notification of implementation of Gateway 2 decision	17/05/2017
Contract award (Main Contract)	17/05/2017
Add to Contract Register	17/05/2017
Publication of award notice on Contracts Finder	17/05/2017
Contract start	17/05/2017
Contract completion date	31/03/2018

KEY ISSUES FOR CONSIDERATION

Description of procurement outcomes

7. The use of the two stage design and build procurement route has allowed the council to bring a contractor on board early in this project to take forward the completion of the designs through the award of the PCSA.
8. This, the second stage of the tender, now confirms the price, based on completed designs. This provides the council with more certainty in the costs of the main contract and ensures the Contractors carries total design responsibility for the scheme.
9. This contract for the Stage 2 design and build contract for Revitalise Peckham Rye shall fulfil the programme brief in the following four phases:
 - Phase 1: Re-located car park (now complete)
 - Phase 2: Landscaping & Play area works.
 - Phase 3: design and build for the changing rooms
 - Phase 4: landscaping

Key/Non Key decisions

10. This report deals with a key decision.

Policy implications

11. The delivery of this project fits with the council's objectives as outlined in the fairer future promises, specifically:

Promise 1: Value for Money
Promise 5: Nurseries and Childcare
Promise 6: A Greener Borough
Promise 9: Revitalised Neighbourhoods

Tender process

12. The council undertook a two stage tender process inviting six contractors selected from the council's Works Approved list.
13. The ITT was issued to all six contractors on 12 Oct 2016, with responses due 22 Nov 2016. A clarification process followed and as a result Neilcott Construction Ltd was awarded the PCSA contract as set out in the Gateway 2 report dated 9 January 2017.
14. With this two stage approach to procurement, there is an expectation and likelihood that the contractor appointed for pre-construction services would be appointed for the works contract, subject to the formal decision of the contracting authority to proceed. Value for money is obtained through the application of competitively tendered framework rates for main contractor's core costs (i.e. management, design, certain preliminaries and overheads and profit) and by competitive tendering of the works packages by the main contractor.

15. As the successful tenderer at Stage 1, Neilcott Construction Ltd was invited in January 2017 to submit a Stage 2 tender return against the Employer's Requirements, which consisted of the overall scheme proposals including the design and specification for the project developed by the design team led by Faithful & Gould.
16. Following the process of design development and packaging of the scheme proposals, Neilcott Construction Ltd submitted prices for Stage 2 on 3 April 2017. These costs were negotiated further to bring them within the project budget and make up the proposed contract sum for the main works and a revised price was submitted on 21 April 2017.

Tender evaluation

17. As the quality assessment was undertaken as part of the Stage 1 tender evaluation, no further qualitative assessment was considered at the second stage.

Stage 2 – Construction Assessment

18. Following the PCSA design period, Neilcott Construction Ltd was required to submit a final construction cost for the works. This cost breakdown was then compared against the cost plan submitted within the Stage 1 tender submission.
19. The council received Neilcott Construction's original submission for these works in April 2017. However, it was not considered good value for money by the council's cost consultants and was over their initial proposal.
20. As a result, discussions have taken place between the capital projects team, Neilcott Construction Ltd and the council's professional services team, and their proposed cost plan and submitted rates have been subject to further interrogation. The final cost proposal submitted by Neilcott Construction Ltd on 21 April 2017 is within the initial proposal and represents value for money. Further details are set out in the closed report.
21. The council's external cost consultant has reviewed the final cost proposal from Neilcott Construction Ltd to ensure that it meets the council's requirements in terms of value for money. They have confirmed that, when benchmarked against comparative market data from other providers for similar projects, the price represents value for money. The council's external cost consultant has submitted a draft tender report and will submit a full tender report at the end of the process.

Plans for the transition from the old to the new contract

22. The terms of engagement and Employers Requirements predicated in the PCSA agreement shall form part of the Stage 2 Contract Documentation.

Plans for monitoring and management of the contract

23. Monitoring and management of the contract will be carried out by Faithful & Gould (Project Manager, Quantity Surveyor, & Principal Designer) and Turkington Martin (Client side Landscape Architect). On-going management during construction will be through the necessary change control protocol

identified within the JCT Design and Build Contract 2011 and through the council's internal governance arrangements.

Identified risks for the new contract

	RISK	RISK LEVEL	MITIGATION ACTION
1.	Contractor has inadequate resources and management arrangements to deliver the main works project.	Low	The project team has ensured that the Contractor plans to – (1) deploy adequate resources and is willing to supplement additional resources to the project, if required. (2) put adequate management arrangements in place to deliver the project.
2.	Insolvency of contractor.	Low	An up-to-date financial check was obtained and this found the contractor to be at 'very low risk'. Neilcott is to provide a parent company guarantee as a condition of contract. The council shall closely monitor performance of firm once appointed.
3.	Construction delays on site due to: <ul style="list-style-type: none">• Hidden obstructions below ground; and• Contamination below ground.	Low	Desktop studies and non-intrusive surveys have been undertaken to anticipate and plan for potential hazards on site. Investigation and remediation works undertaken in enabling works contract have de-risked the site in readiness for the main contract works.
4.	Construction delays on site and additional costs.	Medium	Neilcott will pre-order components with long delivery period. Ensure that site operations are thoroughly and realistically planned, prior to commencement of the works. Allow appropriate contingency provision in the programme to cover possible loss and expense claims arising from delay and disruption of the works. Include Liquidated Damages for non-completion of contract by the contractor. This is also assisted by appointing Neilcott Construction Ltd which ensures consistency across the project.
5.	Delay to approval of planning conditions.	Low	The majority of planning conditions have now been discharged. Any further planning approvals will be submitted for planning approval in a timely manner to allow for approval periods.

RISK		RISK LEVEL	MITIGATION ACTION
6.	Default by key subcontractor/supplier.	Low	A select list of well established sub-contractors by trade maintained by the main contractor, which includes financial health checks and performance monitoring.
7.	Delay to final agreement of contractor's proposals and contract documents.	Low	On going monitoring and forward programming to ensure close can be achieved.

Community impact statement

24. The proposed redevelopment of the Peckham Rye Park and Common is intended to provide a range of public services of benefit to the local community. One of the main objectives of the design brief for the revitalisation of Peckham Rye will be to ensure the facilities are accessible to all members of the community regardless of age, disability, faith/religion, gender, race and ethnicity and sexual orientation.

Social Value considerations

25. The Public Services (Social Value) Act 2012 requires that the council considers, before commencing a procurement process, how wider social, economic and environmental benefits that may improve the well being of the local area can be secured. The social value considerations included in the tender (as outlined in the Gateway 1 report) are set out in the following paragraphs in relation to the tender responses, evaluation and commitments to be delivered under the proposed contract.

Economic considerations

26. This proposal is bringing facilities up to a good standard enabling the service to continue existing provision with potential for reduced running costs to parks and leisure team budgets.
27. The completed works will benefit all the local community from improved access to community facilities and a community focal point.
28. Under promise 8 Education, employment and training of the Fairer Future Promises, the council has made a commitment to create 2,000 new apprenticeships by 2018. In accordance with council policy, Neilcott Construction Ltd has agreed to provide a minimum of two apprenticeship places. This is included within the contractual obligations and will be monitored in accordance with council policy.
29. The Stage 2 design and build contract for the main works to Revitalise Peckham Rye is recommended to be awarded to Neilcott Construction Ltd for a contract value of £ 2,897,794.

Social considerations

30. The council is an officially accredited London Living Wage (LLW) Employer and is committed to ensuring that, where appropriate, our contractors and subcontractors pay staff at a minimum rate equivalent to the LLW rate. Neilcott has confirmed that they already meet the LLW requirements. Following award, quality improvements and costs implications linked to the payment of LLW will be monitored as part of the contract review process.
31. The council can exclude companies who break the law by blacklisting if they are either still blacklisting or have not put into place genuine actions concerning past blacklisting activities. The council can require "self cleaning" which enables a potential contractor to show that it has or will take measures to put right its earlier wrongdoing and to prevent them from re-occurring and to provide evidence that the measures taken by the economic operator are sufficient to demonstrate it has:
 - "Owned Up": clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities
 - "Cleaned Up": taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct, and
 - "Paid Up": paid or undertaken to pay compensation in respect of any damage caused.
32. The council has requested the necessary information from Neilcott Construction Ltd (using the council's standard documentation in relation to blacklisting), and Neilcott Construction Ltd have confirmed that they have not taken part in any blacklisting. The contract conditions also include an express condition requiring compliance with the blacklist regulations, and include a provision to allow the contract to be terminated for breach of these requirements'.

Environmental/Sustainability considerations

33. The council aspires to deliver new buildings that will achieve at least BREEAM very good and whilst that is not required by planning in this instance, the design team have engaged an environmental consultant and have held workshops in order to ensure the design takes in to account the BREEAM standards and these have been incorporated in the design.
34. Neilcott Construction Ltd was assessed at the stage 1 tender return on how they will conduct the works in a sustainable manner, and provided a 'satisfactory' response to the sustainability question.

Market considerations

35. Neilcott Construction Limited is a large regional company, operating in London and the south east of England. They have the ability to deliver a wide range of construction projects and have previously operated in both the public and private sectors.

Staffing implications

36. The monitoring and management of the contract is provided for via the council's appointment of Faithful & Gould. The Regeneration - Capital Works and

Development team have oversight of this and this will be managed within the existing team resources.

Financial implications

37. The cost of £2,897,794 plus contingency can be met from existing budgets contained within "Revitalise Peckham Rye" project, capital code R-4020-0070.
38. In November 2014 Cabinet approved a capital cost set out in the closed report, in February 2017 a further increase was approved, taking the total budget for this project to £4.17m.
39. The total expenditure incurred against the capital allocation for the scheme will be monitored and reported on as part of the overall Capital Programme.
40. Staffing and any other costs connected with this recommendation are to be contained within existing business unit budgets.
41. Any future maintenance connected with the asset after completion of this contract to be contained within existing Leisure Directorate revenue budgets.

Investment implications

42. There are no investment implications.

Second stage appraisal (for construction contracts over £250,000 only)

43. In undertaking an Experian credit rating, it is confirmed that Neilcott Construction Ltd is rated as 'below average risk company; little reason to doubt credit' transactions to the limit assigned.

Legal implications

44. Please refer to paragraphs 55-58 for the concurrent of the Director of Law & Democracy.

Consultation

45. The project team have undertaken a significant consultation process for this project. Numerous public consultation events have been held and feedback has been taken on board throughout the design process. A design reference group has been formed, with membership drawn from the local 'friend's of' group, the café operators, football clubs operating in the area, the play room managers and the local ward member. The project team will continue to meet with the design reference group throughout the construction process.

Other implications or issues

46. None.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance and Governance (CAP17/003)

47. This report seeks the approval of the chief executive for the award of the design and build contract for Revitalise Peckham Rye to Neilcott Construction Ltd for up to £2,897,794 for the main works over a contract period of 46 calendar weeks commencing in May 2017 and completing in March 2018, following a procurement process as detailed in the report.
48. The strategic director of finance and governance notes that the capital costs associated with this contract will be contained within the identified budgets as reflected in the financial implications.
49. It is also noted that the expenditure for this scheme will be monitored and reported as part of the overall capital programme.
50. Staffing, any future maintenance and any other costs connected with this contract to be contained within existing departmental revenue budgets.

Head of Procurement

51. This report seeks approval from the Chief Executive Approves the award of the design and build contract for Revitalise Peckham Rye to Neilcott Construction Ltd for £2,897,794, and a contingency amount as detailed in the closed report, for the main works over a contract period of 46 calendar weeks.
52. As the value of the works fall below the EU threshold it was not necessary to undertake an EU compliant tendering process. Tenders were therefore sought from suppliers on the council's works approved list in accordance with CSOs, on the basis of a two stage design and build procurement route. In January 2017 a Gateway 2 was approved to appoint Neilcott Construction Ltd, the successful tenderer at Stage 1, for pre-construction services in relation to this project. In line with the nature of a two staged approach to procurement, as detailed in paragraph 15, Neilcott Construction Ltd were then invited in January 2017 to submit a Stage 2 tender return against the Employer's Requirements for the main contract subject to value for money being demonstrated and satisfaction of the council's requirements.
53. Neilcott Construction Ltd's final cost proposal has been reviewed against comparative market data and the council's cost consultants have confirmed that the project represents value for money and meets the council's requirements.
54. The report confirms the monitoring and management arrangements that will be in place during the life of the contract including how apprentices taken on by the contractor as a result of this contract will receive the necessary skills training.

Director of Law and Democracy

55. This report seeks the approval of the chief executive to the award of contract for Revitalise Peckham Rye to Neilcott Construction Limited, as further detailed in paragraph 1. As the decision falls within the circumstances noted in contract standing order (CSO) 6.5.2(i) it must be taken by the relevant chief officer or

under their delegated authority in line with the department's scheme of management.

- 56. As the value of the works fall below the EU threshold it was not necessary to undertake an EU compliant tendering process. Tenders were therefore sought from suppliers on the council's works approved list in accordance with CSOs, on the basis of a two stage design and build procurement route. Neillcott Construction have already been appointed for the pre-construction services in relation to this project, which was approved in January 2017. As noted in paragraph 15, the nature of a 2 stage procurement approach is that there is an expectation that the contractor appointed for pre-construction services will be appointed for the main contract, subject to value for money being demonstrated. This has been confirmed, as noted in paragraph 21.
- 57. The chief executive's attention is drawn to the Public Sector Equality duty (PSED General Duty) under the Equality Act 2010, and when making decisions to have regard to the need to (a) eliminate discrimination, harassment, victimisation or other prohibited conduct, (b) to advance equality of opportunity and (c) foster good relations between persons who share a relevant protected characteristic and those who do not share it. The relevant characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation, The duty also applies to marriage and civil partnership but only in relation to (a). The chief executive is specifically referred to the community impact statement at paragraph 24 setting out the consideration that has been given to equalities issues which should be considered when approving this award.
- 58. CSO 2.3 requires that no steps are taken to award a contract unless the expenditure involved has been included in approved estimates or is otherwise approved by the council. Paragraphs 37-41 confirms the financial implications of this award.

PART A – TO BE COMPLETED FOR ALL DELEGATED DECISIONS

Under the powers delegated to me in accordance with the council's Contract Standing Orders, I authorise action in accordance with the recommendation(s) contained in the above report.

Signature 

Date 10/5/17

Designation Director

PART B – TO BE COMPLETED BY THE DECISION TAKER FOR:

- 1) All key decisions taken by officers
- 2) Any non-key decisions which are sufficiently important and/or sensitive that a reasonable member of the public would reasonably expect it to be publicly available.

1. DECISION(S)
As set out in the recommendations of the report.

2. REASONS FOR DECISION
As set out in the report.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED BY THE OFFICER WHEN MAKING THE DECISION
Not applicable.

4. ANY CONFLICT OF INTEREST DECLARED BY ANY CABINET MEMBER WHO IS CONSULTED BY THE OFFICER WHICH RELATES TO THIS DECISION
N/A

5. NOTE OF ANY DISPENSATION GRANTED BY THE MONITORING OFFICER, IN RESPECT OF ANY DECLARED CONFLICT OF INTEREST
<i>If a decision taker or cabinet member is unsure as to whether there is a conflict of interest they should contact the legal governance team for advice.</i>
N/A

6. DECLARATION ON CONFLICTS OF INTERESTS
I declare that I was informed of no conflicts of interests.*
or
I declare that I was informed of the conflicts of interests set out in Part B4.*
(* - Please delete as appropriate)

BACKGROUND DOCUMENTS

Background documents	Held At	Contact
Gateway 1 – Procurement Strategy Approval: Revitalise Peckham Rye – Works	Chief Executive's Department / Regeneration / 5 th floor Tooley Street	Laura Wannop 020 7525 5352
Gateway 2 - Contract Award Approval: Revitalise Peckham Rye Stage 1 Tender return and Pre-Construction Services Agreement	Chief Executive's Department / Regeneration / 5 th floor Tooley Street	Laura Wannop 020 7525 5352

APPENDICES

No	Title
None	

AUDIT TRAIL

Lead Officer	Bruce Glockling, Head of Regeneration – Capital Works & Development	
Report Author	Laura Wannop, Project Manager	
Version	Final draft	
Dated	27 April 2017	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Finance and Governance	Yes	Yes
Head of Procurement	Yes	Yes
Director of Law and Democracy	Yes	Yes
Cabinet Member	N/A	N/A
Contract Review Boards		
Departmental Contract Review Board	Yes	No
Corporate Contract Review Board	N/A	N/A
Cabinet	N/A	N/A
Date final report sent to Constitutional Team		9 May 2017