

Item No.	Classification: Open	Date: March, 2019	Meeting Name: Strategic Director of Environment and Leisure
Report title:		Gateway 1 Procurement Strategy Approval Lost Peck Flood Alleviation and Environmental Improvement Scheme - Construction Contract	
Ward(s) or groups affected:		Peckham Rye Rye Lane	
From:		Strategic Director of Environment & Leisure	

RECOMMENDATION (S)

1. That the Strategic Director of Environment & Leisure approves the procurement strategy outlined in this report to procure a supplier through the Environment Agency's (EA) Next Generation Supplier Arrangement (NGSA), Programme Development Unit (PDU), for the construction of the Lost Peck Flood Alleviation and Environmental Improvement Scheme for a period of eighteen months from October 2019 for an estimated total contract value of £1 million.

BACKGROUND INFORMATION

2. As Lead Local Flood Authority (LLFA) under the Flood and Water Management Act 2010 (the Act), Southwark Council embarked on flood investigations and identified areas at relatively higher risk of flooding and prioritised them for flood mitigation schemes. One of such critical drainage areas is Peckham Rye.
3. A scheme has therefore been developed at Peckham Rye Common and Park, consisting of vegetated bunds to hold back storm water from flooding properties downstream. It will also deliver environmental enhancements such as reconnecting the green spaces previously fragmented by roads including the triangle just north of East Dulwich Road (the 'Northern Triangle'), targeted vegetation planting, biodiversity improvements, as well as redevelopment of the derelict wide footway just south of East Dulwich Road, ('Donkey Ride') to improve public access including installation of approximately 130 m of new cycle path.
4. The scheme is described in more detail in paragraphs 5 to 9 below; further information can also be found in the background documents.

Summary of the business case/justification for the procurement

5. The scheme has been designed to provide protection for flood events from a storm likely to occur once in 75 years, representing a flood event with a 1.33% probability of occurring each year. At its peak, the approximately one metre high bunds will protect downstream properties by temporarily holding back surface water runoff (estimated at 14,650 m³) which would otherwise flood areas around Rye Lane. A Map of areas at risk of surface water flooding is presented in Appendix 1.
6. Hydraulic modelling estimates that 318 properties are at risk of surface water flooding during a 1 in 75 year storm, including 231 residential properties and 87 non-residential properties. Following implementation of the scheme, it is projected

that 267 (84%) of these properties would be protected from surface water flooding, including 210 residential and 57 non-residential properties.

7. An economic assessment estimated that in the absence of the scheme, economic damages of approximately £11.5 million would be incurred in the event of flooding at affected areas. These damages would be reduced to around £5.5 million following implementation of the scheme, representing an economic benefit or damages avoided of £6 million.
8. The proposed measures will integrate environmental and flood alleviation objectives to provide multiple benefits to the community, improve biodiversity and enhance the local environment.
9. In addition to achieving flood risk management objectives, the scheme has been developed to deliver multiple benefits for the community, including:
 - enhancement of the current underutilised green space immediately north of East Dulwich Road,
 - enhancing the biodiversity value of this area of the common, through targeted use of native plant species,
 - creating connectivity between the existing green spaces,
 - improving the currently derelict historic 'donkey ride' area along East Dulwich Road, reclaiming this aspect of the common and creating a positive space. This is partly funded by Cleaner, Greener, Safer (£70,000),
 - celebrating and recognising the history of the Lost River Peck, through themed environmental enhancements and educational boards and
 - improvement to local air quality and noise levels through enhanced buffer planting around the road boundary in the Northern Triangle.

Market considerations

10. To achieve best quality and minimise risks, it is preferred that the chosen contractor should have experience of delivering flood risk management and environmental enhancement works. This is a 'niche' market that the council does not often contract for and has limited experience of. Also, there is uncertainty about the suitability of contractors on the approved contractors list.
11. It is therefore recommended to utilise the specialist suppliers available to the council by using the Environment Agency's Next Generation Supplier Arrangement (NGSA), Programme Delivery Unit (PDU). With this new arrangement a contractor is assigned to each geographic area to provide specialist flood and environmental services to the Environment Agency and other Flood Risk Authorities. It is a refinement of the current framework arrangement where two contractors are assigned to each geographic area and performance on the current arrangement is a key factor in selecting contractors for the NGSA.
12. The EA's decision to appoint one supplier per area was based on the judgement that it would best reflect the commercial need of users and establish value for money as it facilitates closer collaboration and allows consideration and discussion of commercial risk much earlier in the process. Moreover, value for money benchmark assessment is an important component of this collaborative approach.

KEY ISSUES FOR CONSIDERATION

Options for procurement route including procurement approach

13. The table below outlines the procurement options and their relative merits:

Options	Advantages	Disadvantages
Use of term contractor (single supplier negotiation)	<p>Benefit of early contractor engagement during the design process</p> <p>Less complex legal processes to be followed</p> <p>Less resources/input required from the Council in procurement process</p>	<p>Limits opportunities for competitive tendering and ensuring best value</p> <p>Council contractors are less likely to have specialist experience of delivering niche services for flood defence works.</p>
Mini-competition (from selected contractors known to have relevant experience on the approved list)	<p>The council has full control of the process particularly with respect to the public interface</p> <p>Could yield better value for money</p> <p>Could use the council's standard conditions</p>	<p>Significant time and resources to be spent in the tender process, including researching contractors, obtaining and evaluating quotes</p> <p>May lose the benefit of early contractor involvement in the design while going through the tender process</p> <p>Timescale for the tender process may adversely impact on the delivery programme</p>
Single supplier in our geographic area allocated from the Environment Agency's (EA) Programme Delivery Unit (PDU)	<p>May yield better value for money by benefiting from the EA's two-staged highly competitive procurement processes (NGSA and PDU)</p> <p>Existing framework in place which has met the EA's robust procurement guidelines and requirements including a robust price benchmarking exercise</p> <p>Minimises resources/input required from the Council as the EA has already gone through the process of selecting contractors with the requisite experience and reputation.</p> <p>Benefit of early contractor involvement during the design process in addition to technical support from the EA.</p>	<p>Limited to a single supplier within the geographically based PDU</p> <p>May have to work under the terms and conditions of the framework although there is potential to negotiate some terms with the supplier</p>

Proposed procurement route

14. Based on the above evaluation, it is proposed to procure a single contractor through the EA's PDU.
15. A single supplier is allocated by the EA to each geographically based PDU. The supplier is to be selected from the EA's pool of specialist suppliers in the NGSAs framework following a further competitive process. For those in the existing framework, their current performance level is a key factor in selection process. The PDU supplier would therefore have gone through two rounds of competition.
16. This approach is preferred since it ensures the procurement of a supplier that has already met robust standards and is a specialist within a niche market. It will save the council significant time and resources which would otherwise have been employed in a tendering process. Additionally, the scheme will benefit from early contractor involvement during the development of detailed designs, which is not likely if procuring a contractor via a full-scale tendering process.
17. The contract has set standard unit costs (£/metre) for flood defence structures such as bunds for NGSAs suppliers following a detailed benchmarking exercise to ensure competitive pricing. Additionally, the quality/cost split for evaluation purposes is confirmed as 70/30.
18. PDUs have been set up to be the default delivery route for procuring the majority of the EA's uncommitted capital flood risk management projects and are also able to provide assistance to other Risk Management Authorities, including Lead Local Flood Authorities.
19. PDUs were established to improve overall confidence in delivery, with benefits including increased speed of delivery, greater quality, improved communication, improved risk management as well as improved health, safety and welfare as set out in the EA's PDU Handbook.
20. PDUs are geographically based and it is therefore proposed that the supplier will be allocated from PDU3 which covers Kent, South London and East Sussex. The specific contractor will be known when the new framework goes live in April 2019.

Identified risks for the procurement

21. Identified risks and mitigation actions are summarised in the table below:

No.	Risk	Risk Level	Mitigating Action
1	Inability to secure a suitable contractor via the Environment Agency's Programme Delivery Unit	Low	We have entered into discussions with the EA who have confirmed that contractors on their framework possess the relevant experience to deliver these works

2	Lack of 'buy-in' by local interest groups and public halting the project.	Low	Extensive public consultation and engagement have been conducted to develop a scheme which is widely supported, including public meetings and an online consultation. We have engaged with relevant groups including the Friends of Peckham Rye Park, the Peckham Society and local residents' associations and will continue to work with stakeholders at the detailed design and implementation stages
3	Programme and cost over-run	Medium	Early contractor engagement will facilitate more accurate estimates of timescales and cost
4.	Inability to obtain planning consent	Low	Early and ongoing discussion with the Local Planning Authority
5	Failure to secure funding from the Environment Agency	Low	The scheme is being developed in collaboration with the Environment Agency including preparation of a Business Case
6	Shortfall in EA funding	Low	Early identification of funding gap following completion of business case and early application for additional levy funding. Additional Thames Water funding is being explored.
7.	Failure to secure approval from the Secretary of State for working on common land	Medium	Early and continued engagement with key stakeholders associated with Common Land to secure support for the scheme

Key/Non Key decisions

22. This report deals with a non key decision.

Policy implications

23. The procurement of construction services will actively identify opportunities to manage flood risk in a manner that seeks to deliver on the council's vision for the borough, placing emphasis on solutions that enhance the safety of residents and businesses and provide multiple benefits.

24. It is intended to engage with local communities in planning the construction of the scheme. It will be transparent, participative and more responsive to local needs and aspirations.

25. The construction will be sensitive to the usage and character of the parks and open spaces and will ensure disruptions are minimised.

Procurement project plan (Non Key decisions)

Activity	Complete by:
DCRB Review Gateway 1:	06/03/2019
Brief relevant cabinet member (over £100k)	21/03/2019
CMT Review Gateway 1:(if applicable)	N/A
Approval of Gateway 1: Procurement strategy report	29/04/2019
Completion of tender documentation	31/05/2019
Invitation to tender	N/A
Closing date for return of tenders	N/A
Completion of clarification meetings/presentations/evaluation interviews	N/A
Evaluation of technical, quality and financial proposals received from the relevant PDU contractor and negotiation on specific terms. Completion of evaluation of tenders	15/07/19
Forward Plan (if GW2 is key decision)	31/06/2019
DCRB Review Gateway 2: Contract award report	17/08/2019
Brief relevant cabinet member (over £100k)	28/08/2019
CMT Review Gateway 2: Contract award report (if applicable)	N/A
Notification of forthcoming decision (if GW2 is key decision)	08/08/2019
Approval of Gateway 2: Contract Award Report	30/08/2019
End of scrutiny Call-in period and notification of implementation of Gateway 2 decision (If GW2 is key decision)	21/09/2019
Debrief Notice and Standstill Period (if applicable)	N/A
Contract award	21/09/2019
Add to Contract Register	21/09/2019
Place award notice on Contracts Finder	24/09/2019
Contract start	01/10/2019
Contract completion date	31/03/2021

TUPE/Pensions implications

26. There are no specific implications. No staff transfers are involved.

Development of the tender documentation

27. It is intended that the detailed design process benefits from early contractor involvement and input. The outline design drawings and specifications which will be used for planning application will therefore be used for the procurement process and the detailed design will be undertaken once the contractor is on board. .

Advertising the contract

28. No advertising will be undertaken since the contract will be procured through the EA's PDU that has been advertised in the OJEU and in line with the EU regulations.

Evaluation

29. The council's Flood Risk Team will evaluate the technical, quality and financial proposals from the EA's PDU contractor to ensure they meet the council's requirements and benchmark that against the Herne Hill Flood Alleviation scheme which applied a similar design concept and involved the construction of earth bunds and associated drainage works.

Community impact statement

30. In line with the council's Public Sector Equality Duty under the Equality Act 2010, this decision has been judged to have no or a very small detrimental impact on local people and communities. The scheme will have a positive impact on a significant number of local residents, businesses and visitors by reducing the risk of flooding and enhancing the local environment. As the scheme is to be implemented in Peckham Rye Common and adjacent green spaces, some public amenities may be out of use for a limited period during construction works. This should not adversely impact any particular group of people.

Social Value considerations

31. 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 wellbeing of the local area can be secured. The details of how social value will be incorporated within the tender are set out in the following paragraphs.

Economic considerations

32. By reducing the risk of flooding from surface water, the proposed scheme is likely to reduce economic losses including but not limited to damage to properties and vehicles, loss of income due to closed businesses, travel delays due to closed roads and insurance claims.
33. By enhancing the existing green spaces, public access and sustainable transport, we anticipate that the scheme will promote the economic development of the area by encouraging people to walk, cycle, visit and spend time and money in and around Peckham Rye Common.

34. The contractor will be encouraged to source and purchase products from the local area where possible to support the local economy.
35. We anticipate that any disruption during the construction of the scheme will be very limited and occur only for a temporary period during the works.

Social considerations

36. The council is an officially accredited London Living Wage (LLW) Employer and is committed to ensuring that, where appropriate, contractors and subcontractors engaged by the council to provide works or services within Southwark pay their staff at a minimum rate equivalent to the LLW rate. The requirement that London Living Wage be paid to contractor's staff working on this contract is one that will be incorporated in the framework's terms and conditions.
37. The stakeholder engagement activities that will be undertaken as part of the scheme construction and opening will enhance social cohesion.

Environmental/Sustainability considerations

38. Construction methods to be applied will be sympathetic to the existing character and uses of the park and open space. Measures to be constructed will not only reduce flood risk but also enhance the environment and improve the amenity value of the park and the common.
39. The contractor will be required as far as reasonably possible to reduce the import of material and re-use/recycle materials.

Plans for the monitoring and management of the contract

40. A project board will be established to include representatives of key stakeholders such as the EA, Friends of Peckham Rye Park, the scheme designer and the contractor. The project board will meet monthly. The project board will report to the Central South Flood Partnership which is chaired by the cabinet member for environment, transport management and air quality. The partnership meets quarterly. The partnership will in turn report to the Thames Regional Flood and Coastal Committee.

Staffing/procurement implications

41. There are no specific implications. Additional staff will not be required as a result of this contract.
42. The Council's in-house Flood Risk Management team will continue to liaise with other flood risk partners to facilitate the successful delivery of the project.

Financial implications

43. The estimated total capital cost of the scheme (including design, investigations costs and contingency) is £1,000,000. Scheme development was funded by the EA. The business case for the detailed design and implementation of the scheme is currently being developed in collaboration with the EA.
44. The quantum of funding to be secured through the Flood Defence Grant in Aid (FDGiA) process for scheme implementation will be determined by the partnership

score which in turn depends on the number of properties protected. The higher the partnership score the more funding will be allocated to the scheme.

45. A contribution of £70,000 has also been secured from the Council's Cleaner, Greener and Safer Fund specifically for improving the donkey ride area.

Investment implications

46. The Council will own the assets delivered and will be responsible for managing them over their lifetime.

Legal implications

47. On the basis of the estimated value of the project the procurement of the construction works would not be subject to the application of the (EU) Public Contracts Regulations 2015. However, paragraphs 10 to 20 note the proposal to engage a specialist contractor which is to be appointed to a framework managed by the Environment Agency following an EU compliant procurement process and assigned to a geographical PDU. This will be subject to a satisfactory evaluation by the council of the specialist contractor's costed proposal for the project.
48. The procurement of a specialist contractor through a single supplier negotiation process is also consistent with the council's Contract Standing Orders, which allow an exemption from the prescribed tendering requirements to be granted where exceptional circumstances exist.
49. Officers will seek and obtain advice from the Director of Law and Democracy in relation to the terms of the works contract forming part of the EA's framework and will ensure that the council's local requirements are included.

Consultation

50. Extensive public consultation has been conducted to gain local knowledge of the area as well as to secure community support for the proposed scheme. Consultation activities included site walks, letter drops, community workshops, and attendance at community council, community groups and residents' association meetings.
51. An online consultation was conducted from June to August 2018. Of the 80 residents who completed the questionnaire, 72% agreed that the scheme is the right approach to flood mitigation in the area, with 20% unsure and 8% in disagreement.
52. Public opinion was also sought for options proposed for the 'Donkey Ride' and 63% of the respondents supported the construction of a cycle lane on the stretch.
53. Respondents were also generally supportive of proposed environmental improvement to the triangular area just north of East Dulwich Road ('Northern Triangle').
54. On completion of the online consultation, an exhibition was held on Saturday, 8 September 2018 where the results were presented. The event allowed residents to receive feedback on the online consultation and offered opportunities to those who had concerns about the scheme to discuss them with the project team.

Other implications or issues

55. Southwark council will take ownership and be responsible for the maintenance of the assets to be constructed. From the experience of managing the construction and maintenance of the Herne Hill Scheme, the cost associated with maintenance is expected to be minimal.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Head of Procurement

56. Since the estimated cost of the proposed project cost is below the EU threshold, a formal concurrent is not required.

Director of Law and Democracy

57. A formal legal concurrent is not required for this report as the estimated value of the proposed construction works is below the EU advertising threshold.

Strategic Director of Finance and Governance (CAP18/068)

58. The strategic director of finance and governance notes the recommendation to the strategic director of Environment and leisure to approve the procurement strategy outlined in this report to procure a supplier through the Environment Agency's Next Generation Supplier Arrangement (NGSA) Programme Development Unit (PDU) for the construction of the Lost Peck Flood Alleviation and Environmental Improvement Scheme for a period of eighteen months from October 2019 for an estimated total contract value of £1 million.

59. The strategic director of finance and governance also notes the resource/financial implications contained in the report and expects all funding sources to be confirmed before award of contract.

60. It is also noted that officers' time and any other costs connected with this recommendation will be contained within existing departmental revenue budgets.

Director of Exchequer (for housing contracts only)

N/A

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: 26th March 2019

Designation: Strategic Director of Environment & Leisure

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
As set out in the report.

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

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>

<p>5. NOTE OF ANY DISPENSATION GRANTED BY THE MONITORING OFFICER, IN RESPECT OF ANY DECLARED CONFLICT OF INTEREST</p> <p><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></p>

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

BACKGROUND DOCUMENTS

Background Documents	Held At	Contact
Peckham Rye Briefing Note	Flood Risk Management	John Kissi 020 7525 2062
Link: S:\FLOOD RISK MANAGEMENT\Flood Alleviation Schemes\Peckham Rye\09 - Docs, Repts & Drwgs\01 - Documents\Gateway Report\Supporting documents		
Peckham Rye Economic Analysis Technical Note	Flood Risk Management	John Kissi 020 7525 2062
Link: S:\FLOOD RISK MANAGEMENT\Flood Alleviation Schemes\Peckham Rye\09 - Docs, Repts & Drwgs\01 - Documents\Gateway Report\Supporting documents		
Base Model and Options Technical Note	Flood Risk Management	John Kissi 020 7525 2062
Link: S:\FLOOD RISK MANAGEMENT\Flood Alleviation Schemes\Peckham Rye\09 - Docs, Repts & Drwgs\01 - Documents\Gateway Report\Supporting documents		
Environment Agency, Programme Delivery Units Handbook	Flood Risk Management	John Kissi 020 7525 2062
Link: S:\FLOOD RISK MANAGEMENT\Flood Alleviation Schemes\Peckham Rye\09 - Docs, Repts & Drwgs\01 - Documents\Gateway Report\Supporting documents		

APPENDICES

No	Title
Appendix 1	Flood Map for Peckham Rye
Appendix 2	
Appendix 3	
Appendix 4	

AUDIT TRAIL

Lead Officer	Dale Foden	
Report Author	John Kissi	
Version	Final	
Dated	March 2019	
Key Decision?	No	
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
Director of Exchequer (for housing contracts only)	N/A	N/A
Cabinet Member	No	No
Contract Review Boards		
Departmental Contract Review Board	Yes	Yes/No
Corporate Contract Review Board	N/A	N/A
Cabinet Member	Yes/No	Yes/No
Date final report sent to Constitutional /Community Council/Scrutiny Team	Date/Month/Year e.g. 5 July 2010	

BACKGROUND DOCUMENT - CONTRACTS REGISTER ENTRY FORM - GATEWAY 1

Contract Name	Lost Peck Flood Alleviation and Environmental Improvement Scheme – Construction Contract
Contract Description	To provide specialist construction services in the implementation of the above scheme.
Contract Type	Works
Lead Contract Officer (name)	Dale Foden
Lead Contract Officer (phone number)	02075252045
Department	Environment and Leisure
Division	Highways
Procurement Route	Single supplier via Environment Agency's Programme Development Unit
EU CPV Code (if applicable)	N/A
Departmental/Corporate	Departmental
Fixed Price or Call Off	Call Off
Contract Total Value	£1,000,000
Contract Annual Value	£1,000,000
Contract Start Date	01/10/2019
Initial Term End Date	31/03/2021
Number of Remaining Contract Extensions	0
Contract Review Date	01/06/2020
Revised End Date	N/A
SME/ VCSE (If either or both include Company Registration number and/or registered charity number)	N/A
Comments	
London Living Wage	Required

On approval by the decision maker this document should be passed to the member of staff in your department who is responsible for keeping your departmental contracts register up to date.