

Item No.:	Classification: OPEN	Date: 22nd February 2006
To	The Strategic Director of Environment and Leisure	
Report title	Gateway 2 – Contract Award Approval Peckham Pulse Water Leak Repairs Contract Construction works by Makers UK Ltd (the preferred contractor)	
Ward(s) or groups affected	Peckham and other Wards	
From	Andrew Brown	

RECOMMENDATIONS

1. That the Strategic Director of Environment and Leisure approve the award of the Construction Works Contract for the Peckham Pulse Water Leak Repairs to Makers UK Ltd in the sum of £1,198,546.90p subject to a satisfactory financial appraisal by the Head of Procurement (paragraph 23, below).

BACKGROUND

2. In September 2005, the Strategic Director of Environment and Leisure approved the procurement strategy outlined in the Gateway 1 report dated 28.07.05, for remedial works to the defective pipework at the Peckham Pulse Leisure Centre. This strategy was developed in response to the requirement for early involvement of a suitable works contractor to start site excavation, conduct further investigative works, advise on buildability issues and, in conjunction with the Council's team of professional consultants, to develop a compliant tender for the construction works.
3. As detailed in the report, the procurement process selected for the project was a two-stage tendering process, which enabled the early involvement of the contractor in developing a preferred design solution.

The first stage tender submission for the Pre-Construction Stage covered :

- the resources required to provide Pre-Construction Services (which included the development of the design solution);
- construction preliminaries;
- Contractor's overheads and profit rates for the subsequent stage;
- method statements for a number of critical aspects of the work.

The second stage tender covers :

- a price for construction works based on developed design proposals.

4. In October 2005, the Strategic Director of Environment and Leisure approved the recommendation of the Gateway 2 report dated 7 October 2005, to award the Pre-Construction Services Contract (Stage 1) to Makers UK Limited in the sum of £34,034.14.
5. This Pre-Construction Services Contract was completed with the submission of the Tender for Construction Works Contract (Stage 2) on 10 February 2006.
The recommendation for approval (above) is for the Construction Works Contract (Stage 2).

6. Timetable of procurement process followed:

Activity	Date completed
Gateway 1: Approval given for procurement strategy	<i>Signed off by Gill Davies September 2005</i>
Completion of tender documentation	10/02/06
Advertise the contract	<i>From Stage 1 award so n/a</i>
Closing date for expressions of interest	<i>From Stage 1 award so n/a</i>
Invitation to tenders	10/10/05
Closing date for return of tenders	13/02/06
Completion of evaluation of tenders	13/02/06
Completion of any post-tender clarification meetings	N/A
Closing date for best and final offers (in the case of a negotiated tender)	N/A
Completion of final talks and agreement with supplier	N/A
Gateway 2: Approval of Construction Stage Contract (this report)	February 2006
Start date of contract (construction work)	March 2006
Completion of contract	October 2006

7 The award of the contract is a Key Decision :

- the award will incur expenditure in excess of £500,000.
- the restoration of the pool facility will have a significant impact on communities in the Peckham Ward and beyond.

The Key Decision is not included on the Forward Plan because of a misunderstanding over requirements relating to Chief Officer decisions. A General Exception is sought and the requirements of Rule 16 of the Access to Information Procedure Rules have been complied with .

Description of contract outcomes

8. Acceptance of the second stage proposals for the project will:

- allow the remedial and maintenance works to commence, with the ultimate intention that the swimming pools be re-opened and normal service be restored to the public at the earliest opportunity;
- undertake a number of relatively minor general upgrading works within the pool halls, already planned as part of a general 'facelift' to revitalise the centre after almost 8 years of heavy public use;
- permit the gathering of evidence of the cause of the water leaks.

Provision is made for all these elements within the scope of works and tender sums for the contract, which is based on the GC/Works/1 1998 form of contract (including the Council's standard amendments).

KEY ISSUES FOR CONSIDERATION

Policy implications

- 9 Peckham Pulse is the most modern and popular leisure centre in Southwark. The pool closure therefore represents the loss of a significant amenity to local residents, and the loss of considerable revenue to the facility's operators. The availability of good quality sports and recreational facilities within the borough, to encourage more people to take regular exercise, thereby improving their health, is an important component of the Corporate Plan. The restoration of the pools at Peckham Pulse for use by the public at the earliest possible time is, therefore, a chief priority.

Tender process

- 10 The use of a two-stage tender based on GC/Works/1 (1998) form of contract, and invited in accordance with the NJCC Code of Procedure for Two Stage Selective Tendering, was approved following the Gateway 1 report.
- 11 The following budget provision for the project was approved, as identified in the Director's report to the Executive Committee on 22 November 2005 :

Budget Item	£
Site investigations and statutory fees	36,046
Remedial works	1,320,000
Project management, professional and legal fees	432,531
Project contingency	161,427
Total	1,950,004

- 12 A tender list of five firms was drawn up from the Council's approved list, and each was invited to tender for the contract consisting of the following elements :
 - a fee for the Pre-Construction Stage services;
 - construction works preliminaries prices; and
 - the rate at which overheads and profit would be charged on the stated estimates for the anticipated construction works.
- 13 Following the evaluation of the tenders, the tenderer, Makers UK Limited, which submitted the lowest priced bid and the best rated quality submission, was identified as the preferred contractor. The initial Gateway 2 report recommended that the Pre-Construction Services Contract be awarded to the preferred contractor. (see paragraph 4 above).
- 14 The Preferred Contractor, in conjunction with the Council's team of professional consultants, has assisted in the development of the project design, which subsequently adopted tunnelling as the method of working and submitted a tender for the Construction Stage Contract.
- 15 The pre-tender estimate for the Construction Works Contract was £1,200,000.

Tender analysis

- 16 The tender submitted on 10 February 2006 for the Construction Works Contract by the Contractor, Makers UK Limited is in the sum of £1,198,546.90p for a contract period of 28 weeks.
- 17 The Tender has been examined by the consultant Quantity Surveyor and the tender evaluation report is appended to this report for information (Appendix 1).
- 18 The tender submission as detailed in the appended report consists of :
- contract preliminaries costs (as included in the Stage 1 Tender and adjusted to accommodate design development changes);
 - priced items of work;
 - prime cost sums based on competitive quotations;
 - provisional sums;
 - the application of the Contractor's overhead costs and profit margin (as included in the Stage 1 Tender).
- 19 Value-for-money and commercial considerations
The tender received from the Contractor is considered to be its best offer. By virtue of its status as preferred Contractor, the Tenderer's submission for the Construction Works Contract is the lowest bid. The Tender is considered by the consultant Quantity Surveyor to represent value-for-money for the Council in most areas of the works. However, in respect of areas representing about 7.5% of the value of the works, it is not possible to establish that value-for-money would be achieved, and a commercial view has been taken. The examination of the Tender in respect of value-for-money and its commercial value to the Council is summarised at Appendix 2. This concludes that it is in the Council's best interests to accept the tender rather than retender the works.
- 20 Construction (Design and Management) Regulations
The Tenderer has submitted a Health & Safety Plan, which has been examined by the Planning Supervisor and found to require further development in a number of specialist areas. It has been referred back to the Tenderer for further action. The client should note that it must not allow works to commence on site until this plan has been adequately developed. The consultant Planning Supervisor will advise the client on this issue at the appropriate time.
- 21 Planning, Listed Building, and Building Regulation Approvals
The works consist of remedial and minor improvements and do not require planning approval. An application for Building Regulation approval has been made, and the commencement of work on site is conditional on it being received.
- 22 The tender submitted by Makers UK Limited is recommended and remains open for acceptance for 30 days.
- 23 Contractor's financial status
A financial appraisal of the Tenderer has been requested and the award of the contract is conditional on a satisfactory report from the Procurement Section of Strategic Services.

Plans for monitoring of the contract

- 24 The contract will be administered by the Construction Project Manager (CPM), SBDS Acting Head of Service. The project team comprises:

Lead Client officer:	Nigel Robinson (Southwark Parks and Sports)
User representative:	Matt Peatty (Fusion)
Project Management:	Andrew Brown, Mike Purdy (SBDS)
Lead consultant / architect:	John Bussy (SBDS)
Consultant structural engineer:	Alan Baxter & Associates
Consultant quantity surveyor:	Franklin & Andrews
Consultant planning supervisor:	Scott-White & Hookins (Health & Safety) Ltd
Legal Advisor:	Sharpe Pritchard (on behalf of the Borough solicitor)

- 25 The team of professional consultants appointed for the project has considered available options for safeguarding the Council's interest and has put in place a regime designed to optimise the effective monitoring and control of the contract. The key safeguarding measures are set out at Appendix 3.

Performance bond/Parent company guarantee

- 26 Arrangements are being made for the execution of the performance bond included in the tender.

Other considerations

- 27 Risk
A risk management workshop involving all key stakeholders was held on 10th January 2006 in order to establish by consensus a Risk Register for the project. This describes the main risks to the project in descending order of magnitude, including the management actions required for each risk, the person responsible for taking action and the deadline for action. A copy of the Risk Register, updated to reflect the current status, is included as Appendix 4.

Community impact statement

- 28 See policy implications at paragraph 9.
- 29 Sustainability Considerations – N/A
- 30 Market Development Considerations – N/A

Resource implications

- 31 Staffing Implications – N/A
- 32 Financial Implications – Approval is sought for the sum of £1,198,546.90p against the budget provision of £1,320,000 identified in the report to Executive Committee on 22 November 2005. Paragraph 8 refers that provisional sums have been included for maintenance, evidence gathering and minor upgrading. In view of the inherent risks attached to the proposed works, the difference between the tender sum and the budget provision will be retained as a project reserve.
- 33 Although extensive action has been taken to mitigate and control the risks inherent in the type of construction work involved, there remains a substantial element of uncertainty for the project. The risk register will be updated at key stages in discussion with main key stakeholders and any significant changes in cost, or extension of the timetable, arising from unforeseen circumstances will be reported to Strategic Director and Director of Finance. In addition the cost of the project will be monitored through the monthly performance monitoring meetings.

34 Concurrent with the repair project, action is being taken to obtain and record forensic evidence which may assist the Council's recovery of costs due to the failure of others. This is being done in such a way as not to hinder or delay the repair process and the re-opening of the pool facilities, which remains the first priority.

35 Investment Implications – not applicable.

Legal implications

36 The investigation and remedy of defects is being conducted in close consultation with the Council's legal advisor, Stephen Millen of Sharpe Pritchard, to ensure that the Council's position is safeguarded in the event of any future legal action.

Other implications or issues

37 None

Consultation

38 User Consultation is happening with information letters and a project information board at the centre.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Borough Solicitor

- 39 This report seeks the Strategic Director of Environment and Leisure's approval to the award of contract noted in recommendation 1. Contract Standing Order 8.4E provides that where an award of contract is to the lowest bid or is below the relevant EU threshold but is no more than 15% above the lowest bid it may be approved by Chief Officer. As noted in paragraph 13 of this report, Makers UK Limited submitted the lowest price bid at first stage and at this stage their bid represents value for money (except for the 7.5% value noted at paragraph 19).
- 40 Contract Standing Order 2.8 requires that no steps may be taken to award a contract unless the expenditure involved has been included in approved estimates or on capital or revenue accounts, or has been otherwise approved by, or on behalf of the Council. Paragraph 31 of this report sets out the resource implications and confirms how the contract is to be funded.
- 41 The Council's Constitution provides that a decision taker may only make a Key Decision in accordance with the requirements of the Executive Procedure Rules, Access to Information Rules and the Protocol for Key Decisions. This requires that a Key Decision (which include award of contracts in excess of £500,000 per year) may not be taken unless the matter is on the Forward Plan. Paragraph 7 of this report confirms that this Key Decision has not been included on the Forward Plan, describes why a General Exception is sought and confirms that the requirements of Rule 16 of the Access to Information Procedure Rules have been complied with .
- 42 Rule 16 provides that a Key Decision that has not been included on the Forward Plan may still be taken if:
- 42.1 The decision must be taken by such a date that it is impracticable to defer the decision until it has been included on the next Forward Plan and until the start of the first month to which the next Forward Plan relates;
 - 42.2 The proper officer has informed the Chair of the relevant Overview and Scrutiny Committee, in writing, by notice, of the matter to which the decision is to be made;
 - 42.3 The proper officer has made copies of that notice available to the public at the offices of the Council; and
 - 42.4 At least 5 clear days have elapsed since the proper officer complied with 40.2 and 40.3 above.
- 43 The Overview and Scrutiny Procedure Rules require at Rule 18.4 that where a Key Decision is made by an Officer, the decision must be published, sent to all Members and shall be made available at the main offices of the Council (normally within 2 days of being made). Rule 18.5 provides that the decision will come into force and can be implemented only after the expiry of 5 clear working days after the publication of the decision unless the Overview and Scrutiny Committee objects to it and calls the decision in.

Finance Director

44. The Executive agreed on 22 November that the Finance Director set aside funds to meet the cost of the essential structural repairs and that the release of the funds be subject to his agreement. The Finance Director will only release funds after he has been satisfied that the costs have been properly incurred in the discharge of the contract.

Head of Procurement

44 **With an estimated award value of £1,198,546.90, this works procurement qualifies as a non-EU general procurement and this report confirms the compliance of this protocol with the invitation of five tenders from the Council’s Approved List.** The report author has confirmed that in addition to in-house evaluation, additional consultancy has reviewed the bid and confirmed that the offer represents best value for the Council and there is no reason to believe that a repeat tender exercise would improve this offer. Therefore, subject to satisfactory financial evaluations and an agreed health and safety plan, the best interest of the Council and the community are serviced by approving this award.

FOR DELEGATED APPROVAL

Under the powers delegated to me in accordance with the Council’s Financial Regulations, I authorise action in accordance with the recommendation contained in the above report.

Signature

Date.....

Designation

KEY POINT SUMMARY

- This procurement followed a general protocol.
- This contract is for services and works and is a new provision.
- EU Regulations are not applicable to this contract.

BACKGROUND PAPERS

Background Papers	Held At	Contact
Gateway 1 – Procurement Strategy Approval Peckham Pulse Water Leak Repairs	Environment & Leisure Department, Sport & Parks Division, 186 Walworth Road, London SE 17.	Nigel Robinson, Strategic Development Manager for Sport
Gateway 2 – Contract Award Approval Pre-Construction Services Contract Peckham Pulse Water Leak Repairs	Environment & Leisure Department, Sport & Parks Division, 186 Walworth Road, London SE 17.	Nigel Robinson, Strategic Development Manager for Sport
Report of the Director of Environment and Leisure Services to the Executive Committee (22 November 2005) : Peckham Pulse – Swimming Pool Restoration	Environment & Leisure Department, Sport & Parks Division, 186 Walworth Road, London SE 17.	Nigel Robinson, Strategic Development Manager for Sport

APPENDICES

Appendices number	Title of appendix
1	Peckham Pulse Water Leak Repairs – Quantity Surveyor's Tender Report Franklin & Andrews : 6 th February 2006
2	Peckham Pulse Water Leak Repairs – Value-for-Money Consideration SBDS : 10 th February 2006
3	Measures for Safeguarding Contract Performance SBDS : 10 th February 2006

AUDIT TRAIL

Lead Officer	Andrew Brown	
Report Author	Mike Purdy	
Version	Draft 7	
Dated	22/02/2006	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Legal: Borough Solicitor & Secretary	Yes	
Chief Finance Officer	Yes	
Head of Procurement	Yes	
Executive Member	No	
Date final report sent to Constitutional Support Services		