

Report for: Cabinet Member for Housing, Regeneration and Planning

Item number: 4

Title: Approval for the variation of the Council's existing contract with GVA Bilfinger for the provision of commercial advice for the High Road West regeneration scheme from a maximum contract sum of £499k to £679k

Report

authorised by: **Lyn Garner, Director of Regeneration, Planning and Development**

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Ward(s) affected: Northumberland Park

Report for Key/

Non Key Decision: Key decision

1. Describe the issue under consideration

- 1.1. In February 2015, GVA Bilfinger ('GVA') were procured to act as the Council's commercial consultants for the High Road West regeneration scheme ("the Scheme"). Specifically, they were procured to: support the Council identify the public sector funding requirement for the Scheme, develop a land assembly approach, support the Council through a procurement process to select a development partner and support the Council with ad-hoc commercial advice. The maximum approved contract sum was £499,000.
- 1.2. Since appointment, GVA have worked under the Council's instruction to progress the procurement process and initiate negotiations with landowners and businesses regarding the acquisition of their landholdings/business. GVA have also undertaken, under the ad-hoc element of the contract, some unforeseen work, including developing a Treasury Green Book appraisal to submit to HM Treasury and supported prolonged negotiations with the GLA regarding Housing Zone funding for North Tottenham.
- 1.3. Despite significant progress, the launch of the procurement process for the Scheme was delayed due to prolonged negotiations regarding public sector funding and the requirement to undertake extensive financial modelling and sensitivity testing. The procurement process will also take longer than originally

envisaged when GVA were appointed. This is due to the complex nature of the Scheme and the level of detail required from the Bidders. This, coupled with the need to expedite negotiations with key landowners and businesses and complete further financial modelling to meet our Housing Zone funding requirements has resulted in the need to extend the maximum contract sum by £180,000 on top of the existing approved contract sum of £499,000. This will allow GVA to continue to support delivery of the Scheme and meet the objectives/targets within the Housing Zone. There is scope within the Tottenham Regeneration budget to fund the increase to the contract sum.

2. Cabinet Member Introduction

- 2.1. Significant progress has been made in delivering the Scheme, including securing £62m of Housing Zone funding, initiating the procurement process and progressing negotiations with landowners and businesses. GVA's advice has been fundamental in securing this progress. GVA's advice, knowledge and experience of the Scheme will be critical in finalising the development agreement with a development partner, securing land assembly and starting on site in the next 18 months.
- 2.2. Whilst there is sufficient existing budget to fund the increase in the contract sum, in light of existing budget constraints across the Council, I have requested that Officers negotiate and secure best value from GVA. I believe that this has been achieved. It is also worth noting that the Council will be receiving £250k from the development partner once appointed and this, along with Housing Zone funding (related to acquisitions), can be utilised to offset fees related to bringing the High Road West Scheme to fruition.

3. Recommendations

- 3.1 That the Cabinet Member for Housing, Regeneration and Planning:
 - i. Grant approval for the variation of the Council's existing contract with GVA Bilfinger for the provision of commercial advice for the High Road West scheme by increasing the maximum contract sum from £499k to £679k.

4. Reasons for decision

- 4.1 GVA have to date led commercial and property negotiations for the Scheme on behalf of the council, as well as preparing the business case considered by Cabinet in December 2015 for the preferred delivery structure and detailed financial model. This proved instrumental in securing £62m of Housing Zone funding for North Tottenham. As such, they are the best fitted organisation as they have the detailed knowledge and understanding to support the progression and completion of the procurement in a timely fashion. Therefore, it is

recommended that the existing contract be varied to ensure that there is consistency of commercial advice as procurement, land assembly and business relocation work progresses.

5. Alternative options considered

- 5.1. The current maximum contract sum for the GVA contract does not provide sufficient cover to support the procurement process and concluding the development agreement nor could it provide funding for the further ad hoc work closely related to the Housing Zone.
- 5.2. An alternative would be for the Council to commence a new procurement process for a commercial advisor. This could take a minimum of three months from commencement to appointment, which would cause delay to the procurement process for the Scheme. The successful tenderer, if not GVA, would not have GVA's in-depth familiarity with the commercial advice already received and even with a detailed handover from GVA on all of the work to date, it would be very difficult to ensure consistency in the ongoing advice. The OJEU procurement process for a development partner was launched on 31 May 2016, with the preferred bidder due to be selected by Cabinet in summer 2017. Procurement of a commercial advisor would divert officer resources from evaluation of bidder submissions and would risk delay to the development partner procurement. The handover would also incur additional costs for the Council in a climate of significant cost pressure. This is not considered a viable option or one that delivers value for money.
- 5.3. A second option would be for the current contract to remain as is without variation. Currently the amount left in the contract will not cover the work required to take the procurement to completion and therefore represents a risk to the process.
- 5.4. Both options have been discounted in consultation with Procurement and Legal.

6. Background information

Delivery approach and financial modelling

- 6.1. In February 2015, a contract was awarded to Bilfinger GVA ("GVA") to act as the Council's commercial advisors and to work with the Council and its external legal advisors to develop a preferred delivery structure for High Road West and determine the most appropriate process for securing a development partner.
- 6.2. The scope of the commission has changed since GVA were commissioned. This paper seeks to extend the fee scope of the commission to reflect these changes and to ensure sufficient cover for the remainder of this stage of the project.

Additional work delivered out of scope

- 6.3. The key reason for requiring an extension to the contract sum is the delay to the Scheme. In the original brief, the Council forecasted the procurement process would commence in April 2015, a development partner would be selected in May 2016 and signing of the Development Agreement would take place in September 2016. After a Business Case developed by GVA, Cabinet in December 2015 agreed to the procurement methodology. The procurement process was launched at the beginning of May 2016. The request for extension of GVA's commission therefore reflects the changes in the procurement programme.
- 6.4. The work packages that were envisaged in 2015 have also changed. For example, within the original brief, there are work packages identified but no longer required (e.g. no land pooling agreement) while substantive alternative tasks were required instead (e.g. GVA establishing a financial model for feasibility purposes to support the bid for the Housing Zone funding).
- 6.5. These amendments were either dealt with through the 'Ad Hoc' element of the contract or through amendments to the work packages.

Works identified going forward

- 6.6. Going forward, the Council will need to access further commercial advice to support the procurement and land assembly. It will be essential that there is maximum consistency between the previous and further advice on this procurement and Housing Zone financial modelling.
- 6.7. Following internal reviews and discussion with GVA, officers have identified additional resources which can deliver work previously undertaken by GVA in a more cost efficient way (e.g. CPO negotiation). However, there are still areas of work that would be best delivered by GVA given their professional expertise and existing established relationships. A scope review was performed based on the forecast procurement programme and to cover the forthcoming fourteen months of work. It is proposed that GVA will provide the following:

1. Procurement Process:

- a. Dialogue sessions – attend and follow up notes for/actions arising from.
- b. Assistance with drafting of ISDS and ISFT documents, including finalisation (as we found during ISOS stage).
- c. General review of bids (necessary even where not scoring) incl. financial submissions at ISOS and ISFT stages (no bid at ISDS currently programmed).

- d. Direct scoring of bid responses to assist Council with evaluation. This may include moderation of certain questions with the Council (we have allowed for scoring of up to 10 questions).
- e. Liaison with bidders as necessary.
- f. Summary reporting as necessary.
- g. Formal report at final tender/preferred bidder stage.
- h. Contract stage.

2. Land Assembly

- a. Further strategic site assembly advice
- b. Individual acquisition advice for key landowners incl. THFC & Fairgate-as necessary.
- c. Advice on Shared Equity products as necessary
- d. Additional analysis of non-HRW sites (e.g. Kings Rd, 500 WHL) as necessary.
- e. Updating Property Cost Estimate as necessary.
- f. Valuation of non-residential property for acquisitions and estimate of disturbance (non-Red book) as necessary.

3. Housing Zone & associated support

- a. Advice in relation to the emerging Borough Intervention Agreement (BIA) as necessary.
- b. Financial implications of land assembly reimbursement and financial offers arising on Council finances as necessary.
- c. Sign-off of Council non-residential acquisitions as necessary.
- d. On-going negotiations with GLA

6.8 GVA have also provided a quote for adhoc commercial advice and 'abnormals' which cover the following delays to the programme:

- a. Competition timescales extended (e.g. ISDS submission introduced)
- b. Planning applications made by existing landowners
- c. Legal challenges and judicial review applications
- d. Additional representation at dialogue
- e. Other associated strategic advice

6.9 GVA presented a quote for each work package based on fixed hourly rates. The Project Team is therefore seeking a £180,000 extension to the original maximum contract sum approval of £499,000, leading to a total commission cost of £679,000.

Best Value

6.10 Officers have negotiated with GVA to ensure that best value is secured through the contract. The fee rates committed to as part of this next phase of work have:

- been frozen in line with GVA's fee rates proposed in the original tender submission in January 2015. No inflation will be attributed to these rates over the contract period;
- reflect a c.30% discount compared to GVA's standard hourly rates.
- reflect a discount of up to 25% compared to GVA's other public sector panels including (e.g. TFL);
- reflect a discount of up to 30% compared to GVA's quasi-public/private sector rates (e.g. Thames Water).

6.11 GVA have also agreed to apply a further 5% tolerance on the fixed fee elements of the tender (i.e. the main procurement process), such that any additional time spent in excess of the proposed allocation, up to a cap of 5% (cumulative hours across all levels), will be absorbed by GVA without additional call on fees. GVA are happy to commit to this in the spirit of partnering and to reflect their wider relationship with the Council. The only exception to this is if the Council materially extend the procurement competition timescales.

6.12 It is also worth noting that should the Council seek to re-procure the work, there would also be:

- The direct cost of procuring the new consultant.
- Other associated timescale/programme delay implications, including general overhead costs.
- Any new consultant we believe would be unable to offer the programme efficiencies that GVA can (given they would need to familiarise themselves with the project etc.).
- Any new consultant is likely to be on higher panel rates than GVA rate on the HCA Panel, which is one of the lowest rates.

7.0 Contribution to strategic outcomes

7.1 The recommendation in this report to extend the commercial consultant contract is key to supporting the delivery of the regeneration objectives for Tottenham as set out in the Strategic Regeneration Framework and the Tottenham Area Action Plan. The progression of the High Road West regeneration scheme and the hundreds of millions of pounds of private sector investment it will bring, supports the Council in the delivery of two of its five Corporate Plan priorities: –

- Priority 4: Drive growth and employment from which everyone can benefit; and

- Priority 5: Create homes and communities where people choose to live and are able to thrive.

8.0 Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Finance

- 8.1 The cost of this contract extension can be contained within the budget set for the Tottenham Regeneration Programme as part of the Medium Term Financial Strategy. It should be noted that this budget includes the funding identified for 2017-18 and 2018-19 which could still be subject to change and hence the service need to ensure that work is not commissioned beyond the approved budget for the relevant year.
- 8.2 As set out in paragraphs 6.10-6.12 above, officers have sought best value when negotiating the fees for the required work streams. On top of agreeing to freeze their fee rate, GVA have agreed to apply a further 5% tolerance on the fixed fee elements of the tender (i.e. the main procurement process), such that any additional time spent in excess of the proposed allocation, up to a cap of 5% (cumulative hours across all levels), will be absorbed by GVA without additional call on fees. Re-procuring this work would generate significant overhead/delay costs to the Council and there would be no guarantee that the rates would be cheaper.

Procurement

- 8.3 CPG note the contents of this report to extend the authority to spend against the GVA commercial consultant contract from £499,999 under a Director's Delegated Authority Report to the increased the spend value of £679, 000 as a Key Decision under this Cabinet Member Signing report.
- 8.4 The original Contract Award for GVA contained 3 Parts – Parts 1 & 2 were for a fixed fee of £278,092 and Part 3 was for “ad hoc” services to be provided on a time-charge basis at the agreed rates and prices. It is now anticipated the Part 3 services will extend beyond the current financial authority level of the Delegated Decision and should now be considered as a Key Decision by the Cabinet Member. The additional value must not extend beyond the 50% (50% would be an additional £249.5k) of the original contract authorisation as stipulated under the Public Contract Regulations 2015, Regulation 72 (1) (b). Only on this basis does the CPG have no objection to the Cabinet Member approving the recommendation to increase the authorisation to spend on the GVA to £679k subject to compliance with the Council's Governance arrangements.

Legal

8.5 The report is seeking a variation of the existing contract with GVA (the “GVA Contract”) which is for services that are subject to EU procurement rules as reflected in the Public Contract Regulations 2015 (“PCR 2015”). As such, the contract variation proposed in paragraph 3.1 of this report may be approved provided that to do so is compliant with the PCR 2015.

8.6 The PCR 2015, at reg. 72(1)(b), provide a permissible ground for varying a contract that is relevant to the proposed GVA Contract variation. This states, so far as relevant, that a contract may be varied without a new procurement procedure where additional services have become necessary from a contractor that were not included in the contract initially procured from that contractor where a change of contractor:

- (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing services procured under the initial procurement, and,
- (ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority,

Provided that any price increase does not exceed 50% of the original contract value.

8.6 Paragraphs 4.1, 5.2 6.1 to 6.9 of this report set out circumstances relating to the GVA Contract that appear to bring the contract within the above ground in Reg. 72(1)(b) for varying a contract. This is on the basis that paragraphs 5.2, 6.6 and 6.7 of the report point to the further services deliverable by GVA under the variation being further services which are so intimately linked to the services under the original GVA Contract that the Council could not, without significant inconvenience and / or substantial duplication of costs, avoid using GVA to provide the further services. As the maximum approved contract value under the original contract is £499K, the proposed additional value of £180K for the further services under the variation would not exceed 50% of the original value.

8.7 Once the proposed contract variation is approved and carried out, under PCR 2015 reg. 72(3) and (4), notice of it must be published by the Council through the Official Journal of the EU. The Tottenham Regeneration Team should continue to consult with the Corporate Procurement Group and Legal Services, as necessary, to ensure that this is done.

8.8 The Assistant Director of Corporate Governance is of the view that there is no legal bar to approval of the recommendation in paragraph 3.1.

Equality

8.9 The Council has a public sector equality duty under the Equality Act 2010 to

have due regard to the need to:

- tackle discrimination and victimisation of persons that share the characteristics protected under S4 of the Act. These include the characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (formerly gender) and sexual orientation;
- advance equality of opportunity between people who share those protected characteristics and people who do not;
- foster good relations between people who share those characteristics and people who do not.

8.10 The proposed contract variation aims to support Haringey Council to progress on the Scheme, particularly on securing the Housing Zone Phase 2, through enabling the purchase of additional commercial advice services from GVA Billfinger. An [Equality Impact Assessment](#) was completed for the High Road West Masterplan, which was agreed at Cabinet in 2014. A further [EqIA for the High Road West regeneration scheme](#) was completed in December 2015, to assess the impact of the Council initiating the rehousing process for tenants living in Phase 2 of the Love Lane Estate. These EqIAs should continue to be considered and inform any contracted advice from GVA Billfinger on the High Road West scheme, and the proposed contract variation should not change this.

8.11 GVA Billfinger as a contracted provider of Haringey Council is required to demonstrate a strong commitment to equality and fairness in its actions and adherence to the Equality Act 2010. The proposed contract variation will not change these contractual expectations.

9.0 Use of Appendices

NA

10.0 Local Government (Access to Information) Act 1985

10.1 Background Papers:

- 13th September 2016 Cabinet Report- Tottenham Housing Zone Phase 2- North Tottenham.
- 15th December 2015 Cabinet Report- High Road West Regeneration Scheme Update and Next Steps.
- 9th February 2016- EXEMPT Director report, Lyn Garner - Approval for award of contract under Contract Standing Order (CSO).

10.2 This report contains exempt and non exempt information. Exempt information is contained in the exempt report and is not for publication. The exempt information is under the following categories: (identified in the amended schedule 12 A of the Local Government Act 1972 (3)):

(3) Information in relation to financial or the business affairs of any particular person (including the authority holding that information).