

CABINET

2 DECEMBER 2014

GATEWAY 1 PROCUREMENT: ROCHESTER RIVERSIDE DEVELOPMENT PROCUREMENT STRATEGY

Portfolio Holder: Councillor Rodney Chambers OBE, Leader

Report from: Robin Cooper, Director of Regeneration, Community and Culture

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SUMMARY

This report seeks permission to commence the procurement of a development partner to support the delivery of the Rochester Riverside Development.

This Gateway 1 report has been approved for submission to the Cabinet after review and discussion at Regeneration Community and Culture Directorate Management Team Meeting on 23 October 2014 and Procurement Board on 5 November 2014.

The Regeneration Community and Culture Directorate Management Team have recommended that this project be approved as a Category B, high-risk procurement. The procurement of a development partner for Rochester Riverside is a major undertaking for the Council. It is a high profile, flagship regeneration scheme and a key priority in the Council Plan. The procurement, financial and contract risks are high as is the reputational risk to the Council.

1. BACKGROUND INFORMATION

1.1 Budget & Policy Framework

1.1.1 Rochester Riverside is designated as an Action Area for redevelopment in the Medway Local Plan (2003). Policy S7 of the Local Plan states that the comprehensive regeneration of the area will be sought in accordance with a development brief as approved by the Council.

1.1.2 In September 2014 Cabinet approved the adoption of the 2014 Rochester Riverside Development Brief and Masterplan as a

Supplementary Planning Document to the Local Plan. The Development Brief establishes a set of strategic parameters and illustrative guidance to steer the future development of the site, provides planning and design guidance to developers, and will inform future development management decisions.

1.2 Service Background Information

- 1.2.1 Rochester Riverside is a 32-hectare (74-acre) flagship regeneration scheme within the Thames Gateway. The site stretches from the A2 Rochester Bridge southwards to Doust Way, with the River Medway forming the eastern boundary of the site, and the high speed rail line to central London forming the western boundary.
- 1.2.2 The scheme is managed in partnership by Medway Council and the Homes and Communities Agency (HCA), who jointly own the site and have invested substantial funds in land assembly, remediation, site preparation and infrastructure works to enable the comprehensive regeneration of the site. Representatives of each partner sit on the Rochester Riverside Board.
- 1.2.3 The key objective of the partners is to transform the area into an attractive place to live, work and play through the implementation of a substantial, high quality, sustainable, mixed use scheme.
- 1.2.4 Development has already begun on site. A new riverside walk and cycle way opened in 2008, making the waterfront accessible to the community for the first time in a century. The first phase of residential development was delivered on Phase 1 of the site in 2013, with the construction of 73 affordable housing units, associated infrastructure, and the creation of a new public square, the 'Southern Gateway Square'.
- 1.2.5 Funding of £4.4m from the Growing Places Fund (via the South East Local Enterprise Partnership) has also been committed to deliver further site preparation and infrastructure works, with works taking place during 2015.
- 1.2.6 Network Rail is creating a new £26M station for Rochester which will be connected to the Rochester Riverside site via a new pedestrian subway and commuter car park. The new station will enable increased capacity and reduction in journey times to Central London, thus facilitating the economic growth of the local area and the regeneration of Rochester Riverside. The station will open in December 2015.

Rochester Riverside Masterplan

- 1.2.7 The vision for Rochester Riverside is established in the 2014 Development Brief and Masterplan, adopted as a Supplementary Planning Document to the 2003 Local Plan.

1.2.8 The Development Brief establishes the key planning and design parameters for the development, including land use components, urban form, density, open space and sustainability. It outlines the previous use and history, the policy context and physical constraints.

1.2.9 The Masterplan envisages a phased development, with the site split into six main phases, supporting a range of retail, leisure and tourism uses providing activity both day and night, including:

- A mix of up to 1,400 residential units, including affordable housing
- Residential and non-residential parking.
- A hotel.
- A centrally located Primary School.
- A new entrance to Rochester Rail Station.
- A Waterfront Square with associated shops, restaurants and bars
- Flexible commercial and office spaces
- Local retail facilities
- Riverside walk.
- Publicly accessible open spaces.
- Upgraded site 'Gateways'.
- Community facilities.

Disposal approach

1.2.10 With the adoption of the new Development Brief, the development of the site and the procurement of a development partner is now a priority for the Rochester Riverside Board. The key objective is to secure the comprehensive implementation of a substantial, high quality, mixed-use scheme. Beyond this primary objective, there is the requirement for the partners to secure best value for the site, recognising the substantial investment already made in land assembly, site preparation and infrastructure works.

1.2.11 Officers and the Board have undertaken extensive options analysis to consider the most appropriate procurement route for seeking a development partner for Rochester Riverside. Market testing has been carried out to assess the market appetite for the site and legal advice has been sought on the most appropriate procurement route and delivery mechanism.

1.2.12 It is proposed that the Council undertake a procurement to appoint a sole development partner for the whole site, who will enter into a long-term contractual partnership with the Council/HCA allowing the draw down of phases within the overall scheme.

1.2.13 The Council/HCA will seek a partner:

- Capable of delivering a large-scale regeneration scheme

- With the skills and experience to deliver a range of high quality residential and non-residential elements
- Who can manage the development now and in the future
- Who has the ability to release tangible economic opportunities.
- Who is committed to working in partnership
- Who is commercially and financially robust.

1.2.14 The contract will be structured to ensure sufficient time to deliver the regeneration vision for Rochester Riverside, which is anticipated to be 10 to 15 years.

1.2.15 Phasing will be on the basis of the Masterplan, but may be subject to change as part of the procurement process.

1.2.16 It is envisaged that Stanley Wharf could either be included as part of the whole site, or alternatively made the subject of a stand-alone development, as originally intended.

1.2.17 The disposal of the whole of the site to a sole purchaser would be subject to development obligations included within the Development Agreement, ensuring the Council/HCA can secure quality development and appropriate capital receipt reflecting values at the time the phase is released. The intention would be that the Development Agreement would provide for phased disposal, with each phase being released to the developer only following successful completion of works on the preceding phase. As this development is likely to be phased over a number of years, the Council will seek to include a mechanism allowing subsequent revaluation at the point the relevant phase is to be sold. To achieve certainty it would be best if the revaluation is on the basis of the higher of the value of the phase agreed on exchange of contracts or open market value at the purchase date of the relevant phase. This is to reduce the risk that the Council will lose out on increased land values in a period of inflation or rising land values.

1.3 Funding/Engagement From External Sources

1.3.1 The Homes and Communities Agency is a key partner of the Council in delivering Rochester Riverside.

1.4 Parent Company Guarantee/Performance Bond Required

1.4.1 Parent company guarantees may be sought for this procurement, depending on the financial strength of the developer.

2. PROCUREMENT DEPENDENCIES AND OBLIGATIONS

2.1 Statutory/Legal Obligations

2.1.1 As this is a public works contract, the procurement of a developer will need to follow EU procurement procedures, including an advertisement in the Official Journal of the European Union.

3. BUSINESS CASE

3.1 Procurement Project Outputs / Outcomes

3.1.1 As part of the successful delivery of this procurement requirement, the following procurement project outputs / outcomes within the table below have been identified as key and will be monitored as part of the procurement project delivery process.

Outputs / Outcomes	How will success be measured?	Who will measure success of outputs/ outcomes	When will success be measured?
1. Procurement of a developer, with the capacity and experience to deliver exceptional place making projects	Evidence throughout the procurement process of relevant experience, and adequate capacity, and through the successful delivery of each phase of the development scheme	Rochester Riverside Project Manager Rochester Riverside Project Board Category Management	Throughout the procurement process and the delivery of the project phases Quarterly Board meetings Evaluation of tender proposals and throughout the negotiated procedure process
2. Procurement of a developer who will ensure best possible capital receipts/financial returns for Medway	Best value proposals from developers in their tender submissions	Rochester Riverside Project Manager Rochester Riverside Project Board Category Management, Finance and Property teams	Throughout the procurement process and the delivery of the project phases Monthly Board meetings Evaluation of tender proposals and throughout the negotiated procedure process
3. A quality scheme that is in keeping with the architecture and	Design of each of the spaces to be sensitive to the local area. Strict quality management during the construction phase. Adherence to the	Rochester Riverside Project Manager and Project Team Development Management.	Throughout the design and construction phases of the project.

history of the local area	Development Brief and Masterplan.		
4. The procurement of a developer to work in partnership with Medway and the HCA	Prospective developers will submit proposals for partnership working as part of their tender bid, together with evidence of previous experience of successful partnerships in deliver similar developments	Rochester Riverside Project Manager Rochester Riverside Project Board Category Management	Throughout the procurement process and the delivery of the project phases Monthly Board meetings Evaluation of tender proposals and throughout the negotiated procedure process

3.2 Procurement Project Management

- 3.2.1 The procurement of a sole developer for Rochester Riverside will be a significant undertaking for the Council. The process will be managed by the Rochester Riverside Project Manager and Category Management, with additional input from the regeneration, legal and property teams. There will also be additional support from external legal and commercial advisors.
- 3.2.2 Regular updates on the process will be presented to the Rochester Riverside Board, to Cabinet and to Full Council as required.

3.3 Post Procurement Contract Management

- 3.3.1 The management of the contract for the developer will be managed by the Rochester Riverside Project Manager with additional input from the legal and property teams, with additional support from an external advisor.

4. MARKET CONDITIONS AND PROCUREMENT APPROACH

4.1 Market Conditions

- 4.1.1 It is anticipated that interested parties will include large-scale developers, house builders, contractors and housing associations.

4.2 Procurement Process Proposed

- 4.2.1 Advice has been sought on the most appropriate procurement route and selection process for the scheme, comparing the EU compliant procurement routes available and recommending the most appropriate, given the size and significance of the site and the council's desire for control over its development. Please refer to table 1 below.

Table 1

	Advantages	Disadvantages
Competitive Dialogue	<ul style="list-style-type: none">• likely to be able satisfy the grounds for use• in line with EU and Cabinet Office views on the use of procedure for this type of project• allows free negotiations with bidders during the dialogue phase• structured process which can benefit a contracting authority and bidders• no mandatory time	<ul style="list-style-type: none">• no material negotiations are permitted once final tenders are invited – difficult to manage in a regeneration context• the risk of challenge in respect of the use of procedure is perhaps more likely to arise at the final tender stage which could therefore have a significant impact

	Advantages	Disadvantages
	<p>periods after the PQQ stage</p> <ul style="list-style-type: none"> • prohibition on material negotiations at preferred bidder stage can work in the contracting authority's favour if the process is structured appropriately 	<p>on the Project if the challenge is successful</p> <ul style="list-style-type: none"> • tends to be cost and resource intensive for both authority and bidders
Competitive Negotiated	<ul style="list-style-type: none"> • allows free negotiations with bidders throughout the process • familiar process to bidders • challenges in respect of the choice of procedure must arise early in the process so potentially less impact even if successful • appears to be used by other contracting authorities for regeneration projects 	<ul style="list-style-type: none"> • need to document and be satisfied that the grounds for using the procedure can be made out • grounds for using the procedure are likely to be interpreted strictly • European Commission and/or Cabinet Office may be more likely to question the choice of procedure • preferred bidder stage can involve "deal creep" because negotiations are permitted
Framework Agreement	<ul style="list-style-type: none"> • significant savings on procurement costs • established mechanism for selecting a preferred developer with model contracts in place • unlikely to be challenged if the framework was properly procured 	<ul style="list-style-type: none"> • may limit competition (particularly if the framework was set up more than 12 months ago) as new entrants are not permitted • need to work within an established contractual structure which may not be appropriate • need to work within established principles for evaluation which may not be appropriate / relevant for the Council

4.2.2 The Office of Government Commerce (OGC) has issued guidance setting out when the negotiated procedure can be used. It can be used where the overall pricing of the contract cannot be established due to the nature of the goods and services to be provided.

4.2.3 The competitive negotiated route has been used by other local authorities to procure large development and regeneration projects. The Council can justify using this route on the grounds that the complexity of the development at Rochester Riverside does not permit overall pricing for various reasons:

The uncertain scale of the contract

4.2.4 Although there is an adopted Development Brief and Masterplan, these documents are flexible and deliberately do not 'prescribe' development. The overall extent of the development will require negotiation with the developer. It will be advantageous to consider proposals for phasing, potential increase in unit numbers, extent and delivery of non-residential elements.

The nature of the contract

4.2.5 It is not clear what form of contract will best meet the Council/HCA's objectives since this is dependent on the market's response to the Council's ambitions for Rochester Riverside.

Fragile market conditions

4.2.6 The Council needs to seek financially viable proposals but the means by which this can be achieved from the outset cannot be established with any precision.

Choice of partner

4.2.7 The Council's choice of partner may be a developer, or registered provider, or combination. Since the Council may not wish to close down the opportunity for this to be established during negotiation, and since the ultimate decision will be a factor in determining price, no overall pricing model is capable of being established in advance.

Risks in the contract

4.2.8 The approach to pricing will depend on planning consents, viability and market conditions.

4.2.9 The Council will need to determine, through negotiation, the balance to be struck between developer return, land value and overage. These cannot be established in advance.

4.2.10 The table below shows an indicative procurement timetable:

Activity	Date
Procurement Board approval of Procurement Strategy	5 November 2014
Cabinet approval of Procurement Strategy	25 November 2014
Publication of OJEU Notice & issue of PQQ	5 December 2014 – 13 February 2015
Shortlisting of 3 bidders	13 March 2015
Issue tender pack to shortlist	16 March 2015
Deadline for tender submissions	10 July 2015
Initial evaluation of submission	July/August 2015
Commence negotiations with shortlist	3 August 2015
Confirmation of preferred bidder (subject to completed negotiations)	November 2015
Internal approvals process	November 2015 – February 2016
Contract award	March 2016

4.3 Evaluation Criteria

4.3.1 60% of the weighting of the tender will be given to quality. The criteria will evaluate the design and technical quality of the submissions as well as the developer's ability to work with the Council and HCA to deliver transformational place making and the regeneration of the area.

4.3.2 The quality criteria will assess:

- Design and technical proposals – particularly with regard to transformational place making
- Programme and delivery proposals
- Economic and social benefits
- Sales and marketing approach
- Quality of full team
- Long-term management proposals
- Partnership management

4.3.3 40% of the weighting will be given to price and will include an assessment of financial strategy, proposed structure of the financial deal and commercial robustness of the proposals.

4.3.4 These weightings, with the emphasis being on quality and deliverability, are proposed to ensure the delivery of exceptional place making at Rochester Riverside.

5. RISK MANAGEMENT

5.1 Risk Categorisation

1. Risk Category: Procurement	Likelihood: High	Impact: Critical
Outline Description: Limited market appetite due to high bidding costs and long-term nature of the project.		
Plans to Mitigate: Market testing has indicated that the larger 'place making' developers, and the more traditional house builders, have indicated they are interested in bidding for the role of development partner.		
2. Risk Category: Procurement	Likelihood: Medium	Impact: Critical
Outline Description: Extended time periods required to complete contract negotiations, leading to risk of developer withdrawal before contract signature.		
Plans to Mitigate: External legal advisors will be appointed to advise the Council during the negotiation stage.		
3. Risk Category: Commercial	Likelihood: Low	Impact: Critical
Outline Description: Future competing projects in the southeast , eg Lodge Hill, Ebbsfleet Garden City, more attractive to developers		
Plans to Mitigate: Strict contract terms to reduce the risk of developers withdrawing after contract signature.		

6. CONSULTATION

6.1 Internal (Medway) Stakeholder Consultation

6.1.1 Representatives from Development Management, Finance, Procurement, Legal and Property teams attend both the Rochester Riverside Officer and Project Board meetings and have been consulted on the procurement strategy.

6.2 External Stakeholder Consultation

6.2.1 Soft market testing was carried out at the request of the Rochester Riverside Board to seek initial views on the appetite for the sole developer approach. Responses received were varied but the testing concluded that there is market interest in Rochester Riverside, either as sole developer or a phase-by- phase approach. However it was generally expressed that the sole developer approach would result in a better quality of development and certainty of the delivery of the non-residential elements.

7. PROCUREMENT BOARD

7.1 The Procurement Board considered this report on 5 November 2014 and supported the recommendation set out in paragraph 10 below.

8. SERVICE IMPLICATIONS

8.1 Financial Implications

8.1.1 The procurement requirement and its associated delivery (as per the recommendations at Section 10) will be funded from the existing Capital Programme.

8.1.2 Further detail is contained within Section 2.1 Finance Analysis of the Exempt Appendix.

8.2 Legal Implications

8.2.1 Regulation 13(b) of the Public Contracts Regulations 2006 provides that a contracting authority may use the negotiated procedure with prior publication of a contract notice “exceptionally, when the nature of the work or works to be carried out, the goods to be purchased or hired or the services to be provided under the contract or the risks attaching to them are such as not to permit prior overall pricing”.

8.2.2 This ground is available for all types of procurement whether the contract is predominantly one for services, works or supplies, where it is not possible to establish a single pricing structure (or payment mechanism) when the award process commences. It is particularly appropriate where the nature of the project means that there is broad scope to negotiate and amend the pricing structure because of the nature/risks of the project. The inability to price must derive from either

the nature of the works/services or the risks attaching to the works/services.

- 8.2.3 These criteria are met in the case of Rochester Riverside as a result of:
- (i) uncertainty about what exactly is to be built on site because of the scope for flexibility in developer proposals; and,
 - (ii) uncertainty about the financial proposals that might be offered by a developer eg. lease length, mechanisms for paying rent and profit share, etc.
 - (iii) funding market volatility in connection with this type of project. Assuming the developer requires third party finance for the project, there is every likelihood that lenders will not commit unless a bidder has an exclusive position. This means that detailed funding negotiations could only take place once a preferred bidder is approved;
 - (iv) matters such as user demand risk.
- 8.2.4 As this is a high risk procurement, the decision to commence procurement will be a decision for Cabinet. The decision to dispose of the land to one or more developers will also be a decision for Cabinet, using powers in section 233 Town and Country Planning Act 1990, and where the land value is in excess of £1 million, the approval of Full Council will need to be sought.

8.3 Procurement Implications

- 8.3.1 As per the Council's Contract Procedure Rules under section 3.3.1: 'All requirements above £100K must be advertised on the Council's Website, the Kent Business Portal and in the OJEU (where above the EU tender thresholds for goods, services or works).'
- 8.3.2 Adopting the competitive negotiated procedure, as detailed in section 4.2, will allow the council and the HCA to hold free negotiations with developers throughout the bidding process and has been used by other local authorities procuring large development and regeneration projects.
- 8.3.3 The procurement programme proposed will satisfy the EU statutory timescales for the prequalification stage; the negotiation stage has no given timescales which need to be adhered to by law.
- 8.3.4 Significant staff capacity will be required to manage the procurement process effectively and efficiently, along with external legal and commercial advisors.

9. OTHER CONSIDERATIONS

9.1 Diversity & Equality

- 9.1.1 An Equalities Impact Assessment will be carried out as part of the procurement.

9.2 Social, Economic & Environmental Considerations

9.2.1 The development at Rochester Riverside will stimulate the regeneration of the waterfront integrating with the existing character and environmental context of Rochester, and ensure long term benefits for Rochester's existing and future residents and visitors.

9.2.2 Particular consideration for the development will be archaeological, as there are numerous historical listed buildings in historic Rochester, consideration for maintaining the views of the castle and cathedral along the river, and consideration of any wildlife habitats that may need to be translocated.

9.2.3 Rochester Riverside also offers opportunities to broaden central Rochester's commercial potential. The Masterplan will promote a range of new uses including office space, a hotel and shops adjacent to the new station. It is anticipated that Blue Boar Wharf will provide a setting for high quality restaurants at the heart of the area.

10. RECOMMENDATION

10.1 The Cabinet is asked to approve the procurement of a sole development partner, to deliver the Rochester Riverside Development via the EU Competitive Negotiated Procedure.

11. SUGGESTED REASONS FOR DECISION

11.1 The procurement of a development partner or partners will allow the comprehensive regeneration of Rochester Riverside, one of the Council's key priorities.

LEAD OFFICER CONTACTS:

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BACKGROUND PAPERS

The following documents have been relied upon in the preparation of this report:

Description of Document	Location	Date
Rochester Riverside Masterplan & Development Brief	http://www.medway.gov.uk/pdf/885_R_140424_Development_Brief.pdf	April 2014