

## **Cabinet**

**13 February 2024**

### **Gateway 1 / Gateway 3: Options Appraisal with Subsequent Direct Award to Deliver the One Public Estates Brownfield Land Release Fund Works**

Portfolio Holder: Councillor Naushabah Khan, Portfolio Holder for Housing and Property

Report from: Sunny Ee, Assistant Director, Regeneration

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#### Procurement Overview

Total Contract Value (estimated): £940,238

Regulated Procurement: No

Proposed Contract Term: 12 months with 6 month extension

#### Summary

This report seeks to detail the options relating to the delivery of the One Public Estates (OPE) Brownfield Land Release Fund (BLRF) enabling works Contract, with subsequent information relating to directly awarding a contract thereafter.

#### 1. Recommendations

##### 1.1. The Cabinet is requested to:

- i) agree the preferred option of a direct award as identified in paragraph 6.3.1.
- ii) agree the award of services/works for the cost.

#### 2. Suggested reasons for decisions

- 2.1. The appointment of MDC as Project Manager and Contractor to deliver the enabling works for the OPE BLRF, will ensure the project is completed and the grant funding is utilised.

### 3. Background Information

#### 3.1. Budget and Policy Framework

3.1.1. Medway Council has been awarded £940,238 ring fenced grant funding from One Public Estates Brownfield Release Fund to deliver enabling works at the Mountbatten House Building, to facilitate residential delivery of a minimum of 164 residential units.

3.1.2. The ring fenced grant funding has been added to the capital programme.

3.1.3. Cabinet approval is required because this is considered a key decision.

#### 3.2. Background Information and Procurement Deliverables

3.2.1. Mountbatten House is high profile due to its size and location within the heart of Chatham town centre. The site benefits from its highly accessible location and will help to meet the housing demand while increasing footfall in the high street.

3.2.2. It is proposed that Medway Development Company (MDC) is contracted to deliver these works to bring forward the site. MDC will be appointed in the capacity of Project Manager and Contractor, utilising the teckal exemption.

3.2.3. The enabling works focus on demolition works, concrete repairs, structural works, access route works along with utility diversions. The funding requirements stipulate that a contractor needs to be appointed by March 24.

#### 3.3. Urgency of Report

3.3.1. The funding requirements from OPE stipulate that a contractor needs to be appointed by March 2024. This requires MDC to undertake the project management and contractor role to undertake a procurement exercise to appoint the enabling works contractor.

#### 3.4. Parent Company Guarantee/Performance Bond Required

3.4.1. This will be waived as the subsequent works contracts will have suitable retention clauses.

### 4. Procurement Dependencies and Obligations

#### 4.1. Project Dependency

4.1.1. The £940,238 grant funding from the OPE BLRF is for enabling works for the future delivery of a minimum of 164 residential units. The land release must be completed by March 2027, Land release is defined in the grant agreement and therefore must comply with that definition, therefore a future procurement exercise may be required depending on the land release mechanism chosen.

## 4.2. Statutory/Legal Obligations

4.2.1. A direct award to the Council's LATCo is lawful provided that the criteria of the teckal exemption are met.

4.2.2. Medway Council has the power under the Local Government (Contracts) Act 1997 and the Localism Act 2011 to enter into contracts in connection with the performance of its functions.

4.2.3. The process described in this report complies with the Public Contracts Regulations 2015 and the Council's Contract Procedure Rules.

## 5. Business Case

### 5.1. Business Case Procurement Project Outputs / Outcomes

5.1.1. 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.

<b>Outputs / Outcomes</b>	<b>How will success be measured?</b>	<b>Who will measure success of outputs/ outcomes</b>	<b>When will success be measured?</b>	<b>How will a direct award achieve this?</b>
Specification of enabling works, as per the funding agreement	MDC will ensure that the scope of works procured meet the criteria of the enabling works of the funding body	Regeneration Programme Manager	Prior to tendering the works	The Council worked with MDC, to prepare the bid and have a clear understanding of the works required. MDC have the resource and skill set to manage and undertake this role
Award of enabling work contract by March 24 – a critical milestone for the funding body	Appointment of contractor to undertake the enabling works	Regeneration Programme Manager	March 24	The Council worked with MDC, to prepare the bid and have a clear understanding of the works required. MDC have the resource and

				skill set to manage and undertake this role
Management and completion of the enabling works- as per the funding agreement	Management of the enabling works will be reviewed frequently at monthly progress meetings. The completion of works will be assessed post delivery of works and defects period.	Regeneration Programme Manager	Throughout project	The Council worked with MDC, to prepare the bid and have a clear understanding of the works required. MDC have the resource and skill set to manage and undertake this role.

## 5.2. Procurement Project Management

5.2.1. The management of this procurement process will be the responsibility of the Category Management team.

## 5.3. Post Procurement Contract Management

5.3.1. The management of any subsequent contract will be the responsibility of the Regeneration Programme Manager.

5.3.2. To ensure the needs of the requirement are met and continuously fulfilled post award, a funding agreement will be implemented, stipulating the KPIs, the table provides a high level summary.

#	Title	Short Description
1	Reporting	MDC will complete the funding bodies reporting template, as well as council reporting requirements
2	Local supply chain	MDC will look to utilise local contractors and consultants where possible
3	Programme	The contractor for the works will be in contract by March 24, with the works to be completed within a year, providing enough time to adhere to the funding bodies land release longstop date of March 27

## 6. Market Conditions and Procurement Approach

### 6.1. Market Conditions

6.1.1. Whilst there are alternative project managers and contractors, MDC have been established as a teckal compliant LATCO, for the purpose of undertaking regeneration projects, who can be directly engaged to deliver these services.

### 6.2. Procurement Options

6.2.1. The following is a detailed list of options considered and analysed for this report:

6.2.1.1. **Option 1 – Do nothing:** This will result in the loss of £940,238 grant funding to deliver enabling works at Mountbatten House for residential development.

6.2.1.2. **Option 2 – Extend the current contract:** No current contract exists.

6.2.1.3. **Option 3 – Utilise a framework:** The council only partly operates a framework to meet this need, therefore is not viable.

6.2.1.4. **Option 4 – Open market procurement:** Whilst a viable option this approach would not meet the funding programme required and would result in a loss of the grant funding.

6.2.1.5. **Option 5- Direct award to MDC:** While there are alternative project managers and contractors, MDC have been established as a teckal compliant LATCO, for the purpose regeneration projects, who can be directly engaged to deliver these services. The council has confidence that MDC are able to meet the funding programme.

### 6.3. Procurement Process Proposed

6.3.1. Option 5 is recommended as the procurement process in order to meet the criteria and timescales of the grant funder.

6.3.2. It is recommended that the contract length be a 12-month term with the option to extend for 6 months by mutual agreement.

### 6.4. Evaluation Criteria

6.4.1. Subject to the proposed process outlined in 5.1.1, Officers wish to provide the following assurances as part of the proposed direct award:

Question/Criteria	Explanation
The ability to deliver	A funding agreement between the council and MDC will be administered, prior to the transfer of funding, whereby MDC will commit to their ability to deliver the scheme.

Meeting of the critical path- stipulated by the funding body	A funding agreement between the council and MDC will be administered, prior to the transfer of funding, whereby MDC will commit to their ability to deliver the scheme in accordance with the funding criteria.
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## 7. Consultation

- 7.1. Public stakeholder consultation has been undertaken for the residential development, the enabling works facilitate the future residential development.

## 8. Risk management

Risk	Description	Action to avoid or mitigate risk	Risk rating
Not meeting the funding body timescales to appoint a contractor by March 24	If MDC is not appointed as Project Manager and Contractor, the OPE deadline of appointing a contractor by March 24 will not be met, putting at risk the £940,238 grant funding	Approve option 5- direct award to MDC	CII
Land release not being met by March 27	Land release as per the definition in the grant funding agreement needs to be met by March 27	Depending on the disposal route for the site a further procurement route may need to be undertaken and/or utilise the existing delegated authorities in place	CII
Funding not being spent in accordance with the funding terms	Funding not being spent in on compliant funding works, would result in potential claw back of grant funding	Funding agreements will be in place with MDC to ensure spend is incurred on as per the funding bodies terms	CII

For risk rating, please refer to the following table:

Likelihood	Impact:
A Very likely	I Catastrophic
B Likely	II Major
C Unlikely	III Moderate
D Rare	IV Minor

## 9. Service Implications

### 9.1. Financial Implications

- 9.1.1. The procurement requirement and its associated delivery as per the recommendations will be funded from capital ringfenced grant, which has

been received and will be added to the capital programme. A funding agreement will be in place outlining the delivery requirements, management processes and spend requirements.

## 9.2. Legal Implications

9.2.1. As per paragraph 4.2.

## 9.3. Procurement Implications

9.3.1. The Council established a Teckal compliant LATCo that can be utilised to meet this need. The recommendation complies with public procurement regulations and is the route most likely to meet the criteria and timescales of the provider.

## 9.4. ICT Implications

9.4.1. N/a

## 10. Social, Economic & Environmental Considerations

10.1. A funding agreement will be implemented between the Council and MDC, which will govern any social, economic and environmental considerations that may be relevant to the scheme.

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### Appendices

None

### Background papers

[Cabinet report – Acquisition of Mountbatten House – July 2019](#)