

## **Cabinet**

**30 April 2024**

### **Gateway 3 Tender Process Review and Contract Award: Building Contractor for the Healthy Living Centre, the Pentagon Shopping Centre**

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

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#### Procurement Overview

Total Contract Value:	£9.721million
Project Budget:	£13.1million
FTS reference number:	2024/S 000-002447
Contract Term:	12 Months

#### Tender Process Overview

Process used:	Open Procurement
Evaluation criteria used (Q/P):	60/40
Suppliers expressed an interest:	38
Tenders received:	4
Parent Company Guarantee/PB Required:	Yes (Waiver Requested @ 3.3.1)

#### Summary

This report seeks Cabinet approval to award the procurement of the Building Contractor for the Healthy Living Centre Contract.

## 1. Recommendations

- 1.1 It is recommended that the Cabinet agrees to award the building contract for the Healthy Living Centre to the organisation named in 3.2 of the Exempt Appendix as they have been evaluated as the most economically advantageous tender against the Council's award criteria as per the evaluation spreadsheet contained within 3.1 of the Exempt Appendix.
- 1.2 The Cabinet is asked to note that the formal award to the preferred contractor will not be issued until such time as the NHS have fully committed and signed the legal agreement.
- 1.3 The Cabinet is asked to agree the waiver of a Performance Company Guarantee (PCG) or Performance Bond, as set out at 3.3.1 of the report.
- 1.4 The Cabinet is asked to agree that recommendations 1.1 and 1.3 are urgent and therefore should not be subject to call in, as set out in 3.1.15 of the report.

## 2. Suggested reasons for decisions

- 2.1 The proposed contractor named in the Exempt Appendix has a successful track record of delivering healthcare projects. Most recently delivering a health centre facility in Ashford (£13.5million), as well as a Maritime Hospital D&B project (£8million), and separately experience with BREEAM and working in live environments.
- 2.2 The proposed contractor has been evaluated as the most economically advantageous tender against the Council's award criteria.

## 3. Background Information

### 3.1. Budget and Policy Framework

- 3.1.1 The Council acquired the Pentagon Centre in April 2019. This was a strategic decision to regenerate the town centre while also enabling Mountbatten House to be utilised for future redevelopment, further aiding the regeneration of the town centre. It was acknowledged that whilst the ground floor was trading well and returning a good net income, the first floor required investment to secure a blue-chip tenant, in order to cover rates and service charges and also generate a reliable income.
- 3.1.2 Various options have been considered for the redevelopment of the first floor, however most would be risky for the Council, as it would need to spend a significant amount of capital making the first floor suitable for a given private sector use, with the risk that the tenant of this area may then default and no new occupier found.

- 3.1.3 The favoured option for development of the first floor is for it to be used as:
- An NHS Healthy Living Centre (HLC), this will provide a much-needed medical facility in Chatham, as well as bring in rental income for the council and reduce void costs.
  - An Innovation Hub, will primarily be funded from the Future High Street Fund (FHSF),
  - A Pharmacy letting to the private sector, this will only happen if the letting to the NHS goes ahead.
- 3.1.4 A flagship Healthy Living Centre will integrate key community health services, the Primary Care Team, additional General Practitioner capacity and consultant specialists in a visible, highly accessible location, supporting town centre diversification and improved health outcomes.
- 3.1.5 Medway Council obtained £9.49million from the Future High Street Fund (FHSF) to deliver a programme of regeneration projects within Chatham's city centre.
- 3.1.6 The Healthy Living Centre was awarded £500,000 from the Future High Street Fund and £1.246million from the existing Pentagon Centre future works budget (Cabinet decision no: 13/2024, which recommended a virement to Full Council), to enable works up to and including RIBA 4. As Landlord this standard practice.
- 3.1.7 The original cost for RIBA 5-7 (for construction and professional fees) was estimated at £10.348million. This was added to the Capital programme in February 2022.
- 3.1.8 On 28 June 2023, the Leader, using urgency powers, agreed an undertaking to the Integrated Care Board that the Council would underwrite any VAT shortfall not exceeding £2,015,933 on the proviso that the total NHS build cost remained at £14,099,266. (Decision number 88/2023).
- 3.1.9 Due to cost inflation in the market and further design work, Full Council agreed to add £2.752million to the construction budget on 24 January 2024, minute no. 564 refers (RIBA 5-7), taking the total budget to £13.1million. This was on the basis that the NHS will reimburse the full cost.
- 3.1.10 It was agreed with the NHS that the Council will directly appoint and manage the works contractor on the basis that we go out to the open market as opposed to using the Council's framework.
- 3.1.11 To mitigate financial risk to the Council, the NHS will sign a Funding Agreement and Agreement for Lease, prior to Medway entering into a contract with the preferred contractor.
- 3.1.12 The Council acquired the Wilkinson unit in 2024, of which was necessary to bring forward the Healthy Living Centre.

- 3.1.13 Works are expected to commence in June 2024 and complete by July 2025, in line with NHS timescales.
- 3.1.14 As part of the deal with the NHS, it has been agreed that there will be no annual interest cost to Medway, as the NHS will pay 65% of the reimbursement cost (table 1 in the Exempt Appendix) upfront, with the remaining 35% to be paid within the 12-month construction period.
- 3.1.15 In line with rule 15.11 of Chapter 4, Part 5 of the Constitution, call-in can be waived where any delay likely to be caused by the call-in process would seriously prejudice the Council's or the Public's interests. On this occasion it is proposed that the call-in period be waived as the works need to start on site in June 2024 in order to meet the NHS timescales, and the delay impacts the programme for appointing the contractor, which is before the usual Call-In period would expire for decisions taken by the Cabinet on 30 April 2024. The Chairperson of the Regeneration, Environment and Culture Overview and Scrutiny Committee has agreed that the decisions proposed are reasonable in all the circumstances and to them being treated as a matter of urgency and to waive call-in.

## 3.2 Background Information and Procurement Deliverables

- 3.2.1 The original contractor, Tilbury Douglas, was appointed under a two-stage procurement in October 2022.
- 3.2.2 Tilbury Douglas submitted their final contract sum in December 2023, which was significantly over the QS estimates. It was therefore agreed that the Project Team would go back out to the market for a competitive tender process to deliver the Healthy Living Centre.

## 3.3 Parent Company Guarantee/Performance Bond Required

- 3.3.1 The service would like to request a waiver to the requirement of a PCG or Performance Bond. Given the proposed contracting method is a Joint Contracts Tribunal Design and Build Works contract, which includes a standard retention clause of 3% of the contract value.

## 4. Procurement Process

### 4.1 Procurement Process Undertaken

- 4.1.1 To ensure competitive tenders are received from suitable qualified suppliers, an open market procurement exercise was undertaken. The competitive process will help ensure value for money is also achieved.

### 4.2 Evaluation Criteria Used

#	Question	Weighting (%)	Purpose
1	Confirm your company's relevant track records,	25%	To ensure bidders have the ability to fulfil the

	proposed project team and their relevant/similar project experience. Please provide a project specific organogram and team CV's, detailing relevant experience of your proposed key project team members.		requirements of the project and deliver the HLC. To ensure the key personnel have the requisite experience and qualifications to undertake the services required.
2	Please provide details of how you will manage Health and Safety measures on site, including site set up, access, egress, compound location, traffic movements and the like, referring to any additional measures you consider necessary to take account of the specific needs of the site. Please include a site logistics plan within your answer and submission.	15%	To ensure the main contractor is competent to work in and adjacent to the general public and to evidence their suitability to do so.
3	Please provide cost savings and / or value engineering suggestions, with projected values for the project, which will still fundamentally maintain the quality of the project and meet the client's brief.	10%	To ensure the project can be delivered within budget and remain at the same expected quality. To ensure bidders have access and procedures in place for the selection of suitably qualified and sized supply chain partners so that best value can be achieved.
4	Provide a Programme in the form of a Gantt Chart illustrating key dates of delivery, assuming a Contract is signed by 3rd June 2024. If possible, please identify any time savings which will lead to the overall reduction of the Programme.	10%	To ensure bidders can deliver within the agreed timescales.

### 4.3 Contract Management

4.3.1 Contract management will be the responsibility of Black Cat consultancy in consultation with Evangeline Carter, Principal Regeneration Project Officer.

## 5. Risk management

<b>Risk</b>	<b>Description</b>	<b>Action to avoid or mitigate risk</b>	<b>Risk rating</b>
Capital Funding	Full Council has agreed for £13.1million to be added to the Capital Programme on the basis that the NHS will reimburse the full cost.	As part of the deal with the NHS, it has been agreed that there will be no annual interest cost to Medway, as the NHS will pay 65% of the reimbursement cost (table 1 in the Exempt Appendix) upfront, with the remaining 35% to be paid within the 12-month construction period. the NHS will sign a Funding Agreement and Agreement for Lease, prior to Medway entering into a contract.	CI
Appointment of the contractor	The appointment of the contractor sits with Medway Council. It has been agreed that Medway Council will manage and oversee the project delivery and budget.	To mitigate financial risk to the Council, the NHS will sign a Funding Agreement and Agreement for Lease, prior to Medway entering into a contract.	CI
Construction Costs (RIBA 5-7)	Constructions costs for RIBA 5-7 need to be within the NHS agreed budget	Tenders have been received and evaluated by the Quantity Surveyor. There is clear indication of market value and the preferred contractor's final contract sum is within the agreed NHS budget.	CII
Tender applications	Insufficient quality of applications received	The tenders received demonstrate sufficient quality.	DIII
Project Delivery	The project is not delivered within the NHS timeframe and the Council could be liable for additional costs if the project is not delivered to programme.	The contractor needs to start on site in June 2024 in order to complete the project on time. It is requested that call-in be waived to ensure that there is no impact on the programme for appointing the preferred contractor as per section 3.1.15. Accepting unforeseen incidents may occur in a large capital project, there is no reason to suggest at this stage that there will be a delay in the project, subject to the decision of Council.	CIII

For risk rating, please refer to the following table:

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

## 6. Service Implications

### 6.1. Financial Implications

6.1.1. The procurement requirement and its associated delivery as per the recommendations will be funded from existing capital budgets on the basis that the NHS will reimburse the Council.

6.1.2. As outlined in 3.1.14, as part of the deal with the NHS, it has been agreed that there will be no annual interest cost to Medway, as the NHS will pay 65% of the reimbursement cost upfront, with the remaining 35% to be paid within the 12-month construction period.

6.1.3. On 28 June 2023, the Leader, using urgency powers, agreed an undertaking to the Integrated Care Board that the Council would underwrite any VAT shortfall not exceeding £2,015,933 on the proviso that the total NHS build cost remained at £14,099,266. (Decision number 88/2023).

### 6.2. Legal Implications

6.2.1. This procurement activity was above the Find a Tender Service (FTS) threshold and therefore an FTS notice was required.

6.2.2. The procedure gives a high degree of confidence that the Council's primary objectives for procurement are met, as required by Rule 2.2 of the Council's Contract Procedure Rules ("the CPRs").

6.2.3. Under the Council's Contract Procedure Rules, the procurement is a Process 3 procurement (Rule 18), and the process set out in this report meets the requirements for such procurements. The procurement was advertised on the Kent Business Portal, in compliance with rule 18.4 of the CPRs.

6.2.4. 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.

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

6.2.6. This report was presented to the Procurement Board as a Process 3 medium risk procurement. The Monitoring Officer, in consultation with the Procurement Board will therefore set the risk and reporting stages for the remainder of the procurement process for Gateway 4.

6.2.7. The Procurement Board approved the recommendations, subject to the report being presented to the Leader / Cabinet.

### 6.3. TUPE Implications

6.3.1. Not applicable.

### 6.4. Procurement Implications

6.4.1. As per the Contract Procedure Rules: All requirements above £100K must be advertised on the Council's website, the Kent Business Portal, Contracts Finder and in the FTS.

6.4.2. This procurement was carried out via an open procedure (FTS) via the Kent Business Portal to comply with these rules, to adhere to the updated Public Procurement Regulations 2015, and to support the Council's procurement strategy to provide best value.

6.4.3. We received 38 expressions of interest, which resulted in 4 compliant bid submissions for evaluation.

### 6.5. ICT Implications

6.5.1. Not Applicable

### Lead Officer Contact

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### Appendices

Exempt Appendix 1 – Financial Analysis

### Background Papers

[Pentagon Shopping Centre - Addition to the Capital Programme and Virements, Council 24 January 2024](#)

[Potential VAT Shortfall at the Healthy Living Centre, Chatham, Leader Urgent Decision, 28 June 2023](#)