

<b>Committee/Meeting:</b> Cabinet	<b>Date:</b> 9 <sup>th</sup> Jan 2013	<b>Classification:</b> Unrestricted	<b>Report No:</b> CAB 61/123
<b>Report of:</b> Corporate Director Community, Localities and Culture and Corporate Director Development and Renewal  Originating officer(s) Ann Sutcliffe Service Head Corporate Property and Capital Delivery		<b>Title:</b> Poplar Baths and Dame Colet House – tender process update and selection of preferred bidder  <b>Wards Affected:</b>  Blackwall & Cubitt Town Limehouse East India & Lansbury St Dunstan's & Stepney Green	

<b>Lead Member</b>	Cllr Rabina Khan ( Lead Member – Housing and Development) Cllr Choudhury (Lead Member – Resources)
<b>Community Plan Theme</b>	Building one Tower Hamlets
<b>Strategic Priority</b>	1.4 Provide effective local services and facilities

## 1. **SUMMARY**

- 1.1 This report deals with the selection of the preferred bidder for the Poplar Baths and Dame Colet Project and the delegated authority to conclude Contract negotiations and enter into contract with the preferred bidder.
- 1.2 This report provides Members with an update on the procurement process for the refurbishment and re-use of Poplar Baths, provision of new homes adjacent to the Poplar Baths Site, new homes on the Dame Colet site and the provision of a new Haileybury Youth Centre.

## 2. **DECISIONS REQUIRED**

Council is recommended to:-

- 2.1 Agree to the recommendation of the procurement evaluation panel to approve the developer consortium mentioned in the tabled Part 2 report as the preferred bidder;
- 2.2 Authorise officers to proceed with the final stage of procurement in finalising agreements with a preferred bidder;

- 2.3 Authorise officers to nominate the unsuccessful bidder as a reserve and to authorise the Director of Community Localities and Culture, following discussion with the Executive Mayor to call upon this reserve if the preferred bidder's position deviates significantly from that tendered.
- 2.4 Following consultation with the Executive Mayor and the Lead Member for Resources, authorise the Director of Community Localities and Culture and the Assistant Chief Executive Legal in conjunction to approve and finalise the contract terms in accordance with the bid and to complete the contract; and,
- 2.5 Adopt a capital estimate to the value of £36m for the development of the Poplar Baths and Dame Colet sites.
- 2.6 Confirm that funding requirements as outlined in the Part 2 report will be available to meet the potential contract costs subject completion of the contract.

### **3. REASONS FOR THE DECISIONS**

- 3.1 Cabinet agreed on 6<sup>th</sup> July 2011 that officers should develop a proposal for Poplar Baths and Dame Colet House for procurement and implementation. The decision was made to achieve the following:
- That the retained Poplar Baths be refurbished and remodelled, retaining the heritage features of the building
  - Provision of a minimum of a 100 additional new build homes adjacent to Poplar Baths and on the Dame Colet House sites
  - Provision of a new build youth facility on the existing Haileybury Centre site
- 3.2 Cabinet further agreed on 4<sup>th</sup> July 2012 that officers should proceed with their recommended shortlist of two bidders through final dialogue and invite final tenders.
- 3.3 This reports provide feedback on the ITSFT submissions, and the recommendation to proceed to conclusion of the tendering process and appointment of the preferred bidder as set out in the original OJEU notice.

### **4. ALTERNATIVE OPTIONS**

- 4.1 The final business case attached in Part 2 details the alternate options assessment undertaken around delivery.

### **5. BACKGROUND**

- 5.1 The Cabinet agreed on the 6<sup>th</sup> July 2011 that the Poplar Baths Project should proceed to procurement, working with private sector partners to

delivery the most cost effective option for the Council for the provision of refurbished/remodelled baths, additional home and a new build youth centre.

## **6. Main Body of the Report**

### **Process to date**

- 6.1 LBTH issued an OJEU Contract Notice (2011/S 194-316050) on 8<sup>th</sup> October 2011 via the London Tenders Portal. Further to the Cabinet decision of 4<sup>th</sup> July 2012 two parties were invited to participate in the final stage of dialogue.
- 6.2 The 2 parties were:  
  
Bouygues UK consortium, and  
  
Guildmore Ltd
- 6.3 The two selected bidders were invited to participate in a further period of Competitive Dialogue procurement process by attending Design & Technical and Legal and Financial meetings between the 17<sup>th</sup> July and 12<sup>th</sup> November 2012. The Design & Technical meetings comprised of the bidders presenting their designs as they evolved and the client and professional team providing feedback on these designs. The Legal and Financial meetings involved the bidder's clarification on lease terms and Development Agreement, the structure of their consortium and the structure of the proposed transaction.
- 6.4 Bidders were then invited to present their proposed schemes to the Council stakeholder departments and feedback was provided to each before close of dialogue.
- 6.5 Dialogue was formerly closed on Tuesday 13<sup>th</sup> November 2012 and final tenders were submitted on 30<sup>th</sup> November by both bidders.
- 6.6 The final tenders comprised of design submissions for the proposed schemes as well as financial offers and derogations against the proposed legal documents.
- 6.7 The schemes for the Baths site comprised the refurbished baths option approved at Cabinet in July 2011 but modified to allow for a full sized 25m pool on a 35 year leaseback basis. The housing scheme provided for a minimum of 60 socially rented housing units to the site behind the baths, again on the basis of a 35 year lease and lease back basis with the Borough's arm's length organisation, the ALMO managing the housing stock.
- 6.8 For the Dame Colet and Haileybury site the scheme required the delivery of a minimum of 40 socially rented housing units together with a new youth and community building. Again these were all on a 35 year leaseback basis.

- 6.9 Following receipt of submissions, the professional team reviewed the full documents and provided the Evaluation Panel with an indication of the recommended score (fail, low, acceptable, good and exemplar) for each section (commercial proposition, planning strategy, quality, mix of uses, local issues and management) of the Technical Evaluation.

### **Scoring**

- 6.10 In accordance with the evaluation criteria set out in the invitation to submit final tenders the technical element for each scheme and each site was worth 40% of the overall marks with the financial element for each scheme and each site being worth 60% of the overall marks. The technical and financial scores were then added together to give an overall score for each site and these were then combined to give an overall score.
- 6.11 The Poplar Baths scheme would then be weighted at 70% and the Dame Colet scheme would then be weighted at 30%, to give an overall score for each bidder.

### **Evaluation**

- 6.12 The Evaluation Panel comprised both senior council officers and external technical and legal advisors.
- 6.13 Following this evaluation process which was endorsed by the Project Board, it is recommended to proceed with the Bidder 1 – the highest scoring bidder as identified in the part 2 report.

### **Programme**

- 6.14 Upon receipt of Cabinet approval officers will proceed with finalisation of contract documents to allow detailed design and planning applications to be made. The table below outlines the programme for these works; this has been approved by the selected bidder and will be monitored by the procurement team.

Activity	Start date	Completion Date
Cabinet selection of successful bidder	09/01/13	09/01/13
Alcatel period	09/01/13	19/01/13
Final clarifications	19/01/13	28/02/13
Contract close	28/02/13	28/02/13

Preparation and submission of planning permission	28/02/13	25/06/13
Planning	26/06/13	16/10/13
Financial Close	31/11/13	31/11/13
JR period	17/10/13	16/01/14

## **7. COMMENTS OF THE CHIEF FINANCIAL OFFICER**

- 7.1 This report updates Cabinet on the progress of the Poplar Baths and Dame Colet House schemes since 4<sup>th</sup> July 2012, and asks the Mayor in Cabinet to consider the recommendations of the procurement evaluation panel and approve a developer consortium to deliver the scheme.
- 7.2 To protect the Council's financial interest key aspects of the Chief Financial Officer's comments are set out in a separate report on Part II of the agenda.
- 7.3 The base scheme on which bidders have now submitted their final bids, has assumed key standard specifications, including the number of housing units to be provided, and that the whole development operate via a finance lease back of 35 years to the Council. A detailed financial appraisal has now been undertaken of each of the bids, together with a comprehensive financial review of each of the companies which make up the Special Purpose Vehicle (SPV). The SPV will develop and refurbish the properties and lease them back to the authority over a 35 year period. The SPV is responsible for running Poplar Baths leisure complex but the new dwellings are managed and internally maintained by Tower Hamlets Homes (THH). Under the Development Agreement, the annual lease payment becomes payable once the development period has ended.
- 7.4 Each of the four elements of the project will be financed through a finance lease. A finance lease is defined as an agreement where risks and rewards of ownership are substantially transferred to the lessee. The lease term is for the major part of the economic life of the asset and ownership of the asset transfers to the lessee at the end of the lease period. It is therefore clear, that as ownership of the asset transfers to the lessee at the end of the lease period, these leases can only be classified as a finance leases.
- 7.5 In accordance with accounting standard IAS 17 and the Prudential Code for Capital Finance in Local Authorities if the leases are classified as finance leases the assets and the liabilities have to be recognised in the Authority's balance sheet. The recognition of property plant & equipment will be matched by long term liabilities defined as credit arrangements. These credit arrangements will count in the calculation of the capital financing requirement. Adoption of a capital estimate is therefore required by the Mayor in Cabinet. The development costs, including internal clienting arrangements are likely to

be up to £36m, taking into account project financing risks (for example changes to rates on interest.) This will be split £20m capital estimate within the General Fund and £16m within the Housing Revenue Account.

- 7.6 Provision has been made in the Council's medium term financial strategy, as agreed by the Council in February 2012, for additional General Fund capital schemes valuing some £30million to be financed via prudential borrowing. The recommended GF element of the capital estimate is within those parameters.
- 7.7 The annual overall net revenue costs are estimated at between £1.6m - £1.8m, with approximately £1.25m of this attributable to the General Fund. This includes the annual cost of running the Poplar Baths facility, which for each bid is less than £100k per annum.
- 7.8 The affordable rents receivable on the housing development, over the period of the HRA business plan, will not be sufficient to repay the development financing costs. Indeed the annual gap will be up to £500k. Furthermore because this is a finance lease and deemed to be notional borrowing the housing developments will count against the Council's authorised debt cap under the HRA self-financing regulations. The HRA borrowing headroom will reduce by up to £16m. This will mean that the Council will reach its debt cap earlier than currently predicted in the 30 year business plan. To compensate for the loss of capital resources additional resources of between £400k and £500k per annum will need to be identified to supplement HRA reserves to deliver the long term capital investment needs of the existing housing stock. In total, therefore, full year savings of between £750 and £1,050k per annum are required from 2015/16 to deliver a balanced HRA business plan. Savings have been factored into the HRA Medium Term Financial Plan to offset these costs.
- 7.9 The housing element of the scheme could generate some £900k additional New Homes Bonus over the six year period following its completion, assuming no change to Government policy with regards to its allocations. That could be applied to partially offset the net cost of the scheme.
- 7.10 As outlined in the Risk Management Implications (paragraph 11.2), tenants will potentially maintain the right to buy the new rented properties. The Authority will be able to fully utilise any capital receipt but will receive reduced rental income while still being liable to make the full lease payment to the Special Purpose Vehicle over the period of the lease.

## **8. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)**

- 8.1 The Council has conducted the Procurement process for this contract using the Competitive Dialogue procedure in accordance with the Public Contracts Regulation 2006. This procedure is used in the case of particularly complex

contracts where contracting authorities consider that the use of the open or restricted procedure will not allow the award of the contract.

- 8.2 A contract is "particularly complex" when the Authority is not able to objectively define:
- the technical means capable of satisfying their needs or objectives and/or
  - the legal and/or financial make up of a project. This is broadly interpreted as contracting authority not be able to produce a single specification or legal/financial documents at the outset which would enable it to identify the best solution to meet its needs One of the purposes of the procurement process is to work with potential providers to identify which solution is best.
- 8.3 The Competitive Dialogue procedure was considered appropriate in this Case given that the Council is seeking to obtain not only the refurbishment of Poplar Baths to bring it back into public use but also the maximum number of new build homes and a new build youth facility on the Haileybury Centre site . The scope of OJEU notice was comprehensively drafted to enable the contracting authority to have discussions with bidders with the aim of identifying and defining the means best suited to meet the contracting authority's needs.
- 8.4 The Competitive Dialogue Process has produced contract proposals from the two remaining bidders.
- 8.5 This contract will be consistent with the Council's obligation as a best value authority under the Local Government Act 1999 to secure continuous improvement in the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
- 8.6 The council retains the freehold of the land and grants a licence to build to the developer and upon practical completion of the works the lease is granted. This ensures that title does not pass before the works are completed

## **9. ONE TOWER HAMLETS CONSIDERATIONS**

- 9.1 This project provides the improved opportunities for access to community leisure and youth facility along with affordable rented homes. A EIA has been undertaken and is attached to this report.

## **10. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 10.1 The schemes will comply with the Council's requirements on the reduction of carbon emissions, energy consumption along with green and sustainable construction delivery.

## **11. RISK MANAGEMENT IMPLICATIONS**

- 11.1 The main risks that exist for the project are as follows:
- A. The project over-runs its programme, incurring additional costs for the Authority, including bid costs
  - B. A lack of resources to maintain the programme

The above will be managed through strong project governance arrangements on the project, building on good practice on complex commercial negotiations undertaken by the borough over recent years.

- 11.2 Recent legal advice indicates that although the Authority is leasing the dwellings for the thirty-five year period, there is potential that tenants moving into the properties will maintain their ability to exercise the right to buy on these dwellings. The Authority will therefore continue to be liable for the lease rental payments to the Special Purpose Vehicle, but will no longer generate rental income. The capital receipts generated will be fully usable by the Authority, with resources recycled into the scheme.
- 11.3 There are a number of risks associated with the final tender recommendations; these are detailed in the part 2 report.

## **12. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 12.1 The project will provide homes that are of a better design in terms of orientation to maximise passive supervision of common and external areas, with safe pedestrian routes to and from the homes. The community leisure and youth facilities will promote positive activities for young people to engage with.

## **13. EFFICIENCY STATEMENT**

Provision of additional new homes will contribute to the Councils Overcrowding Strategy, through rehousing those tenants most in need. The homes, along with the refurbished properties and the Youth Centre will be built to sustainable design standards, therefore reducing the financial impact for residents and users. The procurement process will identify the most efficient means of delivering this key Mayoral priority.



Brief description of “background papers”

Name and telephone number of holder  
and address where open to inspection.

Cabinet Report 6 July 2011

Cabinet Report 14<sup>th</sup> March 2010

Ann Sutcliffe

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