

21st March 2018

Extraordinary Council

Procurement of a Joint Venture Partner

Report of: *Chris Leslie – Commercial Manager*

Wards Affected: *All*

This report is: *Public but contains exempt appendices*

1. Executive Summary

- 1.1 This report seeks approval to commence a procurement process under the Public Contracts Regulations 2015 using the Competitive Dialogue procedure to procure a joint venture partner.
- 1.2 A joint venture partner is required to enable the Council to further its asset development programme.

2. Recommendation(s)

- 2.1 **That a Competitive Dialogue Procedure under the Public Contracts Regulations 2015, to procure a joint venture partner commences.**
- 2.2 **That the procurement documentation set out in the appendices be approved.**
- 2.3 **That Delegated Authority is given to the Chief Executive, after consultation with the Leader of the Council, to finalise all documentation required to support the procurement process.**

3. Introduction and Background

- 3.1 The Council's Asset Development Programme has now progressed to a point where it is necessary to seek a development partner to enable it to achieve its objectives.
- 3.2 Through utilising specialised consultants, use of soft market testing and reporting to Policy, Projects and Resources Committee it became apparent that a joint venture partner would be the best delivery option.

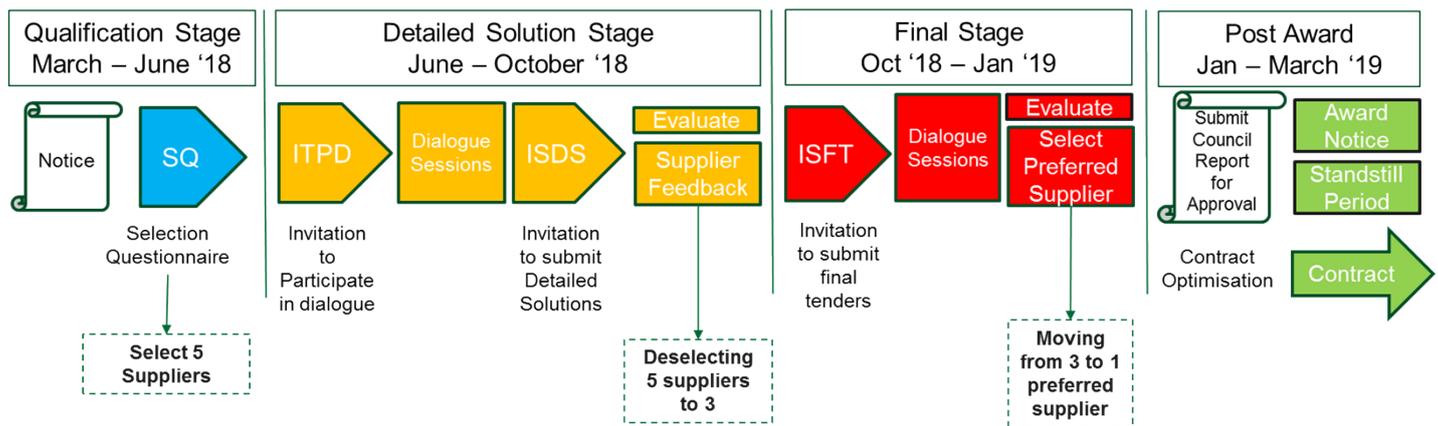
- 3.3 On 19th September 2017 the Policy, Projects and Resources Committee agreed the joint venture approach, and on the 6th February 2018 the Committee agreed that a decision to formally tender for a partner be brought for decision.
- 3.4 Due to the potential value of the projects that maybe taken forward under a joint venture a full Competitive Dialogue Procedure under the Public Contracts Regulations 2015 is required.

4. Procurement Process

- 4.1 To ensure an effective procurement process the Council has engaged the services of:
- East of England Local Government Association (EELGA)
 - 31ten Consulting (via EELGA)
 - Sharpe Pritchard
 - J C Gill and Co Limited
- 4.2 These consultants are familiar with public sector joint venture partnerships, the Competitive Dialogue Procedure and have been involved in similar procurements before. Their knowledge will be highly beneficial in securing the right partner.
- 4.3 The procurement process is outlined in the following paragraphs:
- 4.4 **Qualification Stage** – This is the first sift of bidders and aims to identify early those who are most likely to be selected as a partner. Bidders will respond to the Selection Questionnaire and be evaluated in accordance with their response (Appendix A). Following this, it is likely that five bidders will be selected to go through to the next stage. Restricting the number to five will provide the Council with a strong selection of partners and keep the assessment resources required at the next stage reasonable. The bidders will also remain engaged knowing the competition has decreased when they progress to the detailed solution stage.
- 4.5 **Detailed Solution Stage** – The successful five bidders will be invited to submit their detailed solutions in accordance with the Council's instructions (Appendix B). Solutions are discussed through dialogue sessions with the Council and then submitted through answering a series of evaluation questions (Appendix C). A shortlist of three bidders will then be drawn up based on how well their solutions meet the Council's requirements, as determined by the scoring methodology outlined in the instructions.

4.6 **Final Stage** – The final three bidders have an opportunity to refine their solutions in line with the Council’s detailed requirements as articulated in the bid documents. Solutions are further discussed through dialogue sessions and then their final bids are submitted. A Preferred Bidder is then selected based on how well their solutions meet the Council’s requirements, as in the detailed solution stage. Full Council will be required to approve the successful partner and a period of contract refinement will take place before the contracts are signed.

4.7 Timescales and the procurement stages are shown in the following diagram.



5. Potential Development Sites

5.1 On 19th September 2017 Policy, Projects and Resources Committee were informed of the assets considered as part of the asset challenge and triage process. These will continue to be the assets used in the procurement process as an example to the market of what sites may come forward to the partnership. The list of properties is shown in Appendix D.

5.2 Of these assets, eight principal properties were selected and used in the market soundings. Since then King Edwards Road has been dropped from the list so the Council can self-develop the site. Due to the positive feedback, prospective partners will be asked to undertake financial modelling based on these seven sites. Additionally, detailed development plans for three of these sites will be required. Restricting the number of assets in this way allows a more focused procurement and prevents an unreasonable amount of time and costs being incurred at risk by bidders, who otherwise might not be inclined to bid.

5.3 The four sites that will not be developed in detail will be costed by the bidders based on a development specification provided by the Council. This will match probable development potential, but if any were to be

developed by the partnership a detailed development plan would need to be prepared and signed off through the partnership arrangements.

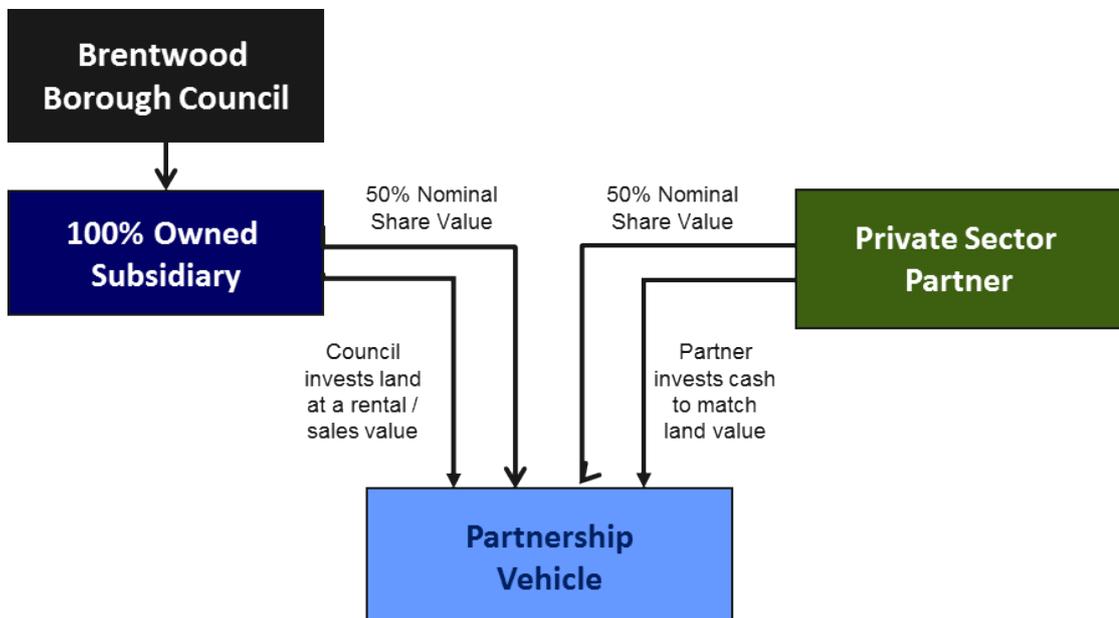
- 5.4 Although all seven sites form part of the procurement, only the three sites that are to be planned and designed in detail will be guaranteed to be developed by the partnership. Even after a partner is appointed, the decision to allow the partnership to develop further sites will still rest with the Council. Additionally, the Council is not restricted to developing only these sites as part of the partnership and may choose to add others over time.

6. Joint Venture Governance

- 6.1 Once a partner has been appointed a “development vehicle” will be required to allow the partnership to operate. Details of this will emerge as the competitive dialogue progresses. This could be through a new, separate private entity set up as a joint venture owned 50% by the Council and 50% by the partner with a deadlock arrangement so that neither party has control. This model is already used by a number of local authorities and public agencies in the UK to bring forward major development on their land, where those authorities do not have the investment capacity and skills to achieve the best possible outcomes without a partnership approach of this kind. A joint venture development vehicle can combine Council land with private investment and expertise while maintaining an appropriate degree of Council control over the pace and quality of development. It can also potentially give the Council a long term income stream as well as capital returns, which will be reinvested in accordance with the Council’s statutory functions, on social and economic benefits or on other Corporate Plan objectives.
- 6.2 It would be established as a company, or as a Limited Liability Partnership. The Council will likely have two or three Council Officers nominated to the Board (the same number as the private partner). The vehicle will have an executive team which could be procured in a number of ways, dependent on the nature of the partnership and the successful bidder.
- 6.3 The Council would not wish to have a share of less than 50%, as this would relinquish too much control and create an uneven partnership. Additionally, a share greater than 50%, would make the vehicle unattractive to the market.
- 6.4 As it is envisaged that a programme of sites will be developed over a number of years, the partnership must be long term. Once the sites are

developed, property will be held by the partnership to generate a revenue stream. Considering the payback period for developments and the need to maximise the income from the partnership, an agreement of 30 years has been deemed optimal.

- 6.5 The final governance arrangements will be the subject of refinement and discussion with potential partners during the procurement process. This ensures the Council gets the best possible arrangement by not restricting options at an early stage. One possibility is that a company, wholly owned by the Council may act as an intermediary between the joint venture and the Council. This will depend upon the governance and tax advantages of such a structure.



- 6.6 Certain key decisions will be reserved for the Council and its partner to take as shareholders, requiring unanimous approval of the shareholders. These are set out in more detail in section 6 of the key legal principals at Appendix E, but some of the key decisions include:

- Approval, adoption and variation of business plans
- Alteration of the nature or scope of the vehicle's business
- Action outside the parameters of the business plans
- Making a petition to wind up the joint venture
- Approving the development of any Further Sites

- 6.7 The Board of Directors of the joint venture will take decisions relating to matters such as:

- Committing expenditure to an agreed threshold
- Approving material contracts
- Appointment of employees
- Monitoring and directing the work of the joint venture

7. Reasons for Recommendation

- 7.1 To commence a Competitive Dialogue Procedure under the Public Contracts Regulations 2015, approval by Council is required.

8. References to Corporate Plan

- 8.1 This fits with the Council's Transformation Vision, to explore new income generating ideas and opportunities.

9. Implications

Financial Implications

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- 9.1 The costs of the procurement exercise have been included in the Medium Term Financial Plan 2018/19. It is intended to be funded from the organisational transformation reserve and monitored throughout the process.
- 9.2 As part of the procurement a detailed business plan will be developed for the joint venture.

Legal Implications

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- 9.3 The legal implications are set out in the report.

10. Appendices to this report

Appendices contain exempt information and are therefore not publicly available.

- Appendix A - Selection Questionnaire
- Appendix B - Invitation to Submit Detailed Solution Instructions
- Appendix C - Evaluation Questions
- Appendix D - Potential Development Sites
- Appendix E - Key Legal Principals

- Appendix F - Equalities Impact Assessment

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