

HERTFORDSHIRE COUNTY COUNCIL
CABINET
MONDAY, 18 DECEMBER 2017 AT 2.00PM

Agenda Item

No:

11

PROCUREMENT OF THE PROPERTY DEVELOPMENT PARTNER
HERTFORDSHIRE COUNTY COUNCIL

Report of the Director of Resources

Author: Mike Evans, Head of Estates Management

Executive Member: David Williams, Leader of the Council (as responsible for the Resources, Property and the Economy portfolio)

1. Purpose of report

- 1.1 To provide Cabinet with an update on progress on the procurement of the Joint Venture (JV) partner, that will enter into a joint venture with Herts Living Limited and details of the analysis of final tenders submitted.
- 1.2 To enable Cabinet to consider a proposal to authorise the selection of a preferred bidder to be the JV partner, that will enter into a joint venture with Herts Living Limited.
- 1.3 To provide an update on the formation of Herts Living Ltd.

2. Summary

- 2.1 Members are referred to the previous reports presented to Cabinet on 13 March 2017 and 10 July 2017 which approved the commencement of the procurement process with regards appointment of the JV partner and the setting up of the company – Herts Living Limited.
- 2.2 This report summarises the process, the key aspects of the final tenders received, the evaluation, the timetable leading to the anticipated award of contract and the recommendation to select the Preferred Bidder. This report does not include a recommendation to award the contract or enter into a joint venture; this will be addressed in due course in a separate report once the Preferred Bidder Dialogue stage has concluded in February 2018.
- 2.3 The programme has taken eighteen months since inception and has involved a rigorous and robust competitive dialogue procurement process. There has been a substantial commitment from the County Council with dedicated internal resources and commissioned specialists.

- 2.4 This report is supported by more detailed information which is exempt under Part 1 of Schedule 12A to Local Government Act 1972 (as amended).

3. Recommendations

- 3.1 The Resources, Property & the Economy Cabinet panel will consider a report on this item of business at its meeting on 15 December 2017. The Panel will be invited to recommend to Cabinet

1. *“That Cabinet: :*

- i. having considered the matters set out in Part 1 & Part 2 reports, authorises the selection of the Preferred Bidder.*
- ii. authorises the Director of Resources, in consultation with the Leader of the Council (as responsible for the Resources, Performance & Economy portfolio), to enter into discussions with the Preferred Bidder with a view to clarifying, specifying and optimising aspects of the Preferred Bidder’s final tender (including but not limited to project governance, sites to be developed, phasing, financial profile and communications) and to confirm commitments contained in the final tender.*
- iii. agrees that a further report relating to the award of contract to the Preferred Bidder and approval of the final documentation to support the establishment of the JV, arrangements and the agreement of the relevant business plans is brought to Cabinet, following further refinement at closure of the preferred bidder stage.*
- iv. notes that the detail of the governance arrangements, including the delegation matrix, will be reported to Cabinet following further refinement at the preferred bidder stage.*
- v. delegates to the Director of Resources in consultation with the Leader of the Council (as responsible for the Resources, Performance & Economy portfolio) to work with the Managing Director of Herts Living Limited to create and agree a robust business case for the future objectives of Herts Living Limited, incorporating the objectives of the County Council.*
- vi. approves the request for £0.5m allocated for capital spend to be made available for revenue spend, as set out in 11.3 of the report.*

2. *That Cabinet notes that the following actions are complete as delegated per the Cabinet decision of 10 July 2017:*

- i The creation of the company, Herts Living Limited (“the Company”) which was incorporated on 5 September 2017 (Company number 10947722), wholly owned by the County Council to work, in due course (subject to a decision to this effect being made by the County Council), with the joint venture partner and explore other opportunities to develop land and building assets for the benefit of County Council. The model articles and memorandum of association were adopted in accordance with the Companies Act 2006. The County Council is the sole shareholder, with a holding of 1,750 ordinary shares with an aggregate nominal value of £175,000.*
- ii The recruitment and appointment of a Managing Director (MD) of Herts Living Ltd, with an anticipated start date of 01st February 2018. All terms and conditions of the employment have been agreed.*
- iii The appointment of the following employees of County Council as Directors of the Company: Simon Aries, Mike Evans and John Oakley, with the appropriate indemnities in accordance with the Local Authorities (Indemnities for Members and Officers) Order 2004.”*

3.3 The Cabinet Panel’s recommendation/s to Cabinet will be reported orally at the Cabinet meeting and circulated to Members in the Order of Business sheet.

4. Background

4.1 In March 2017, Cabinet gave approval to carry out the procurement process to identify a Joint Venture development partner to assist the County Council, through a wholly owned subsidiary (now established as Herts Living Ltd), in the development of 12 initial sites. The OJEU process proceeded through autumn/summer 2017.

4.2 Officers have completed the evaluation of final tenders submitted as part of the procurement process and are in a position to recommend a Preferred Bidder.

5. The Procurement Process

5.1 All elements of the procurement process were robust and transparent and complied with the Public Contracts Regulations 2015. It should be noted by Cabinet that the County Council has carried out this procurement on behalf of its wholly owned subsidiary company – Herts Living Limited, which intends in due course (subject to a decision to this effect being made by Cabinet) to enter into the necessary JV with the Preferred Bidder.

- 5.2 The County Council placed a Contract Notice in the Official Journal of the European Union (OJEU) on 28 April 2017. The OJEU notice stated that a competitive dialogue procedure would be adopted with a formal structure, with successive stages and strict timescales.
- 5.3 Initial market responses were shortlisted against the predetermined selection criteria in May 2017. Five candidates were shortlisted and invited to participate in dialogue and to submit a detailed solution. Four chose to do so and following evaluation of these detailed solutions, three bidders participated in further dialogue and were invited to submit final tenders in October 2017. Both detailed solutions and final tenders were evaluated against predetermined award criteria by County Council officers and external technical experts. Following moderation of the evaluator's scores the County Council are now in a position to recommend the selection of the Preferred Bidder.
- 5.4 If Cabinet approves the selection of the Preferred Bidder, then the intention is to inform the Preferred Bidder. This would be sent to Bidder 3 (see Table below), in order to confirm financial commitments and other terms contained in their final tender.
- 5.5 In parallel to the above, the two other bidders will be informed who the Preferred Bidder is.
- 5.6 Upon the County Council and Bidder 3 agreeing terms during the Preferred Bidder Dialogue stage, a further recommendation will be made to Cabinet for the decision to enter into a joint venture with the Preferred Bidder; this will lead to formal contract award. A standstill period in accordance with the Public Contract Regulations 2015 will be observed at that point, prior to any contract with the Preferred Bidder being signed. It is intended to execute the required contractual documentation during March 2018.
- 5.7 Subject to the above process, and the necessary approval by Cabinet to proceed, engagement with the Preferred Bidder can commence, which will allow Herts Living Limited and the Preferred Bidder to clarify, specify, optimise and confirm commitments in the Preferred Bidder's final tender.

6. Details of the Solutions offered in the Final Tenders.

- 6.1 The County Council has been consistent with its objectives in the procurement exercise and bidders have responded to the key criteria, set out below:
 - To develop a quality brand for the developments, that has bold design aspirations for sustainability and the environment, aimed at safeguarding the long-term objectives of the County Council.
 - To optimise opportunities from a portfolio of property assets that will generate new long term financial returns (both capital and revenue)

- The use of the partnership vehicle must deliver a greater total financial return to County Council than the return which could be achieved through its traditional approach
- To accelerate the pace of development
- To build a long-term relationship with a partner with aligned objectives and to utilise their expertise

6.2 Below are the final scores achieved by the three bidders. The information within this report is supplemented with additional detail contained within the separate Part 2 report.

Award criteria	Bidder 1	Bidder 2	Bidder 3
Total Weighted Scores	81.77	71.44	85.46
Order of Tenders	2	3	1

- 6.3 Bidder 3 scores reflected their ability to work in partnership with Herts Living Ltd in the delivery of property development. The Preferred Bidder has a proven track record in public/private joint ventures and is able to bring both technical and financial solutions to deliver the initial sites at pace. The partner also has the capacity to take on board further projects, including urban extensions, along with external projects from sources such as the Hertfordshire Property Partnership (Hertfordshire's One Public Estate forum).
- 6.4 Bidder 3 has a proven track record in house building and other forms of construction, including civil engineering. They have experience in using modern methods of construction with the aim of improving pace, quality and value.
- 6.5 The bidding process allowed Officers to understand how the development of the 12 sites would come forward. Bidder 3's proposal was very strong on an architectural level, delivering policy compliant development solutions in an effect way, for example the use of efficient building techniques and supply chains, together with the use of strong marketing material to deliver a brand image and consequent sales.

7. Herts Living Ltd

- 7.1 On 13 March 2017 Cabinet approved the commencement of the procurement for the JV partner and then on 10 July 2017, Cabinet approved the use of a wholly owned property company to work with the Joint Venture partner.
- 7.2 In accordance with the decision of Cabinet on 10 July 2017 Herts Living Ltd was incorporated on 5 September 2017 (Company number 10947722), with the appointment of a Managing Director.

- 7.3 There will be three levels of governance sitting above Herts Living Ltd, these will be:
- Shareholder Board of Herts Living Ltd – oversight, guidance and scrutiny. Members will include Director of Resources and elected members
 - Shareholder Representative – Director of Resources who will represent the interest of the Shareholder Board.
 - Herts Living Ltd Board – a separate legal entity to the County Council, run by an MD and supporting directors (currently three of the directors are also employees of County Council) with responsibility to establish the Terms of Reference and business plan of the company. This business plan will be approved by Cabinet and published by spring 2018.
- 7.4 The Director of Resources will consider the required governance as set out above, including the completion of the required delegations matrix and decision making structures as required and will present such to Cabinet for approval next spring.
- 7.5 The Delegations Matrix will set out at what level decisions can be made within the Company by the MD and other Directors, and what decisions will need to be referred to the Shareholder and/or County Council. The Delegations Matrix will be reviewed regularly by the Shareholder and Board of Directors of the Company at the annual general meeting of Herts Living Limited. A further delegations matrix will be required between Herts Living Limited and the Preferred Bidder as part of the joint venture.

8. Legal Structure

- 8.1 The use of joint venture arrangements in property development is a common method of bringing sites forward
- 8.2 The County Council's interest in the joint venture ("JV") will be owned by Herts Living Ltd, its wholly-owned subsidiary. The County Council is empowered to incorporate a subsidiary company by virtue of the general power of competence contained in section 1 of the Localism Act 2011. Herts Living Ltd will also have the ability to undertake general trading by virtue of section 95 of the Local Government Act 2003 should it wish to do so in the future (entering into the JV alone would not amount to general trading).
- 8.3 The articles of association of Herts Living Ltd provide it with powers to enter into the JV with the Preferred Bidder. The relationship between Herts Living Ltd and the Preferred Bidder will be governed by a legal agreement, which will govern the commercial relationship between the two parties.
- 8.4 The legal documentation submitted by the Preferred Bidder is in line with the requirements set out in tender documents with regards its financial and commercial offering to the County Council.

9. Financial Implications

- 9.1 As originally set out in earlier approval papers, the County Council has a number of property disposal methods. Currently, County Council traditionally sells land having secured beneficial planning consent for policy compliant developments, from which the County Council receives a land value. For the initial 12 sites, as listed in Part 2, this was estimated to be £44.3m over 5 years. By participating in a joint venture vehicle the County Council not only receives its land value but also shares in the developer's profit. The OJEU competition has clearly identified the opportunity for County Council to significantly improve its financial position as well as engage with a development partner who will assist the County Council to release similar opportunities over the long term, and in doing so generate enhance receipts.
- 9.2 The forecast receipts, along with expenditure to date from the joint venture are set out in the Part 2 report.

10. The EU procurement position

- 10.1 The County Council has been fortunate to benefit from a very competitive EU procurement process and the evaluation process established the most advantageous tender, based 40:60 price/quality split. It would not be lawful to recommend to select a bidder other than the Preferred Bidder who has been selected following rigorous assessment against the predetermined procurement criteria. The alternative to the selection of the Preferred Bidder is, therefore, to abandon the procurement which would lead to substantial wasted procurement costs, and require an alternative long term strategy to be established.
- 10.2 There are no grounds to delay the decision to select the Preferred Bidder. To do so would delay the proposed benefits to the County Council and expose the County Council to substantial additional costs and it would have a negative impact on the County Council's reputation and the credibility of its procurement process.

11. Operating costs to date

- 11.1 At the County Council's Cabinet meeting on the 13 March 2017 the funding for the evolution of the PropCo and joint venture was approved that the Director of Resources, in consultation with the Executive Member, Resources & Performance be granted access to up to £500k revenue and £500k capital funding available from the LAMS in 2017/18. This approval did recognise that the balance of costs may be more towards revenue. In addition to this funding an Invest to Transform bid was also approved which has provided a further £125k for the project.

- 11.2 The County Council is forecasting to utilise £500k of this funding on the procurement exercise which has been predominantly on external fees; these are property, legal and finance support. The procurement exercise is now nearing completion; however there will be a final phase to complete the suite of legal documentation and to ensure appropriate external financial advice is provided in matters such as tax.
- 11.3 In addition there will be running costs associated with the operation of Herts Living Ltd. The funding for these will be provided by the County Council as follows:
- Equity funding through 1,750 ordinary shares with an aggregate nominal value of £175,000
 - Loan funding of up to £325,000
- 11.4 The split has been advised to ensure compliance with state aid requirements. The loan funding will be advanced as required. Expenditure within Herts Living Ltd will be controlled by the Council's nominated directors.
- 11.5 Such costs are likely to be classified as revenue. As such it is recommended to switch £500k of LAMS capital funding to revenue to support this project. The overall cash value allocated remains the same.

12. Risk

- 12.1 Given the substantial financial sums of money involved and the reputational impact that property development can have, risk registers at County Council, Herts Living Ltd and the joint venture vehicle will be maintained. At present the County Council has a live risk register for the project.
- 12.2 The main risk to County Council in entering into the joint venture arrangement is the certainty of income flowing back to County Council. It is considered that the joint venture will provide greater certainty on land value income, as well as the County Council's share of developer's profit. The governance arrangements will ensure robust financial forecasting and delivery obligations are adhered to.

13. Equalities Implications

- 13.1 When considering proposals placed before Members it is important that they are fully aware of, and have themselves rigorously considered the Equality implications of the decision that they are making.
- 13.2 Rigorous consideration will ensure that there is a proper appreciation of any potential impact of that decision on the county council's statutory obligations under the Public Sector Equality Duty. As a minimum this

requires decision makers to read and carefully consider the content of any Equality Impact Assessment (EqIA) produced by officers.

- 13.3 The Equality Act 2010 requires the County Council when exercising its functions to have due regard to the need to: (a) eliminate discrimination, harassment, victimisation and other conduct prohibited under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The protected characteristics under the Equality Act 2010 are age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief, sex and sexual orientation.
- 13.4 As property developments come forward full equality implications of the decisions are taken account of through local planning policy compliance.

14. Conclusion

- 14.1 This procurement has been carried out in full compliance with The Public Contract Regulations 2015.
- 14.2 All of the companies and their proposals were subject to rigorous analysis to ensure they met the requirements of the County Council. The competitive dialogue process has enabled the County Council to explore the best value solution using a reliable, robust and proven process of procurement to identify the JV partner.

Background Information

- *Cabinet Agenda 10 July 2017*
<https://cmis.hertfordshire.gov.uk/hertfordshire/Calendarofcouncilmeetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/516/Committee/8/SelectedTab/Documents/Default.aspx>
- *Cabinet Agenda 13 March 2017*
<https://cmis.hertfordshire.gov.uk/hertfordshire/Calendarofcouncilmeetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/509/Committee/8/SelectedTab/Documents/Default.aspx>