



## Officer Key Decision

**Report to the Strategic Director of  
Regeneration and Environment  
11 January 2022**

### **AUTHORITY TO AWARD CONTRACT FOR CONSTRUCTION OF THE NORTHWICK PARK SPINE / ACCESS ROAD.**

<b>Wards Affected:</b>	Northwick Park
<b>Key or Non-Key Decision:</b>	Key Decision
<b>Open or Part/Fully Exempt:</b> (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Part Exempt – Appendix 1 is exempt as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: “Information relating to the financial or business affairs of any particular person (including the authority holding that information)”
<b>No. of Appendices:</b>	Appendix 1 – exempt Appendix 2 – evaluation grid
<b>Background Papers<sup>1</sup>:</b>	None
<b>Contact Officer(s):</b> (Name, Title, Contact Details)	Nick Ljustina Operational Director of Property and Assets. <a href="mailto:Nick.Ljustina@brent.gov.uk">Nick.Ljustina@brent.gov.uk</a> Tel: 020 8937 5025  Sandor Fazekas Project Development Service Manager <a href="mailto:Sandor.Fazekas@brent.gov.uk">Sandor.Fazekas@brent.gov.uk</a> Tel: 020 8937 5113

#### **1.0 Purpose of the Report**

- 1.1 This report requests approval for the award of a contract for the construction of the Northwick Park Spine/ Access Road
- 1.2 This report requests authority as required by Contract Standing Order 88. It summarises the process undertaken in procuring this contract and it recommends to whom the contract should be awarded, following completion of the evaluation of the tenders received by the Council.

1.3 The Council's procurement of, and entry into the construction contract for which approval is sought, is in pursuit of the Council's obligations under the Infrastructure Collaboration Agreement into which it entered on 22<sup>nd</sup> March 2021 with London North West University Healthcare NHS Trust; the University of Westminster and Network Homes Limited.

## **2.0 Recommendation(s)**

2.1 That the Strategic Director of Regeneration and Environment acting under delegated authority received from Cabinet (and acting in consultation with the Lead Member for the Environment):

2.1.1 approves and agrees the the pre-tender considerations and evaluation described in this report for the selection of a contractor from Transport for London's Surface Transport Infrastructure Construction ("STIC") Framework for the construction of the Northwick Park Spine/ Access Road; and

2.1.2 approves the Council's entry into a call off construction contract procured as described at para.2.1.1 and within this report, to the selected contractor, VolkerFitzpatrick Limited, for a period of 12 months, the anticipated duration of the work, with an option to extend for up to 6 months, at a total estimated contract value of £6,022,990.00.

## **3.0 Detail**

3.1 The Council requires the provision of highway construction work for a new Northwick Park Spine /Access Road. The Council is required to construct the road in pursuit of its obligations under the Northwick Park, One Public Estate Collaboration Agreement ("the Collaboration Agreement") with London North West University Healthcare NHS Trust; the University of Westminster and Network Homes Limited. The Council entered into the Collaboration Agreement on 22<sup>nd</sup> March 2021.

3.1.2 If approval for award of the contract, as sought at para 2.1.2 is received, the Council will enter into a Works contract with VolkerFitzpatrick Limited on the basis of a STIC-amended National Engineering Council Engineering and Construction (Option A : Priced Activity Schedule) Contract.

3.1.3 Payments to the Contractor will be made from HIF Grant Funding and as otherwise as described at paras. 3.17 to 3.20 of this Report.

3.1.4 The majority of the design for the new access road has been prepared by Steers, the Council's external Consultants. However, the Contractor is responsible for some limited design in respect of the decommissioning of a service tunnel and the provision of a small retaining wall along the new footpath due to changes in surface levels.

### **Previous Relevant Internal Council Approvals**

- 3.2 When it approved the Council's entry into the Collaboration Agreement on 09 December 2020, Cabinet also approved:
- 3.2.1 the procurement of the construction works (and all other associated works and services) required for the completion of the new spine/access road, and
  - 3.2.2 the grant of delegated authority from Cabinet to the Strategic Director (acting in consultation with the Lead Member for the Environment) to agree relevant pre-tender considerations for the procurement of a suitable contractor and thereafter the evaluation of tenders on the basis of such pre-tender considerations, and
  - 3.2.3 the grant of delegated authority to the Strategic Director for Regeneration & Environment, (acting in consultation with the Lead Member for Environment) to approve the selection of a contractor(s) and to approve the Council's entry into a contract with the selected contractor for the Spine / Access Road works on the basis set out at para 3.2.2.

### **Procurement of the Construction Contract - STIC Framework Agreement**

- 3.3 Officers acting on the advice of the Council's Procurement Team determined that the most appropriate means of providing the construction work was through the procurement of a contractor by way of a mini-competition under Transport for London's Surface Transport Infrastructure Construction (STIC) Framework.
- 3.4 VolkerFitzpatrick Limited bid for, and won the mini-tender competition held and evaluated as described at paras 3.5-3.16 below, and in the Tender Evaluation Grid provided in Appendix 2.
- 3.5 The mini-tender process used by the Council to procure this Contract followed the Call Off procedure set within Transport for London's Surface Transport Infrastructure Construction (STIC) Framework.
- 3.6 Advertisements were placed in the London Tenders Portal on 20<sup>th</sup> May 2021 seeking initial expressions of interest, which elicited 16 initial enquiries. Contractors were provided with an outline Specification and details of the tender approach. They were invited to complete a Selection Questionnaire using the Council's Electronic Tendering Facility. The three contractors identified at exempt Appendix 1 including VolkerFitzpatrick Limited subsequently completed the Questionnaire. Each of these contractors had been appointed as Suppliers under Transport for London's STIC Framework.
- 3.7 Shortlisting was carried out on the basis of the contractors' financial viability, and technical ability. On 23<sup>rd</sup> September 2021, the three contractors listed in exempt Appendix 1 were invited to mini-tender for the Council's proposed contract.

3.8 The Council’s tendering instructions stated that the construction contract would be awarded on the basis of the most economically advantageous offer to the Council. When evaluating tenders and mini-tenders using this award criteria, contracting authorities like the Council use a cost-effectiveness approach or price/quality ratio, when evaluating whether a tender or mini-tender offers the best price (though not necessarily the lowest price). The award criteria used, and the weighting allotted to that criteria is set out below:

<b>Technical / Quality</b>	<b>Area weighting</b>	<b>Overall weighting</b>
Q1 Experience	20%	<b>30%</b>
Q2 Project Methodology and Programme	25%	
tQ3 Project Resources	25%	
Q4 Supply Chain	10%	
Q5 Sustainability	8%	
Q6 Stakeholder Management	7%	
Q7 Innovation	5%	
<b>Total for Quality/Technical</b>	<b>100%</b>	
<b>Social Value</b>	<b>Area weighting</b>	<b>Overall weighting</b>
Social Value	100%	<b>10%</b>
<b>Commercial - Cost</b>	<b>Area weighting</b>	<b>Overall weighting</b>
Commercial (Price)	100%	<b>60%</b>
<b>Total</b>		<b>100%</b>

3.9 Tenderers were required to submit details of their proposed arrangements for the performance of the contract including (but not limited to) the following:

- Experience
- Project Methodology and Programme
- Project Resources
- Supply Chain
- Sustainability
- Stakeholder Management
- Innovation

### **Evaluation process**

3.10 The tender evaluation was carried out by a panel of officers from the Council’s Highways Team, as well as representatives from the Council’s One Public Estate (“OPE Partners”) comprising:

- Westminster University
- London North West University Healthcare NHS Trust (“NHS”)

- Network Homes
- 3.11 All tenders had to be submitted electronically no later than 23<sup>rd</sup> September 2021 at 12:00 pm.
  - 3.12 Tenders were opened on 23<sup>rd</sup> September 2021 at 13:04 pm and 3 valid tenders were received in return.
  - 3.13 Each member of the evaluation panel read the tenders and carried out an initial evaluation of how well they considered each of the award criteria was addressed in the tender.
  - 3.14 The panel met on 28<sup>th</sup> October 2021 and each submission was marked by the whole panel against the award criteria
  - 3.15 The names of all the tenderers, including VolkerFitzpatrick, are contained in exempt Appendix 1. The scores allotted to their mini-tenders are included at Appendix 2. It will be noted from the Tender Evaluation Grid that VolkerFitzpatrick Limited was the highest scoring mini-tenderer. Officers therefore recommend the award of the contract to this company.
  - 3.16 The approval sought in this Report, notification and debriefing of any unsuccessful tenderers who request this during the standstill period of 10 calendar days, and the signature of a contract by both the Council and VolkerFitzpatrick Limited will allow commencement of the contract.
  - 3.17 The estimated value of the Contract is £6,022,990 for a contract period of twelve months, which is the anticipated programme required for the work, with a possible extension of six months.

### **Funding and Governance Background**

- 3.18 The construction works under the Contract are to be funded by Housing Infrastructure Fund (“HIF”) grant funding. Brent Council secured £10,000,000 (ten million pounds) for the construction of the Access Road subject to the terms and conditions in the HIF Grant Funding Agreement dated 16 December 2019.

The purposes for which the funding should be used by the Council for the construction of the Spine/ Access Road and how it should be used is specified in the HIF Grant Funding Agreement. As a condition for HIF Grant Funding, the Council was required to enter into an Infrastructure Collaboration agreement with its Partners to give a legal framework to help progress and manage their proposals. This covers matters including planning, the obtaining of permissions for works to be carried out, land ownership and rights requirements, funding arrangements and other responsibilities.

- 3.19 Cabinet approved the Council's entry into the Northwick Park, One Public Estate Collaboration Agreement on 09 November 2020. The Council subsequently entered into the Collaboration Agreement on 22 February 2021.

By virtue of clause 12.2 of the Collaboration Agreement, should there be a shortfall between the grant funding referred to in this paragraph 3.18 and the total construction costs that are payable to the Contractor under the proposed construction Contract, then, the Council's Partners are equally and jointly responsible for meeting any shortfall up to a maximum cap of £1,000,000 (one million pounds).

Brent Council is required to fund any further shortfall up to a maximum of £500,000 (five hundred thousand pounds) by way of a pre-emptive bid for Community Infrastructure Funding ("CIL").

Any further shortfall will be met at the direction of the Northwick Park, One Public Estate Project Board, of which the Council is part, with its Partners.

- 3.20 On 12 February 2021 Cabinet resolved to delegate authority to the Strategic Director of Regeneration & Environment (acting in consultation with the Lead Member for Environment, the Lead Member for Planning, Property and Regeneration and the Director of Finance) to allocate £10m of Community Infrastructure Levy funding to allow the construction of the new One Public Estate Spine/Access road at Northwick Park. This will assist the Council to deal with timing differences between the HIF grant draw down and the programme cost milestones meaning the project will need to be temporarily cash flowed until HIF Funding re-imburses construction costs and the £10m SCIL allocation is earmarked to underwrite the construction project if the terms of the HIF cannot be met or if the HIF grant falls away.
- 3.21 Under the HIF grant funding agreement, the 'longstop' date for completion of the project is 31<sup>st</sup> March 2023. Under the same agreement, the GLA is able, in its' absolute discretion, to defer this date on application by the Council for such deferral.

### **Property Implications**

- 3.22 In a conveyance dated 9 May 1946, certain restrictive covenants and other restrictions on land use were created in favour of Harrow School over some of the land in the area of the Access /Spine Road. In the opinion of the OPE Partners these restrictive covenants and the other restrictions do not affect the highway works that the Council wants to undertake. Harrow School disagrees. The OPE Partners and Harrow School have decided that notwithstanding their differing views about the restrictive covenants they would enter into an agreement with Harrow School ("the Harrow Commercial Agreement") which would facilitate the development of the site that the OPE Partners want to develop and the site that Harrow School want to develop. This will be enabled by a Deed of Consent.

- 3.23 The Harrow Commercial Agreement is currently being negotiated and it is anticipated that it will be in an agreed form sometime in January 2022. The Council is a party to this Agreement. A Deed of Consent will then be entered into when there are three satisfactory planning permissions in place. These are the planning permissions that relate to the Masterplan regarding the development that the OPE Partners want to carry out on their respective land, the Phase 1 permission that relates to the Network Homes development and the Access Road permission.
- 3.24. The Council wants to commence the highway works without waiting for the Harrow Commercial Agreement to be completed. Whilst the risk is low that the Harrow Commercial Agreement will not be entered into ( the Collaboration Agreement already entered into between them contains obligations on all of the parties to work in a collaborative manner) there is a risk that the Council will commence the highway works and the Harrow Commercial Agreement is not entered into. If this were to happen, then one course of action would be for all of the OPE Partners to make an application to the Upper Chamber of the Lands Tribunal to have the relevant restrictive covenants modified or discharged to allow for the highway works to continue so long as the Upper Tribunal formed the same view as the OPE Partners regarding the restrictive covenants.

#### **4.0 Financial Implications**

- 4.1 The estimated cost of this contract is £6,022,990 and will be met from the Northwick Park (Infrastructure Fund) budget which is £10,000,000 in total and sits within the Housing General Fund programme.
- 4.2 The ongoing spend against budget for this contract will be monitored by the Housing Design and Delivery Board, Housing Care and Investment Board and Capital Programme Board.

#### **5.0 Legal Implications**

- 5.1 The estimated value of the call off construction contract described at para. 2.1.2 of this report defines the contract as a High Value Contract under the Council's Contract Standing Orders ("CSOs").

Under Regulation 86 of the CSOs any High Value Contract may only be awarded on the approval of Cabinet as required by paragraph 9.5 of Part 3 of the Constitution. Cabinet has therefore expressly delegated the power to approve the award of this contract to the Strategic Director for Regeneration & Environment, (acting in consultation with the consultation with the Lead Member for Environment) on 09 November 2021.

- 5.2 The value of the proposed contract renders the decision to award it a Key Decision under the Council's CSOs. Key Decisions are subject to the Council's Access to information Rules within Part 2 of the Constitution. This

means that any award proposal must be published on the Forward Plan at least 28 days before the decision to award is taken. The Council must also wait a minimum of 5 days after the decision is made to implement the award decision, or longer, if the Key (award) Decision is called in by the Council's Overview and Scrutiny Committee

- 5.3 Permission for the use of the STIC Framework, a third-party let Framework Agreement, was received from the Director of Legal HR Audit and Investigations on 06 May 2021 in accordance with the Council's Contract Standing Order 86(e) (ii).
- 5.4 The estimated value of this contract over its lifetime is in excess of the financial threshold for procurement of Works under the Public Contract Regulations 2015 ("PCR 2015"). So, this contract must be procured in accordance with the one of the procedures set out within the PCR 2015.

The call off construction contract referred to at para 2.1.2 of this report has been procured in accordance with a procurement procedure permitted under the PCR 2015 for public contracts of this value.

Regulation 33 of PCR 2015 permits the use of Framework Agreements that have been pre-let by other contracting authorities (like TFL's STIC Framework). The procurement procedure referred to at para 2.1.1 of this Report and as further described at paras. 3.3 to 3.15 of this Report falls within the scope of Regulation 33 of the PCR 2015.

- 5.5 As this procurement is subject to the full application of the PCR 2015, the Council must observe a mandatory minimum 10 calendar-day standstill period after all tenderers are notified in writing of the Council's decision to award the contract referred to at para.2.1.2 of this Report. The standstill period provides unsuccessful tenderers with an opportunity to request and to receive a debriefing from a contracting authority like the Council, as to why they were unsuccessful, and how their bid compared with the successful tenderer. The standstill period allows them to issue a legal challenge the Council's award decision. However if no legal challenge or successful challenge is brought during that period, the Council can make its intended award.
- 5.6 The property-related background to the award of this contact and property-related legal comments contained at paragraphs 3.21 to 3.24 of this report are noted.
- 5.7 The comments contained at paragraph 8.0 of this report as regards the planning and highways-related background and related legal aspects of the award of this Contract, are noted.
- 5.8 The staffing and personnel resources that will be utilised for this contract as described at paras 8.1.to 8.4 of this report, are noted. There are no human resources or staff transfer implications under the Transfer of Undertakings (Protection of Employment) Regulations 2006.

## **6.0 Equality Implications**

6.1 The Council must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment and victimisation
- (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,

pursuant to s149 Equality Act 2010. This is known as the Public Sector Equality Duty.

6.2 Under the Public Sector Equality Duty, having due regard involves the need to enquire into whether and how a proposed decision disproportionately affects people with a protected characteristic and the need to consider taking steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it. This includes removing or minimising disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic.

6.3 The Public Sector Equality Duty covers the following nine protected characteristics: age, disability, marriage and civil partnership, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

6.4 The new access road has been designed to required highway standards and will be fully accessible. Provisions have been made for dropped kerbs for pedestrians and wheelchair users and tactile paving (for the visually impaired) at pedestrian crossing points. The new traffic signal junctions will meet Transport for London's design standards. Pedestrian phases will be provided, with push buttons / tactile cones / and audio to accommodate people that are visually impaired.

6.5 No adverse equality implications arise from the award of this Contract.

## **7.0 Consultation with Ward Members and Stakeholders**

7.1 Officers from Brent, Network, the University of Westminster and London Northwest Health Authority held a series of public consultations - to discuss the planning applications and general work the OPE project has been doing. These were on 25, 26, 27 and 29 June 2019 for the first consultation and 8, 9, 10, and 12 October 2019 for the second consultation.

7.2 Ward councillors were met with and consulted as regards the above on the following dates:

- a. 22 November 2018
- b. 21 June 2019
- c. 8 October 2019 (Cllr McClennan did not attend)
- d. 28 November 2019 (Cllr McClennan only)

## **8.0 Human Resources/TUPE Implications (if appropriate)**

8.1 As an OPE Collaboration Partner, Brent is obliged under the Collaboration Agreement, to produce a Construction Management Plan to OPE Partners and to report to OPE Partners in respect of that Plan. In this context, the Council's Highways Infrastructure Project Development Manager is to manage the construction contract strategically from design, through procurement and to completion of construction in this road delivery project.

8.2 As there is no internal capacity to manage the delivery of the construction project from within the Council's Highways and Infrastructure Service, NEC4 Project Management services are being procured to enable day-to-day operational management of the construction. The Construction Contract is a modified NEC4ECC Construction Contract, so the focus will very much be on active day-to-day operational and interpersonal contact between the Council's NEC4 Consultant and the Contractor throughout the construction contract period.

8.3 Brent Council's Development Control Team in the Planning Service will be engaged approval of the adoption of the road after its construction. Once adopted, the road will be maintained by the Highways and Infrastructure Service. This is part of the Council's normal role as a Highways and Planning authority.

8.4 Brent Council's Traffic Management and Network Management teams within Highways and Infrastructure, will work with Development Control and between themselves as regards permissions for work on the public highway and agreement of traffic management arrangements to minimise disruption on the network. Again, this is part of the Council's normal role as Highways authority.

8.5 Steer Davies and Gleave Limited ("Steers") act as external Consultants and :

8.5.1 since 2019, they have provided masterplanning and planning application consultancy services;

8.5.2 since April 2020 they have provided preliminary design, highway approvals, and detailed design and compile a construction tender package; and

8.5.3 once the construction contract is let, the Council will engage Steers' consultancy services on an *ad hoc* basis to advise in any enquiries received from the Contractor in relation to their design.

## 9.0 Planning and Highways

9.1 Full Planning permission was given to Brent Council (as developer) by Brent's highways authority for the construction of the Northwick Park Access Road. This was granted by the Council on 4th December 2020 (Ref 20/0677). This planning permission permits junction improvement works to the A404 (Watford Road) and the widening of the existing Northwick Park Hospital spine road to allow two – way traffic, pedestrian and cycle improvements and associated landscaping and public realm works and associated changes to access. This is referred to as "the Access Road Condition" in the OPE Collaboration Agreement. The Council's development control team have approved the design of and specification for the new access road. They will also monitor compliance with the agreed design.

9.2 There is a requirement under the above planning permission for the OPE partners to enter into a section 278 agreement under the Highways Act 1980 to enable them to make permanent alterations or improvements to existing public highway for the purposes of the road construction project and, a section 38 agreement under the Highways Act 1980 for the adoption of the new road as a public highway.

The Council is also required to enter into a section 8 agreement under the Highways Act 1980 with the London Borough of Harrow to enable work on the Watford Road, which is a borough boundary road.

These legal agreements will be progressed by the Council's Development Control Team with the Property Team in Legal services.

9.3 Stopping up of sections of public highway will be required under S247/248 of the Town and Country Planning Act 1990 allowing for the cessation or to diversion of the use of existing highway, road or footpaths both during construction and thereafter.

9.4 Traffic Management Orders under the Road Traffic Regulation Act 1984 will also be required to regulate the use of highways for movement of traffic and parking and management within the road construction area. The Contractor will be responsible for any temporary traffic management arrangements relating to the work. Transport for London are responsible for the management of traffic signals and new installations in London, the contractor will need to liaise with them on the installation of the new signal junctions. The contractor will be responsible for any temporary traffic management arrangements.

## 10.0 Public Services (Social Value) Act 2012

10.1 The Council is under a duty pursuant to the Public Services (Social Value) Act 2012 (“the Social Value Act”) to consider how services being procured might improve the economic, social and environmental well-being of its area; how, in conducting the procurement process, the Council might act with a view to securing that improvement; and whether the Council should undertake consultation. Officers have had regard to considerations contained in the Social Value Act in relation to the procurement.

10.2 The Social Value pillars which were requested were the following:

- Strong foundations
- Every opportunity to succeed
- A future built for everyone, an economy fit for all
- A cleaner, more considerate Brent

The social value award criteria is was weighted at 10% of the evaluation criteria and had a monetary value commitment in order to ensure the delivery of the Social Value commitments.

10.3 Social value benefits include community engagements, apprenticeships for Brent residents, making good of pathways and tree planting. In the event that it fails to provide these by way of social value, the Contractor will have to pay the sum of £ £6,022,990.14(or the relevant proportion of this in relation to what has been delivered) into the Council’s Social Value Fund.

### Related documents:

- (1) Cabinet Report 9th November 2020: Northwick Park, One Public Estate – Update, Infrastructure Collaboration Agreement and Spine Road Construction
- (2) Cabinet Report 12th January 2021; Northwick Park, One Public Estate – Spine / Access Road CIL Allocation
- (3) Item 12 - Cabinet Decision Notice dated 09 November 2021

### **Report sign off:**

**Alan Lunt**  
Strategic Director for Regeneration and Environment