

REQUEST FOR DIRECTOR DECISION – DD1241

Title: Lewisham Gateway – Appointment of Project Monitor

Executive Summary:

Lewisham Gateway is a GLA led development project between GLA Land and Property Limited (GLAP) TfL, TfL Buses (London Bus Services Limited), the London Borough of Lewisham (LBL) and Lewisham Gateway Developments Limited (LGDL), the developer. In addition to a general update on scheme progress to date (following completion of legal agreements on the 1 April 2014), this paper requests:

- a) approval to enter into a contract to appoint an external Project Monitor (cost to be met by LGDL with GLAP incurring no outlay) and approval to pay the VAT element of invoices (to be reclaimed by GLAP) and;
- b) approval to pay the VAT element of invoices paid from an Escrow Account), held by Bevan Brittan LLP, on behalf of GLAP and LGDL in relation to the Lewisham Gateway project. As above, the VAT element of these invoices would be reclaimed by GLAP.

Decision:

That the Director approves:

- Entering into a contract to appoint AECOM as an external Project Monitor (cost to be met by LGDL with GLAP incurring no outlay);
- expenditure of up to £61,020 representing VAT payable upon the provision, by AECOM, of project monitoring services to GLAP over a 4 year period (LGDL being liable to pay AECOM's fees to which such VAT applies);
- a related exemption from the requirement of Section 4.1 of the GLA's Contracts and Funding Code to procure competitively the services to be provided by AECOM; and
- expenditure of up to £19,582 representing VAT payable upon the provision of professional/legal services financed from funds held in Escrow, by Bevan Brittan LLP, on behalf of GLAP and LGDL in relation to the Lewisham Gateway project.

AUTHORISING DIRECTOR

I have reviewed the request and am satisfied it is correct and consistent with the Mayor's plans and priorities.

It has my approval.

Name: David Lunts

Position: Executive Director Housing and Land

Signature:

Date: 17 July 2014

PART I - NON-CONFIDENTIAL FACTS AND ADVICE

Decision required – supporting report

1. Introduction and background

- 1.1 Lewisham Gateway is a GLA led development project between GLA Land and Property Limited (GLAP), previously LDA, TfL, TfL Buses (London Bus Services Limited) and the London Borough of Lewisham (LBL). The selected developer for this project is Lewisham Gateway Developments Limited (LGDL).
- 1.2 The project involves the removal of the A20 roundabout and wholesale re-alignment of the existing 'A' road network to create a development platform that better links the transport hub to the town centre. LGDL are proposing to deliver up to 800 new homes, up to 12,000 sq m of retail space, up to 17,500 sq m of office and educational space and public open space across two phases of development.
- 1.3 Following completion of the Deed of Priority (DoP) (December 2013) in respect of the HCA's Get Britain Building equity funding for the scheme, there have been a number of changes to the legal documentation. These changes have, for the most part, been necessary to ensure that the financial provisions within the legal agreements (entered into by the developer and public sector partners) accurately mirror the financial provisions within the DoP.
- 1.4 Execution (and preferably completion) of the most important of these legal agreements – a Supplemental Agreement to the Development Agreement – was one of the conditions precedent that the Homes and Communities Agency insisted was satisfied, by the 31st March 2014, in order to ensure that the draw-down of funds could still occur within their funding 'window'.
- 1.5 The parties successfully completed, on 1st April 2014, a Supplemental Agreement to the 2006 Development Agreement and a number of associated legal agreements.
- 1.6 Following the recent satisfaction (and confirmation of waiver) of all outstanding pre-conditions within the Development Agreement, LGDL are now unconditional. This triggers a process of land transfers to enable individual Plot Leases to be granted to LGDL by LBL. The legal documentation regulates the time periods within which this process needs to take place and also provides for the roles and responsibilities of all parties.
- 1.7 Start on site for the first building, Plot A (and associated common parts) is due in August 2014. Phase 1 will be completed by 2018 and, given that there is likely to be an overlap in terms of a construction start for Phase 2, completion of the entire scheme is anticipated by 2020.
- 1.8 Previous approvals – MD 1301 provided authority for GLAP to enter into all necessary legal agreements and land transfers in addition to delegated authority for the Director of Housing and Land to finalise all matters in relation to the scheme.

2. Objectives and expected outcomes

- 2.1 **Project Monitor** – As lead public sector partner and on behalf of GLAP, TfL and LBL, GLAP is intending to appoint a Project Monitor (PM) to identify and comment upon construction and/or development issues as they arise throughout the life of the project. In addition, the appointment will encompass a requirement for the PM to undertake specific ongoing project monitoring tasks on behalf of the HCA. The PM will rely upon his/her own experience of dealing with comparable

development projects and more formal information received from the developer's professional team and main contractor. The PM will owe a duty of care to all public sector partners as well as the HCA.

- 2.2 Whilst the contractual arrangements will lie with GLAP, ongoing day to day management of the PM will be the responsibility of LBL. LGDL as developer are funding the costs of the PM (save as for VAT – see 2.4 below), including the costs of preparing an initial report, ongoing monthly monitoring and an optional addendum report on completion of the first phase.
- 2.3 GLAP is seeking to appoint AECOM to undertake the PM role.
- 2.4 Although LGDL will be liable to pay AECOM's fees (and this will be reflected in the contract between GLAP and AECOM) the VAT'able supply is being provided to GLAP. Accordingly, GLAP is liable to pay the applicable VAT. It should be noted that as LGDL will not be in receipt of the services it would not be able to offset any VAT costs because it will not be in receipt of the VAT'able supplies. Therefore, AECOM will invoice LGDL for their fees and GLAP for the VAT thereon. It is understood that GLAP can reclaim this VAT.
- 2.5 This is, therefore, a back to back arrangement with no financial risk to GLAP. A capital budget is required to ensure the timely processing of monthly invoices from the PM in respect of the VAT payable only.
- 2.6 Officers acknowledge that contracts with the value of that proposed should under, section 4.1 of the GLA's Contracts and Funding Code ("Code"), be procured competitively or by way of "calling off" from an accessible framework. However, section 5 of the Code provides that exemptions from that requirement may be approved where the contractor in question has had previous involvement in a specific current project or the services in question are a continuation of existing work which cannot be separated from the new project/work.
- 2.7 AECOM have had previous involvement in the project, as the provider of financial due diligence and construction contract and programme monitoring services to the primary funders of the project (The Homes and Communities Agency and Royal Bank of Scotland). These roles have demanded an in depth understanding of the background to the project as well as the legal documentation governing the roles and responsibilities of all parties. As a result, AECOM have a considerable amount of experience, information and intelligence that can usefully be shared. As previously highlighted, the GLA's appointment of AECOM will encompass an ongoing project monitoring role for the HCA.

Therefore, the approval of an exemption from the requirements of section 4.1 of the Code is sought.

- 2.8 **Escrow Account** – on behalf of GLAP and LGDL, Bevan Brittan LLP (GLAP's legal advisors on this project having taken over that role from Eversheds LLP) hold funds, in Escrow, for the payment of 'qualifying' expenditure in relation to the scheme. Qualifying expenditure includes such fees as those incurred by professional advisors. This is a historic arrangement, put in place by the LDA, and inherited by GLAP.
- 2.9 The current arrangement is that all qualifying fees incurred are paid (exclusive of VAT) out of the Escrow monies held by Bevan Brittan, on behalf of GLAP and LGDL. Under the terms of the Escrow account, the VAT element is to be borne by the party to whom the services for which the qualifying fees are charged have been rendered. This means that a VAT payment process would need to be undertaken by the GLAP for each individual invoice. It is understood that GLAP can reclaim this VAT. To avoid the need to authorise each individual VAT invoice paid by GLAP a capital budget is

required. The budget requirement is £19,582 which represents the VAT element of any invoices paid from the balance of funds held in Escrow (£97,913).

- 2.10 The remaining Escrow funds will be used for the payment of professional and legal fees in relation to the land draw down process i.e. the transfer of GLA/GLAP land to LBL, and the subsequent grant of Plot Leases to LGDL by LBL. It is anticipated that the remaining funds will be sufficient to cover costs in relation to Phase 1.
- 2.11 Again, this is a back to back arrangement with no financial risk to GLAP. The budget is required to ensure the timely processing of VAT reclaims by GLAP.

3. Equality comments

- 3.1 The provisions of the Equalities Act 2010 have been considered and no adverse implications are anticipated.

4. Other considerations

- 4.1 There are no foreseeable financial risks to GLAP of setting up capital budgets for the payment of VAT (and reclaim by GLAP) in respect of the PM role or the reclaim of VAT, by GLAP, in relation to funds held in Escrow.

5. Financial comments

- 5.1 The cost of appointing an external Project Monitor will be met by LDGL (the developer) but GLAP will enter into a contract with the provider.
- 5.2 The cost of professional/legal fees are to be met from existing funds held in Escrow by Bevan Brittan LLP.

6. Legal comments

- 6.1 Officers have indicated in this report that:
 - 6.1.1 the decisions requested of the Mayor fall within the statutory powers of the Authority to do such things which may be considered facilitative of or conducive or incidental to the promotion of economic development and wealth creation in Greater London; and
 - 6.1.2 in formulating the proposals in respect of which a decision is sought officers have complied with the Authority's related statutory duties to:
 - a) pay due regard to the principle that there should be equality of opportunity for all people;
 - b) consider how the proposals will promote the improvement of health of persons, health inequalities between persons and to contribute towards the achievement of sustainable development in the United Kingdom; and
 - c) consider consulting with appropriate bodies.
- 6.2 Paragraph 4.1 of the GLA's Contracts and Funding Code (the "Code") requires contracts with the value of that proposed should be procured competitively or by way of "calling off from an accessible framework. However, section 5 of the Code provides that exemptions from that requirement maybe approved where the contractor in question has had previous involvement in a specific current project or the services in question are a continuation of existing work which cannot be separated from the new

project/work. Officers have indicated, at sections 2.5 and 2.6 of this report, that this is the case here. The Mayor may therefore, approve an exemption from the Code, if satisfied with the content of this report.

- 6.3 Officers must ensure that an appropriate written contract is put in place with AECOM (with express provisions making it clear that LGDL and not GLAP are liable for and will make payment of AECOM's fees, save for VAT) and executed by both parties before the commencement of the services in question.

7. Planned delivery approach and next steps

Activity	Timeline
MD approval for expenditure	July 2014
Procurement of project monitor (funded by developer)	July 2014

Appendices and supporting papers: Single Source Request (9.7.14)

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOI Act) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary.

Note: This form (Part 1) will either be published within one working day after approval or on the defer date.

Part 1 Deferral:**Is the publication of Part 1 of this approval to be deferred? NO**

If YES, for what reason:

Until what date: (a date is required if deferring)

Part 2 Confidentiality: Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form – YES

ORIGINATING OFFICER DECLARATION:

Drafting officer to
confirm the
following (✓)

Drafting officer:

Davena Wilson has drafted this report in accordance with GLA procedures and confirms that:

✓

Assistant Director/Head of Service:

Lucy Owen has reviewed the documentation and is satisfied for it to be referred to the Sponsoring Director for approval.

✓

Financial and Legal advice:

The Finance and Legal teams have commented on this proposal, and this decision reflects their comments.

✓

EXECUTIVE DIRECTOR, RESOURCES:

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

Signature

Date