



Subject: **BIRMINGHAM SMITHFIELD DEVELOPMENT OPTION APPRAISAL AND SELECTION OF PREFERRED BIDDER**
Report of: **CORPORATE DIRECTOR, ECONOMY**
Relevant Cabinet Member: Councillor Ian Ward , The Leader of the Council
Councillor Brett O'Reilly, Cabinet Member for Finance and Resources
Relevant O &S Chair(s): Councillor Sir Albert Bore – Resources
Councillor Tahir Ali – Economy and Skills
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Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s): Bordesley & Highgate		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 005634/2018		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		

1 Executive Summary

- 1.1 Birmingham Smithfield is one of the City's most significant development opportunities and a key strand of the transformational plans for the City Centre.
- 1.2 On 25 July 2017 Cabinet approved the process to appoint a developer/investor to partner with the City Council to deliver the Birmingham Smithfield redevelopment.

- 1.3 The purpose of this report is to note the procurement process undertaken and that the Private Cabinet report contains the outcome, commercial details and recommendations pertaining to this report.

2 Recommendations

- 2.1 That Cabinet notes the report.

3 Background

- 3.1 On 20 September 2016 Cabinet approved the Birmingham Smithfield Masterplan which sets out the vision to transform the former wholesale markets site and its surrounding environs. The site totals 17 hectares. The vision for Birmingham Smithfield is to create a new destination in the heart of the city centre including new cultural and leisure attractions, vibrant retail markets and spaces for new and existing small businesses, as well as a residential neighbourhood with a high quality public realm and integrated public transport links to the wider city centre. Birmingham Smithfield is one of the five areas of transformation that will deliver the growth of the City Centre, as set out in the Big City Plan (2011) and is a major development site in the statutory Birmingham Development Plan 2031 and the largest Enterprise Zone site.
- 3.2 Due to the scale of the redevelopment, the City Council will need to partner with an investor/developer to bring appropriate finances and expertise to deliver the re-development. On 18 October 2016, Cabinet gave approval to commission an adviser to develop a Delivery Strategy for the site, including an appraisal of the complex delivery structure options that can deliver the ambitions of the Masterplan for the area; and to develop a procurement strategy for the appointment of a Development/Investment Partner(s). Cushman and Wakefield were appointed as the Adviser in December 2016.
- 3.3 On 25 July 2017, Cabinet approved the Procurement Strategy to procure the Development Partner through OJEU Competitive Dialogue procedure using the project objectives as set out in Appendix 1 paragraph 2.2 to evaluate final tenders. Cabinet also gave approval to commence the procurement on the basis of formulating a Contractual Partnership (Master Development Agreement) with the option of changing to the formation of a Joint Venture Partnership (JV) if this was preferred by a Bidder and delivered greater benefit to the City Council.
- 3.4 The shortlisted bidders preferred the formation of a Contractual Partnership (Master Development Agreement) and detailed heads of terms were negotiated with each bidder on this basis.
- 3.5 The Competitive Dialogue Procedure followed four key stages:

STAGE 1 Selection (Shortlisting):

Shortlist bidders invited to participate in competitive dialogue stage.

STAGE 2 Competitive Dialogue:

Dialogue between the City Council and shortlisted bidders to assist in the development of bidder's solution.

STAGE 3 Final Tender Submission and Evaluation:

Evaluation of final tenders.

STAGE 4 Preferred Bidder Stage:

Clarification and confirmation of commitments to develop a Full Business Case and Contractual Partnership (Master Development Agreement).

- 3.6 On 1 August 2017, the procurement process formally commenced with the submission of a Contract Notice to the Official Journal of the European Union (OJEU). Once published, it was also advertised on www.finditinbirmingham.com and Contracts Finder. The opportunity was immediately available for interested parties to express an interest in and to download from the City Council's tender portal, INTend. A press release announcing the commencement of the process was released to various specialist property trade publications with local and national coverage.
- 3.7 Four 4 bidders were shortlisted to participate in Competitive Dialogue. Dialogue with bidders closed on 23 July 2018 and bidders were then invited to submit final tenders.
- 3.8 The Final Tender Submission and Evaluation stage has now been completed and one bidder is being recommended to go forward to the Preferred Bidder Stage. The outcome of the final tender evaluation and details of the Strategic Outline Business Case (Option appraisal) and the recommended Preferred Development Partner/Bidder are included in the Private Report.
- 3.9 Further details of the procurement process are included at Appendix 1.
- 3.10 The Birmingham Smithfield Development project is applying best practice methodologies along with learning outcomes from other major projects such as Brindley Place, Library of Birmingham, Grand Central and Paradise Circus, to ensure the project is structured and managed in the most robust and effective way to achieve delivery and minimise public sector risk. This includes undertaking a comprehensive appraisal of potential delivery structures and procurement routes to ensure appropriate levels of control/influence and apportionment of risks and rewards; having a robust governance structure to effectively controlled and monitor the project; producing a HM Treasury Green Book compliant Full Business Case that is jointly prepared by the City Council and Development Partner and underpinned by a financial model; and the maintenance of high quality public realm at no cost to the City Council.

4 Options considered and Recommended Proposal

- 4.1 Option 1 – Abandon the Procurement Process and Do Nothing. To abandon the procurement process undertaken and do nothing will not enable the City

Council to bring forward the development of the area in a holistic, coherent manner that optimises the opportunity to attract private sector investment and provide the best value for money. Furthermore, abandoning the procurement process at this stage could provide bidders with grounds for a legal challenge leading to financial and significant national and international reputational damage for the City Council.

- 4.2 Option 2 – Carry out the Development In-house. The City Council does not have the finances or expertise to develop Birmingham Smithfield in-house.

5 Consultation

5.1 Internal

- 5.1.1 Relevant Ward Members and Member of Parliament for Ladywood Constituency have been consulted and support the contents of the report.
- 5.1.2 Members of the Project Board and Group which includes the Corporate Director Place, Assistant Director of Property Services, Assistant Director Development and senior officers from City Finance, Transportation and Connectivity, Highways and Infrastructure, Arts and Culture, Market Operations, Legal and Democratic Services, Birmingham Property Services and Corporate Procurement Services, have supported the evaluation of tenders which form the basis of this report; and support the contents of the report.
- 5.1.3 City Finance, Legal and Democratic Services and Corporate Procurement Services officers have been involved in the preparation of this report.

5.2 External

- 5.2.1 Key Stakeholders and the general public were consulted in both March 2015 and March 2016 on the Birmingham Smithfield Masterplan. The comments received in relation to the delivery strategy are reflected in the project. The project objectives which formed the criteria for the evaluation of final tenders are based upon the Masterplan.

6 Risk Management

- 6.1 Risks have and will continue to be identified, evaluated and controlled in line with the Birmingham City Council Risk Management Methodology 2017. The initial risks and opportunities are detailed in the Strategic Outline Business Case (Option Appraisal).

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 7.1.1 The redevelopment of Birmingham Smithfield is a specific action within the City Council's Plan and Budget 2018-2022 strategic outcomes; to support the priority of jobs and skills to create conditions for inclusive and sustainable growth which

delivers and sustains jobs and homes across Birmingham. It also supports the priority action to use the Council's property assets for development, regeneration and investment. The development of the Birmingham Smithfield area also supports the Housing priority as it will contribute to the provision of housing in a range of types and tenures, to meet the housing needs of all current and future citizens of Birmingham.

- 7.1.2 The delivery of the Birmingham Smithfield Masterplan forms part of the Birmingham Development Plan 2031, the Big City Plan and the Greater Birmingham and Solihull Local Enterprise Partnership (GBSLEP) Enterprise Zone Investment Plan (EZIP); and supports the Birmingham Connected five core objectives.
- 7.1.3 The recommended supplier is a certified signatory to the Birmingham Business Charter for Social Responsibility (BBC4SR). Compliance with the BBC4SR is a mandatory requirement. The Social Value element of the tender evaluation and selection criteria had an increased weighting of 12%. Bidders were required to submit their action plans for achieving Social Value as part of their final tender submission. The Preferred Bidder/Development Partner's action plan will be further developed during the Preferred Bidder stage and the implementation of the agreed action plan will be closely monitored during the contract period.
- 7.1.4 The City Council will also ensure that all main and sub-contracted organisations involved in the re-development of the site, maximise employment outcomes for local people through the development of apprenticeship schemes and prioritises Birmingham's job seeking residents.

7.2 Legal Implications

- 7.2.1 The City Council has a duty to efficiently manage its assets and has the power to hold and dispose of land under Sections 120 and 123 of the Local Government Act 1972. Section 1 Localism Act 2011 sets out the City Council's general power of competence. Section 111 of the Local Government Act 1972 contains the City Council's ancillary financial and expenditure powers in relation to the discharge of its functions.

7.3 Financial Implications

- 7.3.1 The procurement costs of £940k are contained within the EZIP revenue budget for Birmingham Smithfield (Southern Gateway) project. These costs are immediately met by current and accumulated National Non-Domestic Rates (NNDR) receipts, investment repayments or other revenue income across the EZ. Officer time and resources from Economy, Finance and Legal and Property Services have been applied from existing City Council budgets and where eligible and agreed by the GBSLEP has been recharged to the EZ.

7.3.2 The project is managed in-line with the City Council's gateway process and related financial approval framework.

7.3.3 A further report will be presented to Cabinet to seek approval for the Full Business Case for the development of the Birmingham Smithfield site. The report will provide a detailed whole-life cost of the preferred operational and financing model for the development of the site, and highlight the capital and revenue implications to the City Council's budget.

7.4 Procurement Implications (if required)

7.4.1 This report concerns the award of a contract following a procurement process and the implications are detailed throughout the report.

7.4.2 Human Resources Implications (if required)

7.4.3 A management team will be established to manage the Partnership Agreement once the Business Plan and Full Business Case has been approved and the Development Partner has been appointed.

7.5 Public Sector Equality Duty

7.5.1 The Preferred Development Partner/Bidder Final Tender proposal and the Strategic Outline Business Case (Option Appraisal) supports the delivery of the Birmingham Smithfield Masterplan approved by Cabinet on 20 September 2016, for which an Equality Analysis was undertaken. This Equality Analysis has been reviewed and it is concluded that the Preferred Development Partner/Bidder's proposal is unlikely to have a disproportionate impact on any of the protected groups and characteristics under the Equality Act 2010. The Equality Analysis will be reviewed again once the detailed Masterplan and Full Business Case (FBC) have been produced.

8 Background Documents

8.1 Birmingham Smithfield Development Procurement Strategy Cabinet Report 25 July 2017

8.2 City Council Plan 2018-2022

8.3 List of Appendices accompanying this Report (if any):

1. Procurement Methodology

BIRMINGHAM SMITHFIELD DEVELOPMENT PARTNER PROCUREMENT METHODOLOGY**1. Stage 1 - Selection Stage**

- 1.1 On 1 August 2017 the procurement process formally commenced with the submission of the Contract Notice to the Official Journal of the European Union (OJEU). Once published, it was also advertised on www.finditinbirmingham.com and Contracts Finder and the opportunity was immediately available for interested parties to download from the City Council's tender portal, INTend. A press release announcing the commencement of the process was released to various specialist property trade publications with local and national coverage.
- 1.2 In response to the advertisement, 50 organisations expressed an interest and were requested to complete and return a Selection Questionnaire (SQ) by 12 September 2017.
- 1.3 The SQ required bidders to demonstrate that the specific exclusion grounds did not apply and that they possessed the necessary economic and financial strength and technical and professional ability to meet the contract requirement. Some of the questions were evaluated on a pass / fail basis, with other elements such as previous experience and social value were scored.
- 1.4 9 organisations responded by submitting an SQ tender and 41 organisations effectively withdrew themselves from the process, at this stage, by not returning an SQ.
- 1.5 The evaluation of SQ responses was carried out by an evaluation panel consisting of the following senior officers:

Name	Position	Role
Waheed Nazir	Corporate Director Economy	Moderator/Approver
Richard Cowell	Assistant Director Development Economy	Evaluator
Kathryn James	Assistant Director Property	Evaluator
Simon Delahunty- Forrest,	Head of City Design	Evaluator

- 1.6 The evaluation process was overseen by the City Council's Corporate Procurement Services team with advice provided by Cushman and Wakefield. Input (in an advisory capacity) was also received from a number of City Council Officers with respect to specific topics, including Social Value, Arts & Culture and Markets.

- 1.7 The SQ stated that the top 4 ranked bidders would proceed to Stage 2 – Dialogue.
- 1.8 Following the evaluation and moderation process, the Corporate Director, Economy approved and signed off the shortlist of 4 bidders to proceed to the Dialogue Stage. Organisations that had submitted a SQ were notified of the outcome of the SQ evaluation on the 11 October 2017.

2. Stage 2 – Dialogue

- 2.1 On 23 October 2017, the 4 shortlisted bidders were issued with the Invitation to Participate in Dialogue (IPD) document. This formally commenced the dialogue stage of the procurement process.
- 2.2 The main objective of the Dialogue stage was for Bidders to develop their proposals, with input, advice and feedback from the City Council, until at least one proposal was capable of meeting the Project Objectives approved by Cabinet on 17 July 2017; that would be used to evaluate final tenders as shown in the following table:

68%	QUALITY	33%	CONCEPT (Uses & Design)		
			1	Leisure	18%
			2	Markets	18%
			3	Residential Neighbourhood	15%
			4	Retail, Office & Other Ancillary Uses	7%
			5	Art & Culture	9%
			6	Public Realm	18%
		7	Transport, Linkages & Connectivity	15%	
		25%	DELIVERY		
			8	Partnering Approach	60%
			9	Delivery & Resources	40%
		10%	OPERATION		
10	Long Term Structure		60%		
11	Smart Cities		20%		
12	Temporary Uses		20%		

12%	SOCIAL VALUE	12%	SOCIAL VALUE		
			13	Buy Birmingham First	17%
			14	Local Employment	25%
			15	Partners in Communities	8%
			16	Environmental Sustainability	50%

20%	PRICE	20%	COMMERCIALITY		
			17	Funding	40%
			18	Financial Structure	60%

100%	Total				100%
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- 2.3 A series of 'dialogue meetings' were arranged during the Dialogue Stage from 6 November 2017 to 18 June 2018 to provide the City Council and Bidders with the opportunity to:

- Provide constructive feedback;
- Test assumptions and rationale;
- Identify and discuss any issues that require further clarification or resolution; and
- Resolve any issues that require dialogue / negotiation prior to close of dialogue and inviting bidders to submit final tenders.

- 2.4 The meetings were structured with an internal pre-meeting beforehand, followed by a three hour dialogue meeting with the bidding party. Whilst the topics for the initial meetings were generally pre-determined by the City Council, bidders had the opportunity to make amendments and review agendas beforehand to suit their individual resourcing and progress in developing their tender proposals.
- 2.5 Bidders had the opportunity to contact the City Council via the INTend portal to raise any clarification questions. All clarification questions received were duly responded to all bidders.
- 2.6 On 1 February 2018, after 4 dialogue meetings, one of the bidders confirmed that they were withdrawing from the process. Likewise, on 9 March 2018, (after 5 dialogue meetings) another bidder also withdrew from the procurement. No written feedback was received from either organisation as to the reasons for their withdrawal. The process continued with the two remaining parties.
- 2.7 All bidders (remaining in the process at the time) were given equal opportunity to attend and participate in dialogue meetings. In total, nine dialogue meetings were required, as well as seven legal dialogue meetings, one social value meeting, two financial appraisal meetings, an Enterprise Zone funding meeting and a Compulsory Purchase Order (CPO) strategy meeting.
- 2.8 On 13 March 2018, the two remaining bidders were invited to submit draft tenders by 9 April 2018. This provided the bidders with an opportunity to demonstrate progress made on individual sections of the submission, as well as receiving detailed and constructive feedback. There was no scoring of the submissions at this stage. The evaluation and moderation of the draft tenders was undertaken in accordance with the timetable below.

Review of Draft Tenders	
Draft Tenders Submitted by Bidders	09 Apr 18
Draft Tender Review Period	10 Apr 18 – 23 Apr 18
Moderation Meeting	25 Apr 18
Draft Proposal Written Feedback to Bidders	04 May 18
Draft Proposal Feedback Meeting with Bidders	09 May 18

- 2.9 Towards the end of the dialogue stage, the two remaining bidders were invited to present their proposals to the Leader and Deputy Leader of the City Council. This presentation was followed by a question and answer session and an internal reflection, after which the evaluation panel provided feedback to each bidder.
- 2.10 The dialogue stage was formally closed on 10 July 2018 when the Corporate Director, Economy confirmed that the City Council had at least one solution capable of meeting the City Council's requirements. Bidders were advised on the same date and simultaneously issued the Invitation to Submit Final Tenders (ISFT) document.

3. Stage 4 – Invitation to Submit Final Tenders (ISFT) Stage

- 3.1 The third stage of the process was to request final tenders. During this period, bidders had the opportunity to contact the City Council via the INTend portal if there was any doubt as to the interpretation of the ISFT documentation or if they considered that any of the requirements were ambiguous. All clarification questions received were duly responded to all bidders before the tender return deadline.
- 3.2 The two bidders returned a response by the submission deadline of 23 July 2018.
- 3.3 The evaluation of Final Tenders was carried out by the same evaluation panel that undertook the evaluation at SQ stage with supporting advice provided by City Council officers with expertise in market operation, leisure, arts & culture, sustainability, digital technology, transportation, social value and finance. Advice was also provided by Cushman & Wakefield (Delivery Adviser) and Bevan Brittan (Legal Adviser).
- 3.4 The evaluation process was overseen by Cushman & Wakefield with further oversight and regulation provided by the City Council's Corporate Procurement Services.
- 3.5 Following the completion of the evaluation and moderation of the final tenders on 8 October 2018 with the Corporate Director, Economy, a procurement report produced by Cushman & Wakefield was approved by the Corporate Director, Economy on 23 October 2018 that recommended that the first ranked bid be awarded the status of Preferred Development Partner/Bidder, subject to Cabinet approval.
- 3.6 City Council officers and external consultants Cushman and Wakefield Ltd have validated and recommend a Preferred Development Partner/Bidder and final tender for acceptance. The Preferred Development Partner/Bidder delivers the best and most economically advantageous outcomes for the City Council in meeting the City Council's vision for Smithfield.
- 3.7 The Preferred Development Partner/Bidder has a proven track record in designing and delivering mixed used schemes regionally, nationally and internationally.

- 3.8 Financial and commercial due diligence on the Preferred Development Partner/Bidder was undertaken at the Selection Stage of the procurement by the City Council's Finance Team in consultation with Cushman and Wakefield; and the results confirmed that the company is of sound financial standing to deliver its development obligations for Birmingham Smithfield.
- 3.9 A Strategic Outline Business Case (Option Appraisal) has been developed to support the evaluation of tenders that provided a high level assessment of the benefits, costs and deliverability of the final tenders against the strategic business needs of delivering Birmingham Smithfield. It provides a preliminary justification for selecting the Preferred Development Partner/Bidder to work with the City Council to develop a viable Business Plan and Full Business Case that achieves optimum affordability and value for money. An executive summary of the Strategic Outline Business Case (Option Appraisal) is contained in the private report.

4. Stage 5 - Preferred Bidder Stage

- 4.1 If Cabinet approve the recommendation of the Preferred Development Partner/Bidder, the City Council and the selected Preferred Development Partner/Bidder will enter into the preferred bidder stage. They will not enter into a formal contractual arrangement, but rather this stage will provide a period of exclusivity for the Preferred Development Partner/Bidder to:
- Develop their Masterplan and prepare a hybrid planning application for the site, based on their tender submission and in conjunction with the City Council for approval by the City Council Cabinet;
 - Develop an overall Business Plan and Full Business Case for the development opportunity, based on their tender and in conjunction with the City Council for approval by the City Council Cabinet; and
 - Work with the City Council to convert the detailed heads of terms, submitted with their tender, into a final form development agreement ready for execution by both parties at the end of the preferred bidder stage and on the basis that the last two bullet points are satisfied.
- 4.2 At the conclusion of the preferred bidder stage, a further report will be presented to City Council Cabinet to seek approval for the detailed Masterplan, Business Plan, Full Business Case and appointment of the Development Partner for the development of Birmingham Smithfield