



City of Westminster Cabinet Member Report

Meeting or Decision Makers:	Councillor Richard Beddoe, Cabinet Member for Place Shaping and Planning, Councillor Tim Mitchell, Cabinet Member for Environment and City Management
Date:	6 th November 2018
Classification:	For General Release
Title:	Oxford Street District Procurement Strategy
Wards Affected:	West End, Marylebone High Street and Bryanston & Dorset Square and Hyde Park.
Reason for the Report	This report seeks approval to procure a Design and Build contract for the Oxford Street District Place Shaping Project.
City for All Summary	The subject of this report and its recommendations respond to the City Council's commitments to: creating places and opportunities for everybody in the city to be physically active and play a role in their community; creating great local places where people enjoy living, working and visiting; and taking pride in our role as custodian of this great city, protecting our heritage by managing places and spaces that can be enjoyed now and in the future.
Key Decision:	Yes
Financial Summary:	The Capital Strategy 2019/20 to 2023/24 includes a budget of £150m for the Oxford Street District – subject to approval by Full Council on 7 th November 2018. Approval to spend on the contract is expected next year as part of the Business Case.
Summary of the Recommendations contained within this report	That formal approval is given to commence procurement of a Design and Build contract for the Oxford Street District project.
Report of:	Executive Directors of Growth Planning and Housing, City Management and Communities, and City Treasurer
Report Authors:	Paul Barrett and Phil Robson

1. Executive Summary

To satisfy the City for All ambitions, the Council is in the process of establishing a Place Shaping Strategy and Delivery Plan for the Oxford Street District. To realise the ambition of the strategy, in this high profile and challenging environment, and given the scope of public realm works required a Design and Build contract is considered most appropriate. This report seeks approval to commence the procurement exercise through the Competitive Procedure with Negotiation.

The Oxford Street District project will involve significant public realm works to the main street and local streets across the district. The proposed procurement exercise will ensure focus on reaching the best commercial arrangement with a quality service provider of suitable experience and compliance within relevant procurement regulations.

The procurement exercise has three distinct phases (Soft Market Testing, Tender Exercise and Contract Award) and is scheduled to be completed by May 2019 on the basis that a draft Place Strategy and Delivery Plan are agreed in Jan / Feb 2019.

A significant Soft Market Testing exercise is planned that includes discussion on partnership, sub-contracting, contract packaging, stakeholder engagement, evaluation criteria (Price/Quality ratios) and performance indicators. The intention is to be open and transparent with potential bidders to attract market interest from suppliers or from a consortium of providers and to 'de-risk' the procurement as much as possible from project commencement.

2. Recommendations:

- 2.1 That formal approval is given to commence the procurement of a Design and Build Services Contract to deliver the Oxford Street District project.
- 2.2 That approval is given to change the price/quality contract evaluation ratio depending on the outcome of the soft market testing and in consultation with the Strategic Steering Group.

3. Reasons for Recommendations

- 3.1 That the Oxford Street District is in need of significant and wide reaching public realm improvements to underpin and support the delivery of the emerging draft Oxford Street District Place Strategy. This will ensure that a service provider is appointed to deliver the District Place Strategy following public consultation.
- 3.2 The potential variation to the price/quality evaluation split is recommended as this is a very high profile initiative requiring a greater emphasis on the quality of works.

4. Background

- 4.1 Oxford Street welcomes 100 million visitors per year, is recognised worldwide as a leading retail destination and it is estimated, will generate £13 billion for the national economy by 2021. This is no ordinary high street. It also lies at the heart of a district with some of London's most characterful neighbourhoods that are home to thousands of residents.
- 4.2 To maintain Oxford Street's global reputation and status and make the district a long term success, the Council needs to confront the challenges it faces. These include: the changing nature of retail, the Elizabeth Line bringing a further 1.5 million people to the district every year

from autumn 2019, poor air quality, traffic congestion, crowding and safety. Addressing all of these issues is of paramount importance.

- 4.3 Following resident feedback through two prior consultations, the Council has decided to take the option of the full-scale pedestrianisation of Oxford Street off the table. A new draft Place Strategy and Delivery Plan for the entire district has been under development over the summer and this will be presented for public consultation from Tuesday 6th November to Sunday 16th December (6 weeks).
- 4.4 The Oxford Street District is located at the heart of the West End and is classified as an international shopping district in the London Plan. The street and the surrounding neighbourhoods are home to many residents and businesses which help to make up this vibrant mixed-use district. The Council believes that the street and its' surrounding district require a comprehensive review to act as a base for any future measures and improvement, in order to ensure its' long-term success, status and relevance to our residents, businesses and visitors.
- 4.5 The Council's draft strategy for the area will respond to the big challenges the district faces, such as:
- enhancing the area for a vibrant residential community
 - adapting to a rapidly evolving retail environment
 - catering for more people
 - providing more attractions and for Oxford Street to be a better neighbour to its district
- 4.6 A Prior Information Notice (PIN) notifying the market of our intention to procure services for the Design and Build contract for the Oxford Street District was issued on 28th September 2018 via the Official Journal of the European Union (OJEU). (Appendix A). At this early stage of the project it is encouraging that twelve suppliers have expressed an interest in the opportunity.

5. Soft Market Testing (SMT)

- 5.1 Soft Market Testing (SMT) is a vital part of proposal development and will seek to engage the market on the following to help inform an options appraisal with recommendations on the structure of the final contract documents:
- Contract packaging;
 - Contract scope;
 - Risks; and,
 - Innovation opportunities.
- 5.1 This exercise will also provide an opportunity for the Council to obtain insight into:
- how potential providers might approach the delivery of the service in question; and,
 - provides a useful early insight into the likely level of interest in a proposed project from that market.

5.3 The soft market testing event is provisionally scheduled for 15th November 2018. A questionnaire has been developed, (Appendix B) for interested parties to complete. They may also be invited to meet with the project team to discuss the requirements in more detail.

6. Procurement Exercise

6.1 Procurement Options.

The Oxford Street District project is high profile and will attract significant interest from the market. Procurement Services were commissioned to advise on the route to market to secure a service provider that can deliver the council's ambition for the district and deliver a quality outcome in a difficult and challenging environment. The following options were considered:

- a. Procure through existing Highway contract – the limits of the existing contract for the value of works per scheme mean that this option cannot be pursued.
- b. Use of construction framework arrangements – several construction framework contracts exist for engineering and construction services. These offer the option to draw down against pre-agreed contract terms with established providers. However, the ability to tailor these arrangements to the client's specific needs for delivery and commercial terms is limited. There is no guarantee therefore that the frameworks offer value for money. More importantly, there is a very real risk that the providers on the frameworks do not understand the challenges of working in central London, leading to the potential for delays, increased cost and reputational damage.
- c. Procure the construction services in an open market – procuring the Oxford Street District Design and Build contract directly provides an opportunity to secure a commercially competitive service that meets the Council's financial and quality requirements. This option will be open and transparent and will attract a lot of market interest from suppliers or from a consortium of providers. **This is the option being recommended.**

6.2 Several routes to market were considered including the open, restricted or competitive dialogue (CD) process. In discussion with Procurement Services, and recognizing that many suppliers may not appreciate the context of construction in Westminster, the Competitive Procedure with Negotiation (CPN) route is to be pursued. This follows the restricted route but allows for negotiation as part of the process where the works or services being procured include design or innovation or because of the technical, complex, financial or legal reasons that require clarification and discussion with the bidders before a contract can be awarded. Negotiation under this procedure does not have to be undertaken. The steps under this procedure are:

- a) A formal notice to the supplier market;
- b) Pre-Qualification and shortlisting stage;
- c) Each of the shortlisted suppliers are invited to submit an initial tender;
- d) The council negotiates the tenders so as to improve them and can then invite further/refined tenders.
- e) During the negotiation stage, each supplier will be invited to discuss and develop their tender. The negotiation stage can be repeated as often as required and will end once it is clear there are proposals which the Council believes are robust, affordable and correlate closely with the aspirations for the project;
- f) Each of the suppliers are then invited to submit a final tender;
- g) These final tenders are evaluated and a preferred supplier is agreed;

- h) Award of Contract approved by the relevant Cabinet Member(s); and,
- i) The contract with preferred supplier is executed.

The council can award the contract on the basis of the initial tenders if it is possible for them to do so.

- 6.3 This procedure allows identification from the open market of suitably qualified and experienced contractors and to refine submissions, as necessary, during the negotiation stage. Given uncertainty around the outcome of the Oxford Street District Project consultation exercise it is considered prudent to be able to negotiate with shortlisted tenderers.
- 6.4 The Council remains open as to how bidders approach this commercial opportunity whether via Special Purpose Vehicles (SPV's), partnerships or other arrangements. The procurement strategy seeks to drive innovation, creative thinking and a commercial approach that achieves delivery within reasonable timescales and ensures stakeholder management and, particularly public liaison, are of the highest quality.
- 6.5 The contract scope is to deliver Initial Designs, Detail Design stages and the construction of high-quality public realm and highway improvements across the District. The contract will allow the use of specialist sub-contractors who have significant experience in complex traffic modelling, urban design, landscape architecture and architecture.
- 6.6 Given the technical nature and challenging timescales of the procurement, the Council has, via the Compliance and Audit Services contract, retained the services of Norman Rourke Pryme (NRP) to prepare the technical specifications, pricing schedules and provide support with the evaluation of the submitted bids. NRP have the experience and understanding of the Westminster service contracts having supported the procurement of the Highways Term Contract in 2013. They are specialist in highways contracts, have an in-depth understanding of the market and, more importantly the context of working in Westminster. NRP supported the recent successful procurement of the West End Project (Tottenham Court Road) for the London Borough of Camden and have been retained to audit and monitor this contract.
- 6.7 It is routine for the Council procurement exercises to have a 60/40 Price/Quality contract evaluation split, however, given the very high profile nature of this procurement and the resultant works there is greater emphasis on the quality of works and for this reason a 50%/50% Price/Quality evaluation criteria is considered prudent. This element of the tender will be a subject of discussion at the soft market testing discussions.
- 6.8 To support achievement of the requirements, Key Performance Indicators (KPIs) will be developed in the following areas:
 - Finance - variance from approved budgets, final account settlement;
 - Substantial Completion Dates;
 - Health and Safety Compliance;
 - Management Reporting;
 - Programme Management;
 - Inventory Updates; and,
 - Stakeholder Engagement and Management.

6.9 Governance

Given the value and strategic importance of the works being procured, project oversight and guidance is essential to a successful outcome.

A Strategic Steering group of Cabinet Members made up of (i) the Cabinet Member for Place Shaping and Planning, (ii) the Cabinet Member for Finance, Property and Regeneration, (iii) the Cabinet Member for Environment and City Management, (iv) the Cabinet Member for Economic Development, Education and Community will exercise strategic management of the project and determine other critical engagement.

The Oxford Street Board chaired by the Chief Executive will provide guidance and monitor programme progress.

The procurement programme delivery will be overseen by the Oxford Street District Procurement Steering and Delivery Group chaired by the Director for City Highways with membership from Procurement, City Highways and the Place Shaping teams.

Contract award decisions will be made jointly by the Cabinet Members for Place Shaping and Planning and Environment and City Management.

6.9 Procurement Programme

An outline procurement programme is shown in Table 1 below. The programme is ambitious but achievable assuming key decisions and consultation outcomes keep to the existing timetable.

Milestone	Date
Publish PIN	Sept 18
Soft Market Testing	Nov 18
Publish OJEU	Nov 18
Evaluate & Shortlist – Initial supplier submissions.	Dec 18
Invite shortlisted suppliers to submit initial tenders.	Jan 19
Negotiation Stage	Jan 19
Suppliers submit Final tenders	Jan 19
Evaluate/Moderate	Feb 19
Preferred Bidder Identified	Mar 19
Gate 2 paper/Board Approval	Mar 19
Contract Sign Off	Mar/Apr 19
Contract Start Date	Apr/May 19

7 Financial Implications

- 7.1 The Capital Strategy to be submitted to Full Council for approval on 7th November 2018 includes a capital budget allocation for Oxford Street District of £150m. There is current approval to spend of £5.5m for the programme (£3.0m for maintenance and safety related works, £2.5m for developing the place strategy and progressing the scheme to a Business Case) Approval to spend for the Design and Build contract is expected early in the year linked to the development of the business case.
- 7.2 The two key financial risks are in relation to funding and costs as detailed below
- 7.3 As part of the Oxford Street District draft Place Strategy and Delivery Plan a number of projects are referenced. It is expected that the delivery of the strategy for the district will

exceed £150m. Work is ongoing as part of the consultation exercise to secure funding from external parties however if funding cannot be secured or if funding agreements take some time to complete the Council will need to prioritise its funding priorities. The procurement will be set at a value expected to deliver the whole strategy but with an acknowledgement that the contract value could be less dependent on securing funding.

- 7.4 These projects are at varying stages of development with some at an early concept stage, an understanding of how and when these will be delivered and the cost associated with these will be an iterative process and informed by the consultation. As this is a Design and Build contract once the contractor is procured they will work alongside the project team to fully work these up. Consideration of how the procurement is scored from a quality and price perspective will be important post the soft market testing (as detailed at 5.1) to drive innovation, value for money and also considering risk transfer in the context of a developing strategy. Also post procurement providing a clear scope on a project by project basis will prevent cost increases and ensure value for money.

8 Legal Implications

- 8.1 The Public Contracts Regulations 2015 stipulate the grounds (circumstances) in which it is lawful to use the competitive procedure with negotiation to award a contract they also include the method by which that procedure is to be managed. This report indicates that the procurement falls within some of the permitted grounds therefore it is lawful to use the competitive procedure with negotiation.

9 Staffing Implications

- 9.1 There are no staffing implications arising from the content of this report.

10 Consultation

- 10.1 The Steering Committee of Cabinet Members will be consulted on the outcomes of the Soft Market Testing Exercise and the specification documents.
- 10.2 Ward Members have been briefed on the Oxford Street District draft Place Strategy and Delivery Plan via a briefing that took place on the 12th September 2018. A further Ward Member briefing took place on the 16th October 2018.
- 10.3 There are no direct public consultation implications arising from this report but consultations with internal and external stakeholders concerning scheme designs for the place strategy projects within the scope of the final contract will be significant.
- 10.4 A dedicated Public Liaison Officer will be employed on the project to engage with residents, businesses, visitors and other interested parties throughout the period of works.

11 Risk

- 11.1 The construction industry has become increasingly litigious and the risk of challenge on such a high profile project is very real. However, the likelihood of a successful challenge is significantly reduced through running an open, transparent and robust process that complies fully with the requirements of the public procurement regulations.
- 11.2 The nature of highways works in central London can lead to delays, design changes and cost overruns. A key strand of the procurement strategy seeks to limit the Council's exposure to

these events and encourage and reward the service provider to deliver the required outcomes within the agreed programme and to budget.

12 Resources Implications

- 12.1 The procurement of the Design and Build Contract will be covered by existing staff within the Procurement, City Highways, Place Shaping, Legal and Finance teams with the support from NRP under an existing Highways contract.

13 Business Plan Implications

- 13.1 The works to be undertaken will see the realisation of improvements to the Oxford Street District as laid out in the City for All plan (City that celebrates its Communities).

14 Risk Management Implications

- 14.1 A risk register is being created by the Procurement Delivery Group for this project. There are project risks over potential procurement programme delay, legal challenges to shortlisting and preferred bidder decisions and project finance.
- 14.2 In addition to the above risks, key construction phase risks include: reputational risks concerning design, build quality, timetabling impacts on stakeholders and, financial risks associated with project scope change and cost overruns. Construction activity is by its nature a noisy and intrusive activity and while the timings and scheduling of activity will be carefully scheduled. Closing roads to undertake works in an area where businesses and traffic are active 24/7/365 will inevitably meet with opposition and complaints.

15 Health and Wellbeing Impact Assessment including Health and Safety Implications

- 15.1 The scheme will have a beneficial impact on health and well-being over the current layout. Disruption during works will be carefully managed to minimise negative impacts such as dust and noise. The works will fall under the requirements of the Construction (Design and Management) Regulations 2015.

16 Crime and Disorder Implications

The measures in this report are not expected to have any implications under the Crime and Disorder Act 1998. The proposals seek to create safe and accessible public spaces.

17 Impact on the Environment

Using the CWN procurement procedure allows for negotiation with short-listed bidders using individual work streams. One of these work streams will be focussed on the environment and the sourcing approach for the materials for this project.

18 Equalities Implications

The Scheme is being designed to improve the accessibility of the streets for persons with visual and mobility difficulties through the installation of flush kerbs at pedestrian crossings and an accessible route adjacent to the building line.

19 Staffing Implications

No implications.

20 Human Rights Implications

No implications.

21 Energy Measure Implications

No implications.

22 Communications Implications

Public Liaison Officers will be employed on the contract to engage with residents and businesses throughout the works to mitigate the impacts of the works.

If you have any queries about this Report or wish to inspect any of the Background Papers please contact: **Paul Barrett, E-mail: pbarrett@westminster.gov.uk**

Appendices:

- **Appendix A: Prior Information Notice**
- **Appendix B: Soft Market Testing Questionnaire**

BACKGROUND PAPERS:

- Westminster City Council Cabinet Member Report: West End Partnership: Bond Street, Hanover Square and Oxford Street West Public Realm proposals December 2015:
<http://committees.westminster.gov.uk/ieDecisionDetails.aspx?ID=451>
- Cabinet Place Shaping Strategy and Delivery Plan Report October 2018
<https://committees.westminster.gov.uk/ieListDocuments.aspx?CId=130&MIId=4784>

For completion by the **Cabinet Members for Place Shaping and Planning, and Environment and City Management.**

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____
Councillor Richard Beddoe, Cabinet Member for Place Shaping and Planning
Councillor Tim Mitchell, Cabinet Member for Environment and City Management

NAME: _____

State nature of interest if any

(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled Oxford Street District Place Shaping Project Procurement Exercise

Signed
Councillor Richard Beddoe, Cabinet Member for Place Shaping and Planning
Councillor Tim Mitchell, Cabinet Member for Environment and City Management

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:
.....
.....

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, Chief Operating Officer and, if there are resources implications, the Director of Human Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

For completion by the **Cabinet Members for Environment and City Management.**

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____

Councillor Tim Mitchell, Cabinet Member for Environment and City Management

NAME: _____

State nature of interest if any

(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled Oxford Street District Place Shaping Project Procurement Exercise

Signed

Councillor Tim Mitchell, Cabinet Member for Environment and City Management

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

.....
.....

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, Chief Operating Officer and, if there are resources implications, the Director of Human Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.