

Request to waive Contracts Procedure Rules 8.1 and 8.2 'Competition for Intermediate Value Procurements' to enable the Council to make a direct award to Squire Patton Boggs for legal advice relating to Temple Works

Date: 05/11/2021

Report of: Head of Regeneration

Report to: Chief Officer Asset Management and Regeneration

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

What is this report about?

Including how it contributes to the City's and Council's ambitions

- The South Bank regeneration programme presents one of the most significant development opportunities in any UK city. It is key to delivering the city's commitment to be the best city in the UK by 2030.
- Temple Works within the South Bank is of huge heritage significance to Leeds and nationally. It comprises of a site of approximately 13,000sqm located in Marshall Street in Holbeck, and includes the two listed buildings of Temple Mill and Gate Lodge to Temple Mill. Temple Works has been on the Heritage at Risk Register since 2009 with substantial repairs required to secure the future of the building. The building was acquired by CEG Temple Mill Ltd in November 2018.
- In November 2018 Executive Board agreed a number of principles by which it would help to support the restoration of Temple Works and wider regeneration of the area. This includes the appropriation of Council land for the scheme and potential Compulsory Purchase Orders.
- To support and deliver the above workstreams and priorities, external legal services are required to provide advice to the council on this multi-faceted and complex project on a range of multi-disciplinary areas including but not exclusive to Grant Agreements, State Aid, Compulsory Purchase Orders, Land and Property Disposals, Planning, and specialist Vacant Possession advice.
- It is proposed to grant the contract for legal services for Temple Works directly to Squire Patton Boggs via a waiver of CPRs 8.1 and 8.2 for Intermediate Value Contracts. This firm has provided legal advice relating to the project since January 2016 following a competitive tender process. In 2017/18 Squire Patton Boggs was also competitively procured through a separate exercise to provide multi-disciplinary legal services on Leeds Station and across the South Bank, excluding the Temple Works area.

- Continuing to use the Squire Patton Boggs rather than go out to tender via a wider procurement exercise would provide best value for money due to the underlying knowledge already built up on this complex project. It would also maintain the good working relationships between all parties. The company has a detailed understanding of the relevant issues and site and wider context history. This background allows for value for money as it saves on charges which would be required by a company new to the project in terms of background review, context setting and exploratory meetings.
- The previous contract was for a period of four years including extension provisions. The timescale over which the advice will be required within the new contract is also four years, on the basis that the vast majority of legal work will be completed in this time.
- The total value of professional fees that may be incurred is below £500,000 and therefore this is not a Key Decision.
- In accordance with Contract Procedure Rules, this report seeks approval to procure, outlines the justification for the procurement route chosen, and seeks approval of the methodology to be applied.
- The regeneration of the South Bank plays a key role in the Leeds Inclusive Growth Strategy objective to double the size and economic impact of Leeds City Centre. It is one of the largest City Centre regeneration initiatives in Europe. Regeneration of the area will meet a wide range of Council priorities through inclusive growth, and our child and age friendly approaches.
- The ambition to deliver a redevelopment of Temple Works within the South Bank will support principles set out in the Inclusive Growth Strategy, Health and Wellbeing Strategy and the Best Council Plan. It would support the Best Council Plan priorities on reducing health inequalities and supporting active lifestyles; improving the city's transport and digital infrastructure and tackling climate change risks; making Leeds the best city for children and young people to grow up in; making Leeds the best city to grow old in; and improving the quality of lives and growing the economy through cultural and creative activities.

Recommendations

- a) Approve a waiver of CPRs 8.1 and 8.2 using the authority set out in CPR 1.3 in order for a continuation of contract to be directly awarded to Squire Patton Boggs Ltd for a period of four years.
- b) Approve the appointment for legal services on an hourly fee quotation, with a £100,000 cap for costs not indemnified and/or funded by third parties.

Why is the proposal being put forward?

- 1 Temple Works within the South Bank is of huge heritage significance to Leeds and nationally. It comprises of a site of approximately 13,000sqm located in Marshall Street in Holbeck, and was originally constructed as a flax spinning mill between 1838–40 and 1840-43 for John Marshall and Company. The building is entirely unique both in design and engineering and marks a historic peak of innovation and industrial power in Leeds. It includes two listed buildings:

- Temple Mill - a Grade I listed building
- Gate Lodge to Temple Mill – a Grade II* listed building

- 2 Temple Works has been on the Heritage at Risk Register since 2009. The extent of the repairs required to secure the future of the building are substantial. The building was acquired by CEG Temple Mill Limited, a subsidiary company of Commercial Estates Group (CEG) in November 2018.
- 3 The restoration of Temple Works is highly complex and faces viability challenges both from a technical and commercial perspective. Achieving this restoration and achieving a sustainable end use for the building is a key objective for the Council and for Historic England. Given the substantial conservation deficit and major market failures, in November 2018, Executive Board agreed a number of principles by which it would help to support the restoration of Temple and wider regeneration of the area.
- 4 This package of support includes working in partnership with CEG, and the appropriation of Council land for the scheme. Executive Board also provided approval for the Director of City Development to develop, negotiate and agree legal agreements for the provision of grants, the disposal of Council owned assets and CPO indemnity agreements.
- 5 The British Library alongside the Council, CEG, and Historic England, have been exploring the potential of a new national visitor attraction 'British Library for the North' at Temple Works, with £25m of funding announced in March 2020 to further explore this potential.
- 6 The Council has agreed to explore further the opportunities for appropriation of Council land, legal agreements for the provision of grants, the disposal of Council owned assets, and CPO indemnity agreements. The regeneration work to bring into use the historic Temple Works is a major and complex project that requires significant legal support, which is considered not to be available through the internal service provider, and provides best value for money to go to a single provider. There is a requirement that the legal advice needs a strong join up and consistency across the multi-disciplinary areas.
- 7 Squire Patton Boggs has provided complex legal advice relating to the project since January 2016 following a competitive tender process, and is also contracted to continue to provide advice on the wider South Bank and station regeneration work.
- 8 Contract Procedure Rules 8.1 and 8.2 require competition for intermediate value contracts that are valued at between £25k-£100k. This report seeks to waive these CPRs, in accordance with CPR 27, in order to award a further contract directly to Squire Patton Boggs without further competition. Directly awarding a contract to Squire Patton Boggs will provide the Council with a route to obtain the high quality legal advice necessary to assist in driving this project forward with a challenging timescale, in a way that manages risk and enables a major contributor to the Best Council Plan.
- 9 Appendix 2 provides the Site Allocation Plan boundary for the Temple Works mixed use allocation, although it is noted that the boundary is for indicative purposes only and that legal advice under this contract may be required for sites outside of this boundary in relation to regeneration of the area around Temple Works more widely.

What impact will this proposal have?

Wards Affected: Beeston and Holbeck

Have ward members been consulted? Yes No

- 10 The impact of the proposal to appoint Squire Patton Boggs will be to receive high quality and timely legal advice on matters relating to Temple Works, which will contribute towards the overall ambition to restore the building with a sustainable end use.
- 11 The development of the South Bank and Temple Works within it as a sustainable and inclusive locality is a priority. The proposed action has no specific or new implications for equality and diversity, cohesion and integration, although the Council will continue to meet its general duties under the Equality Act and to treat people fairly. Specific equality and diversity / cohesion and integration matters will be considered further as necessary within the legal advice provided under this proposed contract.
- 12 The Equality Impact Screening is attached at Appendix 3.

What consultation and engagement has taken place?

- 13 There has been engagement with and support from the Head of Regeneration, the Regeneration Executive Manager for the South Bank, and the relevant Heads of Service in Legal Services, around the importance of the role of a specialist legal consultant in future work facilitating this regeneration.
- 14 The Council works closely with CEG as the owner of Temple Works.
- 15 The South Bank Regeneration Framework (South Bank SPD) was developed by Leeds City Council working in collaboration with landowners, stakeholders and local businesses and has been shaped by extensive public consultation with more than 32,000 individual responses being received.
- 16 Procurement and legal officers within in Procurement and Commercial Services have been consulted on the approach to this legal services contract, and are supportive.

What are the resource implications?

- 17 A new contract with Squire Patton Boggs is the strongest method of ensuring availability of services and value for money will be achieved for the Council and ensure continuity of scheme development across the South Bank and Station.
- 18 Based on the quality and price of previously procured legal services for Temple Works for the Council, and also the ongoing appointment of Squire Patton Boggs for legal advice to cover the wider South Bank, it is considered that this direct appointment offers best value for money and creates efficiencies for the Council.
- 19 The advice provided will support the delivery of Council priorities, offer the best value for money, and facilitate the work that will be required for the foreseeable future. Furthermore, appointing Squire Patton Boggs will strengthen the working relationships which contribute to the continued success of work carried out by the Council and its partner organisations, providing the Council with nationally renowned expertise to support it in achieving its aims for the South Bank.

- 20 Squire Patton Boggs will work to the same competitive capped hourly rates for services as for the previous contract which commenced in 2016. The rates are commercially sensitive and therefore are enclosed in a separate confidential Appendix.
- 21 The majority of the total fees to be charged by Squire Patton Boggs for their legal advice is to be met by third parties, i.e. primarily CEG in its role as the owner and developer of Temple Works. The Council will only be required to pay for the legal advice where this is only of sole benefit to the Council. The total contract value for the Council is therefore to have a £100,000 cap for costs not indemnified and/or funded by third parties.
- 22 The appointment of a service provider through this procurement exercise will not commit the Council to any level of fees other than those incurred in response to detailed instructions. As such the Council will remain in control of expenditure through regular monitoring and client liaison. There is current budget provision to support this work in 2021/22, the continuation of the commission will be reviewed and the need for continued or additional budget provision in future years will be fed into departmental budget setting.

What are the legal implications?

- 23 This is a Significant Operational Decision which is not subject to call in. There are no grounds for keeping the contents of this report confidential under the Access to Information Rules.
- 24 Awarding the contract direct to Squire Patton Boggs in this way could leave the Council open to a potential claim from other providers, to whom this contract could be of interest, that it has not been wholly transparent. In terms of transparency it should be noted that the Council should always consider whether contracts of this value should be subject to a degree of advertising in order to ensure that opportunities are made available to all potential contractors and that value for money is obtained. It is up to the Council to decide what degree of advertising would be appropriate. In particular, consideration should be given to the subject-matter of the contract, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices, etc) and the geographical location of the place of performance.
- 25 The Head of Regeneration has considered this, and due to the nature of the services being delivered, the historic knowledge of the project required, and value for money for the provider to be located in Leeds, is of the view that the scope and nature of the services is such that the matter should not be advertised.
- 26 There is a risk of an ombudsman investigation arising from a complaint that the Council has not followed reasonable procedures, resulting in a loss of opportunity. Obviously, the complainant would have to establish maladministration. It is not considered that such an investigation would necessarily result in a finding of maladministration however such investigations are by their nature more subjective than legal proceedings.
- 27 Although there is no overriding legal obstacle preventing the waiver of CPR 8.1 and 8.2, the above comments should be noted. In making their final decision, the Chief Officer of Asset Management and Regeneration should be satisfied that the course of action chosen represents best value for the Council.

What are the key risks and how are they being managed?

- 28 The buildings comprising Temple Works continue to be at risk of further degradation and disrepair and all parties are working to provide both immediate and longer term solutions for its repair and eventual reuse. There is therefore urgency and a limited window of opportunity to bring about the best regeneration outcome for the buildings, and the wider area, including funding requirements.
- 29 Authorising the direct appointment of Squire Patton Boggs will enable the Council to draw upon extensive knowledge and skills for the continued delivery of the regeneration project. There is a lack of capacity related to the required advisory services in-house within the Council. The ability to obtain external advice is also very useful as a peer review or sense check of the Council's proposals. To appoint a different legal advisor would be inefficient and more expensive overall as there would be a cost in the time taken for a new advisor to understand the background context and complexities of the project.

Does this proposal support the council's 3 Key Pillars?

Inclusive Growth

Health and Wellbeing

Climate Emergency

- 30 The regeneration of the South Bank plays a key role in the Leeds Inclusive Growth Strategy objective to double the size and economic impact of Leeds City Centre. It will create a distinctive mixed use district providing over 35,000 jobs and over 8,000 homes. It is one of the largest City Centre regeneration initiatives in Europe, and will capture the growth of Leeds City Centre for the coming decades, cementing the city's role as the fastest growing city and driver of the region's and nation's economy. Regeneration of the area will meet a wide range of Council priorities through inclusive growth, and our child and age friendly approaches.
- 31 The ambition to deliver a redevelopment of Temple Works within the South Bank will support principles set out in the Inclusive Growth Strategy, Health and Wellbeing Strategy and the Best Council Plan. It would support the Best Council Plan priorities on:
- reducing health inequalities and supporting active lifestyles;
 - improving the city's transport and digital infrastructure and tackling climate change risks;
 - making Leeds the best city for children and young people to grow up in;
 - making Leeds the best city to grow old in;
 - Improving the quality of lives and growing the economy through cultural and creative activities.
- 32 Efforts will be made during the lifetime of the contract to reduce any carbon emissions. Paper usage will be kept to a minimum under this contract. The legal advice sought under this contract will take account of the Council's stated Climate Emergency when considering relevant options.

Options, timescales and measuring success

a) What other options were considered?

- 33 In accordance with the Contract Procedure Rules 3.1.4, it was explored whether there is an Internal Service Provider (ISP) who could undertake this work. There are in house services that provides these services. However, due to resource limitations, Legal Services will not be able to produce the work within the challenging timescales required at various points in the workstream. There is agreement that the ISP not be used in this instance, but there will be close partnership working with the service as we move forward with the work.
- 34 As per contract procedure rule 3.1.5, it was explored if there was an exclusive supplier arrangement for such services, and there is not.
- 35 Contract Procedure Rule 3.1.7 states that the authorised officer will, if there is no ISP or exclusive supplier arrangement, ascertain whether there is an Approved Framework Agreement in place that can be used and use such arrangements if so.
- 36 The Council requires senior level of resource (at Partner level) to deliver the services, and requires an organisation who can respond at speed across a range of complex areas.

b) How will success be measured?

- 37 Whilst the extent of the services required cannot be defined in full until further due diligence takes place and there will be no guarantees of quantum of work required, the expected areas of legal expertise that the Council expect or may draw down upon include:
- Property and Land (both strategic and detailed);
 - State Aid;
 - Compulsory Purchase & Compensation;
 - Planning;
 - Litigation;
 - General Commercial and Contract;
 - Local Government;
 - Funding Agreements;
 - Insurance;
 - VAT;
 - European Regulations.
- 38 This list is not exhaustive and additional legal services not listed may be required arising from the direction the project takes and any issues that may arise. The services outlined above are included in the scope but with flexibility for the Council to seek additional services should it be required.
- 39 Success will be measured through receiving high quality and timely legal advice on the above matters, leading to particular outputs which will also be required:
- The production, negotiation and agreement to land sale agreements for Council owned land.

- The production, negotiation and agreement to grant agreements for funding that the Council proposes to provide;
- If required, the production, negotiation and agreement to a CPO indemnity agreement and, if required, detailed due diligence into any potential CPO proposals, drafting of a CPO order and general CPO advice.
- Appropriation of Council owned land;
- Detailed diligence into site titles for the boundary of development;
- Comprehensive State Aid investigations and advice;
- Finalisation and implementation of any vacant possession strategy;
- Review and finalisation of update planning guidance where the comprehensive development is proposed.

40 Ultimately the success of the wider project will result in achieving the restoration of Temple Works. Working in partnership with CEG and the British Library a sustainable end use for the building will be delivered via a new national visitor attraction 'British Library for the North.'

c) What is the timetable for implementation?

41 The Squire Patton Boggs contract for provision of legal services is to be for a period of four years, the same as the previous contract. This on the basis that the vast majority of legal work will be completed in this time.

Appendices

- 42 Appendix 1 – Reason for Waiving CPRs
- 43 Appendix 2 – Location of Temple Works
- 44 Appendix 3 – Equality, Diversity, Cohesion and Integration screening
- 45 Appendix 4 Confidential – Squire Patton Boggs Hourly Rates

Background papers

46 None.

APPENDIX 1

REASON FOR WAIVING CPRS

There is a genuine, unforeseeable emergency meaning there is no time to go through a procurement process e.g. to deal with the consequences of extreme weather.	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
To purchase supplies or services on particularly advantageous terms due to liquidation/administration.	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Requirement to put a contract in place with a current provider whilst a review of the services is completed.	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Ran out of time to undertake a new procurement exercise	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
<p>Other (please provide summary here)</p> <p>Value for money and for ongoing continuity to use same legal firm as have used for legal advice on Temple Works over the past four years.</p>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

APPENDIX 2

LOCATION OF TEMPLE WORKS

Site Reference: MX2-35 (5349)

Site Address: Temple Works Mixed Use Site

Mixed use allocation

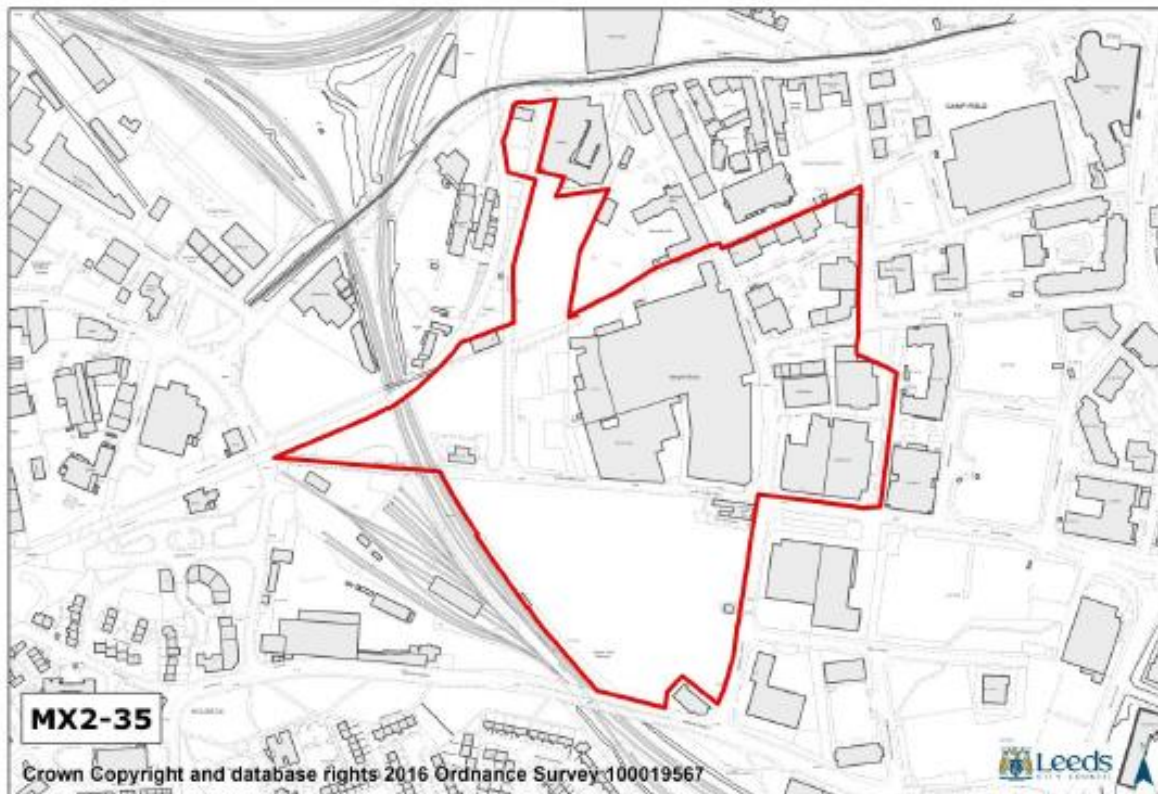
Site Capacity: 1000 units & 3.1 ha employment

Site Area: 11.37 hectares

Ward: City and Hunslet

HMCA: City Centre

Phase: 1



PRODUCED BY CITY DEVELOPMENT, GIS MAPPING & DATA TEAM, LEEDS CITY COUNCIL

APPENDIX 3

EQUALITY IMPACT SCREENING

(See separate document)

APPENDIX 4 - CONFIDENTIAL

SQUIRE PATTON BOGGS HOURLY RATES

(See separate document)