By virtue of paragraph(s) 3 of Part 1 of Schedule 12A

of the Local Government Act 1972.

Subject: East Bank – Stratford Waterfront procurement and construction

update

Meeting date: 1 October 2019

Report to: Investment Committee

Report of: Colin Naish, Executive Director of Construction

This report will be considered in private

Subject to the decision of the Committee under Item 14 on the agenda for this meeting, this report is exempt and is therefore not for publication to the public or press by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972 in that it contains information relating to the financial and business affairs of any particular person (including the MDC holding that information).

1. SUMMARY

- 1.1. The paper provides an update on the current cost position and summarises the steps being taken to minimise the extent of the cost overrun on current design and identifies more radical options available to further reduce the forecast overspend on the project.
- 1.2. Tenders have now been received for the following packages:
 - UAL Frame (concrete now awarded)
 - V&A Frame (predominantly steel)
 - UAL Glazing and Metal Cladding (mix of steel and aluminium)
 - UAL/V&A/BBC Precast Cladding (concrete)
 - BBC/Sadler's Wells Frame (concrete and steel)
 - SW/BBC/V&A Glazing and Metal Cladding (aluminium)
 - V&A Mechanical, Electricals and Plumbing (MEP)
- 1.3. Tender returns for the frame and envelope packages listed above are significantly in excess of the package budgets and Pre-Tender Estimates (PTE). The Anticipated Final Cost (AFC) for the delivery of the project is currently available over the Current Baseline Budget (CBB), reflecting the variances to budget in packages already awarded and trends for packages where tender returns have been received and for which outturn trends are included in the AFC.
- 1.4. The principal reasons for the tender returns exceeding the package budgets are (i) the design and budget is not sufficiently aligned, (ii) package scope is out of 'comfort zone' of package contractors and (iii) package size and associated financial turnover requirements preclude smaller contractors from tendering.
- 1.5. Consideration is being given to disaggregating frame and envelope packages (where the scope is outside the comfort zone of package tenderers) and subdividing packages to reduce package size, both of which should have the benefit of attracting more package contractors to participate in a re-tender process, but will increase package count.

- 1.6. This refinement of the Managed Package Strategy (MPS) procurement approach should assist in obtaining tender returns closer to the PTEs, but the fact remains that package PTEs are in excess of package budgets. Further Value Engineering (that remains compliant with the Planning Permission and the AfLs) is unlikely to be sufficient to close the gap between PTEs and package budget; radical redesign will be required to get closer to CBB, but this will require a new Planning Permission to be sought and AfLs to be renegotiated.
- 1.7. A series of workshops are underway to identify the extent of further value engineering possible and radical redesign required to get back to CBB. With works underway on site, implementing radical redesign at this stage will have significant associated delay cost and programme implications.
- 1.8. If the cost plan, on which the PTEs are based, proves to be not reflective of current market conditions, additional radical redesign will be required to get back to CBB, or additional funding will be required.

2. RECOMMENDATION

2.1. The Committee is asked to:

- 2.1.1. Note the cost reduction measures being taken in Appendix 2 to reduce the overspend on the delivery of the current scheme.
- 2.1.2. Consider implementation of the more radical options listed in the report.
- 2.1.3. Approve the proposed refinement of the MPS procurement approach to disaggregate and sub-divide packages, and to utilise Mace's supply chain for sub-OJEU procurements, resulting in an increase in the number of packages from the current 27.

3. BACKGROUND

Agreement for Leases

- 3.1. LLDC as Landlord has two main roles under the AfLs, firstly, the role of Landlord to grant the legal interest to the Tenants (Partners) and secondly, the role of developer procuring and managing the design, planning and construction works. Delivery cost risk for works carried out by the LLDC is shared with UAL but, not with Sadler's Wells, BBC and the V&A where the risk resides with LLDC.
- 3.2. The obligations on the LLDC are currently standard developer-type obligations and oblige for example the works to be carried out using reasonable and proper care, with provision of warranties to the Partners from the contractor, main sub-contractors and all relevant professional team members and for the LLDC to use reasonable endeavours to procure that the building contractor makes good all defects.

Establishing budgets and deliverables

3.3. Following the restart of Stratford Waterfront in January 2017, the individual Partner building budgets were reviewed together with the brief requirements. The budgets and rate per m2 were set following a review of wider UK cultural and education building benchmarks with Gardiner & Theobald (G&T) and referencing the previously produced Stage 3 cost plans (Stratford Waterfront Version 1). Both of these were reviewed and commented on by Mace as commercially realistic.

4. FINANCIAL IMPLICATIONS

4.1. East Bank PTEs are based on G&T's estimates at Stage 3, updated for design development. A&M's brief is to design within budget. G&T's Stage 3 cost estimate

- was assured by an independent cost consultant Turner & Townsend. The Invitation to Tender (ITT) documentation for all package procurements is not released to the market without the relevant Partners' sign off and the Partners are kept up to date with any material adjustments made during the procurement process (and any adjustments that would affect LLDC's obligations under the Agreements for Lease).
- 4.2. In order to keep to programme, the earlier frame and envelope package ITTs were launched knowing the package PTEs were in excess of the package budgets, with the aim of capturing Value Engineering opportunities through the tender process. On the later MEP and Fitout packages, the time was available to undertake Value Engineering to better align the package PTEs with the package budgets prior to the ITTs being launched.

Specific Package returns

4.3. Set out in the table below are the anticipated award and associated variance to package budget figures are available at the time of issue of this paper, but an update will be given at the Committee meeting.

| Package | Budget* £m | PTE* £m | Tender returns £m | Actual/Anticipated award £m | Variance to Budget £m |
|---|---------------|------------|----------------------|-----------------------------|-----------------------------|
| UAL Frame (awarded) | s.43 | | | | |
| V&A Frame | | | | | |
| UAL Glazing and Metal Cladding | | | | | |
| UAL/V&A/BBC Precast Cladding | | | | | |
| BBC/SW Frame | | | | | |
| BBC/SW/V&A Glazing and Metal Cladding | | | | | |
| V&A MEP | | | | | |

^{*}Budget is the actual amount of available funding for the package within the CBB.

- 4.4. Remaining packages have been reviewed by LLDC and Mace to assess the impact of purchasing risk on the project, specifically taking into account pricing (including package PTEs in excess of package budgets), fees and market interest to develop a best/worst and likely outturn against CBB.
- 4.5. Adjusting this outturn to accommodate a 7-10% construction contingency against available contingency provides a range of outturns, allowing UAL, LLDC and GLA to have a fuller picture of any cost exposure at decision points. It is hoped that this analysis balances current visibility on tender returns prior to committing to new contract awards.

^{*}PTE is G&T's estimate of the anticipated tender return value of the package.

⁽b) BBC/SW Frame under review as Section 5.3.1

⁽c) One of the two tenders received for the BBC, Sadler's Wells and V&A glazing package is incomplete and therefore non compliant which may result in only one bidder, requiring a re tender process.

4.6. The following table sets this out (following the V&A Frame, UAL Glazing and Metal Cladding, UAL/V&A/BBC Precast Cladding and BBC/SW Frame returns):

| Construction Contingency | Best Case £m | Most Likely £m | Worst Case * |
|--------------------------|-----------------|-------------------|--------------|
| 7% | c 13 | | |
| 10% | 5.T0 | | |

^{*} Reduced by to from the August 2019 Board report to reflect that the UAL frame contract has been awarded.

The amounts listed above also include an allowance of 5% (Most Likely Case) and 10% (Worst Case) on the M&E and fit out packages, reflecting the work undertaken on these later packages to more closely align the design/budget/PTE before issuing for tender. If the tender returns are in excess of this allowance then the Most Likely and Worst Case values set out above will also increase.

- 4.7. The analysis above excludes BBC SDLT risk, which amounts to **5.43**. Brexit Tariff risk, which is modelled at **5.43**, and other programme-wide risks, currently being re-assessed, and is based on a construction baseline of **5.43** (excluding professional fees, contingency and tenant fit-out where the risk sits with the tenant).
- 4.8. The August period end AFC for the East Bank construction baseline reflected an adverse variance to CBB of 3.43 (including the 3.43 Brexit Tariff risk), reflecting the variances to budget in packages already awarded and trends for packages where tender returns have been received and for which outturn trends are included in the AFC. Including BBC SDLT risk the adverse AFC variance to CBB is 3.43 Under the terms of the UAL AfL, UAL funds 3.43 of this overspend. The August Dashboard report prepared by Mace is in Appendix 1.
- 4.9. LLDC considers the following as the main causes of the tender following as being the principal reasons for the tender returns exceeding the cost plan allowances:
 - 4.9.1. The design and budget is not sufficiently aligned the prime construction cost and the fee in package tender returns is significantly above the cost plan allowances. Tenderers' feedback is that the designs are complex and high quality and this is driving cost.
 - 4.9.2. Package scope is out of 'comfort zone' of package tenderers MPS sized packages include scope that is beyond core business for some package contractors, for example structural steelwork in a concrete frame package (BBC/SW Frame), steel stairs and blockwork in a concrete frame package (UAL), concrete in a steel frame package (V&A) which results in risk allowances and subcontract fees being added in tender returns.
 - 4.9.3. Package size and associated financial turnover requirements driving out competition smaller contractors who would normally be keen on the project cannot tender, for example the combined UAL/BBC/V&A pre-cast package.
- 4.10. In addition, UAL have identified additional issues which they believe may have impacted on market interest and tender returns, but LLDC do not believe they alone are driving additional cost within the tender returns:
 - 4.10.1. OJEU procurement with seemingly plentiful work, contractors can choose to tender other projects that do not have such onerous pre-qualification and ITT submissions.
 - 4.10.2. NEC form of contract and extent of client amendments to the standard form again, with seemingly plentiful work, contractors can choose to tender other projects using standard trade contracts that do not have such onerous contract administration obligations.

5. ACTION TAKEN TO REDUCE COSTS ON CURRENT SCHEME:

- 5.1. LLDC is taking actions in the following areas of the project to minimise the cost overruns on the project and address some of the causes of the cost pressure summarised above:
 - 5.1.1. Refinement of the MPS procurement approach (re-packaging);
 - 5.1.2. Programme and associated costs of meeting the 2022 academic year completion date;
 - 5.1.3. Review of Design Team Stages 5 & 6 scope and fees;
 - 5.1.4. Working with Partners, design team and contractors to identify value engineering opportunities; and
 - 5.1.5. Review of contract terms and OJEU process (as set out in Appendix 2)
- 5.2. Detail of specific cost reduction measures being taken are summarised in Appendix 2 to this paper.

Refinement of the MPS procurement approach

- 5.3. We are implementing the above through actioning the measures set out in Appendix 2 to reduce the cost overrun and specifically:
 - 5.3.1. Frame Packages Proceeding with the commercial evaluation of the remaining frame package tender returns. Under consideration is the opportunity to sub divide the BBC and Sadler's Wells frame package and disaggregate the BBC frame into primary material elements (concrete, steel & blockwork), but this needs to be considered in the context of acoustic performance risk which could preclude hand over of the building. Following Value Engineering, a tender addendum has been issued to tenderers for the V&A frame package.
 - 5.3.2. Envelope Packages Challenge the envelope package contracts (as they are being returned significantly in excess of package budget), can be disaggregated into smaller packages and can be subject to design change within the boundaries of the current planning permission (this will need assessed), whether they impact 2022 completion or not. To this end, LLDC are:
 - s.43
 - Considering sub dividing the single UAL, BBC and V&A precast package into individual building precast packages and retendering on this basis;
 - With agreement of UAL changing steel windows frames to aluminium and then split the current glazing package into separate packages to reduce cost and drive more competition through a retender;
 - **s**.43
 - 5.3.3. MEP packages proceeding with the current tender process, as the floor space requirement and building usage is unlikely to change, so the design of the MEP is unlikely to be able to be reduced to save cost; and
 - 5.3.4. Fitout packages proceeding with the current tender process, but with consideration being giving to delaying procurement to assist with managing resource constraints driven by repackaging and retendering of the envelope packages.
- 5.4. This refinement of the MPS approach should assist in obtaining tender returns closer to the PTEs, but the fact remains that package PTEs are in excess of package

- budget. Further Value Engineering (that remains compliant with the Planning Permission and the AfLs) is unlikely to be sufficient to close the gap between PTEs and package budget; radical redesign will be required to get closer to CBB, but this will require a new Planning Permission to be sought and AfLs to be renegotiated.
- 5.5. A series of workshops are underway to identify the extent of further value engineering possible and radical redesign required to get back to CBB. With works underway on site, implementing radical redesign at this stage will have significant redesign and associated delay cost and programme implications.
- 5.6. If the cost plan, on which the PTEs are based, proves to be not reflective of current market conditions, additional radical redesign will be required to get back to CBB, or additional funding will be required.

6. RADICAL OPTIONS FOR CONSIDERATION

- 6.1. If additional funding is unavailable, then the more radical redesign options which would need to be considered in order to get back to CBB include:
 - 6.1.1. **Option 1 reduced floor areas/storey height:** Stop site works once substructure works are complete, renegotiate the AfLs and redesign the buildings based on current footprint (because it is now set by the ongoing substructure works), but with reduced floor areas/storey height, to the current design quality and specification.
 - 6.1.2. Option 2 reduced design quality and specification: Stop site works once substructure works are completed, and redesign the buildings based on the current footprint and AfL compliant floor areas but to a reduced design quality and specification
 - 6.1.3. **Option 3**: A combination of the Options 1 and 2 reduced floor areas/storey height and reduced design quality and specification.
- 6.2. The following points should be noted with regards to the 3 options listed above:
 - All options could fundamentally undermine how the buildings operate and what Final Business Case benefits they may accrue.
 - Option 1 (and therefore Option 3) has been dismissed by UAL and is not really
 viable for Sadler's Wells, V&A and BBC as they are very compact buildings based
 around core functions with specific needs for auditorium, gallery and studio space
 respectively. As such any meaningful size reduction would impact on the
 operation of the buildings and unlikely to be accepted by the Partners.
 - It should be noted that any value engineering or radical redesign could take time
 to gain acceptance by Partners for further change (especially if it impacts
 operational outputs) and incur fees to amend the design either by the Design
 Team or the contractor.
 - If a radical redesign was required as a result of Options 1 or 2 (effectively starting with a new brief for reduced Partner building size), circa 3-4 months would be needed for design briefing with Partners and their internal sign off, there would then be another 9 months of design work and another 9 months required to prepare a new planning application. This could result in a 2 year delay to the project, abortive fees and additional Tender Price Inflation with no guarantee that any forecasted savings could be achieved (especially if current floor space is maintained as per Option 2). There is also a risk that one or more of the Partners might withdraw their commitment to the project given the delays (the BBC Development Agreement has a 2024 longstop date).
 - Any new planning application for a radical redesign would put at risk the position approved on the residential component of the hybrid application.

 Costs incurred to date are substantial if design and procurement work is aborted now. There will be reputational damage to LLDC / GLA / Partners and loss of momentum may never be recovered. It would be difficult to row back from public commitments made at this stage.

7. LEGAL IMPLICATIONS

7.1. LLDC have taken advice on changes the package contracts as outlined in Appendix 2.

8. APPENDICES

- Appendix 1 August 2019 Dashboard
- Appendix 2 Cost Reduction Measures being undertaken

List of Background Papers:

Cultural and Education District Procurement Strategy Update Paper to 12 June 2018 Investment Committee (exempt information)

East Bank Stratford Waterfront construction contracts delegation Paper to 21 May 2019 Board (exempt information)

East Bank Stratford Waterfront UAL Frame and Roof Procurement update Paper to 18 June 2019 Investment Committee (exempt information)

East Bank Stratford Waterfront UAL Frame and Roof Procurement update Paper to 30 July 2019 Investment Committee (exempt information)

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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

Appendix 2

Cost Reductions Measures being undertaken

| Action | Comment | Progress |
|--|---|---|
| Procurement Process | Committee | Progress |
| Pre tender VE to get package PTE in line with Budget prior to ITT (post envelope packages) | PTE process refined and updated. No packages released for tender until PTE aligns with budget to allow for a more efficient tender process. | Put in place for M&E &fit out packages any new pre tenders. |
| Introduced a series of targeted mid tender briefings (in addition to pre existing Industry Days and ITT commencement briefings) | Extensive tender briefings incorporated into package tenders and programme. Briefings to MEP contractors have helped ensure full tender lists. | Incorporated in all tenders post frame tenders onwards. |
| Changed to the Competitive Procedure with Negotiation (CPN) process (post Frame packages) to enable greater contractor input in the final tender requirement | LLDC had already responded on the issue of flexibility by introducing an OJEU compliant CPN to remaining tenders earlier in the year and has been quick to react to market information in respect of package scope increasing the number of packages from 22 to the current 27, with at least one further additional package under discussion (vertical circulation). | Incorporated in all tenders post frame tenders onwards. |
| Changes to the principal of a minimum Quality Threshold, thereafter, lowest price wins (post Substructure Package) | As above. | Incorporated in all tenders post substructure tender onwards. |
| Secure full tender lists for M&E and fitout packages (greater competition) | First M&E package tender due back this month. Full tender lists secured on all MEP packages and fit out packages to date. | Achieved for M&E and fit out packages. |
| Utilise Mace Tender List for sub OJEU level packages | If it is commercially advantages to remove scope from a package, and the scope is below the OJEU threshold, there is the option to use Mace shortlisted suppliers to help ensure competitive bids and expedite the tender process. | Under consideration for future re tenders. |
| Contractual Change | | |
| Taken Tariff risk | Intended to help reassure the market with regards to uncertainty resulting from Brexit. | Approved at August Board for all future tenders. |
| Obtained ability to take FX risk where commercially advantageous | As above. | As above. |
| Relaxed Care & Protection extended defects period for UAL Frame (with UAL's agreement) | Agreed variation with UAL. | Incorporated in UAL frame contract. |
| Retained Transfer of ground risk to substructure contractors and wind risk to frame contractors (QRA allowances utilised) | Advantageous for contractors. | • N/A |
| Retained OCIP, limits of liability, retention only of value of defect correction (all to the tendering contractor's benefit) | As above. | • N/A |
| Clarified Mace's role re coordination and interface management to avoid duplication of cost | Extra clarity to bidders. | Made clearer from frame packages onwards. |
| Clarity of Stage 5 residual design requirement retained, CDPs identified. | As above. | As above. |

| Action | Comment | Progress |
|---|--|---|
| Packaging Strategy | | Jg. 000 |
| Increased package count to respond to market feedback (e.g. Envelope packages) – from 18 to 27 packages currently | Responding to market feedback. May increase package numbers further to ensure cost efficiency and avoid 'fee on fee' being included in tender returns. | Re – considering packaging strategy on the envelope. Potential for an increase in packages. |
| Transferred budget and scope in response to tenderers pricing (UAL roof works) | In order to help reduce the risk of 'fee on fee' in tender returns, respond to market conditions by transferring scope and budget. See also reference option of using Mace tender list to save time and cost. | Kept under review, may look at transferring SW roof works into another package for example. |
| Currently considering breaking out elements of works from MPS Frame and Envelope packages into trade specific packages (BMU, Blockworks, steel staircase) to remove fee on fee and risk allowance/cover pricing | Option being looked at on every package. See also reference option of using Mace tender list to save time and cost. | Under review and may utilise access to Mace tender list to expedite access to market. |
| Currently considering reducing package sizes to lower package value to lower turnover threshold to increase competition. | See above. | Looking at disaggregating envelope packages (precast and glazing). |
| Tender Stage Value Engineering | | |
| Issued tender addendums (common contractor VE) | Significant savings achieved on UAL frame (although it was still over budget) using process which will be refined going forward. | Addendums issued on all packages to incorporate VE proposals from contractors. |
| Prepared Day 1 Compensation Events (post competition successful contractor specific VE) | | Utilised on UAL frame and used on future packages where appropriate |
| Currently considering re package and re tender with Alternative materials – Steel to Aluminium windows, Precast Concrete to GRC | | Utilised on UAL windows (steel to aluminium agreed with UAL) and used on future packages where appropriate |
| Currently considering re package and re tender with Alternative installation methodology Unitisation | | Looked at with UAL, but now discounted as cost savings unlikely to be achieved. |
| Design Scope and Fees | | |
| Review the scope and cost of A&M's Stage 5/6 role for LLDC | Review of Stage 5/6 to be undertaken to ensure there is no duplication with contractors and appropriate rates are secured. | Under review. |
| Seek reduction in fees for any design work required for VE opportunities | Some of the contractor VE proposals will require additional design work to be undertaken. LLDC seeking to negotiate reduced rates from the Design Team for the work given they are obliged to design to budget. | Ongoing discussion between LLDC CEO and A&M. |
| Partner Engagement | | <u> </u> |
| Seek additional funding from Partners | Limited scope for V&A and SW due their funding arrangements and VAT considerations. UAL are taking the majority of overrun risk (2/3 shell and core and all of fit out). May be scope for BBC to increase funding, but will mean varying the DA. | Discussions with partners where appropriate. |
| FFL | Work commencing with FFL on exploiting commercial rights to raise capital funding for the project. | Discussions with FFL ongoing. |
| Working with partners on securing VE opportunities | Most of the relatively straight forward items have already been taken and agreed with partners during earlier stages. Where practicable LLDC are continually pursuing | Partners have been actively engaged on securing VE opportunities. |

| Programme | value engineering opportunities with the Design Team. | UAL have attended workshops and meetings with contractor. Ongoing value engineering has been undertaken on the design and is tracked monthly and will continue to be assessed. Package contractors are obliged to suggest further savings |
|------------------------------|--|--|
| Programme | | |
| Detailed review of programme | Option to extend the delivery programme beyond 2022 being looked at if more time required to realise savings, but needs to be considered in the round as inflation costs will increase as well. Given the proximity of the buildings, there may be building construction inefficiencies and therefore additional costs if the buildings are delivered to different programme. It may also not be viable to operate some of the buildings (eg BBC and Sadler's Wells in particular) if one of more of the neighbouring partner buildings are still being constructed whilst others are becoming operational. | Full programme analysis underway to take into account increased and additional procurements. |

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