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15 September 2015

Dear *Caroline*

Garden Bridge

In his letter of 15 June 2015, Sir Peter Hendy said that TfL would undertake a review of the procurement of the Garden Bridge design process.

That work has been undertaken and I enclose a copy of the review.

The review concludes that the procurement was acceptable in relation to the selection of bidders and there is no evidence to suggest that the process did not provide value for money for TfL.

TfL's initial role to develop the design concept for a new pedestrian bridge evolved over time and in response to a number of Mayoral Directions. If the overall programme for the Garden Bridge and the role TfL was going to play in supporting the project had been known from the outset, then it would have been possible for there to have been a procurement strategy in place from the start. However, the reasons for not having one are understandable.

There are a number of specific management actions relating to process and the agreed measures are being taken to ensure established processes are fully followed in the future.

To ensure that we are being as transparent as possible, the review will be added to the documents relating to TfL's involvement in the Garden Bridge on our website.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Mike Brown'.

Mike Brown MVO

To: Richard De Cani, Managing Director of Planning

Cc: Mike Brown, Interim Commissioner
Howard Carter, General Counsel
Steve Allen, Managing Director Finance
Andrew Quincey, Director Commercial
Ian Nunn, Chief Finance Officer

From: Clive Walker
Director of Internal Audit

Phone: 020 3054 1879

Date: 15 September 2015

Ref: IA 15 638

Audit of the procurement of design and development services for the Temple to South Bank Footbridge Project

Executive Summary

The audit did not find any evidence that would suggest that the final recommendations did not provide value for money from the winning bidders.

The audit identified no issues in either procurement with regard to:

- the selection of bidders;
- the development of the tender and associated contract documentation;
- the procedure used when awarding the contracts and providing the unsuccessful bidders with an opportunity for feedback;
- the procedures used by TfL to manage the project and contracts following award.

However, TfL's role in the project was unclear from the outset and this was a strong factor in there not being an agreed procurement strategy in place. It is clear that the project would have benefited from a procurement strategy, although the reasons for not having one are understandable. Two different procurement approaches were adopted and, in both procurements, there were some instances where TfL policy and procedure with regard to communication with bidders and tender evaluation were not fully complied with.

Management actions have been agreed and are being taken forward to ensure that established processes are followed in the future.

Introduction and background

The Mayor's Transport Strategy (MTS) and London Plan set out the need for better connectivity for pedestrians in Central London. The MTS is particularly supportive of schemes that will reduce walking time to and from Public Transport. In addition to this, it has been recognised for some time that a direct link between Temple and the South Bank would improve pedestrian traffic in the area and support better transport links.

In early 2013, the Commissioner and Managing Director Planning of TfL met with the Mayor, following a presentation the Mayor had received from Thomas Heatherwick Studio regarding a proposal for a "Garden Bridge". At this meeting the Mayor stated his desire for TfL to consider whether the construction of an innovative and novel design based around a living bridge concept would be feasible. TfL agreed to develop a concept for a new bridge in the area on behalf of the GLA.

At the time TfL did not have a framework to cover this type of work and was seeking design concepts that would be innovative and novel and provide more than just a pedestrian footbridge. It was agreed to engage with three market leading companies with a track record of delivering unique and world class designs. TfL decided to approach Wilkinson Eyre Architects, Marks Barfield Architects and Thomas Heatherwick Studio all of whom had the relevant and suitable experience for a project of this type.

In February 2013 TfL ran a tender to procure a design advisor to "help develop this concept" and understand scale of costs and benefits of the scheme. Following the technical and commercial evaluation of the bids, the contract ('TfL 90711 Design Services') was awarded to Thomas Heatherwick Studios in March 2013 with a capped fee of £60,000. TfL's contract with Thomas Heatherwick Studio ended in July 2013.

During March 2013 the TfL scope evolved quickly following a request by the Mayor to progress the project and submit a planning application. There are a number of Mayoral Directions relating to this project. It is clear that TfL did not expect, in the early stages, that this project would be undertaken in these timescales, or that TfL would be involved to the level it subsequently became. TfL took on the role "of enabler, securing the necessary powers and consents, helping to secure the funding for construction and future maintenance from third parties, helping to establish an appropriate structure for its delivery and, potentially, providing project management expertise during construction."

In April 2013 a second tender was issued to develop the technical design of the bridge, to enable a planning application to be submitted. The tender process used the TfL Engineering & Project Management Framework and went through the formal stages of Expression of Interest and Invitation to Tender. The Invitation to Tender was issued to 13 companies from the framework and tenders were received on 7 May 2013, with clarification

interviews held with four bidders between 14 and 16 May 2013. Subsequently Arup was awarded the contract as lead consultant ('TfL 90001 Task 112 Temple Bridge') and resulted in a final fee of £8,422,000.

Following the award of both contracts, TfL continued to progress the project until it was able to transfer all management responsibility to the Garden Bridge Trust in 2015. The TfL contract with Arup ended in April 2015.

On 3 June 2015 the Leader of the London Assembly Liberal Democrat Group, Caroline Pidgeon MBE AM, wrote to the Commissioner of Transport for London raising a number of questions relating to the procurement of the design services for the Temple to South Bank footbridge.

The Commissioner responded to this letter on 15 June 2015 and confirmed that a review of the design contract procurements would be undertaken and the findings published.

Objective and scope

The objective of the audit was to provide assurance that the procurements of design and development services for the Temple to South Bank footbridge Project were undertaken in accordance with procurement regulations and approved procedures, and were open, fair and transparent.

Findings

The audit findings are set out below under the scope headings agreed at the commencement of our work.

Procurement management processes and compliance with UK and EU guidance

The procurement approach adopted for TfL 90711 Design Services was appropriate, and follows accepted practice in TfL for projects of this monetary value. TfL Legal provided TfL Planning with some initial legal advice on the Procurement Issues and Powers relating to delivery of the Garden Bridge on 8 January 2013. At this stage it wasn't clear what the extent of TfL's involvement would be in the project and the advice was given on the assumption that TfL might be the delivery body for the entire project. The advice sets out a number of options for the procurement process that might be used for the selection of the design team and concludes that "a design contest or a competition through OJEU might be a suitable process." Subsequently, a decision was taken to split the procurement into two parts with the first phase being a short design exercise, to be commissioned through a small tender and the second part to be procured through the existing TfL consultancy frameworks.

In both procurements there was some informal communication between TfL Planning and individual bidders outside of the formal tender process, as described below:

TfL 90711 Design Services

- 8 February 2013, TfL Planning issued the design brief to all three bidders, ahead of the formal release of the ITT on 13 February 2013. This was done in order to make all three bidders aware of what was coming shortly so that they had the resources available to respond, but was outside TfL Policy on engagement with bidders.
- 26 February 2013, an email was sent from TfL Planning to Thomas Heatherwick Studio requesting clarification on which rates apply to which people in the Heatherwick Bid as this was not clear in the bid. This communication should have been made through the e-procurement portal.
- Thomas Heatherwick Studio were informally notified by TfL Planning that they had been successful in their tender, before the formal notification by TfL Commercial to all bidders through the e-procurement portal.

TfL 90001 Task 112 Temple Bridge

- During evaluation of the tenders, TfL Planning made a direct request (by telephone) to Arup to reduce their day rates. This is discussed more fully in the Evaluation Process section below.

Communications outside of the formal tender process are inconsistent with TfL policy and procedure.

Selection and pre-qualification of bidders

The audit identified no issues with regard to the selection of bidders in either procurement.

Three bidders were selected for the TfL 90711 Design Services tender in accordance with TfL Commercial guidance. TfL Planning selected the bidders on the basis of their experience and their ability to provide a unique and innovative design.

Bidders for TfL 90001 Task 112 were selected through a formal Expression of Interest, issued to companies on the Engineering & Project Management Framework.

The process for developing and approving the Invitation to Tender, contract and associated documents

The audit identified no issues with the development of the tender and associated contract documentation.

Evaluation process for Invitation to Tender and management of bid clarifications

The audit identified a number of issues considering the evaluation and analysis of the tenders in both contracts.

TfL 90711 Design Services

- The technical evaluation of the three bids was undertaken by a single person in TfL Planning and endorsed by the MD Planning. From our interviews with those involved, the respective roles of TfL Planning and TfL Commercial in the evaluation of the bids were unclear and should have been better defined from the outset. The technical and commercial evaluations of the three bids were undertaken by the same person, which is inconsistent with TfL procedures and guidance on managing procurements and accepted good procurement practice.
- Some of the documentation to support the commercial analysis of the day rates used in the evaluation could not be located at the time of the audit.
- The rates submitted by the three bidders varied significantly. As a result, a decision was taken to give all bidders the same evaluation score, and the contract was awarded as a fixed fee and capped at £60,000.

TfL 90001 Task 112 Temple Bridge

- The commercial submission from Arup on 7 May 2013 was in the form of an Excel spreadsheet providing day rates. We would have expected a formal commercial submission.
- No supporting documentation relating to the individual technical evaluation scores was available to review. We have been told the documentation was held in hard copy by the TfL Planning Project Manager until recently when, as a result of an office move and introduction of hot desking policy, it was disposed of. Interviews with those involved show that the first tender evaluation was carried out in accordance with TfL procedures.
- Initial scoring placed Arup 7th out of the 13 bidders because of their higher cost in spite of the fact their technical bid was judged by the

evaluation team to be the strongest. However, a decision was taken to interview Arup as they had the strongest technical bid.

- At this point it was decided to contact Arup to ask them to review their fees, with a view to reducing them, leading to a second submission. The rationale given for this was the Arup technical bid was much stronger than the other bids and it was their price that affected their scoring. The gap between Arup's technical score and those of the other bidders increased further following the interview stage. None of the other bidders were given the opportunity to revise their submissions and there was no Best And Final Offer stage included in the procurement. It would have been best practice to have done this.
- There was a small error in the analysis of Arup's commercial submission. Each bidder was required to submit day rates in each defined area for five roles, these were Partner/Director, Principal Consultant, Senior Consultant, Consultant and Junior Consultant. In the analysis of the Arup commercial submission the rates for Consultant and Junior Consultant were taken from the 7 May submission and the rates for Partner, Principal Consultant and Senior Consultant were taken from the second submission. The rates used in each analysis were the lower of the two rates provided. This error resulted in an uplift in the Arup score from 19.26% to 19.85%. However, it should be noted that the additional 0.59% did not affect the final placing of the bidders.

The manner in which the evaluation process in both procurements was undertaken did not follow TfL procurement policy and procedure in a number of instances. However, the audit did not find any evidence that would suggest that the final recommendations did not provide value for money from the winning bidders.

Contract award and debriefing

The audit has not identified any issues with the procedure used by TfL when awarding either contract and providing the unsuccessful bidders with an opportunity for feedback.

Arrangements for post contract award management

The audit has not identified any issues with the procedures used by TfL to manage both the project and contract following the award of both contracts.

Recommendations

Awareness of Policies, Procedures and Guidance

TfL has in place a number of policies and procedures setting out its requirements for the governance of procurements, including the TfL Code of Conduct and the TfL Procurement Policy. The TfL Corporate Disposal Schedule sets out requirements for retention of documents. These policies and procedures were not followed in all cases, which may reflect a lack of understanding of requirements by the staff concerned. An effective briefing on procurement procedures by TfL Commercial might have prevented some of the issues from arising.

Recommendation –Individuals involved in the management and delivery of procurement activities are responsible for ensuring they are fully aware of the requirements placed on them and TfL by guidance and statute to ensure best practice is followed. Planning staff involved in procurement activities should make themselves aware of these requirements.

At the start of any procurement, and commensurate to the size and level of risk, TfL Commercial should brief all staff involved in the process giving clear instructions relating to:

- *the process that will be followed,*
- *roles and responsibilities,*
- *the documentation they will be expected to produce and provide to TfL Commercial*
- *escalation procedures for reporting non-compliance*

This briefing will emphasise the rules of engagement with bidders and the need for segregation of duties during the evaluation of bids.

TfL Commercial should develop a training package on TfL's procurement processes for use with staff who are not familiar with them, and for staff who are new to TfL. The purpose of this training material should be to raise awareness of the guidance available, the policy and procedure that must be followed and the potential ramifications of non-compliance.

We have been informed by TfL Commercial that over the past year the Commercial Centre of Excellence (now called Commercial Strategy and Performance) have led a piece of work to identify the methods of tender evaluation across TfL and Crossrail and to use best practice to develop a consistent approach to bid evaluation. The new approach is currently being rolled out and will be mandatory from Oct 2015.

Enforcement

The audit found some instances where TfL Commercial staff had raised issues during the process with regard to the communication with bidders and the evaluation of tenders, which were not acted on.

Recommendation – TfL Commercial should be robust in ensuring that issues in relation to the procurement process are highlighted on a timely basis and escalated as appropriate to ensure action is taken to mitigate any breaches of policy or procedure.

Review of evaluation models

As noted above, there was an error in the analysis of Arup's commercial submission.

Recommendation – TfL Commercial should identify the reason(s) that led to this error and whether improved controls need to be put in place.

Conclusion

The audit did not find any evidence that would suggest that the final recommendations did not provide value for money from the winning bidders.

However, TfL's role in the project was unclear from the outset and this was a strong factor in there not being an agreed procurement strategy in place. It is clear that the project would have benefited from a procurement strategy, although the reasons for not having one are understandable. Two different procurement approaches were adopted and, in both procurements, there were some instances where TfL policy and procedure with regard to communication with bidders and tender evaluation were not fully complied with.

We would like to thank all those who were involved in and contributed to this audit.

Please do not hesitate to contact Roy Millard, Senior Audit Manager, or me, if you would like to discuss this further.

Kind regards

Clive Walker
Director of Internal Audit

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