

8 March 2018



By email

Mr Simon Morrow  
Lambeth Peoples Audit

Dear Mr Morrow,

**Re. Your report on Fenwick Estate development management contract**

Thank you for your email of 2<sup>nd</sup> March. I am grateful to you for your report and for giving me the opportunity to look into the matter.

You have raised a number of concerns about the tender process which led to the selection of Mace Ltd in May 2017 for the contract for the Fenwick Estate Development Management Contract. This was challenged in the High Court by another tenderer, Karakusevic Carson Associates ('KCA'). In July 2017 Lambeth published a cabinet member delegated decision report in which it proposed to terminate the procurement, and not confirm the provisional award of the contract to Mace Ltd. The Cabinet Member subsequently accepted the recommendations and the decision was implemented.

In that report it was stated that:

Whilst the Council is of the opinion that the procurement was carried out in a proper manner, there may be arguments raised as to the adequacy of the contemporaneous documentation in explaining the Council's decision making. Given that there is a level of risk in the outcome of the litigation process, the Council is of the view that this course of action is advisable to minimise both costs and commitment of officer time. Detailed consideration of the Council's prospects in litigation is exempt information and is set out in the confidential Part II report. In the meantime the Council is not permitted to enter into contract with Mace, as the issue of legal proceedings has automatically suspended the contract award.

KCA subsequently discontinued its claim and Lambeth reached an agreement on confidential terms in respect of its legal costs.

I turn now to the points and queries you have raised:

**Why was the scoring for comparing the rival bids for this contract split 30% on price and 70% on quality – and not as its contracts for other Lambeth estate redevelopments, which split 50/50 on price/quality?**

The procurement strategy was approved in 2015 when price/quality tended to be more evenly weighted than now. The Council's starting point price/quality split has changed since

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then towards 30/70 price quality. The appropriate price/quality split is determined on a case by case basis and consultancy and specialist contracts tend to have a split that is more quality oriented than, say, contracts for goods where price is typically more obviously important than quality.

The Cressingham Hill, Knights Walk, South Lambeth and Westbury contracts had a 50/50 price/quality split. The reason for that is that those four contracts was called off the Homes and Communities Agency framework, which had been set up on the basis of a 50/50 split. Contracts called off a framework must usually adopt the same evaluation criteria, although there is sometimes some leeway to move away from the split to a modest degree.

For the Fenwick and Central Hill Estate contracts, however, it was decided that the HCA framework had been saturated and the decision was taken to conduct a full OJEU restricted two stage tender. Lambeth was then free to determine its own price/quality split and opted for 30/70.

I understand you have previously been given the procurement strategy report for the Fenwick Estate procurement. I direct your attention to the justification for the 70:30 split stated in that report:

“(1) the complexity of these projects means that it is inappropriate simply to choose the cheapest submission – quality of the team is paramount; and (2) being the strategy and design stage of the work for these projects, by choosing the right team now, significant savings can be made during delivery (construction) of these projects. It is for these reasons that it is suggested that scoring of ITT responses should be biased 70:30 towards quality.”

I trust that this answers your question.

**In what ways was Mace’s tender of such higher quality than Karakusevic Carson’s and Mott Macdonald’s that it justified spending an additional £5.6 million of taxpayers’ money?**

The detailed quality evaluation has been deemed exempt from disclosure as commercially sensitive so I cannot explain it in detail to you. When evaluating quality the evaluation panel would have considered whether the detailed bid adequately resourced the project to fully and satisfactorily deliver the project. A public contracting authority has to determine which tender will be the most economically advantageous. It is therefore not always the case that a lower priced bid – even one which on the face of it is much lower – is necessarily the most economically advantageous. In some cases, particularly in the construction industry, it is found only once the contract is well underway that substantial variations are required in circumstances where a higher priced tenderer would perhaps not have needed them. When that happens the true price difference is not that between the headline tender prices but that between the cost outturn and the losing bid.

I understand that one of KCA’s grounds of challenge was that in evaluating the quality submissions the evaluation panel made certain errors in how they analysed the way that each tender was resourced. The point was not adjudicated on but I understand that for the

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fresh procurement some changes will be made to the evaluation process in any event to ensure that there is no room for misunderstanding or potential for error.

As the tender submissions are confidential to the tenderers I cannot share with you in detail the qualitative differences between the tenders.

### **Why is the difference in price scores so small when the difference in bid prices was so large?**

Scoring of price is not a simple matter of comparing headline prices and converting them to percentages. I cannot fully explain the scoring matrix in detail in this letter but in brief it involved this process:

- A. Score for Stage 1 of project
- B. Score for Stage 2
- C. Score for average cost per day (total project cost/resource days)
- D. Average of A, B & C with equal weighting
- E. Adjustment to D based on average of daily rates for additional work.

So if, for instance, a big adjustment may be required under E. to take account of a tender with a higher price having resourced a higher number of days than a lower priced tender; this can narrow the price scores considerably.

### **Why was the winning bid so much higher than the procurement strategy indicated?**

There can be a number of reasons why tender prices might come in much higher than the original estimate. In this case I understand that the original procurement strategy in 2015 was approved on the basis that officers had scoped the services on the basis that design work would be carried out up to the point typically required for a design and build contract (i.e. up to and including RIBA Stage 3). The pricing estimates were on the basis of only proceeding to RIBA Stage 3.

However, it became apparent that the HCA framework had been saturated and so the larger two projects of Central Hill and Fenwick were tendered through a full OJEU procedure. During negotiations for the lead estates during 2016 it was determined that it would be better for the scope of services for future development management appointments to extend to RIBA Stage 4 and potentially beyond. This was the subject of clarifications in the tendering exercise and therefore all tenderers would have understood that the change in scope would increase the price range from the original estimate. Increasing the scope did significantly increase the likely fees arising from these services. The appointment for the contract did not commit Lambeth to proceed to RIBA Stage 4 but provided flexibility as to exactly how much design work to do prior to handing over to a contractor.

However, I understand your concerns over the large difference between the original estimate and the tender prices and I acknowledge that the increased scope will not necessarily explain all of the difference. Estimates at the start of a procurement are the



product of officers' assessment of the market in the light of the facts and assumptions available to them at the time. Once the procurement strategy is developed in detail and the Council engages with the market, it is sometimes found that the estimate was optimistic or based on insufficient facts or assumptions. I note that two of the other three tenders were not that far from Mace's bid, which suggests that Mace's bid was not out of line with the market. Hopefully the new procurement process will see lower priced high quality bids.

### **What about the alleged conflict of interest involving ex-employees of Mace?**

The allegation was that that two directors of the consultants Lambeth engaged to assist with the tender evaluation were former Mace employees and that this created a conflict of interest. This was investigated by Lambeth's Head of Internal Audit and Counter Fraud in March 2017 and this led to a finding that there was no conflict of interest. I acknowledge that the allegation did form one of KCA's grounds of challenge but it was not adjudicated on. I am satisfied that the matter was properly investigated.

### **Transparency in the public interest**

I understand that in response to Freedom of Information Act requests which you made last year Lambeth disclosed quite a lot of information to you. However, information which is confidential to tenderers cannot be disclosed under the Public Contracts Regulations. When it comes to information which is not confidential but is deemed commercially sensitive, an assessment is made as to whether the public interest overrides the Council's and interested parties' interests in withholding it. When Lambeth notified you that it would withhold some of the information you requested you were told in detail of the assessment made and the reasons for that assessment.

In taking a decision to terminate the procurement process and not confirm the provisional contract award to Mace, Lambeth took legal advice. This advice is legally privileged. We do seek to be transparent where possible but there are good reasons for not disclosing legal advice – both in general and in this case specifically. I refer you again to the extract from the report which I incorporated near the top of this letter. I cannot add to that.

I hope that I have answered your concerns and queries and I thank you again for raising them with me.

Yours Sincerely



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