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**Decision Maker:** EXECUTIVE

For pre-decision scrutiny by the Renewal, Recreation and Housing Committee

**Date:** RRH PDS: Wednesday 26 January  
Executive: Wednesday 9 February

**Decision Type:** Urgent Executive Key

**Title:** CRYSTAL PALACE SUBWAY AWARD OF WORKS CONTRACT

**Contact Officer:** Lydia Lee, Assistant Director Culture and Regeneration  
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**Chief Officer:** Director of Housing, Planning, Property and Regeneration

**Ward:** Crystal Palace;

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1. Reason for report

This report, together with the accompanying Part 2 report, sets out the award of the main construction contract for the Crystal Palace Subway restoration works. The outcome of the compliant two stage Restricted Tender and Negotiated Procurement process has been outlined in the Part 2 report.

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2. RECOMMENDATION(S)

That Members of the RRH PDS: -

2.1 Note the contents of this report and make any comments available to the Executive.

That Members of the Executive: -

2.2 Delegate authority to the Director of Housing, Planning and Regeneration in consultation with the Portfolio Holder for Renewal, Recreation & Housing and the Director of Finance, to approve the acceptance of any additional grants required to deliver this scheme to completion, namely any further grants that come forward from the National Lottery Heritage fund and / or Historic England.

- 2.3 Delegate authority to the Director of Housing, Planning and Regeneration in consultation with the Portfolio Holder for Renewal, Recreation & Housing and the Director of Finance, to approve increasing the Capital Programme for the Subway Restoration Project up to a maximum of £3.597m, to enable the completion of the full restoration scheme, subject to securing additional grant funding. Noting that if additional grant funding is not secured, the addition to the Capital Programme will not be required.**
- 2.4 Delegate authority to the Director of Housing, Planning and Regeneration and the Director of Corporate Services, to agree the commercial heads of terms for a legal agreement proposed to be entered into between the Council and the London Borough of Southwark, outlining the Council's future maintenance and management responsibilities for the Subway upon practical completion of the works.**
- 2.5 Delegate authority to the Director of Corporate Services to execute all and any ancillary legal documentation relating to the proposed legal agreement referred in paragraph 2.4 above.**
- 2.6 Delegate authority to the Director of Housing, Planning and Regeneration and the Director of Corporate Services, to agree the commercial heads of terms for a works licence with the London Borough of Southwark, and the construction contractor, to enable the undertaking of the restoration works.**
- 2.7 Delegate authority to the Director of Corporate Services to execute all and any ancillary legal documentation relating to the proposed works licence referred to in paragraph 2.6 above.**
- 2.8 See Part 2 Report for further Recommendations in relation to the award of the works contract.**

### Impact on Vulnerable Adults and Children

1. Summary of Impact: The restoration of the Crystal Palace Subway as part of the wider Regeneration Plan will have a positive impact on vulnerable adults and children.
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### Corporate Policy

1. Policy Status: Existing Policy
  2. BBB Priority: Regeneration, Supporting Independence, Vibrant, Thriving Town Centres.
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### Financial

1. Cost of proposal: Estimated Cost – See Part 2 report
  2. Ongoing costs: Not Applicable
  3. Budget head/performance centre: Capital Programme – Crystal Palace Park Subway
  4. Total current budget for this head: £2.368m for this element of the scheme
  5. Source of funding: Grant Funding. Grants from the City of London Strategic Investment Pot, Historic England, and a contribution from the Friends of Crystal Palace Subway.
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### Personnel

1. Number of staff (current and additional): N/A
  2. If from existing staff resources, number of staff hours: N/A
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### Legal

1. Legal Requirement: Non-Statutory
  2. Call-in: Not-Applicable
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### Procurement

1. Summary of Procurement Implications: The correct procurement process has been undertaken to date under advice from the Head of Procurement and the Assistant Director of Governance and Contracts. This report and the accompanying Part 2 report sets out the procurement route used for the main works contract.
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected): A recent survey estimates that the park receives 1.4m visits each year.
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### Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes
2. Summary of Ward Councillors comments: The project has Ward Councillor support.

### 3. COMMENTARY

- 3.1.1 The detailed background to this report is set out in report no. DRR20/018 and report no. HPR2021/033.
- 3.1.2 In October 2019 (Report no. DRR19/058) Executive approved the recommendations to award £2.34m from the Strategic Investment Pot (SIP) to the Crystal Palace Subway Restoration Project, subject to securing appropriate match funding to finance the works. Following this report match funding was confirmed from Historic England and the Friends of Crystal Palace Subway.
- 3.1.3 In February 2020 (Report no. DRR20/018) Executive approved the addition of the Subway restoration project to the Capital Programme at a cost of £3.141m. This approval was agreed based on the scheme costs being fully funded by grants from the Strategic Investment Pot, Historic England, Transport for London (TFL), and a contribution from the Friends of Crystal Palace Subway.
- 3.1.4 The smaller grant funding allocation from TFL has not been forthcoming due to TFL's financial situation as a result of Covid-19 and competing pressures arising from the Hammersmith Bridge project. The Council has therefore instead submitted additional funding applications to Historic England and shortly to the National Lottery Heritage Fund, and the outcomes of these applications are anticipated this spring. The success of these applications will determine the extent of works undertaken throughout the restoration project, as outlined within Part 2 of this report.
- 3.1.5 Due to the funding not being forthcoming from TFL the restoration project is effectively being split into two phases. The main works (phase one), which already have funding from SIP and Historic England need to get underway due to the grant funding conditions and the requirement to commence works in this financial year, as well as due to Planning Conditions and the bird nesting season. Phase one is the majority of the project, satisfies grant conditions, and will enable to opening of the Subway to the public for a variety of uses. Phase two, which will see the complete waterproofing of the underground structure from the road, will only proceed if the further funding required is secured. However officers will strive to secure this funding whilst the works contractor is on site, as overall varying the contract will be the most cost effective opportunity for delivering phase two.
- 3.1.6 Following Chief Officer Approval, the Council procured award-winning conservation led architects Thomas Ford & Partners in March 2020 via a competitive tender process, to deliver the consultancy services for the restoration of the Subway from RIBA Stages 0-7. RIBA Stage 4 of the project has now been completed, and Planning and Listed Building Consent was granted at the Plans sub-committee on 6 January 2022.
- 3.1.7 Officers have worked extensively with the Friends of Crystal Palace Subway to ensure appropriate engagement with the local community throughout the duration of the project. This has involved the creation of a webpage dedicated to the restoration works, social media, mailing lists and leafleting. The project has received extensive media coverage, including BBC News.
- 3.1.8 In June 2021 (Report no. HPR2021/033) the Executive approved the recommendations to proceed to procurement for the Subway main contract works. Details of the tender process has been outlined in section 4 of this report below.
- 3.1.9 Once the restoration works are completed in early 2023, the Subway is planned to become a new cultural venue for South London. The restoration of the Subway and its development was included within the 2007 Masterplan and has been carried forward into the Crystal Palace Park Regeneration Plan. The extensive research and consultation undertaken to inform the Regeneration Plan highlighted the importance of reactivating Crystal Palace, and the

development of the Subway into a publicly accessible cultural destination is considered crucial to the vitality of the wider area. The reactivation of this historical asset is also central to enabling the broader event-driven business model for the whole park.

3.1.10 The restoration of this site will also enable the Council to engage with a commercial partner, who could fund the cost of ancillary site visitor facilities at ground level (as envisaged in the Regeneration Plan which has Outline Planning Permission), linked through to the Subway, creating further prospects for the currently underutilised space.

3.1.11 In order to ensure compliance with the grant conditions outlined by Historic England and the SIP fund, the Council has initiated conversations with partners at the London Borough of Southwark regarding maintenance and management responsibilities of the site, upon practical completion of the restoration works. The Council is in the process of negotiating the Heads of Terms with Southwark, and this report seeks approval to delegate authority to the Director of Housing, Planning and Regeneration and the Director of Corporate Services, to agree the Heads of Terms for the future Legal Agreement. Further information on the proposed agreement has been included within Part 2 of this report.

## **4. TENDER PROCESS**

4.1. As detailed in Report no. HPR2021/033, Officers utilised a restricted two stage tender process to procure the main contractor for the restoration works. This process included the initial distribution of an Expression of Interest to specialist contractors as agreed with the project's Lead Architect and Quantity Surveyor, a Stage 1 shortlisting exercise followed by an Invitation to Tender to those providers successful at Stage 1.

4.2. Further information on the tender process has been outlined within Part 2 of this report.

### **Expression of Interest**

4.3. In May 2021, an Expression of Interest was shared with nine specialist construction contractors as part of the initial soft-market testing exercise, to help establish the potential level of interest for the proposed works. The document also sought feedback on the proposed two stage restricted tender process

4.4. Contractors were provided information on the history of the site and previous works, site photos, information on the high-level project requirements, the Council's policies regarding social value and equality and existing appointments.

4.5. A total of nine responses were received, all of which expressed a high level of interest for the project. Feedback indicated that a two-stage restricted tender process (opposed to a one-stage open tender) was the preferred procurement route.

### **Stage 1 Pre-qualification**

4.6. Following the outcome of the soft-market testing exercise, tender documentation for the Stage 1 Pre-qualification round was published on 9 August 2021. In order to ensure compliance with UK public procurement regulations and the Council's procurement policies, Stage 1 of the two-stage restricted process was advertised as an open tender, therefore any suitable organisation was permitted to submit a bid to be considered as part of the initial pre-qualification shortlisting exercise.

4.7. During this first stage, contractors were required to complete the standard selection questionnaire (SSQ). The SSQ establishes whether an organisation meets the Council's statutory

requirements, is competent and capable and has the necessary resources and experience to carry out the works contract.

4.8. Details on the criteria of the SSQ have been outlined below:

Question	Weighting
Company Experience – Relevant Works	30%
Response to the Project	25%
Relevant Experience – Case Studies	25%
Referees	20%

4.9. The first stage pre-qualification tender was open for a period of four weeks, and a total of ten submissions were received.

4.10. Detail on the outcome of the Stage 1 Pre-qualification tender is located in section 5 of this report.

### **Stage 2 Closed Tender**

4.11. Further to the outcome of the first stage tender, contractors were invited to submit a full tender as part of the two-stage tender process. The second stage tender was released on the 8 October and was open for a period of seven weeks, closing Thursday 25 November. Tenderers were provided the opportunity to visit the site with their subcontractors during this period.

4.12. Tenderers were asked to complete a detailed quality questionnaire and pricing schedule to enable the project panel to undertake a thorough evaluation process to determine the quality of each submission. Details of the quality questionnaire have been provided below:

Question	Weighting
Project Team	15%
Project Challenges	20%
Specialist Works	20%
Specialist Brickwork	20%
Social Value and Engagement	15%
Programme	10%

4.13. A total of four bids were received and evaluated by the project panel. Detail on the outcome of the Stage 2 tender is located within section 5 of this report.

### **Stage 3 Competitive Procedure with Negotiation**

4.14. Upon completion of the second stage tender, it was evident that all four tenders classified as irregular or unacceptable, as set out in Regulation 26-27 of the Public Contract Regulations 2015. In general, the Council found all tenders received to be greater than the budget currently available to complete the restoration works. Therefore, in line with Regulation 26 (4) (b), the Council decided to move to a Competitive Procedure with Negotiation, in order to establish an affordable solution for the project so that the restoration works could be undertaken in line with the available budget.

4.15. Information on the outcome and process of the Competitive Procedure with Negotiation has been outlined in Part 2 of this report.

## **5. TENDER OUTCOME**

5.1. See Part 2 Report.

## **6. STAKEHOLDER ENGAGEMENT**

6.1. The following key stakeholders were engaged and have been consulted throughout the duration of the tender process and entire restoration project:

- Historic England
- The Friends of Crystal Palace Subway
- The London Borough of Southwark
- The City of London (SIP fund administrators)

6.2. The tender documentation and returns for the second stage tender were also shared with the Crystal Palace Park Trust, although they were not formally asked to provide comments.

## **7. IMPACT ON VULNERABLE ADULTS AND CHILDREN**

7.1. The Regeneration Plan, which includes the restoration of the Subway, will have a positive impact on vulnerable adults and children.

7.2. The park is designed for public enjoyment and education. Restoring the Grade II\* listed Subway will enable it to be accessible to the public once again.

## **8. POLICY IMPLICATIONS**

8.1. The park is shown with various designations and policies in the Local Plan and the London Plan. There is an outline planning permission in place subject to legal agreement for the Regeneration Plan, as of March 2021.

## **9. FINANCIAL IMPLICATIONS**

9.1 Although the Capital Programme provision for this scheme was approved at £3.141m, this assumes all expenditure will be funded from external grants and contributions. This included a TfL grant of £296k which is no longer available, therefore the revised total funding so far secured is £2.845m.

9.2 As a result of that grant reduction and also due to the tendered cost of the works exceeding the total available budget, the report is now recommending that the scheme is split into two phases. Phase 1 will involve the main construction works to be funded from the grants already secured. These works will be carried out under the contract award set out in Part 2. The total cost of these



works, plus any costs incurred to date and other commitments, at this stage cannot exceed the total funding available of £2.845m.

- 9.3 Progression of the Phase 2 works under the same contract will be subject to the further grant applications to Historic England and the National Lottery Heritage Fund set out in the report. If successful, the report seeks a delegation to increase the Capital Programme in line with any additional funding secured. Based on expenditure to date, other scheme commitments and the total potential value of the contracted works need to complete the scheme in full, the revised total scheme estimate, include all design consultancy team costs, would be £3.597m.

## **10. LEGAL IMPLICATIONS**

- 10.1 The Council has the legal power to hold, maintain and develop its landholdings and buildings in connection with its functions including powers available under various Parks and Open Spaces legislation and with regard to its Regeneration Priorities. In addition, Section 1(1) of the Localism Act 2011 gives the Council the power to do anything that individuals may do and under Section 111 Local Government Act 1972 the Council has power to do anything calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.
- 10.2 In furtherance of these powers the Council may provide and commission through a contract, the building works outlined in this report and Part 2 report and in relation agreeing any rights, interests and access over the land, may enter into the proposed Agreement and Licence set out in recommendations 2.4 and 2.6
- 10.3 The commissioning of the works contract to carry out the necessary works of restoration to the Crystal Palace Subway is a public works contract within the meaning of the Public Contracts Regulations 2015 (Regulations). Due to the value and nature of the works, a procurement has been carried out in accordance with the Regulations. The report has explained the use of the Restricted Procedure and the reasons for using the Competitive Procedure with Negotiation. Details of the evaluation and outcome recommending the award of the works contract, is set out in the Part 2 report.
- 10.4 Given the circumstances surrounding budget and funding currently available, it would appear sensible to procure the works as more fully described in the accompanying Part 2 report. In the event of any further works proceeding, these are likely to be accommodated within the proposed works contract. In support of this the Part 2 report is recommending that delegated authority is given to the Executive Director in consultation with the Director of Finance to approve such variations. The Council will be using the standard industry recognised JCT contract with amendments.
- 10.5 The report is also recommending Executive approval to agree any increase to the Capital Budget where this can be funded as described in this report and as permitted by the Council's Financial Regulations and Capital Programme Procedures
- 10.6 The recommendations to this report are consistent with the Council's Contract Standing Orders (CPR's) (CSO Guidance) which for award of a contract of this value which gives authority to the Executive to award with the agreement of the Chief officer, Delegated Budget Holder the Assistant Director of Contracts and Governance and the Portfolio Holder.
- 10.7 It would appear from this report that the procurement of the works contract has been carried out in compliance with the Council's CPR's and the Regulations.
- 10.8 As confirmed within this report, Officers are fully aware of the need to comply with the conditions of grant throughout the project and have obtained prior approval from the Grant Bodies that the

specification for the works, as revised and more fully explained in the Part 2 report, are in conformity with grant conditions.

10.9 In relation to the proposed officer delegation to agree the Agreement and Licence as sought in recommendations 2.4 and 2.6 of this report further information is contained within the Part 2 report.

## 11. PROCUREMENT IMPLICATIONS

11.1. This report seeks to award a contract for the provision of the works required for the Crystal Palace Subway restoration project.

11.2. The part 2 report contains the details of the proposed award.

<b>Non-Applicable Sections:</b>	Personnel implications
Background Documents: (Access via Contact Officer)	Crystal Palace Park: Regeneration Plan, July 2017, DRR17/029 Strategic investment Pot, October 2019, DRR19/058