

Cabinet – Supplementary agenda

A meeting of the Cabinet will be held on:

Date: 20 July 2010

Time: 3.00pm

Venue: Meeting Room 2 - Level 3, Gun Wharf, Dock Road, Chatham ME4 4TR

Items

- | | | |
|------------|---|--------------------------|
| 10. | Gateway 3 Contract Award: Chatham Dynamic Bus Facility | (Pages 1 - 10) |
| 11. | Gateway 3 Contract Award: Chatham Road and Public Realm Improvements - The Brook | (Pages 11 - 20) |
| 15. | Exclusion of the Press and Public | (Pages 21 - 100) |
| 16. | A228 Stoke Crossing - Project Update | (Pages 101 - 106) |

This report sets out the primary risks to the delivery of the project following Cabinet's decision to award the contract for this project to Birse Construction at its meeting on 8 June 2010. It is considered the need to keep this information exempt outweighs the public interest in disclosing the information.

Therefore, should Members wish to discuss the exempt appendix, the Committee is recommended to exclude the press and public as it contains commercially sensitive and legally privileged information under paragraphs 3 and 5 of part 1 of Schedule 12A of the Local Government Act 1972.

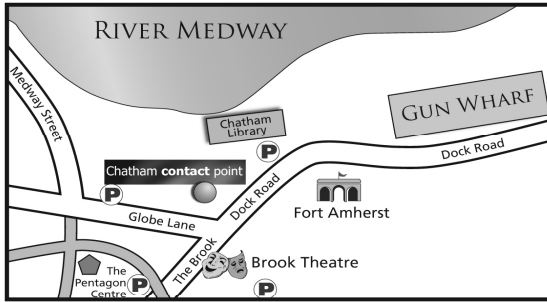
Definitions:

Paragraph 3: Information relating to the financial or business affairs of any particular person (including the authority holding that information).

Paragraph 5: Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

For further information please contact Wayne Hemingway/Anthony Law, Cabinet Coordinators on Telephone: 01634 332509/332008 or Email: democratic.services@medway.gov.uk

Date: 20 July 2010



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CABINET

20 JULY 2010

GATEWAY 3 CONTRACT AWARD: CHATHAM DYNAMIC BUS FACILITY

Portfolio Holder: Councillor Rodney Chambers, Leader

Report from: Robin Cooper, Director Regeneration, Community and Culture

Author: Sara Purvis, Chatham Project Manager

Summary

This report seeks approval to award the main works contract for the construction of the Chatham Dynamic Bus Facility to Morgan Sindall.

1. Policy and Budget Framework

1.1 The decision falls within the policy and budget framework. The delivery of the dynamic bus facility is identified as a priority in a number of adopted Council documents:

- Medway Waterfront Renaissance Strategy 2004
- Chatham Centre and Waterfront Development Framework 2004
- Medway Regeneration Framework 2006-2016
- Chatham Centre and Waterfront Development Brief 2008
- Council Plan 2009-2012 (priorities 1, 5, and 7)

1.2 The Cabinet is asked to consider this matter as urgent and not subject to call-in as any delay would jeopardise the development programme and the ability for the bus station to be delivered within the funding period (before March 2011).

1.3 In line with rule 16.11 of Chapter 4, Part 5 of the Constitution, call-in can be waived where any delay likely to be caused by the call-in process would seriously prejudice the Council's or the Public's interests. As set out above, it is considered that a call-in would delay the development programme and jeopardise the funding for this project. The Chairman of the Regeneration, Community and Culture Overview and Scrutiny Committee has agreed that

the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency and to waive call in.

2. RELATED DECISIONS

- 2.1 The Gateway 1 report considered by Cabinet on 24 November identified that the appointment of a contractor at the pre construction stage is medium risk and Cabinet delegated the appointment of the preferred contractor at the pre construction and enabling works stage to the Assistant Director of Housing and Corporate Services in consultation with the Leader and the Portfolio Holder for Finance.
- 2.2 Following the approval of the Gateway 1 report in November 2009 a Gateway 3 Report for the appointment of the contractor for the pre construction stage and the enabling works contract was approved in December 2010 by the Assistant Director of Housing and Corporate Services in consultation with the Leader and the Portfolio Holder for Finance.
- 2.3 Morgan Sindall were subsequently appointed for the pre construction stage, and enabling works contract.

3. BACKGROUND/INTRODUCTION

- 3.1 This report relates to the procurement of a contractor for the Chatham Dynamic Bus Facility. When the Gateway 1 report was considered by Cabinet in November 2009, it was confirmed that prior to entering into the main construction contract with the appointed contractor a further Gateway 3 report would be considered by Procurement Board and Cabinet, at such time as agreement is reached with the contractor on the contract sum.
- 3.2 Following the appointment of Morgan Sindall under the pre construction agreement in December 2009, the contractor has worked alongside the project team, throughout the detailed design process, to advise on cost, programming, procurement and buildability issues, and subsequently has been appointed for the enabling works contract, including the service trench and utility diversions, which is now underway on site. Morgan Sindall have now priced the main works contract, by competitively tendering all of the construction packages that make up the scheme. This has been carried out using an open book process, and a contract sum for the main works has now been reached. This report now seeks Cabinet approval to enter into the main works contract with Morgan Sindall on the basis of the sum proposed. The main construction contract will include the following elements of work:
 - Works to the Brook between Whiffens Avenue and Dock Road, including new pedestrian crossings
 - The construction of the bus station and the refurbishment of the White House to provide management and driver facilities
 - Design and installation of the telematics equipment required for the Dynamic Operating System for the bus station
 - Associated landscaping works.

The Dynamic Bus Facility project is fully funded by HCA as part of the current programme of regeneration projects taking place in Chatham as part of the Thames Gateway programme. The funding period runs until March 2011. Funding has been confirmed.

4. SUMMARY OF THE BUSINESS CASE

4.1 Strategic Context

The Transport for Medway study in 2005 identified a need for a new modern bus facility to serve Chatham in order to fulfil regeneration objectives, and to encourage greater patronage of public transport in the area. The case for a new bus station relates to the inefficiencies and inadequacies of the existing bus station within the Pentagon Centre, as well as the identified benefits of the new station. In addition the relocation of the bus station out of the Pentagon Centre allows for the expansion of the Pentagon Centre, providing additional retail floorspace and reinforcing Chatham's role as a retail destination. The dynamic operating system allows efficient use of the station, which reduces the land take required to facilitate the number of bus services, now and in the future.

4.2 Whole Life Costing/Budgets

Whilst the capital cost of designing and constructing the DBF will be met from HCA funding, there will be an associated ongoing revenue cost in managing and maintaining the station, which cannot be met in this way. HCA funding can only be used for the initial capital investment. It is expected that the revenue cost will be met through revenue generated by charging the bus operators for use of the bus station.

Arrangements for the on-going management, operation and revenue funding of the DBF are being examined currently by the Council's Integrated Transport team.

4.3 Risk Management

A project of this nature, as with any construction project, has a number of risks and a detailed risk register is held by the project team and frequently updated as risks are mitigated or identified. Following the appointment of Morgan Sindall under the pre construction agreement in December last year, they have contributed to the risk register and risk management process. A summary of the main areas of risk associated with this project is set out below. A copy of the project team's comprehensive risk register is provided in the exempt appendix.

Risk	Description	Action to avoid or mitigate risk
Approvals	Risk of significant further delay and additional costs or loss of funding if required approvals are deferred or not approved	Planning approval is now in place and pre commencement conditions have been discharged. Cabinet authorisation to appoint is the last remaining significant approval required.
Construction	There are a range of construction risks e.g. ground conditions, weather conditions and archaeology that could result in additional cost or delay to the programme	Ground investigations and archaeological assessments have been carried out, so that risks are managed, however this does not preclude uncovering the unexpected when works start. Weather conditions remain a significant risk of delay during the winter period.
Dependencies with other Council Projects	The DBF project has dependencies with other Council projects, in particular the Real Time Information (RTI) project, if this is not operational at the time of completion of the DBF there would be cost implications for the Council	Effective liaison with the Council's integrated transport team
Cost/Specification	The DBF project has a fixed budget. If unexpected construction risks are encountered the associated increase in costs may require a reduction in scheme specification to stay within budget	Early contractor involvement and risk management

4.4 Market Testing (Lessons Learnt/Bench Marking)

Use of the IESE framework as proposed takes full advantage of the benefits of bench marking and lessons learnt from other members of the framework as set out in the Gateway 1 report considered in November 2009.

4.5 Stakeholder Consultation

The policy documents referred to in section 1 of this report have been the subject of full public consultation, and there has also been the opportunity for members of the public to comment on the proposals through the planning

process.

The bus operators are an important group of stakeholders, particularly the main operator in this area, Arriva. Discussions have taken place with operators regarding the proposed station. The integrated transport team within Medway Council, who are responsible for ensuring public transport targets are met are also a significant stakeholder and have been involved in the development of the project.

4.6 Equalities Issues

The Council's equal opportunities policy seeks to ensure that contractors promote equality and diversity. The procurement of the contractor has been carried out having full regard to the equal opportunities policy.

4.7 Environmental Issues

Morgan Sindall provided evidence of their commitment to environmental sustainability in their tender submission. Confirming that the following will be undertaken:

- The preparation and implementation of an accredited project specific Environmental Management Plan
- Minimising site impacts during construction (including energy and water use, procuring timber from sustainable sources, protecting retained trees and environmental features, and minimising dust and water course pollution)
- Implementation of a site waste management policy to mitigate where possible transportation of waste to landfill.

5. PERMISSIONS / CONSENTS

Planning permission was granted by Development Control Committee on 27 January 2010. The permission was subject to a number of pre-commencement conditions which have now been discharged.

6. INVITATION TO TENDER

6.1 Summary of Tender Process

The contractor has not been procured through a traditional competitive tender process. Instead, the contractor has been selected through the IESE (Improvement and Efficiency South East) Contractor Framework. The process for selection of the contractor was set out in considerable detail in the Gateway 1 report that was considered by Cabinet in November 2009.

In summary, the selection process comprised a shortlisting exercise, seeking expressions of interest from the 10 framework contractors. Four contractors were shortlisted and a mini competition exercise, including interviews to select the preferred contractor. The mini competition provides the opportunity for contractors to demonstrate their approach, experience, and ability to deliver the project. Initially the contractor that is selected as a result of this exercise is appointed to provide preconstruction advice through the detailed design process, however it is expected that that contractor will then be appointed to carry out the construction works.

The price for the main works contract is arrived at in conjunction with the project team, following Morgan Sindall undertaking a competitive tending exercise for each package of works. This process carried out on an open book basis. Measures to reduce and manage costs are agreed between the project team and the contractor.

6.2 Tender Evaluation

The tender evaluation process was reported in detail in the Gateway 3 Report for the pre construction and enabling works contracts considered by Assistant Director of Housing and Corporate services in consultation with the Leader and the Portfolio Holder for Finance in December 2009.

Four contractors were shortlisted and took part in the mini competition. All four were also interviewed by the project team. Morgan Sindall was the highest scoring bidder in relation to the selection criteria both through the mini competition and interview stages as prescribed by the protocols of the IESE framework and mini competition documentation. Once appointed through the pre construction agreement Morgan Sindall have worked alongside the project team, and have now priced the scheme to arrive at a contract sum for the main works contract. This pricing is carried out on an open book basis.

Following the issue of the stage F design in May this year to the contractor, they have tendered the work to their subcontractor supply chain. The initial price which was returned on 2 July was in excess of the project budget. However, the design team in conjunction with Morgan Sindall had already identified a range of cost savings and these are now being reviewed with the supply chain, to verify the level of saving that can be achieved.

The price set out within the tender review report by Franklin + Andrews contained in the exempt appendix is within the project budget allowance, however there remain a number of matters which are still subject to confirmation by the contractor. The information available to date is however enough to give the project team confidence that an agreed price that is within the project budget, including an appropriate level of contingency will be agreed, this is also confirmed by Morgan Sindall, see exempt appendix.

7. PREPARATION OF THE NEXT STAGE OF PROCUREMENT

7.1 Resources & Project Management

Medway Renaissance will continue to manage the project through the construction phase, to ensure the required outputs are achieved and quality is maintained.

7.2 Contract Management

Contract administration will be provided by scheme architects D5 who will be contract administrators for the main construction contract, and Franklin + Andrews will have an ongoing role in verifying quantity and value of works completed as the scheme progresses.

8. Comments of The Leader (Regeneration)

- 8.1 The proposed Dynamic Bus Facility represents a key stage of the transport and public realm improvements taking place as part of the ongoing regeneration programme in Chatham. Appointment of a contractor for the main works represents an important step forward in this project.

9. Procurement Board

- 9.1 Procurement Board considered this on 12 July 2010 and approved the report for consideration by Cabinet subject to:

- Formal written confirmation from HCA of the funding allocation to Medway Council.
- Clarification of budgeted costs for the DBF Main works and the White House, contingences and potential costs in the event that issues arise, requiring contract cancellation.
- Review of risk register and subsequent inclusion to the Cabinet report as a separate appendix.

- 9.2 It is confirmed that funding agreements are in place for all of the Chatham projects, including the phase 2 road schemes and the public realm projects. Further written confirmation was sought in response to the request from Procurement Board, and an e-mail was received from HCA, dated 19th July 2010, confirming that "As a result of the funding settlement, the HCA has confirmed that it will be able to meet existing contractual commitments across all its programmes. This applies to Medway funding agreements and therefore includes Chatham Bus Facility and Chatham Road Network Phase 2, both of which are funded from the Thames Gateway fund.

- 9.3 In terms of the budget costs for the main works and the White House, this is set out in more detail in the tender review report which is included as an exempt appendix.

10. FINANCIAL, PROCUREMENT AND LEGAL COMMENTS

- 10.1 *Comments of the Chief Finance Officer.*

The overall programme for Chatham which is wholly funded by Homes and Communities Agency (HCA) allocates £5,009,463 this financial year to the Bus station project (which also includes works to the Brook and Waterfront, paid for out of their respective budgets). The procurement route assures value for money and the contracts will be within the budget provision.

- 10.2 *Comments of the Head of Procurement.*

Strategic Procurement has provided quality assurance throughout the procurement process and is satisfied that a robust and compliant procurement process has been undertaken in line with the protocols of the IESE framework and EU procurement regulation. The outcomes of this procurement process

should enable the delivery of best value and the requirements of the specification. The client department must ensure that all legal formalities are concluded and HCA funding confirmation has been formally received before committing the Council. Furthermore, as the evaluation is of highly technical nature, the client department must ensure that it is satisfied that the financial evaluation is robust in respects to the viability of the submitted pricing matrix.

9.3 *Comments of the Monitoring Officer*

This procurement was under the IESE (Improvement and Efficiency South East) Contractor Framework. This framework protocol involves a staged process, the final stage of which is the contract award for the main construction works. Under the protocol the contractor awarded the design and pre-construction works had the option, through an open book procedure, to price for the main construction works. This open book process is fully supportive of the principles of best value and it encourages the contractor's supply chain, i.e. the contractors pricing for each part of the main construction works, to develop transparent processes and for their prices to be competitive. This final stage of the process will have been in accordance with the provisions of a framework agreement that satisfies the requirements of the Public Contracts Regulations 2006 (as amended).

10. RECOMMENDATIONS

- 10.1 Cabinet authorise the Assistant Director of Housing and Corporate Services to enter into a contract with Morgan Sindall for the main works contract for the construction of the Chatham Dynamic Bus Facility within the agreed budget provision.
- 10.2 The Cabinet is asked agree that this decision is considered urgent and therefore should not be subject to call-in.

11. SUGGESTED REASONS FOR DECISION(S)

- 11.1 To enable the contract for the construction of the bus station to be awarded to Morgan Sindall so that the main works can commence.

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Chief Finance Officer or deputy:	Mick Hayward	☎ 01634 332220
Monitoring Officer or deputy:	Julien Browne	☎ 01634 332154
Head of Procurement or deputy:	Gurpreet Anand	☎ 01634 332450

Background papers

The following documents have been relied upon in the preparation of this report:

Description of document	Location	Date
IESE Construction and Asset Management Guidelines and Working Practices		Sept 2009
Gateway 1 Report – Chatham dynamic bus facility		24 November 2009
IESE Framework Shortlist Results		13 November 2009
Gateway 3 Report – Chatham Dynamic Bus Facility (Pre construction and Enabling works contracts) and appendices		11 December 2009

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CABINET

20 JULY 2010

GATEWAY 3 CONTRACT AWARD: CHATHAM ROAD AND PUBLIC REALM IMPROVEMENTS - THE BROOK

Portfolio Holder: Councillor Rodney Chambers, Leader

Report from: Robin Cooper, Director of Regeneration Community and Culture.

Author: Sara Purvis, Chatham Project Manager

Summary

To consider the appointment of a contractor for the Chatham road and public realm improvements at the Brook.

1. BUDGET AND POLICY FRAMEWORK

- 1.1 This project is fully funded by the Homes and Communities Agency (HCA) as part of the Thames Gateway Programme. It forms an important part of the Chatham Regeneration programme, and the project was the subject of a Green Book appraisal process during the funding approval process. The project must be completed within a fixed timescale in order to achieve the outputs and the spend profile agreed with HCA.
- 1.2 This project has been rated as medium risk, and due to the value of the works is a matter for Cabinet.
- 1.3 The Cabinet is asked to consider this matter as urgent and not subject to call-in as any delay would jeopardise the development programme and the ability for the project to be delivered within the funding period (before March 2011).
- 1.4 In line with rule 16.11 of Chapter 4, Part 5 of the Constitution, call-in can be waived where any delay likely to be caused by the call-in process would seriously prejudice the Council's or the Public's interests. As set out above, it is considered that a call-in would delay the development programme and jeopardise the funding for this project. The Chairman of the Regeneration, Community and Culture Overview and Scrutiny Committee has agreed that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency and to waive call in.

2. RELATED DECISIONS

- 2.1 Cabinet agreed to progress with the Phase 2 Road Improvements as part of the Chatham regeneration programme, on 24 June 2008. Planning permission was granted for the works that required it in July 2009. Cabinet and full Council have also since considered reports regarding compulsory purchase of land required to implement the scheme, and a Council resolution to make the CPO was made April 2009. Gateway 3 Reports regarding the award of contract for the previous 2 elements of the phase 2 road improvements (at Sir John Hawkins Way and Union Street) were considered by Cabinet in December 2008 and November 2009, respectively

3. BACKGROUND/INTRODUCTION

- 3.1 This report relates to the procurement of the works contract to undertake the road widening and public realm works to the Brook. The works will include demolition of a number of existing structures, road widening and realignment, construction of retaining structures, resurfacing and landscaping works. These works form the final element of the phase 2 road improvements and public realm improvements to be carried out in Chatham within this funding period.

4. SUMMARY OF THE BUSINESS CASE

4.1 Business Case Summary

- 4.1.1 The phase 2 road improvements and public realm improvements form part of the programme of the regeneration of Chatham Town Centre. The projects have the following benefits:
- Creating additional highway capacity to accommodate existing traffic and traffic that could be generated by the development of the additional homes and businesses proposed through the Chatham Centre and Waterfront Development Brief, and improved traffic flow
 - Creating an improved pedestrian environment, including improved pedestrian crossings and creating better opportunities for informal crossing points on the Brook, increasing the pedestrian connectivity between the retail area centred on the High St and the surrounding residential areas.
 - Creating additional cycling routes, increasing safety for cyclists, and encouraging more people to use cycles for short journeys. In particular on the Brook this means a marked cycle lane on carriageway in both directions with advance cycle stop lines at junctions, providing a connection to NCN (National Cycle Network) 1 which is being improved as part of the bus station project.
 - Improving the public realm, all of the road scheme improvements are being carried out in accordance with the Chatham Public Space design Code, to ensure a high quality design and finish.
- 4.1.2 Commencement of the works on the Brook is reliant on acquiring a number of parcels of land. Most of these have now been acquired, with the exception

of the Southern Water land, where terms have now been agreed and the land will be under contract soon, and land owned by Trillium (Crown House), where it has not been possible to agree satisfactory terms, and where instead the scheme has been revised to enable implementation without this land. The revised scheme does not impact on the traffic capacity benefits, but does have a reduced level of public realm improvement in the vicinity of Crown House. The scheme is designed in such a way that the full scheme could be implemented in the future on redevelopment of the Crown House site, or should further funding opportunities arise in the future.

4.2 Strategic Context

4.2.1 The improvement of Chatham’s highway network and public realm, of which this proposal is a significant element is proposed by the Chatham Centre and Waterfront Development Framework (2004) and the Chatham Centre and Waterfront Development Brief (2008). It is also a priority in the Medway Renaissance Business Plan.

4.3 Whole Life Costing/Budgets

4.3.1 The capital cost of these works will be met from HCA funding and the cost of this contract can be met from the project budget (These works are funded from the Chatham Phase 2 road scheme and Chatham public realm project budgets). Ongoing revenue costs primarily relate to the ongoing maintenance of the new highway, street lighting and landscaping. The maintenance cost of the new hard surfaces and street lighting will initially be reduced and in the longer term are not expected to be significantly higher than existing. Some stockpiling of materials is proposed. There is an increased area of soft landscaping and new tree planting which will have an increased maintenance cost, particularly in the short term while the landscaping areas establish.

4.4 Risk Management

4.4.1 There are a number of risks associated with a project of this nature and a full risk register is held by the project team who monitor and manage the risks. A copy of the project team’s comprehensive risk register is provided in the exempt appendix. The table below provides a summary of the more significant risks for consideration at this stage of the project.

Risk	Probability (P) (score 1(low)-4(High))	Impact (I) (score 1 (low)-4(high))	Overall Score P x I	Action to avoid or mitigate risk
Land Acquisition not complete by projected start date	3	4	12	Acquisitions are being progressed, and all sites have either been acquired or are at an advanced stage of negotiation. Contract will not be awarded until land

				required to implement the scheme has been purchased
Remediation of Contamination incurs additional cost or takes additional time	2	2	4	Ground investigations have been carried out and a cost has been identified for the remediation, which is included in the estimated cost. This risk therefore relates to the risk of finding unforeseen contamination
Planning conditions	1	3	3	Ongoing liaison with planning to ensure conditions can be discharged, materials proposed are in accordance with approved Design Code
Delays increase Programme and costs	2	3	6	The project has a finite budget, and must be complete by March 2011. Cost and programme must therefore be monitored carefully. However factors such as extremely poor weather may impact. The contract is a remeasurable contract and an appropriate contingency must therefore be held, and effective site supervision and contract monitoring in place

4.5 Market Testing (Lessons Learnt/Bench Marking)

4.5.1 The market for this type of work is well developed.

4.6 Stakeholder Consultation

4.6.1 Both the Development Framework and Development Brief were the subject of extensive public consultation. The submission of an application for the works that required planning permission also gave the public an opportunity to comment on the proposals and a continuous programme of public engagement is in place as the works progress. Regular project updates on progress and on public engagement are reported to Chatham Member Board. In addition there has been extensive consultation within the Council with the various departments responsible for the ongoing maintenance of the various elements, such as greenspaces, highway maintenance, street lighting, waste,

etc. who have all agreed to the specification of the proposed materials contained in the Chatham public space design code which will be used in the implementation of this project.

4.7 Equalities Issues

4.7.1 The Council's equal opportunities policy seeks to ensure that contractors promote equality and diversity. The procurement of the contractor has been carried out having full regard to the equal opportunities policy.

4.8 Environmental Issues

4.8.1 Any contractor appointed for the project would have to comply with appropriate legislation and regulations, however J Breheny state that they have a commitment to strive for continuous improvement in:

- . Efficient use of energy and water
- . Recycling of material
- . Reducing emissions to air, land and water
- . Minimising our impact on the natural and built environment
- . Minimising waste disposal to landfill.

5. PERMISSIONS / CONSENTS

5.1 Planning permission was granted in July 2009 and work is currently progressing with discharge of conditions.

6. INVITATION TO TENDER

6.1 Summary of Tender Process

6.1.1 At Gateway 1 stage approval was given to progress with agreement of a price for the Brook works as a single source exemption to contract rules, which allowed entering into a contractual agreement without competition, effectively through an extension (variation order) to J Breheny's existing Medway Council contract for the Union Street works (which has a value of approximately £1.2m, and was awarded following Cabinet's approval in November 2009). This procurement route required an exemption to the Council's procurement rules, which was supported by the Director for Regeneration, Community and Culture and approved by the Council's Monitoring Officer (Assistant Director Housing and Corporate Services).

6.1.2 As an extension to the existing contract (by way of a variation order) the price is based on many of the same rates that formed the tender price for the Union Street works. The Union Street contract was awarded following a competitive tendering exercise and therefore should demonstrate value for money. To reach the price for the works Breheny's existing rates were applied to the cost plan for the scheme. Where there are items that were not priced as part of their original tender for Union Street proposed rates have been verified by our

independent cost consultants Franklin + Andrews, and their report is provided in the exempt appendix.

- 6.1.3 This approach has the benefit of being less resource hungry than a traditional tendering exercise and enables a contractor to be in place much earlier than via any other procurement route. This is advantageous because the works are of a similar nature and are physically adjacent to the Union Street works. It could therefore be possible for elements of the Brook works to be undertaken while the Union Street works are still in progress, potentially giving some efficiency savings and shortening the overall programme.

6.2 Tender Evaluation

- 6.2.1 The price has been based on rates which formed part of a competitively tendered price (for the Union Street works) and has been reviewed by independent cost consultants Franklin + Andrews. In a few cases those rates have been amended, where there has been a significant change in the market price since the Union St tender exercise (e.g. steel) and where some items were not priced for the Union Street contract. Where new rates are approved Franklin + Andrews have used their knowledge of market rates and expertise to determine whether the new rates represent value for money. Their report is provided in the exempt appendix.
- 6.2.2 The price is within the project budget allowance for the scheme, and the draft programme provided by the contractor shows completion before the end of the financial year. Further details are provided in the exempt appendix.

7. PREPARATION OF THE NEXT STAGE OF PROCUREMENT

7.1 Resources & Project Management

- 7.1.1 In common with the previous elements of the Chatham Town Centre Road and Public Realm improvements the project will be managed by Medway Renaissance with contract management undertaken by the Council's Capital Projects team.

7.2 Contract Management

- 7.2.1 Contract management will be undertaken by the Council's Capital Projects Team who report regularly to Medway Renaissance to ensure the project is delivering the quality and outputs expected. During the contract Franklin + Andrews have ongoing involvement to verify amount and value of work undertaken by the contractor.

8. COMMENTS OF THE LEADER (REGENERATION)

- 8.1 The improvements to The Brook represent one of the most important and challenging stages of the road and public realm improvements taking place as part of the ongoing regeneration programme in Chatham.

9. PROCUREMENT BOARD

- 9.1 The Procurement Board considered this report on 12 July 2010 and recommended it for consideration by Cabinet subject to:
- Formal written confirmation from HCA of the funding being committed to Medway Council.
 - Formal confirmation of an agreed price and exchange date with needs to be in place with Southern Water.
 - A detailed programme being in place to ensure completion of works within required timeframes, including provisions for contingencies and effective risk management logs.
- 9.2 In response to the comments of Procurement Board set out above, it is confirmed that funding agreements are in place for all of the Chatham projects, including the phase 2 road schemes and the public realm projects. Further written confirmation was sought in response to the request from Procurement Board, and an e-mail was received from HCA, dated 19th July 2010, confirming that "As a result of the funding settlement, the HCA has confirmed that it will be able to meet existing contractual commitments across all its programmes. This applies to Medway funding agreements and therefore includes Chatham Bus Facility and Chatham Road Network Phase 2, both of which are funded from the Thames Gateway fund.
- 9.3 Terms have been agreed for the acquisition of the Southern Water land and exchange and completion is expected to take place in early August. It is recommended that the variation order for the works (excluding demolitions) is not issued until there is a contractual arrangement in place with Southern Water.
- 9.4 A detailed draft programme of works is enclosed with the tender review report in the exempt appendix, which shows project completion within the funding period.

10. FINANCIAL, PROCUREMENT AND LEGAL COMMENTS

- 10.1 Comments of the Chief Finance Officer
The overall programme for the Chatham Road Scheme and public realm improvements is £9,905,000, wholly funded by the Homes and Communities Agency (HCA). A sum of £1,565,000 has been earmarked for The Brook improvements. The total cost of the contract will be within the budget provision. The procurement process adopted has ensured that Medway has obtained best value for the works.

As HCA funding will not be available after March 2011 it is vital that the works are completed in this financial year if no costs are to fall to the Council.

10.2 Comments of the Head of Procurement:
Strategic Procurement has provided quality assurance throughout the process, including assisting the client department with identifying the single source exemption route as providing the most efficient way to progress and delivery the requirements for this project within the tight timescales. Strategic Procurement is satisfied that this award should delivery best value and achieve project objectives. Furthermore, as the evaluation is of highly technical nature, the client department must ensure that it is satisfied that the financial evaluation is robust in respects to the viability of the submitted pricing matrix. The client department is advised to liaise with Legal to complete the necessary legal formalities and ensuring that HCA have provided formal confirmation of funding before committing the Council to this award.

10.3 Comments of the Monitoring Officer:
Although the Public Contracts Regulations 2006 (as amended) do not require prior advertising of works contracts below the threshold value in the OJEU, the letting of these contracts is subject to the general procurement obligations of transparency, equal treatment and non discrimination that derive directly from the Treaty on the functioning of the European Union. EC case law now suggests that some form of advertising of requirements should take place in all instances regardless of contract value or any need to place a notice in the OJEU.

10. RECOMMENDATIONS

10.1 Cabinet is recommended to authorise the Assistant Director, Housing and Corporate Services to enter into a contract with J Breheny for works to The Brook, as set out in this report.

10.2 The Cabinet is asked agree that this decision is considered urgent and therefore should not be subject to call-in.

11. SUGGESTED REASONS FOR DECISION(S)

11.1 In order that the variation order can be issued to J Breheny Ltd as soon as the land required has been secured, and the final stage of the Phase 2 road improvements can be implemented.

Report Originating Officer:	Sara Purvis	☎ 01643 337155
Chief Finance Officer or deputy:	Mick Hayward	☎ 01634 332220
Monitoring Officer or deputy:	Julien Browne	☎ 01634 332154
Head of Procurement or deputy:	Gurpreet Anand	☎ 01634 332450

Background papers

The following documents have been relied upon in the preparation of this report:

Description of document	Location	Date
Procurement Board Gateway 1 Report for the Procurement of the Brook works		9 June 2010

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