

CABINET

8 JUNE 2010

GATEWAY 3 CONTRACT AWARD – A228 STOKE CROSSING

Portfolio Holder: Councillor Phil Filmer, Front Line Services

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

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Summary

This report seeks the approval to the award of a contract for the construction of a bridge at Stoke Crossing on the A228.

1. Budget and Policy Framework

- 1.1 The A228 Stoke Crossing is funded by the Homes and Communities Agency (HCA). The improvement schemes to the A228 of which this forms part are supported by relevant policies contained within the Local Transport Plan and are key to the delivery of the regeneration proposals for the former refinery site at Grain. The project will be part funded from HCA and part from a developer contribution.
- 1.2 A funding agreement with HCA is in place and a S106 Agreement with National Grid has been signed. The estimated project costs are within the funding agreements as shown in the financial section of the report. The project is the subject of a major planning application. This application provides detailed assessment of the project against national, regional and local planning policies. These include PPS1 & Climate Change Supplement PPG13, Towards a Sustainable Transport System, South East Plan CC1, CC4, T1 & T14 and Medway Local Plan T3, T4 & T18.
- 1.3 The project is, therefore, within the Policy and Budgetary Framework of the Council.
- 1.4 The project funding from the HCA is limited to the current financial year. The very restricted timescale means that delivery is dependent on thorough planning of initial operations, in particular gaining the approval of Network Rail, the Environment Agency (EA) and the GPSS (who control the

Government fuel pipeline). The involvement of the contractor at this stage of the project, even before planning permission is granted, will significantly increase the efficiency of the project delivery and mitigate against a number of the risks which are dealt with in more detail later in the report.

- 1.5 Delays in obtaining the approvals will delay the start. Certain works, such as moving water voles to safe areas are seasonal and cannot be delayed. This work must be planned and approved by the EA. Delays to the start will put at risk the likelihood of committing all the HCA funding in the current financial year in accordance with the funding agreement. In addition, it is essential that early approval is gained to methods of working near services and over the railway in order that there can be certainty that no changes are going to be made prior to the steel being ordered. Over the last 6 months steel prices have risen by 200/tonne. Delay in approval will result in delay in ordering and the current best estimate is that the price is expected to rise by a further 80/tonne. For these reasons Cabinet is asked to consider this an urgent item.
- 1.6 The Chairman of the Regeneration, Community and Culture Overview and Scrutiny Committee has agreed to waive call in on this report on the basis that this matter is reasonable in all the circumstances and to it being treated as a matter of urgency in accordance with Rule 16.11 of the Overview and Scrutiny Rules (Part 5 of Chapter 4 in the Constitution).

2. RELATED DECISIONS

- 2.1 Cabinet approved the scheme and the submission of a planning application at its meeting on 15 December 2009 (decision 234/2009 refers). A further approval to seek Compulsory Purchase Powers, should they be required, was made at Full Council on 4 March 2010.

3. BACKGROUND/INTRODUCTION

- 3.1 Tenders have been received for this project and details of their analysis are set out in the exempt appendix. The value of the tender exceeds the Director's delegated authority and the matter is therefore a decision for Cabinet. The report recommends that the tender be accepted. However, full commitment to the project will not occur until the grant of planning consent. A decision on the planning application is expected on 14 July 2010.
- 3.2 Assuming consent is granted the order for the steel will be placed on 15 July 2010 as will the application for a Licence to move the water voles and the application for Land Drainage Consent will also be submitted.

5 SUMMARY OF THE BUSINESS CASE

5.1 Strategic Context

A full Treasury Green Book Analysis was done for this project as part of the application for CIF funding and was submitted to both Procurement Board and Cabinet as an Appendix to the Gateway 1 Report. It is not proposed to revisit the Business Case at this stage. The only major change of note is that the

National Grid planning application was approved and, as a consequence, a S106 Agreement is now in place that guarantees the financial contribution necessary for the completion of this scheme.

5.2 Whole Life Costing/Budgets

Funding from HCA covered both this project and the Fenn Corner roundabout which is currently being built. The total for both is £10.58m. Of this £1.5m has been set aside for Fenn Corner leaving a total of £9.1m (rounded). In addition to this the S106 Agreement will provide a further £5m towards the scheme. Including advance payments for service diversions, the cost of site investigations and surveys plus design fees etc. approximately £2.7m has been spent or committed to date. Details of anticipated costs are included in the exempt appendix but it is concluded that there are sufficient funds to complete this project.

5.3 Risk Management

The risk register submitted with the Gateway 1 Report is attached as Appendix A. This has been updated to show the revisions to the risks as at the current date. It should be noted that, apart from the land agreements, risks are now currently considered low but it should also be noted that any delay at this stage will threaten delivery of the project so the consequences are very severe.

5.4 Stakeholder Consultation

The planning application has been submitted and advertised for representations. In addition to statutory consultees any parties with interests in the land or the local habitats have been contacted and informed of the application and where to find the details. Early briefings were offered to the two Parish Councils most affected. Discussions with Police and advisors also took place.

5.5 Equalities Issues

There are no equalities issues.

5.6 Environmental Issues

5.6.1 The protection of the environment is a key part of this project. As noted in the Gateway 1 report, the site is in, or adjoins two Special Protection Areas (SPA), SSSI and Ramsar site. The local ditches and watercourses are home to a large number of water voles which are a protected species. The contract includes for their relocation prior to work being done and for both local and off-site habitat creation for both voles and for over-wintering birds. The off-site works will be done at land north of Cooling adjoining, but not within, the SPA.

5.6.2 The voles will be relocated to an area to the north of the site, within Stoke Marshes and released in an area with a low vole population. Once the construction of the bridge is complete, the area around it will be reinstated

and upgraded to provide high quality habitat for voles and other wildlife. It is not intended to move the voles back but it is anticipated that, as the population increases the reinstated ditches will become occupied.

- 5.6.3 In order to safeguard the land improvements carried out as mitigation it will be necessary for the Council to enter into licence arrangements for the management of the land both on land it acquires and on other areas used as mitigation. The land to be acquired is the minimum necessary for the bridge and its future maintenance.
- 5.6.4 The works will be carried out over the winter months which is the time when it is most likely that over-wintering birds will be affected. For this reason special piling techniques will be used to minimise disturbance. The main works will be completed by Spring of 2011 and it is expected that the full HCA funding will be spent on time. However some environmental reinstatement works are seasonal in nature and it is probable that these will only be finalised in the late Autumn or early winter of 2011. It may be that planning conditions require further work going into 2012. Funding for this is not a problem as this time period is built into the S106 Agreement funding from National Grid.
- 5.6.5 An additional problem is that Scotia Gas introduced a late requirement to divert their medium pressure main. In the early stages of this project the main was not going to be diverted. It is not possible for Scotia Gas to divert the main prior to start on site so it will be protected during the main works and they will come in after the road is open to carry out the diversion. Exactly how this is achieved will be dependent on dialogue between Scotia Gas and the selected contractor. However it is likely that some elements of the environmental mitigation for the bridge will be delayed until after Scotia Gas complete their works.

6. PERMISSIONS / CONSENTS

A number of consents are required and are listed below. The limited timescale and the need to provide details of working methods and proposals are a key reason to have the contractor involved at the earliest possible time.

- Planning Consent – Submitted, determination due 14 July
- Network Rail – Revised submission lodged
- River Works Licence – Required because the ditches have a classification as Main River, working methods required.
- Licence to relocate water voles – Cannot be given until planning consent granted
- S16 Consents to work over or near strategic utility services – details of working methods required
- S185 Agreement for diversion of water main - submitted
- Railway possession for working over or adjacent to lines - booked

7. INVITATION TO TENDER

7.1 Summary of Tender Process

7.1.1 The tender process was by way of the Accelerated Restricted Procedure under EU rules where the notice periods are allowed to be reduced for public infrastructure projects that will provide a boost to the local economy. The OJEU notice was published on 15 March and completed Pre –Qualification Questionnaires returned by 5 April. The submissions were assessed against criteria agreed with the Procurement Team and Legal Officers and 5 tenderers selected.

7.1.2 Tenders were issued on 12 April and returned on 12 May. Tenders were evaluated on both price and quality. Tender feedback will be provided to all contractors once a decision has been made.

7.2 Tender Evaluation

7.2.1 The submitted tenders were checked for compliance with the tender invitation as well as numerical accuracy and whether or not there were any qualifications. Evaluation of the bids was done on the basis of a 60:40 weighting for quality and price. The evaluation matrix (agreed with Procurement Team) completed for each tenderer, together with the final scores based on the inclusion of price is attached to the exempt appendix.

7.2.2 As can be seen from the matrix, key areas of expertise were identified and the quality of the contractors' proposals to deal with them assessed. The primary quality assessed was their proposals to deal with the environmental issues which reflects the importance of the site and the Council's commitment to the

environment. The highest score on the quality assessment was given to Tenderer E. The second highest was Tenderer B.

7.2.3 The financial sections of the tenders were also scrutinised to assess whether any areas of work carried an unusually high or low price which might indicate an error on the tenderers' part or that their assessment of risk was significantly different to that of Officers. There were no major discrepancies in the weighting of any of the tenders. The price submitted by Tenderer B was the lowest while that of Tenderer E was the highest. It should be noted that the difference between the lowest and second lowest priced tender is only 0.2% and that the difference between lowest and third lowest priced tender is 2%. This demonstrates that the tenders were extremely competitive and that the lowest priced tender does represent best value.

7.3 Preferred Bid

Although Tenderer E scored highest on their quality submission, they also submitted the highest priced tender. This was significantly higher than the others and this meant that their overall score in respect of the evaluation matrix was the lowest, i.e. their bid was not the most economically advantageous. Therefore, the company with the highest score after being assessed against the financial and technical criteria in the evaluation matrix is Tenderer B. This company submitted the most economically advantageous tender and it is the preferred contractor.

8. PREPARATION OF THE NEXT STAGE OF PROCUREMENT

8.1 Resources & Project Management

As agreed at the Procurement Board, the contract is a standard ICE 6th Edition form without significant modification. The contract will be managed in-house by the Capital Projects team but a number of additional specialist skills will be required. A full-time Resident Engineer with extensive bridge and soft ground experience will be appointed as the site representative for the Council. This appointment will only be for the duration of the main contract and may be done either through an agency or through a consultancy. The costs will be fully covered by the project funding. It is not anticipated that any appointment will be of sufficient length to gain employment rights.

8.2 Contract Management

As noted in Section 5 above, creation and inspection of environmental mitigation areas is likely to continue beyond the completion of the main bridge works. This will be managed by the Capital Projects team but using external skills and advice where necessary. Funding for this ongoing interest and control is included within the budget. Until the planning conditions are known, the extent of external skills required will not be known. However it is intended for ongoing inspections, to continue to use the Mott MacDonald team who have been involved from the earliest surveys and all discussions with Natural England and other interested parties.

9. COMMENTS OF THE PORTFOLIO HOLDER FOR FRONT LINE SERVICES

- 9.1 This report seeks the approval to the award of a contract for the construction of a bridge to replace the level crossing near Stoke on the A228.

10. FINANCIAL, PROCUREMENT AND LEGAL COMMENTS

- 10.1 Details of the budget breakdown and the tender evaluations are attached to the exempt appendix. The scheme will be fully funded by the HCA and developer contributions. The tender process ensures value for money for the Council.
- 10.2 Strategic Procurement has provided Quality Assurance throughout the procurement process including a review of the timetable and evaluation criteria associated with the procurement documentation at Gateway 2. Strategic Procurement is satisfied that a robust and compliant procurement process has been conducted and should deliver the requirements of the original specification and business case and further should deliver best value. Strategic Procurement further supports the recommendations as highlighted within this report including the option to waive contract rules as specified within Section 11.1 (a).
- 10.3 The procurement process was undertaken in accordance with the provisions of the Public Contracts Regulations 2006 (as amended). The award of the contract was stated to be on the basis of the most economically advantageous tender. The criteria in the evaluation matrix used to evaluate tenders shows that award of the contract to the tenderer with the highest score will give the Council value for money.

The Council must comply with the mandatory standstill period and notification requirements set out in the Public Contracts Regulations 2006 as amended by the Public Contracts (Amendment) Regulations 2009

This report should, in accordance with contract rules and the gateway process, have been reported to Procurement Board prior to consideration by Cabinet. However, given the reasons for urgency, as set out in paragraph 1, a request to waive this requirement has been made. In accordance with paragraph 12.1 the body authorised to award the contract (here the Cabinet) can, in consultation with the Monitoring Officer, waive contract rules where it is considered to be in the best interests of the Council to do so provided that the waiver does not breach any EU or UK directive, statute or regulation. The Monitoring Officer recommends that Cabinet consent to waiving contract rules to permit this decision to be made without prior consideration by Procurement Board. The waiver does not breach any EU or UK directive, statute or regulation. The Chair of the Procurement Board has also been consulted.

11. RECOMMENDATIONS

11.1 Cabinet is recommended to:

- (a) Waive contract rules to permit the Cabinet to make this decision without the Procurement Board first having considered the report.
- (b) Accept the most economically advantageous tender, submitted by Tenderer B as set out in the exempt appendix.
- (c) agree that these decisions are considered urgent and therefore should not be subject to call-in.

12. SUGGESTED REASONS FOR DECISION(S)

12.1 The recommendations are made appoint the contractor who submitted the most economically advantageous tender and so that the project can proceed efficiently and to avoid any risk that it may not be delivered within the required timescale.

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Background papers

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

Description of document	Location	Date
None – The tender assessment report contains information that is considered commercially sensitive, all others are included in the planning application which is in the public domain		

RISK REGISTER - A228 Stoke Crossing

D= Avoid, A = Accept, R = Reduce, T = Transfer

No.	Item	Details	Initial Probability VH/H/M/L	Initial Consequence VH/H/M/L	DART Classification	Method of Control	Residual Probability VH/H/M/L	Residual Consequence VH/H/M/L
1	Funding	Failure to obtain contributions would detrimentally affect project viability	M	VH	R	Negotiations with National Grid Property are in progress. A formal agreement will depend on NR submitting an acceptable planning application. Planning consent granted and S106 in place	0	Discharged
2	Environmental Problems	Problems in gaining approval of Natural England or onerous pre-commencement planning conditions	H	H	R	Early consultation has involved Natural England, RSPB and EA. Environmental impact has been anticipated at outline design stage. All parties are being kept fully briefed on the issues and there is an ongoing dialogue	L	VH
3	HCA Funding	Construction would be in 2010/11 and HCA has not guaranteed funding for year 3	L	VH	R	Continue dialogue with HCA to explain progress. HCA have been fully involved in the negotiations with National Grid. Funding is currently agreed	0	Discharged
4	Ground Conditions	Poor ground conditions lead to increased costs	H	L	T	It is known from the location that the ground conditions will be very poor and this has been factored into the estimates. Detailed site investigation completed	0	Discharged
5	Network Rail Agreement	Delay in obtaining NR permission to build over the railway could delay the project	L	H	D	NR are fully supportive of the project and are willing to make a small financial contribution. NR will be involved in design development. Design details submitted in accordance with NR requirements	L	L
6	Planning Permission	Failure to obtain planning permission would prevent project progress	L	H	R	There is local support for the principle of the scheme, objections are most likely to be on environmental grounds which is why stakeholders have been involved at project inception.	L	VH
7	Tender Values	Tender values exceeding the approved budget would impose a high risk on the Council	L	H	D	Prospective tenderers will be involved at an early stage to give a view as to the robustness of estimates. Tenders now received	0	Discharged
8	Timing	Slight delays in delivery may affect seasonal work so delaying the project by a substantial period	L	H	D	The project planning takes account of seasonal works and separate early contracts will be let for site clearance etc. The tendered scheme takes account of seasonal work	0	Discharged
9	Land	Delay or failure to acquire the necessary land would delay the project or prevent it being carried out	L	H	D	CPO powers will be sought if there is a resistance to negotiation. Negotiations are well advanced, the primary remaining risk is completion	M	VH