

## **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:

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