

## **CABINET**

**9 NOVEMBER 2010**

### **GATEWAY 3 CONTRACT AWARD: MEDWAY TUNNEL SYSTEMS**

Portfolio Holder: Councillor Phil Filmer, Front Line Services

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

Author: Ian Wilson, Head of Capital Projects, Road Safety and Networks

#### **Summary**

To seek further improvements to the tunnel control system by means of a variation to the existing contract with Vital Technology.

#### **1. BUDGET AND POLICY FRAMEWORK**

- 1.1 The funding for this work was provided by DFT and is part of the Capital Programme ring-fenced for Tunnel works. This proposal is therefore within that budgetary and policy framework.
- 1.2 The Procurement Board has recommended that the variation by greater than 50% of contract value which requires an exemption approval be considered by the Cabinet.

#### **2. RELATED DECISIONS**

- 2.1 A Gateway 3 report detailing the need for the replacement of the Medway Tunnel Electronic Control System was reviewed by Procurement Board on 14 October 2009 and passed by Cabinet on 3 November 2009. The contract was awarded to Vital Technology with a bid of £847,313.17. The awarded contract is of a 'Design and Build' type.

#### **3. INTRODUCTION/BACKGROUND**

##### **Introduction**

- 3.1 The Head of Highways and Parking Services is now seeking further improvements to the tunnel control system and wishes to do this by means of a 'Variation' to the contract with Vital Technology.

- 3.2 The improvements that the Head of Highways and Parking Services seeks are:-
- A tunnel radio system
  - A vehicle and incident detection system
  - Alterations to the Control Room of the Medway Council Control CCTV Room (Civic Centre, Strood)
  - Improvements to the Tunnel Offices and Control Room (West Service Building).

### **Background**

#### **Works and Associated Costs**

##### 3.3 Tunnel Radio System

During a tunnel closure there is no effective way of communicating with personnel in the tunnel in the event of a serious incident in the tunnel and also the emergency services cannot communicate with their staff.

- 3.4 The proposed system will provide communication to all personnel during a tunnel closure and enable the fire brigade to communicate with their staff.

- 3.5 The cost of providing a tunnel radio system is £241,497.00

#### **Vehicle and Incident Detection Systems**

- 3.6 At present there is a no system in the tunnel that can automatically detect incidents, smoke and unusual behaviour in the tunnel. This can be done with incident detection cameras.

- 3.7 With the increasing safety standards in tunnels it is imperative to ensure ongoing compliance with environmental regulations. A detection system will provide confidence that a major incident of any kind can be detected promptly and reacted to.

- 3.8 The cost of providing a vehicle and incident detection system is £242,826.50.

#### **Alterations to the Tunnel Offices (West Service Building)**

- 3.9 The original contract called for the reuse of the existing control room and to replace all the equipment within it. During busy periods i.e. Tunnel closures it has proved very difficult to effectively manage the tunnel from such a small space.

- 3.10 It is a now proposal to provide a larger working area for operating staff by utilising the existing 'mess' area which has a larger floor area and can incorporate two 'hot desks' for the ICT Section as part of their resilience planning. This new room can be populated, tested and commissioned without disturbing the running of the tunnel. This should prove very useful during Tunnel closures when the office is very busy.

- 3.11 The cost of carrying out the improvements to the West Service Building is £26,848.00.

**Alterations to Medway Council CCTV Control Room (Civic Centre, Strood)**

- 3.12 During ‘out of hours’ the tunnel will be managed from the CCTV control room at the Civic Centre Strood.
- 3.13 At the time of tender part of the control room had been designated for use as a ‘tunnel control area’. Since that time a number of changes have been made to the control room and to the personnel working in it, such that the area that had been set aside is no longer available.
- 3.14 It is therefore proposed to install a new video wall CCTV equipment and desk layout to enable staff in the control room to manage their existing duties and those of the tunnel operation.
- 3.15 The cost of providing a CCTV ‘Video Wall’ for the tunnel operation is £53,662.50.

**Summary of Additional Costs**

Tunnel Radio System	£241,497.00
Vehicle and Incident Detection System	£242,826.50
Alterations to CCTV Control Room (Civic Centre	£53,662.50
Alterations to The Tunnel Offices (West Service Building)	£26,848.00
<b>TOTAL</b>	<b>£564,834.00</b>

- 3.16 The money is ringfenced for the tunnel and was a DfT grant specifically for tunnel maintenance and cannot be used anywhere else. The contractor will be working on an open book basis so we will see all costs and we know that sub-contracted work and supplies have been subjected to competitive quotations by the main contractor. Our consultants would also be expected to flag up any disproportionate costs. The Council’s consulting engineer, Serco Integrated Transport has examined the proposals put forward by Vital and has confirmed that they are practically feasible and that the costs are reasonable. All reasonable measures have been taken to ensure value for money. Most companies are very keen to see continuity of work at the moment so are unlikely to risk that for a quick profit.

**Procurement Options**

- 3.17 The work be carried out as a ‘variation to the existing contract.’
- 3.18 The works be let as a separate contract.
- 3.19 Advantages of carrying out the works as a variation to the existing contract:
- i) The works can be carried out by Vital Technology during the tunnel closures they have proposed as part of the existing contract and also during the scheduled maintenance closures. Although the works

include the installation of new features, these are directly related to what is currently being put in place under the main contract and will, in many cases, use the same equipment, cable trays, access routes and power supplies.

- ii) No additional tunnel closures will be required;
- iii) There will be no 'premature' replacement of tunnel equipment recently installed by Vital Technology as part of the existing contract.

3.20 Disadvantages of carrying out the works as a variation to the existing contract:

- i) There are none.

3.21 Advantages of tendering the works as a separate contract:-

- i) There are none.

3.22 Disadvantages of tendering the works as a separate contract:-

- i) The works cannot start until the existing contract with Vital Technology has completed and the maintenance period has expired in early 2012 as it would be deemed unsafe and impractical to have two main contractors working in the tunnel at the same time. The Construction (Design and Management) Regulations (CDM) requires there to be a main contractor responsible for a single site to ensure safe working practices and good communication. The tunnel is considered to be a single site in health and safety terms and it would not be possible to allow two contractors to work in the same location at the same time.
- ii) To carry out the works on a separate contract would involve closing the tunnel for an additional 15 nights at an estimated cost of £75,000.
- iii) There will be 15 nights additional disruption and environmental impact caused by the tunnel closures.
- iv) If these works are carried out as a separate contract it will still be a requirement for the existing contract with Vital to be carried out in full.
- v) Carrying out the additional works requested under this report at a later date will require the removing of some equipment installed by 'Vital' under the original contract. In addition it would become very difficult to enforce any remedial action or repairs as each party would blame others for any damage or defect. If latent defects appeared in a number of years time it would also be difficult to demonstrate a case for repair from a particular contractor as they would argue another party was the cause.

#### 4. PERMISSIONS / CONSENTS

- 4.1 All necessary permission and consents are contained within the existing contract.
- 4.2 The existing contract with 'Vital' is a 'Design and build' contract.
- 4.3 This makes the contractor responsible for how the works are designed and installed and ensures that it is in their interest to minimise the number of nights it will be required to close the tunnel to carry out the work.
- 4.4 The current contract will require approximately 15 nights of tunnel closures in order to carry out the original contract. This is in addition to the current routine quarterly closures.
- 4.5 The additional works requested by the Head of Highways and Parking Services can be carried out within these closures if carried out as a variation to the Vital Contract.
- 4.6 The existing contract with Vital is designated as 'low risk'.

#### 5. PRE-QUALIFICATION QUESTIONNAIRE (PQQ) AND TENDER PREPARATION

5.1	Which Stakeholders were consulted in preparation of the tender? ( <i>Including Service Users and Trade Unions / Staff?</i> )	Yes, client and tunnel operators
5.2	Does TUPE apply?	No
5.3	How was the tender list compiled? ( <i>Where was the contract advertised? – say when and where</i> )	N/A for variation to existing contract.
5.4	What tender process was used – open, restricted or negotiated? Say why.	See 5.3
5.5	How many PQQs were issued? How many were returned?	N/A
5.6	Which Officers were members of the Evaluation Team?	Ian Wilson, Phil Moore and external consultants
5.7	Were applicants shortlisted from PQQs using clear, relevant criteria? List the criteria used and enclose a copy of the results in an appendix to the report.	N/A

5.8	Were the tender documents approved by Procurement at Gateway 2?	N/A
5.9	When were tenders invited and returned? Were any returned late or disqualified? ( <i>say why</i> )	N/A

## 6. TENDER EVALUATION

6.1	Name the evaluation criteria was used and the weighting applied to each?	As this is a variation to an existing contract it was required that any options comply with the specification and then costs were assessed for best value.
6.2	Which Officers were Members of the Evaluation Team?	Evaluation of the costs was carried out by external consultants to the client requirement
6.3	How are tenderers ranked using the quality assessment alone? Show overall marks ("Contractor A, B, C" etc – show actual names in Confidential Appendix 1)	1. N/A 2. N/A 3. N/A 4. N/A etc
6.4	Did the quality assessment use clear and relevant quality criteria? List the criteria and state the quality / price weighting ratio applied.	1. N/A 2. N/A 3. N/A 4. N/A etc
6.5	Does the proposed award give best value for money? Summarise the evidence	The report sets out the reasons for the recommended procurement option as being best value for money and as minimising risk to the Council as well as minimising the traffic impact.
6.6	Summarise the risks associated with the proposed award, and state the measures taken to control or avoid.	The proposed option avoids risk to the Council
6.7	Has a bond or parent company guarantee been sought?	Yes

6.8	Are final costs within the identified budget estimate? (state % over or under where applicable) Where costs exceed the estimate state how balance will be funded.	Final costs will exceed original estimate but are within the budget available
6.9	What is the contract duration? Additionally, highlight any options to extend	9 months, design and build
6.10	Do government or Council KPIs apply to this service? If so, are these reflected in the specification and monitoring requirements?	No

## **7. PREPARATION FOR CONTRACT MANAGEMENT**

7.1	Who is the contract (service) manager responsible for day to day supplier relationships?	Clive Dyche, Tunnel Operations Manager
7.2	Do sufficient resources exist to manage the contract through implementation and throughout its contract term?	Within Highway Services
7.3	When does the contract start?	In progress
7.4	When is the contract due for its first formal review at Gateway 4?	2012

## **8. COMMENTS OF THE PORTFOLIO HOLDER FOR FRONT LINE SERVICES**

- 8.1 The Tunnel is a key element in Medway's Transport Network and its continued safe and efficient operation is vital to keep traffic moving.

## **9. PROCUREMENT BOARD – 20 OCTOBER 2010**

- 9.1 The Procurement Board considered this report on 20 October 2010 and referred the matter to Cabinet for approval.

## **10. FINANCIAL, PROCUREMENT AND LEGAL COMMENTS**

### *10.1 Chief Finance Officer*

10.1.1 It is considered that the recommended option presents value for money for the Council and minimising disruption to tunnel users will have wider economic benefits. The cost of the work will be met from the capital provision for tunnel improvements.

### *10.2 Head of Procurement or designated deputy*

10.2.1 Contract Rules allow that in the event that a contract is proposed to be let without competition, be it to an incumbent as a variation or to a new supplier, then a waiver must be sought from the Council's Monitoring Officer. One of the sub-rules within rule 12.2 of the Contract Rules affords the Council to negotiate a variation to a contract where the Council has entered into a contract and additional works or services not exceeding 50% of the value of the original contract are needed through unforeseen circumstances and can not be separated from the original works or services without major inconvenience to Medway or are necessary for the later stages of performance of the contracts. However, the proposed value of this variation (£564,834.00) is in excess of the 50% value of the original contract let to Vital Technology (£847,313.17) and therefore this rule cannot be relied upon in this instance.

10.2.2 Another of the sub-rules within Rule 12.2 of the Contract Rules do allow the Monitoring Officer to waive any other circumstances permitted by the EU Procurement Regulations below the relevant EU Procurement thresholds. In the context of what this report is seeking, both the proposed variation value of £564,834.00 in isolation and the resultant total contract value of £1,412,147.17 (inclusive of the proposed variation) are below the EU Procurement Threshold for Works (currently £3,927,260.00) and therefore within the remit of the Monitoring Officer to waive and permit the variation.

10.2.3 In consideration of permitting a variation via a waiver, the Monitoring Officer must be satisfied that the proposed variation and award of additional works does not hinder the competitive requirements and treaty principles of fairness and transparency of the EU Procurement Regulations. Furthermore, the Monitoring Officer must be satisfied that in permitting a waiver and subsequent variation to the original Vital Technology contract, no infringement of the Regulations has occurred.

10.2.4 Strategic Procurement is satisfied that the reasons outlined within this report provide sufficient justification to permit a contract variation via a waiver to Contract Rules as the additional works are vital and integral to the outputs required and any alternative option such as letting an alternative contract via a competitive process, will be both time and cost intensive and may cause additional complications in respects to contract management with different suppliers.

10.2.5 The client department should satisfy themselves that in letting this proposed variation, all attempts have been made to negotiate the best possible deal for

the Council including a consideration of any future revenue implication/pressures resultant from maintenance agreements associated with Radio Tunnel System and Vehicle Incident Detection System. From discussions with the client department, it seems evident that the correct mechanisms are in place both to ensure an efficient up front cost in comparison to the market and long term costs via effective contract management.

### 10.3 *Monitoring Officer or designated deputy*

10.3.1 Current EU procurement case law suggests that any contract variation that is sufficiently material such as to require a renegotiation of the financial model or other core contract provisions relating to the pricing or charging arrangements or the scope of works or services provided could trigger a fresh requirement to put the contract (or at least the proposed variation) out to a new competitive tender process. Contract variations agreed in breach of such an obligation to conduct a fresh competitive process are likely to be regarded as "illegal direct awards", leaving them vulnerable to be challenged. For the reasons set out in paragraph 3 it is considered that the additional works referred to in paragraphs 3.3 to 3.16 (inclusive) are directly related and integral to the works to be undertaken under Vital Technology's existing contract and that it is both practical and appropriate to vary the existing contract to include these works. The additional works do not therefore comprise a significant and material change to the existing contract which would warrant a requirement to tender the additional works as a separate contract.

## 11. **RECOMMENDATION**

11.1 The Cabinet is requested to:

- i) approve the award of additional works to Vital Technology.
- ii) approve an exemption to contract rules to allow a variation greater than 50% of contract value of the existing contract with Vital Technology.

## 12. **SUGGESTED REASONS FOR DECISION(S)**

12.1 In order to upgrade the tunnel systems as quickly and economically as possible and with the minimum disruption to traffic.

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### **Background papers**

Exempt.