

BARNSELY METROPOLITAN BOROUGH COUNCIL

This matter is a Key Decision within the council's definition and has been included in the relevant Forward Plan

**Report of the Executive
Director Place and the
Executive Director Core**

Implementation of a Pre-Construction Services Agreement

1. Purpose of report

- 1.1. To seek approval for the Council to enter into a Pre-Construction Services Agreement with short listed bidders of the procurement exercise to secure a main works contractor for Phase 2 of the Glass Works development.

2. Recommendations

It is recommended that:

- 2.1 **Cabinet note the current position of the procurement exercise to secure services of a Phase 2 main works contractor;**
- 2.2 **Cabinet approve for the Executive Director – Core Services to enter into a Pre-Construction Services Agreement with shortlisted bidders at an estimated cost of £0.534M.**
- 2.3 **Delegated authority is approved for the Executive Director – Core Services to enter into contract with Yorkshire Water for the production of detailed sewer designs associated with sewer diversion necessary for the progression of the Glass Works Phase 2 scheme.**
- 2.6 **Cabinet approve the release of up to £0.200M, for the cost of detailed sewer design work undertaken by Yorkshire Water and their sub-contractor designers.**
- 2.7 **Cabinet approve the release of £ 0.100M for the cost of additional procurement fees, with this cost being added to the overall cost update.**

3. Introduction

- 3.1 At Special Cabinet 9th March 2017, approval was granted for the Council to fund in principle Phase 2 of the Glass Works development, as well as the commencement of a procurement exercise to identify a main works contractor for the delivery of Phase 2.
- 3.2 On 6th September 2017 Cabinet approved the recommendation to appoint a Glass Works Phase 2 main works contractor under a Design and Build form of contract, following the successful completion of the associated procurement process.

Current Position

- 3.2 Since September 2017, significant progress has been made in the delivery of the procurement exercise. The initial elements of the procurement are now complete, which required bidders to return price information on Over Heads, Profits and Preliminaries only, a quality submission and a preferred construction programme. The next and final phase of procurement is currently being progressed that will entail bidders submitting pricing information on the main packages of construction work.
- 3.3 In order for bidders to develop their second stage bids, shortlisted bidders now require access to the novated design team, to further test and develop aspects of critical design. These packages of design will allow bidders to incrementally build and submit pricing information, culminating in a final price submission anticipated early August 2018.
- 3.4 In order for bidders to engage the novated design team, as well as provide bidder surety that costs incurred during this period (principally those related to the appointment and management of the novated design team) can be recovered, it is proposed the Council enter in to a Pre-Contract Services Agreement (PCSA) with shortlisted bidders.
- 3.5 Such an approach will ensure the Council is in receipt of the most robust pricing information, based upon detailed designed contractor's proposals, limiting the requirement for bidders to include in their price for significant sums of risk/contingency.
- 3.6 Due to the size and nature of the final stage tender information due to be returned, there is a need to ensure all elements returned are validated, tested and measured against the Cost Plan budget baseline, promoting, where necessary tender queries back to bidders. This work is more detailed than initially envisaged. In addition, this validation process is required to be completed efficiently and quickly in order to meet the ongoing timescales of the project. This rigorous analysis of returned pricing information within a short period of time will incur additional procurement fee associated with the additional Quantity Survey resource required.
- 3.7 Running alongside the procurement process, work continues to be progressed with statutory undertakers associated with the diversion and construction of their equipment, essential for the advancement of both Phase 1 and 2 of the Glass Works.
- 3.8 An element of this work is the diversion of sewers impacted as a direct result of future construction work related to Phase 2 of the Glass Works. Due to the complexity and extent of the works needed commencement of detailed design is now required. This will enable the development of a works programme for the diversions to be developed that can then be aligned to overall development programme.
- 3.9 Prior to the commencement of detailed sewer designs by Yorkshire Water and their delivery partners, it will be necessary for the Council to enter into contract

with Yorkshire water, the terms and final value of which are currently under negotiation.

4. Consideration of alternative approaches

- 4.1 There is the option for the Council not to implement a PCSA and insist bidders develop the design further at their own expense. This option is not recommended as it may result in bidders not being willing to progress their final stage tender on the grounds that significant expense may be unrecoverable should their bid be unsuccessful.
- 4.2 The second risk with this approach is bidders may limit their exposure to unrecoverable expense by electing to undertake minimal design development to inform their final price submission. As a result, bidders would seek to offset high levels of risk such a method posed through the inclusion of a significant risk/contingency in their final price. This could leave the Council exposed to either the rejection of final bidders on the grounds that final submitted prices exceeded budget expectations, or present a successful bidder with opportunities to secure increased profit through mitigation of risk for which they'd already priced for.
- 4.3 In regard the detailed design for the sewer diversion, there is the option to delay the progression of this work and require any finally appointed Phase 2 main works contractor to enter into contract with Yorkshire water. However, the diversions required are not insignificant in terms of size and complexity; as such there is a risk that delaying the progress of upfront design work will impact delivery on site and has the potential to impede progress of Phase 2 construction.

5. Proposal and justification

- 5.1 Walker Morris is already appointed to provide the Council with procurement and contract advice. It is proposed that this appointment be extended to include for the development of a PCSA.
- 5.2 A commission is in place with NPS Barnsley to lead on the procurement, with assistance and advice also being provided by the Councils DMO – Turner and Townsend (T&T). It is therefore proposed that NPS and T&T manage and negotiate the terms of the PCSA.
- 5.3 The broad scope of services proposed to be included in the PCSA is;
- Design management
 - Architectural Design
 - Mechanical Engineering Design
 - Structural Engineering Design
- 5.4 It's proposed a detailed schedule of tender events will form part of the PCSA which, combined with regular update meetings, will ensure bid progression in

line with the overarching procurement timetable that will secure a final tender submission by early August 2018.

- 5.5 Provision would be made within the PCSA to allow for the assignment and novation of any detailed designs developed under the terms of the agreement to be later relied upon by the Council, or any contractors it later employs.
- 5.6 It is proposed that the necessary agreements and orders be placed with Yorkshire Water and their sub-contractors for the progression of detailed design work associated with the necessary sewer diversions.
- 5.7 Turner and Townsend Project Management are already appointed as Development Management Organisation (DMO) for Phase 2 of the Glass Works scheme. An element of this appointment includes Cost Management Services that will principally deliver the cost control and contract administration of the Phase 2 main works Contract, as well as pre contract Cost Plan budget updates and review. Having regard to this in-depth knowledge Turner and Townsend possess in respect of the Cost Plan budget (which they have developed), as well as their future role in contract administration of the phase 2 main works contract, it is proposed Turner and Townsend be appointed to undertake the Phase 2 Main works contract tender return validation process. However, the overall procurement process will still be led and managed by NPS Barnsley.

6. Implications for local people / service users

- 6.1 The retail and leisure facilities the Glass Works will deliver creates significant job opportunities for the local people. The scheme will provide a number of part time and full time opportunities within the local economy, with a mix of employment opportunities that will help people find varied employment based upon their work life balances.
- 6.2 In the short term, there could be some adverse impacts on existing businesses and potential redundancies as a consequence of the site assembly, demolition, refurbishment and redevelopment requirements of the proposed scheme.
- 6.3 There will be significant construction over a period of time which will cause some disturbance to the town centre. The scheme will be managed to minimise impact on existing businesses and the public including those businesses whose premises are close to the development area. Significant emphasis will also be placed on maintaining a vibrant town centre throughout any construction works. Central to this will be the development of a promotion and events programme to support retail footfall to the Town Centre. The selected DMO has committed to working with the Council on a joint communications and marketing strategy.

7. Financial implications

- 7.1 Consultations have taken place with the Service Director (S151 officer) Finance.

- 7.2 In September 2017 Cabinet approved the ongoing appointment of a DMO for the Glassworks scheme and to commence the procurement process for a main contractor for Phase 2 (the retail and leisure phase) of the development. In addition, this report also released resources totalling £1.7M from the original cost estimate which included the costs associated with the contract procurement process together with design costs up to RIBA 4.
- 7.3 Following receipt of the first stage of the contract procurement process, it is now requested that the Council enters into a Pre Contract Service Agreement with the preferred bidder to allow completion of further design detail and to provide a full contract tender including price to be submitted. This tender is expected to be received by early August. The total cost of the PCSA is estimated to be £0.534M and this has already been accounted for within the £1.7M previously released.
- 7.4 In addition to the above there is also the requirement to complete further sewer design works on behalf of Yorkshire Water. The estimated cost of these works totals £0.2M. This cost was included within the original cost estimate for the Glassworks scheme, therefore this report is seeking approval to release funding for this element prior to the overall Glassworks financial envelope being released.
- 7.5 Finally in order to ensure value for money is guaranteed throughout the next stage of the procurement, it has been suggested that further cost verification/due diligence be undertaken on the final submitted tenders/bids. This work was never considered as part of the original cost plan for the Glassworks development and is therefore an additional cost. Initial estimates suggest that this work will cost upwards of £0.100M. This will be added to the overall cost plan update for the Glassworks development to be submitted to Cabinet later in the year.
- 7.6 The financial implications of this report are presented Appendix A.

8. Employee implications

- 8.1 There are no employee implications arising from this report.

9. Communications implications

- 9.1 There are significant communication implications for the scheme. An integrated communications strategy for the Glass Works scheme has been developed by BMBC and the DMO.
- 9.2 The communication strategy also needs to recognise that the town centre is facing a long period of change with major construction work taking place. A key objective therefore has to be to promote the town centre and its retailers through this period of change communicating that the town centre is still open for business.

10. Consultations

- 10.1** The Glass Works board have been briefed on the proposal to implement a PCSA and are in agreement with the proposed course of action set out in the recommendations of this report.
- 10.2** Walker Morris have been consulted for legal opinion in respect of procurement compliance and PCSA drafting.

11. Community Strategy and the Council's Performance Management Framework

- 11.1** The proposals in this report are consistent with Council's Corporate Plan 2017-2020 as it directly contributes towards the aspiration of delivering a thriving and vibrant economy. A specific outcome of this objective is a vibrant town centre with clear linkages to the further outcomes of creating more and better jobs and increasing skills to get more people working.
- 11.2** The corporate performance framework monitors the vibrancy and health of the town centre by measuring footfall and the occupancy levels of retail units in the town centre. To enhance the measurement of the footfall element the Council has appointed a contractor to provide footfall data captured via footfall count equipment at various locations in the town centre.

12. Tackling Health Inequalities

- 12.1** The creation of new jobs reduces overall worklessness which provides a significant contribution to addressing inequalities in health and developing a healthy productive workforce.

13. Climate Change & Sustainable Energy Act 2006

- 13.1** Action to improve the energy efficiency of buildings constructed as part of the project will help to reduce carbon emissions.

14. Risk Management Issues

- 14.1** A project risk register for the Glass Works has been established in conjunction with the Councils Risk and Governance Manager. This is reviewed and updated on a quarterly basis.
- 14.2** The extract below provides for the latest position in terms of the risk associated with the content of this report:

Risk No.	Title	Consequences	Controls	Current Score	Target Score	Mitigation
4121	Failure to procure a works contractor	Delays to Programme	ITT has been released giving contractors 10 weeks to prepare, and these will be due back by mid December 2017; Last Cost Plan based on RIBA stage 3 - RIBA stage 4 works design are being examined and will result in the cost plan being revised by Turner and Townsend;	4 (Amber)	5 (Green)	Examination of revised cost plan by Board 18/19

- 14.3** As detailed in sections 4.1-4.3 of this report, alternative approaches (including a 'do nothing' option) have been explored, and do not appear to provide adequate assurances in terms of mitigating this key risk.

15. Health & Safety Issues

- 15.1** CDM Regulations require the Council as employer to appoint a Principal Designer, this role will be included in the scope of services to be delivered by the appointed architect under the terms of the PCSA.

16. Compatibility with the European Convention on Human Rights

- 16.1** There are no matters of relevance arising from this report.

17. Promoting Equality & Diversity and Social Inclusion

- 17.1** There is an understanding that anyone with disabilities can face all kinds of challenges using the town centre. The goal is that the finished scheme is a destination of choice for anyone with disabilities to visit, shop, eat and have the facilities they need to fully enjoy their day.
- 17.2** The Town Centre delivery team have put significant emphasis on consulting with local access groups as the scheme has developed to outline planning stage. There has been engagement with local disabled people to ensure that the re-developed town centre is fully accessible and the existing town centre remains accessible for the duration of the work period. This detailed work will continue as the scheme develops and detailed designs emerge for the new retail and leisure facilities created by the scheme.

18. Reduction of Crime & Disorder

- 18.1** The Council is collaborating with the Police to address anti-social behaviour across the town centre. Good, safe design principal will help and assist this work going forward.

19. Conservation of Biodiversity

- 19.1** Phase 2 of the Glass Works development has secured full detailed planning consent, conservation and biodiversity impacts of the scheme have been assessed as part of the planning application process.

20. Glossary

DMO – Development Management Organisation

PCSA – Pre Contract Services Agreement

T&T – Turner and Townsend Ltd

21. List of Appendices

Appendix A Financial Implications

22. Background Papers

There are no background papers to this report.

Officer Contact: Alex Richardson Date: 05/06/2018
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