

# CHESHIRE EAST COUNCIL

## Cabinet

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<b>Date of Meeting:</b>	28 <sup>th</sup> May 2013
<b>Report of:</b>	Head of Environmental Protection and Enhancement and Head of Legal Services
<b>Subject/Title:</b>	Key Decision 6 - Crewe Green Link Road South: Contract Award and Forward Funding of Developer Contributions by Council
<b>Portfolio Holder:</b>	Councillor Jamie Macrae

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### 1. Report Summary

- 1.1. This report seeks approval to award the ECI (Early Contractor Involvement) Contract for the design and construction of the Crewe Green Link Road (South) scheme to the winning Tenderer.
- 1.2. The project Steering Group have carried out a fully compliant tender evaluation of all the bids – a summary of which is included at Appendix 1
- 1.3. This report also seeks approval for the Council to ‘forward fund’ the delivery of the link road in advance of the potential availability of developer (S106) contributions to the scheme to evidence the schemes viability through the imminent CPO public Inquiry.

### 2. Decision Requested

- 2.1. That Tenderer 1 is confirmed as the winning Contractor for the ECI Contract for the design and construction of Crewe Green Link Road (South).
- 2.2. That the ECI Contract between the Council and Tenderer 1 is formally entered into on the terms and conditions set out in the tender following completion of a ten working day statutory standstill period in accordance with the Public Contracts Regulations 2006.
- 2.3. That this decision will permit Contract Award and Authority to Proceed with Phase 1 – ‘Design and development of Target Cost only.
- 2.4. That the winning Contractor’s proposal to undertake some limited elements of the Detailed Design work as part of Phase 1 be approved and responsibility for Change Control be delegated to the

Head of Environmental Protection and Enhancement in consultation with the Portfolio Holder

- 2.5. That the Council in agrees to forward fund the anticipated but contingent maximum developer (S106) contributions to the scheme up to a value of £8.8M in order to meet the current programme as agreed with the DfT pursuant to their programme entry confirmation letter, dated December 2011.
- 2.6. That this decision does not include the funding required to deliver the spur roads off the central roundabout.
- 2.7. That the authority to proceed from Phase 1 to Phase 2 (Scheme Detailed design and construction) and the submission of the final DfT Funding bid be subject to a future Cabinet decision when the Target Cost is known and the extent of developer residual funding is finally established

### **3. Reasons for Recommendations**

- 3.1. To support the Council's key objective to deliver new and improved infrastructure to support economic growth.
- 3.2. The programme for Contractor appointment and subsequent development and agreement of the Target Cost for the final funding request to DfT is on the critical path of the scheme programme. As such, in order to progress the scheme, it is essential that the Award of the Contract for the delivery of Crewe Green Link Road (South) is completed as soon as possible.
- 3.3. The recommended Contractor has been selected following a robust legally compliant procurement process comprising a Pre-Qualification Questionnaire (PQQ), with the top five shortlisted tenderers then receiving an Invitation to Tender (ITT). The submitted tenders were then evaluated by the assessment panel and subject to an independent moderation process.
- 3.4. Following award, Phase 1 of the Crewe Green Link Road (South) Contract will comprise the development of the scheme design sufficiently to enable the Target Cost for scheme construction to be developed. Once an agreed Target Cost has been achieved, a further Cabinet decision will be sought to proceed with the final DfT funding submission.
- 3.5. Accepting the winning contractor's proposal to undertake some limited advance detailed design will enable a more accurate Target cost to be provided, allow for the identification of long delivery time items (such as sheet piling) and ensure the delivery phase of the scheme can advance on the agreed programme with the DfT

- 3.6. Council agreement in principle to underwriting the anticipated but contingent S106 / developer contributions to the scheme is essential to meet the current programme agreed with the DfT pursuant to their programme entry confirmation letter, dated December 2011. The Council agreement is needed now in order to confirm the deliverability and viability of the scheme at the forthcoming Compulsory Purchase Inquiry due to commence on 29<sup>th</sup> July and to enable that confirmation to be made in the Proof of Evidence which is required prior to such Inquiry.
- 3.7. The spur roads off the central roundabout would further assist in facilitating the development of the Basford East site. However, in the absence of both an agreed Masterplan for the site and a collaboration agreement between respective land owners there is little prospect of robustly assessing the cost implications of delivering these spur roads at this time.
- 3.8. The spur roads also fall outside of the funding agreed by the Department for Transport and will be considered for delivery at a later stage when there is more certainty around developer funding and any planning agreements. This is in accordance with the phased approach taken in the planning application for the link road.
- 3.9. The Council has sought to compulsorily acquire the land required for the spur roads to enable the construction of them at a later date and thereby further facilitate the delivery of development at Basford East, which is a strategic objective of the Council. A separate Cabinet decision to proceed with the construction of the spur roads will be required in due course.

#### **4. Wards Affected**

- 4.1. Haslington

#### **5. Local Ward Members**

- 5.1. Cllr John Hammond
- 5.2. Cllr David Marren

#### **6. Policy Implications**

- 6.1. The investment accords with the Local Transport Plan Implementation Plan (2011-2015) policy B2 – Enabling development.
- 6.2. This decision will contribute towards the delivery of Crewe Green Link Road (South) which will have a beneficial effect on congestion, road safety, accessibility and reduction of carbon emissions over the urban Crewe highway network.

## 7. Financial Implications

- 7.1. Sufficient budget provision is available within the approved capital programme to cover the Contractors tendered Phase 1 fees for Target Cost development, plus allowance for additional detailed design, additional surveys and nominal risk allowance in the 2013/14 financial year.
- 7.2. The DfT are, subject to a final funding submission following agreement of the Target Cost, committed to contribute 60% of the overall scheme cost, up to a maximum of £15.724M.
- 7.3. The DfT funding does not include a contribution to the Spur roads off the central roundabout and would require a separate agreement as part of any future development of the adjoining land.
- 7.4. The Phase 1 fees for this work will constitute part of the overall cost of delivering the scheme.
- 7.5. The Phase 1 fee estimate provided in the winning tender from Tenderer 1 is £346,847 and includes costs for design development, preparation and negotiation of Target Cost up to the Notice to Proceed for Phase 2 (Completion of Detailed Design and Construction).
- 7.6. It is recommended that some programme critical detailed design and surveys are to be brought forward from Phase 2 and are undertaken as part of Phase 1 – providing an estimated outturn cost of £518,237 for Phase 1.

### Build Up of Phase 1 Estimated Outturn Costs:

1	Tenderer 1	£346,847
2	Programme Critical Detailed Design (25% of 1) including rail underbridge, environmental mitigation, site establishment, site clearance, advanced drainage works	£86,712
3	Surveys including pre-construction surveys i.e. birds; rail surveys i.e. OLE and condition surveys of existing rail assets, supplementary site investigation	£60,000
4	Contingency at 5% (Ref 1-3)	£24,678
	<b>Total</b>	<b>£518,237</b>

Note: Inclusion of costs for Ref 2 and 3 in Phase 1 will reduce Phase 2 Target Cost.

- 7.7. Since the original funding bid the scheme design and estimates have been further refined and an expected outturn cost of £23m is predicted including an allowance for risk and land costs associated with the CPO.

- 7.8. The cost of Phase 2 construction of the scheme which will include any remaining detailed design will be further refined during Phase 1 through the development of the Target Cost. Final approval, and thus liability for the full estimated costs will only accrue after a final Cabinet decision to proceed with the scheme is taken.
- 7.9. Contributions to the scheme are expected from both the Basford West and Basford East developments. However, it is proposed that the Council commit, in principle, to forward fund the anticipated but contingent developer (S106) contributions to the scheme up to a combined maximum value of £8.8m. This is based on the current anticipated maximum delivery cost of the scheme including land, fees, construction and an element for risk.
- 7.10. A signed S106 agreement with the Basford West developer is already in place which (calculated at current price indices) could potentially deliver a contribution of £3.8m. This funding cannot be drawn down until the development to which the S106 relates is commenced at the Basford West site.

The Basford East (or other developer) contribution required would be the difference between the final scheme cost, direct council funding (through LTP resource) and any Basford West funding achieved.

- 7.11. At the time of the original funding bid the council was advised of the likelihood of the council having to forward fund the Basford East contribution to the scheme. This was anticipated to be £5m.
- 7.12. The Capital Programme for 2013-16 has an approved budget for the scheme of £19.4m. Prior year spend relating to this scheme amounts to £1.7m and the total budget provision may require revision when the Target Cost is confirmed. The current capital budget includes an allocation of £5.87M for developer contributions. The allowance will need to be refined following the completion of the Target cost for the scheme or the use of additional Local Transport Plan resource explored.
- 7.13. The required forward funding of the developer contributions will have an impact on cash flow for the Council and therefore will result in a loss of investment income. There is also an element of risk that the required developer contributions from the Basford East site will not be realised and will require direct funding from the Council's own capital resources.

## **8. Legal Implications**

- 8.1 The construction of the Crewe Green Link Road South is approved in the three Year Plan. The Council has undertaken a legally compliant procurement exercise and has identified a preferred

supplier. The contractual terms provide a 2 phased approach and the Council is not obliged to proceed to the construction phase should it so decide.

- 8.2 A Compulsory Purchase Order has been made to deliver the scheme. Objections have been received and a public inquiry will be held, commencing 29<sup>th</sup> July. Following the inquiry the Secretary of State will either confirm or decline to confirm the CPO. He could confirm the CPO with modifications to the extent of the CPO land
- 8.3 There cannot currently be any certainty that developer (s106) contributions or Community Infrastructure Levy (CIL) will be available to part fund the scheme. The High Speed 2 project will necessitate changes to development proposals at Basford West and the Basford East landowners will review their masterplans and proposals. These changes, reviews and revised masterplanning and development proposals could delay receipt of developer contributions and could reduce the quantum of the contributions anticipated. The National Planning Policy Framework advises local planning authorities to be flexible where revisions to s106 contributions are sought, in order to prevent planned development being stalled.
- 8.4 Legal advice will be required to ensure that anticipated s106 contributions can be justified robustly under regulation 122 of the CIL Regulations 2010 (as amended) and the Council must be mindful that (a) any committed s106 contribution will only be received if and when the relevant developer decides to implement its planning consent and any specified payment conditions triggered and that contributions must be used in accordance with the provisions of the relevant s106 agreement (b) after the earlier of April 2014 and the adoption of the CIL schedule the number of s106 contributions there can be to the project will be limited to five in respect of obligations entered into on or after 6 April 2010.

## **9. Risk Management**

- 9.1. Delay in the agreement of Target Cost could delay the start of Phase 2 (construction) and this could in turn put the Christmas 2014 Network Rail possession at risk.
- 9.2. As reported in Legal Implications, there is a possibility that the Secretary of State will decline to confirm the Compulsory Purchase Order (although this is considered unlikely). Also, the Secretary of State's confirmation, if made, will be subject to judicial challenge and could, in principle, be quashed.
- 9.3. In the unlikely event that funding is not received from the DfT or in the event that the CPO is not confirmed or, having been confirmed, is quashed, CEC would be liable for Phase 1 Contractor costs

incurred. There is a break clause in the Contract in the event of no progression to Phase 2.

The break clause in the contract protects the Council's position over a range of scenarios – including: Insufficient funding to develop scheme, failure of statutory processes such as the CPO or simply a decision to not proceed with the scheme.

- 9.4. It is anticipated that in order to de-risk the construction programme and also enable development of a more robust target cost some of the Phase 2 detailed design will be undertaken during Phase 1.
- 9.5. At the time of the original funding bid (September 2011) it was anticipated that by the time of the final funding submission to the Dft (January 2014) the Basford West developer would have commenced development, thereby validating the S106 agreement and allowing the S106 funding to be collected.
- 9.6. The Basford West developer has still not made a formal commencement of work, citing the economic climate and the viability of the development. However, a revised, more viable, mixed use application for the site has now been registered and is due for consideration by the Strategic Planning Board in June/July.
- 9.7. Having said this, the recently announced Government 'Initial Preference' for a northern extension of the High Speed 2 rail line has a potential impact on the Basford West proposals.
- 9.8. The council has recently been successful in attracting a contribution from the Department for Transport (DfT) 'Pinch Point' fund to the spine road which runs through the Basford West site. The DfT's funding is available until March 2015 at the latest.
- 9.9. A further 'Pinch Point' funding bid, made by the Highways Agency, to provide for an improvement to the operation of Junction 16 has also been successful. The Highways Agency are required to deliver this scheme by March 2015
- 9.10. These measures, taken together, are anticipated to strengthen the likelihood of the Basford West development taking place in the short term and increases the likelihood of the S106 funding being realised.
- 9.11. An update on the status of the development will be given when final funding approval is requested.
- 9.12. The Basford East site is allocated for employment development under the extant Crewe and Nantwich Local Plan. It is proposed as the site for a mixed use development in the emerging Cheshire East Local Plan. Masterplan proposals originally developed for the

site would be affected by the Government's High Speed 2 proposals which have lead to a 'pause' in the development of the associated planning application.

- 9.13. In the event that developer contributions to the scheme cannot be secured so as to repay Council forward funding it may be that the Council could recoup the funding through the Community Infrastructure Levy. However, this levy is currently not expected to be in place until 2015
- 9.14. The current scheme costs have been estimated through best practice and based on professional advice from both a consultant contractor and professional land valuation experts.
- 9.15. All costs valuations and estimates will be further updated to give the most accurate picture possible prior to the Final funding submission to the DfT and inform the final expected level of forward funding required.

**10. Background and Options**

- 10.1. Options for the delivery of Crewe Green Link Road (South) were evaluated by the Project Board in Spring 2012 and the Early Contractor Involvement (ECI) form of contract was selected as the most suitable to deliver the scheme. This method integrates the Contractor during the design development (Phase 1) when the Contractor will develop a Target Cost for the scheme's detailed design and construction (Phase 2).
- 10.2. The anticipated timetable for the award of the contract is:

Activity	Date(s)/Time
Project Steering Group (PSG) Approval of the tender evaluation report and the preferred contractor (Tenderer 1)	22 April 2013
Cabinet Decision	28 May 2013
Call-In Time by Members (5 working days) complete	5 June 2013
Notification of result of Evaluation to all Tenderers	6 June 2013
Standstill Period (Objection Period) Duration: 2 weeks	7 June to 16 June 2013
Finalise Contract Documents incl tender amendments	29 May – 16 June 2013
Award of Contract	17 June 2013
Signing of Contract	18 June – 28 June 2013
Contract Commencement	1 July 2013

- 10.3. The CGLRS ECI Contract is a bespoke contract with the Conditions of Contract based on the NEC3 Engineering and Construction Contract (ECC) Option C, Target Cost with Activity Schedule, containing two key Phases; 1 & 2.

**Phase 1:** The period from ECI Contract Award through to Notice to Proceed to Construction including agreement of the Target Cost, comprising the development of a Target Cost Design and agreement of the Final Target Cost.

**Phase 2:** The period from Notice to Proceed to Construction through to the completion of the whole of the Works and associated contract defect period. Phase 2 is divided into two sections:

- Completion of the main construction (Phase 2A);
- Aftercare and management of environmental landscaping and planting (Phase 2B).

- 10.4. The expectation is that having the Contractor appointed early during the development of the scheme design will result in greater programme and cost certainty for scheme delivery, and will greatly reduce the construction and buildability risks; both of which will be important to the Council for Crewe Green Link Road (South).
- 10.5. The CPO for the land required to deliver the scheme is currently progressing. A Public Inquiry is planned to commence 29 July 2013, and subject to the outcome, Land Entry is forecast for mid May 2014. As such it is important that the Contract for the scheme's design development and construction is let as soon as possible and that the council can demonstrate that a viable funding package is in place to deliver the scheme. Appointment of the contractor is on the critical path on the programme to achieve target cost agreement and final DfT submission by early 2014
- 10.6. The Phase 1 fees are based on the information provided within the tender documentation. Tenderer 1 has also proposed undertaking some limited elements of Phase 2 detailed design and surveys, which would deliver further programme savings and lead to a more robust Target Cost. Any such additional work within Phase 1 would need to be agreed via Change Control.
- 10.7. The Council will pay the actual costs incurred by the Contractor during Phase 1 delivery. The Contractor will run an open book accounting system and the Council will have the option to audit final accounts. Phase 1 fees will be included in the final scheme cost package for DfT funding approval.

## **11. Access to Information**

- 11.1. The background papers relating to this report can be inspected by contacting the report writer:

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