

Cheshire East Council

Cabinet

Date of Meeting:	8 th November 2016
Report of:	Executive Director of Place
Subject/Title:	Congleton Link Road – Procurement Strategy
Portfolio Holder:	Cllr David Brown, Highways and Infrastructure

1. Report Summary

- 1.1. In July 2013 Cabinet approved that the preferred solution to address Congleton's transport problems was a new link road between the A536 and A534. Since then strong progress has been made in the development of this project.
- 1.2. Congleton Link Road is the single largest infrastructure project the Council has undertaken to date. It is essential to the successful delivery of the Council's Local Plan and to resolve long-standing economic and environmental impacts arising from congestion in the town. The link will also improve connectivity across the Borough, particularly for Macclesfield to the M6. The road will be a new principal highway between the A534 Sandbach Road close to its junction with Sandy Lane and the A536 Macclesfield Road to the South of the village of Eaton.
- 1.3. Based on these benefits the scheme was provisionally awarded £45m of Government Growth Deal funding and has demonstrated outstanding levels of local support (c85%) through two large scale public consultations.
- 1.4. The project has been granted planning permission, the compulsory purchase process for the scheme has commenced and the Council has also agreed in principle to underwrite the funding of the project.
- 1.5. This report and the attached annexes set out the options available for the Council to procure a contractor to deliver the project, reviews the benefits and risks of each approach and recommends a preferred procurement strategy.

2. Recommendations

The Cabinet are recommended to:

- 2.1. Note the findings of the Procurement Report attached at Annex A;

- 2.2. Note the comparison of procurement routes timescales attached at Annex B;
- 2.3. Approve the use of the Restricted Procedure for the procurement of the contractor through a NEC3 Option A Priced Contract with Activity Schedule with Contractor Design (Design and Build contract)
- 2.4. Approve the publication of the OJEU (Official Journal of the European Union) contract notice and all tender documentation prior to the commencement of the CPO Public Inquiry;
- 2.5. Delegate the power to the Executive Director of Place to carry out the short-listing of interested suppliers using a Selection Questionnaire (SQ) and then, after the completion of the CPO Public Inquiry, invite the shortlisted suppliers to tender for the project;
- 2.6. Note that further Cabinet authority will be required prior to the award of any contract;
- 2.7. Approve that Ringway Jacobs prepares the initial suite of contract and tender documents;
- 2.8. Authorise the Director of Legal Services to procure additional legal support to approve the contract documents prior to their publication.

3. Reasons for Recommendations

- 3.1. Congleton Link Road has been granted planning permission, has an allocation of provisional Government funding of £45m and a resolution from the Council to underwrite in principle any funding shortfall. A Compulsory Purchase (CPO) process has been started to assemble the necessary land required to deliver the scheme.
- 3.2. It is necessary therefore to consider that if the CPO is granted a contractor will be required to deliver the scheme. The reasons for our recommended approach to procuring a contractor is set out below:

Procurement Strategy

- 3.3. The Design and Build approach is considered to provide the most competitive procurement option for this scheme. Furthermore, the risk of carrying out the work at agreed prices is largely borne by the contractor which will assist in providing cost certainty to the Council.

Procurement Route

- 3.4. It is recommended that the Restricted Procedure route is used since it gives access to the full range of contractors and potentially sharpens competition. The Selection Questionnaire (SQ) process would then enable an appropriate tender list to be drawn up from those best matched to the Council's key requirements for delivering the scheme.

Issuing of Tender Documentation prior to the commencement of any Public Inquiry.

3.5. The shortlisting process (SQ) following issue of tender documentation is anticipated to take around 10 weeks. This includes the timeframes for the assessment of the results of the process. If this work is undertaken prior to the public inquiry, rather than waiting for its completion it provides a direct time saving to the programme.

4. Other Options Considered

4.1. As set out in Section 5.0.

5. Background

5.1. A full comparison of the projected timescales for procuring the project through different routes has been undertaken and is summarised in the table below. Full programme dates are contained in Annex A.

	PROCUREMENT ROUTE				
	1.	2.	3.	4.	5.
	OJEU (Tender before inquiry, before SoS decision)	OJEU (Tender after inquiry, before SoS decision)	Highways England Framework (Tender after inquiry, before SoS decision)	OJEU (Tender after SoS decision)	Highways England Framework (Tender after SoS decision)
Advance Construction works	January 2018	March 2018	January 2018	September 2018	<i>Not Possible – Framework expired</i>
Main Construction Start Date	June 2018	September 2018	June 2018	February 2019	

5.2. This confirms that if the Council initiates the SQ process via the OJEU route prior to the public inquiry (Option 1) the route to construction is as quick as the using the Highways England framework (Option 3.) with the benefit of seeking tender prices from a wider pool of contractors.

- 5.3. The Highways England framework route ceases to be an option if procurement is not progressed until the Secretary of State's Decision. A new scheme is expected to be put in place by Highways England but no details are yet available.

6. Wards Affected and Local Ward Members

- 6.1. Brereton Rural – Cllr John Wray
- 6.2. Congleton East – Cllr David Brown, Cllr Geoff Baggott and Cllr Glen Williams
- 6.3. Congleton West – Cllr Gordon Baxendale, Cllr Paul Bates and Cllr George Hayes
- 6.4. Gawsorth – Cllr Lesley Smetham
- 6.5. Odd Rode – Cllr Rhoda Bailey and Cllr Liz Wardlaw

7. Implications of Recommendation

7.1. Policy Implications

This report recommends the procurement approach for delivering the Congleton Link Road. This scheme assists in delivering the following key corporate priorities:

- OUTCOME 1 *Our local communities are strong and supportive*
- OUTCOME 2 *Cheshire East has a strong and resilient economy*
- OUTCOME 4 *Cheshire East is a green and sustainable place*
- OUTCOME 5 *People live well and for longer*

7.2. Legal Implications

The proposed procurement route of the Restricted Procedure will allow the Council to test the market by inviting interested parties to submit an expression of interest in response to the OJEU Notice. The Council can then carry out a short-listing exercise (using a Selection Questionnaire) and only those meeting the Council's selection criteria will be invited to tender. A minimum of five suppliers must be invited to tender (unless fewer suitable candidates have met the selection criteria and these are sufficient to ensure genuine competition). Finally, no negotiation with tenderers is permitted, just clarification of the tenders submitted and a finalisation of contract terms with the successful tenderer. The Restricted Procedure should only be used where the Council is able to adequately specify its needs.

The Public Contracts Regulations 2015 require the Council to treat all economic operators equally and without discrimination. In addition, the Council must act in a transparent and proportionate manner. If the specification of the project is changed between the OJEU Notice and the award of contract this could lead to the procurement being challenged. There is therefore some risk in proceeding with the Restricted Procedure before the conclusion of the CPO Public Inquiry as it is possible that the CPO Public Inquiry could influence the specification of the project. This risk is considered in paragraphs 8.4 and 8.5 below.

7.3. Financial Implications

The costs incurred by the Council (both internal and external professional fees) in undertaking the procurement exercise are included in the approved scheme budget for the Congleton Link Road.

7.4. Human Resources Implications

Support will be needed from both Legal Services and the Procurement Unit in finalising the Contract Documentation.

7.5. Equality Implications

None arising from matters relating to procurement strategy

7.6. Rural Community Implications

None arising from matters relating to procurement strategy

7.7. Public Health Implications

None arising from matters relating to procurement strategy

8. Risk Management

8.1. Issuing tenders before the outcome of a public inquiry could potentially prejudice the outcome of the inquiry (ie: legal challenge on the basis that going out to tender influences the Secretary of States Decision)

8.2. In practice, the tender documentation will be written to explicitly state that the construction of the road would be dependent on the outcome of the public inquiry. By doing this the risk (of abortive tendering costs) is transferred to the Contractors bidding for the work. The Inspector will consider the needs and merits of the scheme in isolation from the procurement exercise.

- 8.3. In waiting for the conclusion of the inquiry to issue final tender information to the successful shortlisted contractors, the Council will have opportunity to include scope for any changes that the inspector may recommend to the scheme; though confirmation of these would clearly have to wait until the Inspectors final report.
- 8.4. If there is a significant change to the scope of the procurement following the Secretary of State's decision (and this is only available to the shortlisted providers) there is a risk that other providers could make a legal challenge.
- 8.5. This is considered to be small risk. In reality any significant changes to the scheme would require a new or varied planning permission; which would change the timescales for the procurement and essentially restart the procurement process.
- 8.6. If the Secretary of State's decision were delayed the Council would be in receipt of tenders for the scheme but be unable to award. In this case, it may be necessary to build in a safety margin into the tender validity period; or include mechanisms for the final tender price to be adjusted if the award date is delayed.
- 8.7. Issuing tenders prior to the public inquiry has significant programme benefits (c 3months on the programme with consequential construction inflation savings) and any risks are considered manageable through the contract documentation. Programme comparisons are included at Annex B.
- 8.8. Ringway Jacobs (or Jacobs) will not be involved in the tender assessment should there be any prospect of conflict of interest with any of the tenderers.
- 8.9. The proposed Design and Build contract offers early price certainty as the price will be presented once tenders are returned (compared to other routes such as ECI where the contractor is appointed on the basis of a quality assessment with a target cost developed later) and risk transfer to the contractor.

9. Background Papers

- 9.1. Annex A – Procurement Report
- 9.2. Annex B – Comparison of procurement route timescales

10. Contact Information

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