

CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting:	7 th February 2017
Report of:	Executive Director of Place – Frank Jordan
Subject/Title:	Poynton Relief Road – Procurement Strategy
Portfolio Holder:	Cllr David Brown – Highways and Infrastructure

1. Report Summary

- 1.1. The Council has set out a clear vision and strategy for employment led economic growth. An important element of this strategy is to improve the Borough's national regional and local infrastructure to improve connectivity.
- 1.2. The Poynton Relief Road (PRR) is an important element of this strategy and is included in the new emerging Local Plan. The scheme will enable job creation, help to deliver housing growth and address longstanding traffic congestion and environmental issues in the village of Poynton. It will also deliver an important component of the wider South East Manchester Multi-Modal Strategy (SEMMMS).
- 1.3. Based on the scheme benefits, the project has been provisionally awarded £22m of Government funding.
- 1.4. The project has been granted planning permission by both Cheshire East Borough Council's Strategic Planning Board and Stockport Metropolitan Borough Council's Planning and Highways Regulation Committee.
- 1.5. This report and the attached Annex A set out the options available to the Council to procure a contractor to deliver the project; it reviews the benefits and risks of each approach and recommends a preferred procurement strategy.

2. Recommendations

The Cabinet is recommended to:

- 2.1. 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)

- 2.2. 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;
- 2.3. Authorise the Executive Director of Place to shortlist potential contractors following the return of the Stage One Selection Questionnaire documents.
- 2.4. Approve that Ringway-Jacobs prepares the initial suite of contract and tender documents.
- 2.5. Agree that the procurement of the tie in connection design of the proposed new road to the A6MARR is undertaken by Stockport Metropolitan Borough Council who are joint promoters of the Poynton Relief Road proposal.
- 2.6. Authorise the Director of Legal Services to procure additional legal support to approve the contract documents prior to their publication.
- 2.7. Note that following receipt of final tenders with price; a further authorisation from Cabinet will be sought prior to the award of any contract.
- 2.8. Note the findings of the Poynton Relief Road Procurement Workshop Summary Report – attached as Annex A.

3. Other Options Considered

- 3.1. The other options considered are covered fully in Annex A.

4. Reasons for Recommendations

Procurement Strategy

- 4.1. The design and build approach is considered to provide the most competitive procurement option for this scheme. Furthermore the risk of carrying out at agreed prices is largely borne by the contractor which will assist in providing cost certainty. Design and Build also presents opportunity for innovation and faster scheme delivery. The contractor bears the risk of integrating design and performance which means there are fewer changes and the implementation of changes is often simplified. There is often a reduction in claims or the number of claims reducing the administration burden of the enabling authority.

Procurement Route

- 4.2. It is recommended that the OJEU 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.

- 4.3. An Interactive Procurement Workshop was held on 18th May 2015 to review PRR procurement options and to develop a procurement strategy in order to ensure key scheme milestones are met in the overall project programme.
- 4.4. Consideration has been given to the procurement of a contractor through the Highways England Collaborative Design Framework (CDF) This approach was discounted because the CDF would restrict the Council to only using the contractors who are on the framework.
- 4.5. Consideration has been given to using the Midlands Highway Alliance Framework run by Leicestershire County Council however the Council is not named in the Midlands Framework.
- 4.6. It is therefore considered that due to the magnitude of and the complex multi-disciplinary nature of the PRR, it would be more appropriate to test the market with an individual EU procurement exercise.
- 4.7. The Office of Government Commerce (OGC) "*Common Minimum Standards for the procurement of built environments in the public sector*" promotes best practice and states procurement routes should be limited to those which promote partnering and integrated team working and that traditional non-integrated procurement approaches should not be used. A Design and Build contract is an integrated approach recommended by the OGC and is considered to be an appropriate and cost effective option to procure the PRR. Design and Build also allows the contractor to add value, particularly through buildability in the detailed design process.
- 4.8. A single stage EU Open procurement process has been considered in place of a two stage Restricted Process, but as the contract is to be a Design and Build, the tenderers will be expected to carry out a large element of design work as part of their tender. This is an expensive and time consuming process, not only for the contractors, but also for the Council to evaluate. A Restricted, two stage process Selection Questionnaire and Tender allows only suitably qualified and experienced contractors to proceed to Tender stage.
- 4.9. As the PRR contract recommendation is Design and Build, the extent of work to be carried out will not be fully defined when the contract is let. NEC3 advises that in these circumstances, the most appropriate form is a lump sum fixed price contract. This advice is supported by OGC. The advantages of a Target Price Contract are

that the Council has certainty over price and the integrated project team has an incentive to make cost savings leading to best value

5. Background

- 5.1. Poynton Relief Road will form a vital link in the wider infrastructure plan for the borough, provide improved highway connectivity for the northern Macclesfield business area and improve the strategic link between the Manchester Airport Relief Road (A6MARR) under SEMMMS and junction 17 of the M6 via Congleton.
- 5.2. The Poynton Relief Road achieved Department for Transport (DfT) "Programme Entry" status in the DfT's major schemes programme in July 2014. This means that the DfT intend to provide funding, providing there are no significant changes to the scheme and subject to completing a satisfactory Major Scheme Business Case (MSBC) at the appropriate stage.
- 5.3. The DfT have a three stage approval process with the next stage being "Conditional Approval" which can only be applied for once all statutory orders have been obtained. Approval at this stage is a reasonably firm undertaking by the DfT that "Full Approval" will be granted subject to a small and limited number of conditions.
- 5.4. The final DfT approval stage is "Full Approval" which can only be applied for once tenders have been received and a preferred bidder has been selected with a firm and final price. "Full Approval" is the DfT's confirmation that the requested funding to deliver the scheme is available.
- 5.5. Until the DfT confirm that the PRR has "Full Approval" all costs associated with developing the scheme and progressing the DfT bid must be met from the Council's own financial resources. DfT major schemes have a long lead in period and there are only a limited number of contractors technically capable of undertaking these complex multi-disciplinary schemes.

6. Wards Affected and Local Members

- 6.1. Poynton West and Adlington – Cllr Mike Sewart, Cllr Michael Beanland. Poynton East and Pott Shrigley – Cllr Jos Saunders, Cllr Howard Murray. Prestbury – Cllr Paul Findlow.

7. Implications of Recommendations

- 7.1. Policy Implications

Outcome 1: Our local communities are strong and supportive

Outcome 2: Cheshire East has a strong and resilient Economy

Outcome 3: Cheshire East is a green and sustainable place

Outcome 4: 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 selection questionnaire is not a tender and each questionnaire is compiled specifically for the contract under consideration. The cost of the process will be limited to assessing the returned questionnaires and the returned tenders. A further report will be presented to Cabinet on the tendering process outcomes.

7.4. Equality Implications

There are no equality implications.

7.5. Rural Community Implications

Completion of the Poynton Relief Road will address congestion and facilitate movement across the Borough to the benefit of both urban and rural communities.

7.6. Human Resources Implications

There are no anticipated long term impacts on establishment staffing levels or costs. If additional temporary resources are required these will be met from the project budget.

7.7. Public Health Implications

Completion of the Poynton Relief Road will improve air and noise quality in the town which has a designated Air Quality Management Area thus contributing to the well-being of local residents and businesses.

7.8. Implications for Children and Young People

No implications for children and young people as distinct from the wider community.

7.9. Other Implications

No other implications

8. Risk Management

8.1. By issuing tenders prior to the commencement of the public inquiry it might be seen as the Council is being presumptive of the outcome of the inquiry; some may even suggest that such action may influence the decision making of the Inspector.

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; 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 is likely to recommend to the scheme; though confirmation of these would clearly have to wait until the Inspectors final report and the Secretary of State's decision.

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 a 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 tender award date is delayed.
- 8.7. Issuing tenders prior to the public inquiry has significant programme benefits and any risks are considered manageable through the contract documentation.
- 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 Poynton Relief Road Procurement Workshop Summary

10. Contact Information

Contact details for this report are as follows :-

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