

North Somerset Council Decision

Decision Of: Director of Place

With Advice From: S151 Officer and Head of Strategic Procurement



Decision No: 20/21 DP 329

Subject: Contract award for the Housing Infrastructure Fund (HIF) Banwell Bypass & Highway Improvements – Design and Construction Contract - Stage 1 Professional Service Contract

Key Decision: Yes

Reason:

The value is greater than £500k and it affects more than one ward.

Background:

This decision is for the award of the first stage of the two interlinked contracts required to develop, design and construct the HIF Banwell Bypass & Highway Improvements. It is proposed to award the first stage of HIF Banwell Bypass & Highways Improvements, to the preferred contractor to enable the design to be developed to the point where a planning application can be submitted.

The Secretary of State for Housing, Communities and Local Government confirmed approval of North Somerset Council's Housing Infrastructure Fund (HIF) (Forward Fund) bid on the 26th November 2019. The objectives of this bid are to provide infrastructure and educational provision which can support the delivery of existing and potential housing allocations totalling 7,557 new dwellings. 4,482 of the homes are to be located at the existing Weston Villages development sites; the specific numbers and locations of the residual dwellings will be subject to the new Local Plan process.

The Capital Programme was increased by £97,067,550, the total HIF grant from Homes England, at the Full Council meeting on 16 June 2020.

The overall objectives of the Project are to deliver, within cost, quality and programme targets:

- infrastructure that maximises, underpins and de-risks associated housing development,
- infrastructure that is affordable and provides good value for money,
- infrastructure that meets the needs of all stakeholders including developers and local communities;

- to minimise environmental impacts and maximise opportunities for sustainable travel and biodiversity net gain; and
- to ensure the development provides the opportunity to make a positive contribution to the Council's ambition to be carbon neutral by 2030.

The Project consists of several elements:

- a new highway to the north of Banwell, connecting into potential housing sites (subject to the local plan) and a separate link to the south east of Banwell Village, connecting the A371 and the A368;
- Flood management and mitigation measures for the bypass including embankments, attenuation basins, swales and compensation areas;
- Green infrastructure to ensure biodiversity net gain;
- Traffic management and public realm improvements within Banwell village;
- Modifications to existing adjacent local authority highway network including extensive active travel improvements to the footway/cycleway networks,
- Strategic utility provision; and
- Modifications to the Highways England network at J21.

Decision:

That the Stage 1 professional services contract for the Housing Infrastructure Fund (HIF) Banwell Bypass & Highway Improvements be awarded to Alun Griffiths (Contractors) Ltd, Waterways House, Merthyr Road, Llanfoist, Abergavenny, Monmouthshire NP7 9PE (company registration number 1493003) for £2,798,860.00.

Reasons:

Introduction

One procurement exercise has been undertaken to appoint a contractor by two interlinked contracts. This contract approach has been successful on a number of similar contracts in the UK and is familiar in the construction industry.

The detail of the works is developed during the Stage 1 phase and a revised target cost is negotiated for the Stage 2 contract phase as described above. The following elements shall be developed through Stage 1:

- Site investigations and surveys
- Options appraisal and preliminary design
- Environmental Impact Assessment and preparation of Environmental Statement,
- Planning support and preparation of Planning Application
- Land acquisition, Compulsory Purchase Order, public inquiry and Highway Orders support, as necessary.
- Production of construction tender/ contractual documents, e.g. Scope, agreed Stage 2 Target Cost etc.

The following elements shall be developed through Stage 2:

- Detailed design
- Construction

Governance

The Commissioning Plan was approved by Council on the 25 June 2019 (see Background Papers).

The Procurement Plan was approved on the 14 August 2020 by Executive Member (see Background Papers).

Following the completion of the Stage 1 professional services contract, the revised scope and target cost for the detailed design and construction of the project - Stage 2 will be presented to the Executive to confirm the award of the Stage 2 engineering and construction contract.

Contract

The (HIF) Banwell Bypass & Highway Improvements are to be delivered through 2 interlinked contracts:

- Stage 1, a NEC Option C Target Cost Professional Services Contract (PSC) to undertake the preliminary design, planning stages of the scheme and the negotiation of a target cost for the detailed design and construction phase;
- Stage 2, a NEC Option C Engineering and Construction Contract (ECC) for the detailed design and construction of the works.

This report is seeking for the approval of Stage 1 only, with the request to approve Stage 2 following the completion of the Preliminary Design.

The project seeks to achieve best practice and using this industry standard model helps support this goal.

Tendered Target Cost

At tender the bidders submitted two prices, a Target Cost for the Stage 1 contract, and an initial Target Cost for the Stage 2 contract.

The Consultant's Target Cost for Stage 1 of the Project shall be the same as its tender submission and includes a breakdown by staff and programme activity. The Target Cost submitted is £2,798,860.

As the preliminary design is developed and completed, the Initial Target Cost for Stage 2 will be updated to a proposed Target Cost for Stage 2. Put succinctly, the Target cost for Stage 2, detailed design and construction, is worked up during Stage 1. The Initial Stage 2 Target Cost submitted at tender may only be varied under and in accordance with the terms of the two contracts and as it develops it will be scrutinised so as to ensure value for money is optimised.

Break clause

If an agreement cannot be made on the Stage 2 Target Cost, NSC has the option to walk away with the preliminary design and procure another contractor to complete Stage 2.

Market Engagement actions

As part of the scheme development two specific soft market engagement sessions were undertaken with the market. Contractors were invited to attend presentations on the scheme in November 2018 to gauge capacity and capability for design and delivery as well as to get feed-back on procurement options. The Civil Engineering Contractors Association (CECA) were presented to in October 2019, advising them on the up and coming major projects the council is planning to commission. The group's opinion was sought on the proposed procurement approach. This was also followed up by publishing a Prior Information Notice (PIN) in October 2019 to gain information from the market on the procurement approach of ECI and a 2-stage approach. The feedback from the CECA group and the PIN was a positive endorsement of the proposed approach.

After assessment by the project team and procurement colleagues and with advice from the consultant advisor and through market engagement, the restricted procurement procedure was deemed the most appropriate with a 2 stage ECI type contract. With a clear specification, bespoke to the requirement, greater confidence was given to bidders of their chances of success thus increasing market interest.

Award Criteria

The received tenders were assessed and scored by 50% Price and 50% Quality. The preferred supplier has been identified based on their submission for both Stage 1 and Stage 2, ensuring best value for money across the whole delivery life of the scheme. However due to the uncertainty in scope for Stage 2, which will be developed during Stage 1, only Stage 1 approval is being requested at this time. Stage 2 will be approved by the Executive at the appropriate time.

Price

Price had a total weighted score of 50% and was split over the 2 contracts as follows:

Professional Services Contract

The total score available for these elements of the evaluation was 35% (i.e. 35% of the total score of 50%) broken down as follows:

- PSC Target Cost 20%
- PSC fee percentage 10%
- PSC overhead percentage 5%

Engineering and Construction Contract

The total score available for these elements of the evaluation was 65% (i.e. 65% of the total score of 50%) broken down as follows:

- ECC Initial Target Cost 50%
- ECC fee percentage 15%

Quality

5 quality questions were asked that focussed on the skills, knowledge and experience required to deliver a project like HIF Banwell Bypass & Highways Improvements as well as aligning with North Somerset Council policies. A summary of each question is given below:-

Question 1 Weighting 40%
Theme: Organisation, Key People and Delivery

Question 2 Weighting 10%
Theme: Social Value and Environmental Impact

Question 3 Weighting 20%
Theme: Minimising Carbon, and Environmental Impact/ Climate Emergency

Question 4 Weighting 10%
Theme: Project Risks

Question 5 Weighting 20%
Theme: Biodiversity Net Gain

Procurement procedure & publishing information

The council competitively tendered the opportunity via the restricted procedure. The OJEU notice was published on 21 August 2020 (2020/S 162-395260). An amendment to the OJEU notice was made and published on 4 September 2020 (2020/S 172-417098). The amendment was made to change the contract value published.

The Selection Questionnaire was advertised on the council's e-procurement system. 10 contractors submitted a response and, as detailed in the tender documents, the top 5 were invited to tender. Two of the 5 bidders submitted responses; three of the bidders withdrew from the tender process. Naturally it is disappointing that only two of the five bidders chose to submit a bid, particularly given the engagement actions that were undertaken by the project team and its advisers prior to publication. It is suspected that international events such as Brexit and the Covid-19 pandemic played a part in bidders' decision whether to bid or not. Of particular note should be the fact that these events have contributed substantially to an increase in construction activity throughout the UK. Despite the impact of the Covid-19 pandemic and Brexit the infrastructure sector within the UK has seen a significant commitment by government through 2020: £25bn plus for the road sector, £50bn plus for the water and sewerage sector, and similar amounts for the rail sector. Such increased activity introduces both challenges and opportunities, and unfortunately one of the challenges is the tendency for contractors to "cherry pick" projects to suit their resourcing and geographical profiles (current and future).

Evaluation Panel Members

Senior Responsible Officer	NSC
Senior Project Manager	NSC
Project Manager	NSC
2x Technical Leads	NSC
Project Support	Consultant

<i>Observers</i>	
Finance	NSC

<i>Facilitators</i>	
Procurement	NSC

Evaluation outcome

Price

Each element (e.g. PSC Target Cost from “Award Criteria” chapter) was marked against the lowest tendered submission considering all suppliers using the below formula.

$$\text{Supplier element score} = \frac{\text{Lowest tendered element value} \times 100}{\text{Supplier element value}}$$

All the Bidders’ scores for each element were then combined to provide an overall score for Price.

Quality

Each question was scored 0 to 5, from unsatisfactory to excellent. All the Bidders scores for each question were combined to provide an overall score for Quality.

Final Evaluation Scores

	Alun Griffiths	Supplier 2
Quality Score	41.00%	40.00%
Price Score	49.23%	44.88%
Total Score	90.23%	84.88%

Social Value

Stage 1 commitments include:

- Employment of a local persons
- Holding a Jobs Fair
- Work placements
- Holding a meet the Buyer/Contractor event
- Work experience opportunities
- Holding a local school careers fair
- Supporting community projects.
- Volunteering days etc

Further commitments are made for Stage 2.

Implementation of Contract

The contract will be delivered over the below estimated timescales;

Preliminary design	June 2022
Executive approval for Stage 2	July 2022

Contract Management

The Contract will be managed by the Project Technical Lead, with performance and budget regularly reviewed with the Senior Responsible Officer as well as the Project Board. Key support from the Employer's Agent who will provide Contract Administration and Cost Consultancy services.

Options Considered:

As only two tenders were received from a possible five the Council could decide to re-run the tender process and seek a greater number of tender returns. This would cause significant delay to the project and Council would not meet its obligations under the HIF agreement.

The two tenders received were both considered to be of high quality and demonstrated a strong background in delivery of similar design and construction contracts. It is considered that revisiting the tender process is unlikely to attract tenders of a higher quality to justify this course of action.

The two price submissions were subject to a commercial review by the Council's consultant. The review found that the two prices were closely aligned for both Stage 1 and stage 2. A benchmarking exercise was undertaken which compared rates within both tenders for key/ high value items and structures. The review concluded that on the whole the rates are reasonable, viable and present good value. It is considered that revisiting the tender process is unlikely to attract more competitive rates without changing the form of contract and the allocation of greater risk towards the Council.

The Council could decide to not proceed with the project however this would prevent Council from delivering the infrastructure it agreed to provide under the HIF agreement.

Financial Implications:

Costs:

The estimated value is £2,798,860.00 over the period required to complete Stage 1.

However, this is a target price contract, utilising pain/gain mechanisms for both the Council and contractor so the final contract value may vary for the above cost.

Funding:

The decision is to be funded by the Housing Infrastructure Fund (HIF) Grant awarded by MHCLG. The Grant provides £ 97,067,550 of capital funding and under the terms of the Grant Funding Agreement dated 24 August 2020 the grant monies will be received incrementally at the timeframes specified in the Grant Agreement under a Forward Funding arrangement.

North Somerset Council have secured funding for Banwell bypass up until completion of preliminary stage totalling £17,336,518. A further £49,383,858 will be granted to the Council for construction subject to grant agreement conditions as stated above.

Legal Powers and Implications:

The project will require exercise of functions (and use of applicable Acts) of the Local Planning Authority, Mineral Planning Authority and Local Highway Authority as examples. The successful contractor will be required to work with the Council's project delivery team and their appointed legal team to develop and deliver the project in accordance with the legal functions and acts.

The council will need to acquire land in order to construct the Banwell Bypass; it is proposed that all the land required for the bypass will be acquired by negotiation and agreement, but the council can and may have to use its CPO powers if agreement cannot be reached with landowners. The development of the scheme through this contract will determine the extent of land required to deliver the scheme. The decision on the use of such powers will be subject to a further and specific council resolution. Land Agent and Legal Services procurements have taken place separately to enable delivery of the HIF Programme.

In accordance with the Council's duties as a commercial client as defined by the Construction (Design and Management) Regulations 2015, the tenderer will be appointed to fulfil the role of Principle Designer and Principle Contractor.

A Heads of Terms has been agreed between the Council and Ministry of Housing, Communities and Local Government (MHCLG). The Heads of Terms defines the responsibilities on the Council and MHCLG for the Programme. The terms and conditions of these documents flow down to the Contractor through the Contract as appropriate.

Stage 1 uses the NEC4 Option C PSC terms and conditions including bespoke clauses to ensure that the Council is sufficiently protected.

The Council procured the contract ensuring compliance with the Public Contract Regulations 2015.

Climate Change and Environmental Implications:

The procurement exercise has assessed the tenders abilities to assess climate change and environmental impacts on similar schemes and how they can apply innovation to meet Councils objectives during the delivery of the HIF Banwell bypass and highway

improvements. The successful bidder will work with Councils project team to deliver the project with minimal climate change and environmental impact.

Consultation:

The Banwell Bypass safeguarded route alignment and the allocated area for the Weston Villages secondary school formed part of consultation undertaken within the Development Management Policies Plan in July 2016.

Further consultation was undertaken with local communities during November 2018 as part of various focus groups Local Plan Issues and Options consultation.

The core and specific detailed consultation and engagement with the public for the programme of infrastructure works will take place during phase 1 .

The HIF engagement and communication strategy aims to ensure project success through effective engagement, consultation and communication, the strategy will;

- Build effective relationships between the programme and key stakeholders;
- Ensure stakeholders are consulted and informed about the programme and its activities;
- Engage and consult to achieve meaningful feedback from representative participants;
- Increase participation in consultation;
- Raise awareness of the programme among stakeholders;
- Improve understanding of the programme's projects – school, housing and road;
- Ensure effective and responsive internal communication across programme teams between project staff and across workstreams.

Local Members, Executive Member and SPEDR have been briefed as part of the contract award process.

The project team held pre-market engagement sessions with the market to ensure its proposed ECI procurement approach was appropriate and in line with the types of contract which civil engineering contractors would wish to bid for.

Risk Management:

The inclusion of a break clause in the contract between Stage 1 and 2 ensures that the contractor provides a detailed target cost and acceptable preliminary design before proceeding to detailed design and construction. There are strict criteria detailed in the contract that need to be met for substantiating an increase in the contractor's bid cost and the Employers Agent will make an assessment on the level of risk included within the overall costs to ensure it is appropriate. If agreement on all these elements are not met, then the break clause can be implemented.

Lack of cost certainty for two stage ECI	Budget overrun	Employment of cost consultant to improve estimate certainty and Employers Agent to negotiate Target Cost.
Lack of competition during negotiation of final Stage 2 target cost	Value for Money not demonstrated	Employment of cost consultant to audit the Contractors costs and the Contractor's procurement process; undertake cost benchmarking of the target price; and ensure that the revised target cost is based upon changes to the assumptions made in the original tendered cost for the detailed design and construction.
Grant funding issue	Delayed completion	Good communication with Homes England Ensuring the Employer's agent keeps the Contractor to their tendered Programme commitments.

Equality Implications:

Have you undertaken an Equality Impact Assessment? Yes

An initial screening exercise has been carried out to identify protected characteristics that the Equality Act 2010 requires us to consider, in relation to the highway and school infrastructure. As part of the project design and development phase a full EQIA will be carried out for both the school and highway work.

The protected characteristics most pertinent to the highways and school are age, disability and religion or belief. Provisions will be made to maximise equality between those who share a protected characteristic and those who do not.

Potential solutions to be included in the next stage of the design include:
for the Bypass;

- Simple road layouts that are easy to understand and navigate through;
- Gentle slopes on footways to aid mobility;
- Crossing points to ensure established routes to places of worship are maintained;
- Technology within signal-controlled crossing points to indicate to those with disabilities that the signal for pedestrians to cross is active.
- Tactile surfaces to assist those with visual impairments

Corporate Implications:

The provision of key enabling infrastructure and the improvement of the transport network widely support the Corporate Plan objectives in creating a thriving and sustainable place to live, and empowering people.

Appendices:

N/A

Background Papers:

Procurement Plan:

<https://www.n-somerset.gov.uk/sites/default/files/2020-08/DE106%20Procurement%20Plan%20HIF%20Banwell%20Bypass%20signed.pdf>

Commissioning Plan:

<http://apps.n-somerset.gov.uk/cairo/docs/doc29685.pdf>

<http://apps.n-somerset.gov.uk/cairo/docs/doc28834.pdf>

<http://map.n-somerset.gov.uk/PoliciesMap.html> (Banwell Safeguarded alignment)

<https://www.gov.uk/government/news/government-investment-to-unlock-more-homes-across-england> (links to HiF announcements and all supporting MHCLG HIF documents)

<https://www.jointplanningwofe.org.uk/consult.ti>

HIF Bid Pro-Forma online form 03 December 2018

MHCLG HIF Forward Funding Business Case Guidance

HIF Forward Fund Business Case Questions

COU18 Dated 08 May 2018

Exec Member Decision 18/19 DE341

Corporate Plan 2020-2024

<https://www.n-somerset.gov.uk/my-services/planning-building-control/planningpolicy/local-plan/new-local-plan/about-the-local-plan/>

Housing Infrastructure Fund (Forward Fund) Commissioning Plan Approval <http://apps.n-somerset.gov.uk/cairo/docs/doc29685.pdf>

COU 8 Acceptance of Housing Infrastructure Fund (Forward Fund) Grant Heads of Terms with Conditions (Agenda Item 9) <https://apps.n-somerset.gov.uk/Meetings/document/report/NSCPM-205-7>

Signatories:

Decision Maker(s):

Signed:  Director of Place

Date: 11 March 2021.

With Advice From:

Signed:  S151 Officer

Date: 2 March 2021

Signed:  Head of Strategic Procurement

Date: 2 March 2021