

Agenda Item No:

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**Report of :** Asset Management

**Report to :** Chief Asset Management and Regeneration Officer

**Date:** August 2014

**Subject:** Proposed Re-Tender, Sovereign Street Green Space

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|---|---|--|
| Are specific electoral Wards affected?  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| If relevant, name(s) of Ward(s):  | City & Hunslet                          |  |
| Are there implications for equality and diversity and cohesion and integration? | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| Is the decision eligible for Call-In?   | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| Does the report contain confidential or exempt information?                     | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| If relevant, Access to Information Procedure Rule number:                       |   |  |
| Appendix number:  |   |  |

### Summary of main issues

1. Following Executive Board's authority to incur expenditure in November 2013, on the creation of new, high quality green space at Sovereign Street and the completion of detailed technical design works approval was given for the issue of tender documents for the construction of the green space on the 15<sup>th</sup> April 2014. Tender documents were issued on the 21<sup>st</sup> April through the YorTender framework and submissions were received back on the 19<sup>th</sup> June from three contractors.
2. After taking advice through YorCivil framework the Council applied its own tender evaluation matrix to assess all three tenders rather than the YorTender matrix, on a 60% cost and 40% quality split and the outcome of the Council's evaluation was that only one contractor provided a price within budget and that same contractor came top in the tender evaluation scoring. Project Board approved the recommendation to award the works to that contractor as a result. The unsuccessful tenderers were then notified of the outcome.
3. However, on informing the unsuccessful contractors, one contacted the procurement unit to query how tenders had been evaluated. It indicated that it considered that tenders had not been evaluated in accordance with the provisions laid down in the YORcivil framework.
4. On investigating this matter further it transpired that the YORcivil evaluation matrix

states that the quality scores of each tender should be adjusted as follows:-

“The highest scored total for quality is adjusted to 100 and all other totals have one mark deducted for each percentage point by which the total is lower than that of the highest. Percentage calculations will be made to one decimal point. (e.g. a total 13.5% below the highest will thus receive 86.5 marks)”.

5. This wording was mistakenly removed from the template document by the Council.
6. The implications of this are twofold. Firstly if this unsuccessful contractor is deemed the highest scoring tenderer, the scheme is no longer within budget and therefore unaffordable. Secondly the Council could then be open to challenge from the contractor who was the successful contractor based on the outcome of the Council's tender evaluation scoring matrix.
7. In order for the scheme to proceed without risk to the Council of challenge relating to the outcome of the tender evaluation and ensure value for money, the most appropriate way forward is to abandon the current tender process and retender the scheme, using the same evaluation methodology and cost quality split of 60%/40%, removing the administrative error from the tender documents.
8. In accordance with the Council's Contract Procedure Rules 3.1.8 and 3.1.10, the report requests the Chief Asset Management and Regeneration Officer approves the abandonment the current tender for Sovereign Street, the proposed re-tender of Sovereign Square green space via the YorCivils Framework and the proposed use of the existing tender evaluation criteria for the procurement of a preferred contractor to deliver the new green space at Sovereign Square.

## **Recommendation**

4. The Chief Asset Management and Regeneration officer is requested to:-
  - approve the abandonment of the current tender process for Sovereign Street;
  - approve a re-tender for the procurement of contractors for the construction of new green space at Sovereign Square using the YorCivils Construction Framework;
  - and the proposed tender evaluation criteria of 60% price and 40% quality with the scheme value capped at £2.2m.

## **1 Purpose of this report**

- 1.1 The purpose of this report to seek the Chief Asset Management Officer's approval to:-
- the abandonment of the current tender process for Sovereign Street;
  - a re-tender for the procurement of contractors for the construction of new green space at Sovereign Square using the YorCivils Construction Framework;
  - the proposed tender evaluation criteria of 60% price and 40% quality with the scheme value capped at £2.2m.

## **2 Background information**

- 2.1 The City Council's Executive Board gave approval to the revised planning statement in June 2011, which was adopted to allow new development proposals to come forward on the majority Council owned site. This was aimed at providing guidance on the consideration of new development proposals for the site, the potential to deliver new high quality green infrastructure in the city centre and identify individual development plot locations.
- 2.2 As a consequence of this guidance and the agreement to progress negotiations for the development of one of the plots for a new northern HQ building for KPMG, Executive Board in July 2012, approved the injection of capital into the Sovereign Street green space scheme, which would be funded by the first call on any capital receipts generated from the Sovereign Street development plots. Subsequently, in November 2012 detailed planning approval was granted for both the KPMG HQ building and the green space.
- 2.3 In November 2013, Executive Board gave authority to incur expenditure on the delivery of the first two phases (1&1a) of the new green space at Sovereign Square.
- 2.4 In April 2015 the Chief Asset Management and Regeneration Officer approved the selection of a list of contractors via the YorBuild Framework and the proposed tender evaluation criteria respectively on a 60% cost and 40% quality split, for the procurement of a preferred contractor to deliver the new green space at Sovereign Square.

## **3 Main issues**

- 3.1 The tender documents for the scheme were issued on the 21<sup>st</sup> April through the YorTender framework.
- 3.2 The Tender Evaluation Criteria was set out on a 60% price and 40% quality split and the quality evaluation are set out below:-
1. Tender Programme – 10%/40 points
  2. Outline Quality Method Statement, Resources and Sub-Contractors - 40%/160 points broken down into
    - (i) Site Organisation
    - (ii) Design
    - (iii) Construction Programme
  3. Health and Safety including Preliminary construction phase Health and Safety Plan – 20%/80 points;

4. Site Staff and CVs – 20%/80 points
5. Employment and Skills Plan – 10%/40 points

- 3.3 Tenders were received from 3 contractors, only one of which was within budget.
- 3.4 The Council applied its own tender evaluation matrix to assess all three tenders rather than the YorTender matrix, on a 60% cost and 40% quality split. The quality evaluation of the tenders was carried out on the 30<sup>th</sup> June 2014 and the cost evaluation was completed on the 8<sup>th</sup> July 2014.
- 3.4 At that time, the contractor providing the lowest tender price and importantly the only contractor to provide a price within budget, the outcome of the tender assessment and the decision from Sovereign Square Project Board was therefore that this contractor should be awarded the contract for the construction of green space at Sovereign Square. The unsuccessful tenderers were then informed of the outcome of the tender evaluation and their scores and position within scoring matrix.
- 3.5 Upon being notified that their bid had been unsuccessful NMC contacted the procurement unit to query how tenders had been evaluated and specifically that they had “serious concerns relating to the quality assessment and final outcome of the tender”. The contractor indicated that it considered that tenders had not been evaluated in accordance with the provisions laid down in the YORcivil framework as it is their “understanding that the highest scoring contractor should receive an adjusted score of 100 multiplied by 40% = 400, with other contractors' scores calculated pro-rata” which is referred to on page 16 of the Instructions for Tender.
- 3.6 On investigating this matter further it transpired that the YORcivil evaluation matrix states that the quality scores of each tender should be adjusted and the template documents provided by YORcivil includes following wording in the Instructions for Tendering in relation to how quality criteria would be evaluated: –
- “The highest scored total for quality is adjusted to 100 and all other totals have one mark deducted for each percentage point by which the total is lower than that of the highest. Percentage calculations will be made to one decimal point. (e.g. a total 13.5% below the highest will thus receive 86.5 marks)”.
- 3.7 This wording was mistakenly removed from the template document by the Council. If this wording had been retained and the scoring applied as per its guidance, it would alter the tender evaluation scores and provide a different outcome.
- 3.8 The Council now has potential risks to the project progressing on the basis of any contract award:-
- Any bid other than the lowest price received is above the Council’s available budget and therefore makes the scheme unaffordable;
  - there is the potential that the lowest price tenderer could challenge the Council’s decision to award the contract to anyone other than themselves.
- 3.9 In order for the scheme to proceed without risk of challenge to the Council following to the outcome of the tender evaluation including an administrative error and ensure value for money, the most appropriate way forward is to abandon the current tender process and retender the scheme, using the same evaluation methodology and cost

quality split of 60%/40% at a capped price of £2.2m, removing the administrative error from the tender documents.

- 3.10 Through this retender process the Council will approach all of the original ten contractors (three of whom submitted an actual tender) who expressed an interest in the scheme when the tender was first issued. This is to determine if there are additional contractors who may now be interested in submitting a tender. This will provide added competition to the tender process and ensure that any interest to bid for the work is identified prior to the commencement of the retender.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 In November 2013, Executive Board gave authority to incur expenditure on the delivery of the first two phases (1&1a) of the new green space at Sovereign Square.

- 4.2 In April 2015 the Chief Asset Management and Regeneration Officer approved the selection of a list of contractors via the YorCivils Framework and the proposed tender evaluation criteria respectively on a 60% cost and 40% quality split, for the procurement of a preferred contractor to deliver the new green space at Sovereign Square.

### **4.3 Equality and Diversity / Cohesion and Integration**

- 4.3.1 There is no expected impact on the protected equality characteristics and, therefore, it is not applicable for an EIA or screening form to be completed at this time.

### **4.4 Council Policies and City Priorities**

- 4.4.1 The proposed creation of high quality green space at Sovereign Square is consistent with the Best Council Plan 2013 – 17 in terms of promoting sustainable and inclusive economic growth.

### **4.5 Resources and Value for Money**

- 4.5.1 The Chief Asset Management and Regeneration Officer will be responsible for the award of the contract to the preferred contractor based on a 60% price and 40% quality split with a capped price of £2.2m.

### **4.6 Legal Implications, Access to Information and Call In**

- 4.6.1 The Council's Procurement Governance and Regulations Officer has advised that the delegated decision to determine the procurement approach and the evaluation criteria for the appointment of the contractor to undertake works at Sovereign Square should be taken in compliance with Contract Procedure Rules 3.1.8 and 3.1.10 respectively.
- 4.6.2 Due to the administrative error within the tender documents and the potential risk to the Council of either, not delivering a scheme within budget or having a potential challenge from Esh construction the least risk to the Council is to retender the scheme at a capped value of £2.2m.
- 4.6.3 The proposals constitute an administrative decision and are, therefore, not subject to call in.

## **4.7 Risk Management**

**4.7.1** The Council now has potential risks to the project progressing on the basis of any contract award:-

- Any bid other than the lowest price received is above the Council's available budget and therefore makes the scheme unaffordable;
- there is the potential that the lowest price tenderer could challenge the Council's decision to award the contract to anyone other than themselves.

**4.7.2** This risk will be managed by retendering the scheme using the same 60% cost and 40% quality split, the same tender evaluation criteria but the application of the Council's tender evaluation scoring criteria will be clearly defined to ensure there is no confusion.

## **5 Recommendation**

**5.1** The Chief Asset Management and Regeneration officer is requested to:-

- approve the abandonment of the current tender process for Sovereign Street;
- approve a re-tender for the procurement of contractors for the construction of new green space at Sovereign Square using the YorCivils Construction Framework;
- and the proposed tender evaluation criteria of 60% price and 40% quality with the scheme value capped at £2.2m.

## **6 Background Documents<sup>1</sup>**

**6.1** None

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.