

Report of : Asset Management and Regeneration

Report to : Chief Officer Culture and Sport

Date: 19 August 2016

Subject: Proposed Waiver of Contract Procedure Rules 8.1, 8.2, 9.1 and 9.2 to Appoint a Contractor and Various Design Consultants to Undertake the Proposed Roof Maintenance Works at Leeds Grand Theatre Without the Need for Inviting Competitive Tenders for the Proposed Services and Works.

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 checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:	10.4 (3)	
Appendix number:	1	

Summary of main issues

1. The proposed maintenance works to Leeds Grand Theatre (the Theatre) are consistent with the Best Council Plan in terms of promoting sustainable and inclusive economic growth by maximising the impact of our cultural infrastructure and employment opportunities for local residents. The Theatre is a Grade II* Listed Building, which enjoys a national reputation being home to Opera North and, is regularly visited by Northern Ballet. The Theatre forms a major component of the City's cultural infrastructure. In order to make a compelling proposal to be European Capital of Culture in 2023, the City needs to work to ensure the cultural infrastructure across the city is fit for purpose, that our cultural organisations are resilient and sustainable and that Leeds builds its reputation as a great place to live, work and visit.
2. With 2023 in mind and, as part of the Leeds Grand Theatre and Opera House Limited's (the Company's) preparation to restructure to become a fully independent Charitable Trust and, in adherence to UK legislative requirements, the Company has sought to develop a comprehensive capital programme to identify outstanding capital works which did not form part of the earlier Transformation project. As part of this process the Company commissioned a review of the fabric of the Theatre including a structural inspection of the roof void and plaster ceiling over the auditorium. Consultants retained by the Company having regard to the outcome of the inspection of the auditorium roof

void identified the need to undertake work to reduce the loading on the roof trusses by building an over roof with which to support both the current roof and suspended plasterwork over the auditorium. The Council and the Company are both of the view that the work which is required to be carried out to the auditorium roof is not the responsibility of the Company and that, therefore, the responsibility for undertaking such work rests with the City Council.

3. This report seeks approval to Waive Contract Procedure Rules 8.1, 8.2, 9.1 and 9.2 to authorise the City Council to appoint the design team retained by the Leeds Grand Theatre and Opera House Ltd comprising a number of different consultants and the preferred contractor to assume responsibility for the design and delivery of the proposed roof maintenance works at the Theatre, without inviting competitive tenders for the respective services and works.

Recommendation

4. The Chief Officer for Culture and Sport is recommended to approve the Waiver of Contract Procedure Rules 8.1, 8.2, 9.1 and 9.2 to authorise the City Council to appoint the design team retained by the Company and comprising a number of different consultants and the preferred contractor to assume responsibility for the design and delivery of the proposed roof maintenance works at Leeds Grand Theatre, without inviting competitive tenders for the respective services and works.

1.0 Purpose of this report

- 1.1 The purpose of this report is to seek approval to Waive Contract Procedure Rules 8.1, 8.2, 9.1 and 9.2 to authorise the City Council to appoint the design team retained by the Company comprising a number of different consultants and, the preferred contractor to assume responsibility for the design and delivery of the proposed roof maintenance works at the Theatre, without inviting competitive tenders for the respective services and works.

2.0 Background information

- 2.1 The City Council's Executive Board at its meeting in June 2016 approved an injection of £2.95m into the Capital Programme and Authority to Spend as a grant to the Company as the Council's contribution towards the cost of undertaking works to reduce the loading on the original Victorian trusses in the roof above the theatre auditorium. The proposal is to build an over roof with which to support both the existing roof and the suspended plasterwork over the auditorium. Thereafter, once the new roof is in place and the building watertight, the existing roof would be stripped of its slate tiles which will lighten the load on the trusses below.
- 2.2 At the time the Executive Board determined to provide a grant to the Company towards the cost of the works, it was considered that the responsibility for undertaking such works rested with the Company under the terms of the lease concluded between the Council and the Company in September 2006 for its occupancy of the theatre building.

3.0 Main issues

3.1 Reasons for Contract Procedure Rules Waiver

- 3.1.1 Subsequent to the Council's Executive Board approving a grant to the Company as a contribution towards the cost of the works, the City Council has now received correspondence from the Company advising that in their view the problems identified with respect to the auditorium roof predate their responsibilities under the terms of their lease with the Council for the theatre building. Whilst the Company acknowledge it has a responsibility to keep the whole of the premises in good and tenable repair and condition including the roof exterior and all structural parts, the Company has highlighted that the lease states that the tenant shall not be obliged to put the premises into any better state of repair than at the date of their lease i.e. September 2006. As such, the Company is of the view that the repair work to the roof is the responsibility of the City Council as the owner of the building.
- 3.1.2 Against this background, the Council sought the view of its own retained Technical Advisor (TA) as to when the problems identified with regard to the auditorium roof trusses had arisen. The Council's TA who is a structural engineer specialising in historic buildings has advised that in his opinion, the deficiencies in the roof trusses would have substantially occurred over many years and, in all probability, the majority would have predated the lease concluded between the Council and the Company.
- 3.1.3 Advice has been sought from Legal Services as to the terms of the lease and they have confirmed that, in all probability, the work which is required to be carried out to the auditorium roof is the responsibility of the Council, but that in accepting that, the Chief Officer for Culture and Sport should note that the Council is undertaking such works without prejudice to any future liability for maintenance/repair works at the Theatre.
- 3.1.4 To ensure that the proposed works are delivered efficiently, on programme and within budget, it is considered that both the design team already appointed by the Company to develop design proposals for the works and the preferred contractor identified to undertake the works (much of which is specialist in nature) remain best placed to assume responsibility for the delivery of the works on site. The consultants and preferred contractor have a detailed knowledge and understanding of the project as a whole and, are best equipped to ensure that the works are fully coordinated with all interface issues between the respective works being addressed through the design phase and, with the preferred contractor prior to and whilst works progress on site.
- 3.1.5 Given the need to maintain the development programme and the need to minimise the Council's risk exposure, it is not considered practical given the nature of the proposed works to either appoint other design consultants to assume design responsibility for such works, or to seek to procure another specialist contractor to undertake the works, as such would more than likely increase the Council's risk exposure by delaying the start of the works possibly into early 2017, with consequential cost implications to both the Council and the Company.
- 3.1.6 If the Chief Officer for Culture and Sport is minded to approve the Waiver of Contract Procedure Rules to appoint the preferred contractor and consultants without the need to invite competitive tenders for the works and services, it should be noted that further reports will be presented for approval detailing the provisional terms and conditions that have been agreed with the respective consultants for their

design input to the project and, the preferred contractor to progress the works on site.

3.2 Consequence if the Proposed Action is Not Approved

- 3.2.1 If the proposed action is not approved, the development programme will not be maintained with consequential risk to the operation of the theatre.
- 3.2.2 It is not considered feasible to appoint NPS Leeds, procure other design consultants via a mini competition from the YorConsult Framework or seek to procure a contractor from the YorBuild Framework, as this would significantly impact on the programme, add cost to the Council and adversely impact the operational arrangements of the Company.

3.3 Advertising

- 3.3.1 No specific advertising has or will be undertaken.

4.0 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 The Council's Executive Board at its meeting in June 2016 was advised as to the proposed works and the importance of their being undertaken as soon as possible so as not to adversely impact on the operation of the theatre.
- 4.1.2 The Council's Procurement Unit has been consulted and advised as to the need to approve a Waiver of Contract Procedure Rules 8.1, 8.2, 9.1 and 9.2 in this instance.
- 4.1.3 The Executive Members for Strategy and Resources and Transport and the Economy have been consulted and are supportive of the recommendation contained in the report.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 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.

4.3 Council Policies and City Priorities

- 4.3.1 Investment in the Theatre will aid the Council's bid to become European Capital of Culture 2023. The Theatre contributes to both a strong economy and to a compassionate city by making Leeds a more attractive place to invest and also a better place to live.
- 4.3.2 The proposed works to the Theatre will contribute to the Best Council Plan objective of Promoting Sustainable and Inclusive Economic Growth and the Best Council priority of maximizing the impact of our cultural infrastructure.

4.4 Resources and Value for Money

- 4.4.1 The cost of the consultant's fees and the roof works will be funded from a combination of the £2.95m injected into the Capital Programme as a grant payable by the Council to the Company as approved by Executive Board in June 2016 and, a contribution from the Company. Further details of the cost of the works, the value of the contracts to be entered into with individual companies and the level of

contribution from the Company toward the cost of the works is detailed in Appendix 1 of the report which is Exempt/Confidential under Access to Information Procedure Rules 10.4 (3).

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 The proposal forming the subject of this report constitutes a significant operational decision and, therefore, is not subject to Call In.
- 4.5.2 The Appendix to the report is Exempt/Confidential under Access to Information Procedure Rules 10.4 (3). The public interest in maintaining the exemption in relation to the confidential Appendix outweighs the public interest in disclosing the information and financial details which, if disclosed would adversely affect the business of the Council and the business affairs of a number of individual companies.
- 4.5.3 Awarding contracts directly to the consultants and the preferred contractor in this way could leave the Council open to a potential claim from other providers to whom these contracts may be of interest that it has not been wholly transparent. In terms of transparency, it should be noted that case law suggests that the Council should always consider whether contracts of this value should be subject to a degree of European wide advertising if it is considered that they may be of interest to providers in other Member States. It is up to the Council to decide what degree of advertising is appropriate and, in particular, consideration should be given to the subject matter of the contract, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices etc.) and the geographical location of the place of performance.
- 4.5.4 The Chief Officer Culture and Sport has considered this and, due to the nature of the services being delivered, the relatively small value of the contracts and the specialist nature of the services required is of the view that the scope and nature of the services is such that it would not be of interest to suppliers in other EU Member States.
- 4.5.5 Whilst it is acknowledged that there is a risk of a challenge as set out above, the Council can reasonably argue that in order to address any interface issues and to ensure all such works are fully coordinated, the responsibility for such design development work should remain with the same technical disciplines, which in this instance is the Company's design team and preferred contractor who already have considerable technical knowledge of the overall project and, to do otherwise has the potential to have cost and programme implications for the City Council.
- 4.5.6 There is a risk of an ombudsman investigation arising from a complaint that the Council has not followed reasonable procedures, resulting in a loss of opportunity. Obviously, the complainant would have to establish maladministration. It is not considered that such an investigation would necessarily result in a finding of maladministration, however, such investigations are by their nature more subjective than legal proceedings.
- 4.5.7 Although there is no overriding legal obstacle preventing the Waiver of CPR's 8.1, 8.2, 9.1 and 9.2, the above comments should be noted. In making a final decision, the Chief Officer Culture and Sport should be satisfied that the course of action proposed represents best value for money to the City Council.
- 4.5.8 If the Chief Officer Culture and Sport is minded to approve a Waiver of CPR's 8.1, 8.2, 9.1 and 9.2, it should be noted that the precise mechanism for contracting with

the Company's design team and preferred contractor has yet to be determined (in some instances it is likely to be by way of novation of an existing contract with the Company to the Council) and will be discussed in detail with officers from the Council's Projects, Programmes and Procurement Unit and Legal Services.

4.6 Risk Management

- 4.6.1 The Theatre is an historic listed building that remains open and fully operational. As such, only a limited amount of intrusive survey work has been possible before work commences on site. For this reason, a level of client contingency commensurate with the risks that may only become apparent once works are on site has been included in the project cost plan by the project cost consultant.
- 4.6.2 There is a risk that the start of the proposed works may be delayed such that they are not completed by the end of the year/early 2017. This risk cannot be completely mitigated as there a number of time critical actions to be addressed in order to meet the timetable for completion of the works.

5.0 Recommendation

- 5.1 The Chief Officer Culture and Sport is recommended to approve the Waiver of Contract Procedure Rules 8.1, 8.2, 9.1 and 9.2 to authorise the City Council to appoint the design team retained by the Leeds Grand Theatre and Opera House Ltd and comprising a number of different consultants and the preferred contractor to assume responsibility for the design and delivery of the proposed roof maintenance works at Leeds Grand Theatre, without inviting competitive tenders for the respective services and works.

6.0 Background documents¹

- 6.1 None

¹ 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.