

**Report of Head of Regeneration**

**Report to Director of City Development**

**Date: 20 September 2017**

**Subject: Procurement of consultant services for risk mitigation advice and guidance - Waiver of Contracts Procedure Rules (CPRs) 8.1 and 8.2. to award a contract direct to Arup Pty Ltd**

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s): Burmantofts & Richmond Hill, Temple Newsam		
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: 10.4 (3)		
Appendix number:		

**Summary of main issues**

1. Leeds City Region Enterprise Zone (EZ) offers businesses excellent opportunities for relocation and expansion. The area covers 142 hectares of development land, capable of creating up to 4 million sq.ft of manufacturing and industrial workspace, delivering up to 6,500 new jobs over the next 20 years. However, to optimise delivery of these long term ambitions requires the advice of a technical specialist to assess, advise and help mitigate potential constraints. Potential risks which could jeopardise timely delivery of the zone's benefits have been identified through previous studies and investigations.
2. In June 2015 a waiver report was approved which waived Contract Procedural Rules (CRP's) 8.1 and 8.2 to enable a direct contract to be awarded to Arup Pty Ltd through the YorConsult Framework. Arup were appointed to advise on power related issues and undertook feasibility work which was completed by in March 2016 and recommended a solution to ensure development of the benefits from development in the EZ are maximised.
3. In accordance with Contract Procedure Rules 3.1.8, 8.1 and 8.2 approval is sought to reappoint the same technical advisor to provide the required advice and guidance to progress the technical solution to its conclusion. This report summarises the rationale and scope of the proposed commission, the proposed procurement method, timescales and the anticipated financial implications.

## **Recommendation**

4. The Director of City Development is requested to approve:
  - the waiver of CPRs 8.1 and 8.2 and award a direct contract to Arup Pty Ltd the sum of £33,352.

### **1 Purpose of this report**

- 1.1 The purpose of this report is to request the Director of City Development to approve additional funding of £33,352 to engage Arup to provide technical advice and guidance to enable completion of the technical solution.; & Authority to Spend up to £33,352 from revenue budget 32649 000 000 to appoint a consultant.

### **2 Background information**

- 2.1 Designated in 2012, Leeds Enterprise Zone offers businesses excellent opportunities for relocation and expansion. Significant investment has already been made through the Building Foundations for Growth funding of £8.57M and ongoing business grants awarded through Business Growth Programme to end users locating in the zone.
- 2.2 Previous investigations have identified risks that could fetter the zone's ability to deliver its optimum potential.
- 2.3 In 2015 Arup were appointed through direct call off through Yorconsult, to carry out an indepth study into the long term supply of power to the EZ. This was procured through the YorConsult framework following adherence to Contract Procedure Rules 3.1.4 (appropriate Internal Service Provider approached and declined) and 3.1.5 (confirmed no exclusive supplier route). Arup completed their three stage report in March 2016.

### **3 Main issues**

- 3.1 Arup recommended the delivery of additional infrastructure to ensure there is sufficient power capacity to attract manufacturers and other end users with high power requirements. This was presented to the Strategic Delivery Board in March 2016 and a direction to progress the solution was given. The Board is chaired by the Chair of LEP and includes representatives from LCC and developers with an interest in the EZ.
- 3.2 The technical solution proposed will require significant public investment through the form of a loan which will be repaid as development progresses within the zone. However this investment will generate wider benefits to the zone, to Leeds and to the City Region including enhanced business rates which will be reinvested into regeneration projects around the region.
- 3.3 Although the technical solution is an industry standard procedure officers in neither Leeds City Council nor Leeds city Region Local Enterprise partnership have the technical knowledge or the experience to manage the process fully without an expert advisor.

- 3.4 To ensure continuity and to retain knowledge gained through the initial investigation it is proposed that the services of Arup are retained and recommissioned without competition.
- 3.5 Lead officers within YorConsult were consulted and subsequently advised the original contract could be extended to allow Arup to continue to provide technical expertise. However, a waiver is required under LCC's Contract Procedure Rules.
- 3.6 As before the approved methodology would be to procure a further commission through the Yortender. This would mean the council would access the 'YOR Consult' Framework. Direct call-off from this framework is allocated on a rotational basis from the relevant lot. Although all the companies have completed a procurement held in compliance with the Public Contract Regulations and have successfully won places on the framework, based on their technical capacity, expertise and experience they will not have the unique insight into the particulars exclusive to Leeds Enterprise Zone that Arup does. A different company other than Arup could be next on rotation and the contract would have to be awarded to them.
- 3.7 Should a different consultant be commissioned additional background research/fact find would have cost and time implications.
- 3.8 Furthermore it is advisable from the perspective of both the council and the LEP to have a consistent source of technical expertise. Although unlikely should an element of the proposed technical solution be problematic or at worse undeliverable then the audit trail of advice provided will be easily identifiable.
- 3.9 The technical solution will need to progress rapidly, to allow sufficient time to implement the solutions to remove the risks. Arup have a significant level of understanding of the issues and challenges which has resulted from 18 months working on this project and carrying out extensive consultation with the various stakeholders.
- 3.10 If approved through this report the contract will be closely monitored to ensure continued performance and value for money. Arup's work will be tightly controlled to ensure that only required work is undertaken and a process to agree scope of activities before work gets underway has been established.
- 3.11 All companies on the framework have a rate card which identifies the hourly rates of their graded personnel. Rate cards are reviewed annually on the 1st May, with an inflation increase applied at that time.

## **4.0 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 The proposals to commission a study have been subject to consultation with the Executive Member for Development and Economy, Chief Officer Economic Development, Leeds City Region Local Enterprise Partnership and Homes and Communities Agency. All of which are supportive of the proposals to commission Arup to continue in their role of expert advisor to the technical solution which is seen as a critical piece of work to deliver the aspirations for the Enterprise Zone.

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

- 4.2.1 The decision to commission this contract does not have any equality and diversity impacts.

## **4.3 Council policies and City Priorities**

- 4.3.1 The Best Council Plan sets a council objective of promoting sustainable and inclusive economic growth – improving the economic wellbeing of local people and businesses with a focus on boosting the local economy, providing housing as the city grows and helping people into jobs. The Commission on the Future for Local Government outlines a proposition for local government to stimulate jobs, homes and good growth, with local government creating conditions for enterprise to thrive. The outputs of this commission will help to achieve these city priorities as they will help to optimise the job growth potential of the enterprise zone.
- 4.3.2 Officers in procurement have advised that following approval of this report direct who have advised that the approach complies with Contract Procedure Rules.

## **4.4 Resources and value for money**

- 4.4.1 Arup have submitted a proposal to fulfil the requirements for the sum of £33, 352 plus additional items utilising hourly rates contained in the most recent Yortender pricing tables. The £33,352 includes stakeholder meetings, planning application, highways liaison, and support with technical specification and solution application
- 4.4.2 Corporate Finance have previously approved up to £70,000 through budget 32649 000 000 to support the delivery of the technical solution.
- 4.4.3 A bid submitted by the Council to support delivery of the technical solution is being considered by the LEP with strong indications of approval. Included within the funding requested is a budget for consultant's fees. Should this bid be approved the funding paid to Arup by the Council will therefore be fully reimbursed.

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

- 4.5.1 As the procurement is under the threshold value of £173,934 there is no requirement to comply with the Public Contracts Regulations.
- 4.5.2 Awarding a contract directly to Arup Pty Limited in this way could leave the council open to a potential claim from other providers, to whom this contract could be of interest that it has not been wholly transparent as the opportunity is not being advertised and at least three written tenders invited.
- 4.5.3 Although there is no overriding legal obstacle preventing the waiver of CPR 8.1 and 8.2, the content of the report should be noted. In making their final decision, the Director of City Development should be satisfied that the approved course of action represents best value for the council.

## **Consequences if the proposed action is not approved**

- 4.5.4 Revisiting YorConsult to procure a potentially different consultant does not offer Best Value in terms of additional delay and evaluation for the reasons set out in

sections 3 and 4. The scope of directly engaging Arup is to identify actions to ensure the timely delivery of the technical solution and to ensure the EZ delivers on its full potential. Delay would impact on the timely delivery of job creation opportunities, a reduction in the value of the retained business rates for reinvestment and overall delivery of the zone's considerable potential.

#### **4.5 Risk Management**

4.5.1 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. The complainant would have to establish maladministration. It is not considered that such an investigation would result in a finding of maladministration, however, such investigations are, by their nature, more subjective than legal proceedings.

4.5.2 Should this recommendation not be approved the additional technical expertise will have to be procured as a separate contract in order to facilitate the delivery of the technical solution. This could increase the potential for a longer delivery time (and possibly a corresponding increase in costs) to close the knowledge gap a new consultant will have to manage.

#### **5 Conclusions**

5.1 The Leeds City Region Enterprise Zone offers huge potential for business investment growth and job creation. Significant investment has already been made through the Building Foundations for Growth funding of £8.57M and ongoing business grants awarded through Business Growth Programme to end users locating in the zone. Several national and international business have located in the zone and since summer 2017 it has a fully operational Park and Ride at Gateway 45.

5.2 However, failure to tackle identified risks could fetter this development potential and limit the impact of this investment to transform this area of the lower Aire Valley and contribute to the growth of the Leeds City Region, and achieve Best Council Plan objectives to deliver sustainable and inclusive economic growth.

5.3 There is no in-house technical expertise to support delivery of the solution. It is therefore proposed to buy in the services of a consultant with the required knowledge and a firm understanding of the issues particular to Leeds Enterprise Zone and the resolution. Arup uniquely have these requirements and it is considered the most prudent use of the available funding to directly procure this firm to support delivery of the technical solution.

#### **6.0 Recommendations**

6.1 The Director of City Development approved:

- the waiver of CPRs 8.1 and 8.2 and award a direct contract to Arup Pty Limited in the sum of approximately £33,352 without seeking competition.

#### **7.0 Background documents**

7.1 None.

