

**Report of: Asset Management and Regeneration**

**Report to: The Director of City Development**

**Date: 10 November 2017**

**Subject: Proposed Waiver of Contract Procedures Rules 8.1 and 8.2 for the Appointment of Specialist Heritage Engineers, Kirkgate Market.**

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 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 report seeks approval to Waive Contract Procedure Rules (CPRs) 8.1 and 8.2 to appoint Ove Arup and Partners (Arup) to provide specialist heritage engineering advice to the City Council at Kirkgate Market to inform the Council's maintenance of the Grade 1 Listed heritage asset and, the interface of the building with the proposed redevelopment of the George Street retail units. The report sets out the reasons for seeking approval to Waive CPRs 8.1 and 8.2 and the consequences if the proposed action is not approved.

**RECOMMENDATION**

2. The Director of City Development is requested to approve Waiving Contract Procedure Rules 8.1 and 8.2 to appoint Ove Arup and Partners to provide specialist heritage engineering advice at Kirkgate Market without the need for inviting competitive tenders for the proposed commission.

**1 Purpose of this report**

- 1.1 The purpose of this report is to seek the Director of City Development's approval to Waive Contract Procedure Rules 8.1 and 8.2 to appoint Arup to provide specialist heritage engineering advice at Kirkgate Market without the need for inviting competitive tenders for the proposed commission.

## **2 Background information**

- 2.1 In accordance with good asset management practice to ensure the long term future of the Grade 1 Listed Kirkgate Market and, to consider the interface of the building's roof structure with the proposed redevelopment of the George Street retail units, the Council is seeking to develop a comprehensive understanding of both the condition of the 1875 blockshops and the roof structure over the blockshops to help inform proposals to develop a mansafe system on the roof over the blockshops (as currently safe access to such areas is not feasible) and, to inform the Council's negotiations with the proposed developer of the George Street scheme regarding the interface of the roof over the blockshops with the proposed George Street development.
- 2.2 In order to fully understand and establish the condition of the fabric and form of construction of the blockshops and the roof structure over, it is proposed that a company that has considerable expertise in the development and implementation of monitoring regimes of historic buildings and, experience in investigating, restoring and refurbishing historic structures encompassing the different types and forms of construction over the last millennium be retained by the Council to help inform both the ongoing maintenance regime for the building and, the development of any remedial works required to ensure the long term future of the building.

## **3 Main issues**

### **Reason for Contracts Procedure Rules Waiver**

- 3.1 In order to progress the investigations required to understand the condition of the building fabric of the 1875 blockshops and the roof areas above, their interface with the proposed George Street redevelopment works and, to establish the monitoring regime outlined in paragraph 2.2 above, the Kirkgate Market project team are of the view that Arup having regard to their extensive experience of historic buildings and structures are best placed to be awarded the commission to undertake the inspection, monitoring and subsequent investigative works without inviting competitive tenders for the commission.
- 3.2 Given the need to progress the works in a timely manner in order to inform the Council's negotiations with the proposed developer of the George Street units, it is not considered practical given the nature of the service required to seek to procure such consultants through competition from the YorConsult Framework. Such a procurement approach would delay the receipt of information required by the Council's for its negotiations with the proposed developer for George Street and, ultimately the implementation of any remedial works that may be considered necessary to ensure the long term future and performance of the blockshops.

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

- 3.3 If the proposed recommendation is not approved, then the alternative course of action would be to seek to appoint a consultancy with the appropriate relevant experience across different types and forms of construction in historic buildings from the YorConsult Framework or via open competition via the Council's YorTender site. Both courses of action have the potential to significantly delay the receipt of information relating to interface issues with the proposed George Street development, implementation of the proposed monitoring regime and, as a consequence, the

development of any proposed remedial works that may ultimately be identified as being required to address the problem of rainwater ingress and to ensure the long term performance of the blockshop units and the roof areas above.

## **Advertising**

- 3.4 The Director of City Development should note that no advertising will be undertaken with regard to Arup's appointment.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 The Executive Member for Regeneration, Transport and Planning has been consulted and is 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 The proposals contained in this report support the Good Growth priority in the Council's Best Council Plan 2017/18 by promoting investment which will contribute to economic growth and job retention/creation.

### **4.4 Resources and Value for Money**

- 4.4.1 The fee proposed by Arup to provide the required specialist heritage engineering advice and support to the City Council is detailed in Appendix 1 of the report which is Exempt/Confidential under Access to Information Procedure Rules 10.4.(3).
- 4.4.2 Funding for the fees for the provision of heritage engineering advice will be funded from existing budget provision, Capital Scheme No. 16811.

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

- 4.5.1 The Council's Procurement Unit has advised that it would be lawful for the Council to Waive CPR's 8.1 and 8.2 in these circumstances provided that the Director of City Development is satisfied that there are compelling reasons to do so.
- 4.5.2 The Director of City Development should note that CPR's 8.1 and 8.2 state 'where no appropriate Independent Service Provider, exclusive supplier, existing provider or approved framework agreement exists, competition in the form of three written tenders will be invited for procurement with an estimated value at or over £10,000 but below £100,000.
- 4.5.3 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 an individual company.

- 4.5.4 Awarding a contract directly to the consultant in this way could leave the Council open to a potential claim from other providers to whom this contract 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 should be subject to a degree of advertising if it is considered that they may be of interest to other providers. 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.
- 4.5.5 The Director of City Development should consider paragraph 4.5.4 above. However, due to the specialist nature of the service being delivered and the relatively small value of the contract it is felt that the scope and nature of the services is such that it would not be of interest to suppliers in other EU Member States.
- 4.5.6 Although there is no overriding legal obstacle preventing the Waiver of CPR's 8.1 and 8.2, the above comments should be noted. In making a final decision, the Director of City Development should be satisfied that the course of action proposed represents best value for money to the City Council.
- 4.5.7 The proposal contained in the report constitutes a Significant Operational Decision and is not subject to Call In.

## **4.6 Risk Management**

- 4.6.1 There is a risk that the budget to be made available to meet the anticipated consultant fees will be insufficient. This risk will be mitigated by continually reviewing the nature of the advice and actions to be undertaken to ensure that the most appropriate level of resource is allocated to the required tasks.

## **5 Recommendation**

- 5.1 The Director of City Development is recommended to approve the Waiving of Contract Procedure Rules 8.1 and 8.2 to appoint Ove Arup and Partners to provide specialist heritage engineering advice at Kirkgate Market without the need for inviting competitive tenders for the proposed commission.

## **6. Background documents**

- 6.1 None.