

HAMBLETON DISTRICT COUNCIL

Report To: Cabinet
12 March 2019

Subject: **CENTRAL NORTHLERTON IMPROVEMENT WORKS - WAIVER OF PROCUREMENT PROCEDURE RULES**

All Wards
Leader: Councillor M S Robson

1.0 PURPOSE AND BACKGROUND:

- 1.1 This report seeks approval to waive the procurement rules set out in the Council's Procurement Procedure Rules and Procurement Manual in relation to a contract to procure physical improvement works to The Link and East Road in Northallerton.
- 1.2 The Council recently secured from the Local Enterprise Partnership (LEP) the sum of £3.167 million as a contribution towards improvement works to road infrastructure and town centre linkages in central Northallerton. These include improvements to Crosby Road, East Road, Zetland Street, and New Row and Central Arcade. The Council has entered into an agreement with the LEP to deliver these improvements.
- 1.3 The Council is required to procure the services of a contractor or contractors to deliver the improvement works. It is anticipated that the majority of the works will be procured from the County Council through a North Yorkshire County Council framework agreement. Any procurement through that framework will comply with the Council's Procurement Procedure Rules.
- 1.4 However, certain works (namely improvements to The Link and East Road in Northallerton) are required to be undertaken alongside the Treadmills development by the developer/landowner of the site, the Central Northallerton Development Company Limited ("CNDCL"). The planning permission for the Treadmills site requires various highway improvements, part of which are on land owned by CNDCL. As such, these works will need to be implemented sequentially as part of the Treadmills development. Given the developer's obligations to deliver the improvements, and the fact that those improvements require access to land owned by CNDCL, the developer is best placed to deliver the improvement works.
- 1.5 The estimated value of the Council's contribution to the Link/East Road improvement works is £474,158.00. This has been funded by the LEP. The developer will also be providing a financial contribution to ensure the project is delivered. The cost of the works has been independently verified as part of the Council's LEP bid and, in the particular circumstances of the case, represents best value for the Council.

2.0 APPLICATION TO WAIVE PROCUREMENT RULES

- 2.1 The Council's Procurement Procedure Rules normally require a works contract of this value to be formally advertised for tender. The Rules anticipate that at least four tenders will be requested and at least two compliant tenders must be received.

2.2 However, there is provision in the Council's Procurement Procedure Rules (as set out in the Procurement Manual) for Cabinet to provide an exemption to these rules in exceptional circumstances. A waiver of the procurement rules may be agreed by Cabinet, if it is satisfied, after considering a written report, that the waiver is justified because:

- (i) The nature of the market for the works to be carried out for the goods or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of the Procurement Procedure Rules is justified;
- (ii) The contract is for works, goods and services that are required in circumstances of extreme urgency that could not reasonably have been foreseen;
- (iii) The circumstances of the proposed contract are covered by legislative exemptions;
- (iv) The goods are proprietary items and no satisfactory alternative is available;
- (v) Requirements are needed to match a partial replacement or an addition to existing goods or installation;
- (vi) There are other circumstances which are genuinely exceptional.

2.3 Any exemption must be justified on the basis that in the particular circumstances of the case it will deliver Best Value for the Council.

2.4 This report requests Cabinet to approve a waiver of the Council's Procurement Procedure Rules on the basis that there are circumstances which are genuinely exceptional (point 2.2vi above), namely that CNDCL (for the reasons set out at paragraph 1.4 above) is best placed to deliver the improvement works and, therefore, represents best value.

3.0 LINK TO COUNCIL PRIORITIES:

3.1 Driving Economic Vitality - the delivery of the improvement works in connection with the wider Treadmills development will assist in promoting the growth of the local economy, will enable business to grow, will improve market town vitality and viability, and ensure delivery of one of the Council's key projects.

4.0 RISK ASSESSMENT:

4.1 The key risks are in not approving the recommendations as shown below:-

Risk	Implication	Prob*	Imp*	Total	Preventative action
Risk that alternative contractor may not be able to deliver the improvements in a timely manner.	May lead to delays in the Treadmills development and wider improvement works.	3	5	15	Waive Procurement Procedure Rules
Possible loss of developer contribution to improvement works	Risk to delivery of improvement works	3	5	15	Waive procurement Procedure Rules

Prob = Probability, Imp = Impact, Score range is Low = 1, High = 5

5.0 FINANCIAL IMPLICATIONS:

- 5.1 The Council's contribution towards the improvement works has been secured through funding by the LEP.

6.0 LEGAL IMPLICATIONS:

- 6.1 The Council is required to deliver the improvement works pursuant to its agreement with the LEP. The developer will be required to enter into a similar agreement with the Council.

7.0 EQUALITY/DIVERSITY ISSUES

- 7.1 It is anticipated that the improvements to the highway will improve access for all.

8.0 HEALTH AND SAFETY ISSUES

- 8.1 All improvement works will be subject to full health and safety assessments.

9.0 RECOMMENDATIONS:

That Cabinet:-

- (1) grants an exemption from the Council's Procurement Procedure Rules; and
- (2) authorises the Deputy Chief Executive (at his discretion), in consultation with the Leader, to negotiate the terms of, and enter into an agreement with CNCDL to provide the improvement works to The Link and East Road, Northallerton.

MICK JEWITT
DEPUTY CHIEF EXECUTIVE

Background papers: Hambleton District Council's Procurement Procedure Rules

Author ref: Gary Nelson

Contact: Gary Nelson
Director of Law and Governance (Monitoring Officer)
Tel: 01609 767012