

<b>Decision maker:</b>	<b>Cabinet member contracts and assets</b>
<b>Decision date:</b>	<b>10 November 2017</b>
<b>Title of report:</b>	<b>Development and regeneration programme procurement completion</b>
<b>Report by:</b>	<b>Programme director housing and growth</b>

## **Classification**

Open

## **Decision type**

Non-key

## **Wards affected**

(All Wards);

## **Purpose and summary**

To approve the expenditure required to complete the procurement of the development and regeneration provider including a financial assessment of the identified preferred bidder. The financial assessment is required as part of the due diligence process to ensure that the preferred bidder is of sufficient financial standing to enter into the contract. The assessment will support the officer in deciding whether to support the award of the contract.

## **Recommendation(s)**

**That:**

- (a) a further £50k be approved to complete procurement including due diligence requirements**

## **Alternative options**

1. The contract award could be confirmed using the financial standing analysis that was carried out at the qualification stage. However, in light of concerns raised by members, changes to the bidding organisation since the qualification stage, and the significance of

any potential contract award, it is considered that further analysis is appropriate to inform any decision to award the contract.

## Key considerations

2. Herefordshire Council are in the process of appointing a developer to work in partnership with the council to deliver a development and regeneration programme (DRP). Projects within the programme will be approved on an individual non-obligation business case basis, however the OJEU notice allowed for a maximum programme/contract value of £200m over a potential 20 years.
3. The required project budget was originally estimated as £250k. The procurement is now expected to cost approximately £300k due to a number of changes that have put pressure on the budget. These include:
  - a. An extension to the timeline – the procurement was originally due to approve a preferred bidder for the programme in April 2017. This was extended to July 2017 with an additional round of dialogue meetings – the refined solution stage – added. This was done to allow the substitution of one of the original first batch sites which was found to be too small to be economic; and
  - b. A change of approach to contract development meant that contract development costs have been included in the project expenditure.
4. The preferred bidder was approved by Cabinet at its meeting on 27 July 2017 and authority delegated to the director for economy, communities and corporate having consulted with the chief financial officer and cabinet member contracts and assets, and having received satisfactory confirmation of tender commitments, to complete contractual arrangements with Keepmoat for a period of 10 years.
5. The council has undertaken due diligence throughout the procurement including initial financial standing assessments at the pre-qualification questionnaire (PQQ) stage of the procurement. In order to complete the due diligence process to enable an award of contract, and having regard to the advice of the chief finance officer, it is recommended that a further, independent assessment of the developer's financial standing be undertaken in accordance with the procurement framework to specifically provide assurance to the council that:
  - a) a robust analysis of the developer's financial records has been undertaken and has found no financial reason why the developer would be unable to deliver the council's development and regeneration programme;
  - b) a robust analysis of the developer's organisational group inter-dependencies has been undertaken and found no financial reason why the developer would be unable to deliver the council's development and regeneration programme; and
  - c) the developer is of sound financial standing, appropriate to the size of contract.
6. The assessment will provide an assurance report which addresses the three key points identified above, highlights any areas of concern/risk and provides recommendations for mitigating those risks.
7. This will provide the chief financial officer with the assurance necessary to support the confirmation of the award of the contract to the preferred bidder.

8. The chief financial officer has advised that the financial assessment be carried out by a suitably qualified individual in an independent organisation. It is crucial that the council is confident that the provider appointed to deliver the programme is of suitable financial standing. This report is, therefore, important in underpinning the council's decision to appoint its development partner.
9. Officers are continuing to work on the project pipeline to ensure that once procurement is complete the development partnership can mobilise quickly. Projects outside the first batch projects are being considered as part of the council's prioritisation and approval process.
10. Once the contract award has been confirmed final negotiations will take place with the preferred bidder to clarify and contractualise final tender commitments and mobilise the first batch projects. These are the projects that have been included in the programme as a result of the procurement process. The approach and costs associated with contractualisation and mobilisation will be the subject of a further Cabinet member decision before we commit to any individual projects.

## **Community impact**

11. The development and regeneration programme is expected to contribute to the community both through direct investment of a proportion of the profits from the programme and through economic development of the county.
12. The council's corporate plan 2016-2020 includes the following strategic priorities: helping residents to live safe, healthy, independent lives; keep children and young people safe and give them a great start in life; support the growth of our economy; and to secure better services, quality of life and value for money.
13. The wider Herefordshire economic vision sets out a bold and ambitious framework for economic growth within the county, guiding investment to, and within, the county and is supported by the recently adopted core strategy. Delivery of the core strategy and economic vision will rely on significant investment in a variety of developments across the county.
14. Supporting the corporate plan and economic vision, the council's property strategy for 2016 to 2020 includes the objectives to maximise the economic benefits of the council's property asset base and to support economic development and housing growth. The development partnership will facilitate the realisation of these economic benefits.
15. The council is committed to providing a healthy and safe environment for all individuals impacted by the council's funded activities. The council endeavours to ensure that the work they and their partners undertake, does not adversely affect the health, safety or welfare of members of the public especially visitors. Therefore council partners are expected to work to the same health and safety standards and codes of practice as the council, as far as is reasonably practicable. This requirement will be included in the final contract terms.

## **Equality duty**

16. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
17. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this is a decision to appoint a provider to deliver a specific assessment, we do not believe that it will have an impact on our equality duty.

## Resource implications

18. This funding is part of the budget for the procurement. However, the procurement budget does not have capacity to meet this additional cost. Additional resources are, therefore required.
19. The procurement project is currently overspent by £28k. There is now a requirement to carry out the financial assessment which is estimated to cost a further £10k. The project, therefore, requires a further £50k of resources (including £12k of contingency) making the total cost of procurement £300k. An existing operational budget within the commercial team in Environment and Place has been identified to cover the additional spend. The spend is one-off revenue.
20. The assessment is required in order to give confidence that the preferred bidder is financially capable of meeting the commitments of the development and regeneration programme and therefore capable of delivering the expected benefits. According to the crown commercial services (CCS) the financial assessment of potential providers should be undertaken in a manner that is proportionate, flexible and not overly-risk averse while ensuring taxpayer value and safety is protected and the relevant EU Procurement Law complied with.

## Legal implications

21. The procurement process specifies the due diligence that will be completed before the contract can be awarded.

## Risk management

Risk / opportunity	Mitigation
There is a risk that the council appoints a preferred bidder that ultimately proves to be incapable of delivering the service required by the council	Getting a financial assessment and recommendation from a well-respected financial advisor will confirm the financial standing of the preferred bidder and give the chief finance officer the confidence to recommend that the contract award is confirmed
There is a risk that the cost of carrying out	The assessment will be procured by

the work is higher than anticipated	competitive tender ensuring that the council pays a competitive rate  Contingency has been included in the estimate of cost to complete the procurement
There is a risk that the council will not receive any bids for the work	The commercial team will request bids from a range of suitable organisations

## Consultees

22. This assessment has been requested as a result of concerns raised during member consultation on the decision to appoint the preferred bidder.

## Appendices

None

## Background papers

None identified