

Record of officer decision

Decision title:	Procurement of Remaining Priority Flood Repair Works
Date of decision:	2 July 2021
Decision maker:	Director for Economy and Place
Authority for delegated decision:	<p>Cabinet decision on 23 July 2020 Reallocation of capital programme budgets for priority flood works:</p> <p>subject to the decision taken at Council confirming the changes to the capital programme, the director of economy and place be authorised to procure the priority flood repair works;</p> <p>http://councillors.herefordshire.gov.uk/mgIssueHistoryHome.aspx?Id=50033832</p>
Ward:	All
Consultation:	<p>Chief Finance Officer, Solicitor to the Council, Cabinet Member for Infrastructure and Transport.</p> <p>The Cabinet Member for Infrastructure and Transport supports this recommendation</p>
Decision made:	<p>That:</p> <ul style="list-style-type: none"> • Both the existing procurements for the Whitney of Wye scheme as a design and build commission and the various flood damage sites through a new framework contract, are discontinued; • The investigation and design element of the Whitney of Wye scheme now be delivered through the Public Realm Services Contract with Balfour Beatty Living Places, with the build element now being delivered through a further separate open market tender. This works tender will follow once the designer has produced an outline design; • The various flood damage sites will now be delivered through an open tender for the entire remaining works; • The staff resources necessary to enable the procurement and works supervision of the various flood damage sites are commissioned through Hoople Ltd and costs are funded from the flood repair capital budget; • The works supervision of the build element of the Whitney on Wye scheme will be commissioned from Balfour Beatty Living Places through the Public Realm Services Contract. The cost of this function will also be funded from the flood repair capital budget; and • The staff resources necessary to support the procurement and commercial management of the Whitney on Wye scheme are also commissioned through Hoople Ltd and costs are funded from the flood repair capital budget.
Reasons for decision:	Following the decision taken by Cabinet on 23 July 2020 and the subsequent funding decision taken by the Council on 4 August 2020, the

works to repair all remaining priority flood damage sites were to be commissioned and delivered.

Consequently the Director of Economy and Place took the decision on 22 September 2020 that:

All remaining elements of the Fownhope work (estimated scheme value £1m including all management support) be delivered through the Public Realm Services Contract;

The Witney of Wye scheme (estimated value £0.5m including all management support) be delivered as a design and build commission;

The various flood damage sites (estimated value £0.962m including all management support) be delivered through a new framework contract aimed at providing a 'post' COVID opportunity directly to local SMEs; and

The managing agent support to the council's own project and contract management costs, as required to deliver these schemes, is commissioned through the Public Realm Services Contract.

The Fownhope Scheme has now been delivered through the Public Realm Services Contract.

The Whitney of Wye scheme has been tendered as a design and build commission. However, no returns have been received from the market. Consequently, as we are unable to progress to the delivery of this scheme via this procurement route, it is discontinued. Analysis of feedback received during the tender period from prospective bidders suggests that there is a limited appetite in the local market for a design and build commission of this nature.

A framework has been put to the market for the various flood damage sites. However, analysis of the prices received concludes that this framework does not represent value for money for the council, when compared to other available delivery options. For this reason it is proposed that we discontinue this procurement.

As a consequence alternative delivery options are sought for both the Whitney on Wye scheme and the various flood damage sites.

In regard to the Whitney on Wye scheme, it is proposed that these works are procured through a two stage approach, as follows:

the first for the investigation and design work, culminating in the production of a final design and all associated specifications and tender documentation. This first stage is proposed to be commissioned from Balfour Beatty Living Places through the Public Realm Services Contract.

the second stage will be for the works in accordance with the design works as the product of the first commission. Meaning that the second works tender will follow once the Balfour Beatty Living Places have produced an outline design...

The first stage can be commissioned following this decision and investigation work will be mobilised within the following month. The procurement of the second phase, the repair works themselves, will have to follow on from the completion of an outline design, this procurement would take an estimated 6 to 8 week period to complete, though work on the works tender can be progressed, to some degree, in parallel with the design process, particularly during the period following production of an outline design to completion of the final design solution. This option will ensure that value for money is secured through a competitive process for the works, whilst allowing the necessary investigations and design to progress as soon as it practicably can following this decision.

	<p>In regard to the various flood damage sites, it is proposed that these works are now procured through an open tender for the entire works. This will ensure that value for money is secured for these repair works through a competitive process. It is anticipated that this option will take approximately 10 weeks to commission.</p>
<p>Highlight any associated risks/finance/legal/equality considerations:</p>	<p>Legal: If this work is not progressed, the council will not have met its duty to maintain the highway. As the works here are not in the Annual Plan for the Public Realm Services Contract and given that the contract is not an exclusive contract there is no obligation on the Council to call off these works from that contract. The Council has the choice of procurement routes and has considered these for each scheme.</p> <p>Risk: Community - the wellbeing, connectivity and prosperity of residents and business across the County, and potentially in neighbouring Counties, be unduly compromised by the ongoing deterioration in the condition of the highway. This particularly if that deterioration necessitates further road closures on the grounds of safety. Mitigation can be achieved by progressing to delivery soonest.</p> <p>Risk: Asset Condition – sites damaged by Storm Dennis in February 2020 have suffered further damage and deterioration and will continue to do so by the time repairs are actioned, resulting in the need for further repair work and an increase in the time and cost of the repair of all sites. Some contingency for this has been included in prior cost estimates, but particularly in the case of Whitney on Wye, the site has yet to be investigated in detail and as such the true scale of the repair needed is highly susceptible to change. It should be noted that deterioration in the condition of the highway has, to date, necessitated closures at 3 sites, [namely Tereece at Llangarron, Tressick Mill Road at Hoarwithy– erosion and surface damage and Browns Lane in the Golden Valley. To mitigate, these works having been progressed through the Public Realm Services Contract under a separate decision. Further mitigation can be achieved by progressing to delivery soonest.</p> <p>Risk: Safety – ongoing deterioration of the highway at these storm damaged site, coupled with the time that will elapse before repairs can be delivered by the chosen procurement route, will increase the likelihood and potentially severity of damage or injury to highway users and their vehicles, also the risk of damage to adjacent property will increase. The related ability to defend against all claims made by third parties for damage or injury as a consequence of highway defects and any proven failure to meet the duty to maintain (established by section 41 of the Highways Act 1980) under section 58 of the Highways Act 1980 may also be compromised. Mitigation can be achieved by progressing to delivery soonest.</p> <p>Risk: Statutory – in addition to the need to meet the duty to maintain as established by section 41 of the Highways Act 1980 through the response to all highway defects in accordance with the Highway Maintenance Plan, the prolonged closure of any route will expose the council to risk that it is not meeting its network management duty as established by section 16 of the Traffic Management Act 2004. Mitigation can be achieved by progressing to delivery soonest.</p> <p>Risk: Market interest – there has been limited interest from the market in the works as offered to date. Returning to the open market may not result in the return of competitive tenders that represent value for money to the council. The proposed approach seeks to mitigate this risk by presenting these works in packages that, based on feedback will attract more interest from the market, compared to prior procurements.</p>

	<p>Risk: Mobilisation - in all cases the time between the selection of a contractor and the mobilisation of works on site will be dependent on the availability of the contractor's resources. Significant time may be introduced into delivery. To mitigate availability can be tested during the evaluation of tenders received.</p> <p>Risk: Network Management - works to all sites will need to be coordinated with those of all others (including all statutory undertakers) who have a right to undertake works within the highway. To mitigate all appropriate noticing and applications for road space can be commenced by the service prior and during the tender period.</p> <p>To progress these procurements, supervise works and to take all actions to mitigate, so far as able, the identified risks the highway service will require additional staff resources:</p> <p>In respect to the various flood repair works, a clerk of the works and support from an additional engineer will be required for a fixed term, it is proposed that these resources are commissioned through Hoople Ltd and costs are funded from the flood repair capital budget.</p> <p>In respect to the Whitney on Wye scheme it is proposed that works supervision of the build element of the Whitney on Wye scheme will be commissioned from Balfour Beatty Living Places through the Public Realm Services Contract. The cost of this function to also be funded from the flood repair capital budget. Additional contract management and project management support may be required may also be required. It is proposed that these resources are either commissioned through Hoople Ltd. or provided by the corporate project management team.</p>
<p>Details of any alternative options considered and rejected:</p>	<p>The various options for the procurement of these necessary works have been considered.</p> <p>In regard to the Whitney of Wye scheme, the alternative options are:</p> <ul style="list-style-type: none"> • To put the design and build commission to the market again. This option is discounted as having already advertised this opportunity as an open tender on the council's portal and the dedicated portal for England, it is considered that this would not be an option that is likely to produce a better result. This option can be taken quickly with a 4 to 6 week period for tender and evaluation; • That these works are procured through a two stage approach, as described earlier, but with both stages put to the open market. This will take time to prepare, an estimated 12 weeks to progress to the commissioning of the initial investigation and design works, with the procurement of the repair works themselves having to follow on from the completion of an outline design. The second procurement would then take an estimated further 6 to 8 week period to complete. This option will involve the procurement of two separate contracts and this will have a significant impact on delivery time, though work on the works tender can be progressed, to some degree in parallel with the design process, particularly during the period following production of an outline design to completion of the final design solution. This option will ensure that value for money is secured through a competitive process, but is discounted on the basis that it will take too long to be in a position to progress with investigations and design.

	<ul style="list-style-type: none"> • To procure these works through the use of an existing framework contract to which the Council has access. A suitable framework contract would need to be identified by the council's commercial team and to secure value for money there will be a competitive process to select a contractor to undertake these design and build works. This option would provide a balance between the need to expedite the repair works and demonstrate value for money through a competitive process but is discounted as no suitable framework has been identified. It is anticipated that this option will take approximately 15 weeks to commission, assuming that a suitable framework can be found; and • The use of the Public Realm Services Contract for all stages (as described earlier). This option will provide a more immediate route to commence delivery, Service Orders can be raised following a decision to take this option. This option is discounted on the grounds that value for money for the works element will not have been proven through a competitive open market process for these particular works. <p>In regard to the various flood damage sites, the alternative option is the use of the Public Realm Services Contract. This option will provide a more immediate route to delivery, Service Orders can be raised following a decision to take this option. This option is discounted on the grounds that value for money will not have been proven through a competitive open market process for these particular works.</p>
Financial Implication	The funding for these priority flood damage works was decided by Council on 4 August 2020. Any variation in overall funding requirements will be the subject of a separate decision.
Details of any declarations of interest made:	None

Signed

Date: 2 July 2021

Name: Andrew Lovegrove
Acting Deputy Chief Executive / S151 Officer