

	REPORT TO CABINET TO BE HELD ON 18 OCTOBER 2016				
NOT FOR PUBLICATION – The appendix to this report contains exempt or confidential information	<table border="0"> <tr> <td>Key Decision</td> <td>YES</td> </tr> <tr> <td>Forward Plan Ref No</td> <td>N/A</td> </tr> </table>	Key Decision	YES	Forward Plan Ref No	N/A
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Corporate Priority Safe and Healthy Prosperous Quality Environments	<table border="0"> <tr> <td>Cabinet Portfolio Holder</td> <td>Cllr. Mike Cockerill</td> </tr> </table>	Cabinet Portfolio Holder	Cllr. Mike Cockerill		
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REPORT OF: CHIEF EXECUTIVE – 16/231

WARDS AFFECTED: WHITBY WEST CLIFF, STREONSHALH AND MULGRAVE

SUBJECT: WHITBY PIERS COAST PROTECTION - APPOINTMENT OF CONTRACTOR

RECOMMENDATION (S):

Cabinet is recommended to :

1. Accept an offer from the Environment Agency to provide a further £62,000 of grant aid, and approve the increase of the budget for the early contractor involvement stage to £357,000; Note that no further financial contribution is required from the Council at this stage;
2. Approve that following an EU tender process, Balfour Beatty Civil Engineering Limited be selected as the Preferred Bidder for the early contractor involvement stage of Whitby Piers Coast Protection Works;
3. Delegate authority to the Portfolio Holder for Harbours, Assets, Coast and Flood Protection to approve the final terms of all relevant agreements with Balfour Beatty Civil Engineering Limited for the early contractor involvement stage of Whitby Piers Coast Protection Works (subject to resolution of outstanding issues to the satisfaction of the Section 151 Officer and Monitoring Officer) and authorise entry by the Council into the relevant agreements

REASON FOR RECOMMENDATION (S):

To manage the risks to people and the developed, natural and historic environments from sea flooding, coastal erosion and coastal instability over the next 100 years.

In order to identify the programme of necessary works for essential upgrading of Whitby Harbour Piers.

To comply with Defra and the Environment Agency best practice on coastal management, including taking into account contemporary guidance, studies and monitoring data.

HIGHLIGHTED RISKS:

A risk matrix is attached at Appendix A. The key risks are as follows :

- Costs exceed the amount of grant and contributions required to deliver the construction stage.
- Failure to attract sufficient third party contributions to enable the scheme to progress past tender stage.

1. INTRODUCTION

- 1.1 At its meeting on 17 February 2015, Cabinet was asked to consider (report ref 15/65 refers) the procurement of a contractor for the next early contractor involvement (ECI) stage of the project which is to carry out further relevant investigations, prepare a technical design, obtain necessary statutory consents and procure the works.
- 1.2 Cabinet were offered two alternatives; to appoint Balfour Beatty Construction Limited from the Scape Civil Engineering and Infrastructure Framework to undertake feasibility work or to request that Officers tender the works in accordance with EU procurement rules.
- 1.3 Cabinet resolved to request that Officers tender the works in accordance with EU procurement rules.
- 1.4 The competitive tender process has now been completed, and officers are recommending that Balfour Beatty Construction Limited are appointed to undertake the early contractor involvement stage.

2. CORPORATE AIMS/PRIORITIES AND THE COMMUNITY PLAN

- 2.1 The strategy will underpin a number of the Council's Corporate Plan aims:

Aim 1: Safe and Healthy

Aim 2: Prosperous

3. BACKGROUND AND ISSUES

- 3.1 Following Cabinet's decision to tender the works, a notice was placed in the Official Journal of European Union on 18 November 2015 inviting expressions of interest from potential contractors to work with its professional team during an Early Contractor Involvement (ECI) Stage to design the Works, obtain all statutory permissions, develop the Works and Site Information and to agree an NEC3 ECC Option A Price Contract with Activity Schedule for the next construction stage of coastal defences to the piers at Whitby.
- 3.2 The outcome of the pre-qualification process was reported to the portfolio holder for Harbours, Assets, Coast and Flood Protection on 1 April 2016 (report ref 16/103 refers) as required by the Constitution and the six companies approved were subsequently invited to tender.
- 3.3 By the due deadline on 6 June 2016, the Council received three tenders for the ECI services.

4. CONSULTATION

- 4.1 A significant amount of consultation and stakeholder engagement with both statutory and non-statutory consultees has been undertaken as part of the Whitby Coastal Strategy 2 in 2002, 2005 and 2010. Further consultation took place during the options appraisal stage in 2012.
- 4.2 Further public consultation will take place as the project is developed, including a statutory consultation as part of the planning application.

5. ASSESSMENT

- 5.1 The tender documentation sought information on costs and also a quality submission.
- 5.2 The tenders were analysed on the basis of the most economically advantageous tender comprising a cost and quality submission. The evaluation method used was in accordance with the CIRIA Special Publication 117 'Value by Competition' Method 4. The quality of the submission was weighted out of 50% and the financial element of the submission was weighted out of 50% in the assessment.
- 5.3 Tenderers were required to provide the following cost information :
1. A fixed price for the ECI services, including site investigations, detailed design, and obtaining of statutory permissions.
 2. Fixed fee percentages.
 3. Preliminaries establishments and rates to be used to develop prices for the later works contract.

- 5.4 The tenderers were also required to provide quality information covering a range of areas including :
1. Staffing structures.
 2. Method statements.
 3. Site information to be collected
 4. Approach to cost determination and open book accounting.
 5. Sustainability
 6. Subcontracting.
- 5.5 A comprehensive and detailed tender evaluation was undertaken by Project Managers Mott MacDonald and SBC Officers and a full copy of the tender evaluation report including all quality scoring and the commercially sensitive pricing information of all tenderers is included in private and confidential Appendix B.
- 5.6 Based upon the tender evaluation, Balfour Beatty Construction Limited are identified as the tenderer providing the most economically advantageous tender in line with the pre-established tender criteria, and are recommended as the preferred contractor for appointment to undertake the ECI stage in the sum of £155,202.

6. IMPLICATIONS

(a) Policy

- 6.1 There are no policy implications as a result of this report. The works to protect the piers accord with the adopted policy within the Shoreline Management Plan.

(b) Legal

- 6.2 The works will be carried out using the Council's permissive powers under the Coast Protection Act 1991 and also the Flood and Water Management Act 2010.
- 6.3 The tender process complies with the Council's Financial and Contract Procedure Rules and EU Procurement rules. This report is part of that process.

(c) Financial

- 6.4 There are financial implications associated with this decision. Grant aid of £295,000 has previously been provided for this ECI stage of the project by the Environment Agency.
- 6.5 Mott MacDonald have already been appointed for the ECI stage in the sum of £131,325 and now the appointment of Balfour Beatty is sought in the sum of £155,202.
- 6.6 The Environment Agency have therefore agreed to provide a further £62,000 of grant aid to support the project, including the Council's in house costs during the ECI stage.

- 6.7 The overall estimated cost of the scheme is £8.522m; with £4.812m of grant secured. However, under Defra's new "Partnership funding approach" contributions from "beneficiaries" of schemes need to be sought to supplement the Government funding available. Therefore in the future the scheme will need to secure further funding of up to £3.710m, with contributions from beneficiaries, of which the Council will be one.
- 6.8 The Council's strategy for providing its funding contribution was set out in its Coast Defence Finance Strategy which was approved by Cabinet at its meeting on 16 September 2016 (report ref 16/72 refers).

(e) Equalities and Diversity

- 6.8 There are no equalities and diversity implications as a result of this report.

(f) Staffing

- 6.9 There are no staffing implications as a result of this report.

(g) Planning

- 6.10 There are no direct Planning implications as a result of the report.
- 6.11 The piers are a listed structure and any refurbishment will require planning permission which will be subject to the statutory process. The Council's role as Local Planning Authority is not prejudiced by this decision.

(h) Health and Safety

- 6.12 There are no direct health and safety implications as a result of this report.

7. ACTION PLAN

- 7.1 The following action plan is proposed following approval to appointment a contractor :

Alcatel period	October/November 2016
Execution of contracts	November/December 2016
ECI services commence	Spring 2017
ECI Services complete	Autumn 2017
Secure funding contributions	October 2016 – Autumn 2017
Commence works	First quarter 2018



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Background Papers:

14/156 - Whitby Harbour Piers Coast Protection Scheme Phase 1

16/103 – Whitby Piers Refurbishment Work

Appendix A - Risk Matrix

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
1	10.02.15	Breach of EU procurement rules	Legal challenge. Legal cost to the authority Damage to reputation	Approval of the tender process has been obtained and the tender is considered to be EU compliant.	A3	A3	C Bourne	
2	10.02.15	Poor performance by Contractor	Knock on cost, time or quality effects on other contracts.	Protection under contract terms.	B3	B3	C Bourne	
3	27.9.16	Statutory permissions may not be obtained	Project does not progress	Early consultation with statutory consultees	A1	A1	C Bourne	
5	10.02.15	The cost of construction of the overall scheme is not viable and insufficient contributions from beneficiaries are forthcoming	Project will not proceed. Condition of structures will continue to deteriorate. Potential for structural failure.	Significant time built into programme to secure contributions. Alternative funding sources already being explored.	D4	D4	C Bourne	

Glossary of Terms

Risk	An event which may prevent the Council achieving its objectives
Consequences	The outcome if the risk materialised
Mitigation	The processes and procedures that are in place to reduce the risk
Current Risk Score	The likelihood and impact score with the current mitigation measures in place
Corporate Objectives	An assessment of the Corporate Objectives that are affected by the risk identified.
Target Risk Score	The likelihood and impact score that the Council is aiming to achieve
Service Unit Manager	The Service Unit or Officer responsible for managing the risk
Action Plan	The proposed actions to be implemented in order to reduce the risk to the target score

Risk Scoring

Impact	5	[Hatched]				
	4	[Hatched]	[Hatched]	[Hatched]	[Hatched]	[Hatched]
	3	[Hatched]	[Hatched]	[Hatched]	[Hatched]	[Hatched]
	2	[Hatched]	[Hatched]	[Hatched]	[Hatched]	[Hatched]
	1	[Hatched]	[Hatched]	[Hatched]	[Hatched]	[Hatched]
		A	B	C	D	E
	Likelihood					

Likelihood:

A = Very Low
 B = Not Likely
 C = Likely
 D = Very Likely
 E = Almost Certain

Impact

1 = Low
 2 = Minor
 3 = Medium
 4 = Major
 5 = Disaster