



Author/Lead Officer of Report:
James Fletcher, Flood and Water Manager

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Report of: Executive Director of Place

Report to: Cabinet Member for Transport and Development

Date of Decision: 11 December 2018

Subject: Contract for the provision of maintenance and emergency operational services for moveable flood defence assets in the Lower Don Valley

Is this a Key Decision? If Yes, reason Key Decision:-

Yes ☐ No ☒

- Expenditure and/or savings over £500,000

☐

- Affects 2 or more Wards

☐

Which Cabinet Member Portfolio does this relate to? Transport and Development

Which Scrutiny and Policy Development Committee does this relate to?
Economic and Environmental Wellbeing

Has an Equality Impact Assessment (EIA) been undertaken?

Yes ☐ No ☒

If YES, what EIA reference number has it been given? *(Insert reference number)*

Does the report contain confidential or exempt information?

Yes ☒ No ☐

If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-

*"The **appendix** is not for publication because it contains exempt information under Paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended)."*

Purpose of Report:

To approve the ongoing negotiations and principle of a direct award of a contract to Amey LG Limited to provide services in respect of our flood defences in the Lower Don Valley area. The services will include flood defence inspection, testing, maintenance and emergency operational services. We also seek to approve delegations in respect of the final terms and award of the contract. The report will also give an overview of the need to efficiently maintain the flood defences that the Council has built to assist in the prevention of flooding in the area.

Recommendations:

The Cabinet Member for Transport and Development:

1. Approves in principle a direct award of a contract for services, along with ongoing negotiations with Amey LG Limited to provide services of inspection, testing, annual maintenance and emergency operation of the moveable flood defences in the Lower Don Valley, subject to agreeing suitable terms.
2. Delegates authority to the Head of Procurement and Supply Chain in consultation with the Director of Legal and Governance to agree the finalise terms of the contract to provide the services, detailed above, with Amey LG Limited.
3. Delegates authority to the Head of Procurement and Supply Chain in consultation with the Director of Legal and Governance to award the contract to Amey LG Limited, once suitable terms have been agreed.
4. Delegates authority to the Head of Procurement and Supply Chain in consultation with the Director of Legal and Governance to take such steps as they deem appropriate to achieve the outcomes set out in this report.

Background Papers:

Closed report-24th March 2015- Officer Non-Key Decision Report to Executive Director of Place.

Lead Officer to complete:-		
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.	Finance: Paul Schofield, Finance and Commercial Services
		Legal: Nadine Sime, Legal Services
		Equalities: Annemarie Johnston, Business Improvement Manager, Place
	<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>	
2	EMT member who approved submission:	Laraine Manley, Executive Director, Place
3	Cabinet Member consulted:	Councillor Jack Scott
4	I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.	
	Lead Officer Name: Paul Billington	Job Title: Director of Culture and Environment
	Date: 6 December 2018	

1. PROPOSAL

Background

- 1.1 In response to the 2007 floods in Sheffield, the Council constructed new flood defence assets in the Lower Don Valley from Kelham Island to Meadowhall. The Council commissioned the construction of most of the defences as part of the Lower Don Valley Flood Defence Scheme which completed in December 2017.
- 1.2 Cabinet approved the Lower Don Valley Flood Defence Scheme and the various proposal and decisions needed in order to fund and construct the flood defence assets, in the report of the 31st December 2012. In the report of the 24th March 2015 The Executive Director of Place supported the continued implementation of the scheme and noted and endorsed the Council's position regarding future maintenance (this is attached as a background paper).
- 1.3 Most of those assets are fixed walls, however there are 19 moveable flood defences (flood gates and doors) located on both public and private land. The Council is responsible for the maintenance and emergency operation of those moveable flood defences in the Lower Don Valley in Sheffield.
- 1.4 The Council needs to procure a contractor to provide inspection and testing, maintenance and 24 hour emergency operation of the moveable flood defence assets within the scheme. The Council does not have the infrastructure to deal with a 24 hour service in-house. The Council's in-house facilities management services only operate during business hours. Therefore as an interim provision the Council entered into a short-term emergency response agreement with Amey LG Ltd in December 2017 to act as 'first responder' for the closure of flood gates and doors in an emergency. This agreement was approved under a waiver of the council's Standing Orders and has been extended, pending the Council putting in place a long term solution.
- 1.5 Details of the proposal
Amey LG Limited is the only viable option to provide a 24/ 7 emergency response service. Amey LG Limited already has the expertise and 24/ 7 service in place to assist the Council and would access the assets on behalf of the Council, whilst ensuring that the Council's maintenance obligations are met. Amey already provide a 24/7 highway maintenance service in the city from the Olive Grove Depot, they are best placed to continue to provide the emergency operation and related maintenance functions of the Lower Don Valley flood defences.
- 1.6 This report therefore proposes and seeks approval to directly award Amey LG Limited with a longer term contract to include inspection and testing, annual maintenance and the emergency operation of the moveable flood defence assets for a period of six years. The contract and service provided by the contractor would link in to the Council's

emergency plan and warning systems.

- 1.7 The Council's facilities management delivery service will continue to operate as 'second responder' in a flood emergency situation, to provide assistance during business hours.

2. HOW DOES THIS DECISION CONTRIBUTE ?

- 2.1 The new flood defence assets increase the flood protection primarily to businesses in the Lower Don Valley to a standard equivalent to a 1:100 chance of flooding taking place in any given year. This obviously has a positive economic impact on the area. The standard is met when the defences are watertight, which requires the moveable defences to be in the closed position. The flood gates and doors are located at openings within the defence walls that enable and improve access to pedestrians and vehicles, such as at bridge crossings.

3. HAS THERE BEEN ANY CONSULTATION?

- 3.1 There is no statutory duty to consult stakeholders in order to operate and maintain the built flood defences. The Council consulted the Lower Don Valley community during delivery of the flood defence scheme and received overwhelming support for the scheme.

4 RISK AND IMPLICATIONS OF THE DECISION

4.1 Equality of opportunity implications

This proposal to maintain and operate the built flood defences does not have any equality of opportunity implications.

4.2 Financial and Commercial Implications

- 4.2.1 The annual costs for inspection, testing, maintenance and operation will be funded by the Council's Flood and Water Management revenue budget. Amey LG have priced the services as follows:
 - a. Annual maintenance and inspection- fixed price of £10,620.
 - b. Emergency call out to close the defences- fixed price of £1,400.
 - c. Re-opening of defences when emergency no longer in force – fixed price of £650.
- 4.2.2 Due to the low value but high risk nature of the proposed contract it is the intention of the Flood and Water Management team to enter into negotiations with Amey LG Ltd, supported by the Highways and Property Procurement and Supply Chain team and Legal Services, to reach an agreement with Amey LG Limited on suitable terms that will ensure value for money on the services required. Those services are the inspection, testing, annual maintenance and the continued provision of the 24/7 emergency response.

- 4.2.3 Amey LG Ltd already provide a 24/7 highway maintenance service in the city from the Olive Grove Depot. As such, Amey are best placed to continue to provide the emergency operation of the Lower Don Valley flood defences. However, other options for inspection and testing and annual maintenance will be explored as part of the procurement strategy should a satisfactory agreement not be reached with Amey LG Ltd.
- 4.2.4 A waiver of Standing Orders will be required to award the proposed contract to Amey LG Ltd should the negotiations prove successful. The waiver of Standing Orders has been approved in principle by the Head of Procurement and Supply Chain service subject to this report being approved and acceptable terms and conditions of contract being agreed with Amey LG Ltd.

4.3 Insurance and Risk Implications

- 4.3.1 Construction of the new flood defences places a duty on the City Council not to cause flooding where it would not otherwise have occurred but for the creation of the defences. It follows that failure to close the defences in an emergency could result in the Council incurring losses above the level to which the Council can insure.
- 4.3.2 The Council proposes to mitigate this risk by appointing a suitably qualified contractor to provide a service of inspection, testing, maintenance and operation of the moveable flood defences. Liability for failure to operate the defences in an emergency will remain with the City Council and not be transferred to the appointed contractor because the additional risk premium payable to the contractor for unlimited liability would not be cost effective.

Legal Implications

- 4.4.1 The procurement of an Inspection, Maintenance and Emergency Operation contractor for the Lower Don Valley Flood Alleviation Scheme is incidental to the Council's statutory functions. The Council does have the specific power to do anything (whether or not involving the expenditure borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate or is conducive or incidental to the discharge of any of their functions under s.111 (1) of the Local Government Act 1972.
- 4.4.2 To the extent that the proposals are not covered in the above, power to proceed is also provided through the General Power of Competence, s.1 (1) of the Localism Act 2011.
- 4.4.3 The Council approved and built the flood defence assets under the scheme and approval was also given to enter into a funding agreement with the Environment Agency (EA), which provided some of the funds to construct these assets and also placed certain obligations on the Council. Decisions and approvals have already been made in respect of the scheme, along with the funding and the maintenance obligations/

liabilities of the Council in proceeding with the scheme. Now that the Council has these obligations it must maintain the assets in accordance with the funding agreement between the Council and the Environment Agency.

- 4.4.4 Should the Council fail to have a provision in place for maintenance (which must include inspection and testing) and the emergency operation of the moveable assets it created, this would be a breach of its maintenance obligations under the funding agreement. Failure to maintain would also risk reputational damage to the Council.
- 4.4.5 This is a direct contract award to Amey LG Limited, who already provides a certain amount of 24 hour response cover for the Council under a separate PFI contract in respect of Highways. The proposed contract would also include very similar duties around emergency operation and Amey would utilise the same team and staff members as are used on the PFI contract. Therefore the services Amey would be providing would be complementing the existing service the Council utilise under the separate PFI contract.
- 4.4.6 The Council is currently in negotiations with Amey LG Limited regarding the terms of the contract and will ensure that it reaches agreement on terms that are suitable to the Council and value for money on the services required. As this is a direct award there will need to be a waiver of contract standing order in place.
- 4.4.7 The maintenance and operation work will require access onto private land. The Council has drafted individual license agreements with all private landowners to allow the Council and the contractor access onto the private land for testing and inspection, maintenance and emergency operation of the flood asset. These agreements are in the process of being signed off and in the interim the Council has verbal agreements with all of the relevant businesses regarding access by the Council and Amey LG Limited.

5. REASONS FOR RECOMMENDATIONS

- 5.1 The Council's flood emergency first response plan requires a 24/7 operational control and management capability within the city in order to direct suitable resources to close the flood gates at short notice. Amey LG Limited have this capability and resources at their Olive Grove Depot in Sheffield.
- 5.2 Annual asset maintenance is required to keep the moveable flood defences at operational readiness throughout the year and to meet the terms of the Lower Don Valley Flood defence Scheme funding agreement between the City Council and the Environment Agency. In order to mitigate any operational/ maintenance interface risk it is preferable for Amey LG Ltd to undertake this work to ensure that the assets they will be operating in an emergency have been regularly maintained correctly.

