

Report to Portfolio Holder for Environment

Subject: Contract Award for Environmental Improvements to Netherfield Cinder path

Date: 7th January 2019

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Wards Affected

Netherfield

Purpose

To obtain approval to directly award the contract for environmental improvements to Netherfield Cinder path to S.P.G Construction Ltd.

Key Decision

This is not a key decision.

Recommendation(s)

THAT the Portfolio Holder for Environment:

approves the direct award of the contract for Environmental Improvements to the Netherfield Cinder path to SPG Construction Ltd.

1 Background

- 1.1 Improvements to Netherfield Cinder path (“the Project”) received an in principle funding approval from Waste Recycling Environmental Limited (“WREN”) in September 2018. The Project has many elements to it and involves the renovation of a historically significant Cinder path (shown on

Appendix 1) including signage, clearance works, path works, tree surveys, tree works, reseeding and earthworks. WREN had awarded funding for this project in September 2017 but due to ecological impacts of carrying out the treeworks in the bird nesting/bat roosting season the Project had to be delayed and the funding award from 2017 could not be progressed. A fresh funding bid was submitted in June 2018 and was subsequently approved by WREN subject to full submission of project details including details of any contract awards and completion of a funding agreement.

- 1.2 The Project is being led by the Localities Co-ordinator in Netherfield and the Service Manager for Parks and Street Care. In addition to WREN funding, CIL monies have been secured to improve lighting along the path, Gedling's tree team are carrying out the necessary tree works along the path and, as the tree works are close to the railway line, Network rail are required to supervise these tree works. An agreement with Network Rail to facilitate this has been completed.
- 1.3 In terms of the construction works to the path itself, the Council needs to appoint a contractor. The estimated value of these works is in excess of £50,000 and as such, in compliance with the Council's Contract Standing Orders an open tender procedure was undertaken in October 2018. There were two bidders who responded to the invitation to tender. The successful bidder, with the lowest bid, was SPG Construction Ltd ("SPG").
- 1.4 It was made clear in the tender documentation that the contract would not be awarded to the successful contractor until a funding agreement had been completed with WREN. Whilst the evaluation of tenders took place in early November, WREN did not provide a funding agreement for completion until 14th December 2018. Once the funding agreement was completed, the bidders were notified of the outcome of the tender evaluation. Unfortunately, due to the delay between submission and notification, SPG had lined up work to be carried out during the contract period. The period set out in the tender for the works to be undertaken was between the 7th January 2019 and 1st March 2019. These timescales tied into the Project Plan for all other elements of the Project including the tree works and Network Rail supervision.
- 1.5 SPG, when advised that they had been successful in their bid, indicated they would still undertake the works but were unable to start on site until the end of January 2019 and that completion would not happen by 1st March 2019. Contract Standing Orders which reflect the Public Contract Regulations 2015 and case law, do not allow post tender negotiations that result in a fundamental change to the specification or contract terms. Where there is such a change, the contract must not be awarded and must be re-tendered.

- 1.6 The alteration to the contract period, would be a fundamental change to the specification and the contract terms that were included in the contract documentation. The timescale for delivery of the works was short, it was also construction and earthworks to be undertaken in January which is not an ideal time of year given the weather conditions. Had the timescale for completion been different, it is arguable that more contractors would have submitted a bid. In addition, the contract contained liquidated damages clauses which are specifically linked to the contract period and demonstrated to prospective bidders that the timescales for delivery of the works were fundamental.
- 1.7 In order to comply with standing orders, the works should be re-tendered unless an exception to standing orders can be applied. Having considered the exceptions to standing orders, where a contract is funded by time limited grant funding from an external body and time limitations will not allow a full tender process to be completed, tenders are not required to be invited. In such a case, any contract award must be approved by the Cabinet Member responsible and must not contravene funding conditions.
- 1.8 The grant funding agreement with WREN, stipulates that the funding must be claimed by 30th September 2019. Whilst that may give the Council sufficient time to re-tender the Project, it would not enable the construction to be undertaken in line with the other elements of the project or in line with the timescales submitted to WREN for completion of the works. WREN have been notified that SPG could still start on site in January if the contract were awarded to them and they are content with this slight delay in the works. A re-tender would delay commencement of the works for at least 6 weeks, pushing the timescales back for commencement of the work to the end of February at the earliest.
- 1.9 WREN have made it clear in the funding agreement that the amount of funding awarded cannot be increased. The funding award for the construction works is based on the successful tender bid from SPG. Should there be any increase in that price during a second tender round WREN will not provide the funding and without the external funding the Project cannot complete. Given that tree works have already commenced this would be unsatisfactory.
- 1.10 The first tender process resulted in only two bids for the works, the prices bid were significantly different with SPG being the lower. It is possible that a second round of tenders would result in the same contract price being bid and as such funding for the project would be lost. In addition, given that works have already started on site, it is essential that the construction of the path commence as soon as possible. A re-tender process is likely to significantly delay the project, with no guarantee that the work would be completed and the funds drawn down in time for September, also, given the risk that a second tender would increase the price, and given that

WREN will not provide any further funding, a re-tender is likely to result in the Project having to be abandoned. This is the second time that funding has been secured for the Project. WREN are unlikely to grant funding for a third time.

2 Proposal

- 2.1 Given that it is unlikely the Project will continue and the WREN funding would be lost if works to construct the path are not commenced in January by SPG, it is proposed that the Portfolio Holder approve a direct award of the contract for works to SPG in line with the exception set out in Contract Standing Orders and detailed in paragraph 1.7 above. Save for a slightly amended commencement and completion date, the contract terms to be applied and the works to be undertaken in accordance with the details set out in the tender documentation.
- 2.2 SPG submitted a successful tender bid in the tender process, they have already gone through necessary due diligence checks as part of that process and have satisfied the Council that they provide value for money in relation to these works.

3 Alternative Options

- 3.1 The alternative option would be to re-tender for the works. As set out in this report, it is likely that tender bids would be above the grant funding level, there is also a risk that the works would not be completed in time for the September funding deadline, particularly if the tender were unsuccessful.

4 Financial Implications

- 4.1 The funding for the construction works at the price bid by SPG has already been approved. The funding agreement makes it clear that any increase to that price would not receive funding from WREN. In addition, any substantial change to the Project in terms of timescales or contractor may not receive approval from WREN and could result in the funding being lost. Given that the funding is time limited and based on the Project as submitted to WREN there is a real risk of funding being pulled if SPG do not commence works as soon as possible. There is insufficient budget to complete these works without the funding and it is unlikely that WREN

would award the funding for a third time.

5 Appendices

5.1 Appendix 1 – Plan of Cinder Path

6 Background Papers

None

7 Reasons for Recommendations

7.1 To ensure WREN funding can be utilised to complete works to the Cinder Path and to comply with Contract Standing Orders.