

REPORT TO: Mersey Gateway Executive Board
DATE: 26 January 2012
REPORTING OFFICER: Chief Executive
PORTFOLIO HOLDER: Leader
SUBJECT: Governance and Financial Approvals
WARDS: All

1.0 PURPOSE OF THE REPORT

1.1 To outline recent actions that have been taken by the Mersey Gateway Team in conjunction with senior officers in respect of financial and governance arrangements. The actions and procedure reported below have been exercised in accordance with the governance arrangements agreed with the members where certain authority is delegated to the Chief Executive in consultation with the Leader.

2.0 RECOMMENDATION: That

- (1) That the Board approve the approval procedure for Advance Works as outlined at Appendix One.**
- (2) That the Board note the Chief Executive's use of the Emergency Procedures in waiving of Standing Orders Part 4 (1.8.1 Forms of Tendering) in respect of the use of a Marine Site Investigation tender.**
- (3) That the Board note the appointment of Rock Infrastructure Ltd to provide commercial advice to the team. (Waiver to Standing Orders paragraph 1.8.2.c).**
- (4) That the Board note the Chief Executive action to award the contract for Private Sector Adviser – Finance and Commercial – to the contractor Daniel Hennessey on terms to be agreed, taken within his delegated powers, and that in light of the exceptional circumstances (namely need to independent external advice clear of conflict of interest with any potential bidder and in accordance with Procurement SO 1.8.2.c) the competition requirements of Standing Orders Part 4 be waived on this occasion in view of Propriety and Security.**
- (5) That the Board note the Chief Executive action to award the contract for Private Sector Adviser – Infrastructure & Technical – to the contractor Rod Holmes on terms to be**

agreed, taken within his delegated powers, and that in light of the exceptional circumstances (namely need to independent external advice clear of conflict of interest with any potential bidder and in accordance with Procurement SO 1.8.2.c) the competition requirements of Standing Orders Part 4 be waived on this occasion in view of Propriety and Security.

3.0 SUPPORTING INFORMATION

3.1 Advance Works Approvals

Following discussion with the Finance Director and Divisional Manager – Audit & Operational Finance, the financial approval procedure in respect of the Advance Works budget has been devised.

The DfT grant letter places emphasis on the Council to seek to minimise developments costs, and the procedure outlined at Appendix One ensures that all approvals for Advance Works are appropriately appraised to guarantee that the work is necessary to delivery of the project, either as requirements of the TWA order or removes a significant element of risk from the dialogue with potential project companies.

3.2 Marine Site Investigation

Authorisation from the Chief Executive was sought to waive standing orders in respect of the Marine Site Investigation tender to use a selected list of tenderers rather than an open tendering process, as in preparation of the documentation and final scope of the works to be undertaken, the following factors have become apparent that there were only a limited number of businesses that had the relevant expertise to undertake the contract.

Following standing orders would allow an “open field” followed by a qualification process to rule out bids from unsuitable tenderers. It was originally intended to run the qualifications in conjunction with tender evaluation to expedite that process. However, there was a concern that this approach would result in a large number of unsuitable tenders – given the particularly specialised area of work. The evaluation of these would be time-consuming and possibly delay the eventual contract award. Also, it is recognised that the considerable time and effort of responding to the tender would be wasted by those not meeting the qualification standard.

Competitive Dialogue is due to commence in mid February 2012 and to enable the eight core boreholes to be undertaken and the contractor to be in position to commence work on the next 14 boreholes, it is necessary for the contractor to be on site by 3rd March 2012.

Initial estimates for the value of this contract were less than £1m. However following a review of the previous MSI undertaken in 2006 and

the work that will be needed to inform potential bidders during the dialogue stage, the costs have been revised with an upper estimate for the contract value of £1.25m (including 20% contingency) based on the following factors:

- Project costs have risen significantly since the original 2006 marine investigation works due to the demand for similar works from the off-shore wind farm industry following the Round 3 announcements in January 2010;
- The highest element of the project costs are mobilisation, standard charge of the vessels and demobilisation;
- There are various methodologies being proposed for the undertaking of the works, which could lead to a wide variation in tender prices;
- Businesses not based in the UK would not be able to mobilise within the short time between contract award and commencement of works;
- There are eight core boreholes that need to be undertaken and a further 14 boreholes where the exact location will be determined by the potential project companies during the competitive dialogue stage. The collaborative nature of this approach sits well with the notion of recovering these costs from the Project Company at a later date;
- Discussions around the transfer of risk from the Council to the contractor;
- Internal discussions regarding the possible noise issue of 24/7 working upon the housing at the Deck (not an issue in the original MSI); and
- Data describing the unique nature of the Upper Estuary has been collated to better inform contractors.

The deviation from Standing Orders Part 4 (1.8.1) will be that instead of using the Forms of Tendering outlined and being advised using Due North, the tender will be sent to a pre-selected list of eight suitable tenderers. The selection of the parties has been undertaken by Gifford based upon their knowledge of this sector and having held initial discussions with potential parties to discuss the scope of the work required and timescales. The tenders will then be evaluated in the usual manner to ensure that value for money is obtained.

Given the timescales between the evaluation and award of contract, please treat this report as the Preliminary Estimate Report to MGEb.

3.3 Rock Infrastructure Ltd

The Chief Executive in consultation with the Leader of the Council, the Portfolio Holder for Resources and the Portfolio Holder for Transportation has appointed Rock Infrastructure Ltd to provide services that are required to support the preparation of the procurement process and to supplement the Council in the formal Competitive Dialogue procedure (contract negotiations) leading up to a Mersey Gateway DBFO Project Agreement being awarded (embracing the Demand Management Participation Agreement subject) and supported by any necessary funding agreements with lenders and investors (Financial Close). During this time they will also undertake duties as directed by the Council as required to establish the Mersey Crossings Board as a legal entity.

This appointment follows an evaluation period, where Rock Infrastructure Ltd has demonstrated value for money. The contract will expire 1st December 2013

3.4 Mersey Gateway Officer Project Board

The MG Officer Project Board has been long established to reflect best project management practice and assists the Chief Executive to discharge his authority delegated by Members.

At the MGEB on 17th March 2011, a report was presented (MGEB17 Procurement Process for Mersey Gateway – Necessary Delegation) to achieve the overall governance structure approved at this meeting, it was necessary to appoint the two private sector advisor roles of :

- Project finance and commercial expertise; and
- Senior technical infrastructure construction and maintenance expertise.

Accordingly Daniel Hennessey and Rod Holmes have been appointed to the roles accordingly on a monthly retainer basis, on a two year contract subject to a month's notice by either party.

In view of the need to appoint suitable private sector advisers who are independent of any of the potential bidders, it is not possible to advertise these positions through the normal procurement process and ensure that the Officer Project Board remains commercially secure in terms of the advice that will be given to the Chief Executive as the project now enters a particularly financially sensitive period. The Chief Executive has therefore only been able to appoint people to these positions who are trusted and known to have no external commercial interest in the project.

3.5 Business Case for Waiving Tendering Standing Orders in respect of Recommendations 3, 4 and 5

- Value for money and Competition

In relation to the value for money, the rates of remuneration of the consultants are in keeping with the market for elite skilled support for a high prestige and technically complex project. Judgment has been applied to the decision regarding the special personal skills and acumen of the consultants and to that extent testing the market would be unnecessary

- Transparency

The arrangement for the appointing the consultants will be subject to the Freedom of Information Act, Environmental Information Regulations and the internal and external audit processes

- Propriety and Security

Usual integrity clauses will be built into the contract document, the Bribery Act 2010 and associated public sector integrity legislation will apply to consultant contracts and only staff with a need to know will have information about the contract

- Accountability

This is secured through the Officer dealing with the award of contract, further underpinned by internal and external audit and associated scrutiny arrangements

- Position of the contract under the Public Contracts Regulations 2006

Given the complexity and sensitivity of the project the Officers are satisfied fundamental transparency and non-distortion of competition requirements have been satisfied

4.0 POLICY IMPLICATIONS

- 4.1 The project is a key priority for the Council which will deliver benefits locally and across the wider region.

5.0 OTHER IMPLICATIONS

- 5.1 The cost of the above appointments has been allowed for in the budget approved by the MGEB on 22 September 2011. All other substantive implications are reported above and in the report annex.

6.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

- 6.1 **Children and Young People in Halton**

Mersey Gateway provides an opportunity to improve accessibility to services, education and employment for all.

6.2 Employment, Learning and Skills in Halton

Over 500 construction jobs will be required for MG and matters are in hand to ensure the local community has access to these job opportunities. In the longer term, several thousand jobs are forecast to be created in the sub-region due to the wider economic impact of the project.

6.3 A Healthy Halton

Mersey Gateway provides an opportunity to improve accessibility to services, education and employment for all, including improved cycling and walking facilities.

6.4 A Safer Halton

The project will produce road safety benefits for road users including improved cycling and walking facilities.

6.5 Halton's Urban Renewal

Mersey Gateway Project is a priority project in the Urban Renewal Programme.

7.0 RISK ANALYSIS

The project structure supported by the proposed delegation and decision authority will reduce the risk of delay and improve the quality of the project control.

The Approval Process for Advance Works is specifically written to reduce risk associated with the awarding of contracts during the procurement stage.

8.0 EQUALITY AND DIVERSITY ISSUES

Mersey Gateway provides an opportunity to improve accessibility to services, education and employment for all.

9.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

9.1 None under the meaning of the Act.

Appendix One

Approval Process for MG Advance Works

Approval of Works

This includes enabling works, pre-construction surveys, demolition, remediation and any other works deemed necessary.

As the project now progresses, there is a need to undertake Advance Works on sites acquired prior to their handover to the Project Company and it was felt to be an appropriate time to have an approved authorisation process for such works.

Advance Works are managed by Gifford, the MG Project's consultant engineers, and will be reviewed with the Project Team on a regular basis. Any significant variations from budget will be highlighted at Officer Project Board.

The re-appointment of Gifford has been approved by Mersey Gateway Executive Board (27.01.11). The budget for Advance Works, including Gifford's fees is a standing item at Officer Project Board.

Gifford will produce an Activity Brief for all aspects of work to be undertaken in respect of the Advance Works budget. These documents will be endorsed by the Project Director and then form part of the budget control process.

In certain circumstances, it is accepted that Gifford may directly use a sub-consultant (who will be paid by Gifford) to deliver aspects of the Activity Brief. They will endeavour to minimise this and will produce, where possible, three quotes to demonstrate value for money.

Where the Advance Works require the appointment of a 3rd party contractor to be paid by HBC, then an Advance Works Commitment (AWC) Form will be produced outlining the work and approximate costs.

AWC Forms with a value of less than £100,000 will be sent to the Project Director for his endorsement, and once given then three invitations sought via The Chest. Once the procurement process has been completed and the contract value known, then the AWC Form will be revised and endorsed by the Project Director and approved by the Inward Investment Officer (in the absence of the Inward Investment Officer or any other Officer Project Board Officer, with appropriate delegated authority may approve the AWC Form), assuming that the value remains below £100,000 and there is no significant variation from the estimate. Should the value of the work be over £100,000 then the AWC will need to be approved via Officer Project Board.

AWC Forms with a value over £100,000 will be circulated at Officer Project Board, and if agreed then procurement, following standing orders, can commence. Once the contract value and the preferred bidder is known then the AWC Form will be revised and, where possible, circulated at Officer Project board before being approved by the Finance Director and Chief Executive (in the absence of the Finance Director/Chief Executive, any two Strategic Directors may approve the AWC Form).

It is important to remember that as the cost of these works will be recovered via the DfT grant, it is necessary to have a clear audit trail with an appropriate rationale explaining why the works are being undertaken and how they benefit the delivery of the project, and this will be demonstrated in both the Activity Briefs and the Advance Works Commitment Forms.

Invoice Approval

Authorisation of invoices will depend upon the value of the individual invoices received. Although the contract value may exceed £1m, the invoices could be less than £100,000 and on a stage payment certification basis. In most cases the nominated Contract Manager, as identified in the AWC Form, will be responsible for the management of the contracts and confirmation that the work has been undertaken prior to seeking the appropriate authorisation for payment.

Member Scrutiny

This process will be discussed on a regular basis by the Leader, the Portfolio holder for Resources and the Portfolio holder for Transportation.

Regular reports will also be made available to the Mersey Gateway Executive Board.