

King's Dyke Level Crossing Closure Scheme

To: Economy and Environment Committee

Meeting Date: 23rd April 2020

From: Steve Cox, Executive Director, Place & Economy

Electoral division(s): Whittlesey North & Whittlesey South

Forward Plan ref: 2020/002 **Key decision:** Yes

Purpose: To inform the Committee of the outcome of the procurement process for the Design and Construction contract for the Kings Dyke Level Crossing closure scheme, and to seek Committee's approval to award the contract to the preferred bidder subject to the approval of further funding by General Purposes Committee.

Recommendation: The Economy and Environment Committee is recommended to:

- a) Note the procurement process which, subject to approval, will reduce the budget required for the scheme by almost £10 million when compared to the previous construction contract price;
- b) Approve the award of the Design and Construction contract to the preferred bidder as detailed in section 2.8 of this report, subject to approval of further funding by General Purposes Committee;
- c) Support the recommendation to General Purposes Committee that additional funding of £2.018 million be allocated to the scheme;
- d) Support the recommendation to General Purposes Committee that a £1.5 million Covid-19 risk contingency be created;
- e) Delegate authority to the Executive Director - Place and Economy, in consultation with the Chairman and Vice-Chairman of the relevant Committee to use the Covid-19 contingency in relation to risks directly related to the Covid 19 pandemic to aid to project delivery.

Officer contact:		Member contacts:	
Name:	Andrew Preston	Names:	Cllr. Ian Bates/Cllr Tim Wotherspoon
Post:	Assistant Director, Infrastructure & Growth	Post:	Chair/Vice-Chair
Email:	andrew.preston@cambridgeshire.gov.uk	Email:	ian.bates@cambridgeshire.gov.uk Tim.wotherspoon@cambridgeshire.gov.uk
Tel:	01223 715664	Tel:	01223 706398

1. BACKGROUND

- 1.1 On 15th August 2019, the Economy and Environment (E&E) Committee approved the procurement of a new Design and Construction contract for the Kings Dyke scheme. This decision followed a significant increase in the proposed construction contract price from the previous contractor. A link to the report that informed this decision can be found at the end of this report.
- 1.2 At the time this meant that the budget required would have needed to increase to £41.6 million, almost £12 million more than the approved budget of £29.98 million. This was on the basis that the construction target price had increased from £15.9 million to £26.2 million plus associated contingencies. The breakdown can be found in the confidential appendix of this report.
- 1.3 The August 2019 E&E Committee agreed that the procurement of the new Design and Construction contract should proceed as an open market tender. This had to be conducted as a European Union (EU) tender as the estimated contract value was above the European Procurement threshold. A restricted two stage tender process was followed.

2. MAIN ISSUES

Procurement

- 2.1 The first stage of the procurement process was publication of a contract notice in the Official Journal of the European Union (OJEU) on 1st October 2019 and the issue of Selection Questionnaires (SQ). The SQ invites an interested provider to make a submission which is evaluated for financial and safety suitability, along with capacity and relevant experience, particularly with respect to some of the likely risks involved in delivering the project. The SQ received an excellent response with nine contractors expressing interest in the Design and Construction contract.
- 2.2 All nine SQ submissions were evaluated and the highest scoring contractors were invited to tender. The Invitation to Tender (ITT) was issued on 19th November 2019 to the six contractors considered most suitable.
- 2.3 A four month tender period then followed, which included 83 tender clarifications to questions from bidders and two specific opportunities for bidders to check design assumptions with the Council.
- 2.4 Independent specialist planning advice was also provided to bidders by the Local Planning Authority in response to the potential impact of any proposed design changes. This was on

the basis that the design must comply with the current planning consent and only non-material amendments were permitted.

- 2.5 This tender period closed on 13th March 2020 and three of the six contractors submitted a final tender. Unfortunately one of the tenders was deemed to be non-compliant and therefore subsequently had to be rejected from the process. This was on the basis that the proposed design was outside the planning permission red line boundary. The ITT contained a fundamental requirement that all proposals must remain inside this boundary, otherwise a new planning permission would be required, which was not acceptable.
- 2.6 The tender required a quality submission to demonstrate how the contractors proposed to build a high quality product to meet the requirements of the County Council, along with a target cost for the design and construction of the scheme. The tenders were submitted on the LGSS e-tendering system and the cost and quality submissions were evaluated by independent teams. No cost information was shared with the quality evaluation team until the evaluations had been completed. The scores for each component were then combined to give an overall score. The overall score was calculated on a ratio 60% price to 40% quality to identify the preferred bidder. The evaluation was undertaken by officers and consultants and independently moderated by LGSS Procurement Officers.
- 2.7 At this stage in the procurement process information on the bidders and details of the tendered prices are confidential. The overall result of the evaluation is set out in Table 1 below, with further details in the confidential Appendix 1.

Table 1 - Tender evaluation scores

Bidder	Financial Score (Max 60%)	Quality Score (Max 40%)	Total Score %
Bidder 1	60.00	23.00	83.00
Bidder 2	47.93	17.50	65.43

- 2.8 From the table it can be seen that Bidder 1 has provided the most economically advantageous tender and also scored highest in both financial and quality assessments. It is therefore recommended that the contract for the design and construction of the Kings Dyke Level Crossing closure scheme is awarded to Bidder 1. Details of the bidders' tendered prices are shown in the confidential Appendix 1 that will be circulated to committee members.
- 2.9 Subject to approval of the recommendations in this report and those to General Purposes Committee, the formal notification of the intention to award the contract will be immediately issued to all shortlisted contractors, which will trigger the stand still period. When undertaking a procurement exercise that is above the EU thresholds, a standstill period must be held before awarding the contract. The mandatory standstill period gives

unsuccessful bidders at least ten calendar days after being notified of an award decision to challenge the decision before the contract is signed with the successful bidder.

- 2.10 At the end of the stand still period the details of the contract award can be made publicly available, including the name of the bidder and tender price. This information will be included within the contract award notice in the OJEU and the Council will actively communicate this information.

Financial Implications

- 2.11 Whilst the confidential Appendix 1 shows the overall estimated budget now required to deliver the scheme has reduced by almost £10 million from the previous tender exercise, a further £2.018 million more than the currently allocated budget is still required to deliver the scheme when all expected expenditure and contingencies are included. With these, the total cost of the scheme and budget required is expected to be £32m compared to the previous figure of £41.6m
- 2.12 The breakdown included in the confidential Appendix 1 shows that this is based on the significant reduction in the preferred bidders' tender price over the Council's previous contractor in August 2019, despite the additional forecast costs associated with re-tendering and re-negotiation of land licenses.
- 2.13 The current approved scheme budget of £29.98 million is made up of £5.58 million from the County Council (Local Transport Bodies and residual capital), £8 million Growth Deal funding approved by the former Local Enterprise Partnership (LEP) and £16.4 million from the Cambridgeshire and Peterborough Combined Authority's (CPCA) Transforming Cities Fund.
- 2.14 The Growth Deal funding has now been fully spent and a funding agreement between the County Council and the CPCA formalises further expenditure of the £16.4 million Transforming Cities funding. The funding agreement also contains provision for any further costs above or below the current budget figure to be apportioned on the basis of 60% from/to the CPCA and 40% from/to the County Council.
- 2.15 The County Council's General Purposes Committee at its meeting on 23rd April 2020 will be asked to fund the additional £2.018 million required for this scheme. However, this is on the understanding that a £1.21 million contribution towards this cost will be sought from the CPCA, in accordance with the funding agreement. Whilst all further monies need to be fully quantified and secured, the full amount of additional funding is being sought from GPC to allow a contract for the scheme to be signed as soon as possible and not be delayed.
- 2.16 The business case for allocating further funding to this project remains very strong. As reported previously, the independently reviewed Major Schemes Business Case (MSBC) prepared in line with the Department for Transport (DfT) WebTag guidelines demonstrated very high levels of benefits from the scheme compared to its cost.
- 2.17 In fact the economic and transport user benefits were valued to be 8.37 times greater than the estimated cost to deliver this scheme. This is an exceptionally high benefit to cost ratio (BCR) with a figure in excess of 2 usually deemed to represent excellent value for money by the DfT.

- 2.18 The change in estimated scheme cost is unlikely to have a meaningful impact on a BCR of 8.37, however, the exercise to update it needs to be completed and is underway. This will be reported verbally to both Economy & Environment and General Purposes Committees.

Programme

- 2.19 The current timeline for project completion and the initial realisation of benefits is as follows, subject to successfully securing approvals for additional funding;

May 2020	Sign contract with preferred contractor
June 2020	Work to finalise design commences
December 2020	Construction commences
December 2022	Construction complete

- 2.20 It should be noted that there are risks that could potentially impact on this timeline and the revised and updated costed risk register can be found in Appendix 2 of this report. It is this list of risks that, when added together, set the value of the risk contingency that has been allowed for within the total estimated budget required. The more significant key programme risks from this register are listed below;

- agreement of final construction contract terms.
- completion of utility diversions. Ideally need to be carried out before construction commences. (May be carried out alongside construction but this brings some additional risk).
- Agreement of Network Rail possessions which need to be coordinated with the revised construction programme.
- Delays in gaining necessary Network Rail approvals
- Significant adverse weather
- Unforeseen ground conditions.

- 2.21 All red rated risks will be reported to E&E Committee on a monthly basis alongside financial and programme information within the monthly finance monitoring report.

Coronavirus (Covid-19) Pandemic

- 2.22 The outbreak of the Coronavirus pandemic has the potential to have a significant impact on this project. However, given the rapidly changing position with the virus and government responses, it is difficult to accurately quantify the risks. This is made even more challenging by it not being possible to discuss the impact with the preferred bidder until the notification of award has been issued following Committee approval.
- 2.23 The risk of impact on the design and construction contract is a Council owned risk and has the potential to lead to significant cost and programme increases. These could be caused by a range of issues, from materials not being available from suppliers to loss of capacity or productivity due to the availability of resources or required changes to working practices.

- 2.24 When discussions can take place with the chosen contractor, these risks can be more fully considered and potential options available to mitigate them identified. However, even at that stage, the nature of the risk will be uncertain and will depend on the course of the pandemic and actions to contain it throughout the year and outside of the Council and contractors control. Therefore, it is recommended that a specific Covid-19 project contingency budget be created to allow the project to proceed as quickly as possible and without the need for a further Committee cycle as long as the risks identified are within this contingency budget.
- 2.25 Committee is therefore asked to recommend to General Purposes Committee that a specific Covid-19 contingency budget of £1.5 million be created to fund any additional costs directly associated with the project caused by the impact of Covid-19. This budget would only be required where the impact cannot be reasonably avoided and closely managed risk mitigation controls will be in place to minimise the impact, in collaboration with the contractor.
- 2.26 It is proposed that all requests for use of this contingency be reviewed and approved by the Executive Director, Place & Economy in consultation with the Chairman and Vice-Chairman of this Committee. These decisions will be reported to E&E Committee on a monthly basis within the Finance Monitoring report and spending against the main project budget and the Covid-19 contingency will be clearly identified separately.
- 2.27 Whilst GPC is being asked to allocate the full amount of this additional Covid-19 contingency, it is proposed that discussions take place with the Combined Authority to fund this on a 60:40 basis as with the additional project funding noted in paragraph 2.15.

3. ALIGNMENT WITH CORPORATE PRIORITIES

3.1 A good quality of life for everyone

There are no significant implications for this priority.

3.2 Thriving places for people to live

The following bullet points set out details of implications identified by officers:

- Eliminating the delays at the level crossing will help to promote growth in the local area. This will help to promote jobs, business and housing.
- Both roundabouts have been sized to allow the 4th arm to be constructed which will open up development potential to the south.

3.3 The best start for Cambridgeshire's children

There are no significant implications for this priority.

3.4 Net zero carbon emissions for Cambridgeshire by 2050

- This transport scheme is aimed at reducing vehicle delays and congestion thereby reducing emissions from slower moving traffic or idling engines.
- The closure of the level crossing will facilitate an increase in train paths for both freight and passenger use of the rail network, reducing Heavy Goods Vehicle (HGV) and car movements.
- The assessed quality submissions showed that the Contractor's design seeks to minimise carbon emitted in construction by reducing vehicle movements and selecting materials with low carbon embodiment.

4. SIGNIFICANT IMPLICATIONS

4.1 Resource Implications

- The report above sets out details of significant resource implications in Section 2.16 onwards. Committee is asked to note the increased costs of £2.018m and request General Purposes Committee to approve the additional funding from Prudential Borrowing. This will reduce to £807,200 if the Cambridgeshire & Peterborough Combined Authority approves its 60% share of this increase, in accordance with the funding agreement. The annual cost of this £807k additional prudential borrowing will start at £40k per annum and decrease each year thereafter over 40 years.
- A Target Cost Contract has been selected, therefore actual costs will be paid (but subject to a pain/gain mechanism). The Target Price will vary to reflect any increase or decrease in the scope of the work required. In construction projects where unpredictable issues may arise, costs will almost certainly vary from the agreed Target Cost. At the end of the contract, any variance between the final target price and actual cost is apportioned between the contractor and the employer, allowing the contractor to share any savings made or to contribute towards overspend. This mechanism incentivises all parties to work collaboratively to deliver the project as economically as possible as underspends (gain) or overspends (pain) are shared in an agreed proportion.
- The contract is being managed and supervised in accordance with New Engineering Contract (NEC) requirements. All claimed costs and adjustments to the target price will be assessed by the NEC Project Manager, including specialist cost consultants, in negotiation with the contractor to ensure that they are justified, evidenced and demonstrate value for money.

4.2 Procurement/Contractual/Council Contract Procedure Rules Implications

The following bullet points set out details of significant implications identified by officers:

- A restricted OJEU process has been completed in accordance with contract procedure rules.
- Contract implications relating to Covid-19 are included in section 2.22 to 2.30 above.

4.3 Statutory, Legal and Risk Implications

Risks are detailed in the Risk Register presented to this Committee 5th March 2020 and updated in the Appendix. The register will be monitored throughout the project and mitigation agreed with relevant parties.

All red rated risks will be reported to E&E Committee on a monthly basis alongside financial and programme information within the monthly finance monitoring report.

The following bullet points set out significant implications identified by Officers:

- Risk categories include project funding, governance and technical risks such as coordinating work with Network Rail and Statutory Undertakers, unforeseen ground conditions, contaminated material and construction in Star Pit
- Additionally, there is a risk with Network Rail possessions not being available when required. It will be the responsibility of the successful contractor to organise and book the required possessions to suit its programme.
- The preferred bidder has not allowed what is thought to be an adequate risk allowance within their tender price. There is therefore a risk that the actual cost of the project may exceed the target price at completion. Under the pain/gain share percentage mechanism within the contract, the Council would be liable for a share of these additional costs above the target price. An appropriately priced risk has therefore been incorporated into the priced risk contingency.
- Challenges from unsuccessful tenderers.
- Health and Safety on the scheme will be managed in accordance with all relevant legislation, including the Construction Design and Management Regulations 2015 and all other relevant legislation.

4.4 Equality and Diversity Implications

There are no significant implications within this category. An Equalities Impact Assessment screening has been undertaken for the project previously.

4.5 Engagement and Communications Implications

The following sets out significant implications identified by Officers:

- A public engagement event on 12th August 2019 reaffirmed the preferred scheme option and was successfully followed up on 30th October 2019 with a more detailed discussion from a group of residents around 250-260 Peterborough Road.
- Further engagement will be undertaken in-line with the Communications Plan that will be overseen by the Project Board and Member Advisory Group.

4.6 Localism and Local Member Involvement

The following sets out significant implications identified by Officers:

- As set out above, local County, Town and District members will be engaged in the project via a Local Liaison Group. The first meeting was held on 19th February 2020 and further meetings will be arranged as and when required.

- This group may refer any concerns it may have to the King's Dyke Project Board or to the Member Advisory Group.

4.7 Public Health Implications

- The removal of the significant amount of traffic congestion currently caused by the level crossing will have a positive impact on air and noise pollution, which cause a wide range of health problems.

Implications	Officer Clearance
Have the resource implications been cleared by Finance?	Yes Name of Financial Officer: Sarah Heywood
Have the procurement/contractual/ Council Contract Procedure Rules implications been cleared by the LGSS Head of Procurement?	Yes Name of Officer: Jon Collyns
Has the impact on statutory, legal and risk implications been cleared by the Council's Monitoring Officer or LGSS Law?	Yes Name of Legal Officer: Fiona McMillan
Have the equality and diversity implications been cleared by your Service Contact?	Yes Name of Officer: Elsa Evans
Have any engagement and communication implications been cleared by Communications?	Yes Name of Officer: Sarah Silk
Have any localism and Local Member involvement issues been cleared by your Service Contact?	Yes Name of Officer: Andrew Preston
Have any Public Health implications been cleared by Public Health	No Name of Officer: Tess Campbell

Source Documents	Location
Kings Dyke Economy and Environment Committee Report, Decision Summary and Minutes from 15th August 2019 General project documentation including Major Schemes Business Case.	https://cambridgeshire.cmis.uk.com/ccc_live/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/1048/Committee/5/Default.aspx https://www.cambridgeshire.gov.uk/residents/travel-roads-and-parking/transport-projects/kings-dyke-crossing