

**REPORT TO:** Executive Board

**DATE:** 24 May 2012

**REPORTING OFFICER:** Strategic Director Policy and Resources

**PORTFOLIO:** Physical Environment

**SUBJECT:** Construction of access road to 3MG development – authorisations and waiver of Procurement Standing Orders.

**WARDS:** Boroughwide

## **1.0 PURPOSE OF THE REPORT**

1.1 To seek approval for the contractual arrangements for the construction of the western access road to the 3MG HBC Field development including a waiver of Standing Orders for Procurement.

## **2.0 RECOMMENDATION: That**

- (1) The Board approves the project as described in the Preliminary estimates section of the report;**
- (2) The Operational Director Policy, Planning and Transportation be authorised to award the contract for the construction of the 3MG Access Road to the Contractor Balfour Beatty Civil Engineering Ltd. in the sum of £4,330,784; and that in the light of the exceptional circumstances, namely that:
  - (i) Compliance with Standing Orders would result in a clear financial detriment to the Council; and**
  - (ii) Compliance with Standing Orders would result in the Council having to forego a clear financial benefit; and**
  - (iii) Compliance with Standing Orders would result in the Council having to forego a clear commercial benefit;**and in accordance with Procurement Standing Order 1.8.3, Procurement Standing Orders 2.2 – 2.12 and 2.14 be waived on this occasion.**
- (3) The Operational Director Policy, Planning and Transportation be authorised to award a contract for advance site investigation works (comprising sampling and testing) to the Contractor Balfour Beatty Civil Engineering Ltd. in the estimated sum of £15,000 and that in the light of the exceptional circumstances, namely that:
  - (i) Compliance with Standing Orders is not practicable because the Council's requirements can only be delivered by a particular supplier;****

**and in accordance with Procurement Standing Order 1.8.3(e), Procurement Standing Order 4.1 be waived on this occasion.**

- (4) The Operational Director Policy, Planning and Transportation be authorised to award the contract for further scheme design work to Atkins (Engineering and Design Consultants) in the estimated sum of £95,000 and that in the light of the exceptional circumstances, namely that:**

**(i) Compliance with Standing Orders is not practicable because the Council's requirements can only be delivered by a particular supplier;**

**and in accordance with Procurement Standing Order 1.8.3(e), Procurement Standing Order 4.1 be waived on this occasion.**

- (5) The Chief Executive, in consultation with the Leader and the following Portfolio holders; Physical Environment, Transportation and Resources, be authorised to take such action as he judges necessary to implement the construction access road to 3MG.**

### **3.0 SUPPORTING INFORMATION**

#### **3.1 Context**

3.1.1 The 3MG Executive Sub Board has previously approved the preliminary design for the western access road (ESB3 16 July 2007), given authority to enter into legal agreements with Knowsley Borough Council and with Network Rail for the construction and future maintenance of the proposed road and bridge (ESB2 24 September 2009), and authorised the entering into agreements with ProLogis UK Ltd for the development of HBC Field (ESB3 30 June 2011)

3.1.2 The access road will comprise a 7.3m wide carriageway with 3m footway cycleway, connecting to Newstead Road and its junction with A562 Speke Road and A5300 Knowsley Expressway. The road will be built upon embankment with an overbridge crossing of the West Coast mainline Railway (Liverpool Branch).

3.1.3 Two separate planning permissions are in place for the access road: North of the West Coast Mainline (Liverpool Branch) railway line, including a new roundabout junction and the realignment of Newstead Road within Knowsley MBC's administrative boundary; and for the section of access road south of the railway line within Halton BC boundary. All pre-commencement planning conditions have been discharged.

3.1.4 Over the course of the past 9 months officers have been working closely with the Council's approved development partner, ProLogis UK Ltd (PUK), on the delivery of the scheme including the western access

road and bridge. A draft development agreement between the Council and PUK has been prepared which was intended to commit PUK to deliver all of the necessary infrastructure works from funds generated from the sale of HBC Fields. PUK have consistently made it clear that any significant capital investment from them would only materialise when they had obtained pre-let agreements with customers.

- 3.1.5 In July 2011 PUK invited tenders for the access road and bridge construction and had identified a preferred bidder, with whom they entered into further discussions on alternative detail designs and value engineering proposals which have the potential to minimise cost and construction period.
- 3.1.6 In parallel, PUK have been progressing the design and layout of the development itself with their identified customer. HBC Officers have been proceeding with the drafting of the various legal agreements required with PUK and with Network Rail to enable the development to proceed. Unfortunately as of 30th April 2012 the customer has failed to confirm their commitment to the scheme.
- 3.1.7 Grant funding has recently been confirmed for the HBC Field development and consequently, as a result of the £4.5M Regional Growth Fund (RGF) and the Growing Places Fund (GPF) (£5.4m for HBC Field) there is an opportunity, to continue to make progress on the provision of access infrastructure works to the site, taking advantage of the advanced negotiations that have taken place with PUK's preferred bidder for the road and bridge scheme, to ensure that the commercial benefit of the competitive tender (which represents good value for money) is not lost, and to avoid the time and cost of preparing tender documentation and tendering the scheme afresh.

## **3.2 Preliminary estimates**

- 3.2.1 PUK invited competitive tenders for the construction of the western access road including the railway overbridge from civil engineering companies, using the scheme design and specification documentation prepared by Atkins, as HBC's design Consultants, and based upon the use of an Institution of Civil Engineers (ICE) Design and Build Contract for their construction. At design stage, the initial cost of the scheme was estimated to be in excess of £9.8M
- 3.2.2 Four tenders were received and Balfour Beatty Civil Engineering Ltd (BBCEL) submitted the most economically advantageous tender based upon an alternative tender quotation, which adapted the original Atkins design in respect of certain scheme elements, including bridge abutments and earthworks design and construction.
- 3.2.3 Since tender submission, PUK (in consultation with HBC and Atkins) have been in discussions with BBCEL in relation to the alternative design proposals. However, due to the parties' inability to commit the

significant resources referred to in paragraph 3.1.4, key aspects of the alternative design have yet to be progressed. These include:

- Further site investigation works comprising earthworks material sampling, testing and analysis to support the revised earthworks strategy;
- Earthworks re-design based upon the findings of the further site investigation;
- Bridge abutment re-design based upon a reinforced earth proposal;
- Routing of electrical service supply within the proposed bridge structure.

These works are vital to verify the suitability and acceptability of the alternative design solutions so that they can be considered for approval by the Council as Highway Authority and, in respect of the bridge design, by Network Rail.

3.2.5 In view of their involvement in the original scheme design, and the importance for continuity throughout the scheme design and approval process, only Atkins can provide the further design services required to develop the alternative design proposals at this stage of the Project, in the estimated sum of £95,000. Otherwise, there may be serious Professional Liability implications for the Council going forward and it is therefore proposed that Procurement Standing Orders be waived in this instance.

3.2.6 In terms of supporting the further site investigation works which are necessary to inform the alternative design proposals, BBCEL are best placed to undertake the material sampling, testing and analysis work as the revised earthworks strategy, upon which their alternative design proposals are based will ultimately form a key element of the permanent works design. It is proposed that Procurement Standing Orders be waived on this occasion and BBCEL are contracted to undertake the material sampling and testing elements of this investigation work in the estimated sum of £15,000.

3.2.7 In consultation with PUK, Council officers have been in discussions with BBCEL to review the extent of the scheme, such that the major elements of the access road could be delivered outside the Development Agreement, funded directly through the Council's Capital Programme. This approach would deliver an accessed development site and an enhance value of HBC fields, should the development need to be re-marketed.

3.2.8 At this stage it would be inappropriate to complete the access road south of the railway line. We do not know whether the site will eventually be developed for single or multiple occupiers. Following consultation we have concluded that the Council should retain flexibility for future development by providing a temporary access haul road only, to the south of the railway line. The final approach road to be

completed by the developer when there will be more certainty about the detailed development of the scheme.

3.2.9 By reference to the schematic drawing in Appendix 1, this reduced scheme would comprise (in summary):

- Areas 1, 2 & 3 New junction and realignment of Newstead Road (Subject to a Section 278 / Section 38 Highways Act Agreement with KMBC); Full construction of carriageway, footway/cycleway, street lighting & traffic signs provided.
- Area 4 Access Road north of railway line:  
Earthworks to road capping layer and subsoil drainage
- Area 4 Bridge and northern abutment (subject to Overbridge Agreement with Network rail):  
Full construction, with the exception of final road surfacing.
- Area 5 southern bridge abutment and temporary haul road only.

3.2.10 The estimated value of this work, based upon BBCEL's alternative tender submission (to PUK) is £4,330,784. This figure includes allowance for inflation of tender prices since submission on 10 August 2011.

3.2.11 The extent of the access road comprising S278 and S38 works within KMBC boundary will be subject to a 12 month maintenance period and thereafter will be adopted by KMBC and maintained by them as Highway.

3.2.12 Two further sums would become payable to third parties as follows:

- In accordance with the Section 278 / 38 Highway Agreement the sum of £400,000 will become payable to KMBC for highway improvements to the A5300/A562 junction.
- In accordance with an Easement Agreement the sum of £100,000 will become payable to Network Rail for rights over the West Coast Mainline Railway (Liverpool Branch)

3.2.13 No additional on-going costs are envisaged in respect of this element of the scheme. Completion of these works would remove any future risk to the delivery of the access road within KMBC boundary and would enable traffic capacity issues at the existing junction to be addressed in advance of the opening of the development.

3.2.14 The earthworks and bridge in areas 4 and 5 will be the responsibility of HBC to maintain until such time that the roadworks are completed, when they shall be adopted as Highway. Future maintenance costs will be borne by highway revenue budgets.

3.2.15 The proposed method of procuring these works by utilising our development partner's tendering process minimises the procurement cost to the Council and enables the Council to take advantage of the competitive bid from BBCEL:

- The costs of tender invitation and administration, borne by PUK need not be repeated;
- The costs of preparing fresh tender and proposed contract documentation are avoided,
- The construction programme can commence with minimum delay which would keep inflationary costs at bay.

3.2.16 The proposal requires a necessary degree of flexibility to procurement in response to the changing development opportunities at HBC Field. It is considered that this method of procurement provides the most efficient method of delivering the essential access infrastructure and ensures that the Council can maximise financial and commercial benefits from these opportunities, whilst removing potential barriers to the delivery of the overall project.

3.2.17 This approach is in line with the Council's Procurement Strategy which identifies business efficiency as a key focus for the Council and recognises that value for money can be achieved through collaboration and partnership working – in this case with our 3MG development partners.

### **3.3 Business case for waiver**

**3.3.1** Construction of the 3MG access road in advance of the development of the HBC Fields site will remove a number of risks and delay to the overall project:

- The highway works within the Knowsley MBC administrative area would be completed in full, including the new roundabout junction to serve the development site access;
- This would trigger the release of £400,000 of funding (from Halton to Knowsley) for highway improvement works to the A562 / A5300 junction, improving traffic capacity on the approach to the development;
- The bridge spanning the West Coast Mainline railway would be completed in full under agreements between Halton and Network Rail;
- The land to the north of the railway line, owned by Halton but currently forming part of an agricultural tenancy would be occupied by the northern embankment.

3.3.2 Progressing the access road scheme would enable an early draw-down of the available RGF grant funding and the Growing Places Funding for the project and would send a strong signal to developer partners and potential end-users / customers that the 3MG development continues to be the prime attractive site for freight distribution in the North West.

- 3.3.3 Early investment in the western access road will add value to the HBC Field site as potential developers will be offered an access-served site which is free of major risk to development.

Value for Money and Competition.

- 3.3.4 PUK received competitive tenders from four reputable civil engineering construction companies capable of delivering the scheme. The tender documentation provided was based on the approved design (in accordance with the Design Manual for Roads and Bridges and the Specification for Highway Works). The proposed Conditions of Contract are based on the ICE Design and Build form of contract. These are acceptable documents for the Council to adopt in a road and bridge works contract with BBCEL.
- 3.3.5 The values of tenders received have been shared with HBC officers as part of the 'open-book' process that is required under the draft Development Agreement. BBCEL submitted the lowest tender based upon their alternative tender submission and the breakdown of costs per activity within the scheme has been shared with HBC by both PUK and BBCEL during project discussions.
- 3.3.6 BBCEL's total price tendered for the full scheme is significantly less than the scheme estimates that had been prepared by Atkins, the Council's design consultants, during the preliminary design process. Whilst the tender documents do not include a priced bill of quantities or schedule of rates, the costs of the various works activities have been scrutinised and appear to offer excellent value for money.
- 3.3.7 Adopting the tender procedure utilised by PUK and BBCEL's tender submission would negate the need for preparation of full tender documentation, invitation to tender and tender assessment procedures by the Council. The cost saving to the Council has been estimated to be approximately £75,000

Transparency

- 3.3.8 A contract with BBCEL for the construction of the western link road would be administered within the Capital Programme in accordance with Finance Standing Orders and Procurement Standing Orders in respect of section 2.12 (Contracts to be in writing) and section 1.7 (Contract Payments) and will be subject to the Council's audit procedures.

Propriety and Security

- 3.3.9 The usual integrity clauses will be incorporated into the contract document and only those officers with a need to know will have information about the Contract.

Accountability

- 3.3.10 Accountability for the administration of the contract would remain with the Operational Director Policy, Planning and Transportation subject to

scrutiny by the Council's Policy Performance Boards acting within their relevant Terms of Reference. Usual internal and external audit provisions shall apply.

#### Position of the Contract under the Public Contract Regulations 2006

3.3.11 The proposed contract is exempt from the requirements of the 2006 Regulations as the estimated value of the works is below the threshold of £4,348,350. The fundamental Treaty Obligations of transparency and non-distortion apply.

## **4.0 POLICY IMPLICATIONS**

There are no policy implications in connection with the report.

## **5.0 OTHER IMPLICATIONS**

### **5.1 Resource Implications**

The scheme is estimated to cost £4,330,784 and will be funded through the Council's Capital Programme 2012/13 utilising the secured RGF (£4.5m), and from the secured GPF (£5.4m).

Upon completion of the works to realign Newstead Road, the sum of £400,000 will become payable to Knowsley Metropolitan Borough Council under the terms of the Section 8 Agreement dated 1 April 2010. Such sum to be included within the Council's Capital Programme.

The costs of Contract supervision and administration, which are estimated to be £135,000, will be funded from the secured RGF (£4.5m), and from the secured GPF (£5.4m).

### **5.2 Legal Implications**

It is proposed that the Council enter into formal agreement under the ICE Design and Build form of contract with Balfour Beatty Civil Engineering Limited, for the construction of the western access road to the 3MG HBC Fields development site, as described in paragraph 3.1.2 of this report.

## **6.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES**

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

There are no implications associated with this report.

### **6.2 Employment, Learning and Skills in Halton**

Construction of the western access road will facilitate the development of the Halton Fields development area, and is a key deliverable within the overall 3MG programme. The programme will assist in providing job opportunities for local people and will go some way in addressing the

level of unemployment in Halton. The next phases of development are estimated to create up to 2,717 new jobs. The Halton Employment Partnership will engage with employers at 3MG to maximise the opportunities for local people.

### **6.3 A Healthy Halton**

There are no implications associated with this report.

### **6.4 A Safer Halton**

There are no implications associated with this report.

### **6.5 Halton's Urban Renewal**

Construction of the western access road to the 3MG Halton Field development area is a key deliverable within the overall 3MG programme. The programme is acting as a catalyst to attract developers and new businesses to the area by creating an attractive, well-accessed and serviced area, which provides a safe and attractive environment for employees and visitors.

## **7.0 RISK ANALYSIS**

7.1 There is a risk that Prologis UK Limited may object to the use of the tender documentation they prepared for these works in July last year, or seek payment of their costs in connection with the original tendering exercise and subsequent pre-contract negotiations. PUK are Halton's development partner on the scheme. They are aware of the Council's desire to progress the western access road element of the project and have been involved in the further discussions with their preferred bidder. PUK have indicated that they wish to have continued involvement in this aspect of the project although their specific role in this has yet to be discussed and agreed. It should be noted therefore that there may be an additional financial obligation to PUK in respect of the recommendation.

7.2 There is a risk that the results of the advance site investigation and materials testing may indicate that the alternative design solution submitted by BBCEL is not acceptable or results in increased estimated cost, such that the Public Contract Regulations (2006) threshold value is exceeded. If this were the case, the matter would be reported back to board. The works contract will not be awarded to BBCEL until such time that the scheme design amendments, which were submitted in their alternative tender, have been completed and approved by relevant parties. If the re-design results in an additional estimated works cost, the scheme elements will be reviewed once again to ensure that the public procurement thresholds are not exceeded and that the risk of challenge to the Council is minimised.

7.3 As with any civil engineering construction project, there is a risk that the cost of the construction works exceeds the estimated cost and budget allocation. Tenders were invited on the basis of a priced activity

schedule, rather than as an 'admeasure' Bill of Quantities. It is proposed to let the contract under the ICE Design and Build form of Contract which provides less scope for variations and additional costs, however the proposed conditions of contract do provide mechanisms and procedures for agreement of price variations.

## **8.0 EQUALITY AND DIVERSITY ISSUES**

8.1 All decisions of the Council are required by the Public Sector Equality Duty (s149 Equality Act 2010) to have due regard to the need to:-

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The 9 "Protected Characteristics" are:-

- Race
- Gender
- Disability
- Age
- Gender Reassignment
- Pregnancy and Maternity
- Religion or Belief
- Sexual orientation
- Marriage and Civil Partnerships

8.2 The Council will work with its partners to develop effective procedures and policies to combat all forms of discrimination and to share good practice.

8.3 The Core Strategy and the Local Transport Plan have undergone Equality Impact Assessments. HBC Field sits in this over arching framework. However, the 3MG Steering Group on 15<sup>th</sup> June 2011 felt the need to do a separate Equality Impact Assessment for completeness and has undergone the first stage. This has shown a neutral impact on the majority of the characteristics and a positive impact on disability and socio-economic disadvantage.

8.4 In terms of disability the architects Stephen George & Partners have provided a Design & Access Statement regarding Access For All for the development of HBC Field:

"The building and its immediate surroundings, including external works to and from the proposed car park areas and building approaches, is designed to be accessible by all staff and visitors. These spaces are designed to meet all current UK Building Regulations and respond to the

latest version and provisions of the Disability Discrimination Act. Best practice design ensures that access is available to all regardless of any special mobility problems or restrictions. Level thresholds, gentle slopes or ramps and ambulant disabled stairs are designed in as standard. There are no physical barriers to users of the development or to those that serve the development, such as emergency services. There are no special access points for wheelchair users who will use the same access doors as everyone else. Accessible car parking has been provided at 10% of the total permanent number of spaces and is positioned closest to the main office entrance”.

This characteristic is also considered under Planning, Highways and Building Regulations.

- 8.5. Socio-economic disadvantage is referred to in 6.2 of this report. The Council has dedicated teams in place which will assist and support the end user to maximise the benefits to local people particularly targeting the economically inactive.

## **9.0 REASON FOR DECISION**

- 9.1 Continuing progress on the provision of infrastructure to support the 3MG HBC Field development will enable the draw-down of RGF and GPF funding allocated to the 3MG Programme that has been identified for this purpose. Construction of the western access road removes elements of risk to programme delivery, enhances the value of the site and its attractiveness to potential developers / customers and takes advantage of the competitive tender submission for the construction of the road from BBCEL.

## **10.0 ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

- 10.1 The contract for the construction of the western access road could be re-tendered. However, this would incur additional procurement costs, including tenderer pre-qualification and selection, preparation of tender documentation, management of the tender process and tender evaluation and award. The process is estimated to add approximately £75,000 to the cost of the scheme and would take around 20 weeks from inviting expressions of interest to award of Contract. The existing tender from BBCEL is considered to offer excellent value for money and there is no guarantee that a new tender process would result in lower prices.
- 10.2 The original plan was for the transport infrastructure relating to the development of HBC Field to be delivered through a Development Agreement with PUK our development partner. For the reasons stated in paragraph 3.1.4 PUK are not in a position to let a contract for the road construction. Therefore if the Council accepts and wishes to continue to make progress as set out in Paragraph 9.0 above, it is not an option to wait for a pre-let agreement to be signed with a customer.

- 10.3 The scope of works tendered in July by PUK included the whole of the western access road and bridge (as designed by Atkins) from Newstead Road into the proposed HBC Fields development site. This was on the basis of a potential customer's requirements. The contract could be retendered on this same scope of works, however, the value of the scheme would be above the public procurement thresholds and would require re-tendering with the consequent additional costs and delays as set out in 10.1.
- 10.4 In addition to the reasons for rejection described in 10.3, the scope of the scheme for the construction of the western access road has been modified from that originally tendered by PUK, because at this stage we do not know whether the site will eventually be developed for single or multiple occupiers. This retains a degree of flexibility in the future layout of the road south of the railway lane.

### **11.0 IMPLEMENTATION DATE**

- 11.1 Subject to Board approval, the advance site investigations and further design work would commence in early June. It is anticipated that contract award would follow confirmation of amended design approvals in July.

### **12.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972**

<b>Document</b>	<b>Place of Inspection</b>	<b>Contact Officer</b>
Section 8 Agreement Knowsley Metropolitan Borough Council dated 1 April 2010	Highways Office, Rutland House, Halton Lea, Runcorn	D. Cunliffe
3MG Masterplan	Regeneration, Municipal Building, Widnes	S. McDonald
Community Impact Review and Assessment Stage 1	Regeneration, Municipal Building, Widnes	S. McDonald
3MG Steering Group Minutes 15 <sup>th</sup> June 2011 extract re: EIA	Regeneration, Municipal Building, Widnes	S. McDonald

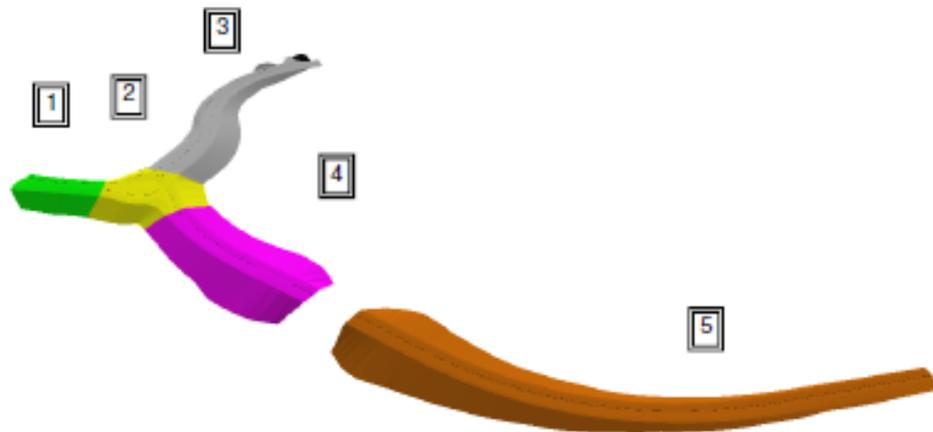
**Balfour Beatty**

Civil Engineering

**M11012**

**Highways Access to 3MG**

**EARTHWORKS SCHEDULE**



- |   |  |
|---|--|
|  | North west approach to Newstead roundabout |
|  | Newstead roundabout                        |
|  | North east approach to Newstead roundabout |
|  | Newstead road link ch 45 - 200             |
|  | Newstead road link ch 235 - 619            |