

CABINET 10th FEBRUARY 2009

**REQUEST FOR EXEMPTION TO NORMAL CONTRACT
PROCEDURE RULES AND FOR ACCEPTANCE OF GRANT AID
- ASHBY CANAL**

REPORT OF THE DIRECTOR OF COMMUNITY SERVICES

PART A

Purpose of Report

1. The purpose of this report is to seek:
 - a) an exception to the County Council's Contract Procedure Rules in order to let a contract for the construction works for phase 1- Snarestone Connection on the Ashby Canal by May Gurney through the British Waterways Framework Agreement without following the usual tendering and procurement processes; and
 - b) approval for the acceptance of funding for canal restoration from the East Midlands Development Agency (emda).

Recommendation

2. It is recommended:
 - a) That an exception to the County Council's Contract Procedure Rules be approved to allow a contract to be awarded to British Waterways to construct Phase 1 of the Ashby Canal restoration on the understanding that British Waterways will appoint May Gurney to carry out the works via an existing EU compliant Framework Agreement;
 - b) That the offer of £440,000 funding towards the cost of the works from the East Midlands Development Agency and the accompanying terms and conditions be accepted; and
 - c) The Director of Highways Transportation and Waste Management (in consultation with the County Solicitor) be authorised to take any action he considers necessary to give effect to these decisions.

Reason for Recommendation

3. British Waterways has considerable experience in carrying out construction works on canals through its Framework Agreement; some of the work is on land owned by British Waterways and the canal is proposed to be handed over to British Waterways after completion of restoration to Moira. It is therefore considered that British Waterways' direct input in this phase of the project is vital.
4. There is currently no suitable Framework Agreement set up either by the Council or ESPO available to use. This is because canal restoration is specialist work and there is no provision within any existing frameworks for this type of work to be undertaken. The recommended approach avoids the cost and time of a new procurement exercise which would in any event not be possible within the timescale specified by emda for claiming the grant offered. The British Waterways Framework Agreement has been procured through a compliant procurement procedure.
5. Acceptance of the funding will enable the County Council to proceed with the works.

Timetable for Decisions

6. An urgent decision is required in order to enable the contract to be let in order to meet emda's requirements for the majority of funding to be claimed during the current financial year.

Policy Framework and Previous Decisions

7. The County Council at its meeting on 19th May 2004 approved the submission to the Secretary of State of an application for an order under the Transport and Works Act 1992 for restoration of the Ashby Canal from Snarestone to Measham. Following a Public Inquiry The Leicestershire County Council (Ashby de la Zouch Canal Extension) Order 2005 which provides the powers (outline planning consent, compulsory purchase etc) to restore the canal was made by the Secretary of State on 7th October 2005.
8. Cabinet at its meeting on 17th January 2006 decided to authorise the County Solicitor to sign a Joint Venture Agreement with Ideal Country Homes (Measham) Ltd. (ICH) in relation to the regeneration scheme around a new wharf, with associated housing and retail development.
9. Cabinet at its meeting on 23rd October 2007 approved the acquisition of land for the restoration of the Canal from Snarestone to Measham (with funding from emda and the National Forest Company) and the earmarking of any future receipts from appreciation of this land, resulting from development, as match funding for external funding bids to meet construction costs.

10. Securing funding for the next phase of the Ashby Canal restoration is a priority of the Medium Term Corporate Strategy.

Resource Implications

11. Funding of £560,000 for phase 1 of this project has been sourced from the emda (£440,000), the County Council Capital Programme (£110,000), Ashby Canal Association (£5,000) and the Ashby Canal Trust (£5,000). emda has advised that an offer would be subject to a standard emda contract that has previously been considered by the County Solicitor on other similar schemes. Funding would be subject to the repayment of any receipts in the event that the canal is subsequently sold.

Circulation under the Local Issues Alert Procedure

None

Officers to Contact

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PART B

Background

12. The value of the works for phase 1- Snarestone Connection is estimated to be £500,000 (including fees and contingencies but excluding £60,000 of advanced design and development work) which is below the European Union threshold for works but above the Council's threshold for formal tenders.
13. The total value of the project to extend the canal from Snarestone to Measham is estimated to be £14,000,000. The subsequent phases of the project are expected to be carried out as and when funds are available.
14. British Waterways has put in place a Framework Agreement in compliance with the Public Contract Regulations 2006; this Framework is open to all Public Sector bodies and has one sole supplier, May Gurney. However these bodies which include Leicestershire County Council cannot award a contract directly to the Framework Contractor because of the nature of the Framework terms and conditions. Therefore the Council would need to contract with British Waterways, who would sub-contract the work to May Gurney.

Contractual and Legislative Issues

15. Under the Council's Contract Procedure Rules a contract of this value should be subject to formal competitive tendering unless an exception is approved by the Cabinet (or in cases of an urgency) the Chief Executive.
16. The Head of Legal Services, the Head of Procurement, the Director of Highways Transportation and Waste Management and the Director of Corporate Resources have been consulted on the use of this Framework and acceptance of the emda grant and support the recommendations.

Equal Opportunities Implications

17. None.

Background Papers

18. None.