

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:	5107
Author:	Laura Marsden
Department:	Growth and City Development
Contact:	Laura Marsden (Job Title: Regeneration Officer, Email: laura.marsden@nottinghamcity.gov.uk, Phone: 0115 8761586)
Subject:	Future High Streets Fund Maid Marian Way Infrastructure Improvements: Main Works Contract
Key Decision (decision valued at more than £1million):	Yes
Key Decision (decision affects 2 or more wards):	Yes
Total Value:	£5.7million (Type: Capital)
Decision Being Taken:	<p>To call off a contract from the NCC Highways Multi-Discipline Framework under a Direct Award to deliver specified infrastructure improvement works;</p> <p>To delegate authority to the Corporate Director of Development and Growth to finalise the contract requirements and agree and enter the contract To delegate authority to the Corporate Director of Development and Growth to instruct Legal Services/Director for Legal and Governance to agree legal agreement and then execute as per the constitution.</p>

**Reasons for the
Decision(s)**

In December 2020, the Council was successful in securing £12,520,000 from DLUHC's 'Future High Street Fund' (FHSF), as part of the Government's 'Levelling Up' programme. This included £8.6m of funding for the Maid Marian Way Highway Infrastructure project, which was secured against £377,000 of match funding; provided by the Transforming Cities Fund.

DLUHC recently announced an extension to the funding deadline of the FHSF programme which the Council was successful in applying for. It was approved based on evidence and assurances provided by NCC that the project was deliverable and spend able to committed by the required funding timescales. The revised deadline now requires all spend to be contractually committed by Sept 2024 with full financial defrayment by March 2025. Any delays to this programme will therefore have a significant impact on the Council's ability to fulfill our funding agreement with DLUHC. the Council's ability to fulfil our funding agreement with DULHC.

The scheme is 100% fully grant funded with previous Council approval to implement the scheme under DD4153 and DD4301.

The scheme has now been fully designed and pre-engagement works with our preferred contractor Thomas Bow have been undertaken to confirm their ability to meet budget programme and method.

In order to maintain progress against the programme and to continue to comply with funding conditions of the FHSF and TCF, start on site is due to begin in April 2024, however, the main works contract now needs to be agreed and entered.

Therefore this decision seeks approval to enter into the main works contact with the preferred contractor, Thomas Bow, to deliver the Maid Marian Way Infrastructure works, funded by the Future High Streets Fund.

Thomas Bow has been selected through the NCC Highway Services Multi-Discipline Framework. The Call-off procedure for this contract is direct award on ranked order. Based on these call-off arrangements, to ensure best value and to reduce risk to the authority this contract will be let under Option C of the NEC4 contract Spend Control Approval ref: 3237.

Other Options Considered:

Do nothing: Not enter into contract and not proceed with the scheme. This option was rejected as this would forfeit the conditions of the funding agreement and the opportunity for a £8.6m Central Government capital investment allocation which would have to be returned to DLUHC.

Traditional procurement/tender process. This option was rejected as the process would take longer than the recommended route; limiting the time to deliver the scheme within the timescales associated with the conditions of funding.

Background Papers:

None

Published Works:

Decision 4153 - Acceptance of Future High Streets Funding and Decision 4301- Acceptance of Future High Streets Funding

Affected Wards:

Castle, Hyson Green and Arboretum

Colleague / Councillor Interests:

None

Consultations:

Those not consulted are not directly affected by the decision.

Crime and Disorder Implications:

There are no crime and disorder implications associated with this decision

Equality:

EIA not required. Reasons: This is a continuation of an existing service

Decision Type:

Leader's Key Decision

Subject to Call In:

Yes

Call In Expiry date:

22/03/2024

Advice Sought:

Legal, Finance, Procurement

Legal Advice:

This decision seeks authority, via a LKD, to call off a contract from the NCC Highways Services Multi-Discipline Framework under a Direct Award to deliver specified infrastructure improvement works and to undertake the associated steps to execute an appropriate contract.

In respect of recommendation 2, it is advised that any contract that the Council intends to enter into is subject to review by either Legal Services or an external law firm, depending on the prevailing circumstances. The proposed contract is an NEC4 Option C contract; a construction contract. As a contract used (according to the NEC website) in "large or more complex projects, with a sharing of financial risk", this suggests some form of legal review will be required to ensure the Council's position is as protected as possible and relevant risks identified and accepted, if appropriate. At present, there is no construction law expertise in Legal Services so funding may need to be identified to allow an external law firm to provide any required legal support.

It is assumed that Procurement colleagues will confirm that the proposal is a compliant route to market and in accordance with the Council's constitution.

In the proposed use of funds, the Council must ensure compliance with any conditions or restrictions imposed on the use of FHSF or TCF funding. Further, since an extension of time for the use of funding was agreed by DLUHC based on evidence and assurances provided by the Council, if there is any change in that evidence or in relation to the assurances provided, the Council must notify DLUHC as soon as possible and, in any event, in accordance with any requirements imposed by DLUHC in such circumstances.

Subject to the above, Legal Services are happy to support as far as it is able.

Tony Heath, Senior Solicitor, Contracts and Commercial, 4th March 2024.

Finance Advice:

The Maid Marian Way Infrastructure project is included within the approved Capital Programme, with the initial scheme being approved March 2021 within LKD4153. As this project is already included within the approved General Fund Capital Budget this decision does not affect the bottom line of the Capital Programme. Therefore, this decision does not require endorsement by the Capital Board.

As detailed in the body of this report this scheme is entirely funded from third party grants. It is the project manager and project sponsors responsibility that grant conditions are complied with to mitigate the risk of clawback and ensure the project is delivered within approved budget due to current capital funding pressures within Nottingham City Council.

Advice provided by Tom Straw (Senior Accountant - Capital Programmes) on 28/02/2024.

Procurement Advice:

The Highways Multi Discipline Framework provides a compliant route to carry out these works and therefore pose no procurement issues, however care should be taken to ensure compliance with the terms set out within the Framework Agreement. NEC4 Option C open book target cost contract will be used in order to demonstrate best value. If external legal services are required the client must liaise with Legal Services in-house team and procurement to ensure compliance with Public Contract Regulations and provide Best Value for NCC.

Advice provided by Sue Oliver (Category Manager - Procurement) on 06/03/2024.

Signatures:

David Mellen (Leader/ PH Strategic Regeneration & Communications)
SIGNED and Dated: 14/03/2024
Sajeeda Rose (Corporate Director of Growth & City Development)
SIGNED and Dated: 08/03/2024