

Committee: Cabinet

Date of meeting: 27 March 2023 (reconvened from 16 March 2023)

Title of Report: Award of design and build contract to construct Carlisle Southern Link Road and approval to execute Deed of Variation to Grant Determination Agreement with Homes England

Report by: Angela Jones, Executive Director, Economy and Infrastructure

Cabinet Member: Cllr. Keith Little – Cabinet Member for Highways and Transport

What is the Report About? (Executive Summary)

1. The report seeks approval to consider the award of a design and build contract for the construction of Carlisle Southern Link Road (CSLR).
2. The report recommendation follows a restricted tender procurement process carried out in accordance with the Public Contracts Regulations 2015.
3. The report also seeks approval of an amendment to the Grant Determination Agreement (GDA) between the Council and Homes England for the construction of the CSLR to confirm the revised project funding and delivery milestones.
4. The report also notes the necessary amendments to the capital programme 2022-27 to reflect the remaining full project costs and funding including the additional Homes England Funding
5. The recommendations are all subject to confirmation of the requested funding decision from Homes England. At the time of publication, written confirmation of the funding decision has not been received. Members will be updated at the reconvened meeting on the 27th March 2023.
 - If the funding has been received the recommendation will be to award the contract.
 - If the funding decision has not been received the recommendation will be to delegate the final decision to award to the Executive Director, Economy and Infrastructure in consultation with the Leader, Deputy Leader, Portfolio Holder for Highways and Transport, Chief Executive, Section 151 Officer and Monitoring Officer following receipt of funding confirmation.
6. If the funding decision is not received by the 31st March 2023 the decision to award the contract will transfer to Cumberland Council.
7. Award of the contract is critical to ensuring that the overall project programme is maintained in line with the amended GDA.

8. At its meeting on the 16th February 2023 Cumberland Shadow executive formally granted consent in accordance with the Direction issued under section 24 of the Local Government and Public Involvement in Health Act 2007 to Cumbria County Council consenting to the award of a design and build contract for the construction of CSLR to the winning bidder and the amendment of the GDA between the County Council, the City Council and Homes England for the construction of the CSLR.
9. Due to the delay in receiving notification about the funding decision, the report provides different recommendations depending on the circumstances prevailing at the time of the reconvened meeting. For each of the scenarios below, due to the timing of the decision in relation to LGR and the urgency required to award the contract, an exemption from call in has been sought and approved in accordance with Section 5D paragraph 16 of the Constitution.
10. The recommendations included at paras 13- 17 apply to the situation, and the decision required, should the funding decision have been made at the time of the meeting.
11. The recommendations included at paragraphs 18- 19 apply to the situation where the funding decision has not been received at the time of the reconvened meeting but would delegate authority up to 31st March 2023 to enable the County Council to make the decision.
12. If the funding decision has not been received prior to 31st March 2023, the decision to award the contract will pass to Cumberland Council.

A. Recommendations of the Executive Director (subject to written confirmation of the funding decision being received by the date of the reconvened meeting on 27th March 2023)

13. To approve the award of a design and build contract for the construction of CSLR to the winning bidder for the Target Cost submitted and as set out in Appendix 1.
14. To approve the amendment of the GDA between the Council and Homes England for the construction of the CSLR which revises the funding allocation to the amount stated in Appendix 2 and revise the agreement milestones set out in Appendix 2.
15. To note, following approval of the amendments to the GDA, the necessary amendments to be made to the capital programme 2022-27 to reflect the remaining full project costs and funding including the additional Homes England Funding.
16. To note that due to the timing of the decision in relation to LGR and the urgency required to award the contract, an exemption from call in has been approved in accordance with Section 5D paragraph 16 of the Constitution.
17. All of the above recommendations are subject to confirmation of the requested funding from Homes England. At the time of publication, the funding decision has not been received. Members will be updated at the reconvened meeting on 27th March as to any updated information received.

B. Recommendation of the Executive Director, if written confirmation of the funding decision not received by the date of the meeting on 27 March 2023

18. To delegate the final decision to award the contract to the Executive Director, Economy and Infrastructure in consultation with the Leader, Deputy Leader, Portfolio Holder for Highways and Transport, Chief Executive, Section 151 Officer and Monitoring Officer between the date of the meeting and 31 March 2023 following receipt of the funding decision confirmation.
19. To note that due to the timing of the decision in relation to LGR and the urgency required to award the contract, an exemption from call in has been approved in accordance with Section 5D paragraph 16 of the Constitution.
20. The details of the successful bidder and the Target Cost price is contained within the exempt appendices but will be provided publicly immediately prior to the final decision being made.

Background to the Proposals

21. CSLR is a key piece of strategic infrastructure required to unlock housing growth at St Cuthbert's Garden Village (SCGV) to the south of Carlisle. CSLR will provide a high-quality link between Junction 42 of the M6 and the A595, it also connects to Carlisle Northern Development Route, thereby completing an outer ring road for Carlisle.
22. In addition to unlocking the development of SCGV, CSLR will relieve congestion in Carlisle and will provide improved east-west connectivity. SCGV is planned to include the development of 10,325 new homes over the next 30 years, new employment opportunities and community facilities. Without CSLR, traffic modelling has identified that development would be restricted to just 1,000 homes.
23. This project dates back to 2015 when Cumbria County Council, working with Carlisle City Council, undertook early scheme development to identify options to meet the requirements of housing growth in Carlisle. The project has been through extensive public consultation, planning permission has been approved and significant scheme works have been undertaken through the design and enabling works.
24. Despite a number of challenges, the County Council, City Council and Government have remained committed to progressing the project, recognising that this multi-million-pound scheme is vital for the economic growth of Carlisle and to deliver the St Cuthbert's Garden Village project. This project will unlock economic inclusive growth through the creation of jobs, attracting businesses to invest, reducing congestion and creating the infrastructure to support the building of quality homes and community facilities.
25. The project is now ready for the main construction works to start. Land has been acquired, major statutory diversions are being completed, the site has been cleared, a preferred bid has been obtained from a suitable contractor to deliver the scheme within the required timescale and funding has been approved. All the pieces are in place to deliver all of the benefits of this project. Timing is critical to

both the contractor's submission and the funding offer. If this opportunity is not taken now it may be many years, if ever, before this project and the associated developments can be delivered.

26. In July 2020, Cumbria County Council and Carlisle City Council entered into the tripartite HIF Grant Determination Agreement (GDA) for £134m of funding from the Housing Infrastructure Fund (HIF) towards the £144m CSLR project.
27. A procurement exercise was carried out for a two-stage design and build contract to deliver the Works. The Stage 1 contract was subsequently awarded to Morgan Sindall Construction & Infrastructure Ltd (MSCI) following approval from Cabinet on 18th March 2021. Provisions existed in the tender documents for a Stage 2 construction contract to be awarded to the successful Stage 1 contractor following successful completion of the Stage 1 contract and agreement of a formal offer for the works construction.
28. The formal offer provided by MSCI included a Total of the Prices which significantly exceeded the project budget and included a number of proposed changes to the Stage 2 contract such that the economic balance of the Stage 2 contract, would have changed to an extent which is more than de minimis. As a result, the executive director was unable to recommend award of the Stage 2 contract to MCSI and a decision to not award the Stage 2 construction contract was made at the Cabinet meeting of 21st July 2022.
29. Following this decision and with the consent of Homes England a new procurement exercise has been carried out for the construction of CSLR based on the detailed design outputs from the Stage 1 contract.
30. The Department for Levelling Up, Housing and Communities (DLUHC) has confirmed funding for an additional £78 million to ensure the project can proceed and the economic and social benefits can be realised.

Procurement Process

31. A two stage restricted process procurement has been undertaken. Following issue of a Prior Information Notice on 15th August 2022 feedback was received from a number of interested suppliers which was used to tailor the tender process. PQQ documents were issued on 10th October 2022 and returns were received on 11th November 2022. Returns were assessed and a tender list of 4 competent contractors agreed. Contractors were assessed for experience and capability and a financial stability assessment was also carried by an external financial consultancy. Details of the assessment at PQQ are included in Appendix 1.
32. Tender documents were issued on 25th November 2022 with a proposed return date of 27th January 2023. Following a request for an extension of time the return date was amended to 3rd February 2023.
33. Three tenders were received. One of submissions included a number of qualifications. Qualifications are not allowed and the bidder was asked to withdraw the qualifications and confirm that they would deliver the offer for the price submitted. The bidder declined to do so and as a result the submission was disqualified. The remaining tenders were assessed on quality and price basis with 65% quality and 35% price weighting. Assessment was undertaken by a panel of experienced officers with a moderation meeting used to arrive at agreed scores

for each question for each bidder. Price submissions and supporting information was assessed by an experienced commercial team. A detailed report of the assessment outcome is included as Appendix 1.

34. Due diligence is firmly established as an element of corporate good governance in the contract award process, in order to protect the reputation of the Council and its finances, as well as the protection and reputation of the decision makers. A due diligence exercise has been undertaken in relation to this contract award and further detail is available in Appendix 1. Under the terms of the contract a Performance Bond is required and will be provided by the Contractor. The value of this Bond is 10% of the total of the Prices. Under the financial assurance the Contractor is also required to provide a Parent Company Guarantee.
35. The submission from the winning bidder was assessed as providing the most economically advantageous tender based on both Quality and Price with an overall score of 792.88 out of 1000.

Contract Terms

36. The contract to be awarded is an NEC Option C Target Cost contract. The contract is not a “fixed price” contract. The submitted price is a Target Cost. In practice this means the Contractor is paid all of the actual costs incurred in delivering the works up to the Target Cost. Actual costs are determined through open book transparency with the level of information specified in the contract and outlined in the bidder’s offer. The contractor is then incentivised to minimise the actual cost through a pain/gain mechanism set out in the contract.
37. If the actual cost is less than the Target Cost the difference is shared and both parties gain. If the actual cost is more than the Target Cost both sides share the additional cost referred to as pain. The maximum amount the Contractor can be due under the specified pain/gain mechanism is the Target Cost + 3.75%. This means that the maximum cost to the Council under the contract is limited to the Target Cost + 3.75%.
38. The Target Cost can increase or decrease subject to Compensation Events which are changes or events that have an effect on the cost or programme. Events or changes which constitute Compensation Events that would increase the Target Cost are defined in the contract. The key ones are:
 - Extreme weather conditions
 - Unforeseen ground conditions
 - Force Majeure issues e.g. War, Acts of God, Pandemics
 - Instructions which change the Scope
39. These have or will be mitigated as follows:
 - *Extreme weather conditions* – These are defined in standard terms in the contract and an additional definition has been added for flood levels in relation to the Caldey River. The risk of this is mitigated by inclusion of a project contingency within the overall budget.
 - *Unforeseen ground conditions* - extensive ground investigations have been carried out as part of the detailed design work. Further ground investigations and assessments of potential contaminated land have been carried out

during the reprogramming work. All the archaeological watching briefs have already been carried out. Residual risk is included in project contingency.

- *Force Majeure Events* – these are events outside the control of and which could not be predicted by either the Client or the Contractor. The risk of these events is included in the project contingency.
- *Instructions which change the Scope* – these are within the control of the Project Manager and are mitigated by the scheme of delegation ensuring that instructions cannot be issued without the Project Manager/ Project Director approval. Any changes and their impact will be logged and reported to Board on an ongoing basis. Changes can be used to reduce the Target Cost – i.e. descoping if required.

40. In addition to the above the conditions of contract have been set to allow the risk of inflation against Steel and Ready Mix Concrete to be held by the Client. A specific allowance has been included in the project budget to mitigate this risk. The risk is managed through the use of named indices and regular reporting on the change in the indices and the effect on the Target Cost. It should be noted that a decrease in the indices will result in a reduction in the Target Cost.

Project Budget

41. A revised overall project budget has been calculated based on the submitted tender price. The revised project budget includes an appropriate level of contingency on the tendered price and the cost of utility diversions. In addition, an additional contingency is included against inflation for Steel and Ready Mix concrete and further contingencies are included for network rail risk and opportunity risk to reflect the risk profile adopted in the tender. The project expenditure forecast and budget issued to Homes England is included in Appendix 3.

Project Governance

42. The required commercial skills and capabilities are already established within the Client team who will take a strategic, benefits and outcome view of the project. The Project Director will act as the interface for the project into the Council, managing the commercial relationship, reporting and managing performance and risks, providing any clarification needed to the senior leadership team and Members and escalating any key issues, risks and decisions required.
43. A Governance Board will be established to ensure oversight and assurance of the delivery of the Project, management of risk, assessment of ongoing value for money, to ensure communication routes are in place and to monitor the realisation of intended benefits. The Director of Place, Sustainable Growth and Transport will act in the role of Senior Responsible Officer, working closely with the Project Director, Statutory Officers and Members.
44. The existing project team will transfer to Cumberland and continue to work on the delivery of the project, ensuring no loss of knowledge occurs. The team will continue throughout the term of the project to manage the contract and ensure the delivery of the infrastructure accords with the Scope.
45. A new post will be appointed for a Construction Manager. To oversee the main works contract and act as the NEC Project Manager. The position will be for an experienced professional with a track record of delivering major construction

projects. Works supervisors and quantity surveyors will also be appointed in order to strengthen the Client's team further.

46. The levels of delegated authority are proposed to remain as current subject to agreement within the new authority.

Grant Determination Agreement (GDA)

47. The revised project budget along with the contractor's submitted programme has been used to determine the required amendments to the GDA with Homes England. Changes to the GDA were reviewed at a meeting with officers from the Councils and Homes England. The amendments are merely to update the GDA to take account of the current position of the project. The aspects of the GDA to be varied are set out in Appendix 2.
48. The revised GDA combined with the proposed funding from the County and City Councils (to be the new Cumberland Authority from 1st April 2023) will provide the funding to deliver the whole project. The full proposed changes to the GDA are set out in Appendix 2.
49. On the 16th February 2023 the Cumberland Shadow Executive was informed of the indicative assessment outcome and price and formally granted consent in accordance with the Direction issued under section 24 of the Local Government and Public Involvement in Health Act 2007 to Cumbria County Council awarding a design and build contract for the construction of CSLR to the winning bidder and the amendment of the GDA between the County Council, the City Council and Homes England for the construction of the CSLR.

Options Considered and Risks Identified

Option (a)

- Approve the award of a design and build contract for the construction of CSLR to the winning bidder and approve the amendment to the GDA with Homes England. (This is the preferred option).

Option (b)

- Do not award the contract to winning bidder.

Risks – Failure to award the contract will result in delays to the programme and cost increases and could lead to the withdrawal of funding from Homes England under the GDA.

Failure to deliver the CSLR project will mean that the SCGV and the associated economic development cannot be delivered.

Reasons for the recommendation/Key benefits

- The offer provided by the winning bidder is the most economically advantageous tender.
- The project is funded through the proposed amendments to the GDA.

- CSLR will provide a key piece of strategic infrastructure required to unlock housing growth at St Cuthbert's Garden Village (SCGV) to the south of Carlisle. CSLR will provide a high-quality link between Junction 42 of the M6 and the A595, it also connects to Carlisle Northern Development Route, thereby completing an outer ring road for Carlisle.
- The project will facilitate investment of over £200m in the local area having a significant impact on the local economy and the local supply chain.
- The offer provided by the winning bidder includes social and economic legacy benefits to be included in and delivered through, an Employment & Skills Plan, a Social Value Plan and an Equality, Diversity and Inclusion Action Plan. These include employment opportunities for people within Cumbria, apprenticeship opportunities and support for community projects.

Financial – What Resources will be needed and how will it be Funded?

50. The recommendation contained within this report is that subject to receipt of the funding decision, Cabinet approves the award of a design and build contract for the construction of CSLR to the winning bidder for the Target Cost as submitted and set out in Appendix 1. Should funding not be confirmed by 31st March 2023, contingency arrangement have been set out, as detailed in paragraph 12 above.
51. As highlighted in this report, tenders were evaluated using a 65:35 quality/cost ratio. It should be noted that winning bidder's bid was significantly lower than the second bidder price and the evaluation process has sought to understand why this might be the case and whether the target cost bid is sufficient to deliver the project.
52. As a result of the evaluation, officers are comfortable they understand the potential reasons for the significant difference in pricing and these are outlined in Appendix 1. Ultimately, Cumberland Council will only be liable for a maximum of 3.75% of the target cost bid as an additional cost if the bid price proves to be too low. There are, however, some compensation events which will impact the target price as set out elsewhere in this report.
53. Cumberland Council will be directly liable for inflation on steel and ready-mix concrete, The total project funding includes a significant contingency budget as highlighted in Appendix 3. Officers within the service are confident that the budget should be sufficient to cover the potential maximum risk exposure to the target cost as well as the inflation on steel and ready-mix concrete. The Finance team are relying on expert advice in this respect.
54. A parent company guarantee and a performance bond will both be provided to guard against contract non-performance. A performance bond requires a bank or similar institution to pay to the Council a pre-determined amount to enable the Council to find an alternative contractor should the winning bidder go into receivership.
55. Again, as highlighted in the main body of the report, the Target Cost itself can be increased for force majeure events but due to the nature of these events it is not possible to forecast the extent of financial risk in this respect.

56. Failure to award the contract before 31 March 2023 will lead to significant additional costs and, again, the Finance Team are reliant on expert advice in this respect.
57. Over and above the matters highlighted above, the total project costs as presented do not seek any additional funding from either the County Council or Cumberland Council going forward other than that already approved and set out in the table below.
58. In approving the amendment to the GDA, funding from Homes England would increase from £134m to the amount set out in Appendix 1.

Funding streams	Existing £m	Proposed £m
Homes England	134.0	See Appendix 1
Cumbria County Council	5.0	5.0
Carlisle City Council	5.0	5.0
Potential receipt from sale of land at Cummersdale		3.4
Total Funding	144.0	See Appendix 1

59. Subject to approval of the amendment to the GDA and therefore the increase in funding to be included in the Capital Programme then the contract award can be funded from the total funding for the Carlisle Southern Link Road project. Should Cabinet decide not to approve the amendment to the GDA, the contract award cannot be made as there would be insufficient funding identified to support it.
60. There is currently £29.966m included in the Councils Capital Programme 2022-2027 following the decision to remove the stage 2 funding as part of the Revenue and Capital Budget Monitoring paper to Cabinet on 22nd September 2022. Therefore the funding removed, and the additional funding secured from Homes England to deliver Stage 2 will need to be included in the Capital Programme 2022-2027 which will then be disaggregated to the Cumberland Council from 1st April 2023. The £3.4m of funding remains subject to the sale of land at Cummersdale.

Legal Aspects – What needs to be considered?

61. Section 111 of the Local Government Act 1972 enables local authorities to enter into contracts in order to deliver their functions. The Council, with the support of external legal advisers, ran the procurement in accordance with its own rules and the Public Contracts Regulations 2015, which included the disqualification of the tendered who provided the qualified tender.
62. Due to the value of the proposed contract the decision to award is a Key Decision and, accordingly, the necessary advertisement requirements have been followed. Cabinet is authorised to make the award of the contract by virtue of paragraph 2.1(i) of Part 2B of the Council's Constitution.
63. The risks associated with this decision arising from the Council's obligations in the GDA for the CSLR were set out at the time the Council entered into the GDA.

The proposed amendments to the GDA are only to ensure that those obligations are in line with the current position of the project. The Council can only construct the CSLR, and comply with its main obligation under the GDA, through an award of a construction contract for the project, as has been recommended to Cabinet in this report.

64. Due to the timing of the decision in relation to LGR and the urgency required to award the contract, an exemption from call in has been approved in accordance with Section 5D paragraph 16 of the Constitution. **LGR Implications**
65. On the 16th February 2023 the Cumberland Shadow executive was informed of the indicative tender assessment outcome and price and formally granted consent in accordance with the Direction issued under section 24 of the Local Government and Public Involvement in Health Act 2007 to Cumbria County Council awarding a design and build contract for the construction of CSLR to the winning bidder and the amendment of the GDA between the County Council, the City Council and Homes England for the construction of the CSLR.
66. On 1st April 2023 the contract and GDA will by operation of law, using the provisions in section 16 of the Local Government and Public Involvement in Health Act 2007, transfer to Cumberland Council

Health and Safety Aspects – What needs to be considered?

67. The County Council has a responsibility under the Health & Safety at Work Act 1974 and associated Management of Health & Safety at Work Regulations to ensure as far as is reasonably practicable that there are arrangements in place to ensure a healthy and safe working environment for all services and activity for which it has responsibility.
68. The recommendation for Cabinet to approve the award of a design and build contract for Carlisle Southern Link Road will be subject to Construction & Design Management (CDM 2015) regulations.
69. In the context of this report, this places a joint responsibility on the County Council as lead for the overall CSLR programme as well as the appointed contractor delivering the design and build works to ensure the highest possible health and safety standards are in place including for example risk assessments, safe methods of work and specialist PPE in place where required. This approach should ensure all legislation and safe ways of working are followed in line with the commitments outlined in the County Council Annual Health & Safety Policy Statement last agreed by Cabinet in July 2022.
70. From 1 April 2023, Health and Safety responsibility for the CSLR project will transfer from Cumbria County Council to Cumberland Council as part of the Cumbria Local Government Reorganisation and the project will then be subject to the health and safety governance arrangements in place for Cumberland Unitary Authority.

Council Plan Priority – How do the Proposals Contribute to the Delivery of the Council’s Stated Outcomes? (Outcomes - People in Cumbria are Healthy and Safe, Places in Cumbria are well connected and thriving, the Economy in Cumbria is growing and benefits everyone)

Carlisle Southern Link Road will have an important role in supporting the delivery of the Council Plan objectives:-

- The economy in Cumbria is growing and benefits everyone – The CSLR will unlock the St Cuthbert’s Garden Village and improve east-west connectivity, therefore promoting economic growth in Cumbria.
- Places in Cumbria are well-connected and thriving – the CSLR will improve east-west connectivity and promote thriving communities and businesses.
- People in Cumbria are healthy and safe – the CSLR will promote healthy travel choices including walking and cycling provision along its entire length with links into existing cycling and walking networks.

What is the Impact of the Decision on Health Inequalities and Equality and Diversity Issues?

71. None. The tender process included an assessment of the bidders compliance with the Equality Act.

Appendices (Part 2)

Appendix 1 – CSLR tender assessment scores (Part II – copy enclosed for members only).

Appendix 2 – proposed amendment to the Grant Determination Agreement with Homes England (Part II – copy enclosed for members only)

Appendix 3 – Project budget and expenditure forecast (Part II – copy enclosed for members only)

Key Facts

Electoral Division(s): Wetheral, Dalston and Burgh

Executive Decision	Key Decision Included in Forward Plan	Exempt from call-in	Exemption agreed by scrutiny chair	Considered by scrutiny, if so detail below	Environmental or sustainability assessment undertaken?	Equality impact assessment undertaken?
Yes	No	No	N/A	N/A	N/A	N/A

Approved by the relevant Cabinet Member/s on 23 March 2023

Previous relevant Council or Executive decisions

Award of Contract – Stage 1 Design Carlisle Southern Link Road – 18 March 2021

Carlisle Southern Link Road – Land Acquisition, Compulsory Purchase Order and Side Roads Order – 27 August 2020

Carlisle Southern Link Road – Housing Infrastructure Fund Grant Determination Agreement – 23 July 2020

Decision not to award contract for Stage 2 construction works for Carlisle Southern Link Road – 21 July 2022

Consideration by Overview & Scrutiny

None

Background Papers

None

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