

To: Cabinet
Date: 12 June 2019
Report of: Executive Director Development
Title of Report: Seacourt Park & Ride Extension – Appointment of Main Contractor and Final Project Approval

Summary and recommendations	
Purpose of report:	To seek approval to appoint a contractor for the main contract works and for final scheme approval.
Key decision:	Yes
Cabinet Member:	Planning & Transport
Corporate Priority:	Vibrant & Sustainable Economy Clean and Green Oxford
Policy Framework:	Local Transport Plan 4 Oxford Local Plan 2036 (Submission Draft) Oxford City Council Corporate Plan, 2016-2020
Recommendations: That the Cabinet resolves to:	
<ol style="list-style-type: none"> 1. Approve the appointment of ODSL as the main contractor to construct the park and ride extension, subject to final scheme approval; 2. Grant final scheme approval to enable the scheme, as amended, to be delivered within the budget of £5,156,122 approved by Council in February 2019; and 3. Delegate to the Director of Development, acting in consultation with the Heads of Law & Governance and Finance, and the Portfolio holder for Planning & Transport, the authority to enter into all necessary and appropriate contracts to implement the delivery of the proposed extension to the Park and Ride scheme at Seacourt. 	

Appendices	
Appendix 1	General Arrangement Plan – Public Agenda
Appendix 2	Price submitted by ODSL – Exempt Information

Introduction and background

1. Planning permission for the proposed extension to the existing park and ride scheme on land to the north of Botley Road, and to the east of the existing park and ride scheme was granted, subject to conditions, on 12th March 2018.
2. In summary the consented scheme provided for:
 - 685 Additional car-parking spaces;
 - Provision of a landscaped buffer to the north, south and east of the site with associated landscaping;
 - Provision of 10 disabled car-parking spaces, located close to the proposed pickup and drop-off area;
 - A single storey building of 150sqm to provide customer waiting and toilets;
 - 30 cycle spaces across the site with the majority being located close to the waiting area located to the southern part of the site;
 - New pedestrian and cycle access route from the eastern part of the site onto Botley Road;
 - A new turning circle, bus pick-up/drop off servicing adjacent to the proposed customer building;
 - Provision of high level lighting, CCTV and stand-alone ticket machines;
 - Attenuation pond for flood compensation;
 - Integral landscaping and tree planting within parking rows.
3. The scheme to be delivered is substantially the same as that which achieved the grant of permission, but it has been necessary to incorporate some minor changes, which are either on land that comprises highway or otherwise comprise permitted development. See General Arrangement Plan at Appendix 1.
4. These minor changes to the layout comprise the following:
 - Retention of the turning area on the existing park and ride scheme. This will enable improved access from land to the west of the existing car-park for contractors employed by the Environment Agency to deliver the Oxford Flood Alleviation Scheme (OFAS).

- Re-positioning a short section of access carriageway to land just north of that occupied by the Garage. This is because further work has shown that the incorporation of a section of existing road currently owned and used by the Garage for access and deliveries, as part of the internal circulation carriageway as originally envisaged, will not work in practice.
 - The main vehicular access junction has had to be slightly modified in order to better relate to the County Council's planned Botley Road Corridor Scheme and to meet the S278 Highways Act 1980 requirements.
 - There have been very minor changes in the vicinity of the western boundary of the proposed extension to accommodate the requirements of the Environment Agency, particularly concerning flood mitigation and the planned OFAS works.
 - Taken together these changes have reduced the number of additional car-parking spaces from 685 to a total of 596. Notwithstanding this, the payback period still falls within an acceptable range.
5. Various interested parties including the Mid-Counties Co-op Ltd, Johnson Cars Limited, Oxfordshire County Council, the Environment Agency and the prospective contractor (ODSL) have been informed of these changes and provided with updated plans.
 6. Alongside finalising plans for the proposed park and ride extension, it has been necessary to address other matters, in particular arrangements to secure the physical implementation of the scheme. To this end various discussions have been held with ODSL and as a result of this process, ODSL have recently submitted a price to deliver the main contract works and this has been subject to a tender review exercise. The price now proposed by ODSL is detailed at Exempt Appendix 2.
 7. The main contract works will be regulated via a contract, the form of which would be based on a New Engineering Contract (NEC) 3 Option B (with Bill of Quantities).
 8. Subject to the Cabinet granting final scheme approval and approving the appointment of ODSL to deliver the main contract works, officers have made arrangements to use White Young Green (WYG) to perform the roles of Contract Administrator and CDM Co-ordinator, in accordance with the Construction (Design and Management) Regulations 2015.

Options Considered

Not implementing the scheme.

9. This would mean halting work now and not proceeding with the physical implementation of the scheme. This would result in abortive fees as various consultants have been employed by the Council to, for example, design the scheme, obtain planning consent, produce a programme/ independent cost estimate and to develop the draft contract documentation.
10. Financially it would mean forgoing the additional income from car-parking of approximately £193k per annum set out in the Council's Medium Term Financial Strategy.
11. More importantly, not improving the existing park and ride facility would undermine the policy of discouraging the use of the private motor vehicle in the City Centre.

This option is not recommended.

Implementing the scheme using ODSL as the main contractor

12. ODSL as a Teckal company is exempt from the Public Contracts Regulations 2015, and in effect ODSL can be regarded as an arm of the Council. This does not provide exemption from the duty to address best value. Here, ODSL have submitted an independently evaluated competitive price, offer operational flexibility, which is considered key here due to the interface of the proposed Park & Ride extension with works proposed to be undertaken as part of the Oxford Flood Alleviation Scheme; apply Council policies concerning things like the Oxford Living Wage; support a local workforce; use, to the extent possible, the local supply chain, and potentially provide indirect benefit to the Council tax-payer through the payment of dividend to the shareholder (which is the Council), and as such their appointment is considered to provide best value in this instance.

This is the recommended option.

Implementing the proposed scheme using an external contractor selected via a pre-procured Framework or via Open Market Tender

13. These alternative procurement routes are always open to the Council, but at this stage taking either of these options would introduce an element of delay compared to using ODSL, which as a Teckal company is exempt from the Public Contracts Regulations 2015 and is able to start on site somewhere between the end of June and mid-July 2019. If ODSL had not submitted an independently examined competitive price or if they could not reasonably demonstrate that they adequately addressed best value, then it would have been appropriate to select one of these alternative options to obtain a suitable contractor to deliver the main-contract.

This option is not recommended.

Other implications

Crime and Disorder

14. There are two groups of issues here:

- During construction the contractor will take care to ensure that the site is appropriately contained and supervised at all times, in order to not only deter unauthorised access and possible criminal activity, but also to promote public safety.
- The completed scheme will incorporate high-level lighting and CCTV to deter crime and promote public safety, and the design will also make it more difficult for unauthorised vehicles to access the site.

Health and Safety Implications

15. The Council is classed as a Commercial Client under the Construction Design and Management Regulations (CDM) 2015, and must perform specified duties; these include making suitable arrangements for managing health and safety during the project and ensuring that other competent duty holders are appointed. To this end the Council has appointed WYG as Principal Designer and Designer.
16. The Designers duties include planning, managing, monitoring and co-ordinating Health and Safety in the pre-construction phase of a project throughout the design process. By contrast the Principal Designer performs an important role in influencing how risks to Health and Safety are managed throughout a project.

17. WYG's dedicated site management team will, assuming that Cabinet grants final scheme approval, carry out the duties under the CDM regulations for the duration of the construction phase and will continuously assess Health and Safety on behalf of the City Council.

Environmental Implications

18. The current policy of the City and County Councils is to encourage the use of P&R sites and to discourage the private motorist from driving into the City. This policy has been extremely successful in reducing city centre congestion and pollution.

19. In order for the P&R sites to remain an effective measure of control, there obviously needs to be an appropriate level of capacity in the sites to meet demand. If there are insufficient sites and/or capacity does not exist, then potential customers will be forced to seek parking elsewhere, probably resulting in slow journeys around city streets, contributing to congestion and creating avoidable emissions.

20. As the amount of city centre parking is reduced and the zero emission zone (ZEZ) is introduced, it is reasonably anticipated that the requirement for P&R parking will increase. It is therefore appropriate that additional provision is made to enable and support a positive and sustainable change in customers' behaviour. The consented scheme also makes provision for some additional electric vehicle charging points.

Sustainability Implications

21. The consented scheme provided for a:

- Ground source heat pump to provide space heating and hot water for the proposed single storey customer focused building;
- Sustainable urban drainage system for all hard surfaced areas;
- Sedum-planted green roof for the proposed single storey customer focused building.

22. More generally, issues concerning sustainability were considered as part of the planning application that was determined by the Planning Committee in January 2018, following which the Planning Decision was issued on 12th March 2018.

Financial implications

23. The capital budget for this scheme is now approximately £5.156m. It is envisaged that the majority, if not all of the scheme, will be funded from the Community Infrastructure Levy, with any balance being drawn from the Council's Capital Financing Reserve.

24. This needs to cover expenditure to date, consultant fees, miscellaneous expenses, contingency and the main contract works.

25. The contract price submitted by ODSL to deliver the consented scheme, as modified, can be accommodated within the existing budget whilst allowing an externally recommended level of contingency.

26. In terms of the Council's revenue budget, the Medium Term Financial Plan, includes an annual contribution of £193k per annum, from 1st April 2020. Clearly some adjustment will be necessary because the estimated completion date is now July 2020.

27. In terms of the business case, the current scheme (as modified) would, assuming that all of the budget provision was utilised, provide a payback period of approximately 17 years, assuming that there were inflationary increases to car-parking charges. Further details are contained in Exempt Appendix 2 (attached).
28. The award of the main works contract to ODSL is considered appropriate in best value terms because their price was competitive compared to an estimate produced by an independent quantity surveyor which was examined via a tender evaluation exercise. The employment of ODSL will contribute to their profitability, where the Council, as shareholder, is able to receive dividend, which provides indirect value to the Council tax-payer. In addition ODSL support the Oxford Living Wage, employ a largely local workforce and make an increasing use of local sub-contractors and the local supply chain, which all presents additional social and economic value.

Legal issues

29. The Council exercises control of ODSL, it has no private shareholders, and at least 80% of its activities are carried out in the performance of tasks entrusted to it by the Council. In short ODSL enjoys the benefit of Teckal company status.
30. Amongst other things, this means that ODSL falls outside of the Public Contracts Regulations 2015 with regard to:
- Public contracts awarded by the Council
 - Public contracts awarded by ODSL to the Council
 - Public contracts awarded by ODSL to “another legal person controlled by the Council.
31. The Council is therefore quite within its rights to award the main contract works for the proposed extension of the park and ride scheme to ODSL.
32. Notwithstanding this, the Council still has to satisfy itself that the award of a contract to ODSL reasonably provides ‘best value’ under Section 3 of the Local Government Act 1999. As a best value authority the Council must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. Given the context within which ODSL operates this can be demonstrated via an independent valuation exercise, informed by the ‘social value’ of the contract, such that the proposed price submitted by ODSL is a genuine market price.
33. The Council must also be satisfied that awarding this contract to ODSL does not confer an unlawful advantage on ODSL, and therefore does not constitute illegal State Aid. State Aid is any assistance or subsidy given by a Member State which distorts or threatens to distort competition. State Aid can appear in many guises and is effectively anything that is provided at below market value.
34. Economic transactions carried out by a public body such as the Council do not confer an advantage on the other party (ODSL), and therefore do not constitute illegal aid, if they are carried out in line with normal market conditions. This circumstance is normally referred to as the Market Economy Operator Principle (MEOP). In order to determine whether a public body’s commercial arrangements constitutes State Aid, it is necessary to assess before any transaction is entered into whether, in similar circumstances, a private market economy would have been prepared to enter into the contract in question.

35. In accordance with the Draft Guidance issued by the Commission, the Council has considered a price as determined via an estimate prepared by an independent quantity surveyor and a tender evaluation exercise informed by an independent quantity surveyor acting on its behalf, and is satisfied that the contract price is in line with market conditions and prices prevalent in the Oxfordshire.
36. It is envisaged that the actual works would be awarded with an NEC 3 (Option 3 – with Bill of Quantities) contract. This is an appropriate form of contract for the type of work necessary to deliver the park and ride extension.

Level of risk

37. The timing of delivery for this scheme has been dependent on the programme for the proposed OFAS. Until relatively recently it was unclear how OFAS would affect the proposed works to extend Seacourt Park & Ride. It is now clear that the majority of the extension works can be completed prior to OFAS commencing on site, and that a relatively modest level of mitigation will be required. It is envisaged that any additional work and expenditure incurred by the Council as a result of OFAS will be refunded by the Environment Agency. This risk is being mediated by an agreement between the Council and the Environment Agency, which is currently in the process of being finalised.
38. An obvious risk concerns the weather. As with all NEC3 contracts the risk associated with adverse weather events lays with the employer, which in this case is the Council. These can only be mediated to some degree by taking the opportunity to compress the contractors programme where possible by, for example, working longer hours in dry periods, although scheme contingency could be drawn upon to the extent possible to offset these additional costs should they arise.
39. There are potential risks concerning ecology. To be clear the Council is obliged to have full regard to the relevant legislation here, including the Protection of Badger Act 1992, and to proceed accordingly. Whilst appropriate mitigation works have already been undertaken on site, the services of an ecologist have been retained to provide advice, as may be necessary, as the Council moves forward.
40. As in any construction project there is always the possibility that a contractor either does not resource the job to the extent required or makes detailed changes to the scheme as it is built on site. This category of risks will be mediated by WYG who have been appointed to administer the contract on behalf of the Council (as client) and where provision has been made for them to have a sustained presence on site throughout the period of construction, allowing any potential issues to be dealt with efficiently.

Equalities impact

41. These matters were considered as part of the determination of the planning application which received the grant of consent on 12th March 2018. At a high level, the scheme provides for crossing points with dropped kerbs, a new customer building incorporating a toilet for the disabled, a number of designated disabled car-parking spaces, appropriately designed and sited signage and new lighting. The Council would however expect the recommended contractor to have regard to the provisions of the Equality Act 2010 at all times.

Conclusion

42. The plans to extend the Seacourt Park & Ride facility (as modified) are little different to those which obtained the grant of permission on 12th March 2018. This report therefore confines itself to a request for final scheme approval and for permission to appoint a contractor to undertake the main-contract works. The recommended contractor is ODSL.

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Background Papers:

- Seacourt Park & Ride Extension – Draft NEC3 Contract, OCC (Exempt information).
- Seacourt Park & Ride Extension, Due Diligence Tender Review, WYG (Exempt information).