

APPENDIX 1

**Report Presented to Stapleford Town Deal Executive Board Meeting
23 September 2022****Proposed Procurement Route****Background**

The Executive Board is asked to consider and decide on the proposal to commission VIA EM to undertake all highways related works throughout the town centre, in order to submit the sixth and final business case (due early December).

VIA EM is the Highways Authority preferred partner and wholly owned arm's length subsidiary of Nottinghamshire County Council (NCC), and provides engineering services across the East Midlands region. It is VIA who delivers highways services for NCC who have, in the past, proposed the need to use VIA for highways works, to ensure there is a coherence between highways all strands of highways policy and design. Faithful and Gould have recommended their use to the Executive Board in the Stapleford TIP following previous design iterations for the town in the TIP development and business case process undertaken thus far.

As the delivery agent for highways services for NCC, there is little value in tendering for this area of work when the winning tenderer would need to bring in the services of VIA EM and potentially increase costs to the Executive Board because of additional management and oversight that would be needed and charged not only by a contractor but also by VIA as expert contractor for NCC.

Teckal Rules would apply (see Appendix 1) allowing Contracting Authorities to look outside the application of procurement rules when co-operating between public sector bodies or using the "in-house exemption".

Considering the above there is little value in tendering for this area of work when the winning tenderer would need to bring in the services of VIA EM and potentially increase costs to the Executive Board because of additional management and oversight that would be needed and charged not only by a contractor but also by VIA as expert partner/ contractor for NCC.

An alternative option is to use the Single Tender Waiver Justification (see Appendix 2), recently agreed as part of the updated Local Assurance Framework.

The Executive Board has recently approved an updated Local Assurance Framework within which is the Single Tender Waiver Justification.

This Justification allows Board to waive formal tendering procedures in exceptional circumstances when those procedures would not be practicable or the estimated expenditure or income would not warrant formal tendering procedures, or where specialist expertise is required and is available from only one source, and must be approved by the Accountable Body's Chief Executive or s.151 Officer.

The Town Deal was awarded a 5% advance of the total award to fund business case and project development activity. Not all of this funding has been defrayed and there is sufficient resource to commission VIA to use take the existing proposals for the town to manage traffic and secure the best possible harmonization between through route users, traffic visiting the shops and services, cyclists and pedestrians. The work will continue to develop proposals for street scene and pedestrian realm improvements. It will also develop a whole town approach and create some high level schemes capable of being delivered by the Towns Fund budget as well as give the Town opportunities and options to bid for other highways improvement funds when opportunities arise.

The creation of a Car Park on the former Tiles UK site and potentially changes to the entrance and egress to the new Enterprise Hub on Victoria Street will be material to this street design work in Derby Road. It is therefore logical to include some initial surveys and the planning permission for the car park into the same works package. Although there are project accountancy issues capturing the exact spend totals can be separately recorded for monitoring and evaluation purposes. The fee proposals for both should be available for a verbal update at the Board meeting.

Decision Required

The purpose of this paper is to ask the Executive Board, to, in consultation with the S151 Officer, approve the commissioning of VIA EM to undertake appropriate works within the town centre on the Traffic Management Business Case, together with the works package for the creation of the car park on the old Tiles UK site at 131 Derby Road, and a further desk top in relation to the Enterprise Hub.

Need

The Executive Board is now at the stage of being required to demonstrate that it can spend the monies granted by Government and deliver the proposed changes within the various business cases submitted to and approved by Government.

The car park is the first piece of work that will need to be commissioned through VIA EM. The cost is in the region of £100,000, and the car park will require crossing of the pavement and linking to the highway. This is work that VIA would require any contractor to allow them to undertake or would specify clearly the required quality of work expected from that contractor, and monitor that their requirements were indeed provided.

Decision

Executive Board is asked to approve the use of the:

Single Tender Waiver Justification for reasons A and F (Appendix 1) as the approach to ensure swift delivery of the Business Case for the Traffic Management Scheme, acceleration of the work on the replacement car parking; the first stages of the enterprise hub as a single order. The Waiver should site the Teckal Rules as further justification for this approach (See Appendix 2).

Local Assurance Framework – Extract

Single Tender Waiver Justification

Formal tendering procedures may be waived in the following circumstances:

- a) in very exceptional circumstances where the Accountable S151 Officer or Chief Executive Officer decides that formal tendering procedures would not be practicable or the estimated expenditure or income would not warrant formal tendering procedures, and the circumstances are detailed in an appropriate Broxtowe Borough Council record;
- b) where the requirement is covered by an existing contract;
- c) where Crown Commercial Service or equivalent agreements are in place and have been approved by the Governing Body;
- d) where a consortium arrangement is in place and a lead organisation has been appointed to carry out tendering activity on behalf of the consortium members;
- e) where the timescale genuinely precludes competitive tendering, but failure to plan the work properly would not be regarded as a justification for a single tender;
- f) where specialist expertise is required and is available from only one source;
- g) when the task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate;
- h) there is a clear benefit to be gained from maintaining continuity with an earlier project. However, in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering;
- i) for the provision of legal advice and services providing that any legal firm or partnership commissioned by the Broxtowe Borough Council is regulated by the Law Society for England and Wales for the conduct of their business (or by the Bar Council for England and Wales in relation to the obtaining of Counsel's opinion) and are generally recognised as having sufficient expertise in the area of work for which they are commissioned. The Chief Finance Officer will ensure that any fees paid are reasonable and within commonly accepted rates for the costing of such work.
- j) where allowed and provided for in the Capital Investment Manual.

The waiving of competitive tendering procedures should not be used to avoid competition or for administrative convenience or to award further work to a consultant originally appointed through a competitive procedure.

Where it is decided that competitive tendering is not applicable and should be waived, the fact of the waiver and the reasons should be documented and recorded in an appropriate CCG record and reported to the Governance and Audit Committee at the first available meeting.

REQUEST TO WAIVE FORMAL TENDERING PROCEDURES

Requests to waive formal tendering procedures should be made in writing using this template and sent to the Chief Finance Officer for consideration. Contracts should not be entered into or requisitions/orders raised before the waiving of formal tendering procedures has been agreed by the Chief Executive or Chief Finance Officer.

Description of service being procured:

Estimated value of service being procured:

Applicable circumstances for waiver (a-j) and supporting information:

Declaration:

I confirm that the information contained within this form is true and correct. I can confirm that I have complied with the Broxtowe Borough Council's detailed Financial Policies and Standing Orders. I understand that if I have knowingly provided false information or made a false statement that I may be subject to disciplinary and/or criminal action.

Request by:

Signature:

Authorised (Chief Executive or S151 Officer) signature and date:

Date reported to Executive Board:

APPENDIX 2

Teckal Rules

Use of VIA for all highways works

Following receipt of information and advice from Broxtowe BC Procurement Service the information below is applicable to the Stapleford Town Deal suite of projects, and the Government's Levelling Up Agenda using LUF and UKSPF (Levelling Up Fund and UK Shared Prosperity Fund) within the Borough as well as other areas of work being undertaken.

Broxtowe BC has in the past been instructed by NCC to use VIA (a wholly owned arms-length subsidiary of NCC) and NCC have insisted on their appointment for highways works. This is usually to ensure that the NCC policies (safety, DDA, etc) are adhered to and the appropriate quality is reached so that future maintenance can be adopted with a high degree of comfort by the County Council.

It should be noted that when this is the case it is still recommended that the VIA should only charge for costs including overheads.

Faithful and Gould have also recommended the use of VIA for the works related to the Town Deal which forms part of the TIP.

Teckal Rules would apply allowing Contracting Authorities to look outside the application of procurement rules when co-operating between public sector bodies or using the "in-house exemption".

"The Hamburg case set out an exemption for contracts involving co-operation between public sector bodies.

Hamburg

Under regulation 12(7), a contract concluded between two or more CAs will be exempt from application of the regulations where:

- the contract implements a co-operation between the participating CAs with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;
- the implementation of that co-operation is governed solely by considerations relating to the public interest; and
- the participating CAs perform on the open market less than 20% of the activities concerned by the co-operation.

The codification of Teckal introduces two new key changes. The first is that indirect private capital participation is permitted, as is non-controlling and non-blocking forms of private capital participation where this is required by legislation and does not result in a loss of the CA's decisive influence.

Also, the fixing of a percentage for the activity requirement is significant as it sets a clear threshold for CAs to follow in their application of the exemption and Teckal can still be of benefit to CAs where their controlled entities do up to 20% of their activities with or for third party organisations.

The codification of the Hamburg principles means CAs can now potentially rely on a statutory exemption to provide services to each other where the conditions are met.”

(<https://www.wardhadaway.com/insights/updates/procurement-in-a-nutshell-teckal-and-hamburg-exemptions/#:~:text=The%20Teckal%20case%20set%20out%20an%20exemption%20for,It%20is%20oft en%20known%20as%20the%20in-house%20exemption.>)