



Watford Borough Council

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Manny Lewis
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Enquiries to:

Phone no: 01923 278115

Our reference:

Your reference:

Date: 15 May 2014

Exemption Request for phase 3a, 3b and 3c of the Grand Union Canal Towpath Refurbishment Partnership Project.

Dear Manny

In February 2013 Watford Council entered in to a partnership project with Hertfordshire County Council (HCC), Three Rivers District Council (TRDC) and The Canal & Rivers Trust (CRT) for the refurbishment of the Grand Union Canal Towpath. The innovative project was to fully refurbish the existing Canal Towpath and provide a quality surface for pedestrians, cyclists and those with limited mobility to use.

A full procurement exercise was undertaken. Balfour Beatty won the contract following a competitive tendering exercise and were awarded the contract in April 2013. Initially, the contract was for the delivery of Phase 1; a distance of 1400 metres from Iron Bridge 77, Cassiobury Park through to Grove Mill Lane.

The contract made provision for a further phase of works to be included within the tender submission. In July, a second phase from Grove Mill Lane through to Bridge Road in Langleybury, a further distance of 2400 metres was awarded to Balfour Beatty. The works were completed in mid-September 2013.

Phase 1 Costs - £139,497.50 .

Phase 2 Costs - £218,433.44

Total Costs = £357,930.94

Following the success of phase 1 and 2 the Partners (WBC, HCC, TRDC and C&RT) have now been presented with a funding opportunity for 2014-15. The Partners have identified as their priority the extension of the tow path refurbishment northwards to link up with Home Park Industrial Estate, Kings Langley and southwards through Croxley Green to connect to the Ebury



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Way cycle route. A combined distance of 4255 metres. Confirmation of the majority of the funding for the additional work has only recently been received. On the advice of the CRT, major works on the canal tow path of this type must only be carried out during the summer months (April to September) when ground conditions allow and the risk to the stability of the canal bank and potential bank collapse arising from wet conditions is at its lowest. The late confirmation of funding has produced a situation where completion of a full tendering exercise along with a suitable mobilisation period would not leave a realistic time window for the work to be complete within the operation window identified by the CRT.

An exemption request is now being sought to extend the existing contract and awarded the further phases of works to Balfour Beatty on the basis of exceptional circumstances. The reasons for the request are listed below:

1. The late confirmation of funding for further works on the tow path in 2014/15 and the identified window for delivery of the works leaves insufficient time for the funding opportunity to be exploited during 2014/15 if a full tendering exercise is undertaken
2. The phase 1 and phase 2 works delivered in 2013/14 were let using a competitive tendering exercise in accordance with the Council's Procurement Procedures
3. The contractor for phases 1 and 2 has indicated that it will deliver an efficiency saving on the tendered rates for the 2013/14 if the works for 2014/15 are placed with them (see below)
4. The partners have been happy with the method of works undertaken by Balfour Beatty in the previous phases. Continuing with Balfour Beatty would minimise mobilisation time and would enable the Partners to retain the benefits of using an established contractor who has already established efficient operating practices;
5. Extending the refurbishment in 2014/15 will maximise the benefit of providing connectivity to companies in Kings Langley such as Imagination Technology and Renewable Energy Systems (RES) and will form a direct link to Rickmansworth to the south via the existing Ebury Way cycle route at the earliest opportunity;
6. Meets objectives set out in Watford Green Travel Plan for encouraging sustainable journeys;
7. Further establishes the benefits of Partnership working and match funding opportunities;
8. The combined costs of any further phases would be below the EU threshold.
9. The works are specialist work serviced by barge from the Canal

The estimated costs of the further phases of works is £345,000 made up of the following contributions:

- HCC are looking to contribute £220k,
- TRDC £50k,
- C&RT £40k and
- WBC £15k + £20k of remaining Partnership funds left over following the two previous phases of works.

Of the £15k WBC are contributing, £10k has been made available following a successful bid in April 2014 for funds to The Watford and Three Rivers Health and Wellbeing Partnership Executive Group.

Balfour Beatty have agreed to use the contract rates as per the schedules set out in April 2013. An RPI uplift on the rates of 2.54% would be payable for the additional phases. Following negotiations an efficiency saving of 0.31% has provisionally been agreed with BB subject to works award, reducing the uplift to 2.23%. Provisional discussions have taken place with BB and the contractor has provisionally set a start date of the 16th June with completion within 16 weeks (end of September 2014).

The Contract Procedure Rules state that a contract may be extended by up to 50% by value. In this case the exemption request is to waive this rule and allow a greater extension. The figures in the report note a value for phases 1 and 2 of £357,931. The estimated costs for phase 3 is £345,000 so a 100% extension which exceeds the limit in the CPRs, hence the request for a waiver. For the reasons given including the funding opportunity it seems reasonable to ask for an exemption to be considered.

In view of the funding opportunity presented, the timings for undertaking works of this nature and relatively low contribution of actual funding Watford would need to contribute to the scheme, an exemption to the Councils Contract Procedure rules to award Balfour Beatty the additional phases of works is now sought on the basis of exceptional circumstances as described above.

Yours sincerely



Andy Smith
Transport and Infrastructure Section Head

Central Register of Exemptions

The Audit Plan 2013/14 – “Procurement and Contract Management Baseline Assessment” Recommended: “We recommend that consideration should be given to maintaining a central record of waivers and exemptions that have been approved.”

The Council's Contract Procedure Rules state:

Exemptions:

- Acquisition or disposal of Land:

These Rules do not apply to the acquisition or disposal of Land except where a lease or licence is granted as a part of a principal contract for other Works, Supplies or Services.

- Unforeseeable emergency:

Where exemption from these Rules is unavoidable due to an unforeseeable emergency involving immediate risk to persons or property or likely to give rise to major or serious disruption to the Council's services, a Head of Service and the Managing Director may jointly approve an exemption. They must inform the relevant Portfolio Holder and make a report to the next Cabinet meeting on the action taken. Urgency caused by undue delay will not be a valid reason for an exemption.

- Exceptional Circumstances:

An exceptional exemption may be considered by the Managing Director in limited and unusual circumstances. This may, for example, apply where a key supplier has gone into Administration or Receivership. It applies where the event will involve significant risk to a key contract and is likely to give rise to a significant disruption to a Council service. In such an event a Head of Service and the Managing Director may jointly approve an exceptional exemption. This may, for example, be a single tender action or the use of a substitute contractor from the original tender responses to complete a contract or part of a contract. They must inform the relevant Portfolio Holder and make a report to the next Cabinet meeting on the action taken.

- Limited market:

A partial exemption may apply where a supply or service is only obtainable from a single or a very limited number of contractors. In such a case, evidence of the limited market must be provided, such as by public advertisement or detailed market research. A Head of Service and the Managing Director may jointly approve a partial exemption. They must inform the relevant Portfolio Holder and make a report to the next Cabinet meeting on the action taken.

- Prior approval:

Other than as specified above no exemption from these Rules shall be made unless prior approval has been granted at a Cabinet meeting.

Record of Exemptions – Heads of Service must ensure that full details of approved waivers and exemptions are recorded in a central register held by the Corporate Procurement Manager on behalf of the MD.

A record form must be completed and signed for each approved Exemption.

v1.0 Nov 2013

Approved Exemption Record Form

	Details
Exemption category <ul style="list-style-type: none"> • Unforeseeable emergency • Exceptional Circumstances • Limited market • Prior approval 	Please find attached the covering letter which details the Exceptional Circumstances.
Details / Circumstances / Explanation of why an exemption was required:	PLEASE SEE COVERING LETTER
Approved by (Name and date): <ul style="list-style-type: none"> • MD • HoS 	Manny Lewis Jane Custance <i>[Signature]</i>
Portfolio Holder informed (Name and Date):	IAIN SHARPE 28-5-2014
Date reported to Cabinet:	7 TH July 2014
Contract Title:	GRAND UNION CANAL PHASE 3
Vendor / Contractor:	BALFOUR BEATTY
Date Contract let:	APRIL 2013
Term of Contract:	TENDER CONTRACT
End date:	MARCH 2015
Total Value of Contract:	£702,930.94
WBC Contract Manager (Name and contact details):	ANDY SMITH 01923 278115
Comments / Other Information:	NONE
Date entered onto Exemptions Register:	<i>[Signature]</i> , 29/05/14
Signed by Head of Service:	

Copies to:

- Contract File
- Head of Service
- Corporate Procurement Manager
- Central Register of Exemptions