

Report to **Policy & Resources Committee**
Date **17 February 2022**
By **Head of Business Services**
Title of Report **Procurement - Seven Sisters Country Park Further Construction Works**

Decision

Recommendation: The Committee is recommended to:

- 1. Approve the commencement of a procurement process leading to the appointment of a contractor to undertake further construction works at Seven Sisters Country Park as described in paragraph 1.5 of this report and as confirmed at the meeting.**
 - 2. Delegate authority to the Chief Executive to award contracts for the above, following a competitive process as described in this report.**
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1. Summary and Background

- 1.1 At its meeting on 7 July 2020 the Authority agreed a series of “phase 1” Works at Seven Sisters Country Park, following the Authority’s acquisition of the site in 2021. A budget of c£1.9m (plus an additional contingency fund later added by the NPA) was allocated to undertake the agreed building works within phase 1.
- 1.2 Delivery of phase 1 work is currently underway, with the contractors’ team on site currently working to deliver improvements to the infrastructure including Toilets, Visitor centre, new office facilities and improved public realm aspects. The Authority agreed the procurement exercise for this work at its meeting on 7 July 2020.
- 1.3 As is usual for this type of contract a process of value engineering was undertaken which resulted in a number of elements of the planned work being reduced or amended. As the work has developed we have taken the opportunity to release funds from the original scope by deleting some non –essential works which will not impact on the overall delivery. It is now proposed to use the funds released in this way in the award of a further contract to undertake additional works that will increase the scope and impact of the phase 1 development. These works include the conversion of Foxhole Cottage 3 into two separate one-bedroom units, which will provide accommodation to potentially house an onsite warden in the future if required.
- 1.4 In late 2021 the NPA submitted a bid to SELEP (South East Local Enterprise Partnership) for funding made available from the ‘Get Britain Building’ fund. This bid was for £200k. If successful this funding will enable further works to the Foxhole Cottages to be undertaken,

in addition to integral works at the camping barn (underpinning of the garden wall in association with the Construction of the facilities block). The outcome of this funding bid is expected to be released on Friday 11th February, and an update will be provided at the meeting.

- 1.5 If the funding from SELEP is confirmed a full package of works will be tendered at a cost of c £350k, with the remainder of the funds coming from existing NPA funds already allocated to the project. If the SELEP funding is not approved integral elements of the package of works will still need to be delivered from funds released from within the existing £1.9m. The total cost to the authority of these integral works (underpinning and facilities block works) will then be c£180k. These amounts can be met from within the existing funds allocated to this project, and in both cases, the total cost of the works triggers the need for P&R Committee approval of the procurement exercise.
- 1.6 The SELEP grant was submitted, and if successful, will be allocated to the Seven Sisters Phase I project by the Chief Executive using delegated powers.
- 1.7 Members are advised that all of the works identified fall within the scope of the phase I project previously agreed by the NPA, and the costs will be met from within the existing budget allocated for this work. The works will have a positive effect on the Business Plan and are supported by the Seven Sisters Project Board.

2. The Procurement Route

- 2.1 There have been no significant changes to the Public Procurement Rules following the UK's departure from the European Union, save for some minor policy changes to below threshold procurements, allowing Authorities to reserve specific contracts. Although much of the public procurement law in the UK derives from EU directives, it is incorporated into English law through the Public Contract Regulations (2015) Act, which remains in force. The UK has joined the Government Procurement Agreement, within the World Trade Organisation, through which it commits to maintain access to Government contracts to other member states. The Government have published a Green Paper on public procurement, which sets out a direction of travel for the future.
- 2.2 The indicative contract value of £350,000 with SELEP funding or £180,000, without SELEP funding falls significantly below the threshold set out in the Public Contracts Regulations 2015 for works contracts. The threshold for 2020/21 is £4,733,252. The Regulations, other than Chapter 8, will not therefore apply to this procurement process.
- 2.3 Contract Standing Orders (CSO 10) applies to this contract above £75,000 but less than the relevant EU threshold (incorporated into UK law) and states that tenders should be invited from at least five companies. It is intended in this procurement to use the Open Process and advertise this contract on our own website and nationally using the Contract Finder public procurement portal.

3. Tender Evaluation

- 3.1 Although SDNPA commonly uses the single stage or open process for receiving tenders, as recommended by the Cabinet Office for low value tenders, evaluation of tenders is carried out in two stages.
- 3.2 The Selection Stage is where we evaluate the capability of the contractor to satisfactorily carry out the contract. This involves looking at the financial strength and other resources of the company, including its previous experience in carrying out similar works. There is no weighting or scoring in this stage of an open tender; contractors can either do the work or they can't, so this is judged on a pass or fail basis. As the selection criteria are described in

the tender, it is unusual for companies to fail at this stage, generally if they don't meet the criteria then they won't submit a bid.

3.3 The Award Stage is carried out using the Most Economically Advantageous Tender (MEAT) criteria for awarding the contract, using a combination of quality factors, such as Approach to the Contract, Project Resourcing as well as price. The evaluation panel will be looking at the sustainability aspects of any approach as well as looking for proposals that will add social value to the contract.

3.4 Evaluation is carried out by a number of officers (and in this case involving Pritchard Architecture as the architects) scoring independently, before meeting on a panel basis. The evaluation programme will also allow for a process of clarification on all aspects of bids and due diligence before the award is made.

4. Outline Timetable

4.1 With Committee Approval, it is intended to publish the Contract Notice and release the Invitation to Tender on 1 March.

4.2 The tender process will remain open for seven weeks, closing in late April. Three weeks has been allowed for evaluation, including clarifications and due diligence, leading to award in mid-May and a start on site in the middle of June.

5. Other implications

Implication	Yes*/No
Will further decisions be required by another committee/full authority?	No
Does the proposal raise any Resource implications?	SDNPA has sufficient resources in place, in term of staff qualified to undertake the procurement exercise.
How does the proposal represent Value for Money?	The competitive tender process is aimed at delivering value for money for SDNPA
Which PMP Outcomes/ Corporate plan objectives does this deliver against	The contract will deliver against the Seven Sisters Country Park priority in the Corporate Plan
Links to other projects or partner organisations	This procurement is linked to the Seven Sisters Country Park project
How does this decision contribute to the Authority's climate change objectives	There is no direct link to the Authority's climate change objectives
Are there any Social Value implications arising from the proposal?	Tenders will be evaluated partly on the basis of the social value the bidding organisations are prepared to deliver
Have you taken regard of the South Downs National Park Authority's equality duty as	In terms of the procurement exercise, staff members have undertaken ethical procurement training which contains a focus on equalities. Equalities is part of the selection criteria applied

Implication	Yes*/No
contained within the Equality Act 2010?	to bidders. Once the award is made, the subsequent contract will contain the NPA's standard terms and conditions which include provision in respect of equalities duties.
Are there any Human Rights implications arising from the proposal?	The selection process will examine the bidding companies' compliance with the laws on Modern Slavery.
Are there any Crime & Disorder implications arising from the proposal?	The probity of the companies bidding for the contract will be examined as part of the selection process.
Are there any Health & Safety implications arising from the proposal?	The works contractors' Health and Safety policies and record will be examined during the selection processes.
Are there any Data Protection implications?	No
<p>Are there any Sustainability implications based on the 5 principles set out in the SDNPA Sustainability Strategy?</p> <ol style="list-style-type: none"> 1. Living within environmental limits 2. Ensuring a strong healthy and just society 3. Achieving a sustainable economy 4. Promoting good governance 5. Using sound science responsibly 	<p>The environmental policies of the bidding companies will be examined during the selection process, as will their track record on sustainable construction.</p> <p>Those companies shortlisted will also need to demonstrate how their policies and experience in sustainable construction will influence their approach to the contract. This will be examined at the Award stage of the procurement process.</p>

6. Risks Associated with the Proposed Decision

6.1 There are four well documented risks with any procurement and those are listed as follows;

6.2 *Commercial Risk* – That either the price objectives aren't achieved up front or there are other costs that arise during the contract that diminish the overall benefits. Construction contracts are particularly susceptible to price overruns. The schedule of rates will be drawn up by the architect and the architect will also assist in the management of the construction project. The detailed design will be agreed by the Client and further alterations, which can add significantly to the tendered price, will be kept to a minimum. The construction work is likely to be carried out during a period of severe economic downturn and insolvency on the part of the contractor is a significant risk. There are provisions within SDNPA Standard Terms and Conditions of Contract to allow insolvency situations to be managed and financial standing will form part of the due diligence process. Neither of those is sufficient to eliminate this risk.

- 6.3 *Technical Risk* – This concerns the difficulty in being able to specify the desired outcome and on the market being able to deliver to the specification. SDNPA is using a traditional contract to manage this delivery with a single consultant designing and overseeing the build.
- 6.4 *Performance Risk* – This concerns the ability of suppliers to perform consistently over the life of the contract to deliver the planned benefits. Stage payments and regular supervision will provide the necessary incentives for the timely completion of the work to the required standard. However, see insolvency risk above.
- 6.5 *Contractual Risk* – This covers things like being able to remedy the shortcomings in the contractors’ performance without severely damaging the contract and about avoiding reliance on the contracted supplier as the contract develops. There is obviously a reliance on the main contractor in any construction process and it is important to ensure intelligent and active contract management
- 6.6 In Public Procurement, there is also the *Legal Risk*, where a procurement is found unsound in law, either through the remedies directive or the public procurement rules. The application of the Public Contract Regulations to a works contract of this value is limited and the use of professional procurement staff will help ensure that the contract process complies with the procurement rules and with best practice.

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SDNPA Consultees	Chief Executive; Director of Countryside Policy and Management; Director of Planning; Chief Finance Officer; Monitoring Officer; Legal Services,
External Consultees	None

