

**NORTH SOMERSET COUNCIL DECISION**

**DECISION OF: DIRECTOR OF PLACE**

**WITH ADVICE FROM: S151 OFFICER & HEAD OF STRATEGIC PROCUREMENT,**



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**DECISION NO:** 20/21 DP 216

**SUBJECT:** CONTRACT AWARD: LEGAL SERVICES FOR THE HOUSING INFRASTRUCTURE FUND PROGRAMME OF WORKS

**KEY DECISION:** YES

**REASON:**

The decision will result in the Local Authority incurring expenditure of over £500,000 over the contract period for the legal services provided.

**BACKGROUND:**

The HIF programme requires the construction of Banwell Bypass Works to commence no later than late 2022 (and for all necessary consents to be in place to allow such commencement) and completion and opening on or before the 31 March 2024.

DECISION NO: 20/21 DE 110 dated 19 August 2020 approved the Housing Infrastructure Fund (HIF) procurement plan to appoint legal services to support the delivery of the Banwell Bypass.

The appointment of Legal Services will provide legal support to enable the Council to successfully deliver the HIF scheme which requires land assembly, planning approval and the likelihood of a CPO public inquiry and/or planning inquiry.

**DECISION:**

Following a comprehensive procurement and evaluation process, that the Banwell Bypass Legal Services contract be awarded to Burges Salmon LLP, registered at One Glass Wharf, Bristol, BS2 0ZX, LLP number OC307212, at a tendered cost of £642,950. The contract and price cover a period of 5 years.

The Invitation to Tender stated the contract term of 5 years with two optional 1 year extensions. Any exercise to extend the legal engagement beyond the initial 5 year period will be subject to a separate decision at the relevant time.

**REASONS:**

This will enable the Council to appoint a legal team with necessary skills, expertise and resources to advise and support the Council to successfully deliver the Banwell Bypass

and associated infrastructure enabling works which meets the programme requirements of the HIF bid.

### **Procurement Procedure and Publishing Information:**

A competitive Open tender process was followed under the Public Contract Regulations 2015. The tender was made available on 4 September on the Councils procurement portal, Supplying the South West. During the Live tender window, tenderers were able to log clarifications and within the first week were invited to feed in any concerns over the hours allocated to each stage in the process and highlight any potential missing stages, as defined within the Pricing Schedule. Following two clarification submissions two additional stages were added to the Pricing Schedule with appropriate hours allocated and an updated Pricing Schedule re-issued to all potential bidders. On the closing date of the 5 October we received 7 complete bids.

### **Award Criteria:**

As agreed in the Procurement Plan, the award criteria used in this procurement process were: Quality 50% and Price 50%.

The following areas were covered as part of the quality assessment:

Question	Weighting %	
1.1	Business Capability	25%
1.2	Project Team	15%
1.3	Professional Expertise	20%
1.4	Programme Proposal	10%
1.5	Relationship Management	10%
1.6	Counsel Services	10%
1.7	Social Value	10%

### **Evaluation Panel Members:**

The evaluation panel consisted of:

- Procurement Manager (facilitator only)
- Major Scheme Project Manager
- Senior Project Manager
- Transport Planning Technical Lead
- Team Leader – Property & Contracts Team

Nick Brain, Head of Legal attended the first evaluation moderation session to oversee and offer advice.

### **Evaluation Outcome:**

During the evaluation moderation session, one tenderer had their submission disqualified following two concurrent scores of 2 in their quality submission, notably on questions 1.2

and 1.3. All tenderers were made aware in the Invitation to Tender that the evaluation panel reserved the right to fail any tenderer who scored less than a 3. The panel all agreed to disqualify this tenderer from the remainder of the moderation session.

In summary, the final combined quality and price % scores are as follows (in alphabetical order):

<b>Tenderer</b>	<b>Quality and Price Combined score (%)</b>
Bidder One	77.9%
Burges Salmon	98.3%
Bidder Three	66.9%
Bidder Four	71.1%
Bidder Five	81.4%
Bidder Six	95.0%

The detailed results of the quality & price assessment evaluations of these tenders can be found at Appendix 1.

### **Contract Management:**

The estimated total value for legal services was £1.7m which is [substantially] higher than the tendered price of £642,950, the third lowest priced bid, and [substantially] lower than highest price bid. Robust contract monitoring and contract management will be put in place to ensure that Legal Services are delivered within the tendered price. Contract management will include:

- The use of Key Performance Indicators (KPIs) will be used as a tool to measure performance. These will be based around the core principles of time, cost and quality but will also link back to the quality element of the original submission.
- Monthly bespoke reports will be produced by Burges Salmon to enable the contract manager to monitor progress against the key criteria.
- Budget spend against the approved budget together with forecast spend will be summarised in highlight reports and presented to the Project Board.
- Weekly meetings will be organised and chaired by NSC Major Projects team staff to ensure that quality and progress of Legal works is sufficient and meeting contract and project needs.
- Burges Salmon will be asked to produce a monthly finance report to monitor their contract costs against the budget. Quarterly meetings will be held with the land agent to monitor costs. These will be held more frequently if the monthly finance report shows they are required.

### **OPTIONS CONSIDERED:**

Consideration was given to supplying the legal services in house. However this option was considered unviable due to lack of capacity within the legal services team and because of the specialist legal services required to support the Banwell Bypass through land assembly, planning approval and the likelihood of a CPO public inquiry and/or planning inquiry.

## **FINANCIAL IMPLICATIONS:**

### **Costs**

The final cost of the contract with the successful tenderer is £642,950.

The original estimated total value for legal services was £1.7 million based on previous experience from projects of a similar scale, namely South Bristol Link Legal services. Pricing was scrutinised following receipt of the tenders, given that all bids were significantly lower in cost than expected. The hours stated and basis for calculating these, which were used to create the pricing schedule, were reviewed but found to be sound and logical. The contract manager will monitor delivery of legal spend against the tendered price through robust contract management and a monthly review of fees and will report on spend to the Project Board.

### **Funding**

The decision is to be funded by the Housing Infrastructure Fund (FF) awarded by MHCLG. The Grant provides £ 97,067,550 of capital funding and under the terms of the Grant Funding Agreement dated 24 August 2020 the grant monies will be received incrementally at the timeframes specified in the Grant Agreement.

## **LEGAL POWERS AND IMPLICATIONS:**

The procurement was undertaken in line with Public Contract Regulations 2015.

Burges Salmon will be engaged on their standard terms of business and letter of engagement. This is the usual way in which external legal resource is engaged.

## **SOCIAL VALUE:**

The winning provider has committed to the following:

Burges Salmon propose to enhance social inclusion focussing on young people in the local community and support schools and life-long learning within North Somerset.

They will work with charities focused on youth and social mobility to enhance social inclusion. They will undertake activities with Business in The Community (BiTC), Envision, Into University, Teach First, the Social Mobility Business Partnership as well as local schools in the North Somerset area including Churchill Academy and Sixth Form and Hans Price Academy.

In addressing social inclusion of young people in the region, over the next 12-months they will specifically commit to offer the following:

1. Reach at least 600 students where at least 50% are from disadvantaged backgrounds
2. Allocate, fundraise and donate at least £75,000 to relevant local charities in Bristol and North Somerset
3. Enable at least 3 virtual business insights days for under 18s reaching at least 100 students

4. Donate at least 1000 hours of pro bono legal work to organisations in Bristol and North Somerset
5. Have at least 25% of their people volunteer in local communities within Bristol and North Somerset

Their dedicated CR Team will keep track of these targets on a monthly basis. Impact information will be collected through questionnaires completed by the participants. Impact reports will be provided by partnering organisations.

They will also participate in specific benchmarks including the Social Mobility Index and BiTC Responsible Business Tracker.

Burges Salmon will monitor the arrangements at least monthly and we will report to NSC on a regular basis.

### Carbon Reduction

Net Zero and taking positive action for climate and the environment is a key focus of their responsible business agenda. They are one of the founding members (and currently on the Leadership Team) of the Legal Sustainability Alliance, the sector body responsible for helping the legal sector reduce its environmental impact with a specific focus on carbon reporting and transparency.

Their commitments include:

- Having Burges Salmon offices that have all been awarded a BREEAM Excellent rating for energy consumption and incorporate some of the most environmentally-friendly technologies available;

- Having a long-standing commitment to “measure, manage and reduce” our carbon footprint under the governance of our environmental management system accredited to ISO 4001;

- Publishing our annual carbon footprint publicly for many years with a year-on-year reduction in our carbon emissions;

- Moving to an electricity supply that is 100% generated from renewables in alignment with our commitment to the Legal Renewables Initiative;

- Investing in an off-set rewilding project accredited to the UK Woodland Carbon Code with a focus to reduce emissions;

- Member of the Bristol Green Capital Partnership and approach towards Net Zero in the City of Bristol;

- Promoting sustainable travel – prior to Covid-19 80% of our people were either walking, cycling or using public transport for their daily commute and business travel has been prioritised to focus further improvement;

## **CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS:**

As part of the aim to encourage innovative solutions to carbon reduction, it is proposed that a sustainability toolkit be developed to identify sustainability outcomes to be achieved. This is to be developed in collaboration with the supply chain and the purpose specified to put tangible metrics against sustainability into the project as goals.

All supply chain partners will play an active and key role in ensuring the council's ambition of carbon reduction and biodiversity net gain is secured and achieved through both as an active member of the project team and through as necessary application of statutory and non-statutory legislation in the design, development and delivery of the proposed infrastructure.

The procurement process challenged the bidders on their carbon footprint and carbon management through the social value submission. Carbon Management was also included as part of the tender specification with a monthly report required on how the legal consultant is achieving the Council's carbon outcomes. The service specification included the requirement for a preference for remote meetings to reduce carbon emission.

It is proposed to appoint a carbon advocate to help the project team realise its carbon reduction ambition and provide a framework for future projects. Carbon reduction and management were a key component within the tender opportunity.

The Council will seek to ensure that all parties across the value chain work collaboratively, towards a common goal to reduce carbon, so achieving the following outcomes;

- Reduced Carbon, reduced infrastructure cost;
- Promote innovation delivering benefits to society and communities;
- Carbon management will contribute to tackling climate change;
- Deliver more sustainable solutions.

## **CONSULTATION**

Soft market engagement was undertaken with legal firms to gauge capacity and capability for legal support and has helped inform this procurement, additionally engagement has been undertaken with internal stakeholders, including procurement, legal and project management and planning colleagues.

The Executive Member was briefed and approved the procurement plan and SPEDR scrutinised the Contract award decision.

## **RISK MANAGEMENT**

The Banwell Bypass has a full risk register with mitigations recorded against each risk. The risk register is regularly reviewed by the project team and key risks reported to the project steering board that meets monthly.

The following key risks have been identified that are associated with this appointment and mitigating actions proposed, as summarised below.

Description	Impact	Mitigation
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Objection to scheme from public causes delay	Delays to programme, cannot meet funding deadline	Burges Salmon to manage stakeholder engagement, inform of key challenges to programme (E.g. CPO for land)
CPO objections to scheme	Programme delays and cost increase	Advise on best case to be made for CPO
Insufficient professional services cost allowance	Cost increase	Contract management and monitoring.
Changes in legislation	Legal implications, cost increase and programme delay	Advise on any changes in legislation relevant to the scheme and measures to be followed to mitigate the effect of such change.

## EQUALITY IMPLICATIONS

Have you undertaken an Equality Impact Assessment? Yes

An initial screening exercise has been carried out as part of the HIF development business case process to identify protected characteristics that the Equality Act 2010 requires us to consider, in relation to the highway and school infrastructure.

The protected characteristics most pertinent to the highways scheme are age, disability and religion or belief. Provisions will be made to maximise equality between those who share a protected characteristic and those who do not.

A full equality impact assessment will be undertaken as part of the highway development proposal and Banwell Bypass planning application.

## CORPORATE IMPLICATIONS

This work generated by this contract award will support the council through helping deliver the new proposed Banwell Bypass which can support the delivery of existing and potential housing allocations totalling 7,557 new dwellings. 4,482 of the homes are to be located at the existing Weston Villages development sites; the specific numbers and locations of the remaining dwellings will be subject to the new Local Plan process. The contract will support good quality engagement with landowners and stakeholders on the Banwell Bypass. This will help meet the new corporate plan aims

- 1) A thriving and sustainable place
- 2) A council which empowers and cares about people
- 3) An open and enabling organisation

## APPENDICES

Appendix 1 – Quality & Price Evaluation Summary

### BACKGROUND PAPERS

[Commissioning plan](#)

[20-21 DE110 Legal Services Procurement Plan](#)

HIF Report 16 June 2020 Full Council

<https://apps.n-somerset.gov.uk/Meetings/document/report/NSCPM-38-570>

HIF Final Fund Grant Determination Report 29 July 2020 The Executive

<https://apps.n-somerset.gov.uk/Meetings/document/report/NSCPM-203-12>

SIGNATORIES:

DECISION MAKER(S):

Signed:  Director of Place

Date: 27 November 2020

WITH ADVICE FROM:

Signed:  s151 Officer

Date: 27 November 2020

Signed:  Head of Strategic Performance

Date: 25 November 2020