

## Cheltenham Borough Council

Cabinet – 27th April 2010

### Contract Rules waiver- Joint Core Strategy –

### Strategic Flood Risk Assessment Level 2

### Report of the Assistant Chief Executive

#### 1. Executive Summary and recommendation

##### 1.1 The issue

**1.1.1** Under Rule 3.7 of the Council's Contract Rules, contracts with an aggregate value of over £50,000 must be subjected to a Tender Procedure, with a minimum of three written tenders being sought. However, waivers can be agreed in certain circumstances. Under Rule 9.1 i) of the Contract Rules a Waiver must be agreed by Cabinet for contracts over £50,000.

**1.1.2** The Council is acting as Lead Authority for the Joint Core Strategy consortium in respect of the next stage of commissioning of some consultancy for a Strategic Flood Risk Assessment (SFRA). The first stage of the SFRA, known as Level 1, was carried out by Halcrow Group Limited, under a contract procured and entered into by Gloucestershire County Council on behalf of all the district level councils within the county. The county Council are of the view that the contract does not cover the next stage of the SFRA, known as Level 2, and the County Council are reluctant to enter into a new contract with Halcrow Group Limited on behalf of the district level councils. A new contract between the council and Halcrow Group Limited would enable the work to progress in a timely and straightforward manner.

##### 1.2 I therefore recommend that:

**1.2.1 For the reasons set out later in this Report, the Cabinet agrees a Waiver under Rule 9.1 i) of the Contracts Rules in respect of the commissioning of Level 2 of the Strategic Flood Risk Assessment for the Joint Core Strategy at a contract**

value of £52,534.96 plus VAT, the cost to be shared equally between the Council, Tewkesbury Borough Council and Gloucester City Council.

**1.2.2 Authority be delegated to the Borough Solicitor and Monitoring Officer to prepare and complete any contract documentation required in connection with the commissioning of the Level 2 SFRA.**

### **1.3 Summary of implications**

#### **1.3.1 Financial**

The budget exists for the commissioning of the Level 2 SFRA and the contributions from Tewkesbury Borough Council and Gloucester City Council have already been paid and are held by Cheltenham Borough Council.

Financial rule 10.1 requires cabinet to approve waivers for contracts with value over £50,000. Although the net value to the council is less than this amount as a result of the contribution from other partners, the contract, which is in the name of the council, is over £50,000.

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### 1.3.2 Legal

The Contract Rules adopted in April 2006, as revised in 2008, provide a framework for the procurement of works, goods and services. Following them ensures value for money, propriety and the proper expenditure of public funds. The Rules make provision for waivers in certain circumstances, subject to the following of procedures to ensure accountability and transparency. The commissioning of this piece of work is the second part of a consultancy which was originally procured by the County Council on behalf of the district level authorities within Gloucestershire. The obtaining of this waiver will ensure compliance with the Contract Rules in respect this additional commissioning.

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None

### 1.3.3 Other

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## 1.4 Implications on corporate and community plan priorities

- 1.4.1** The Strategic Flood Risk Assessment (SFRA) is a key document that informs the Joint Core Strategy and Level 2 of the SFRA builds on the work already carried out for Level 1 and provides more detailed information in respect of the administrative areas covered by the three councils in the JCS consortium. This will assist achieving the councils' responsibilities regarding the preparation of the Joint Core Strategy.

## 1.5 Statement on Risk

- 1.5.1** The SFRA Level 2 is a vital piece of the JCS evidence base and central to the ongoing development of 'Preferred Options' for the future development of the JCS area. The 'Preferred Options' document is due to be considered by the councils in September and is scheduled to go out to public consultation in October/November. If the SFRA Level 2 is not commissioned at this time, the information will not be ready in time to inform the development of 'Preferred Options' subject to the current

programme. This will undermine the robustness of this work or (if production of 'Preferred Options' is correspondingly delayed) jeopardise subsequent JCS milestones.

## **2. Introduction**

**2.1** In November 2007, the County Council entered into a contract with Halcrow Group Limited for conducting a Strategic Flood Risk Assessment across Gloucestershire. The first stage of the SFRA, known as Level 1, was completed satisfactorily and paid for by the County Council. District authorities were then expected to assess their need for SFRA Level 2 work individually, based on the outcome of Level 1, and to project manage and pay for the Level 2 work themselves.

**2.2** Having assessed the need for SFRA Level 2 work, the JCS team expected the work to proceed under the existing contract between County Council and Halcrow Group Limited. However, the County Council has advised of their view that the existing contract does not cover Level 2 work and County is reluctant for the work to proceed in this way due to:

- Risks associated with County holding a contract for work between two third parties (i.e. the JCS team and Halcrow Group Ltd).
- Reluctance to set a precedent such that Cotswold, Stroud and Forest of Dean District Authorities wish to follow the same course (and subject County to the same risks) for their own SFRA Level 2 work.

**2.3** The County Council has therefore suggested that individual authorities instigate new contracts for SFRA Level 2 work.

**2.4** Halcrow Group Limited are of the understanding that the original brief, their tender, and the work awarded was for both Level 1 and Level 2. Whether this is correct is not a matter for consideration in this Report, but officers consider that the appointment of Halcrow Group Limited to carry out Level 2 meets the requirements in the council's Contract Rules in terms of Rule 9.2 (C) iii), ie that "specialist consultants are required and... it is in the council's best interest to engage a particular consultant". The particular consultant to be appointed is Halcrow Group Limited and it is in the council's best interest to appoint them because of their previous work on Level 1 and in all the circumstances of this case.

## **3. Background**

**3.1** In line with PPS25, Strategic Flood Risk Assessment normally progresses in two phases. In simple terms, SFRA Level 1 identifies broad flood risk across a wide area (e.g. Gloucestershire county), and SFRA Level 2 provides greater detail on specific sites within that area which may be considered for development as part of the Local Development Framework process. SFRA Level 1 is based primarily on landscape analysis, while SFRA Level 2 includes, for example, more detailed analysis of water courses, the built environment, existing flood alleviation measures and surface water

mapping.

- 3.2** The SFRA Level 2 work is therefore a vital component of the JCS evidence base, likely to have a significant impact on the development of 'Preferred Options' for development, and in turn for many aspects of the final Joint Core Strategy. SFRA Level 2 must be commissioned in April such that survey work can be conducted on selected identified sites across the JCS area in May/June, and a draft report provided in mid-July. The mid-July deadline (the earliest date by which Halcrow Group Ltd can deliver) will enable the JCS team to incorporate SFRA Level 2 findings into the development of 'Preferred Options' for publication approximately six weeks later in September (in line with the agreed JCS programme). The final SFRA Level 2 report will follow in September for formal addition to the JCS evidence base.

### **3.3 Consultation**

- 3.4** Onelegal have liaised with both planning and legal officers at Gloucester City Council and Tewkesbury Borough Council who are happy with the approach that is being taken by Cheltenham Borough Council.

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## **Background Papers**

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