

HYTHE PROMENADE ENHANCEMENT SCHEME – FINAL CONTRACT PAYMENT

1. BACKGROUND

- 1.1 A scheme for the enhancement of Hythe Promenade was agreed by the Cabinet on 6th January 2003. It involved a new boardwalk oversailing the existing sea wall, the creation of an amphitheatre area to host events and a re-modelled highway area to create a greatly improved public space near the waterfront.
- 1.2 The work was carried out in 2005 and 2006 and was officially opened in July 2006. The scheme was highly commended in the Local Government News Street Design Awards in 2007 and won a Civic Trust award in 2008.
- 1.3 The project was a partnership scheme with an approved total budget of £792,000 funded by contributions from Hampshire County Council (£492,000), New Forest District Council (£271,000), Hythe and Dibden Parish Council (£28,500) and local business (£500). Given that the contract was in the district the Council undertook to manage the contract and hence has responsibility. Project management was shared with Hampshire County Council.
- 1.4 The project was competitively tendered in accordance with the Council's regulations. However as all tenders were above the budget allocation a negotiation took place with the lowest tenderer to identify a scheme that was within budget but still retained the main elements. A contract was awarded within budget in May 2005 with a start on site on 13th June 2005.

2. ADDITIONAL COSTS

- 2.1 During the course of the project a claim was made by the contractor for additional payments (October 2005) and this was followed by a further claim in November 2006. The total amount claimed was for £237,000 above the sum originally agreed for the contract and above the budget allocated. A final detailed claim was submitted to New Forest District Council on 20th December 2007, and has since been subject to negotiation.
- 2.2 The claim is complex and related to the late issue of information, with particularly reference to the ramp which led to higher costs being incurred by the contractor. It was claimed that the higher costs which resulted from the information delay led to the works extending into the winter period generating significant extra costs for the contractor. The document which supports this claim is a very lengthy and detailed report.

- 2.3 The Council wished to ensure that this complex claim was professionally assessed and an appropriate course of action was followed. If agreement could not be reached by negotiations then it would have led to an independent adjudication process. The latter approach requires very detailed submissions from all parties to be prepared. This has the potential to be a costly approach.
- 2.4 A review of the claim has now been completed by a team of officers from both New Forest District Council and Hampshire County Council. This has involved a meeting with the contractors and detailed consideration of all elements of the claim including the paperwork submitted in respect of it. In particular expert advice was sought from senior officers in the Environment Directorate of Hampshire County Council who are experienced in dealing with claims of this nature.
- 2.5 The conclusion of this assessment is that at least in part the claim is justified. Upon review it is clear that the Council did not ensure that the appropriate plans and documents in respect of the scheme were either available, or sufficiently accurate, when the contractors started on the site. This did cause delays in the contractors planned work programme. This resulted in delays to the works at a critical time in the summer months resulting in an extension into the worse weather conditions in the autumn and winter of 2005. There were mitigating factors to this in terms of some of the actions of the contractor but this could not alter a conclusion that there was basis for the claim. It is on this basis that the view was taken that it would be better to settle the claim by negotiation as opposed to the adjudication route.
- 2.6 Following on from this review and after further negotiation it is recommended that a further payment to the contractor of £135,000 be made as due for the work undertaken. Previously, a sum of £20,000 was paid, as an interim measure. This leaves a balance of £115,000. The contractor has confirmed in writing that they will accept this as a full and final settlement of the contract subject to payment being made by 13 March 2009.

3. CONCLUSION

- 3.1 Obviously, it is disappointing to have to acknowledge that there were problems with the management of this contract that led to additional costs being incurred. Since this contract was let the Council has issued guidance (November 2007) to all staff on Project Management, which if adhered to would have significantly reduced the risk of this situation arising.
- 3.2 To reinforce this project management guidance, training is being organized for officers with responsibility for managing contracts of this nature to emphasise individual responsibilities and highlight lessons learnt.
- 3.3 It is also accepted that individual actions may have contributed to the situation that arose. In response to this appropriate management actions are being taken.

4. ENVIRONMENTAL IMPLICATIONS

- 4.1 The Hythe Promenade Enhancement Scheme is in place and is a very successful award winning environmental enhancement, valued highly by the community.

5. EQUALITY AND DIVERSITY AND CRIME AND DISORDER IMPLICATIONS

5.1 None.

6. FINANCIAL IMPLICATIONS

6.1 It is recommended that the contract claim be settled by the payment of a further £115,000 to the contractor and budget provision be made accordingly.

6.2 As the scheme was jointly financed and managed in partnership with Hampshire County Council they have agreed to finance 50% of the claim. It is understood that this will be achieved by amending their capital programme.

6.3 Taking into account the £20,000 previously approved by Cabinet and paid to the contractor, this leaves a net sum of £47,500 to be financed by NFDC.

7. PORTFOLIO HOLDERS COMMENTS

7.1 The Portfolio Holder supports the recommendation below.

8. RECOMMENDATION

8.1 That Council be recommended to agree a supplementary estimate of £115,000 (of which HCC will contribute £67,500) in order to make a final contract payment for the Hythe Promenade enhancement works; and

8.2 In view of the requirement to make the outstanding payment by 13 March 2009, the Cabinet note that the Executive Director (Section 151 Officer) will, as a matter of urgency, and in accordance with Financial Regulation 2.4, arrange for the payment to be made by that date.

For Further Information Please Contact:

John Mascall
Executive Director
Tel: 023 8028 5261/5644
E-mail: john.mascall@nfdc.gov.uk

Chris Elliott
Head of Planning
Tel: 023 8028 5210
E-mail: chris.elliott@nfdc.gov.uk

Background Papers:

Confidential Cabinet Report
3 September 2008