

North Yorkshire Council

Environment Executive Members

12 July 2024

Filey Sea Wall Refurbishment - Award of Contract

Report of the Assistant Director – Highways & Transportation, Parking Services, Street Scene and Parks & Grounds

1.0 PURPOSE OF REPORT

- 1.1 To inform the Corporate Director of Environment and the Executive Member, Highways and Transportation of an ongoing former Scarborough Borough Council legacy coastal protection scheme to refurbish Filey Sea Wall and consider a proposal to award a construction contract to Jackson Civil Engineering Limited.
- 1.2 To request the Corporate Director of Environment in consultation with the Executive Member, Highways and Transportation to approve the award of the second stage construction contract to Jackson Civil Engineering Limited.

2.0 SUMMARY

- 2.1 The report informs the Corporate Director and Executive Member about the ongoing coastal protection scheme for Filey sea defences and proposes awarding the construction contract to Jackson Civil Engineering Limited.

3.0 BACKGROUND

- 3.1 Despite its age and exposure, the sea wall at Filey is mostly in fair condition due to the maintenance activities that have historically been undertaken, and currently performs well against wave overtopping. There are however signs of deterioration in the sea defence noted in the face of the wall, wave return copings, slipway, and steps. Furthermore, the greatest concern is associated with ongoing outflanking of the southernmost end. In particular, the southern rock revetment is in poor condition, performs ineffectually and requires improvement.
- 3.2 At its meeting on 20 April 2021 the Cabinet of Scarborough Borough Council accepted a grant contribution of £1,654,184 from the Environment Agency for works to maintain the standard of the defences with replacement of some copings, refacing of deteriorated sea wall block faces, and provision of piling works to prevent outflanking, particularly at the southern end.
- 3.3 Jackson Civil Engineering Group Limited were appointed on 05 January 2023 on a rotation call off through the YORcivil2 Framework. This is a two-stage design and build procurement where the contractor is awarded the contract in two stages. The first stage was awarded on a NEC3 Professional Services Contract to carry out further investigations, design the works in detail, seek all necessary consents, and provide a price and programme for the second construction stage. The second stage is the construction of the works, subject to the satisfactory performance of the contractor in the first stage. The intention to award the second stage to Jacksons, on the basis of an NEC Engineering and Construction Contract is clearly stated in the Scope of the first stage contract, but the Council is not obliged to award.

- 3.4 Upon completion of Stage 1, the overall project cost was valued at £2.957m which exceeded the £1,654,184 contribution from the Environment Agency.
- 3.5 In April 2024, the Environment Agency awarded the Council a further grant of £1.303m, increasing the project budget to £2.957m. The grant has been accepted by the Corporate Director, Resources in consultation with the Executive Member for Finance and the Executive Member for Highways and Transportation as required by the Grant Acceptance Procedures.
- 3.6 We are now at a junction where a decision on appointing Jacksons to progress with Stage 2 is required.

4.0 DETAILED PRESENTATION OF THE SUBSTANTIVE ISSUE

4.1 Expiry of the YORcivil2 Framework

- 4.1.1 The project was awarded to Jacksons via a rotation call-off from the YORcivil2 Framework in April 2023.
- 4.1.2 The intention was to contract for the construction phase before the expiry of the framework on 09 August 2023, however this was not achieved due to the ongoing design works, complexities with the outflanking solution, and delays by others in relation to statutory consents.
- 4.1.3 In this case, NYC can be satisfied that:
- The 'award' of the project was carried out in January 2023 when Jacksons were appointed. There are not two separate awards.
 - Jacksons were appointed on a NEC PSC contract as part of a pre-construction agreement
 - The pre-construction agreement has the clear intention to award the second stage to Jacksons which is stated in the Scope of the first stage contract.

4.2 The previous delegation of authority to appoint Jacksons.

- 4.2.1 At its meeting on 20 April 2021, the Cabinet of Scarborough Borough Council accepted the EA grant, but also delegated authority to the Director of Legal & Democratic Services to enter into the contracts for the scheme, subject to the contract sums being within the approved scheme budget of £1,654m.
- 4.2.2 This scheme budget of £1,654m included an estimated contract sum within the expression of interest form issued to all contractors on Lot 6 of the YORcivil Framework of an estimated construction value of £1m to £1.5m.
- 4.2.3 The current proposed contract value for the second construction stage is £1.912m. Whilst the project cost is above the anticipated £1.5m it is still within budget due to the award of further EA grant that has already been accepted with the approved scheme budget of £2.957m.

5.0 CONSULTATION UNDERTAKEN AND RESPONSES

- 5.1 Consultation has been undertaken with the Environment Agency, who are currently committed to fully funding the scheme.

5.2 Initial consultation has taken place with Filey Town Council to inform them of works to be carried out. Further consultation is planned pending this decision which will advise on the locations and the timescales, especially as the works need to be carried out in good weather over the summer months when weather and tidal conditions are less severe.

6.0 ALTERNATIVE OPTIONS CONSIDERED

6.1 The only alternative if the second stage of the project is not awarded to Jacksons is to re-procure the works via a new tender. There would be a number of issues with this approach:

- In the first stage, Jacksons have worked through and resolved these issues with the Council and the benefit of this would be lost.
- The contract is a design and build contract. Jacksons retain the risk liability of the design which would be lost if an alternative contractor were to be procured.
- An alternative contractor would not accept the design risk of someone else's design and the risk would then rest with the Council for any design changes.
- To have to re-tender will cause a significant delay and mean works will not start on site this summer. The EA are expecting the expenditure of the grant and delivery of the benefits this summer. There is no guarantee the grant will be maintained and rolled over to the next financial year next summer.
- Stage 1 of the project requires the contractor to obtain all necessary consents including planning permission and the Marine Management Organisation (MMO) licences. The MMO Licence is method specific to Jacksons and may be required to be resubmitted. The application decision period is 13 weeks and could only be submitted following procurement of a new contractor. The length of time lost would again push the works into Summer 2025.

6.2 For these reasons, this approach is not recommended.

7.0 FINANCIAL IMPLICATIONS

7.1 The estimated cost of the scheme is £2.957m which is fully funded by Environment Agency grant with no match funding required as part of the terms of accepting the funding. This funding was accepted by NYC following the decision of 13th May 2024, report titled, "Permission to accept an increased Environment Agency grant towards Filey Town Seawall Refurbishment", to accept the additional funding. This funding will be added to the Council's capital plan for 2024/25.

7.2 Any additional project costs, including costs arising from compensation events due to circumstances beyond the contractors control and inflation over the estimated value allowed for, including construction cost inflation is at the Council's risk. If costs increase, as it has been confirmed by the Environment Agency that no further grant funding is available, any additional funding required may need to be sought from the Council. This risk is mitigated by allowing within the £2.957m grant for the following costs;

- Inflation £8k.
- Contingency totalling £516k. This sum represents 27% of the contract value.

7.3 Should additional costs arise, descoping the project could also be considered in conjunction and agreement with the Environment Agency providing the benefits of the project were maintained.

8.0 LEGAL IMPLICATIONS

8.1 The proposed Filey seawall works will be carried out using the Council's permissive powers under the Flood Water Management Act 2010.

8.2 This is a two stage contract. Whilst the framework has expired it is legally permissible to now award the second stage as there was a clear intention to award the second stage subject to agreeing a construction cost within budget.

9.0 EQUALITIES IMPLICATIONS

9.1 There are no significant equalities implications arising from this report.

10.0 CLIMATE CHANGE IMPLICATIONS

10.1 There are no significant climate change implications arising from this report.

11.0 REASONS FOR RECOMMENDATIONS

11.1 To address concerns relating to the integrity of the existing sea defences and to ensure the longevity of the coastal erosion in Filey.

11.2 This report sets out a way forward to ensure the progression of an essential coastal maintenance project that has been ongoing since 2021.

12.0 RECOMMENDATIONS

12.1 The Corporate Director for Environment, in consultation with the Executive Member for Highways and Transportation, approves entering into the second stage of the contract with Jackson Civil Engineering Limited to carry out the works to the Filey sea defences.

APPENDICES: None

BACKGROUND DOCUMENTS: None

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21 June 2024

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