

(b)

FALKIRK COUNCIL

Subject: THE HELIX : HELIX PARK PLAY AREA
Meeting: EXECUTIVE
Date: 18 MARCH 2014
Author: DIRECTOR OF DEVELOPMENT SERVICES

1.0 INTRODUCTION

- 1.1 Members will recall that the Helix project incorporates a children's play area located in Helix Park near the splash play area.
- 1.2 The design for the play area has been developed in consultation with the project partners and Falkirk Community Trust and represents a facility which will deliver contemporary, robust, play equipment of an appropriate scale, character, quality and durability to complement the ethos of the Helix project.

2.0 PROCEDURE

- 2.1 In delivering the play area, proper regard had to be given to EU procurement requirements. The nature of the facility to be provided is such that consideration needs to be given as to whether it should be procured as a public works contract or a public supplies contract, in accordance with the relevant definitions. Specialist procurement advice was obtained from Pinsent Masons Solicitors, confirming that a works contract has as its object building or civil engineering activities. Whilst it is recognised that materials will be supplied on site and such materials will be installed, this installation corresponds more correctly with the determination of a "works" contract. The contract is considered to be one for "works" rather than "supplies" for the following reasons:

The main purpose of the contract is for the construction of the Helix play area which involves:

- the design of the play area corresponding to the specified requirements of the Council;
 - the production of bespoke materials corresponding to the specified requirements of the project;
 - the assembly of those materials on site in order to construct the play area;
 - the siting of the constructed play area which will require the preparation of ground works, the provision of foundations, and the construction of plinths on which the play equipment will be located;
 - each of the above mentioned activities points toward the contract being one for works rather than supplies due to the nature of the design, bespoke manufacture and construction of the play area.
- 2.2 The threshold for works contracts is currently £4,322,012 therefore this contract does not fall to be advertised within the Official Journal of the European Union (OJEU).
- 2.3 In general terms the Public Contracts (Scotland) Regulations require that a contracting authority ensures a degree of advertising, even where the proposed award is below the relevant threshold, and follows a procurement process that is transparent. Further, this approach is reflected in the Council's own Contract Standing Orders.

2.4 Helix Park is to be considered a 'destination' for play. Accordingly, the design of the facility is critical to the delivery of this aspiration. Further, the ambition of the design was one of the most compelling factors in attracting key external funding partners. The outline brief from the Council was:

- Large scale and layout to cope with very high volumes
- A design that was as iconic as the Helix Park and The Kelpies Hub, to attract locals but also visitors to the area
- A design that was able to accommodate an age range from 3 to 14, with elements of accessible play
- Materials in keeping with the Helix Park
- Materials that had the maximum possible durability and lifespan
- Bespoke and innovative pieces of equipment to match the Helix Park design
- Avoiding themed play

From this outline brief the Council's technical and procurement advisers Ironside Farrar Ltd (IFL) prepared a technical specification.

2.5 IFL reviewed the market found a very limited availability of large scale items of equipment to deliver the approved outputs. IFL advised that there was only one manufacturer of timber play solutions who could meet their technical specification, that being Richter Spielgerate GmbH. IFL recommended the contract be procured without competition. IFL confirmed that in their view both their technical specification and the awarding the work without competition are permissible under the EU procurement regime and for a works contract of this nature, in compliance with the Council's obligations of equal treatment, non-discrimination and transparency. Their view being that there are no other contractors who can do this work their recommendation was that it would be in the Council's best interest to award the work without competition thus saving the cost and time of undertaking a competitive exercise.

2.6 The play structures are designed and component parts manufactured by Richter Spielgerate in Germany. The product is supplied exclusively to Scottish customers by Timberplay Scotland Limited. A single source tender was requested from Timberplay Scotland and received in the sum of £376,975.00. This compares favourably with the budget estimate of £386,296 as provided by our professional advisors. The tender sum is 2% below the estimated budget.

2.7 It is considered, therefore, that the tender submitted by Timberplay Scotland demonstrates best value, as confirmed by our advisers, by offering a competitively priced tender providing bespoke play equipment of the highest quality that entirely meets the specification.

3.0 LEGAL IMPLICATIONS

3.1 The main risk is that the Council in not submitting the work to any competition might not be complying with the EU procurement requirements. The risks pertain to: the classification of the contract as a works contract rather than a supplies contract (supplies contracts have a lower threshold value for requiring competition); the preparation of a technical specification that only one contractor can satisfy; and compliance with the obligations of equal treatment, non-discrimination and transparency where the nature and extent of the work and the question of cross border interest are relevant (as factors in deciding if below threshold contracts should be advertised and, if so, to what extent).

3.2 External advice has been taken by the Helix team as outlined in paragraph 2.

4.0 FINANCIAL IMPLICATIONS

4.1 The construction cost of the play park can be met from the original Helix budget and additional approved Council and external funding.

5.0 PERSONNEL IMPLICATIONS

5.1 None.

6. POLICY IMPLICATIONS

6.1 None.

7.0 CONCLUSION

7.1 Having regard to the terms of this report, it is considered best value and in the best interests of the Council to award the contract to Timberplay Scotland Limited.

8.0 RECOMMENDATION

It is recommended that Members:

8.1 In reliance upon the advice outlined in paragraph 2 above, grant an exception under contract standing order 5.6 to the requirement for competition.

8.2 Approve acceptance of the tender submitted by Timberplay Scotland Limited in the sum of £376,975.00 in respect of the Helix Park, play area.

.....
Director of Development Services
13 March 2014

Contact Officer: Robert McMaster, Ext 4953

LIST OF BACKGROUND PAPERS

- 1. *Tender documents
- 2. *Tender Report
- 3. *Advice from Pinsent Masons
- 4. *Advice from Ironside Farrier Limited

*Items not for publication on the grounds that it involves the disclosure of exempt information as defined in paragraphs 8 and 12 of Part 1 of Schedule 7A to the Local Government (Scotland) Act 1973.