REPORT

CABINET (HARBOUR AUTHORITY) COMMITTEE
18 JUNE 2003
AGENDA ITEM: 5

PORTFOLIO: CULTURE & SPORT

SUBJECT: EXTENSION OF CONSULTANCY CONTRACTS

Background

1. The majority of services undertaken by the Harbour Authority are carried out using internal resources or by other Service Areas under Service Level Agreements. External consultants have been retained generally where the required experience and skills are not available in-house.

Issues

Management of Legal Agreements

2. Legal agreements entered into by Cardiff Bay Development Corporation required the funding of long term monitoring i.e. pre and post impoundment groundwater levels. The legal agreements permitted the other party to obtain independent specialist advice on the monitoring works at the Development Corporation’s cost. In the case of groundwater monitoring the other parties accepted that Halcrow Ltd be retained at the Development Corporation’s cost to provide impartial advice to each party of the various agreements.

3. It is proposed that Halcrow Ltd be retained to continue to evaluate the impact of impoundment until 31 March 2005 when their appointment will be reviewed further. The cost of retaining Halcrow Ltd for this period will be approximately £25,000 per annum.

Groundwater Control Issues

4. Since 1995, groundwater levels have been automatically recorded by data loggers every 30 minutes from a series of monitoring instruments located primarily in South Cardiff. At the time of impoundment, all data collected was summarised in a "pre-
impoundment” report. This report effectively forms the pre-impoundment baseline against which post-impoundment groundwater data can be compared and interpreted.

5. It is now proposed to prepare a post-impoundment report with the objective of determining the impact of impoundment on groundwater levels for the period up to 30 June 2005. This report will be in a similar format to the pre-impoundment report but will, in addition, provide interpretation of changes to groundwater levels since 4 November 1999. In addition, as recommended by Paragraph 13 of the report entitled “Complaints Under Paragraph 27 of Schedule 7 to the Cardiff Bay Barrage Act 1993 considered quotation works by the Harbour Authority on 13 December 2000”, the report will include “an evaluation to assess the impact of the intermittent flushing that took place between the date of impoundment (4 November 1999) and end of the flushing period”. The report contents will be prepared by Cardiff County Council Drainage Services (under their existing Service Level Agreement) with Cardiff Harbour Authority and Hyder Consulting Ltd (under their Contract with the Harbour Authority).

6. Hyder Consulting Ltd were retained to provide services in respect of the groundwater control systems. These services were required after the establishment of the Harbour Authority and their contract was extended. An ongoing review of the performance of the system is required and in view of their unique experience of these systems, it is recommended that Hyder Consulting Ltd be retained to provide these services for the period up to 31 March 2005. The estimated cost of these services, including the post-impoundment review report services, is approximately £20,000.

**Reasons for Recommendation**

7. The continued appointment of the specialist consultants is required to enable the Council to discharge its responsibilities under the Cardiff Bay Barrage Act 1993, Section 165 Agreement and Barrage Side Agreements, and a previous Harbour Authority decision.
**ADVICE**

This report has been prepared in connection with Corporate Managers and reflects their collective advice. It contains all the information necessary to allow Members to arrive at a reasonable view, taking into account the advice contained in this section.

**The Corporate Manager responsible for this report is Tom Morgan.**

**Legal Implications**

The value of each of the services which are the subject of this report when aggregated over their life may exceed the threshold set by the Public Services Contract Procedure Regulations. The nature of the services provided by Halcrow Ltd may be regarded as providing a means of conciliation to those who have the benefit of an agreement completed with the former Development Corporation. The services may then be regarded as not falling with Part A services. The services to be undertaken by Hyder appear to fall within Part A services. It should be noted that it is unlawful to artificially separate services in order to avoid the application of the Regulations. It is understood that the services are distinct services from those referred in the report as being undertaken in accordance with their extant contract. That being the case the contract value falls below the threshold set by the regulations so that a full procurement process is not then required.

The award is caught by the Contract Procedure Rules which would ordinarily require that in respect of a contract having a value exceeding £10,000 three tenders or quotations would be sought. Tenders may not be invited from less than the minimum number of submissions or from suppliers/contractors who are not Registered or Approved except in accordance with a decision of the Council or a committee within the scope of the powers delegated to it or by an employee exercising powers delegated by the Council or a committee or in the case of an Executive Decision in accordance with a decision properly made under the Executive Procedure Rules.

The Council's Executive Functions - Scheme of Delegations authorises the relevant Chief Officer in consultation with the Procurement Officer to determine that if it is for any reason impossible, unreasonable or inexpedient to comply with the minimum number of tender submissions, to permit tenders, offers or bids to be invited from one supplier /contractor where only one suitable contractor has been identified, for procurements above £10,000 but below £100,000. Subject to the issue outlined above the decision should record clearly the reasons why it is considered impossible, unreasonable or inexpedient to comply with the minimum number of tender submissions.
The proposal must be within the Policy and Budgetary Framework and if it is not the matter will need to be referred to the Council. All decisions taken by or on behalf the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. standing orders and financial regulations; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council’s fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

**Financial Implications**

The recommendations in this report can be achieved within the resources identified in the Section 165 Agreement. The estimated costs for legal consultancy are £25,000 per annum and £20,000 per annum for groundwater control consultancy and these costs can be funded from the quantified/fixed costs budgets.

**Consequences**

The continued appointment of the specialist consultants is required to enable the Council to discharge its responsibilities under the Cardiff Bay Barrage Act 1993, Section 165 Agreement and Barrage Side Agreements.

**BYRON DAVIES**  
Chief Executive  
22 May 2003

**Background Papers** : Correspondence.

**RECOMMENDATIONS**

Cabinet (Harbour Authority) Committee is requested to agree that:

(1) Halcrow Ltd be retained up to 31 March 2005 to provide services in connection with advice on legal agreements within a budget of £25,000 per annum;

(2) Hyder Consulting be retained up to 31 March 2005 to provide services in connection with groundwater within a budget of £20,000.

**COUNCILLOR MARION DRAKE**