

WIRRAL COUNCIL

CABINET – 23 JULY 2009

REPORT OF THE DIRECTOR OF TECHNICAL SERVICES

WEST KIRBY MARINE LAKE PROTECTION WORKS

1.0 EXECUTIVE SUMMARY

- 1.1 This report updates Members regarding the works to West Kirby Marine Lake. Members are also requested to endorse the purchase of a guarantee for works completed during March and April.

2.0 BACKGROUND

- 2.1 At Cabinet on 15 January 2009, Members approved acceptance of Environment Agency grant in the sum of £1.2 million. The scheme is also included in the Council's Capital Programme with an in-house funding allocation of £750,000.
- 2.2 Scheme design was progressed and tenders for the works to reconstruct the lake wall were received in December 2008.

3.0 REPORT

- 3.1 Following a tender evaluation exercise, which included a ConstructionLine check, Members approved acceptance of the lowest tender from Pierse Contracting Ltd in the sum of £1,369,964.99 (Cabinet 15 January 2009 Minute 341 refers).
- 3.2 The appointment of Pierse Contracting was subject to standard Civil Engineering conditions of contract which included the provision of a Bond and Parental Company Guarantee for the works within 28 days of the start of the contract.
- 3.3 Pierse contracting started on site on 9 March 2009 and made good progress with the early stages of the contract. Progress meetings with Pierse identified the outstanding Bond and Parental Company Guarantee as issues, however Pierse remained confident that these would be put in place prior to the due date for the first payment under the contract. This first valuation was undertaken at the beginning of April, identifying completed work to the value of £237k, with payment due in the first week of May.
- 3.4 During the third week of April the Council received information that Pierse Contracting were in serious financial difficulty. On 24 April the contractor left site. The Engineer for the works, Capita Symonds Ltd then issued a formal Certificate of Abandonment in respect of the Contractor and the Employer (Wirral Council) then served a notice of termination on the Contractor at his registered address which also appeared to be abandoned. As no further contact was received from the defaulting contractor during the next seven days, the Employer was able, under the terms of the contract, to formally occupy the site and make arrangements for the completion of the works.
- 3.5 During this notice period the prestigious Wilson Trophy Sailing Competition was held at the Marine Lake, an event for which accommodation measures had already been included within the Contract Documentation. To ensure the lake and lake wall were in serviceable condition for the event one sub-contractor remained on site for a two day period following the departure of the main contractor, to carry out works to ensure the integrity of the wall was not compromised.

- 3.6 The Council has since learned that Pierse Contracting Ltd have gone into administration and that a liquidator has been appointed to deal with the company's outstanding affairs. Initial contact between the Council and liquidator has been made. It has been explained to the liquidator that no money will be forthcoming in respect of payment to Pierse until the full cost of completing the works is known, including costs incurred due to additional staff time, consultant's fees and other additional expenditure.
- 3.7 The second place contractor from the original tender exercise, Jones Bros Civil Engineering (Ruthin) Ltd was contacted and was amenable to undertaking the Completion Contract, subject to re-pricing based on the outstanding works. Given the urgency of the situation the proposed change in contractor was reported verbally to Cabinet on 23 April 2009 and approval was received to appoint Jones Bros to undertake the Completion Contract. Full consultation with Legal and Procurement Officers was held throughout this process.
- 3.8 Jones Bros formally started the Completion Contract on 11 May 2009. However due to the delay caused by the first contractor's default, the scheme completion date of 22 June has been extended to 17 July. The lake will refill by tidal action on or around 22 July and will be available for use from that date.
- 3.9 Jones Bros have complied with the contractual requirement for the provision of a Bond. Jones Bros have no parental company and are not required to provide a guarantee for the works other than that identified in the contract.
- 3.10 The rapid appointment of Jones Bros and their willingness to mobilise at short notice, taking account of the contractual requirement to allow the Wilson Trophy to proceed, have helped to ensure that delays due to Pierse falling into Administration have all been kept to a minimum.

4.0 FINANCIAL IMPLICATIONS

- 4.1 The coast protection elements of the works are subject to grant funding from the Environment Agency up to £1,482,000. The Council has also identified £750,000 from its capital programme.
- 4.2 Pierse Contracting Ltd submitted an application for payment for £237,413.59 prior to their default. This has not yet been certified for payment as explained in 3.6 above. Furthermore the value of work carried out by Pierse following their first application for payment but prior to their default has yet to be assessed and agreed with the liquidator.
- 4.3 Additional costs incurred by the Council as a result of re-awarding the contract are deductible from any monies owed to Pierse Contracting Ltd.
- 4.4 Jones Bros submitted their proposal for the Completion Contract to the value of £1,020,668.04. This represents an increase of £166,136.12 from their original tender. This is attributable to the change in the scope of the works and the tight mobilisation timescales. This increase is deductible from monies owed to Pierse.
- 4.5 Due to the default of the first Contractor, the Council will not have a company to hold responsible should defects in materials or workmanship become evident in those works carried out by Pierse Contracting Ltd. However a large proportion of those works were carried out by a single sub-contractor, Hesselberg Hydro (1991) Ltd who have also been employed by Jones Bros to continue with the bituminous works. In recognition of the situation concerning the guarantee of the works, Hesselberg Hydro has offered to provide a warranty for the asphaltic works undertaken on behalf of Pierse. Hesselberg Hydro has evaluated the warranty based on what they consider to be a fair and reasonable sum taking into account the value of works to be

covered. This is still receiving consideration by ourselves and will be the subject of further negotiation; however in principle it would seem to represent good value for money given that the cost of this additional warranty is deductible from any monies owed to Pierse Contracting Ltd. Final agreement of the price will only be accepted upon full consultation with appropriate Council Officers who have been involved so far in arriving at the proposed warranty value. At this stage I anticipate a final figure in the region of the sum set out in Exempt Appendix 1 for the provision of the warranty.

- 4.6 The liquidator has been informed of the Council's intention to deduct re-award costs from monies owed to Pierse Contracting. No payment will be made to the liquidator until the final costs for the scheme are known, and it is possible that no monies will be due once all the out-turn costs have been considered. The liquidator is aware of this and has requested a financial statement at the end of the works which I have agreed to provide.

5.0 STAFFING IMPLICATIONS

- 5.1 Staff costs which have been incurred as a result of Pierse's default and the subsequent re-award of the Completion Contract are deductible from monies owed to Pierse Contracting Ltd.

6.0 EQUAL OPPORTUNITIES IMPLICATIONS

- 6.1 Equal Opportunities have been considered throughout the scheme implementation process.

7.0 COMMUNITY SAFETY IMPLICATIONS

- 7.1 There are no implications under this heading.

8.0 LOCAL AGENDA 21 IMPLICATIONS

- 8.1 There are no implications under this heading.

9.0 PLANNING IMPLICATIONS

- 9.1 There are no implications under this heading.

10.0 ANTI-POVERTY IMPLICATIONS

- 10.1 There are no implications under this heading.

11.0 SOCIAL INCLUSION IMPLICATIONS

- 11.1 There are no implications under this heading.

12.0 LOCAL MEMBER SUPPORT IMPLICATIONS

- 12.1 The scheme affects West Kirby and Thurstaston and Hoylake and Meols Wards.

13.0 BACKGROUND PAPERS

- 13.1 There are no implications under this heading.

14.0 RECOMMENDATIONS

14.1 Cabinet is requested to:

- (a) Endorse the purchase of a warranty from Hesselberg Hydro for the un-guaranteed bituminous works in a sum up to a maximum of the amount specified in Exempt Appendix 1;
- (b) Note the financial implications around the liquidation of Pierse Contracting resulting in no net increase in financial burden on the Council;
- (c) Endorse the decision to appoint Jones Bros (Ruthin) Ltd. to undertake the Completion Contract.

DAVID GREEN
DIRECTOR, TECHNICAL SERVICES