



North Devon Council

Report Date: Monday, 2 December 2024

Topic: Procurement of Public Art (Cultural Development Fund Project)

Report by: Alison Mills, Culture Manager

1. INTRODUCTION

1.1. This reports sets out a route for procurement of public art for Barnstaple Town Centre in line with procurement regulations and industry best practice.

1.2. The purpose of the commissioned works is to:

- Enhance the town centre's visual identity, attracting more visitors to the sites and encouraging longer stays.
- Build on Barnstaple's long history and cultural heritage, and its long tradition of design and making.
- Promote and celebrate the town's environment and landscape settings.
- Inspire community pride and engagement.

2. RECOMMENDATIONS

2.1. That the full requirements of the Council's Contract Procedure Rules shall be waived in line with the recommendation set out in paragraph 2.2.

2.2. That access to the tender opportunity for public art for Barnstaple Town Centre should be restricted to 10 artists, selected on the basis of the quality of their previous work and any other suitability criteria proportionate to this contract

3. REASONS FOR RECOMMENDATIONS

3.1. The proposed amendments to the procurement route takes account of the peculiarities of this procurement, ensuring value for money, transparency and fairness, while being proportionate to the value of the tender.

4. REPORT

4.1 Flourishing Barnstaple, a North Devon Council initiative aimed at revitalising the town through arts and culture, is commissioning public art installations for Barnstaple town centre. The programme is funded through the Cultural Development Fund, delivered by Arts Council England on behalf of the Department for Culture, Media and Sport (DCMS), and includes: A number of individual permanent artworks in specific locations, for example sculpture or land art.

4.1. The procurement of these installations has several unusual elements;

- 4.1.1. Arts Council guidance recommends that artists should receive payment for working up detailed designs
 - 4.1.2. The total budget may be awarded to one or several artists, depending on the impact and quality of submissions.
 - 4.1.3. Artists are not easily reached through traditional procurement routes
 - 4.1.4. There is a need to incorporate advice from the local artist community (and the wider community) within the selection process, due to the high public impact and likely interest in the completed works.
- 4.2. The value of the contract is £200,000, inclusive of VAT, to be awarded to one or several artists depending on the detailed designs submitted through the tender process.
- 4.3. **Selection process:** As part of its ongoing joint working relationship with Devon County Council on procurement, the Council has received advice from Devon County Council's Procurement Services team. There is a precedent from DCC for the payment of a fee to artists to work up proposals which were then assessed using the tender process. This precedent was for a low value contract, where three artists were selected to produce designs. In this case, the higher value of the contract means that the tender should be offered as an open tender. However, we do not have the budget to assign large numbers of bursaries to artists without knowing whether their work is likely to be of sufficient quality, or fit the brief for the works.
- 4.4. **Timescales:** The process for selecting artworks has already been started with the Town Team for Culture Public Art subgroup. To ensure delivery within the funded period we need to select artists to work up their designs in December 2024, for full tender in February 2025 and 12 months for delivery
- 4.5. **Market Reach:** A Call Out to artists was put out through local, national and international networks, resulting in over 100 enquiries for details of the commission and over 60 completed expressions of interest. We believe this demonstrated that the initial selection stage for procurement has offered fair opportunities for engagement open to any prospective supplier to become involved with, albeit not strictly in compliance with the Council's Contract Procedure Rules.
- 4.6. **Selection of Artists to Tender:** We have allocated 10 bursaries of £500 to enable artists to work up their proposals. The purpose of the informal EOI stage is to ensure the bursaries are awarded to artists capable of creating high quality work, but also to ensure a range of options across the potential sites and themes outline in the Brief. Selection will be made in consultation with the Town Team for Culture Public Art subgroup, comprising artists, community

representatives and businesses who have been involved in the process of setting themes and locations for the artworks, and are best placed to comment on artistic quality and likely public reaction. Measures are in place to avoid conflicts of interest with those submitting EOIs and the ultimate decision as to which EOIs to take forward will be made by an internal team. Decisions will be made on the basis of the received expressions of interest which include:

- Contact details: name, address, email address, phone number.
- A short description of the proposed work, including a rationale of how it will respond to the site and theme of one of the locations (for information only)
- Outline costs, including transport and installation (to the nearest £1000), (for information only).
- A summary of up to 3 relevant past projects or commissions, demonstrating your commitment to local research, understanding of technical issues and successful delivery of public art, with links to a website or gallery of images if appropriate.
- A completed NDC Supplier Form, including acceptance of NDC terms and conditions.

4.7. Selection of Works from Shortlisted artists: The process for final selection of the art works will be set out in the ITT, and will include quality and price elements. For the quality element, applications will be considered by a panel drawn from Members, relevant Council departments and from a diverse group of community members and professionals with experience in culture, the arts, and public engagement in Barnstaple. The panel will advise the officer team that will make the ultimate decision.

4.8. The Council's Contract Procedure Rules, reflecting regulation 111 of the Public Contracts Regulations 2015, provide that the Council cannot include a "pre-qualification stage" in a procurement which is beneath the financial thresholds set in accordance with that law (as is the case here). A "pre-qualification stage" is defined in law as "a stage in the procurement process during which the [Council] assesses the suitability of candidates to perform a public contract for the purpose of reducing the number of candidates to a smaller number who are to proceed to a later stage of the process". However the law does allow the Council to ask candidates proportionate "suitability assessment questions" to allow it to understand if the candidates meet "requirements or minimum standards of suitability, capability, legal status or financial standing". This would normally form part of a single stage open tender process but, as explained above, the Council is unable to do this because of the bursaries involved. These variations to the standard procurement process are required to meet the unique requirements of this opportunity but as has been set out above, a rigorous selection process has been proposed based on the



traditional procurement route to ensure best value. In line with regulation 111(8) Public Contracts Regulations 2015, consideration will be given to whether the above represents a reportable deviation which should be notified to the Cabinet Office, however it is felt that this project is so unique that such deviation is justifiable.

5. RESOURCE IMPLICATIONS

- 5.1. All the bursaries and subsequent commissions are funded from the Cultural Development Fund.
- 5.2. This project requires resource from the Culture Manager and wider Place, Property and Regeneration Service, the Programme Management Office, Legal Services (including Procurement) and Financial services.

6. EQUALITIES ASSESSMENT

- 6.1. An Equalities Assessment has been completed for the wider Cultural Development Fund project.

7. ENVIRONMENTAL ASSESSMENT

- 7.1 This is not currently relevant for this project, which relates to the procurement of public art.

8. CORPORATE PRIORITIES

- 8.1. What impact, positive or negative, does the subject of this report have on:
 - 8.1.1. The commercialisation agenda: The public art will encourage further footfall across Barnstaple town centre.
 - 8.1.2. Improving customer focus: The public art is for all customers to enjoy.
 - 8.1.3. Regeneration or economic development: The installation of public art will contribute to the regeneration of Barnstaple.

9. CONSTITUTIONAL CONTEXT

- 9.1. The decision in respect of the recommendations in this report can be made by this Committee pursuant to delegated powers provided in Part 3 Annex 1 paragraph 1 of the Constitution.

10. STATEMENT OF CONFIDENTIALITY

This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

11. BACKGROUND PAPERS

The following background papers were used in the preparation of this report:



- Cultural Development Fund successful bid and associated Funding Agreement.

12. STATEMENT OF INTERNAL ADVICE

The author (below) confirms that advice has been taken from all appropriate Councillors and Officers: Alison Mills, Culture Manager