

Report To:	EXECUTIVE CABINET
Date:	7 February 2018
Reporting Officer:	Robin Monk – Director of Place
Subject:	VISION TAMESIDE PHASE 2 REMOBILISATION
Report Summary:	<p>This report seeks approval for a proposal from the LEP to replace the building sub-contractor for the Vision Tameside Phase 2 construction project following the liquidation of Carillion Construction Limited and amend the basis of payment from the milestone payments agreed in Schedule 9 to payment applications, on a cost plus a currently proposed 6.5% basis. .</p>
Recommendation	<p>That Executive Cabinet:</p> <ol style="list-style-type: none"> 1. ACKNOWLEDGES that the LEP has terminated the subcontract with Carillion Construction Limited, which is in liquidation and intends to enter into an Early Works Agreement with Robertson Construction Group Limited (Co registration No SC347921) to allow for due diligence works to be undertaken and remobilisation of the site to enable a full contract to be entered into to complete the building works agreed under the main contract between the LEP and the Council and in the circumstances of the liquidation is asked to APPROVE the replacement of the Building Contractor in the Main Contract. 2. Consequently, the Council is asked to APPROVE the principle of variation of the main contract to replace milestone payments as agreed in Schedule 9 of the contract with payment applications on an open book cost plus a currently proposed 6.5% basis on the estimated cash flow set out in Appendix 1, which currently before the due diligence work is completed is intended to fall within the existing cost envelope for the construction. 3. APPROVES the payment on invoice to the LEP of up to £120,000 to pay for the existing professional team and the Independent Client Adviser through the period of the Early Works Agreement (8 weeks), which would have been charged through the milestones under the existing contract which is now being varied, and therefore falls within the existing cost envelope for the construction. 4. AGREES that it will be necessary to come back to elected members once the due diligence work is completed under the early Works Contract (8 weeks) to advise on the cost position and the terms being sought by the LEP under the new subcontract with Robertson to secure the completion of the Vision Tameside Phase 2 construction project and understand the cost and programme implications for the Council to understand available options. 5. AUTHORISES the Borough Solicitor, to undertake any necessary legal work secure any necessary consents, issue any notices required, terminate/vary any existing contracts required etc to secure the completion of the Vision Tameside Phase 2 construction project and where required take external

legal advice such costs to be met from the project contingency budget.

Links To Community Strategy:

Prosperous Tameside

Policy Implications

In line with approved policy

**Financial Implications:
(Authorised By The Section 151 Officer)**

The financial implications are considered in section 6 of the report.

**Legal Implications:
(Authorised By The Borough Solicitor)**

The key purpose of the report is to enable sufficient information to be obtained over the following 8 weeks to enable the Council to determine the best way to proceed whilst protecting the valuable asset it already has part constructed in the ground in far from ideal circumstances. We have a construction project which is essentially 60% completed what we want to achieve is to get a new Construction company to take on the contract on the same basis. PWC, the Liquidator were not in a position to support the project further given the complexity of the project.

Whilst it is a matter for the LEP to fulfil its contractual obligations and it is not for the Council to agree who with per se, nonetheless the Council would not want the LEP to contract with a building contractor who was unable to fulfill the obligations expected under the contract of Carillion. It is therefore for the LEP to make the decision to change contractors, but for the Council to agree this should only happen on the basis that the incoming contractor contracts on the same basis Carillion had previously been contracted to do so. From a legal perspective, it is not clear what variations will be sought to the contract as a consequence and whether this is contractually a sensible option for the Council to follow, although what does appear to be very clear is that urgent works need to be carried out to make the building wind and watertight as a matter of urgency so the due diligence and early works proposed are sensible and an important way to mitigate any potential losses for both the Council and LEP and it will be necessary to agree to pay for these from the existing budget for the work.

An early works order is an issue for the LEP and the risks are ones for the LEP. The master contract is between the Council and the LEP. It is the LEP who contracted Carillion. The LEP can replace Carillion but the LEP has no option but to require a new contractor to comply with the terms of the master contract, unless the Council agrees to vary the master contract to accommodate requests from a new building contractor. However, there is a risk of there being no or limited warranties available to the Council, Wilkos, Tameside College - the Council is under contract with Tameside College and Wilkos. Any change to the contractor is likely to affect these contracts, with the position on warranties being critical. It might be that insurance could be put in place to cover this and this will need to be a consideration during the next phase and report.

Risk Management:

A risk assessment is included within the report.

Access To Information:

The background papers relating to this report can be inspected by contacting the report writer Ade Alao, Head of Investment and Development by:



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1. INTRODUCTION

- 1.1 This report seeks approval for a proposal from the LEP to replace the building sub-contractor for the Vision Tameside Phase 2 construction project, following the compulsory liquidation of Carillion Construction Limited and to change the basis of payment from milestone payments as detailed in Schedule 9 of the contract to monthly payment applications on a cost plus basis- currently proposed as 6.5%. The estimated payments during the first 8 weeks will be contained within the existing project budget.
- 1.2 Vision Tameside Phase 2 creates a new Shared Service Centre for the Council and its partners alongside a new Advanced Skills Centre for Tameside College and retail space.
- 1.3 Executive Cabinet authorised the award of a construction contract for the Vision Tameside Phase 2 project on 29 June 2016.
- 1.4 On 22 November 2016, the Council entered into a Design and Build Contract ("the Master Contract") with Inspiredspaces Tameside Limited ("the LEP") for the construction of Vision Tameside Phase 2.
- 1.5 Simultaneously the LEP entered into a sub-contact with Carillion Construction Limited ("Carillion") who are defined in the Master Contract as the Building Contractor.
- 1.6 On 15 January 2018, the High Court appointed the Official Receiver as liquidator of Carillion Plc, Carillion Construction Limited and some 5 other associated companies on the petition of the company's directors. The Court also appointed PwC as special managers to support the Official Receiver in managing the affairs, business and property of the companies. The LEP, which it should be noted remains a going concern and is solvent.
- 1.7 The LEP terminated the building sub contract with Carillion Construction Limited on 6 February 2018, on the basis that being placed in compulsory liquidation, constitutes a Contractor Default under the terms of the building sub-contract. Primarily this was to secure the site and retain key documentation.

2. UPDATE

- 2.1 All construction work on the site of the Vision Tameside Phase 2 project stopped following the announcement of the liquidation of Carillion on 15 January 2018. The immediate uncertainty of payments, meant that all the sub-contractors suspended work on site. Subcontractors and suppliers who are owed money for work undertaken for Carillion prior to its liquidation have been advised that they are unsecured creditors and will need to lodge a claim with the Official Receiver and that it is unlikely any payments being made.
- 2.2 PWC originally advised the LEP that they would see through the project to completion and put in place 24 hour security on site, however, they have now confirmed that they are unable to support the project further and the LEP needs to appoint an alternative contractor to complete the works.
- 2.3 Most of the Carillion site staff were made redundant by PWC on 5 February 2018, with 5 remaining and reporting for work, individual members of the core team have already sought other employment with the potential loss of their knowledge and expertise, however some staff have indicated that they are willing to consider offers from any replacement contractor.
- 2.5 A site inspection commissioned by the Council and the LEP has identified that the building is not yet 100% watertight and weathertight. This is exacerbated by the current weather conditions and is likely to get worse very quickly without intervention, and could result in

significant damage to already completed building works. Therefore it is important that site works are remobilised urgently to mitigate against further weather damage.

- 2.6 The LEP has identified a replacement sub-contractor Robertson Construction Group Limited, who have confirmed that they are willing to complete the construction of the building on an open book, cost plus basis. Robertson is one of the largest independently owned construction companies in the UK and has been in operation for 50 years and currently employs 2,000 staff. Its turnover for the year ending 31 March 2017 was £565 million with profit before tax of £26 million, net worth of £89 million, year-end cash balance of £67 million and order book value of £1 billion.
- 2.7 The LEP has advised that it intends, subject to the approval of the Council, to engage Robertson Group Limited under an Early Works Contract to undertake urgent protection works on the project, remobilise the site, re engage a core team and sub contractors, whilst at the same time under taking due diligence to agree a contract, programme and estimated cost of completing the project.

3. PROPOSAL

- 3.1 The LEP intends to enter into the Early Works Agreement with Robertsons Construction Group Limited.
- 3.2 This will allow for the prompt commencement of necessary protection works to arrest deterioration of already completed works on the project. It will also allow for an 8-week period for Robertsons Construction Group Limited to carry out its due diligence on the project and enter into contract with the LEP to secure a prompt remobilisation for completion of the project. The intention is for the replacement sub contract to sit under the terms of the existing head contract between the Council and the LEP.
- 3.3 The LEP has already terminated the Building Sub-Contract by serving a Termination Notice to Carillion Construction Limited / PWC due to Carillion Construction Limited being placed in compulsory liquidation, which constitutes a Contractor Default.
- 3.4 The LEP is therefore seeking Council approval under the terms of the Contract to appoint Robertsons Construction Group Limited as new Building Contractor on the Vision Tameside Phase 2 project.
- 3.5 During the period of 'mobilisation' existing design and project management appointments will be required, which would have previously been included in milestone payments, to ensure that design proceeds in line with programme and to avoid delays in finalising design such as Furniture Fittings and Equipment that would ultimately cause delay to the programme later on. The LEP already has appointments with Ryder Architecture (including Space Invaders as their subconsultant) for design and Hewitt Freeborn as Project Managers and Employers Agent to assist in drawing up and managing the production of technical documents to be included within the new contract. A detailed analysis of the full financial implications to the Council, for the overall project, will be presented for consideration in a subsequent report.
- 3.6 The LEP is also seeking Council approval to amend the payment provisions in the existing head contract to reflect the fact that monthly payment applications, on a cost plus basis will replace the milestone payments in Schedule 9 of the contract.
- 3.7 Any further changes required to the existing head contract will be subject to a further report with a clear recommendation based on an assessment of the latest position at the time and the Council's overall best interests. This should take place in the next 8 weeks once the

due diligence under the Early Works Contract has been undertaken and will provide the necessary information to allow an options appraisal.

4 CHANGE OF BUILDING CONTRACTOR

- 4.1 The definition of Building Contractor in the Master Contract is Carillion “or such other building contractor appointed by the LEP to carry out and complete the Works”, which confers upon the LEP discretion as to who it appoints.
- 4.2 The Master Contract requires the LEP to ensure that the Principal Building Subcontractor complies with the obligations in the Master Contract and to obtain warranties from the Principal Building Subcontractor.
- 4.3 The Master Contract contains specific details in the Schedules, which may change if a new Building Contractor is appointed:
 - i. Schedule 1 – Authority’s Requirements – in accordance with the definition of “Variation” and clause 15, the Council can vary the Authority’s Requirements.
 - ii. Schedule 2 – LEP’s Proposals – these can be varied to take account of the Authority’s Requirements.
 - iii. Schedule 4 – Construction Programme – clause 10.2 of the Master Contract provides variations to the Construction Programme.
 - iv. Schedule 7 – Date or Dates for Completion – In accordance with clause 10.2 the Construction Programme can be changed which may result in a change to the Date or Dates for Completion.
 - v. Schedule 9 – Payment Provisions – clause 16 of the Master Contract provides for amendments to the payment provisions.
 - vi. Schedule 13 – Forms of Collateral Warranty and Duty of Care Deeds, most of which contain reference to Carillion.
- 4.3 In appointing a new Building Contractor, the LEP will need to consider the impact of this on:
 - a) Construction Programme
 - b) Date or Dates for completion
 - c) Payment Provisions (Milestones)
 - d) Warranties

These issues will need to be addressed following the due diligence.

5 FINANCIAL IMPLICATIONS

- 5.1 It is still too early to fully assess the likely financial implications of the current situation on the project. The protection that the Council has under the design and build contract with the LEP includes, step-in rights, collateral warranties, and a parent company guarantee provided by the building contractor. As the parent company is in compulsory liquidation, this will not provide protection against any financial loss. Estimates of the potential financial implications, based on the current possible scenarios, range from moderate to substantial.
- 5.2 The main construction contract for Vision Tameside with the LEP was £37.575m, and paid invoices to 15 January amount to £32.006m, excluding a 2% retention (£0.653m). This leaves an available budget of £4.916m to complete the construction part of the project.
- 5.3 The direct financial implication arising from this report is limited to the cost of the Early Works Agreement, which is estimated at £780,825 and will be able to be met from within

the remaining budget. **Appendix 1** illustrates the cashflow required during the Early Works period.

- 5.4 In addition to the costs during the Early Works period, the LEP will continue to employ a professional team (architects, civil & structural engineers, mechanical & electrical engineers and acoustic consultant, project quantity surveyor, project managers etc). The full financial implications can only be established through the project remobilisation process, which will include a process of due diligence. Approval is therefore sought for a provisional allocation, within the existing project budget of £120,000 to employ the professional team and an Independent Client Adviser for the LEP and the Council through the 8-week remobilisation process.
- 5.5 However, it is unlikely that, given events from which these additional costs arise that the project will be able to be completed on time and to budget. The due diligence arising from the early works agreement procured by the LEP will provide the Council with a better understanding of the costs required to complete the construction phase. A delay and set back to the project has already happened and any of the options highlighted will inevitably increase the costs incurred by the Council.
- 5.6 The due diligence phase and subsequent contractually arrangements will require additional visibility and scrutiny of costs that was not in the original design and build contract. The Council will need to employ a reputable, Independent Client Adviser, including professional quantity surveyor services, to ensure that any future works deliver within the new contract and represent value for money for the LEP and the Council.
- 5.7 A detailed analysis of the full financial implications to the Council for the overall project will be required to enable the advancement to a new contract to complete the project. This subsequent report will provide the Council will full clarity and seek approval to set a new fully costed budget to allow the completion of the project.

6. RISK ASSESSMENT

- 6.1 The primary risks associated with this report, if the recommendations are not agreed are set out in the table below:

Risk	Impact	Status
Financial	Moderate to substantial additional costs to complete the project.	Red
Community and Stakeholder	Inability to deliver the project in a timely manner leads to reputational damage with the local community and stakeholders.	Red
Economic	Inability to deliver the project in a timely manner leads to the non-realisation of the anticipated economic benefits from the development.	Red
Education	Inability to deliver the project in a timely manner leads to a major disruption to Tameside College's operations and its ability to open for the 2018/19 academic year.	Amber

7. RECOMMENDATIONS

- 7.1 These are shown at the front of the report.