

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	CABINET
Report of:	DIRECTOR OF COMMISSIONING AND PROCUREMENT
Date of Decision:	24th JANUARY 2018
SUBJECT:	IMPLEMENTATION OF CONTINGENCY ARRANGEMENTS FOR CONSTRUCTING WEST MIDLANDS LOTS 2 & 3
Key Decision: YES	Relevant Forward Plan Ref: n/a
If not in the Forward Plan: (please "X" box)	Chief Executive approved X <input type="checkbox"/> O &S Chairman approved X <input type="checkbox"/> This matter was not included on the forward plan as the timing of the collapse of Carillion plc could not have been foreseen.
Cabinet Member(s):	Councillor Majid Mahmood, Cabinet Member for Commercialism, Commissioning and Contract Management
Relevant O &S Chairman:	Councillor Mohammed Aikhlaq, Corporate Resources and Governance
Wards affected:	ALL

1. Purpose of report:
<p>1.1 To provide details of the requirement to enter into contingency arrangements for Lots 2 & 3 of the Constructing West Midlands (CWM) framework following the announcement of liquidation by Carillion plc on 15th January 2018</p> <p>1.2 These arrangements commenced on 22st January 2018 and will continue for a maximum period of 20 months, subject to satisfactory performance.</p>

2. Decision(s) recommended:
<p>That the Cabinet:</p> <p>2.1 Notes that the rationale for retrospective approval is due to the sudden announcement of Carillion plc's liquidation on 15th January 2018.</p> <p>2.2 Approves and enables the formalisation of contract modification arrangements with IWS Water Hygiene Midlands Ltd ("IWS") and Spie UK ("Spie") to undertake the services previously provided by Carillion PLC under Lots 2 & 3 of the Constructing West Midlands Framework respectively.</p> <p>2.3 Authorises the Director of Commissioning and Procurement to conclude commercial negotiations with IWS Water Hygiene Midlands and Spie 365 Facilities.</p> <p>2.4 Authorise the City Solicitor to negotiate, execute and complete all necessary documents to give effect to the above recommendations.</p>

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3. Consultation
<p>3.1 <u>Internal</u></p> <p>3.1.1 Officers from Legal and Governance, Procurement and City Finance have been involved with the preparation of this report.</p> <p>3.1.2 The Deputy Leader has been consulted on this report.</p> <p>3.2 <u>External</u></p> <p>3.2.1 Acivico DCFM Ltd are the Council's managing agents for these contracts and are working closely with the Council to implement these changes.</p>

4. Compliance Issues:
<p>4.1 <u>Are the recommended decisions consistent with the Council's policies, plans and strategies?</u></p> <ul style="list-style-type: none"> • This contract will support the Vision and Forward Plan priorities; <ul style="list-style-type: none"> ➤ By ensuring continuity of essential water hygiene and mechanical and electrical services to the Council and Birmingham Schools in light of the liquidation of Carillion plc ➤ by ensuring the local sub contractors undertaking works for the City receive payments for works undertaken, payments which would not be made were the Council to continue with Carillion plc whilst it is under control of the Official Receiver. <p>4.1.1 Birmingham Business Charter for Social Responsibility (BBC4SR)</p> <p>Both IWS and Spie 365 Facilities are certified signatories to the BBC4SR and have action plans with commitments proportionate to the value of this contract. These actions are monitored and managed during the period of the contract. In light of these contingency arrangements the Council will undertake a review of their current charter action plans to ensure they reflect this increased scope of work.</p> <p>4.2 <u>Financial Implications</u></p> <p>4.2.1 Based on current and projected spend during 2017/18, the estimated annual value of these contingency arrangements is £341,000 for Lot 2 (Legionella, South of the City) and £3,509,000 for Lot 3 (Mechanical and Electrical Services, North of the City).</p> <p>4.2.2 These contingency arrangements will have no adverse financial impact on the Council, as until the commercial dialogue is concluded the current prices included within Lots 2 & 3 of the contract will continue to apply. This contract modification does not commit the Council to a particular level of spend.</p>

4.2.3 Through ongoing commercial dialogue it is anticipated that revised prices may be able to be negotiated with IWS and Spie 365 Facilities that reflect the proposed increase in the work commissioned and their ability to achieve greater economies of scale.

4.3 Legal Implications

4.3.1 Section 72 (1) c) of the Public Contract Regulation (PCR) 2015 provides for the modification of contracts during their term and specifically Where **all** of the following conditions are fulfilled:

- The need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;
- The modification does not alter the overall nature of the contract;
- Any increase in price does not exceed 50% of the value of the original contract

4.3.2 As all the above criteria are met, It is under these conditions that the Council is seeking to modify the existing contractual arrangements without re-procurement with IWS and Spie to ensure continuity of services to the Council and Birmingham Schools following the announcement by Carillion on 15th January.

4.3.3 IWS and Spie have confirmed to BCC that they will work the liquidator to facilitate the TUPE transfer of staff from Carillion and comply with TUPE Regulations as they apply, in light of the liquidation.

4.4 Public Sector Equality Duty

4.4.1 The requirements of Standing Order 9 in respect of the Council's Equality Policy and the Equality Act 2010 have been specifically included in the contract documentation.

5. Relevant background/chronology of key events:

Background

- 5.1 Through Acivico, Carillion provides services to the council under the Constructing West Midlands (CWM) Lots 2 (Legionella, South of the City) and 3 (Mechanical and Electrical Services, North of the City). These contracts along with other CWM Lots were awarded in 2011 and were effective from 1st October 2011 for a period of 4 years with 2 options to extend each for a further period of 2 years.
- 5.2 On 20th September 2016, Cabinet approved the decision to extend these agreements for the final period of 2 years to 30th September 2019.
- 5.3 On 15th January Carillion announced that the Official Receiver had been appointed as liquidator of Carillion plc (and certain other companies within the Group) and that Special Managers had been appointed by the High Court to help manage the affairs, business and property of the companies in accordance with the powers and duties contained in the order appointing them.

- 5.4 This announcement follows the publication of Carillion plc's strategic and operational review report published 29th September which cited profit warnings and potential financial difficulties facing the organisation.
- 5.5 Since the 29th September announcement officers from Acivico DCFM Ltd and the Council have been in continuous dialogue with Carillion and monitored media speculation. As part of this activity and application of good contract management practice contingency plans were put in place to mitigate against the potential impact to the council of Carillion (CWM Lots 2&3) going into receivership or liquidation.
- 5.6 This contingency planning has in effect enabled a seamless and rapid transition to alternative providers now that this risk has materialised.
- 5.7 The plans enable services to be carried out by other contractors on the CWM Framework specifically Integrated Water Services (IWS) Lot 1 (Legionella North of the City) and Spie (Lot 4, Mechanical and Electrical Services, South of the City).
- 5.8 A briefing note on the situation regarding the liquidation of Carillion plc, its impact on the Council and the requirement to ensure continuity of service was communicated to Cabinet Members, Opposition Leaders and CLT during the week of 15th January.
- 5.9 The terms and conditions under which the CWM framework was established specifically allow for appointed contractors to undertake works in other areas of the City.
- 5.10 In addition, the fact that the Council has the ability to modify contracts under Section 72 (1) c) of the Public Contract Regulations 2015 enables the council to implement these contingency arrangements with little or no risk to breach of PCR.
- 5.11 Given the immediacy of the requirement and the need to ensure continuity of service officers from Corporate Procurement Services and Acivico DCFM Ltd met with representatives from Both IWS and Spie 365 Facilities on 18th January to request that they implement these measures. This request was based on the caveat that they would in effect be working at risk until these arrangements were formalised through an Executive Decision.
- 5.12 Both organisations agreed to proceed based on this principle and these arrangements were implemented with effect from 22nd January 2018.
- 5.13 Consequently, Cabinet approval is sought to retrospectively formalise these arrangements with IWS and Spie 365 Facilities and to finalise ongoing commercial negotiations.

6. Evaluation of alternative option(s):

- 6.1 Given the announcement on the 15th January that Carillion entered into Liquidation and the urgent need to ensure continuity of essential water hygiene and mechanical and electrical services to the Council and Birmingham Schools there are no other viable alternatives that could be implemented immediately.

7. Reasons for Decision(s):
7.1 To inform Cabinet of the need to implement contingency arrangements for Lots 2 & 3 of the Constructing West Midlands framework and to seek retrospective approval to enable these arrangements to be formalised.

<p><u>Signatures:</u></p> <p>Councillor Majid MahmoodDate..... Cabinet Member for Commercialism, Commissioning and Contract Management</p> <p>Nigel Kletz:.....Date..... Director of Commissioning and Procurement</p>

List of Background Documents used to compile this Report:
1. None

List of Appendices accompanying this Report (if any):
None.