

**ROTHERHAM BOROUGH COUNCIL – URGENT BUSINESS POWERS REPORT
TO MEMBERS**

1.	Meeting:	Cabinet Member for Culture, Lifestyle, Sport & Tourism
2.	Date:	4th May, 2011
3.	Title:	Clifton Park Consultants Procurement
4.	Programme Area:	Environment and Development Services

5. Summary

This report seeks an exemption from Standing Orders 47.6.2 and 47.6.3 to allow orders to be placed with LDA Design and Alway Associates to advise the Council in preparing for and managing any adjudication brought by UCS Civils in respect of their terminated contract for the Clifton Park Restoration project.

6. Recommendations

That Cabinet Member approves the exempting of the proposed appointment of specialist consultants for Clifton Park from Standing Order 47.6.2 (requirement to invite at least two oral or written quotations for contracts with an estimated value of £5,000 but less than £20,000), and Standing Order 47.6.3 (requirement to invite at least three written quotations for contracts with an estimated value of £20,000 but less than £50,000) to allow orders to be placed with LDA Design and Alway Associates

7. Proposals and Details

UCS Civils were appointed as main contractor for the Clifton Park restoration project. They became insolvent and went into administrative receivership in November 2009, at which stage the new Garden House and some landscape works remained incomplete. Consequently the contract was terminated, and the Contract Project Manager made an assessment of the final account within a fixed period following termination, in accordance with the NEC3 Contract.

The assessment of the final account was that UCS Civils owed the Council approximately £396,000, taking into account the value of works completed by UCS and the estimated additional cost to the Council to complete the project after the contractor went into administrative receivership. UCS Civils do not agree with this assessment, in spite of a series of meetings with the Project Manager's team to try to resolve the matter.

In April 2011, solicitors acting for UCS Civils wrote to the Council indicating that they would refer the dispute to adjudication. This is provided for within the NEC3 contract, and is intended to provide a means to arrive at a final settlement by allowing an independent person to examine the basis of the case put by the claimant, and any information provided in response by the other side. The Council therefore needs to be able to prepare its case so it can respond quickly when an adjudicator is appointed.

It is proposed that orders now be placed directly as follows:-

- LDA Design to prepare information regarding project costs, sequencing of work, delay assessments and compensation events
- Alway Associates to advise on and co-ordinate preparation of evidence for possible future adjudication brought by UCS Civils, and to act as the Council's representative in communications with the adjudicator.

Approval is sought to exempt these procurements from Standing Order 47.6.2 that requires at least two oral or written quotations to be invited for contracts with an estimated value of £5,000 but less than £20,000 and Standing Order 47.6.3 that requires at least three written quotations to be invited for contracts with an estimated value of £20,000 but less than £50,000, on the following grounds:-

- LDA Design were appointed by the Council as lead consultant and contract Project Manager for the Clifton Park Restoration Project, following a competitive tendering procedure (OJEU), they therefore have detailed knowledge of the matters disputed by the contractors and direct access to relevant information both within their own records, and through sub-consultants employed by them to form the project consultants team.
- Alway Associates were engaged by the Council to assist LDA Design in the assessment of contract delays, and to advise the Council in its dealings with UCS Civils and their Administrative Receivers since contract termination; they therefore have a good knowledge of the developing dispute with UCS Civils, and how best to defend the Council's position in any future adjudication. Their

original appointment was based on evidence of expertise in this specialist field, and was not subject to any competitive tendering because the value of services required then was not expected to exceed £5,000.

8. Finance

The total cost of services required from LDA Design and Alway Associates will depend on whether adjudication happens, and is not known at this stage. However, at this stage, fees for each consultancy are not expected to exceed £20,000.

9. Risks and Uncertainties

As stated above, it is not known at this stage whether UCS Civils will refer their dispute to an adjudicator, and consequently the extent and cost of advice needed from consultants is uncertain. Should adjudication take place, then the adjudicator's decision could range from confirming the Project Manager's assessment of the amount owed by UCS Civils, through to agreeing with all of UCS Civils' claims, which they suggest could amount to around £411,449 plus interest. The adjudicator will also decide how his costs should be apportioned between the parties, and there is therefore a risk of additional costs to the Council, although the likely amounts involved are not known at this stage.

10. Policy and Performance Agenda Implications

The appointment of consultants with previous detailed knowledge of the project will help the Council to minimise risk associated with adjudication.

11. Background Papers and Consultation

Financial Services and Legal Services have been consulted in the preparation of this report.

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