

Finance and Resources Committee

10.00am, Tuesday, 12 June 2018

Appointment of legal advisers - Waiver Report

Item number	7.22
Report number	
Executive/routine	
Wards	
Council Commitments	

Executive Summary

This report seeks the approval of the Finance and Resources Committee for a waiver of Contract Standing Orders for the appointment of Ashurst LLP for the delivery of legal services in connection with the Edinburgh schools closures.

Appointment of legal advisers - Waiver Report

1. Recommendations

- 1.1 The Finance and Resources Committee is asked to:
 - 1.1.1. Approve the appointment of Ashurst LLP (Ashurst) for legal services provided to City of Edinburgh Council (CEC) in connection with the Edinburgh schools closures and the contract with the Edinburgh Schools Partnership;
 - 1.1.2. Note that the nature of this service required the urgent appointment of legal advisers who were not conflicted with the various parties associated with the PPP relationship; and
 - 1.1.3. Note that the total costs associated with this Waiver will be up to £1m.

2. Background

- 2.1 Emergency legal advice was required in relation to the PPP1 contract following the collapse of a wall at Oxfords Primary School and the subsequent closure of a number of Edinburgh schools. It was decided not to instruct the original project lawyers due to a conflict of interest. Legal firms on the Council's framework with appropriate expertise in this specialist area were approached but none were able to act for the Council due to legal conflicts. In the emergency circumstances an off-framework firm who disclosed no such conflict was required to be appointed.
- 2.2 Ashurst were identified as a market leader in PPP advice and CEC was already an Ashurst client. Ashurst were therefore appointed in April 2016. To provide continuity Ashurst were retained through the Professor Cole report period and they remain as advisers in the relation to the project which is still in dispute.
- 2.3 A report to the Corporate Policy and Strategy Committee in May 2016 outlined for elected members that the Council was taking the necessary and comprehensive legal advice in relation to the school's closure matter. The report also stated that the Council was incurring significant costs relating to the closures and that it was intended that the Council would not be left footing the bill relating to all the costs incurred. In effect the costs incurred would be off-set against the deductions made from the monthly unitary charge from the Edinburgh Schools Partnership (ESP).

3. Main report

- 3.1 Ashurst have been appointed since April 2016 in response to the emergency situation caused by the Oxgangs Primary School wall collapse. Ashurst were an appropriately qualified firm who did not have a conflict of interest with the other parties involved with the PPP1 project. They have worked with the Council to ensure that the Council's legal position has been protected.
- 3.2 Ashurst were also able to identify and appoint a known and respected fire-safety expert (Olsson Fire and Risk (OFR)) at a time when such services were in high demand meaning that CEC have been able to ensure that the safety of pupils, teachers, staff and visitors was in accordance with the council's obligations. Ashurst and OFR have worked together in this regard and Ashurst took responsibility for appointing OFR and has organised the payments to OFR. Accordingly, Ashurst's fees have included sums paid to these technical experts.

4. Measures of success

- 4.1 To date rectification works have progressed at ESP's cost.
- 4.2 CEC continue to maintain a robust contractual position based, in part, on advice provided by Ashurst and OFR.

5. Financial impact

- 5.1 In summary the spend upon legal and technical support via Ashurst to date is in the sum of circa £620k.
- 5.2 It is considered prudent to plan for future spend up to the sum of £380k but may be more or less depending on the level of advice and matters, if any, which remain in dispute. It is hoped that a commercial settlement can be reached between the parties which will limit the need for the Council to incur further significant costs. However, the possibility of court action being required cannot be ruled out at this stage.
- 5.3 It is intended that these and other costs will be offset against deductions already made against ESP under the contract.

6. Risk, policy, compliance and governance impact

- 6.1 Due to the unique nature of the PPP1 issues, the possibility of using a Scottish based firm at very short notice was severely curtailed as a result of conflicts of interest.

7. Equalities impact

7.1 There are no equalities impacts arising as a result of this report.

8. Sustainability impact

8.1 There is no sustainability impact arising from this report.

9. Consultation and engagement

9.1 None, due to the urgent nature of this requirement and the commercial sensitivity.

10. Background reading/external references

10.1 None.

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11. Appendices

None.