



CABINET – 29TH JULY 2015

SUBJECT: ST. JAMES PRIMARY – FINAL ACCOUNT

REPORT BY: CORPORATE DIRECTOR, EDUCATION & COMMUNITY SERVICES

1. PURPOSE OF REPORT

- 1.1 To note the outcome of the final account and to endorse the proposals for funding the anticipated net shortfall in funding.

2. SUMMARY

- 2.1 The report seeks approval to funding the anticipated net shortfall in provision as well as noting developments in the process to concluding the issuing of the final certificate for making good and agreeing the final account sum.

3. LINKS TO STRATEGY

- 3.1 The Local Authority is required to pay liabilities arising from legally binding decisions in order to comply with its legal obligations.
- 3.2 Budget decisions impact on all Council strategies. This report relates, primarily, to the efficient and effective use of the Council's revenue and capital resources.

4. THE REPORT

- 4.1 Following an OJEU procurement process Vinci PLC, one of the largest construction companies in Europe, was appointed in January 2010 to construct the St James and Greenhill Primary Schools.
- 4.2 Both the Greenhill and St. James Primary School projects were completed in 2011 but there was a dispute between Vinci and CCBC over the final accounts. The Greenhill scheme has subsequently been agreed but the St. James final account had not been finalised.
- 4.3 As no agreement was reached with Vinci, the matter was referred to adjudication on 11 November 2013. The adjudicator sent out his decision letter on 23 December 2013.
- 4.4 It awarded £537,000.63 to Vinci as well as the adjudicator's fees and said that these sums should be paid within 7 days. The decision also said that it did not bind the parties in terms of the final account as it related to an interim certificate.

- 4.5 The adjudication decision represented a very disappointing outcome for CCBC.
- 4.6 At this stage, 3 options were considered, namely:
- Option 1 - Challenge the adjudicator's decision
 - Option 2 - Pay part of the award under the adjudicator's decision
 - Option 3 - Pay the adjudication sum and follow a clear process for the final account to try and recover or reduce the overall costs.
- 4.7 The interim Chief Executive made a delegated decision to support option 3. This was made on 24 January 2014, under the Council's constitution, due to the urgency to avoid enforcement action.
- 4.8 An assessment took place at that time of the final account value. Having taken account of the adjudicator's decision, the 2013/14 final accounts provided for an overall anticipated £523,000 net shortfall in provision.
- 4.9 There remained a number of outstanding contract issues which Vinci needed to resolve. These included 9 mechanical defect issues and 6 building related issues. The most significant outstanding issue, however, related to information to submit for the BREEAM assessment, which is necessary to secure WG funding.
- 4.10 Progress in resolving these outstanding matters had been slow since the adjudication decision, despite a number of reminders.
- 4.11 An officer meeting took place with Vinci on 23 October 2014. It was evident that there were significant variations in the respective final account valuations. It was agreed that CCBC's external QS would work with Vinci officers to agree a final account value as a priority.
- 4.12 Vinci were also requested to complete the remaining defects and to complete the outstanding BREEAM information. No further payments were made to Vinci, pending the completion of these matters.
- 4.13 Agreement was reached on a provisional final account sum, amounting to circa £5,750,000 by mid December 2014.
- 4.14 There was also good progress since October 2014 in resolving the outstanding mechanical (e.g. heating and ventilation) and building (lighting, damp and equipment) defects. The outstanding BREEAM information has also been received.
- 4.15 Confirmation was received on 8 July 2015 that all outstanding defects have been satisfactorily concluded and the appropriate certificates have been issued. As a consequence, the retention monies will be released.
- 4.16 On this basis, the final account sum of £5,735,227.93 can be confirmed.
- 4.17 A number of site issues require completion which are either outside the scope of the initial contract or were matters lost on adjudication. These include:
- Turfing of play area at rear of school
 - Stone picking and making safe peripheral areas to playing field
 - Drainage works to area in vicinity of football pitch

It is estimated that these works would cost in the region of £40,000.

4.18 The process leading to the settlement of the final account has been arduous and time consuming. As a consequence it is proposed to review the arrangements and to produce a more detailed report to the 21st Century Schools Board which is hoped will assist with future contract arrangements. This process has already progressed and resulted in the recommended way forward in respect of the proposed Abertyswg/Pontlloftyn Primary School, as agreed by Cabinet on 17 June 2015.

5. EQUALITIES IMPLICATIONS

5.1 An EIA screening has been completed in accordance with the Council's Strategic Equality Plan and supplementary guidance. No potential for unlawful discrimination and/or low level or minor negative impact has been identified, therefore a full EIA has not been carried out.

6. FINANCIAL IMPLICATIONS

6.1 Provision was originally made in the capital programme for a sum of £4,677,000. Scrutiny (01/03/2011 and 25/01/2012) were notified of further budget increases (virements) of £200,000 on each of these occasions. An additional, circa £225,000, has been funded from the education capital programme. The subsequent outcome of the adjudication which referred to an interim account meant there would still be a significant under provision in relation to the final account sum.

6.2 It was evident that there was a significant variation between CCBC's and Vinci's final account valuations. When CCBC's accounts were closed for 2013/14 it was assessed that a realistic best case scenario would be a final account sum of £5,836,000.

6.3 This assumed an overall £523,000 net shortfall in provision. The Directorate identified funds to finance this amount, as follows:

	£
• Directorate's revenue balances	274,000
• Redirection from Lifelong Learning capital programme schemes no longer progressing	<u>249,000</u>
	<u>523,000</u>

The funding of the shortfall has not been actioned, awaiting confirmation of the final account sum.

6.4 The final account sum is circa £100,000 less than the sum reserved in the accounts. There are a number of outstanding site issues as identified above.

6.5 It is recommended that these outstanding issues are resolved at a cost of circa £40,000 from the residual £100,000 amount in the final accounts. This would result in the take from the Directorate's revenue balances being reduced from £274,000 to £214,000.

7. PERSONNEL IMPLICATIONS

7.1 There are no direct personnel implications.

8. CONSULTATIONS

8.1 Consultations have been undertaken as identified below. Comments received have been reflected in the report.

9. RECOMMENDATIONS

- 9.1 To note the action taken previously by the Interim Chief Executive and to agree the proposed utilisation of circa £40,000 of residual funding for the project as recommended in section 6 of the report.
- 9.2 To note agreement to the final account to Vinci in the sum of £5,735,227.93.
- 9.3 To fund the revised shortfall of £463,000 (£523,000 - £100,000 + £40,000), through release of Education reserves to the value of £214,000 and re-direction of Lifelong Learning Schemes capital schemes to the value of £249,000.
- 9.4 Prepare a report for the 21st Century Schools Board to review the outcomes of this process and determine if there are lessons to be learnt in moving forward with future contracts.

10. REASONS FOR RECOMMENDATIONS

- 10.1 Cabinet confirm the financial arrangements as set out in section 6 of the report.

11. STATUTORY POWERS

- 11.1 Local Government Acts, 1972 and 2000.

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Angharad Price, Barrister, Legal & Democratic Services
Lynne Donovan, Acting Head of People Management & Development
Jane Southcombe, Financial Services Manager
Mike Lewis, Principal Accountant – Education Central.

Background Papers: Adjudicator's decision dated 23.12.13.
Confidential Legal Advice (Legally Privileged Exempt Legal Advice).