

Cabinet (Resources) Panel

22 March 2023

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| Report title | External Legal Support Relating to Civic Halls | |
| Decision designation | AMBER | |
| Cabinet member with lead responsibility | Councillor Paula Brookfield Governance and Equalities | |
| Key decision | Yes | |
| In forward plan | No | |
| Wards affected | St Peter's | |
| Accountable Director | David Pattison, Chief Operating Officer | |
| Originating service | Legal Services | |
| Accountable employee | Shamsher Zada | Lead Lawyer |
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| Report to be/has been considered by | | |

Recommendation for decision:

The Cabinet (Resources) Panel is recommended to:

1. Approve the Council's continued use of External Legal Advisors, Trowers and Hamlins, to provide specialist construction legal advice and support relating to the Civic Halls Project up to a value of £500,000.

1.0 Purpose

- 1.1 The purpose of this report is to seek authority to continue using Trowers and Hamlins external legal advisors to provide specialist legal support and advice on the Civic Halls Project up to the value of £500,000.

2.0 Background

- 2.1 The Civic Halls are essential to the economic well-being of the city centre, generating millions of pounds every year for the local economy. It is also critical to how we are re-inventing and re-imagining our vibrant city centre for the future.
- 2.2 The venue has brought millions of visitors to our city over the last 82 years and the refurbishment programme will guarantee this for another century. The Council's partnership agreement with AEG will facilitate the success of the venue.
- 2.3 The Shaylor Group who had originally been procured to deliver the project entered administration in June 2019. After the demise of the Shaylor Group the role of Principal Contractor reverted to the City of Wolverhampton Council. The Civic Halls Project Team ensured that the site was protected, safe and secured, whilst alternative procurement strategies were explored with the Procurement Team of the City of Wolverhampton Council.
- 2.4 On completion of the procurement exercise the advice from the client team was via the Scape Framework which enabled access to the framework partners of the Major Works UK and Major Works England and Northern Ireland value bands, which are Wates and Willmott Dixon respectively. Presentations and interviews were arranged for the 5 September 2019 for both framework partners, culminating in a decision by the client to engage with Willmott Dixon.
- 2.5 Subsequently on this basis, a Pre-Construction Services Delivery Agreement (Professional Services Agreement) and an Enabling Works Delivery Agreement (NEC Short Contract) were signed with Willmott Dixon on the 2 December 2019, with the main contract signed on the 28 July 2020.
- 2.6 The Contract between the Council and Willmott Dixon is an NEC3 Option C (Target Cost) Contract which is subject to a pain/gain share mechanism by reference to an agreed Target Cost. The Project Manager (Faithful & Gould), under the NEC Contract, have an obligation to assess all Compensation Events.
- 2.7 Due to the difference in assessments of Compensation Events between the Project Manager and the Contractor, the Council procured specialist legal advisors to assist with supporting the Council in protecting its position and enforcing the terms of the Construction Contract.
- 2.8 In June 2021, the Council procured Trowers & Hamlins LLP through the Crown Commercial Services Framework to provide specialist support and advice on the

Construction Contract. It was envisaged that the initial cost of the advice required from external advisers would be within the approvals delegated to the Chief Operating Officer.

2.9 It has now become apparent that the costs have exceeded that approval. Given the nature and the tight contractual requirements for responding to any dispute, the recent spend relating to the dispute has taken the spending above the delegated approval and therefore this report seeks authority for that spend and any future spending up to a value of £500,000. The costs have exceeded the approval due to the following key:

- i. Additional scope requirements driven by the relationship between the Council and the Contractor.
- ii. Increased legal resource due to the tight timescales in responding to disputes.
- iii. Enhanced specialist knowledge to advise the Council on construction contract law.

3.0 Progress.

- 3.1 The Council has so far spent a total of £347,688.94 on external legal support from Trowers and Hamblins. Their support has enabled the Council to conclude the Construction Phase of the project with the Contractor at the earliest opportunity in order to keep to the overall programme.
- 3.2 The legal advice and support received from Trowers and Hamblins also enables the Council to robustly ensure that contracts are adhered to in order to achieve best value and defend its position in any disagreements between the Contractor and the Council by enforcing the terms of the Construction Contract.
- 3.3 The Council has successfully defended two large issues taken through the adjudication process by the Contractor, as reported to Audit and Risk Committee on 6 March 2023 which are:
 - i. A request for delay of 73 weeks to the project – 45 weeks delay had already been granted by F+G due to factors such as Covid, unforeseeable events and design changes – the adjudicator awarded a finding of 45 ½ weeks
 - ii. An uplift on certain costs, “working area overheads”, of 100% - the adjudicator rejected this claim.
- 3.4 The decision of the Adjudicator is temporally binding unless challenged in the Courts by the Contractor.
- 3.5 It is likely that further support is required including the possibility of a High Court challenge to the adjudicator’s decision and this will require specialist construction legal support.

4.0 Evaluation of alternative options

- 4.1 In order to robustly defend its position and to hold our professional advisors to account the Council will need specialist external legal support. The Council does not have the

requisite specialist knowledge internally to deal with this matter. Where possible and appropriate, internal legal colleagues are advising to ensure the Council remains legally compliant whilst defending the Council's position and secures best value.

5.0 Reasons for decision

- 5.1 The proposals in this report will ensure that the Council can robustly defend its position legally and conclude the Civic Halls restoration project.

6.0 Financial implications

- 6.1 The Performance and Budget Monitoring Report approved by Cabinet on 16 November 2022, included provision from the Budget Contingency Reserve totalling £380,000 to fund any legal costs associated with this project.
- 6.2 The Performance and Budget Monitoring Report being presented to Cabinet on 22 March 2023, seeks approval for a further £120,000 from the Budget Contingency Reserve to support these costs, taking the total budget to £500,000.
- 6.3 If the approval for the increase in budget of £120,000 from the Budget Contingency Reserve is not granted, then the Service would have to look for efficiencies to deliver the legal costs within existing approved resources.
[LD/14032023/Z]

7.0 Legal implications

- 7.1 The Council has procured Trowers and Hamlins LLP through the Crown Commercial Services Framework which is a compliant route for procuring legal advice by Local Authorities and other Public Sector Bodies.
[DP/100323/A]

8.0 Equalities implications

- 8.1 This report deals with the need for authority for additional funding to continue using external legal advisors, the equalities implications of the project have been carefully scrutinised in a number of other reports relating to the project as a whole and continue to be looked at carefully by the Council.

9.0 All other implications

- 9.1 There are no other implications arising from the recommendations of this report.

10.0 Schedule of background papers

- 10.1 There are no background papers.