

Agenda Item	12
Report No	RES/44/18
Restricted	

HIGHLAND COUNCIL

Committee: Corporate Resources Committee

Date: 29th August 2018

Report Title: **Alness Academy – Update report on contractual negotiations with Hub North Scotland Limited**

Report By: **Depute Chief Executive/Director of Corporate Resources**

1. **Purpose/Executive Summary**

1.1 The purpose of the report is to update the Committee on the current position in relation to the progress made in concluding the Design and Build Development Agreement ('**DBDA**') with Hub North Scotland Limited ('**Hubco**') for Alness Academy.

2. **Recommendations**

2.1 Members are asked to:

1. Homologate the actions taken under the Delegated Authority arrangements namely to sign two Letters of Intent (LoI) to cover two tranches of Advanced Works which in total amount to approximately £2.4m;
2. Note the risks of signing these two Lols without having agreed the finalised Project cost with Hubco;
3. Note the risks of not signing these two Lols with Hubco;
4. Agree the delegated authority arrangements agreed in May 2018 (the "Delegated Authority arrangements") remain in place to cover the continuing finalisation of the contractual documentation; and
5. Approve each of the detailed Legal requirements to be provided to Hubco outlined in the report.

3. **Background**

- 3.1 This report provides an update on the progress made to date in concluding a DBDA with Hubco for the provision of the new Alness Academy (the "**Project**").

4. **Current Position**

- 4.1 As agreed by the Corporate Resources Committee meeting on 24th May 2018, Delegated Authority arrangements were put in place to sign off the contract documentation for both an Advanced Works package and the full DBDA contractual documentation for the new Alness Academy.
- 4.2 A Letter of Intent ('**Lol**') between the Council and Hubco was signed under these Delegated Authority arrangements on 1st June 2018. This Lol covered an Advanced Work package totalling approximately £1.8m and was scheduled to expire on 17th August 2018 by which time the full DBDA was scheduled to have been concluded. The Advanced Works undertaken within the terms of the Lol would be subsequently subsumed into the terms of the completed DBDA document.
- 4.3 In the event the DBDA was not completed by the 17th August 2018 as scheduled, for reasons outlined later in this report, and the Letter of Intent was extended by one week to 24th August 2018 on the basis of no change to the scope of works and no extra costs payable by the Council. This extension was to allow the Council and Hubco time to compile a second Letter of Intent to allow the works on site to continue and thereby minimise the risk of the school missing the completion date of March 2020 specified in the terms and conditions of the Scottish Government's funding arrangements. It also gave Hubco assurance that the Council was continuing with the Project and this in turn avoided Hubco levying demobilising costs on the Council (which was highlighted as a risk in the report to Committee in May).
- 4.4 The cumulative total of works undertaken within both the first and second Lols is approximately £2.4m. This second Lol was signed, also under the Delegated Authority arrangements, on 24th August 2018 with an expiry date of 12th October 2018 by which time the DBDA is scheduled to be completed.

In addition to this second Lol, the Council also signed a collateral warranty document from each of three designers appointed in relation to the Project. These warranty documents are required as there are design works to be undertaken under the remit of the second Lol. These documents provide the Council with additional protection in respect of any liabilities resulting from errors, poor workmanship or failure to meet obligations in relation to these design works in the event that the Council is unable to claim against Hubco or the Contractor.

4.5 Whilst signing the Lol documents mitigates some risks for the Council other risks remain particularly the risk of signing the Lols before the Council knows the total Project cost. One risk resulting from this position is that if the current excess cost over budget remains, the Council's ability to reduce the scope of works to make the project affordable would be impaired by having the foundation works undertaken within the remit of this second Lol. Hubco are still undertaking their review of the work packages and consequently the total project cost remains unknown. Hubco have verbally advised that:

- I. at present the Project cost is between £250k to £500k above budget;
- II. they are anticipating this excess cost above budget will be reduced as they continue their review of the work packages; and
- III. the final cost position is scheduled to be available to the Council by week ending 30th August 2018.

On receipt of this final position the Council will then be in a position to continue its review of the work package costs before a final Project cost can be agreed.

4.6 As mentioned previously Hubco have not yet completed their review of the priced work packages they have received from the market. The consequence from this delay in completing the market testing is that Hubco's finalisation of the total Project cost is also delayed and consequently the DBDA could not be completed in time to allow the construction works to continue seamlessly from the expiry date of the first Lol. In order to maintain construction activities continuing on site, the second Lol was put in place to safeguard the Council's interests and to mitigate some of the risks that the Council is exposed to in the Project.

4.7 The Committee is asked to homologate the actions taken under the Delegated Authority arrangements namely the signing of the two Lols and associated documentation and to note the associated risks, and the risks which have been mitigated, resulting from having signed these documents.

5. **Completion of the DBDA document**

5.1 Work is progressing within both the Council and Hubco to conclude as much of the drafting as possible so that the only outstanding issues to be addressed will be the drafting around the finalised Project cost and associated risks.

5.2 As part of the DBDA drafting the Council is required to provide Hubco with Minutes of Committee meetings formally approving various detailed legal matters. As such the Council is asked to agree as follows:

5.2.1 That delegated authority be granted to the Head of Corporate Governance and Legal Manager, or their nominated representative, to negotiate, agree and enter into the various Project Documents and any additional documentation required in connection with the Project. "Project Documents" for the purposes of this meeting

shall be:

- I. Design and Build Development Agreement to be entered into between (i) the Council; and (ii) Hubco;
- II. Contractor Collateral Warranty to be entered into among (i) the Council; (ii) Kier Construction Limited (trading as Kier Construction – Scotland) (the “**Contractor**”); and (iii) Hubco;
- III. Designer Collateral Warranty Agreement to be entered into between (i) the Council; and (ii) Fairhurst;
- IV. Designer Collateral Warranty Agreement to be entered into between (i) the Council; (ii) and JMArchitects Limited;
- V. Designer Collateral Warranty Agreement to be entered into between (i) the Council; and (ii) DSSR; and
- VI. Any additional or ancillary documents in relation to the Project to which the Council is required to be a party.

5.2.2 That the Head of Corporate Governance and Legal Manager, or their nominated representative, be authorised to sign on behalf of the Council the Project Documents and any additional documentation required in connection with the Project. It was further noted that specimen signatures of each of the aforementioned authorised signatories are to be given to Hubco.

5.3 That the Chairman be requested to produce a certified copy of the minute of the proceedings of the meeting as verification that approval has been given.

5.4 To avoid any delays on the Council side the Committee is asked to individually approve each of the legal items detailed above.

6. **Implications**

6.1 Resource – The time taken by Hubco to conclude their review of the work packages and the consequent delays to concluding the DBDA has resulted in an increased Council resource being required, including increased input from the Council’s external advisers, to undertake the works.

6.2 Legal – As per the Resources Comment above.

6.3 Risk – As outlined in the report there are risks to the Council from signing the Lol most notably the Council still awaiting confirmation of the final Project cost.

6.4 Equality, Climate Change, Carbon Clever, Rural and Gaelic – No implications are anticipated.

Designation Finance Manager Partnerships and JV

Date 28th August 2018

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Background Papers None

