

**Report of: Mears Gain Share 2010 / 11**

**Report to: Environment and Housing Decision Panel**

**Date: 12 August 2014**

**Subject: Request for approval to a payment strategy between Mears and Housing Leeds for outstanding Gain share Payment from 2010/11 and Demobilisation Costs**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input type="checkbox"/> No

### Summary of main issues

1. As part of the Gainshare agreement that the former East North East Homes Leeds had in place with Mears, it was calculated that Mears owed East North East Homes Leeds £444,293.35 for the financial year 2010 / 11.
2. A reasonable amount of time was given to Mears to de-mobilise the contract however Mears disputed the length of time that they were given and presented a claim for demobilisation costs.
3. I disputed these costs as unreasonable. However, having reviewed the claim and accepted that the notice period to de-mobilise the contract was insufficient to close down their operation and terminate their existing arrangements, I consider that Mears do have a case to submit a claim for some costs incurred.

### Recommendations

Having reviewed the claim from Mears for de-mobilisation costs I propose that Mears invoice Leeds City Council for £123,149.99. This will be offset by a Credit note from Mears payable to Leeds City Council for the full 2010/11 Gainshare claim value of £444,293.55. The net income to Leeds City Council of £321,143.56 will be split between Revenue (£174,432) and Capital (£146,711) respectively as per the Original Gain share 2010/11 agreed calculations'.

## **1 Purpose of this report**

- 1.1 To provide a document on the Mears Gain share / De-mobilisation issues and to provide SMT recommendations for agreeing a solution to agree a payment strategy.

## **2 Background information**

- 2.1 As part of the Gain share agreement that the former East North East Homes Leeds had in place with Mears, it was calculated that Mears owed East North East Homes Leeds £444,293.35 for the financial year 2010 / 11. This payment should have been paid to ENEHL no later than 3 months following the closedown of the 2010 / 11 accounts.
- 2.2 Mears accepted that the calculation for the Gain share (£444,293.35) was correct and this was verified by, ENEHL Finance and Leeds City Council Internal Audit.

## **3 Main issues**

- 3.1 Due to the natural end of the contract, Mears were instructed that they would not be eligible to retender for the Repairs & Maintenance work as this work would be offered to Construction Services. A reasonable amount of time was given to Mears to de-mobilise the contract however Mears disputed the length of time that they were given and presented a claim for demobilisation costs £450,000. I disputed these costs as unreasonable and Leeds City Council issued Mears with a formal withholding notice (attached) and I continued to negotiate with Mears to seek an acceptable outcome.
- 3.2 Working with Jason Lawrence (Mears), we reviewed both claims. Mears accepted that they owed the former ENEHL £444,293.35. We then considered their claim for demobilisation costs. Within the contract terms and conditions, the contract does not allow for the contractor to submit a claim for de-mobilisation costs. However, having reviewed the claim and accepted that the notice period to de-mobilise the contract was insufficient to close down their operation and terminate their existing arrangements, I consider that Mears do have a case to submit a claim for some costs incurred (copy attached).

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 A was submitted at SMT –Property & Contracts 12 August 2014

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 An equality impact assessment has been conducted and is attached to the report.

## **5 Council policies and City Priorities**

**5.1** The Corporate Procedure Rules (CPRs) have been adhered to in recommending this decision. In accordance with LCC's financial regulations a Senior Officer decision is required.

### **5.2 Resources and value for money**

Leeds City Council will receive income to the value of £321,143.56 from Mears in respect of an aged debt from the former East North East Homes Leeds 2010 / 11 Gain Share payments.

## **6 Legal Implications, Access to Information and Call In**

6.1 None

## **7 Risk Management**

7.1 None

## **8 Conclusions**

8.1 Having reviewed Mears claim for costs incurred as a result of them de-mobilising their contract at short notice we should consider paying Mears £123,149.99. Mears will then forward a credit note to the value of £444,293.55. Property & Contracts will then release all invoices that are currently withheld for payment

## **9 Recommendations**

9.1 The Director of Environment and Housing approve:

9.2 Having reviewed the claim from Mears for de-mobilisation costs I propose that Mears invoice Leeds City Council for £123,149.99. This will be offset by a Credit note from Mears payable to Leeds City Council for the full 2010/11 Gain share claim value of £444,293.55. The net income to Leeds City Council of £321,143.56 will be split between Revenue (£174,432) and Capital (£146,711) respectively as per the Original Gain share 2010/11 agreed calculations'

## **10 Background documents<sup>1</sup>**

10.1 None

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.