



CONFIDENTIAL APPENDIX

**Report of the Director of Social Services and Director of the Development Department
Executive Board**

Date: 14th December 2006

Subject: Independent Living Project – Ground Investigation Surveys

1.1 NOT FOR PUBLICATION
Exempt / Confidential under access to Information Procedure Rule 10.4 (3)

Electoral Wards Affected:

All Wards

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Yes

Not Eligible for Call In

(Details contained in the report)

EXECUTIVE SUMMARY

1. One of three Bidders for the Independent Living Project has withdrawn leaving the remaining two to bear the estimated cost of £700,000 for ground investigation surveys until contract close in December 2007.
2. The recommendation is that only in the event of the Council resolving to withdraw from the procurement that (subject to the provision of transferable warranties) the Council reimburse the Bidders the full cost of the ground investigation surveys.
3. This report contains exempt information under Access to Information Rule 10. The public interest in maintaining the exemption outweighs the public interest in disclosing the information, by reason that the report contains commercially sensitive information about consortia involved in a competitive procurement.

2.0 Confidential Background Information

- 2.1 The Manchester Methodist Housing Association and Investors in the Community (MMHA/IIC) consortium withdrew from the procurement on the 16th October 2006 because their Design and Build contractor Frank Haslam Milan (FHM) had withdrawn and they were unable to replace them with another Design and Build Contractor. The reason FHM withdrew was because they were concerned with the level of risk they were taking on potential liquidated damages with regard to meeting the complex build programme. These liquidated damages arose from the contractual arrangements within the Consortium and were not imposed by the Council. The risk associated with incurring the cost for the ground investigations and then not being reimbursed because the procurement does not go ahead was removed from FHM by MMHA/IIC taking on all the risk.
- 2.2 Within the LiLAC consortium which is led by Gleeson's Capital Solutions and Progress Care Housing Association there were two Design and Build contractors, Richardsons Ltd and Jack Lunn Ltd. Richardsons withdrew in October from the procurement and have not yet been replaced even though the consortium has been trying to find a replacement. The reason Richardsons withdrew was that they believed there was not the correct balance between risk and potential reward. Within the LiLAC consortium the ground investigation risk is shared between consortium members including the Design and Build contractors. After receipt of the revised estimate of the cost of the ground investigations from the selected investigation contractor White Young Green, Jack Lunn Ltd informed the other members of the consortium they were not willing to take on any bid costs connected with ground investigation risk.

3.0 Main Issues

- 3.1 The risk to the Bidders of incurring an unrecoverable cost in connection with the ground investigation surveys which is estimated to be £700,000, will be in addition to their other bidding costs estimated to exceed £1million for each consortium.
- 3.2 The risk to the Council and the Independent Living Project procurement has also increased because if the Design and Build contractor for the LiLAC consortium decides to withdraw it is unlikely another Design and Build contractor would be found and that would force LiLAC to withdraw from the procurement. The Department of Communities and Local Government and Department of Health who are providing the PFI credits has already stated that a procurement with only one Bidder would not be allowed to continue. That would then put the project back to the position of January 2006 and require the issue of a new OJEU notice. The implications of this would be critical to the delivery of the project within the affordability constraints approved previously. This outcome would still be dependent on the Department of Communities and Local Government (DCLG) and the Department of Health (DoH) confirming that PFI credits were still allocated to this project.
- 3.3 There is a risk that agreement satisfactory to all parties may be difficult to reach since the Council could theoretically decide to withdraw for a number of reasons. It is therefore recommended that the Deputy Chief Executive is authorized to agree the final terms of the agreement.

4.0 Conclusions

- 4.1 The level of financial risk for Bidders of an estimated £700,000 for the possibility that the Council may withdraw from the procurement after the Bidders have purchased

the ground investigation surveys has the potential to cause one of the two remaining Bidders to withdraw from the procurement, which would effectively end the procurement. That would then put the project back to the position of January 2006 and require the issue of a new OJEU notice. This would be dependent on the Department of Communities and Local Government (DCLG) and the Department of the Health (DoH) confirming that PFI credits were still allocated to this project.

5.0 Recommendations

- 4.1 Authorise officers to negotiate with Bidders to agree that only in the event of the City Council withdrawing from the procurement, and provided that the full benefit of the ground investigation surveys passes to the Council, that the Council reimburses costs incurred by Bidders in relation to ground investigation surveys.
- 4.2 Authorise the Deputy Chief Executive as Chair of the Project Board with the concurrence of two of the Board members to agree the final terms of the agreement and take any other necessary action to conclude the agreement.
- 4.3 Note resource implications as outlined at point 5.2