

Report of Contract Manager, Procurement & Commercial Services

Report to Director of Children’s and Families & Director of City Development

Date: 30 November 2018

Subject: Novation and Amendment of Management Service Agreements on BSF PFI (schools and leisure) Contracts



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| Are specific electoral Wards affected? If relevant, name(s) of Ward(s): | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Are there implications for equality and diversity and cohesion and integration? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Is the decision eligible for Call-In? | <input type="checkbox"/> Yes | <input checked="" 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 checked="" type="checkbox"/> No |

Summary of main issues

- The LEP Shareholder’s Agreement, LEP Deeds of Novation and New PFI MSAs are now agreed and ready for signing by Leeds LEP Limited (“**LEP**”).

Recommendations

- The Director of Children’s and Families and the Director of City Development (the “**Directors**”) are asked to note Albany SPC Services Limited (“**Albany**”) will replace Interserve Investments Limited (“**IIL**”) in the provision of management services to the LEP in respect of the Leeds BSF Schools and Leisure projects.
- The Directors are asked to note that to effect this change in service provision, the LEP will enter into two deeds of novation and amendment (“**LEP Deeds of Novation**”) of the two LEP MSAs under which such management services are provided in respect of the Leeds BSF Schools and Leisure projects.
- The Directors are also asked to note that the PFI MSAs under which the LEP provides management services to the PFI contractors for BSF1, BSF2 and BSF3 Schools and Leisure projects have expired and therefore new PFI MSAs will be entered into (on substantially the same terms) with an expiry date of 3 April 2022 (“**New PFI MSAs**”).

- The Directors are recommended to approve the signing of a shareholder's resolution of the LEP ("**LEP Shareholder's Resolution**") which:
 - resolves that the LEP shall enter into of the LEP Deeds of Novation; and
 - resolves that the LEP shall enter into the three New PFI MSAs.

1. Purpose of this report

- 1.1. The purpose of this report is to provide the Directors with the information necessary to make a decision regarding the LEP entering into the LEP Deeds of Novation and New PFI MSAs in respect of the BSF Schools and Leisure projects.

2. Background information

- 2.1. In respect of the four BSF projects procured under the Council's strategic partnering arrangements with the LEP for the construction and maintenance of schools and leisure centres across Leeds, the following management services arrangements are in place:

- 2.1.1. IIL provides management services to the LEP under two management services agreements: the first in respect of the BSF1 (schools), BSF2 (schools) and BSF3 (leisure) projects and the second in respect of the BSF4 (leisure) project (the "**LEP MSAs**").

- 2.1.2. The LEP in turn provides management services to each of the PFI project companies in respect of each of the BSF1 (schools), BSF2 (schools), BSF3 (leisure) and BSF4 (leisure) projects (the "**PFI MSAs**").

- 2.2. In the context of the Carillion compulsory liquidation in January 2018 and performance issues under the 4 Leeds BSF projects, the LEP and their investors are looking to future proof delivery of management services in respect of Leeds BSF projects by obtaining such services from a source which is independent from the FM provider (Interserve Project Services Limited) under each of the 4 BSF projects.

3. Main issues

- 3.1. To achieve the objective set out in paragraph 2.2, IIL will cease to be the service provider under the LEP MSAs and this function will transfer to Albany.
- 3.2. This transfer will be documented by the LEP Deeds of Novation, resulting in the rights, obligations and liabilities of IIL under the LEP MSAs being transferred from IIL to Albany. Note that as a consequence, the LEP's recourse for post transfer matters will be against Albany (whilst its recourse for pre transfer matters will continue to be against IIL). The LEP Deeds of Novation also amend the LEP MSAs to terminate on 3 April 2022.
- 3.3. The PFI MSAs for BSF1, BSF2 and BSF3 have expired (although the services and payments under them have continued). The LEP has therefore decided to enter into the three New PFI MSAs on substantially the same terms to as the expired PFI MSAs with an expiry date of 3 April 2022. It is understood that the approximate value of the

three New PFI MSAs is £195,000 per annum. Note that the PFI MSA for BSF4 is still current and it is understood that this will also terminate on 3 April 2022.

- 3.4. For the LEP Deeds of Novation and the New PFI MSAs to be entered into by the LEP, the LEP shall resolve to do so pursuant to a shareholder's resolution (the "**LEP Shareholder's Resolution**"). The Council, as shareholder in the LEP will be required to sign this resolution.

4. Corporate considerations

4.1. Consultation and engagement

4.1.1. Public consultation is not required in respect of this decision.

4.1.2. Key stakeholders include Children's Services, Active Leeds, the LEP and Interserve. All are aware of the main issues and been engaged in the decision making process.

4.2. Equality and diversity / cohesion and integration

4.2.1. There are no equality and diversity implications associated with this proposal.

4.3. Council policies and best council plan

4.3.1. Novation of the LEP MSA's supports the Best Council Plan by making the best use of resources and leveraging and strengthening our relationship with strategic partners. It ensures we are living the value of spending money wisely and making every pound go further.

4.4. Resources and value for money

4.4.1. Novation of the LEP MSA's represents value for money for the Council, as this will provide a managing agent for the Leeds BSF schools and Leisure contracts which is independent from the FM provider under the projects.

4.5. Legal implications, access to information, and call-in

4.5.1. The legal implications are outlined in paragraph 5 above.

4.5.2. The LEP Shareholder's Resolution, LEP Deeds of Novation and the New PFI MSAs have been reviewed by a legal officer in the Procurement and Commercial Services, and no concerns were raised.

4.5.3. This report relates to the novation, amendment and / or re-entering into of existing documents and there is no associated cost to the Council. There is no new spend associated with this decision to enter into the LEP Deeds of Novation, and the value of the three New PFI MSAs to the LEP is approximately £192,000 per annum. Following discussions with Corporate Governance, it is recommended that for transparency purposes this is treated as a Significant Operational Decision.

4.5.4. The decision is not subject to call in.

4.5.5. This report does not contain exempt information under Access to Information.

4.6. Risk management

4.6.1. Novation of the LEP MSA's from IIL to Albany, will ensure provision of an independent managing agent on the BSF schools and Leisure projects for Leeds City Council. An independent managing agent should provide effective "check and challenge" across the PFI portfolio and on future works to be commissioned to Interserve, and help Leeds City Council achieve value for money.

4.6.2. IIL staff currently working on the 4 BSF projects will be TUPE transferred to Albany and then seconded to the LEP as appropriate to ensure continuity in personnel and service and mitigate any disruption from the transfer.

4.6.3. The LEP Shareholder's Agreement, LEP Deeds of Novation and the New PFI MSAs have been reviewed by legal colleagues from within Procurement and Commercial Services and no legal risks have been identified in relation to this.

4.6.4. A financial due diligence review of Albany has also been undertaken by officers within Procurement and Commercial Services. The company has a current credit rating of 96 (very low risk), turnover of £5m, net worth and cash balances of £1m and minimal levels of long term debt. In summary, a stable financial position with no specific issues or concerns to report at this time.

5. Conclusions

5.1. The LEP Shareholder's Agreement, LEP Deeds of Novation and the New PFI MSAs are now agreed and reading for signing as appropriate.

6. Recommendations

6.1. The Directors are recommended to approve the signing of the LEP Shareholder's Resolution on behalf of Leeds City Council as shareholder in the Leeds LEP Limited which:

- resolves that the LEP shall enter into of the LEP Deeds of Novation; and
- resolves that the LEP shall enter into the three New PFI MSAs.

6.2. Gives authority for any other necessary action to be taken to effect the entering into by the LEP of the LEP Deeds of Novation and the New PFI MSAs.

7. Background documents¹

7.1. None

¹ 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.