

Item No. 9.	Classification: Open	Date: 22 November 2017	Meeting Name: Audit, Governance and Standards Committee
Report title:		Report on retrospective decision for The Charter School East Dulwich (TCSED) – Enabling works	
Ward(s) or groups affected:		East Dulwich	
From:		Chief Executive	

RECOMMENDATIONS

1. That the audit, governance and standards committee note the retrospective contract decisions detailed in the report.
2. That the audit, governance and standards committee note the actions taken to ensure that the risk of future retrospective contract decisions is minimised for the future, as set out in paragraph 19.
3. That the audit, governance and standards committee consider whether it would wish to make recommendations to help improve future decision-making.

BACKGROUND INFORMATION

4. Where an approval to a contract decision has been sought retrospectively and has an estimated value of more than £100,000, there is a requirement under contract standing order 6.7 to submit a report to the audit, governance and standards committee. The report should set out the circumstances and manner in which the decision was taken, for the purpose of obtaining guidance to inform future decision making.
5. This requirement applies to decisions relating to the approval of a procurement strategy (Gateway 1), decisions relating to the approval of a contract award (Gateway 2) and decisions relating to the approval of a variation or extension to a contract (Gateway 3) decisions.
6. In June 2016, the strategic director approved the Gateway 1 for the procurement of the enabling works construction services for TCSED project through the council's EXOR list via a single stage procurement process.
7. On 21 December 2016 the strategic director of children's and adults' services approved the appointment of the contractor Syd Bishop & Sons (Demolition) Ltd to deliver the enabling works for Parcels 1 and 2 of TCSED in the sum of £451,700 for a period of 12 weeks between 6 January and 7 May 2017.
8. On 21 March 2017 cabinet approved in principle the award of the main contract to Kier (London) for the sum of £25,325,000 in that report plus previous awards of £421,990 and £510,884 for Pre Construction Services Agreement (PCSA) fees on 27 January 2017. This award was subject to the council's cost consultant's final report being approved by the strategic director of children's and adults' services.

9. On 25 October 2017 the strategic director for children's and adults' services provided retrospective approval for the variation to the enabling works contract for The Charter School East Dulwich (TCSED) contract with SB&S(Demolition) Limited (SB&S) for an additional cost of up to £553,000 for the enabling works which occurred between 6 January 2017 and 8 July 2017.
10. The chair and vice-chair of the audit, governance and standards committee were made aware of this decision on 6 November 2017.

KEY ISSUES FOR CONSIDERATION

Enabling works contract

11. The Gateway 3 report relating to this decision (attached at Appendix 1) sets out the nature of the contract, their values and timelines.
12. The Gateway 3 report explains that the SB&S commenced on 6 January 2017 to an original completion date of 7 April 2017. This was then subsequently extended to July 2017 for the reasons detailed in the Gateway 3 report.
13. The scope of the enabling works package was commissioned to de-risk the project in uncovering any site issues prior to letting the contract to the main contractor bearing in mind the council was working in the grounds of Victorian hospital where the experience of the project team indicated that there would be a level of unpredictability in the ground conditions and the risk of contaminants. SB&S were commissioned to undertake further surveys, remove all asbestos and ensure utilities are decommissioned and create a new haul road into site, demolish the cottages and remove all excess spoil and crush from site.
14. Only when the enabling works contractor started on site did the full extent of the ground condition risks emerge which far exceeded what could have been predicted by surveys. There were particular issues relating to broken underground drainage, concrete obstructions and the source of the bituminous contamination.
15. The project recognised that most cost effective way to manage the risks was for the enabling works contractor to undertake the works and then to hand over to the main contractor as otherwise the main contractor would have had no alternative but to charge the council for any delays in running the site or hiring the plant which would have resulted in an increased cost for the council. Given the extent of the underground issues described above, this has ensured that additional costs have been contained to the cost of the works and the budget and no main contractor overheads or abortive costs have been incurred.

Enabling work packages and services

16. The Gateway 3 report explains that the council had a contract with the enabling works contractor for a set scope of works which was expanded to accommodate site abnormalities and site improvements which needed to be acted on immediately to allow the project to be managed with a lower risk and enabled the main contractor to commence work on the sub structure and main build.
17. The works were immediately incorporated into scope to ensure the cost and programme implications was kept to a minimum and enable any issues to be managed immediately by the contractor.

18. The Gateway 3 report therefore sought to retrospectively formalise the additional instructions of the issues which emerged on site as the programme delay would have impacted on the council's ability to provide school places and have reputational impact for the delivery of the scheme.
19. This action was brought to the attention of the project's Strategic Steering Group but the lesson learned from this that we will seek the approval of the strategic director for children's and adults' service prior to instructing the contractor and will ensure that the formal decision is taken as soon thereafter as possible. The constitutional team have recently attended Regeneration's team meeting as a refresher on council decision making processes

Summary

20. Officers in the legal and procurement sections have discussed and agreed the conclusions set out above.

Policy implications

21. There are no policy implications arising from this report.

Community impact statement

22. This report is not considered to contain proposals that would have a significant impact on any particular community or group.

Resource implications

23. There are no direct resource implications in this report.

Consultation

24. There has been no consultation on this report.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
None		

APPENDICES

No.	Title
Appendix 1	Gateway 3 for Enabling Works

AUDIT TRAIL

Lead Officer	Bruce Glockling, Head of Regeneration	
Report Author	Omar Villalba, Project Manager, Regeneration	
Version	Final	
Dated	1 November 2016	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Corporate Contract Review Board	Yes	Yes
Director of Law and Democracy	No	No
Strategic Director of Finance and Governance	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team	10 November 2017	