



London Borough of

Enfield

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| Title: | Portfolio Report Meridian Water Strategic Infrastructure Works Programme; Main Contractor Contract Novation |
| Report to: | Cllr Ergin Erbil |
| Date of Report: | 02 October 2024 |
| Directors: | Penny Halliday, Director Meridian Water Perry Scott – Executive Director of Environment and Communities |
| Report Author: | Jonathan Skelton - SIW Construction Programme Lead jonathan.skelton@enfield.gov.uk Pauline Albers – Regeneration Manager pauline.albers@enfield.gov.uk |
| Ward(s) affected: | Upper Edmonton |
| Key Decision Number | 5806 |
| Implementation date, if not called in: | 28 October 2024 |
| Classification: | Part I Public and Part 2 Exempt for Publication |
| Reason for exemption | By virtue of paragraph(s) marked below with * of Part 1 of Schedule 12A of the Local Government Act 1972: 1 Information relating to any individual. 2 Information which is likely to reveal the identity of an individual. 3 Information relating to the financial or business affairs of any particular person (including the authority holding that information). * 4 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority. |

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| | <p>5 Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p> <p>6a Information which reveals that the authority proposes to give under any enactment a notice under or by virtue of which requirements are imposed on a person.</p> <p>6b Information which reveals that the authority proposes to make an order or direction under any enactment.*</p> <p>7 Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</p> |
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Purpose of Report

1. To seek authorisation for the novation of the current SIW delivery contract between the council and Vinci Construction (UK) Ltd to Taylor Woodrow Infrastructure Ltd, being the result of a corporate restructure by the Vinci parent company

Recommendations

The Leader is recommended to:

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| I. | Approve the entry into a Deed of Novation, transferring all rights, obligations and liabilities under the SIW contracts from Vinci Construction (UK) Ltd to Taylor Woodrow Infrastructure Ltd. |
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Background and Options

2. On 6 December 2023 the Council entered a Main Works Contract (NEC4, option A) with Vinci Construction (UK) Ltd for £120.9m to deliver the Strategic Infrastructure Works (SIW) in Meridian Water. Entry into contract and the associated expenditure was approved by the Leader in August 2023 (KD5570).
3. The SIW Contract was a contract made under a framework agreement, which was entered into on the 12 March 2021. In March 2021, the Council also entered a Pre-Construction Services Agreement with Vinci Construction, which was also a contract made under the framework agreement and has now been completed.
4. In March 2024, the Vinci parent company (Vinci Construction Holding Ltd) announced a restructure of their UK business with the creation of a new entity, Taylor Woodrow Infrastructure Ltd (TWIL). As a result, it is requested that the SIW contract with the Council are novated from Vinci Construction (UK) Ltd to the new entity Taylor Woodrow Infrastructure Ltd. This report seeks approval for entry into a deed of novation to formalise the transfer.

Preferred Option and Reasons For Preferred Option

5. Enter into the novation agreement.

Meridian Water
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6. The deed of novation transfers all rights, obligations, and liabilities under the SIW contracts from Vinci Construction to TWIL and does not change or amend the terms of the original contract. The deed of novation covers the SIW Contract, as well as the Framework agreement and the completed Pre-Construction Services Agreement (PCSA). The deed has been reviewed and agreed by both parties and the final draft of the deed is attached to this report.
7. Browne Jacobson, the Council's legal advisors reviewed the deed of novation and produced an advice note (see Appendix A) confirming that the deed can cover the Framework Agreement and SIW Contracts. The advice note also confirmed that:
 - Any warranties will be reissued with TWIL as the contractor;
 - Parent Company Guarantee (PCG) from TWIL's ultimate parent will be provided and signed to be completed on the same date as the deed of novation.
8. The team is liaising with the contractor to ensure any warranties are reissued and an PCG is provided and completed on the same date as the deed of novation.
9. Browne Jacobson confirmed that the legal risk of a procurement challenge being successful in relation to novating the SIW Contract and the Framework and that:
 - TWIL are, in fact, taking over the whole of Vinci's business such that TWIL is, in essence, the same contractor just with a different corporate identifier; and
 - TWIL fulfils any pass/fail criteria (such as in relation to financial standing) set out by the Council when it initially procured the Framework.
10. The Council's procurement contract novation process has been followed and the contract novation to TWIL was approved by Procurement Assurance Group (PAG). Following approval of this report and completion of the Deed of Novation, the existing PO will be closed, and a new PO will be set up for the remaining value.
 - Existing PO value: £120,950,000.00
 - Spend to date: £21,127,958.00
 - Remaining PO Value: £99,822,042.00
11. Finance indicated the new PO must be approved at Spend Control Review. Anecdotally, other public bodies including National Grid and Network Rail have completed this novation process for their contracts

Relevance to Council Plans and Strategies

12. Clean and Green Places – through the delivery of two substantial new parks (Brooks Park and Edmonton Marshes), Meridian Water will contribute to boosting the greening and biodiversity of Edmonton. Connection to Energetik will ensure that new homes and facilities will be powered sustainably by energy from waste sources.
13. More and Better Homes – Meridian Water will deliver 10,000 homes over the lifetime of the project. As well as delivering high quality new homes, supported by all the amenities needed to create a thriving new community, a range of housing sizes and tenures will be delivered, including social and affordable rent options for residents.
14. Strong Healthy and Safe Communities – Meridian Water will contribute to the Council's aims to improve public health and people's well-being. Alongside new homes, regeneration will deliver community and social infrastructure such as new amenity spaces and improvement of public access to the River Lee. Development

parcels will be designed in line with active travel principles, prioritising walking and cycling to facilitate health and social interaction.

15. An economy that works for everyone - alongside delivering jobs within the construction industry during the construction phase of project, Meridian Water will deliver c. 725,000 sq.ft of commercial premises and workspace. Meridian Water presents an opportunity to incorporate innovative new workspaces as part of future phases, as well as a dynamic and vibrant town centre, offering a range of retail, office, hospitality and community-focused employment opportunities.

Financial Implications

16. It is normal for corporations to reorganise their operations midway through existing contractual arrangement, whereby subsidiary businesses are folded into a new group structure.
17. In this instance, the risks and rewards of ownership have fully transferred from Vinci Construction to TWIL. Finance cannot comment on whether there is a prohibition or other restriction on novation. This is for legal. That said, the contract amount stated matches the existing PO value of £120,950,000.
18. Given that the novation includes the transfer of all assets from the existing to a new corporate legal entity, the financial checks conducted on the existing entity would serve as “transferable” since the new entity would not have accrued continuity of trading to reveal the type of information that would be requested. The novation agreement (Deed) provides for the same legal protections as afforded under the previous entity.

Legal Implications

19. The Council has sought legal advice from Brown Jacobson (BJ) to support the novation, and an instruction proforma has been agreed with BJ for an estimated fee of £5,250 covering the following scope:
- Review of the deed of novation;
 - Review Parent Company Guarantee (PCG) to ensure it is populated from the proforma and sealed by Enfield Council and signed by TWIL and the guarantor
 - Review on need for the underlying framework between LBE and Vinci to be novated to the TWIL
 - Review of the obligation on the Council to notify MHCLG of any material changes to the underlying contract which the grant is supporting
 - Procurement advice in relation to the proposed novation on the SIW Contract and (potentially) the Framework Contract

Equalities Implications

20. This is entirely a legal process and decision where all existing EQIA issues have previously been addressed in Portfolio report KD5570 without change.

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Appendices

Deed of Novation

Attestation

Financial Information

Background Papers

KD 5570