

REPORT TO: Cabinet

DATE: 17th February 2011

SUBJECT: ROK Building Ltd (in Administration)

**WARDS
AFFECTED:** Linacre, Litherland, Derby, Dukes, Kew, Norwood

REPORT OF: Peter Moore
Environmental and Technical Services Director

**CONTACT
OFFICER:** David Kay
Client Manager - Tel: 0151 934 4527

**EXEMPT/
CONFIDENTIAL:** No

PURPOSE/SUMMARY:

This supplementary report is to update members on the position with regards to ROK Building Ltd (In administration).

REASON WHY DECISION REQUIRED:

To enable the Environmental and Technical Services Director to act in order for the works to be recommenced and completed as soon as possible and in a manner most advantageous to the Authority.

RECOMMENDATION(S):

Cabinet is recommended to:

- (i) Authorise the Acting Head of Corporate Legal Services to terminate the existing contract with ROK Building Ltd and enter into a formal contract in the sum of £2,228,588 for the completion of the outstanding works at Southport Market with the second lowest tendering contractor.
- (i) Authorise the Acting the Head of Corporate Legal Services, to terminate the existing contract with ROK Building Ltd and enter into a formal contract in the sum of £548,591 for the completion of the outstanding works at Kew Woods CP School with the third lowest tendering contractor.
- (iii) Subject to Capita Symonds establishing costs to complete the outstanding works at Lander Road CP School which are reasonable, and where the total amount which is unrecoverable does not exceed £26,000, authorise the Acting Head of Corporate Legal Services to terminate the existing contract with ROK Building Ltd and enter into a formal contract with the second lowest tendering contractor in the maximum sum of £768,745, or alternatively, in the event that this is not achievable, authorise the Environmental and Technical Services Director to invite new competitive tenders.

KEY DECISION: No

FORWARD PLAN: Not Appropriate

IMPLEMENTATION DATE: Immediately following expiry of call in.

ALTERNATIVE OPTIONS:

All reasonable alternative options will be considered with priority being given to those affording the Council the best opportunity to complete the outstanding works as quickly as possible and at no additional cost.

IMPLICATIONS:

Budget/Policy Framework: There are currently capital provisions totalling £3,032,000 £1,895,870 and £780,260 in connection with the Southport Market, Lander Road Primary and Kew Woods Primary projects respectively.

Financial

As indicated within the body of the report there will be no requirement to provide additional financial resources in order for the Southport Market and Kew Woods CP School projects to proceed as proposed.

Subject to ongoing review it appears that the costs to complete the Lander Road contract may exceed the total of the retained monies and maximum bond value by up to £26,000.

In the event that Capita Symonds satisfy themselves that the costs incurred are reasonable, and the Lander Road CP School project is to proceed as outlined in 4.3.6, the additional funding requirement will be met from within the existing Children's Services Capital Programme provision.

<u>CAPITAL EXPENDITURE</u>	2010/ 2011 £	2011/ 2012 £	2012/ 2013 £	2013/ 2014 £
Gross Increase in Capital Expenditure				
Funded by:				
Sefton Capital Resources				
Specific Capital Resources				
<u>REVENUE IMPLICATIONS</u>				
Gross Increase in Revenue Expenditure				
Funded by:				
Sefton funded Resources				
Funded from External Resources				
Does the External Funding have an expiry date? Y/N	N/A			
How will the service be funded post expiry?	N/A			

Legal: See below

Risk Assessment: Details of the risks associated with the recommendations will be provided on the day of the meeting.

Asset Management: Not Applicable

CONSULTATION UNDERTAKEN/VIEWS

The Children's Schools and families and the Leisure Services and Tourism Department have been consulted and any comments have been taken into account in preparing this report.

FD comment: The Interim Head of Corporate Finance & Information Services has been consulted and has no comments on this report. (FD 638)

LD Comment: The Head of Corporate Legal Services has been consulted and his comments have been incorporated into this report. (LD 00043/11)

CORPORATE OBJECTIVE MONITORING:

<u>Corporate Objective</u>		<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		√	
2	Creating Safe Communities		√	
3	Jobs and Prosperity		√	
4	Improving Health and Well-Being		√	
5	Environmental Sustainability		√	
6	Creating Inclusive Communities		√	
7	Improving the Quality of Council Services and Strengthening local Democracy		√	
8	Children and Young People		√	

LIST OF BACKGROUND PAPERS RELIED UPON IN THE PREPARATION OF THIS REPORT

Children Schools and Families and Leisure Services and Tourism Capital Programmes

1.0 Background

- 1.1 ROK Building Ltd, who had been engaged to carry out various contracts on behalf of the Authority, entered administration on 8th November 2010.
- 1.2 Members will recall that reports advising of this, and providing updates of progress, have been presented to Cabinet at its meetings on 16th December 2010 and 27th January.

2.0 Current Situation

- 2.1 ROK Building Ltd, working in conjunction with the appointed administrators, have undertaken to complete the outstanding defects on the St Peters House project.
- 2.2 As previously advised ROK Building Ltd will not however be able to complete the works on the other three projects at Southport Market, Lander Road and Kew Woods schools. It will therefore be necessary to terminate the existing contracts with ROK Building Ltd and to identify new contractors to complete the works.
- 2.3 The Authority's technical services consultant, Capita Symonds, have identified the exact position on each project and identified a cost for completion with the with the most competitive of the original unsuccessful tenderers.
- 2.4 Although there is a requirement to take reasonable steps in order to mitigate any costs essentially the Authority is entitled to utilise monies held against ROK Building Ltd and to make a claim against the performance bonds, in order to cover any increased costs incurred in completion of the works.

3.0 Options to Proceed

- 3.1 It had been hoped that the support of the administrator and bondspersons to the proposals, and associated costs, could have been secured, prior to the Authority entering into a contract for completion of the works, thereby removing the risk that the Authority's actions would be subsequently challenged.
- 3.2 Unfortunately this now appears to be extremely unlikely. The Administrator has indicated that they have appointed a consultant to act on their behalf and reach agreement regarding the monies held by the Authority. It has been suggested that they are unlikely to be in a position to discuss such agreements prior to completion of the works and establishment of the total scheme costs.
- 3.3 It is therefore clear that the Authority will not have the comfort of the Administrators advance support for the proposals and must therefore reach its own conclusion as to how best to proceed.

3.4 Following detailed consideration of the proposals to complete the outstanding works with the most competitive of the original unsuccessful tenderers, and having received the initial comments on the proposals from the respective bondspersons, Capita Symonds can advise, and provide recommendations as follows:

4. Proposals

4.1 Southport Market

4.1.1 The total cost to complete the works with the second lowest original tendering contractor has been established as £2,228,588.

4.1.2 Capita Symonds have examined the additional costs including any additional works costs, and other incidental costs incurred by the Authority, and believe these to be entirely reasonable and justifiable.

4.1.3 The Authority may therefore be confident that all additional costs will be met from the monies held against ROK Building Ltd and as a claim against the performance bond. There would be no additional funding required from the Authority.

4.1.4 Members are therefore recommended to authorise the Head of Corporate Legal Services, to terminate the existing contract with ROK Building Ltd and enter into a formal contract in the sum of £2,228,588 for the completion of the outstanding works with the second lowest contractor.

4.2 Kew Woods Primary School

4.2.1. The second lowest original tendering contractor was not considered because of serious concerns about their performance on an unrelated ongoing project. A legal view has been sought on the proposal to utilise the third lowest original tendering contractor and the Authorities external legal advisors have indicated that they believe this is a perfectly legitimate approach.

4.2.2 The total cost to complete the works has therefore been established with the third lowest contractor as £548,591.

4.2.3 The bondsperson has made an initial offer in settlement of any claim against the bond which would be reduced by £5,465 due to the proposal to complete the works with third lowest original tendering contractor.

4.2.4 Putting this issue aside Capita Symonds are confident that all additional costs, including any additional works costs and other incidental costs incurred by the Authority, are entirely reasonable and justifiable.

4.2.5 The Authority may therefore be confident that all additional costs, other than the £5,465 initially disallowed by the bondsperson, will be met from the monies held against ROK Building Ltd and as a claim against the performance bond.

- 4.2.6 The bondspersons initial offer will be rejected on the basis that the Authority believes its proposals are legitimate but there will remain some risk that the sum of £5,465 may not be recoverable. It is clear however that this sum can, if necessary, be met from within the current scheme funding and there would be no additional funding required from the Authority.
- 4.2.7 Members are therefore recommended to authorise the Head of Corporate Legal Services, to enter into a formal contract in the sum of £548,591 for the completion of the outstanding works with the third lowest contractor.

4.3 Lander Road Primary School

- 4.3.1 The Lander Road project is extremely complicated, not least due to the fact that the scheme was well advanced when ROK Building Ltd went into administration and virtually all elements of the project are partially completed and have variations and defective works which must be taken into account.
- 4.3.2 Capita Symonds advise that they have been able to establish costs for the majority of the work elements with the second lowest original tendering contractor although agreement has still to be reached on certain key elements, including the cost for completion of mechanical and electrical installations.
- 4.3.3 Currently, and subject to clarification and agreement on outstanding matters, Capita Symonds have advised that the cost to complete the works with the second lowest contractor stands at £768,745. This would mean that the total cost to complete exceeds the funding provided through monies held against ROK Building and through a claim against the performance bond by some £26,000.
- 4.3.4 It is hoped that Capita Symonds will be able to establish a final cost in the very near future and to then come to a view on whether this is reasonable and fully justifiable.
- 4.3.5 Clearly it is not desirable to delay re-commencement and completion of the outstanding works any more than is strictly necessary, particularly as the delay at Lander Road is leading to difficulties in the operation of the school. Members are therefore asked to consider two options enabling works to re-commence or, at least, so that progress can be made as soon as possible.
- 4.3.6 In the event that Capita Symonds conclude the costs are reasonable and justifiable, and the total cost to the Authority, over and above what is likely to be recoverable, does not exceed £26,000, then Members are recommended to authorise the Head of Corporate Legal Services to terminate the existing contract with ROK Building Ltd and enter into a formal contract in the maximum sum of £768,745 with the second lowest contractor.
- 4.3.7 Alternatively, in the event that Capita Symonds conclude that the costs established are not reasonable or justifiable, or where the total cost to the Authority, over and above what is likely to be recoverable will exceed

£26,000, Members are recommended to authorise the Environmental and Technical Services Director to invite new competitive tenders.

5.0 Financial Implications

- 5.1 As indicated above there will be no requirement to provide additional financial resources in order for the Southport Market and Kew Woods CP School projects to proceed as proposed.
- 4.2 Subject to ongoing review it appears that the costs to complete the Lander Road contract may exceed the total of the retained monies and maximum bond value by up to £26,000.
- 4.3 In the event that Capita Symonds satisfy themselves that the costs incurred are reasonable, and the Lander Road CP School project is to proceed as outlined in 4.3.6 above, the additional funding requirement will be met from within the existing Children's Services Capital Programme provision.

6.0 Recommendation

Cabinet is recommended to:

- (i) Authorise the Acting Head of Corporate Legal Services to terminate the existing contract with ROK Building Ltd and enter into a formal contract in the sum of £2,228,588 for the completion of the outstanding works at Southport Market with the second lowest tendering contractor.
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