

Report to	Cabinet
Date of meeting	28 th March 2023
Lead Member / Officer	Cllr Barry Mellor, Lead Member for the Environment and Transport / Tony Ward, Corporate Director: Environment and Economy
Report author	Tony Ward
Title	Termination of the contract for a main contractor for the Waste Depot Phase 2

1. What is the report about?

- 1.1. The decision to terminate the contract between Denbighshire County Council (DCC) and R L Davies & Sons Ltd (RLD) for RLD to be the main contractor for the Waste Depot Phase 2 on the Colomendy Estate, Denbigh.

2. What is the reason for making this report?

- 2.1. To formally report to Cabinet, in writing, that the Corporate Director: Environment and Economy made an urgent decision on 20th February 2023, under 2.9 of the Council's constitution, to terminate the contract between DCC and RLD for them to act as the main contractor for the Waste Depot Phase 2 on Colomendy Estate, Denbigh. The constitution allows for an urgent delegated decision to be made where such a decision could not wait until the first available meeting of Cabinet.
- 2.2. To confirm how the decision to award the contract to RLD was made.
- 2.3. To update Cabinet on what has happened since RLD went into administration in relation to the construction of the depot.

- 2.4. To confirm that a subsequent report will be brought to Cabinet (currently scheduled for 25th April 2023), so that the Project Board can recommend the preferred option for completing the construction of the depot.

3. What are the Recommendations?

- 3.1. That Cabinet note the urgent delegated decision referred to in paragraph 2.1.
- 3.2. That Cabinet consider the report and provide feedback, as appropriate.

4. Report details

Termination of the contract

- 4.1. RLD entered Administration on Thursday 16th February 2023. After obtaining the necessary approvals, a Termination Notice was served on RLD and their appointed Administrator on Monday February 20th, which terminated the Contract between DCC and RLD.
- 4.2. The loss of RLD leaves Phase 2 without a Main Contractor. Once we issued the termination notice, the Main Contractor role reverted to DCC.

How the contract award was made

- 4.3. The decision to award the contract was delegated to the Chief Executive by Cabinet on 12th April 2022. The local elections in May 2022, and the uncertain timescale for establishing a new Cabinet, could have caused a delay in awarding the contract. Any delay in awarding the contract would have delayed the project and would almost certainly have resulted in additional costs to the council. Once the tender exercise was completed, the Chief Executive was required to exercise the powers delegated to him by Cabinet to award the contract.
- 4.4. As the delegated decision was made on 17th June 2022, i.e. after a new Cabinet had been formed, the Chief Executive took account of comments provided by the new Leader (Cllr Jason McLellan) and new Lead Member for Environment and Transport (Cllr Barry Mellor) when making the decision to award the contract to RLD. The Chief Executive also took note of comments provided by the S151 Officer (Steve Gadd) and the Monitoring Officer (Gary Williams).

- 4.5. In terms of the tender process, DCC has a declared Tender Evaluation Criteria that it must follow and comply with. The Quality (40%) / Cost (60%) scores are combined in the declared calculation methodology to come up with the final ranking. In this case, RLD were ranked 1st out of the four tenders submitted.
- 4.6. As part of the tender evaluation, a “Dunn & Bradstreet” (D&B) finance check is undertaken to help understand the financial standing of the organisations. This process allocates a score (0 to 5) based on how far below the industry average the D&B score is. If any D&B score is below 11 (which scores 0), that tender can be legitimately set aside. RLD scored 1, based on a D&B Score of 18, and therefore passed the required/published threshold in terms of the financial test.
- 4.7. Even though RLD passed the required financial test, the score of 1 indicated a medium risk of utilising the company. The advice received from Procurement and Legal was that RLD passed the required test in our stated tender evaluation methodology and, as such, we were unable to set aside their tender. RLD could have legitimately submitted a legal challenge if we had awarded the contract to another organisation because RLD were ranked first following tender evaluation.
- 4.8. A score of 1 also requires the service to “consider monitoring the company more closely if a contract is awarded - particularly for large scale contracts” (see Appendix 1 for the Scoring Matrix). As part of the risk mitigation strategy, DCC implemented more stringent monitoring of RLD, and also made the decision to pay some of the more significant sub-contractors directly to limit the impact should RLD go into administration.
- 4.9. The contract was therefore awarded to RLD in June 2022. In August 2022, Conwy County Borough Council’s Cabinet made a decision not to award a contract to RLD (the ‘Preferred Bidder’) for a Sub Regional Children’s Residential Assessment Unit (Bwthyn y Ddôl). Due to the proximity of those decisions, questions have been asked about the reason for the two different decisions.
- 4.10. These two projects were at very different stages of development, with the Bwthyn y Ddôl project being at a much earlier stage, which enabled Conwy to pause and reflect and ultimately start the procurement process over again. That has created a 12-month delay in the project, and the project will ultimately cost more than originally anticipated as a result.

4.11. DCC were not in that position with Phase 2 of the waste depot project. There has always been a time pressure on delivering our project, and Phase 1 had already been completed. Any significant delay to Phase 2 would have created significant slippage in rolling out the new service and would have had very significant cost implications for the overall project, and the council.

4.12. Therefore, although we were aware that appointing RLD came with some risks, it was felt that these risks were acceptable, given our circumstances. All projects come with risk, and it is our job to manage those risks as best we can.

Completing the construction project

4.13. DCC has directly appointed the key subcontractors required to keep the works progressing in the short term while a decision is made on the longer-term way forward for delivering the scheme. There are several options for taking the project forward, including:

- Re-tendering the contract.
- Appointing another contractor from the original tender exercise
- Appointing another contractor with knowledge of the project
- In-house management of the contract by DCC

4.14. These options are currently being explored in more detail to evaluate such issues as risk; practicality; impact on the programme; and cost. A report will then be brought back to Cabinet where the Project Board will recommend the preferred option for completing the construction of the depot. This paper is currently scheduled for the Cabinet meeting on 25th April 2023.

5. How does the decision contribute to the Corporate Priorities?

5.1. There is no decision sought by this paper, which fulfils the requirement to formally report an urgent decision made under 2.9 of the Council's constitution.

6. What will it cost and how will it affect other services?

6.1. There are no direct costs associated with Cabinet noting the urgent decision made under 2.9 of the Council's constitution. However, there will be varying costs associated with the options to take the project forward to completion. That will be covered in the subsequent report to Cabinet referred to in paragraph 4.13.

7. What are the main conclusions of the Well-being Impact Assessment?

7.1. There is no WBIA associated with this paper specifically. A WBIA has been developed for the waste collection service change, and that is currently being reviewed and updated, as it was developed as part of the original business case.

8. What consultations have been carried out with Scrutiny and others?

8.1. The decision to terminate the contract with RLD, and the short-term actions subsequently taken, have involved consultation with the Chief Executive and CET, Cabinet (at Cabinet Briefing), the S151 Officer, and Welsh Government.

9. Chief Finance Officer Statement

9.1. The update provided in this report is very welcome. There are no direct financial implications of the report however, as set out above, any impact on the financial parameters of the business case agreed last year will need further approval by Cabinet.

10. What risks are there and is there anything we can do to reduce them?

10.1. The Project had a bespoke risk register which is managed by the Project Board.

11. Power to make the decision

11.1. Section 2.9 of the Council's constitution.