

DECISION OF: THE DIRECTOR OF PLACE

IN CONSULTATION WITH: SECTION 151 OFFICER AND HEAD OF PROCUREMENT

DECISION NO: 24/25 EAT 34

SUBJECT: APPROVE THE INCREASE OF EMPLOYER'S AGENT FEES IN CONNECTION WITH THE DELIVERY OF BANWELL BYPASS AND ASSOCIATED HIF INFRASTRUCTURE

KEY DECISION: YES

REASON: The total sum for the estimated employer's agent fees exceeds expenditure of £500,000.

BACKGROUND:

The appointment of the Employer's Agent provides contract management support of the ECI construction contract to enable the Council to successfully deliver the HIF scheme.

Their key roles are to:-

- To manage and administer the ECI construction contracts (fulfilling the role of NEC ECC Project Manager);
- To undertake cost and commercial management including cost control, cost evaluation, risk and value management, including forecasting, analysis of performance data and earned value analysis
- To lead and undertake the technical assurance and review of the contractor's proposals and ensure necessary approvals are obtained
- To lead in finalising the scope, issuing the notice to proceed and negotiating the target cost for the ECC Stage 2 contract
- Quality assurance and management of design and construction

Atkins were awarded the contract in February 2021 for a value of £1,288,443.63 (20-21 DP 305). This was to act as Employers Agent covering both stage 1 (design) and stage 2 (build) of Banwell bypass scheme.

A further decision was taken in December 2024 (24-25 DP416) to extend the contract to cover invoices between September and December whilst the project navigated an interim period ahead of proceeding with the stage 2 construction contract. This brought the total spend with Atkins to £1,533,449.78.

The contract, which commenced in February 2021 has a completion date of 23 January 2029. Completion of the NEC contract is defined as being when the required work is complete, the scope of work included management of the design and build contractor during

the defect correction period. Based on the latest programme for construction of the bypass, this contract length is still deemed sufficient.

DECISION:

1. To approve retrospective spend of £10,991.70 for additional costs in December 2024
2. To vary the contract to approve an increase for employer's agent support of £936,470.90 to enable Atkins Realis to continue to deliver critical services for the delivery of Banwell Bypass and associated works from January 2025. This will bring the total cost of employer's agent services on the project to £2,480,912.38.

REASONS:

Due to several delays throughout the delivery of Banwell bypass including a prolonged planning stage from July 2022 to March 2023, delay to the determination of the CPO (inquiry in July 2023 and determination obtained in January 2024) and loss of the main build contractor in February 2024, the project is only just commencing the second stage.

Despite this prolongation of programme, the original budget has been sufficient to cover the involvement of Atkins over the course of time they were expected to be supporting the project but does not cover the increased contract length now required.

Regulation 72 of the Public Contract Regulations 2015 states that a contract/framework may change:

“The change, irrespective of the monetary value, is provided for in the initial procurement documents in a clear, precise and unequivocal review or option clause, which specifies the conditions of use and the scope and nature of the change; and the overall nature of the contract/framework is not altered.”

The cost increase of £936,470.90 has been scrutinised by the Banwell Bypass project team who are satisfied the hours are justified and that the additional contract value remains good value for money. It should be noted that this is an NEC Option E (time charge) contract, Atkins will pay for the resources that Atkins use to deliver the contract.

OPTIONS CONSIDERED:

1. Undertake a new open tender procurement exercise:

This option has been considered recently given concern that the current contract was not working optimally. It was discounted as a new procurement exercise would take several months and would be a high-risk option given that the Council have just appointed Galliford Try and are awaiting an updated target cost for construction which will need to be validated by the employer's agent. In addition to this, Atkins have acquired significant knowledge of the project through their support to date, which would take time and incur cost for new advisors to develop. The project team have committed to reviewing Atkins performance on a quarterly basis following Atkins submission of new personnel on the project. The team that has been working on the scheme since September 2024 are meeting the scope and KPI's which has given further assurance around continuing with this consultant.

2. Do nothing:

There is limited resource within the council to give contract management support services, which would leave the project team without contract management expertise at a critical stage of the project. In addition to this, we do not have a contract management system procured internally as this is provided as part of the scope. The loss of continuity and contract

management tools would likely result in larger scale challenges to the scheme and managing the D&B contract.

3. Seek approval to vary and increase the value of the existing contract with Atkins:
This is deemed to be the most suitable approach and is the recommended decision in this report.

FINANCIAL IMPLICATIONS:

Costs

Atkins has submitted a revised pricing schedule based on the number of hours they anticipate each role will need. This is forecasted on a monthly basis and has been assessed using the time spent on the project in stage 1. A number of roles have been removed from the scope which are no longer needed in stage 2. Atkins will manage the main build contract and so their contract is required until the end of the defect correction period.

The fee forecast totals an additional spend of £936,470.90 bringing the total contract cost to £2,480,912.38 as shown in table 1.

Table 1- additional costs

Original contract value	£1,288,443.63
Increase sought 24-25 DP614	£245,006.15
Contract variation January 2025 onwards	£947,462.60
New contract value	£2,480,912.38

Funding

The costs for the employer's agent contract are to be charged to KDT708 which is the councils cost centre for 'Construction – Other' in relation to the Banwell Bypass scheme. Early budget monitoring identified that the previous budget allocation would not be sufficient to cover Atkins appointment through stage 2 and suitable funds were forecast to account for this decision. There is adequate budget allocated to accommodate

Asset Register

Expenditure in relation to this cost centre is charged at the end of the financial year to A6019-01 which is the Infrastructure Asset for the Banwell Bypass on the council's Asset Register.

LEGAL POWERS AND IMPLICATIONS

Regulation 72 of the Public Contract Regulations 2015 states that:

(1) Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Part in any of the following cases:

a) where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses or options, provided that such clauses:

(i) state the scope and nature of possible modifications or options as well as the conditions under which they may be used, and

(ii) do not provide for modifications or options that would alter the overall nature of the framework agreement.

As we are requesting a variation to the hours charged not seeking to increase the services within the scope of the original contract the variation falls within regulation 72(a).

Contract Standing Orders 31 provides that:

31.1 Instructions to vary a Contract shall be made in writing and before the variation is made approved by the relevant Director and referred to Legal Services for advice where the Contract is subject to the PCR 2015.

31.3 Where a variation occurs during the life of the Contract that cannot be met from within existing budgetary provision, an immediate report shall be made to the Section 151 officer who shall decide what further action is necessary.

As discussed under the financial section of this report, there is budgetary provision for this increase.

31.4 Where any claim for payment exceeds the original Contract sum by 25% excluding VAT or more, the matter must be referred to the Procurement Service before any settlement is made.

31.5 Capital projects with a compensation event/change control mechanism allowed for within the Contract, for example NEC4 Contracts, may manage Contract variations within the project structure/governance, subject to an appropriate delegated authority decision and monitoring at Capital Programme Planning and Delivery Board (CPPDB).

The increase of professional employer's agent fees is a capital project with a compensation event/change control mechanism allowed for within the Contract. This is reported to the HIF Steering Board on a monthly basis and the scheme is also monitored via the capital tracker which is presented at Capital Programme Planning and Delivery Board (CPPDB).

The reasons for the increase are as follows:

1. The design for the Scheme has been more complicated than anticipated, so Atkins has spent additional time on advising NSC throughout stage 1.
2. Prolongation of the stage 1 contract for various reasons (beyond the project teams' control) has resulted in the employer's agent budget needing to cover an additional amount of time.
3. Further hours have been added for work still to be undertaken to reflect the complexity of the project, for example, greater time was spent negotiating the stage 2 contract with Alun Griffiths which was then abandoned, and new discussions progressed with the new design and build contractor.

4. The re-procurement and revision of contract documentation for a new design and build contractor was accounted for in the scope of works, the loss of the D&B contractor however resulted in additional support needed on these tasks.

5. None of the above extends the scope of the contract considerably.

PROCUREMENT

As above.

CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

There are no climate change or environmental implications as a result of this decision.

CONSULTATION

The options listed have been presented to the HIF steering board that agreed (in principle) with the approach and the scheme also reports to the six-weekly to the Transport Climate and Communities Policy and Scrutiny Panel on general progress.

RISK MANAGEMENT

The project has a comprehensive risk register that is reviewed on a bi-monthly basis and a quantitative cost risk analysis is undertaken quarterly to review the risk and contingency allocation for the project. The following risks have been considered in relation to this decision:

<u>Risk</u>	<u>Inherent Risk</u>	<u>Residual Likelihood</u>	<u>Residual Impact</u>	<u>Residual Risk Score</u>	<u>Comments</u>
Previous bidders challenge decision to vary contract	MEDIUM	2	2	LOW/MED	1.Consultation has taken place NSC Legal team who is satisfied with the approach to vary the contract under Regulation 72. The Procurement and Legal Teams think it is unlikely that any challenge would be upheld given the transparency within the tender documents around workload being estimated, alongside the fact that the additional hours fall under the same scope of works which is unchanged.

Insufficient professional services cost allowance	MEDIUM	3	2	LOW/MED	1. Regular cost monitoring of consultants fees/invoicing. 2. Undertake internal NSC governance to increase cost allowance. 3. Produce and submit updated stage 2 forecasts from consultants
Performance of contractor is not as expected	MEDIUM	3	2	LOW/MED	1. Review of performance quarterly 2. Monitoring of monthly spend and output of deliverables

EQUALITY IMPLICATIONS

Have you undertaken an Equality Impact Assessment? Yes

An Equality Impact Assessment (EqIA) was undertaken for the Scheme at preliminary design, in support of the Planning Application. Equalities impact assessments have also been taken for the CPO and the supplemental CPO.

We will update the Equality Impact Assessment (EqIA) at various stages throughout the project.

CORPORATE IMPLICATIONS

The delivery of future housing allocation to be set out in the emerging Local Plan is intrinsically linked to the delivery of Banwell bypass. The bypass supports the vision and priorities of the current Corporate Plan (2020-2024).

APPENDICES

Appendix 1: Revised pricing schedule

BACKGROUND PAPERS

20-21 DE 115 Employers Agent Procurement Plan

20-21 DP 305 Atkins Contract Award

24/25 DP 416 Payment of Atkins Realis invoices for retrospective spend to October 2024 and forecasted spend to December 2024

SIGNATORIES:

DECISION MAKER(S):

Signed:  Director of Place

Date: 6 February 2025

In consultation with:

Signed:  S151 Officer

Date: 6 February 2025

Signed:  Head of Procurement

Date: 6 February 2025