

Manchester City Council Report for Information

Report to: Audit Committee 15 October 2019

Subject: Manchester Salford Inner Relief Route: Lessons Learned

Report of: Director of Highways and Head of Audit and Risk Management

Summary

In March 2019 works unexpectedly ceased on the Manchester Salford Inner Relief Route (MSIRR) highways programme. It became evident that the Principal contractor (Dawnus) was in financial failure and subsequently went into administration.

In response to these events an incident management approach was adopted to deal with immediate risks and issues; and the process of procuring a new contractor to urgently recommence works was completed.

The new contractor started on site in April 2019.

This report summarises the key events surrounding this incident and associated lessons learned.

Recommendations

Audit Committee are asked to note the lessons learned from the MSIRR programme.

Wards Affected: All

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Background documents (available for public inspection):

Documents used in the development of this report include:

- Manchester City Council Contract Terms and Conditions
- Government Commercial Function Guidance on Assessing and Monitoring the Economic and Financial Standing of Suppliers and Guidance on Corporate Financial Distress (available on gov.uk website)
- MSIRR Re-procurement - Contract Award Notice

1 Introduction

- 1.1 The Manchester Salford Inner Relief Route (MSIRR) is a key route in and out of the City Centre, and includes sections of Trinity Way, Mancunian Way and Great Ancoats Street. As a consequence of congestion Manchester City Council and Salford Council developed a programme of improvement works, funded through the Greater Manchester Combined Authority and Transport for Greater Manchester.
- 1.2 Dawnus Construction Holdings Ltd were appointed as the project contractor after a tender process using the Council's Construction Framework TC886. Work started in August 2018 and was expected to last for up to 12 months.
- 1.3 On 12 March 2019 a plant supplier blocked Chester Road and staff from the principal contractor failed to attend site. This was widely reported in the media and resulted in urgent actions to maintain immediate traffic flow on the highway, ensure safety of pedestrians and road users and progress the re-procurement of a contractor for completion of the planned works. The principal contractor subsequently went into administration and works were completed to procure contracts for the completion of works.
- 1.4 Works to complete the MSIRR programme were procured at pace and a new contractor started on site on 2 April, within three weeks of the initial incident. These works are ongoing and given the risks associated with the incident in March 2019 Audit Committee requested a report on lessons learned.

2 Purpose of Report

- 2.1 To provide Audit Committee with
 - A brief summary of the events that resulted in the cessation of works on MSIRR in March 2019 and the approach taken to restart and procure the programme of works required for completion.
 - Lessons learned from the cessation of works and the financial failure of the principal contractor; and the re-procurement of works.
 - Broader lessons learned for consideration in wider Council procurement, commissioning and contract management activities
- 2.2 This report focuses on the governance, risk management and control aspects of the incident and the subsequent re-procurement of works. Whilst providing a short update on scheme progress for context, review of delivery of the scheme and the costs associated with this are a function of the relevant scrutiny committees.

3 Background

- 3.1 In October 2017 a framework agreement (TC886) for major highways works was let that provided a pre-tendered framework with subsequent awards of major works based on a process of mini-competition. In June 2018, a contract for improvements to the Manchester Salford Inner Relief Route (MSIRR) was awarded to Dawnus as principal contractor following mini-competition under this

framework. This was for improvement works at six junctions (A-F) in and around Regent Road, Trinity Way and the Mancunian Way. Works started on site in August 2018 with an overall completion date of 7 August 2019.

- 3.2 Whilst there was understandable focus on the works impacting main arterial routes into the City Centre, Dawnus appeared to have made good progress and by February 2019 there was no indication that this would not continue to be the case. Monthly progress meetings were held between the contractor and project team and summer 2019 remained the target for programme completion.
- 3.3 In March 2019, the project team observed that works began to slow down and the MSIRR site became untidy. This caused the Highways Service to become concerned that this might be a symptom of something wider. A contractor credit check was undertaken and a site meeting between Highways senior management and Dawnus was arranged. The credit check focused on the latest publically reported financial position and performance of the company (15 months old at the time) and returned an assessment of low risk.
- 3.4 On the morning of 12 March 2019 the Highways Service were contacted by TfGM to advise that subcontractor plant vehicles were blocking traffic on Chester Road. GM Police were called and the blockage removed by 10.20am. On the same morning Dawnus management failed to attend a planned site meeting.

4 Incident Management

- 4.1 Given the online reports, road blockage and feedback of inactivity on site an Incident Management Team (IMT) was called in line with the Council's Corporate Business Continuity Plan. This followed an urgent 10am highways meeting at TfGM that was called specifically in response to the reported blockage of the road.
- 4.2 The first IMT (11am on 12 March) was attended the Deputy Chief Executive and City Treasurer; Executive Director of Neighbourhoods and Director of Highways as well as senior officers of the Council representing the following services as well as a representative from TfGM:
 - Audit and Risk Management
 - Highways
 - Legal Services
 - Finance
 - Press and Media
 - GM Civil Contingencies
- 4.3 The initial IMT focused on understanding:
 - The current position, key risks and issues (including safety)
 - Current planned actions
 - Further planned actions
 - Communications

- 4.4 Much of the immediate response was to understand the current position as there were no formal communications from Dawnus representatives and no staff on site. Informal discussions with Dawnus management indicated that they were in a legal process and implied financial difficulty but the nature of this could not be confirmed. Site safety was a key focus and teams were immediately deployed with support from the traffic management, surfacing and vehicle recovery sub-contractors who remained on site to ensure appropriate arrangements to safeguard pedestrians and road users. TfGM retained CCTV coverage of the site to identify and update on any issues.
- 4.5 IMTs continued twice daily for two weeks with interim updates between meetings. All meetings were recorded and action notes agreed and followed up at each meeting. Officer focus at these IMTs included:
- writing formally to Dawnus to seek to understand the issues preventing their return to site and their plans for the project;
 - reviewing legal provisions in contracts and assessment of continuity options should Dawnus not return to site;
 - overseeing site safety and traffic management;
 - reviewing procurement options for the recommencement of works;
 - agreeing the deployment of Manchester contracts and surfacing and traffic management suppliers to complete limited urgent works and maintain traffic flow;
 - reaching out to staff on site and the supply chain, including the sub contractor whose staff had blocked the road on 12 March, to understand if they had been paid; and
 - updating officers, Members, bus companies, local businesses and the public.
- 4.6 By 15 March, despite reports in the media that an administrator had been appointed, there remained no formal contact from an administrator or Dawnus. As absence from site was not a recognised contract termination event and Dawnus thus remained the contractor for the programme, legal options available to appoint alternative contractors or terminate the contract were limited. Planning for this eventuality continued but no decision could be taken or public announcement made without prejudicing the Council's legal and contractual position.
- 4.7 A range of options to secure a new contractor were developed and appraised through the IMT, with agreement on three phases to restart works:
- Interim arrangements with Manchester Contracts and Tarmac to deliver some immediate work on site to lay kerbs, surface pavements and fill holes.
 - Repackage the programme for Regent Road (Junctions A-D)
 - Repackage the remaining elements of the programme (junctions E and F)
- 4.8 Junctions A-D were the focus of the initial re-procurement and detailed procurement and delivery options were considered, assessed and evaluated on the basis of cost, speed to mobilise and minimising ongoing traffic disruption; with speed being of great value due to the works being part completed. It was agreed that two companies would be asked to bid for the completion of works: (i) the second ranked bidder from the original procurement exercise (John Sisk

& Son Holdings Ltd); and (ii) the existing surfacing sub-contractor Tarmac who had remained on-site and completed some further works following the 12 March incident.

- 4.9 In this period officers from the Highways Service attended site to check current status, take photographs and collate records to produce a high level assessment of works completed, to inform both an assessment of costs incurred and to inform conversations with bidders for the completion of works. These records would also form part of any discussions with the administrators.
- 4.10 It was accepted and agreed by officers that difficulties in assessing accurate progress on site would present a significant challenge to bidders being able to submit a fixed price bid to complete works and could result in further delay of at least 12 weeks. This would have meant start on site would have been delayed until around the middle of June. As such the option of a traditional procurement, leaving the site inactive for this length of time, was assessed as presenting a major risk to the programme and to the City. Given the imperative to restart works to minimise disruption it was agreed that a NEC Option E contract (under which the contractor is reimbursed the actual costs they incur in carrying out the works, plus an additional fee) would be used and bidders asked to submit cost and fee estimates. As NEC Option E is not a form of contract used by the Council, external legal advice was secured to support Legal Services in drawing up proposed terms, conditions and contract document. All involved recognised that Option E presented a risk in terms of cost certainty and additional contractor management requirements, but this was balanced against the urgent need to restart works and complete the priority programme as soon as possible.
- 4.11 Confirmation that Dawnus had entered administration was received on 18 March. This enabled the formal process of procurement to start. This process confirmed appointment of John Sisk as principal contractor for the completion of works on junctions A-D (with a total estimated contract sum of £3m-£4m). The initial, planned date for completion set out in the tender response and based on basic site and works information was 30 May 2019 although, due to the uncertainties over works in progress, this cost and timescale were acknowledged to be estimations. Four weeks from contract award and as agreed with the Council's Project Management Team, the principal contractor submitted a more accurate and agreed programme plan with an end date of 20 August.
- 4.12 In advance of contract award officers completed detailed financial due diligence on the proposed contractor as well as key sub-contractors and obtained additional assurance over arrangements for payments to sub contractors and alignment of the contractor terms and conditions with the Unite Construction Charter.
- 4.13 Formal appointment was confirmed to John Sisk and immediate steps taken to restart works on site. On 2 April the works on site were restarted. This was less than three weeks from the 12 March incident and reflected a significant

amount of effort from a range of services and with contractors to manage the incident and successfully procure a new contract.

- 4.14 The completion of works for junctions E and F was based on a traditional fixed-price lump sum contract (NEC Option A). This contract was separately awarded to John Sisk as principal contractor in August 2019. This was approved as a direct appointment given the benefits of maintaining the same principal contractor for completion of the final two junctions on the overall MSIRR programme and the need to complete works on a timely basis. This work is scheduled to complete by December 2019.

Lessons Learned

5 Incident Management

- 5.1 The management of the incident was done in accordance with the principles and processes set out in the Council's Corporate Business Continuity Plan.
- 5.2 Following notification of the highway incident on the morning of 12 March, the IMT was mobilised immediately and attended by relevant senior officers able to support and take decisions. Officers re-prioritised to ensure that appropriate capacity and expertise was allocated to the incident response. The group focused on key issues, with an initial focus on safety, information gathering and communications; then increasingly on completion of urgent works, actions required to restart the programme and the procurement of a new contractor. The twice daily tempo and focus of IMTs was effective and supported active action planning and communications.
- 5.3 It is notable that on 12 March there was also an ICT outage affecting accessibility of the Council's core financial system and as such two incident management teams were running at the same time, with a number of officers from finance, procurement and the audit and risk management teams supporting the successful resolution of both incidents.
- 5.4 The Highways Service, with support from TfGM, took appropriate, immediate actions with remaining subcontractors to try and maintain traffic flow through the roadworks and make good any areas of concern. This quickly minimised the immediate impacts of the incident.
- 5.5 The IMT quickly became aware of the likely financial failure and potential administration of Dawnus and steps were taken to determine, assess and evaluate options for the re-procurement of works to ensure programme completion. Prior to formal notification of administration these steps were limited to internal proposals but actions were taken to utilise Manchester Contracts and the surfacing subcontractor to undertake some appropriate, limited works in the absence of Dawnus on site.
- 5.6 As the incident continued during the week, the IMT was extended to include further Legal Services, Finance and Procurement officers to support the development of options that could be used for the re-procurement of contractors

for completion of works. The IMT continued to meet until the procurement of contractors was agreed and approved.

- 5.7 The IMT was an appropriate and effective mechanism to respond to the incident and was successful in responding to the immediate issues on Chester Road and subsequent management of risks and issues. Officers worked flexibly to respond to emerging issues, maintaining visibility of site risks and acting to address these on a timely basis.

6 Procurement and Contract Management

- 6.1 On site and progress meetings took place with Dawnus throughout the contract, focused on delivery of the scheme. It was not evident from these meetings or from the standard requests for payment that the company was in financial difficulties. There were no indications in the wider trade press or other intelligence to indicate that Dawnus were in difficulty and they appeared to be delivering on a range of other schemes including major works supported by the Welsh Assembly Government.
- 6.2 Whilst media reports claimed that the initial road blocking incident on 12 March was a result of non-payment of subcontractors; there had been no reports into the Council or the Highways Service that subcontractors were not being paid or that Dawnus were in financial difficulty.
- 6.3 Whilst there are existing routes for raising concerns, consideration will be given to how sub-contractors can be further enabled to raise genuine concerns that have not been reasonably addressed through their engagement with principal contractors.
- 6.4 For the new contract from April 2019, a project team with additional resources was deployed to manage the contract with a focus on working with the principal contractor to oversee the delivery of works. The Programme continued to be overseen by a Project Board attended by a business Senior Responsible Officer, Highways, Finance and TfGM; and reports on programme completion dates and cost forecasts have been presented to this Board.
- 6.5 There have been known causes for delays in the project particular linked to wet weather impacting on the completion of surfacing works and the need to rework aspects of the construction that were completed by Dawnus but were assessed as being of sub-standard quality. There have been agreed variations in working hours with shifts reducing from 12 to 10 hours and limitations on night works due to the disruption caused to business and residents. These have impacted on the forecast completion date and have been reported to Project Board. Since August there have been significant extensions of time and subsequent cost reported that the Project Team is exploring further with the principal contractor. It is evident with this project, particularly given the nature of an NEC Option E (cost plus) contract where a significant element of the risk in not meeting time and cost deadlines is passed to the client, that tight project management, accurate contractor forecasting and cost control is critical and this is a lesson learned for any potential future projects of this type.

7 Financial and Cost Control

- 7.1 Despite reports in the media, Dawnus were not paid in accordance with a schedule, but on the basis of interim payment applications, in arrears, for completed works. At the time of administration there were variations and changes that needed to be finalised but these could only be resolved with the administrator once Dawnus ceased to trade.
- 7.2 Options for the completion of works for Junctions A-D were considered and assessed by appropriate senior officers with Legal, Finance and Procurement involved from the outset. Given the speed and fluidity of the developing situation with Dawnus and the lack of information emerging from the company it was not possible to take definitive decisions as this could have resulted in a breach of contract.
- 7.3 The elapsed time required to measure, specify, tender, evaluate and award a contract for the completion of works on Junctions A-D using a standard contract approach was assessed by officers as upwards of 12 weeks and thus works would not have started until around mid June. This delay was considered an unacceptable risk to the programme given the ongoing impact on residents and businesses and the need to complete the scheme as a key Council priority. As a consequence, senior officers agreed that the contract for the completion of works should be let in accordance with NEC Option E. All officers were in agreement that this was not a preferred form of contract as payments are based on 'cost reimbursement plus overheads and profit' which transfers a greater level of financial risk to the Council than with a more traditional form of contract; and there is no certainty or fixing of price at the time of entering into the contract or commencing works.
- 7.4 This form of contract required additional assurances over the approach to on-site contract management by the Highways Service and additional resources to ensure that costs claimed for labour, plant and materials on site were evidenced. The form of contract also allowed the contractor to claim a forecast of future costs, which created added complexity in the validation of applications for payment. This was not a type of contract used previously by members of the Project Team or other Council officers so significant efforts went into ensuring an understanding of the contract type and the steps required to manage this appropriately in advance of project start.
- 7.5 Applications for payment have been reviewed by the Principal Contractor as well as the Council Project Team and Internal Audit Team. The scale of these checks given the Option E contract have rightly been substantial, detailed and rigorous. This has highlighted a number of concerns over the inclusion of some costs in applications for payment and weaknesses in the quality and completeness of evidence provided. This has led to concerns escalated with John Sisk and deductions from the applications for payment. A thorough final account review is planned to obtain appropriate assurance over the validity, accuracy and completeness of the final account and total costs claimed.

7.6 Officers all agreed that the NEC Option E contract is problematic and where possible should be avoided. It requires additional resources, processes and evidence to support payments that have not been consistently evident through this project. It is acknowledged by officers that such a form of contract would only be used in extenuating circumstances and was only used given the very specific and particular events that occurred on MISIRR and the intolerable risk of further, significant details on the programme following the unexpected collapse of Dawnus. In the unlikely event this form of contract be needed in future there is a clear requirement to strengthen project management arrangements and ensure very clear evidence expectations at the outset over allowable costs and the quality of records required to support requests for payment.

8 Due Diligence

8.1 The framework agreement (TC886) was let in October 2017 and contractors appointed following completion of financial due diligence. The award of the contract for MSIRR to Dawnus in May 2018 followed a refresh of this due diligence. The due diligence was based on standard financial reporting and credit reports and thus based on historic, published financial information. This highlighted no areas of concern.

8.2 An additional credit check was requested by the Director of Highways in February 2019 when he and the Project Team became concerned over activity on site. This again returned a report that was positive and did not highlight financial risks. On further accountant examination of the accounts used in producing this report there was indication of changes in company fudging that, whilst not highlighting immediate risks, could in hindsight have formed the basis for further discussion with the company over their financial stability and resilience. Nonetheless, this external report was very clear in concluding that Dawnus were low risk and despite this within 4 weeks they were in administration.

8.3 It is evident that these historic credit and financial due diligence checks have inherent limitations and as part of the re-procurement in 2019, additional checks were undertaken to obtain more current, up to date information from suppliers.

8.4 These additional checks have been undertaken in a number of other procurement activities since the MSIRR incident in cases where financial due diligence or credit checks have highlighted potential concerns. Consideration is also being given as part of the risk assessment and prioritisation of contracts whether increased frequency of formal financial due diligence should take place during the period of contract and not just prior to or at contract award.

8.5 Ongoing market intelligence is obtained through a range of sources including subscription to 'Strategic Supplier Updates' issued by the Cabinet Office. These cover a range of sectors and are distributed by the Council's Integrated Commissioning and Procurement Group to relevant procurement officers, budget holders and contract managers. These highlight activity in various sectors and provide indication of potential risks for contract managers to

consider in their areas of responsibility, although it is noted that, as with the credit checks, these did not highlight any key risks or issues with Dawnus.

- 8.6 The Procurement and Strategic Commissioning Team provide a range of tools and guidance to services that set out key responsibilities for example around risk management and performance management that need to be met. Guidance affirms that the required level of monitoring needs to be especially rigorous when the contract in question is classified as Gold (high risk, value or criticality). Templates and tools are provided that can be tailored by services to reflect the diverse range of goods, works and services commissioned across the Council.
- 8.7 Following the Dawnus incident and given other supply chain issues impacting the Council including the earlier collapse of Carillion, the Procurement and Commissioning Team circulated the Cabinet Office outsourcing playbook, as well as Government Commercial Function Guidance on Assessing and Monitoring the Economic and Financial Standing of Suppliers and Guidance on Corporate Financial Distress. The Government guidance was published in July 2019 and included guidance on potential indicators of future financial distress based on industry best practice and Government learning from high profile corporate supplier failures. This guidance was circulated to all commissioning and contract management leads with an email reminding officers to focus attention on the due diligence at contract commencement and on an ongoing basis.

9 Current Programme Status

- 9.1 The forecast completion date and final cost of the contract for the urgent works to complete junctions A-D, has exceeded the planned completion date of 20 August 2019 and the cost estimate / budget of up to £4m. These were estimates developed in April and were recognised as being based on a range of assumptions around the state of the works in progress and works required to complete.

Programme

- 9.2 Sisk was appointed on 29 March with a request to provide an immediate site presence and produce a programme by the end of month one after surveying the site and having obtained a better understanding the scope of the remaining works.
- 9.3 This programme provided a more realistic, revised completion date of 20 August than the May end date submitted in their tender. The most recent forecast completion is early November and the extended duration of works has significantly impacted on the cost of the scheme.
- 9.4 The programme and associated cost risk were first identified by the Council's site team and Project Manager in the June report to Project Board. This noted a red risk for programme and budget despite contractor assurances of an August completion. The Project Manager's quantitative risk assessment in July indicated that an overrun of at least a month was likely based on progress at

this stage and that programme targets for Junction D would be missed partly due to focusing on Junction A-C completion. Since that date he has continued to report this project as a red risk and has challenged the contractor on their schedule for completion and cost forecasts.

Costs

- 9.5 The forecast final cost at September 2019 is £5.75m. This compares to the contractor forecast of £3.730m submitted in April.
- 9.6 At September there had been 37 compensation events issued by the Project Manager that relate to agreed variations and extensions of time on the project and the principal contractor has been instructed to provide quotations to confirm how these events have impacted on the overall cost and programme timescales.
- 9.7 One of the reasons for the programme overrun is that the tender required operatives to work 12 hour shifts and the programme timescales were based on this assumption. The Project Team directed that these shifts be reduced to 10 hours from 11 July as it was evident that productivity was diminishing in later hours of the shift. Whilst this reduced the daily cost per operative it has contributed in delays to the overall programme.
- 9.8 The costs of the project have increased most significantly due to the cost of subcontractors. In summary the reported reasons for this increase in costs are:
- Delays in surfacing works due to heavy rain.
 - Lower numbers of night hours worked than planned as later start and earlier finish time were agreed due to traffic constraints and noise concerns on Regent Road.
 - Junction D being more complex to construct than initially envisaged and left late in the programme due to focusing on Junction A-C completion
 - Junction A requiring various drainage re-design existing services that presented obstructions to planned the works.
 - More rework of defective Dawnus and contractor works than initially envisaged
 - Increase in the number of traffic management crews due to inability of a single crew to manage all junctions effectively; and increased traffic management provision for night time surfacing operations.
 - Increase in subcontractor plant and labour costs due to programme overrun.
- 9.9 The Council's project team and Internal Audit Service have a large number of outstanding concerns and queries on records provided to support this element of the account and the Council is withholding sums from payment requests pending further information. These queries are being actively reviewed by the principal contractor.

Funding

9.10 As a result of cost increases, the overall scheme is forecast to exceed the approved budget of £14.692m. Council officers are applying to TfGM to secure the £1.54m TfGM contingency. The forecast cost remains £1.362m above the TfGM approved funding level and scheme budget and options to address this shortfall are currently being explored. This will be reported through the Council's capital approvals process.

10 Summary Conclusion and Actions

10.1 As with any major incident the Council seeks to reflect on what went well and any lessons learned. There are a number of positive aspects that the team have reflected on and these include:

- The incident on 12 March and thereafter was managed effectively by a range of appropriate officers with the requisite skills, competency and commitment to address immediate risks and issues. This was done at the same time as managing the response to a major ICT incident.
- The IMT, through supporting services and with assistance from TfGM and subcontractors, took immediate action to address safety risks, maintain traffic flow and reallocate resources to complete some limited works on site.
- Despite a lack of communication from Dawnus and consequent limitations in what the Council could say, there were regular communications to stakeholders and the public.
- Early steps were taken to appraise options to procure a new contractor and these options were robustly assessed and evaluated before a determination on the proposed way forward was agreed.
- Additional expertise and support was secured in areas where there were recognised limitations in Council experience; particularly in the development of the NEC Option E contract approach.
- The procurement process was completed at speed but with effective oversight and engagement of legal, procurement and finance teams. Officers worked hard to assess the site and then develop a specification, scoring, evaluation and award approach to enable a contractor to be on site within three weeks of the 12 March incident.
- Resources were increased to manage the new Option E contract for MSIRR and officers have provided robust challenge to the contractor over the delivery of the programme and related costs incurred.

10.2 Nonetheless there are always areas that in hindsight could have been done differently. Areas to consider that have arisen from the lessons learned on MSIRR are as follows:

- Clarity over the scope of financial due diligence to ensure that, as far as possible, the financial position and performance of proposed contractors is understood and appropriate mitigating actions are taken where required.
- Increased frequency of due diligence in high priority or high risk contracts.
- Approach to communications so that sub-contractors and supply chain are aware of routes for escalating appropriate concerns that are not being addressed through their engagement with the principal contractor.

- Process to control use of NEC Option E contracts and confirm early expectations of contractors in such contracts; noting that such form of contract is only likely to be considered in very specific and rare occasions.
- Strengthening standard contract terms and conditions to support timely termination should contractors fail to deliver services or attend site.
- Confirming allowable costs and supporting evidence expectations with contractors. Whilst this was noted as a lesson learned in respect of NEC Option E the same principle applies to all contracts.
- Reinforcing arrangements for project management and cost control, change control and the management of variations; and the requirement for accurate and timely cost forecasts from contractors given the late notification of significant increased forecast costs on this scheme.

10.3 The proposed actions are as follows. These will be overseen by the Head of Integrated Commissioning and Procurement with a small task group representing procurement, commissioning, audit, finance and legal services.

Ref	Action	Owner and Timescale
1	<p>Procurement guidance to be updated to emphasise that effective financial due diligence must be completed and signed off in advance of (i) inclusion on framework contracts; and (ii) in advance of awards from frameworks. To consider and reflect relative risks in contracts based on criticality, materiality and nature of market; and could include third party credit checks of financial position / performance.</p>	<p>Head of Integrated Commissioning and Procurement, with support from Finance By end January 2020</p>
2	<p>Develop current contract management guide to include a section on ongoing due diligence to include formal financial due diligence and:</p> <p>Market Intelligence: Given the diversity of Council contracts and commissions this will need to be flexible to reflect sectoral intelligence but could include for example:</p> <ul style="list-style-type: none"> • GM or Core Cities Networks • Professional Networks (ADASS etc.) • Central Government Bulletins • Trade and Financial Press <p>Local Intelligence: To consider red flags or lead indicators that could suggest potential financial failure or non-delivery. Indicators could include:</p> <ul style="list-style-type: none"> • Non / reduced attendance on site • Slowing of work or unexplained delays in deliverables • Sub-contractor complaints over payments 	<p>Head of Integrated Commissioning and Procurement (to develop guidance for all services)</p>

Ref	Action	Owner and Timescale
	<p>The level of ongoing due diligence should be proportionate to the nature of the contract in terms of value, criticality and market context; and be informed by whether individual contracts are classified as Gold, Silver, Bronze in line with the Council's agreed contract impact and risk assessment process.</p> <p>Highways to establish regular due diligence on its contracts, appropriate to contract criticality.</p>	<p>Director of Highways with support from Head of Audit and Risk Management to confirm approach to practical collection and application of local intelligence for highways contracts.</p> <p>By end January 2020</p>
3	<p>Standard terms and conditions for suppliers were updated in June 2019 to make more overt reference to the need for contractors to operate effective whistleblowing arrangements. The Council's whistleblowing policy also includes provisions for the public and contractors to raise concerns with Internal Audit.</p> <p>Officers will further review and amend where necessary Council standard commissioning / procurement documentation and guidance in respect of mobilisation arrangements with contractors to confirm that they make their staff and sub-contractors aware of the main contractor issue reporting and whistleblowing arrangements, but also signpost the Council's contract management lead and/or whistleblowing policy as additional mechanisms to raise concerns if all other avenues for issue resolution have been exhausted.</p> <p>Highways to build the above into their mobilisation of future contracts.</p>	<p>Head of Integrated Commissioning and Procurement and Head of Audit and Risk Management</p> <p>By end January 2020</p> <p>Director of Highways</p> <p>By end January 2020</p>
4	<p>Confirmation in procurement guidance that NEC Option E contracts require advance approval of the DCE and City Treasurer; and /or the City Solicitor.</p> <p>Significant concerns with this contract type were raised at the time and this risk was balanced with the need for rapid progress as the scheme was in progress. If ever in this position there will be an</p>	<p>Head of Integrated Commissioning and Procurement</p> <p>By end January 2020</p>

Ref	Action	Owner and Timescale
	immediate, corresponding increase to the client project, contract and cost management approach.	
5	Review of contract terms and conditions to strengthen and clarify the Council's position in respect of contractor non delivery or failure, recognising that this will need to be guided by and reflect legal requirements and constraints.	Head of Integrated Commissioning and Procurement, with support from Legal Services By end January 2020
6	Use the contract management manual to confirm the expectation of contract managers to determine and obtain appropriate evidence to support applications for payment and agree this as part of contract terms and mobilisation. Highways to review and strengthen where necessary arrangements to ensure appropriate evidence is submitted in support of applications for payment.	Head of Integrated Commissioning and Procurement By end January 2020 Director of Highways By end January 2020
7	Final account audit of the MISIRR Junctions A-D contract to ensure that final payments reflect agreed, allowable costs only.	Director of Highways and Head of Audit and Risk Management By end November 2019

11 Recommendations

- 11.1 Audit Committee are asked to note the lessons learned from the MSIRR programme.