

SLOUGH BOROUGH COUNCIL

REPORT TO: Audit & Corporate Governance Committee

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PART 1 **FOR INFORMATION**

INDEXATION ISSUES ARISING FROM THE CONTRACT WITH SLOUGH ENTERPRISE LIMITED - UPDATE

1 Purpose of Report

The purpose of this report is to update the Committee about the issue of the indexation provisions in the Council's contract with Slough Enterprise Limited (formerly known as Slough Accord Limited), a subsidiary of Amey UK Plc, following the last meeting of the Committee.

2 Recommendation(s)/Proposed Action

The Committee is requested to note the contents of this report.

3. The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan

The delivery of all these strategic priorities is dependent on the highest possible standards of openness, honesty and accountability. The Council's learning and actions in response to the findings of this report will serve to enhance the delivery of these priorities.

4 Other Implications

(a) Financial

The financial implications arising from this report appear within the body of the Report.

(b) Human Rights Act and Other Legal Implications

There are no Human Rights Acts implications arising from this report. The Legal implications appear within this Report.

Equalities Impact Assessment

There is no identified need for an EIA arising from the subject matter of this Report.

5 **Supporting Information**

- 5.1 At its previous meeting on 13 December 2018, the Committee requested an update about the indexation issue under the Council's environmental services contract with Slough Enterprise Limited which expired on 30 November 2017.
- 5.2 The issue can be summarised as follows:
 - 5.2.1 It is common ground between the Council and the Contractor that the formula for indexation set out in the contract contained an obvious error and could not be operated in the form contained in the contract.
 - 5.2.2 In or around 2006 and 2007 the Council and the Contractor agreed the manner in which the formula would be applied and the contract was operated on that basis from that time.
 - 5.2.3 In or around 2014 Officers considered that the indexation calculations made by the Contractor since the agreement reached in or around 2006 and 2007 were incorrect and the officers prepared a spreadsheet showing the differences between their calculations and those of the contractor. This spreadsheet is appended as a confidential appendix to this Report. This spreadsheet is the basis for the case that there may have been an overpayment to the Contractor under the contract.
 - 5.2.4 Certain parts of the calculations appear to be consistent with the manner in which it is considered that the contract would be interpreted by the Court but it is difficult to understand the methodology lying behind other parts of the Officers' calculations.
- 5.3 The essential issue, therefore, is over the methodology behind the calculations of the officers set in the spreadsheet appended to this Report.
- 5.4 The Officer responsible for the preparation of the appended spreadsheet left the employ of the Council in early May 2017.
- 5.5 Since the last meeting of the Committee the Council have engaged the external consultants, Ethical Commercial Services Limited, who are presently assisting the Council with the Council's commercialisation and contract management projects, to carry out a review of this matter. They have reviewed the matter. They too are unable to deconstruct the methodology behind the officer's calculations contained in the appended spreadsheet.
- 5.6 The Index for the purposes of the Contract is defined as the Retail Price Index (RPI) less mortgage interest payments (all items). For the purposes of the true interpretation of the indexation provisions in the contract it is considered that the Contract Sum and Schedule of Rates Services are to be adjusted by the percentage change in the Index between March of the previous year and the March of the year of the adjustment. So, by way of hypothetical example, if the index had increased by 2% between March 2005 and March 2006 then the Contract Sum and Schedule of Rates Services would increase by 2% on 1 April 2006.

- 5.7 Some of the calculations shown on the attached spreadsheet appear to be consistent with the changes in RPI less mortgage interest payments (all items) contained in the tables published by the National Office of Statistics and in accordance with the interpretation set out in the preceding paragraph of this Report. It is not possible to discern, however, on what basis other parts of the calculations which purport to be the basis for the claim for overpayment have been made.
- 5.8 The calculations were reviewed by the Council's internal auditors, as detailed in their confidential Report which was appended to the last Report to the Committee on 13 December 2018 but this review was carried out without consideration of the contract documents and was subject to legal review and validation of the calculations.

6 **Conclusion**

In the light of the matters reported above the basis for the Council to continue to seek to pursue a claim for repayment of overpaid sums from the contractor is not clearly established and the external consultants who have reviewed the papers in this case have so advised.

7 **Appendices**

Appendix A – Part II Spreadsheet of Officers' comparative calculations of Indexation payments.

8 **Background Papers**

None.