

EAST AYRSHIRE COUNCIL

CABINET – 12 OCTOBER 2011

BUILDING LEARNING COMMUNITIES

**SCHOOLS PPP PROJECT
DELEGATED AUTHORITY TO NEGOTIATE VARIATIONS**

Report by Executive Director of Educational and Social Services

1. PURPOSE OF REPORT

- 1.1** The purpose of this report is to seek Cabinet approval to recommend to Council the amendment of the Scheme of Delegation to enable the Executive Director of Educational and Social Services to negotiate variations on Contractual Deductions applicable through the Payment Mechanism in the Building Learning Communities PPP Schools Contract.

2. BACKGROUND

- 2.1** The Council achieved financial close and concluded contracts with First Class Consortium (FCC) in July 2006, with the seven schools concerned becoming operational between October 2007 and September 2008.
- 2.2** The contract requires the Contractor (FCC) to provide cleaning and janitation services throughout the 30 year contract and to properly maintain and carry out lifecycle replacement to the buildings as required in exchange for a monthly unitary charge payment. In order to encourage the Contractor to fulfil the contract, the Project Agreement grants the Council the right to make contractual deductions from the payment should the service fall short of the specified criteria.
- 2.3** The specified criteria are set out in the Authority Requirements, and cover standards of cleaning, security, and issues such as maintenance of health and safety standards. The Facilities Management Contractor (Mitie) is required to maintain a Helpdesk which records their response to the various issues which arise. The Contractor produces a report on performance on a monthly basis, which is submitted to the Council as the basis for the monthly Unitary Charge invoice. The PPP Contract Monitoring Staff meet the PPP Contractor to review the monthly Helpdesk and Deductions Report.

3. DEVELOPMENTS

- 3.1** During the early period of the Contract operational period, it has been found that when meeting to discuss the monthly deductions, there are some circumstances in which there are clear benefits to the Council in negotiating contractual variations with the PPP Contractor in terms of waiving deduction from the monthly unitary charge. Such negotiations are helpful to allow the

Council to direct the focus of the Contractor's activity and resources to specific areas of difficulty, and also assist in meeting service dictated timescales, which may not necessarily be met by adhering rigidly to the embedded Contract values.

3.2 The issues in principle were recently reviewed by Internal Audit during an audit of the PPP contract. Both Internal Audit staff and relevant ESS officers believe that negotiation to waive deductions to the value of 1.5% of the Monthly Unitary Charge was appropriate and that in the interests of transparency, when such a negotiation is agreed, that a proper record is made of any financial or time scale waiver granted to the Contractor, and the resulting benefits accruing to the Council.

3.4 The deductions Report Spreadsheet has been amended to make provision for such records.

4. FINANCIAL IMPLICATIONS

4.1 There are no financial implications arising from the arrangement. The Council budgets for the full amount of the annual Unitary Charge and any deductions taken from payments to the contractor are effectively viewed as a 'windfall'. It is intended that any waiver of deductions will recoup benefits in kind equivalent to or in excess of the negotiation agreement reached with the Contractor.

5. LEGAL IMPLICATIONS

5.1 This proposal has been reviewed by the Head of Legal and Regulatory Services who has confirmed that he has no objections to the recommended level of deduction waiver of 1.5% of the Monthly Unitary Charge.

6. COMMUNITY PLANNING IMPLICATIONS

6.1 The recommendations within this report will assist the Council in promoting lifelong learning.

7. RISK MANAGEMENT IMPLICATIONS

7.1 The associated management measures agreed with the Internal Audit Section deal appropriately with any associated risk.

8. SUMMARY

8.1 The proposal in this report will assist PPP Monitoring Staff to achieve an enhanced performance from the Contractor that might otherwise not be achieved by purely contractual means.

9. RECOMMENDATIONS

9.1 It is recommended that Cabinet:-

- (i) recommends to Council the amendment of the Scheme of Delegation to enable the Executive Director of Educational and Social Services to negotiate variations to Contractual Deductions up to a level of 1.5% of the Monthly Unitary Charge of the PPP Contract;
- (ii) note that any such negotiation will be recorded in the Monthly Deductions Spreadsheet for the Period and outcome will be reported annually to Members in the Financial Outturn Report; and
- (iii) otherwise note the contents of this report.

Graham Short
Executive Director of Educational and Social Services

EC/JC/DL
2 September 2011

BACKGROUND PAPERS

Nil

Members wishing further information should contact Euan Couperwhite, Head of Resources, Tel: 01563 576090 or John Cochrane, Service Manager (Contract Support), Tel: 01563 555580.

**IMPLEMENTATION OFFICER – JOHN COCHRANE, SERVICE MANAGER
(CONTRACT SUPPORT)**