

DECISION-MAKER:	CABINET
SUBJECT:	HIGHWAYS SERVICE PARTNERSHIP: APPROVAL TO AWARD CONTRACT
DATE OF DECISION:	5 JULY 2010

REPORT OF: CABINET MEMBER FOR ENVIRONMENT AND TRANSPORT

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STATEMENT OF CONFIDENTIALITY

Appendices 1 and 2 of this report are not for publication by virtue of categories 3 (financial and business affairs), and 7A (obligation of Confidentiality) of paragraph 10.4 of the Council's Access to Information Procedure Rules as contained in the Council's Constitution.

It is not in the public interest to disclose this information as the appendices contain confidential and commercially sensitive information supplied by the bidder. This information has been supplied during the course of a strictly regulated procurement process which included provision for transparency and openness where appropriate. It would prejudice the Council's ability to operate in a commercial environment and obtain best value in procurement negotiations and would prejudice the Council's commercial relationships with third parties if they believed the Council would not honour any obligation of confidentiality.

SUMMARY

Based on an updated business case, Cabinet on 15/02/10 delegated authority to the Executive Director for Environment in consultation with the Solicitor to the Council and Executive Director for Resources and following consultation with the Cabinet Member for

Environment and Transport to close dialogue, call for Final Tenders and appoint a preferred bidder, within set parameters, for the Highways Service Partnership Contract. A company within the Balfour Beatty Group was appointed in 27th May 2010.

This report sets out the agreed final terms of the proposed Contract and requests authority to enter into Contract with a company within the Balfour Beatty Group.

RECOMMENDATIONS:

Having complied with the requirements of Paragraph 15 – General Exception of the Access to Information Procedure Rules:

- (i) To enter into a contract for a period of 10 years plus period of flexible extendibility with a company within the Balfour Beatty Group to deliver the Council's highways services.
- (ii) To delegate authority to the Solicitor to the Council, following consultation with the Executive Director of Neighbourhoods and Executive Director of Resources to finalise and enter into all necessary or ancillary contractual arrangements and documentation with a company within the Balfour Beatty Group, subject to the parameters set out within the report, and specifically in confidential Appendix 1.

- (iii) To authorise the Executive Director of Resources and / or the Solicitor to the Council to take any further action necessary to give effect to the decisions of the Executive in relation to this matter.

REASONS FOR REPORT RECOMMENDATIONS

1. This report is submitted for consideration as a General Exception under paragraph 15 of the Access to Information Procedure Rules in part 4 of the City Council's Constitution, notice having been given to the Chair and Vice Chair of Overview and Scrutiny Management Committee and the Public. The matter requires a decision as it would be impracticable to defer. This would delay Service Commencement and would impact on the Council's commercial position. It would have been impracticable to include on the May 2010 published Forward Plan as the evaluation was in progress and the Preferred Bidder was not appointed until the 27th May 2010.
2. Final Tenders were received from the two remaining bidders in April 2010. A company within the Balfour Beatty Group was appointed as Preferred Bidder on 27th May 2010.
3. The efficiencies generated from the partnership will be re-invested back into the highways service. The Partnership will not provide the level of additional funding required for significantly improving the condition of the highways network (for which it is estimated between £10-15m spend per annum is required) or move the Council away from a 'managed decline' strategy. However, it will ensure the Council is maximising the output from its existing budgets and that the decline is significantly slowed.

CONSULTATION

4. Regular briefings have been provided to Cabinet and opposition Members. Staff and Trade Unions have been consulted regularly through the process.
5. External consultation has taken place with the Audit Commission and Local Partnerships on key risks and issues associated with the project. These, along with the Council responses, were summarised in the last Cabinet report.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 6 A Strategic Business Case included an options appraisal which determined, in the absence of significant additional external investment (i.e. PFI), the model that best met the Critical Success Factors for the future of the Highways service was a long-term public/private service partnership. The alternative options considered were: Do-Nothing; Public/Public Partnership; Strategic Partnership; Externalisation; Fully in-house.

DETAIL

7. The benefits of the HSP, as set out in the original OBC and 15th February 2010 Cabinet report are:
 - Inefficiencies driven out from service delivery to be reinvested back into the highways network
 - Increasing the service performance level
 - Increased investment in the service delivery infrastructure
 - Increased capacity and resources available to deliver the service
 - Maintaining and improving the customer focus
8. The value for money case based on the preferred bidder submission is set out in confidential Appendix 2. This is within the forecast Outline Business Case (2008) and the updated Business Case (Feb 2010) and compares favourably to the Public Sector Comparator.
9. The revenue cost will be fixed for the life of the contract as an annual Lump Sum payment (subject to any Council instigated change to the Contract). Value for money (vfm) can be demonstrated by comparing existing budget for delivering services with the Preferred Bidder's final tender Lump Sum price for delivering the same services at a higher performance level.
10. At Final Tender the Preferred Bidder has submitted prices for a number of example capital schemes which will be used as a benchmark (a 'library of reference schemes') for the pricing of all future capital schemes. Any scheme items which can not be referenced can be benchmarked against market rates. Additionally, there is no exclusivity clause within the contract meaning the Council could seek alternative quotes.
11. As detailed in Appendix 2, there is a realistic expectation that the partnership will deliver 20% more (i.e. higher output) from current levels of expenditure than would be delivered under the current service delivery arrangements.
12. The scope of services is unchanged from that set-out and agreed to in the Cabinet Report of 15th February 2010.
13. A comprehensive performance framework regime has been developed which reflects and exceeds existing performance levels and which will incentivise the Provider to achieve required performance levels, ensuring the Council does not pay for a sub-standard level of service.
14. The capital maintenance programme (a 5 year framework with locally agreed annually focused programmes based on the Council's annual budget setting) will be based on a clear asset management approach yet also take into account wider Council priorities and objectives as they evolve.
15. There have been no material changes to the contractual or commercial positions since the Cabinet Report of 15th February 2010.
16. Payment Mechanisms – Payment for services are based on two mechanisms:
 - Lump Sum (Revenue Budget) covering routine and reactive maintenance
 - Target Cost (Capital) covering the Capital Programme.
17. Guaranteed Capital Funding – The Council has an approved strategy for funding capital maintenance on the highway (approved by full Council on

16/07/08). However, there is no contractual guarantee as to the level of capital funding.

18. Contract Length – the contract will be for a period of 10 years with the possibility of up to 5 years extensions based on performance. The Provider will be able to earn (and lose) extensions based on its performance through the life of the contract.
19. Third Party Income – The Provider will guarantee a level of Third Party Income (mainly income from Traffic Management Act and New Roads and Street Works Act) which is deducted from the Lump Sum payment. The risk of income therefore rests with the Provider and acts as an incentive to achieve performance. The Council will not be able to re-direct this income. However, statutorily this income can only be spent on highways related work and the key project driver is to reinvest into the network.
20. A detailed Financial Risk analysis is attached at Confidential Appendix 2.
21. There will be a more planned approach to delivering works under the partnership. This will be more efficient but in some areas will reduce the ability to direct work on an ad hoc basis. The contract has been drafted to retain a degree of flexibility for the Council.
22. Post-contract award there is a risk that the provider will require additional monies for delivering services which were not included, or poorly set-out, within the specification. A thorough process was undertaken to ensure all functions were included and clearly specified within the Lump Sum, yet there will be ad-hoc requests for service which require additional payments.
23. The target date for Contract Award is 14th July 2010. The Service Commencement date is scheduled for Monday 4th October 2010.

FINANCIAL/RESOURCE IMPLICATIONS

Capital

24. The highways capital budget (whatever this is set at year on year) will be channelled through the partnership. The capital budget will continue to be agreed on an annual basis within the Council budget setting process.

Revenue

25. Existing revenue budgets for in-scope highways services will be transferred to the partnership. The Council will be committed to the revenue budget for the contract period. Any savings in revenue budgets from a reduced lump sum price will be re-invested back into the highways network.
26. A Contract Management and Client Team will be funded through top-slicing of the existing revenue budget after contract payments.

Property

27. The Provider will be leased space at City Depot (Dock Gate 20) when available. In the interim the Provider will move into the space currently occupied by highways in Town Depot and Castle Way. The highways client team will be based at the Regional Business Centre.

28. It is intended that the Provider will be charged only nominal rent and service costs on the basis that any rent charged would simply have been passed back to the Council in the cost of service.

Other

29. The Council believes that the Transfer of Undertakings, (Protection of Employment) Regulations 2006 (TUPE) will apply. Where TUPE applies the Provider is required to protect the terms and conditions of transferred staff including pensions.
30. The Provider is strongly encouraged to (and has indicated that it will) seek admission to the Local Government Pension Scheme but if this is refused / impractical it must provide a broadly comparable scheme as approved by the Government Actuary's Department (GAD).
31. The Provider is required to employ new joiners on terms that are overall no less favourable than those of transferred employees. The Council recognises the Best Value Code of Practice on Workforce Matters and intends to enter discussions on the avoidance of two-tier working.
32. The procurement of Highways Services Partnership contract complies with, and contributes to, the Council's Sustainability Principles. The performance framework includes a number of contributory performance indicators including the reduction of Carbon Dioxide emissions relating to the delivery of highways services, the percentage of sustainable materials used, apprentices employed and local labour employed. The Preferred Bidder's solution contributes to the Councils' Sustainability Principles in a number of ways including whole life costing for supplies, improving road safety, waste and recycling, mechanisms to engage socially excluded groups and those Not in Employment, Education or Training (NEET), supporting local suppliers, developing a learning hub and engaging with Small and Medium-sized Enterprises (SMEs) and Black and Minority Ethnic (BME) owned and run organisations.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

33. Highways maintenance and associated and ancillary functions are authorised by a variety of Statutory powers including the Highways Act 1980 as amended and the Traffic Management Act 2004, together with secondary legislation (Regulations, Directions and Orders). The power to enter into contracts for the delivery of a Council function is contained in s1 of the Local Government (Contracts) Act 1997 and s.111 Local Government Act 1972 (power to do anything calculated to facilitate, ancillary to or conducive to the discharge of a primary function). Regard must be had to the Part 1 (Best Value) provisions of the Local Government Act 1999, the National Procurement Strategy and public procurement law including the Public Contracts Regulations 2006.
34. Part II (Contracting Out) of the Deregulation and Contracting Out Act 1994 is the primary legislation which allows a Minister to make an Order enabling certain statutory functions to be carried out by persons on behalf of the local authority. The Contracting Out (Highway Functions) Order 2009 sets out those functions of the Highways Act 1980 and New Roads Street Works Act 1991 which can be contracted out. The functions under the 2009 Order

include (among many others):

- Section 41(1) - duty to maintain highway maintainable at public expense;
- Section 62 – general power of improvement; and
- Section 150 – duty to remove snow, soil etc from the highway.

Other Legal Implications:

35. The Council will enter into a contract broadly based upon the Highways Agency Managing Agent Contract form of contract (“MAC”) with project specific revisions. An options analysis deemed this the most suitable to underpin the scope of services and standards of delivery required by the Council.

POLICY FRAMEWORK IMPLICATIONS

36. The project is in line with the Council’s Local Transport Plan. The Council maintains control over setting policy and any policy changes will have to be considered and approved in light of the impact on the HSP and in accordance with Council priorities and objectives.

SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members’ Rooms and can be accessed on-line

Appendices

1.	Parameters for Entering into Contract with Preferred Bidder (Confidential)
2.	Financial and Value for Money (Confidential)

Documents In Members’ Rooms

1.	Addendum Outline Business Case
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Background Documents

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.	Outline Business Case 2008
2.	Highways Service Partnership Cabinet report - 15 th February 2010
3.	Highways Service Partnership Cabinet report – 30 th June 2008

Background documents available for inspection at: 45 Castle Way

KEY DECISION? Yes

WARDS/COMMUNITIES AFFECTED:	All
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