

**Summary Joint Working Agreement**  
**South Coast Councils Street Lighting PFI**

**1. Introduction**

The Councils have agreed to work in partnership for the purpose of carrying out a joint Street Lighting PFI (Private Finance Initiative) procurement for the replacement and continued maintenance of street lighting stock within the counties of Hampshire and West Sussex and the city of Southampton.

The joint working agreement shall, unless terminated earlier, continue in force until the earlier of all Parties having reached financial and commercial close or 31 December 2009. If the procurement results in a single contract between all three Councils and the successful Bidder, new joint working arrangements will be put in place for the duration of that contract.

The Parties will work together in good faith and in an open, co-operative and collaborative manner for the duration of the agreement. Each of the Parties represents that it has obtained all necessary consents sufficient to ensure the delegation of functions for the purpose of this agreement.

Subject to any relevant legal constraints the representatives of the Parties shall at all times act in the best interests of the Project and not necessarily their respective Councils.

The joint working agreement shall be a legally binding document, but shall not constitute a partnership (in the technical sense) and no Council shall have the power to contract on behalf of another unless expressly stated.

The Parties shall act in good faith in relation to all decision making and shall use reasonable endeavours to act by consensus where practicable. Certain designated matters can only be determined on a unanimous basis, all other decisions may be made on a majority basis. Those matters specified as requiring unanimity are: approving the form and content of the two key documents issued in the competitive dialogue process, short-listing of bidders and selection of the preferred bidder.

**2. Joint Task Force (JTF)**

The JTF shall provide political oversight to the Project and it shall be comprised of one Cabinet Member from each of the Councils. It will not have decision making powers save in relation to the dispute resolution procedure. It may also refer any matter to the Joint Project Board where it has concerns or wishes for further areas to be considered. The JTF shall meet as often as required for the purposes of the Project and as soon as is reasonably practicable in response to a request by a Party.

Each Cabinet Member shall have responsibility for approving all decisions on behalf of its respective Council within the constraints of their powers, unless these have been otherwise delegated to officers of that Council.

### **3. Joint Project Board (JPB)**

The JPB shall provide strategic direction to, and supervision of, the Project and shall be comprised of the Project Executive (as described below) and his equivalents from the other two Councils. In addition the JPB will draw upon the advice of suitable representatives from the Councils' legal, technical, and financial units.

A meeting of the JPB shall be quorate where at least two Councils are represented.

It shall give direction to the Joint Project Team in relation to the day-to-day management of the Project whilst retaining overall control and monitoring progress as appropriate. The JPB shall oversee and authorise the evaluation of responses from bidders at all stages of the procurement and prepare budget plans throughout the process in conjunction with appropriate risk assessments. It will also oversee and authorise negotiations with bidders and provide instructions in relation thereto.

The JPB may delegate any of its roles and responsibilities to the Joint Project Team, Project Executive or Project Director as it considers necessary.

### **4. Project Executive**

The Project Executive, or his deputy, shall give strategic direction to the Project and be accountable for key decisions relating to it. The JPB shall delegate such powers as it sees fit to the Project Executive to ensure effective decision making throughout the Project. The Project Executive, or where appropriate through his officer equivalent in the two other Councils, shall present key decisions to Members for approval and report to the Members for approvals where necessary.

The Project Executive shall consult with the representatives of all of the Parties prior to making any decisions in relation to the Project.

### **5. Project Director**

The Project Director, or his deputy, shall ensure the delivery of the Project and shall, in consultation with the Councils, take day-to-day management decisions.

The Project Director shall also manage negotiations with the Bidders, in conjunction with the relevant Lead Authority and the relevant pre-agreed negotiating remit.

### **6. Joint Project Team**

The JPT shall, in conjunction with the Project Director, have day-to-day management powers in relation to the Project, and shall meet as necessary to fulfill this role.

The JPT will undertake negotiations and evaluation of responses from Bidders, under the supervision of the JPB and shall liaise with the DfT, 4ps and other relevant bodies as and when needed.

## **7. Lead Authority**

The Parties have agreed that one of the Councils shall be appointed the 'Lead Authority' in relation to each of the specialist areas required for the Project, such as legal, financial and technical. The Lead Authority shall procure the appropriate external advisers and manage the advisers for the duration of the Project.

The Lead Authority shall act as the representative of the Parties in any discussions or negotiations with Bidders relating to the area in which they are leading. Prior to any such negotiations a meeting between the three Councils shall be convened to agree the appropriate negotiating remit.

Payments to the external advisers shall be made by the relevant Lead Authority which shall invoice the other Councils for their respective shares in accordance with the cost sharing proposals.

## **8. Commitment of resources**

The Parties shall commit such non-monetary resources to the Project as reasonably required from time to time.

## **9. Cost-sharing and indemnity**

The costs incurred in conducting the procurement shall be shared by the three Councils in accordance with agreed principles. In essence those principles provide that each Council bears its own internal costs and that all external costs where they have been incurred for the project as a whole, such as for advisers, shall be borne equally in one third shares albeit that where any such external costs relate specifically to a particular Council or its particular situation and have been sought specifically for its benefit then those specific costs shall be borne by that Council.

Each Party shall indemnify the others against any expenses etc in relation to personal injury or death of any person or any damage to property in relation to this agreement.

## **10. Termination**

It is hoped that it should not become necessary at any stage to terminate the joint working arrangements prior to conclusion of the Project and each of the Parties agrees to take reasonable steps to avoid such an event.

Where a dispute has arisen a Party shall not be entitled to terminate its interest under the agreement without first complying with the dispute resolution procedure set out. The procedure has four escalating stages to provide a means of resolving the dispute, the fourth and final stage comprising the appointment of an external adjudicator. The decision of the adjudicator binds all the Parties who wish to remain party to the Joint Working Agreement – albeit that the option of terminating, subject to the consequences outlined below, would be available to a Party which is not prepared to continue within the project based upon such decision.

Where a Party is in default of its obligations under the agreement and fails to comply with a notice from the other Parties concerning such default it may have its interest in the agreement terminated.

A Party may terminate its interest under the agreement by giving one month's written notice.

On termination by one Party the status of the remaining Parties under the agreement shall be unaffected. Such a step would though require the procurement to be unravelled back to a point where the sanctity of the procurement would not be prejudiced, in procurement law terms, by the withdrawal of one of the procuring parties. This would likely require the procurement to be rolled back at least to the commencement of the competitive dialogue process, namely the issuing of the Invitation to Submit Outline Solutions. In the event of a Party terminating its interests under the agreement it shall be liable to pay to the remaining Parties such additional sums as are reasonably incurred in adapting or re-procuring the Project in order to go back in the process and then proceed up to the point in the Project when the withdrawing Party actually withdrew. The nature of these costs is essentially the costs incurred by the remaining Parties to third parties in taking such steps and would not, for example, extend to internal costs or losses arising from a delay to the Project as such. The Joint Working Agreement states that the total liability payable by a terminating Authority shall be limited to the sum of £500,000 to each of the remaining Authorities. The City Council has an express right to withdraw without liability to make such payment in the event that it does so because it is awarded PFI credits for its Highways Maintenance Project.

## **11. Intellectual Property Rights**

All rights in any material created by or for a Party shall vest in that Party, and each Party grants the others a perpetual non-exclusive royalty free licence to use such material

The Parties shall endeavour to keep confidential all information which is of a confidential nature in relation to the Project.

## **12. Legal Compliance**

The Parties shall comply with all laws at all times and shall indemnify each other for any breach of this provision.

Each Party acknowledges that the others are subject to the requirements of the Freedom Of information Act 2000 and each Party shall where reasonable assist the others to comply with their obligations thereunder. The Parties shall wherever possible consult each other on their responses to information requests in relation to the Project.

### **13. Evaluation**

The Parties shall work together to evaluate and moderate all responses received from Bidders for the Project on a common basis.

Subject to any relevant legal constraints the Parties agree that the JPT shall work together to agree the evaluation of bids through discussion and agreement wherever possible and that where agreement on an evaluation cannot immediately be reached then the JPB shall devise and determine a moderation procedure which will be applied.

Should the evaluation of any Bidder response to the 'call for final tenders' lead to the Parties wishing to select different 'Preferred Bidders' they shall seek to agree a mutually advantageous contract cost-sharing arrangement to enable each Party to contract with the same Preferred Bidder.

### **14. Disputes**

Any disputes arising out of the agreement shall be dealt with in accordance with the procedure set out therein (which is described further under 'Termination' above), and the Parties must comply with this procedure prior to termination.