

DECISION-MAKER:	CABINET
SUBJECT:	HIGHWAYS SERVICE PARTNERSHIP: APPROVAL TO CALL FOR FINAL TENDER
DATE OF DECISION:	15 FEBRUARY 2010

REPORT OF: CABINET MEMBER FOR ENVIRONMENT AND TRANSPORT

AUTHOR:	Name: Mick Bishop	Tel: 023 80 832613
	E-mail: Mick.bishop@southampton.gov.uk	

STATEMENT OF CONFIDENTIALITY

Appendices 2, 4, 5 and 6 of this report are not for publication by virtue of categories 3 (financial and business affairs), and 7A (obligation of Confidentiality) of paragraph 10.4 of the Council's Access to Information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 bidders to the procurement. 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

Cabinet (30th June 2008) and Council (16th July 2007) granted approval to commence procurement of a highways service partnership (HSP) to deliver the Council's highways services. This approval required that the project return to Cabinet to confirm the business case and secure approval to call for Final Tender.

This report confirms there is still a clear business need to maintain and improve the overall condition of the network as well as the ongoing statutory need to manage, maintain and improve the highway network for the safe and convenient movement of people and goods. Based on information submitted as part of the procurement process there is a continuing business and value for money case for the implementation of the HSP.

RECOMMENDATIONS:

- (i) To delegate 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 take all necessary steps to close dialogue, issue Call for Final Tenders and appoint a preferred bidder within the parameters set out at Appendix 2, Annex 3.
- (ii) To approve the lease of office and depot space at Castle Way, Town Depot and future Dock Gate 20 City Depot to the successful Provider for a period commensurate with the term of the contract (or such lesser period as may be required) and to delegate authority to determine the final terms and conditions of any such leases to the Head of Property and Procurement.

REASONS FOR REPORT RECOMMENDATIONS

1. The dialogue stage of procurement with bidders is nearing completion. This process has provided evidence that the proposed implementation of a highways service partnership will provide a more effective and efficient service leading to improved performance levels and increased output. An Addendum to the original Outline Business Case has been produced to support these assertions.
2. 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 (approx £7.6m per annum).

CONSULTATION

3. Regular briefings have been provided to Cabinet and opposition Members. OSMC have received a briefing paper. Staff and Trade Unions have been consulted regularly through the process.
4. External consultation has taken place with the Audit Commission and Local Partnerships both of which provided input into the risks associated with the project. Appendix 6 details the key issues raised and the Council's action in response.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 5 A Strategic Business Case included an options appraisal which determined, in the absence of significant additional 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.
- 6 An Outline Business Case (OBC) set out a detailed options appraisal considering the form of Partnership which best met the Council's objectives.

DETAIL

Benefits and Value for Money

- 7 The forecast benefits of the HSP, as set out in the original OBC and previous Cabinet report are as below and described in more detail in Appendix 1.
 - Inefficiencies driven out from service delivery and reinvested back into the highways network
 - Increased investment in the service delivery infrastructure
 - Increased capacity and resources available to deliver the service
 - Increasing the service performance level
 - Maintaining and improving the customer focus
- 8 The value for money case as forecast in the original business case (2008) and the updated business case (2010) is set out in Appendix 2.

- 9 The revenue cost will be fixed for the life of the contract (subject to any change to the specification) via an annual Lump Sum payment. Value for money (vfm) can be demonstrated by comparing existing budget for delivering services with the Lump Sum cost for delivering the same services at a higher performance level.
- 10 Evaluating vfm on capital schemes is achievable, albeit there are risks involved in ensuring vfm on an ongoing basis. At Final Tender bidders will price capital schemes which the successful bidder will be required to deliver. The Council will also have priced these schemes using existing delivery arrangements enabling a vfm comparison at contract initiation. These schemes 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.

Service and Contractual Positions

- 11 Scope –The dialogue has not provided any rationale to justify a fundamental change to the scope of services set out in previous reports to Members. Appendix 3 details the scope of services to be included.
- 12 Performance Framework – A comprehensive performance regime (Appendix 4) has been developed which will incentivise the Provider to achieve required performance levels, ensuring the Council does not pay for a sub-standard level of service.
- 13 Service Levels - All existing service and intervention levels will be retained and/or improved. However, performance levels (e.g. % of repairs completed in prescribed timescale) will increase significantly. Category 2, minor defects, will be repaired using a risk based planned programme of works which will provide a more efficient approach to repair. Appendix 4 provides a summary table of performance indicators.
- 14 The capital maintenance programme will be based on a clear asset management approach yet also take into account wider Council priorities and objectives. A 5 year Forward Programme of works will be produced. An Annual Plan of works will be agreed as a Target Cost when annual budgets are confirmed. It will be agreed on an annual basis between the Council and Provider. Therefore, the Council can review the focus (e.g. carriageway or footway or mix) of the capital programme on an annual basis.

Key Contractual and Commercial Positions

- 15 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.
- 16 Guaranteed Capital Funding – The Council has an approved strategy for funding capital maintenance on the highway (Council 16/07/08). However, no value for money case has been demonstrated through the procurement process to justify a contractual guarantee of capital funding.

- 17 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 performance.
- 18 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, this income can only be spent on highways related schemes and the key project driver is to reinvest into the network. Appendix 5 describes the commercial positions in more detail.

Key Risks

- 19 Although reinforced through the procurement process, the benefits and vfm are still currently only forecast. Final Tenders will provide final prices which Cabinet will be required to consider as part of the Contract Award process. A more detailed Financial Risk analysis is attached at Appendix 2.
- 20 There will be a more planned approach to delivering works under the partnership. This will be more efficient but will lead to a less reactive service reducing ad hoc directed works. The contract has been drafted to retain a degree of flexibility for the Council. Changes to the service specification, especially increased service requirements, will likely incur extra cost to the Council. A distinction should be drawn here between flexibility (using same level of resources to refocus services) and change (requiring additional resources at cost).
- 21 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. As many services as possible have been included within the Lump Sum service, yet there will be ad-hoc services which require additional payments.

Timetable and Call for Final Tender

- 22 Final Tenders are scheduled to be requested on 26th February for return on 1st April 2010. The preferred bidder is due to be appointed in mid-April provided bids fall within the parameters set out in Appendix 2, Annex 3. Contracts will be finalised with the preferred bidder prior to a further report to Cabinet, confirming affordability and vfm, as early as possible in June 2010. Service Commencement is due 1st October 2010.
- 23 The evaluation criteria to be used for Final Tenders will be:
Approach to Service Delivery – 50%
Financial – 30%
Legal and Commercial – 15%
Integrity and Deliverability – 5%

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 highways will be transferred the partnership. The Council will be committed to the revenue budget for the contract period. Any savings in revenue from a reduced lump sum price will be re-invested back into the highways network.
- 26 A Contract Management and Client Team is being established currently and will be funded through top-slicing of the revenue budget.

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.
- 28 It is intended that the Provider will be charged only a nominal rent and service costs on the basis that any rent charged will simply be passed back to the Council in the service cost, potentially at a mark-up.

Other

- 29 In terms of employees, 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 seek admission to the Local Government Pension Scheme but if this is refused / impractical 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.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

- 32 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 EU

Procurement Rules as enacted in the Public Contracts Regulations 2006

33 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 NRSWA 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:

34 The Council will enter into a contract 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

35 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.	Benefits
2.	Financial and VFM (Confidential)
3.	Scope
4.	Performance (Confidential)
5.	Commercial (Confidential)
6.	Summary of External Reviews (Confidential)

Documents In Members' Rooms

1.	Addendum Outline Business Case
----	--------------------------------

Background Documents

Outline Business Case 2008

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

1.	None	
----	------	--

Background documents available for inspection at:

45 Castle Way

KEY DECISION?

Yes

WARDS/COMMUNITIES AFFECTED:	All
------------------------------------	-----