

NEW CONSORTIUM AGREEMENT FOR THE EASTERN SHIRES PURCHASING ORGANISATION

To: **Cabinet**

Date: **15th April 2014**

From: **LGSS Director: Law, Property and Governance**

Electoral division(s): **All**

Forward Plan ref: **N/a** *Key decision:* **No**

Purpose: **To seek Cabinet approval of the new Consortium Agreement between Member Authorities of the Eastern Shires Purchasing Organisation (ESPO).**

Recommendation: **That Cabinet resolves to**

- 1. Delegate approval of the Consortium Agreement between the Member Authorities of ESPO in substantially the terms set out in this report to the LGSS Director: Law, Property and Governance; and**
- 2. Delegate authority to the LGSS Director: Law, Property and Governance to enter into the Consortium Agreement; and**
- 3. Approve the recommendations set out the confidential Appendix to this report.**

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1. BACKGROUND

- 1.1 The County Council has since 1988 been a member of the Eastern Shires Purchasing Organisation (ESPO), which is governed by a joint committee of Member Local Authorities (the ESPO Management Committee) and a Members' Agreement. ESPO is essentially a purchasing consortium which enables the Member Authorities and other customers to purchase goods and services at competitive rates and to access procurement advice and training. The Member Authorities share the trading surplus generated by ESPO each year. Leicestershire County Council is the Servicing Authority for ESPO.
- 1.2 The seven Member Authorities of ESPO are Cambridgeshire County Council, Leicester City Council, Leicestershire County Council, Lincolnshire County Council, Peterborough City Council, Norfolk County Council and Warwickshire County Council. The Member Authorities have recently undertaken a member led business strategic review of ESPO's role and purpose with the objective of enhancing its performance and establishing greater accountability and transparency in its governance arrangements. The production of a new Consortium Agreement which includes a new constitution for the ESPO Management Committee was an essential part of the process of implementing the changes recommended by that review
- 1.3 The Management Committee which met on 7th March 2013 considered a report recommending the adoption of the new Consortium Agreement. Six authorities, including Cambridgeshire County Council, agreed that the Management Committee should approve the Consortium Agreement, recommend it to individual authorities for their Agreement and authorise the Consortium Secretary to make the necessary arrangements for any final drafting amendments to be made, for liaison with individual Member Authorities and for execution of the Agreement. One authority was unable to agree to the wording in the draft Agreement at that time.
- 1.4 Discussions between that Authority and the other Member Authorities have taken place and the outcome thereof is set out in the confidential annex to this report.

2. MAIN ISSUES

- 2.1 The principal provisions of the new Consortium Agreement are summarised below. The new Consortium Agreement:
 - Replaces all previous agreements between the Member Authorities relating to ESPO.
 - Defines the Functions of ESPO and details of the services to be provided by ESPO as core, additional and developing services (Schedule 2 to the Agreement).
 - Establishes a clear management and scrutiny structure for ESPO. ESPO will continue to be governed by the Management Committee and its constitution is set out at Schedule 1 to the Agreement. The constitution defines the terms of reference of the ESPO Management Committee, the Chief Officers Group, delegations to the ESPO Consortium Treasurer, the ESPO Consortium Secretary and the Director of ESPO, the terms of

reference of the ESPO Finance and Audit Committee, Financial Regulations and Contract Procedure rules for ESPO. Each Member Authority will continue to appoint 2 members to the ESPO Management Committee.

- Leicestershire County Council will continue to be the Servicing Authority for ESPO, unless and until it resigns from that role, the Member Authorities agree to replace it, or it is required to resign due to misconduct. The role of the Servicing Authority is defined at Schedule 3 to the Agreement. The Servicing Authority will:
 - a) Employ all staff engaged on ESPO activities;
 - b) Provide professional advice to ESPO;
 - c) Enter into contracts in relation to ESPO;
 - d) Hold all assets acquired for the purposes of ESPO and the benefit of all contracts on trust for all Member Authorities, in equal shares and maintain an Asset Register. Every 5 years an independent valuation of the assets will take place;
 - e) Manage the ESPO premises at Grove Park;
 - f) Ensure suitable insurance is maintained against all risks connected with the functioning of ESPO to the level of cover as set out in the financial regulations at Schedule 1 to the Agreement;
 - g) Provide information and reports together with the Director of ESPO, the Consortium Treasurer and the Consortium Secretary, to the Management Committee to enable it to monitor the performance of ESPO;
 - h) Monitor compliance by ESPO with the business plan and all policies and operating standards; and
 - i) Respond to claims against ESPO.
- Term - the Agreement will commence on the date of completion by all Member Authorities and will continue until such time as the Member Authorities agree to terminate it.
- Termination may occur:
 - a) upon dissolution, if all Member Authorities agree to discontinue the operation of ESPO. The Assets of ESPO will be used to defray all liabilities and any surplus Assets will be distributed in equal shares between the Member Authorities or in such other apportionment as the Management Committee may unanimously resolve; or
 - b) where any Member Authority gives 12 months' notice to terminate its Membership of the Management Committee. The terminating Member Authority will be liable to the other Member Authorities for all directly attributable costs arising from such termination.

- ESPO will be self financing. At the end of each financial year the ESPO Management Committee will approve a distribution of the trading surplus between the Member Authorities in proportion to their level of purchasing through ESPO in that Financial Year.
- The ESPO Management Committee will ensure the Director of ESPO provides an Annual Report and each Member Authority may request additional information.
- Each Member Authority will indemnify the Servicing Authority and in doing so will pay an equal share of all liabilities it incurs in carrying out its functions. Such liabilities will be met first through any insurance compensation, then from Assets. This indemnity will not apply where the liability is incurred in consequence of the Servicing Authority's misconduct.
- The Servicing Authority will be responsible for handling all claims made against ESPO. Where the Servicing Authority needs to incur expenditure to respond to any claim, which cannot be met through insurance or the application of any property or Assets then it may give notice to the ESPO Management Committee and the Member Authorities will reimburse the Servicing Authority in equal share for such expenditure or in such other apportionment as the ESPO Management Committee may resolve. Where the Servicing Authority is successful in pursuing any claim it will first repay the Member Authorities for any contributions they have made and then reimburse the funds of ESPO.
- If a claim is made against a Member Authority which should have been directed the Servicing Authority to deal with, the other Member Authorities will indemnify the Member Authority and in doing so pay an equal share, or such apportionment as the Management Committee may resolve by unanimous agreement, of the costs incurred by that Member Authority.
- Where a Member Authority suffers loss because ESPO has acted otherwise than in accordance with that Member Authority's instructions, the matter shall be referred to dispute resolution. This addresses the situation where ESPO has awarded a contract for the benefit of some, but not all of the Member Authorities.
- The Consortium Agreement may be varied by unanimous agreement.
- Dispute resolution is undertaken by escalation through the Director of ESPO to the ESPO Management Committee.

2.2 The new Consortium Agreement has been scrutinised by the Chief Officers Group of the ESPO Member Authorities and by the ESPO Management Committee. It is considered that the new Consortium Agreement will enable the Member Authorities to have a greater role in scrutiny of the operations and future direction of ESPO than has been the case in the past and that it clarifies the liabilities and benefits that will accrue to each Member Authority. Cabinet is accordingly recommended to approve the terms of the new Consortium Agreement set out in this report.

3. ALIGNMENT WITH PRIORITIES AND WAYS OF WORKING

3.1 Developing the local economy for the benefit of all

There are no significant implications for this priority.

3.2 Helping people live healthy and independent lives

There are no significant implications for this priority.

3.3 Supporting and protecting vulnerable people

There are no significant implications for this priority.

3.4 Ways of working

There are no significant implications identified by officers for leadership, working locally or investing in growth.

4. SIGNIFICANT IMPLICATIONS

4.1 Resource and Performance Implications

Under the terms of the new Agreement, Leicestershire County Council will continue to serve as the Servicing Authority, continuing its responsibility for employing staff, arranging the provision of finance advice, internal audit, insurance services, legal advice, IT support services, committee services, secretarial and administrative support, payroll and human resources advice for and on behalf of ESPO and such other ancillary professional or support services as may be agreed by the Management Committee ensuring the most cost effective approach for the Member Authorities.

The costs of all such support services incurred by the Servicing Authority are reimbursed through ESPO and there are therefore no direct resource implications; however, the adoption of the new Consortium Agreement forms part of a process to improve the efficiency of decision-making and the management of risk.

4.2 Statutory, Risk and Legal Implications

The legal risks and implications are set out in paragraph 2.1 of the report.

4.3 Equality and Diversity Implications

There are no significant implications for equality and diversity.

4.4 Engagement and Consultation Implications

The proposals do not impact on a community and no community assessment is required.

4.5 Public Health Implications

None

Source Documents	Location
Local Government Act 1972	www.legislation.gov.uk/ukpga/1972/70