

**STREET LIGHTING PRIVATE FINANCE INITIATIVE (PFI) - AWARD OF CONTRACT**

*To:* **Cabinet**

*Date:* **26 October 2010**

*From:* **Acting Executive Director: Environment Services**

*Electoral division(s):* **All**

*Forward Plan ref:* **2010/035** *Key decision:* **Yes**

*Purpose:* **Determine the award of the street lighting PFI contract to Balfour Beatty in accordance with the Competitive Dialogue Procedure as set out in Regulation 18 of the Public Contracts Regulations 2006**

*Recommendation:* **Cabinet is recommended to:**

- (i) Confirm the award of the Street Lighting PFI Contract, in accordance with the Competitive Dialogue Procedure as set out in Regulation 18 of the Public Contracts Regulations 2006, to Connect Roads Cambridgeshire Limited the special purpose vehicle established by Balfour Beatty to deliver the Street Lighting PFI project, but noting that such award is subject to statutory standstill requirements and approval of the Final Business Case by the Department for Transport (DfT) and conditional upon receipt of final and formal confirmation of PFI Funding for the Project from DfT and upon satisfactory resolution of all outstanding matters in accordance with recommendation ii) below;**
- (ii) Confirm delegated authority to the Local Government Shared Services (LGSS) Director of Finance or in his absence the LGSS Director of Legal Services to enter into the Street Lighting PFI Contract Documents listed at Appendix A of this report and any other related contracts, agreements and instruments required to give effect to the Project (including, but not limited to, collateral warranties and direct agreements) once (a) final and formal confirmation of PFI funding for the Project has been received from the DfT; and (b) any final outstanding issues had been addressed to the satisfaction of the Acting Executive Director: Environment Services and the LGSS Director of Finance in consultation with the Cabinet Members for Growth Infrastructure and Strategic Planning and the Cabinet Member for Resources and Performance;**
- (iii) Confirm: (a) that the LGSS Director of Finance or in his absence the LGSS Director of Legal Services be**

authorised to give certificates of vires under the Local Government (Contracts) Act 1997 in respect of the Private Finance Initiative (PFI) Project Agreement, Funder's Direct Agreement (and for any other of the Project Contract Documents as may be considered necessary by the LGSS Director of Legal Services); and (b) that the LGSS Director of Finance or LGSS Director of Legal Services (as the case may be) be indemnified by the Authority in accordance with the provisions of the Local Authorities (Indemnities for Members and Officers) Order 2004 in respect of any liability arising from his/her signing of such certificates and that the terms and form of such indemnity be finally settled by the LGSS Director of Legal Services;

- (iv) Confirm Cambridgeshire will work with Northamptonshire to deliver cost effective contract monitoring and to continue the working relationship on street lighting which includes the formation of a Members Contract Board.

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## **1. BACKGROUND**

- 1.1 Following Cabinet approval of the preferred bidder status to Balfour Beatty in July 2010 this paper is to ask Cabinet to award the street lighting PFI contract to Connect Roads Cambridgeshire Limited the special purpose vehicle established by Balfour Beatty to deliver the Street Lighting PFI project. The PFI credits are to replace about 80% of the Council's street lighting stock together with all its illuminated signs and bollards.
- 1.2 This much needed investment is necessary because over many years there has been a national under investment in street lighting. As a result there is a significant backlog and a high percentage of street lighting columns beyond their design life of 25 years.
- 1.3 The project is to replace approximately 44,000 of the 52,000 street lights, replace all the illuminated road signs with new or de illuminated road signs. Additionally it replaces all the illuminated bollards, to which the majority will be replaced with solar powered bollards.
- 1.4 This investment provides an opportunity for old and inefficient street lighting to be replaced with modern and energy efficient lighting with good opportunities to make savings in its energy usage.
- 1.5 The Council stated in its Outline Business Case (OBC), if successful, that it would work with Northamptonshire County Council in the procurement of the project and could also continue to work together post award in a single contract monitoring team.
- 1.6 Cambridgeshire and Northamptonshire formed a single project team (known as Eastern Shire Counties Partnership - ESCP) with joint appointments of the external advisors. This provided significant savings in officer time and external advisor costs during the procurement process.
- 1.7 ESCP while working together determined that there would be two separate PFI contracts, one for each Council. As a consequence of the joint working, the project team were able to develop one common set of contract documentation for the two Councils, with only a few minor Council specific provisions. This assisted the respective bidders in also reducing procurement costs for this project.
- 1.8 The procurement phase for this project started in August 2008 with an Industry Day where 11 organisations attended to hear from the joint project team and to have the opportunity to discuss further with both Councils their respective aims and objectives for the project.
- 1.9 The Local Partnerships (formally 4Ps) had previously published an Official Journal of the European Union (OJEU) Contract Notice pursuant to the Competitive Dialogue procedure within the Public Contract Regulations 2006 which included information about all the Councils who were allocated PFI credits at the same time. Officers from Cambridgeshire were involved in the evaluation of the pre qualification submissions from the respective organisations.

- 1.10 Following the award of the preferred bidder status, at Cabinet on 5 July 2010, to Balfour Beatty, the fine-tuning and clarifications as permissible under the Public Contract Regulations 2006 have now been concluded.

## **2 MAIN ISSUES**

- 2.1 The Project Team has developed an output specification which will provide Cambridgeshire with a high quality street lighting infrastructure with light levels commensurate with the respective need. Additionally the output specification includes for the dimming of light levels for both traffic routes and for residential roads. The dimming regimes for each category are slightly different but result in a maximum of 40% dimming for both categories. This results in the light levels being more appropriate for the numbers of vehicles and pedestrians on the network during the quieter parts of the night.
- 2.2 The proposed street lighting lantern types, modern switch gear together with the dimming regime are expected to provide significant savings in energy once the core investment programme (CIP) has been concluded (projected to be in 2016).
- 2.3 The Project Team explored with bidders the option for a Central Management System (CMS). The CMS proposals did not form part of the evaluation of the Final Tenders, however it was agreed that the CMS solution as set out in the Final Tender should be included in the Cambridgeshire contract when awarded and this was approved by Cabinet as part of its decision in July.
- 2.4 Northamptonshire County Council have appointed Connect Roads Northamptonshire Limited, the Balfour Beatty special purpose vehicle created by them, to deliver the street lighting project in Northamptonshire as their preferred bidder and are expected to appoint them as the Service Provider. As a result there will be annual efficiency savings for both Councils with the Service Provider able to share senior management, depots, plant and labour

## **3. AWARD OF CONTRACT**

- 3.1 Since the Cabinet decision of 5 July 2010 to award preferred bidder status to Balfour Beatty, the Project Team has now completed all the fine tuning matters outstanding and, as a result, all contractual elements have been agreed and are in place for the award of the contract.
- 3.2 A decision on the confirmation of the PFI Credits from the Department for Transport (DfT) is expected any time and the up to date position will be reported at Cabinet. Confirmation has not been received to date, however DfT have commented favourably on the content of our Final Business Case (FBC) prior to its submission
- 3.3 It is clear that without the DfT confirmation of the funding, this contract cannot go ahead.
- 3.4 Northamptonshire are at the same stage in the award as Cambridgeshire. However for them, the decision to award the contract has already been delegated to their Executive Director. This gives them flexibility in the award once the funding confirmation from the DfT has been received. This will allow for a mobilisation plan to deliver a service commencement date of early February 2011.

- 3.5 If the funding decision from DfT is not available at this Cabinet, then the next opportunity for there to be an award of this contract by Cabinet is 16 November with it included within the Cabinet Report to full Council in December.
- 3.6 As a consequence, if Northamptonshire move forward to award and Cambridgeshire waits until November the two Councils will be out of step with each other and there may be implications both in the efficiencies achievable through awarding both contracts to the same Service Provider and to the commencement of service delivery and ongoing monitoring arrangements.
- 3.7 The outcome of such a situation is that they would start the mobilisation period and be in a position for commencement in early February, while Cambridgeshire will be waiting until 16 November to award, move to financial close in late November or early December and for mobilisation for Cambridgeshire sometime after April 2011.
- 3.8 Cabinet will be aware that at final tender, the predicted contract costs showed a saving from the existing street lighting service. Since final tender, further work has been done on the street lighting inventory to ensure it is as up to date as it can be by picking up recent road adoptions. As a consequence, the contract sum is likely to be slightly higher than at final tender. The revised contract figures are set out in Confidential Appendix B.
- 3.9 Cabinet therefore is asked that if the confirmation of PFI credits from DfT has not been received by 25 October, the decision to award the street lighting PFI contract be delegated to the LGSS Director of Finance (Section 151 Officer) supported by the Cabinet Member for Growth, Infrastructure and Strategic Planning, and Cabinet Member for Resources and Performance subject to confirmation that the credits have been allocated to Cambridgeshire for Street Lighting PFI from the DfT.

### **Final Business Case (FBC)**

- 3.10 In accordance of the SoPC4 requirements, Government require Cambridgeshire to submit an FBC to support our PFI credit application.
- 3.11 The Council submitted an Interim Final Business Case in January 2010 and it was approved in April 2010 - which sets out the technical, legal and financial position for the project. It also contained a detailed set of proposed derogations from the 4<sup>th</sup> version of the Government's Standardisation of PFI Contracts Version 4(SoPC4) requirements for each Bidder. These derogations were approved by Local Partnerships on 12<sup>th</sup> March 2010.
- 3.12 The FBC builds on the Interim Final Business Case (IFBC) and completes the final position for all the technical, legal and financial elements of the project for Cambridgeshire. Cabinet in July approved the FBC and delegated authority to the Acting Executive Director: Environment Services and the LGSS Director of Legal Services, in consultation with the LGSS Director of Finance (Section 151 Officer), to make any necessary amendments to approve the FBC and to submit it to DfT for final funding approval. The FBC was duly submitted to the DfT.

## **Statutory Power to Undertake Proposals in the Report:**

- 3.13 The legal powers to pursue the procurement as outlined in this report are contained in the Highways Act 1980 and the Local Government Acts 1972, 1999 and 2000. The procurement process itself is governed by the EU procurement rules (as implemented into UK law by the Public Contracts Regulations 2006 as amended). The LGSS Director of Legal Services has confirmed that Cabinet is the appropriate body to agree the award of the Street Lighting PFI Contract.
- 3.14 The Project Agreement is based on SoPC4 which is developed for PFI contracts as amended by Local Partnerships for the purpose of creating a standard form contract specifically for street lighting PFI's. Further, any derogations from SoPC4 which fundamentally alter the risk allocation must be signed off by DfT and Local Partnerships. All derogations so far to SoPC4 in this procurement have received such sign offs

## **Other Legal Implications**

- 3.15 In implementing the proposals set out in this report, in particular, the placement and maintenance of lighting, regard will be given to the Council's duties under S.17 of the Crime & Disorder Act 1998 and the requirement to exercise the Council's functions having regard to the need to reduce crime and disorder together with assessing the impact on communities and individuals under the Human Rights Act 1998.

## **4. PROPOSED TIMETABLE**

- 4.1 Following the award of the contract based on the recommendations in this report, the Project Team will work with the Service Provider to achieve financial close in early November 2010 and to approve and monitor the Service Providers mobilisation plan, to enable a proposed service commencement date of 1 February 2011.
- 4.2 There are street lighting staff, employed by Atkins, who are presently in the Cambridgeshire Highways Partnership, and who will transfer to the Service Provider at the time of the commencement of service. Atkins have been cooperating with the project team to ensure there is a seamless transition of street lighting staff presently working for them and now on the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) list.

## **SIGNIFICANT IMPLICATIONS**

### **Resources and Performance**

#### **Finance**

- 5.1 This project will deliver up to an additional £57 million of PFI credits which will be PFI Grant (PFIG) spread over the full 25 years of the project. The funds are much needed to improve the quality of the street lighting inventory.
- 5.2 As a result of this funding, the agreed output specification will deliver significant savings in energy as a result of the modern switch gear and the proposed dimming

of light levels. Additionally the Council transfers the risk of liability for any increase in energy usage as a result of his design solution, and he is incentivised to develop solutions which will deliver greater energy usage savings.

- 5.3 The Carbon Reduction Commitments (CRC) have been introduced since the development of the OBC and as a result, the potential savings in carbon converted into CRC has not been taken into account in any calculations. The proposed output specification should realise a saving of potentially £40,000 per annum after 2016.
- 5.4 Competitive prices have been negotiated which allow some headroom against adverse movements in the financial market. However, any movements in funder margins and underlying Swap rates (the finance market rate used for long term contracts) remain with the authority up to Financial Close.
- 5.5 At the current time, Swap rates are low and, factoring in the funders' Swap premium, equate to approximately 4.25%. The bids received have been based on Swap rates of 4.50%, and with premiums, these equate to approximately 4.80%. The current estimated the sinking fund contribution therefore incorporates some headroom over today's market conditions.
- 5.6 If however, the Bank of England does increase interest rates towards Financial Close, Swap rates will increase. The Project Team believe there is sufficient headroom in the affordability gap to absorb the most likely increases.

## **Key Risks**

- 5.7 The principle of the SoPC4 project is that it provides a substantial transfer of risk to the service provider. This includes
- Condition of stock
  - Recovery of traffic accident damage
  - Vandalism
  - Energy consumption
  - A breach by the service provider of any of its obligations under this contract which materially and adversely affects the performance of the Service.
  - Persistent breach by the service provider.
  - Latent defects in existing or new apparatus
  - Condition of lighting columns on expiry ( 5 years residual life requirement)
- Passive safety columns within the output specification and the respective bidders mark ups.
- 5.8 Other risks however stay with the Authority because they are risks that the Service Provider cannot manage or price for over twenty five years, or because the Council is better placed to assume these risks on the basis of a value for money assessment. These risks include
- Energy tariff- which is already with the Council.
  - Legislative or regulator changes, which are not foreseeable.
  - Changes required by the authority.
  - Provision of passive safety columns where traffic speeds are in excess of 40 mph and columns are close to the edge of carriageway, and not covered by the respective bidders mark ups of the output specifications.
  - Excessively high length of private cable network.

- any new lighting installed (as part of Council works or developer works) will be 'accrued' into the PFI contract at a cost per unit.
- cost inflation in line with the retail price index in respect of that element of the cost that relates to operational costs.

## **Statutory Requirements and Partnership Working**

- 5.9 The Council is presently responsible for the street lighting stock and its condition because it's exercised its power to provide road lighting, it now has a statutory duty to maintain the lighting.
- 5.10 The Council has been working with Northamptonshire County Council as Eastern Shire Counties Partnership (ESCP) and the procurement process has delivered efficiency savings and discussions are ongoing to form a contract monitoring team.

## **Climate Change**

- 5.11 The use of modern efficient street lighting apparatus including lanterns, switch gear and dimming regimes, which together with the de illumination of road signs and bollards will provide substantial savings in energy and as a result reductions in carbon and yet still providing a good quality lighting.

## **Access and Inclusion**

- 5.12 This contract will deliver improved lighting for all centres of population and assist all members of the community to move about at night with an improved (white) light source. This should increase modal shift and encourage the public to use public transport.

## **Engagement and Consultation**

- 5.13 The Service Provider has developed a consultation plan for this project. As the replacement programme develops the Council and Service Provider will engage with the communities in advance of any works starting on site.

<b>Source Documents</b>	<b>Location</b>
<i>Street Lighting – Expression of Interest</i> <i>Street Lighting Outline Business Case</i> <i>Memorandum of Understanding</i> <i>Supplemental to the Memorandum of Understanding</i> <i>Cabinet Paper May 2008</i>	<i>A Wing Castle Court</i>

## Appendix A

### **Street Lighting PFI Contract Documents**

- a) the Sub-Contractor Direct Agreement;
- (b) the Senior Lenders" Direct Agreement;
- (c) the pensions Admission Agreement;
- (d) an agreement to appoint an Independent Certifier to assess the quality of the work;  
and
- (e) the Custody Agreement, together with any other documentation ancillary or additional to the above necessary for the completion of the project (Project Documents) once all outstanding issues have been addressed to the satisfaction of the Acting Director for Environment in consultation with the Cabinet Member for Growth, Infrastructure and Strategic Planning and the Cabinet Member for Resources and Performance within the parameters set out in this report for all technical, legal and finance matters and specifically these are:
  - (i) Technical – to reflect the requirements of the Output Specification
  - (ii) Financial – That the annualised contract price (net of PFI grant) remains within the current 2010/11 street lighting budget, as agreed by council as part of the Integrated planning process budget approved by Cabinet on 16 March 2010.
  - (iii) Legal – within Standardisation of PFI Contracts version 4 (SoPC4) subject to any derogations from this being approved by the Department for Transport and Partnerships UK (PUK)

### **Confidential Appendix B (to be handed out on the day)**