

**STREET LIGHTING PRIVATE FINANCE INITIATIVE (PFI) - APPOINTMENT OF
PREFERRED BIDDER**

To: **Cabinet**

Date: **5 July 2010**

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

Electoral division(s): **All**

Forward Plan ref: **2010/0006**

Key decision: **Yes**

Purpose: **To provide an update on the Street Lighting PFI Procurement and to recommend the appointment of a preferred bidder' and associated recommendations relative to the procurement, following the evaluation of the final tenders. Appendices A, B and C which are confidential and contain exempt information not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972. (Information relating to the financial or business affairs of any particular person (including the authority holding that information) will be provided to Cabinet Members separately as background information.**

Recommendation: **Cabinet is recommended to:**

- i) appoint the Bidder with the highest Final Tender evaluation score as the Preferred Bidder as detailed in confidential Appendix A of this report, which summarises the key elements of the two bids and the Final Tender evaluation outcome subject to the acceptance by the Bidder of the terms of the Preferred Bidder Letter.**
- ii) confirm that the Central Management System (CMS) as detailed in confidential Appendix B and proposed by the Preferred Bidder should form part of the clarification with the Preferred Bidder with a view to deciding whether it is being included in the Contract.**
- iii) authorise the Acting Executive Director : Environment Services, following consultation with the Cabinet Member for Growth, Infrastructure and Strategic Planning, to sign the Preferred Bidder Letter with the Bidder appointed pursuant to recommendation (1) once any outstanding issues have been addressed.**

- iv) request a further report be brought to Cabinet prior to the award of the Contract and to note that one of the criteria for formal award of Contract will be confirmation of funding from the Department for Transport.
- v) approve the Final Business Case in Appendix C and to delegate to the Acting Executive Director: Environment Services and in consultation with the Corporate Director: Finance Property and Performance the authority to make any necessary amendments to it and to submit the Final Business Case to the Department for Transport for final funding approval.
- vi) approve the Final Business Case in Appendix C and to delegate to the Acting Executive Director: Environment Services and in consultation with the Corporate Director Finance Property and Performance the authority to make any necessary amendments to it and to submit the Final Business Case to the Department for Transport for final funding approval.
- vii) authorise the Acting Executive Director: Environment Services in consultation with the Cabinet Member for Growth, Infrastructure and Strategic Planning and the Head of Legal Services to take any further actions necessary to give effect to the above decisions and ongoing procurement arrangements prior to award of the Contract.
- viii) note the procurement process to date and the proposed timetable and arrangements for the remaining stages of the procurement.

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1. BACKGROUND

- 1.1 Following Cabinet approval of an Outline Business Case (OBC) for Private Finance Initiative (PFI) credits in January 2007 and a further approval of a revised OBC in May 2008, the Council was awarded £57.2 million in PFI credits by the Department for Transport (DfT) on 16 September 2008. 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. Failure to procure this work through the PFI process would put significant risk on the authority as a result of the need to replace lamp columns as they become a safety risk to highway.
- 1.3 The OBC sets out the operational and financial justification for the PFI credits which included savings as a result of reduced night time accidents and on street crime. The cost benefit ratio in the submitted OBC was 4.8.
- 1.4 The project provides for the replacement of approximately 44,000 of the 52,000 street lights, and all the illuminated road signs with new or de-illuminated road signs. Additionally it replaces all the illuminated bollards, the majority of which will be replaced with solar powered bollards.
- 1.5 This investment provides an opportunity for old and inefficient street lighting to be replaced with modern, energy efficient lighting and opportunities to make savings in energy usage.
- 1.6 As a result of the pressures on all budgets, and following discussions on the OBC at Cabinet, the project team has worked with all bidders to seek to ensure that the Solutions are within the Council's affordability parameters.
- 1.7 The Council stated in its OBC, 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.
- 1.8 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. The team included Cambridgeshire Officers from both the professional and financial areas plus external advice in legal, technical and financial areas.
- 1.9 ESCP, while working together, determined that there would be two separate PFI contracts, one for each Council, and that this may result in the same service provider or two different service providers. 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.

- 1.10 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.
- 1.11 The Local Partnerships (formally 4Ps) had previously published an Official Journal of the European Community (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.
- 1.12 Following the pre-qualification process, a comprehensive and robust competitive dialogue process was carried out by the project team to arrive at final solutions from the remaining two bidders. Details of the competitive dialogue process undertaken are set out at Appendix A.
- 1.13 The final stage in the procurement process is the Invitation to Submit Final Tenders (ISFT) and following further detailed dialogue with the two remaining bidders, dialogue was closed on 14th April 2010 and Final Tenders were received on 12th May 2010.
- 1.14 During the final round of dialogue meetings leading up to the close of dialogue all substantive technical, legal and financial areas were discussed with the bidders. Once dialogue has been closed only fine-tuning and clarifications are permissible under the Public Contract Regulations 2006.

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 and 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. Appendix B summarises the position in relation to CMS.
- 2.4 The bidders were also invited to provide both Councils with efficiencies which they would expect to achieve if the same bidder were to be successful in both Councils; the Northamptonshire Cabinet is scheduled to determine their preferred bidder on 13 July 2010. There is an additional potential advantage

of combining two adjacent councils into one delivery vehicle. These efficiencies did not form part of the evaluation of Final Tenders but have been identified as part of the process to ensure they will be realised if this eventually occurs.

3. FINAL TENDER EVALUATION

- 3.1 Final Tenders were evaluated using a set of pre-agreed evaluation criteria and weightings which were fully disclosed in the ISFT. The Final Tenders were evaluated at 3 Tiers. Details of this evaluation are set out in Appendix A of the confidential part of this report.

Preferred Bidder Letter

- 3.2 A draft Preferred bidder letter was discussed and agreed with each of the bidders prior to close of dialogue.

Preferred Bidder Stage and Further Report to Cabinet at Award

- 3.3 The Preferred Bidder stage is the final stage before Financial Close. The Bidder and its Funders participate in the Preferred Bidder discussions and the continuing tendering exercise at their own risk and expense as they have done throughout the earlier stages. The Council is not, at this stage giving any commitment to enter into a contract with the Bidder and it reserves the right to withdraw the Bidder's status as Preferred Bidder at any time. This reiterated in the Preferred Bidder Letter. Finalised financial terms with the Preferred Bidder and its funders must be agreed with the Council immediately prior to Financial Close when all the contractual documentation will be finalised (subject to the constraints of procurement law) and entered into to establish the contractual commitment. It is the intention of the project team that once Cabinet has approved the appointment of the preferred bidder, the project team and the preferred bidder will work toward financial close. It is envisaged that a further Report will go to the October 2010 Cabinet recommending the award of the contract. Cabinet's decision to award will be included within the Cabinet's notes and decisions reported to full Council in December 2010 for information.

Final Business Case (FBC)

- 3.4 In accordance with the Government's Standardisation of PFI Contracts (SoPC4) requirements, Government require Cambridgeshire to submit a Final Business Case (FBC) to support their PFI credit application.
- 3.5 The Council submitted an Interim FBC in January 2010, 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 4th version of the SoPC4 requirements for each Bidder. These derogations were approved by Local Partnerships on 12th March 2010.
- 3.6 The FBC builds on the IFBC and completes the final position for all the technical, legal and financial elements of the project for Cambridgeshire. The FBC will have to be submitted to Treasury for approval as part of the process

to Financial Close and Cabinet is asked to approve the FBC as part of this process. The FBC is set out in Appendix C.

Working Arrangements with Northamptonshire County Council

- 3.7 As envisaged in the OBC, officers of Cambridgeshire and Northamptonshire, working as ESCP, have continued to work jointly and have established a Project Board made up of Members and Officers from both Councils to inform their decisions, on the procurement to date. A Memorandum of Understanding (MoU) was signed in late October 2006. The Board's objectives within the MoU were:-
- Explore the feasibility of a joint procurement
 - To develop a detailed business case
 - Where the business case supports the Partners, to implement a project plan and enter into a legally binding agreement to procure and operate such facilities
- 3.8 With the approval of both Council's OBC by the Treasury in July 2008, the joint project team was formed and the external advisors appointed. A Supplemental to the original MoU was signed in late 2008. The details are set out in Appendix D:
- 3.9 Cabinet is asked to note and approve the continued working arrangements with Northamptonshire County Council as reflected within the MoU and Supplemental MoU.

Statutory Power to Undertake Proposals in the Report:

- 3.10 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).
- 3.11 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. In the unlikely event that further derogations are required these will also require DfT approval.

Other Legal Implications

- 3.12 In implementing the proposals set out in this report, in particular, the placement and maintenance of lighting, regard will be had 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 appointment of preferred bidder the project team will work with the preferred bidder to clarify all the items for fine tuning.
- 4.2 There are street lighting staff that are presently in the Cambridgeshire Highways Partnership, and are expected to transfer to the preferred bidder 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.
- 4.3 The project team is confident that the outstanding fine tuning items will be concluded in time for Cabinet to award at their October 2010 meeting, to enable financial close to be achieved in late November/early December 2010.
- 4.4 At the point of Financial Close a three month mobilisation period will begin. Service commencement is scheduled for April 2011. It should be noted that the Financial Close process is complex and any unforeseen issues (i.e. Funders' obtaining their credit committee approval and the possibility of additional due diligence being undertaken) could delay this process which in turn could delay the date for service commencement.

5. 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 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. As the cost of energy is with the Council, the savings achieved from the replacement programme are available to the Council. Additionally the Council transfers the risk for any increase in energy usage as a result of the providers design solution, and the provider 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 reduce this future cost to the authority by 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 rate (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 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 ESCP and the procurement process has delivered efficiency savings and discussions are ongoing to form a joint contract monitoring team.

Climate Change

- 5.11 The use of modern efficient street lighting apparatus including lanterns, switch gear and dimming regimes, 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 Street lighting is seen by the majority of the public to be important to reduce night time accidents and to reduce night time crime. The public regularly request additional lighting in gaps in the network, though there is limited funding available for this.
- 5.14 As part of the Member Led Review on Street Lighting in May 2007, a series of Focus Groups were commissioned to look at the street lighting service and the levels of service then being delivered. The Focus Groups were also asked whether the environmental impact of energy generation would change their view of street lighting provision. All the Focus Groups felt that street lighting provision was critical despite the environmental impact.

Source Documents	Location
<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 – EVALUATION CRITERIA, FINAL TENDER SUMMARY AND EVALUATION OUTCOME (CONFIDENTIAL)

APPENDIX B – CMS (CONFIDENTIAL)

APPENDIX C – FINAL BUSINESS CASE (CONFIDENTIAL)

JOINT WORKING ARRANGEMENTS WITH NORTHAMPTONSHIRE COUNTY COUNCIL

SCHEDULE 2

Joint Project Board

Defined terms in this Schedule 2, if not otherwise defined in the Memorandum of Understanding of which it forms a part, are defined in the Partnering Governance Protocol between the Partners.

1. Joint Project Board

1.1. Purpose and powers

The Joint Project Board is responsible for the overall conduct, direction and management of the procurement process. The Joint Project Board is advised by the Joint Project Team and considers the recommendations submitted by the Joint Project Team. The appropriate Joint Project Board Representatives from each Partner are empowered to make decisions on behalf of the relevant Partner (**ordinary decisions**) in respect to the following matters and such other matters (other than reserved matters) that the Representatives may determine:

- Communication of key messages about the Procurement, the Contracts, and the project as a whole;
- Promotion of the project with key external stakeholders;
- Decisions relating to the monitoring of the Contracts and key issues relating to the Service Provider.
- Approval of the evaluation criteria, weightings and methodology for the Procurement;
- Approval of the risk allocation model;
- Consideration of key drafting issues for the tender documentation;
- Consideration of significant changes to the output specification during competitive dialogue;
- Finalisation of the final business case

The following matters will be “**reserved matters**”, which will be referred to each Council after discussion at the Board and with recommendations where appropriate, and which each Council may accept or reject at their complete discretion.

- Revision of affordability issues;
- Approval of the preferred bidder and decision to award the contract
- Approval and auditors sign off of the final business case

- Award of the Contracts,