

TRANSFORMATION OF HIGHWAYS SERVICES SUB COMMITTEE

AGENDA

Date: Tuesday, 7th September, 2010
Time: 2.00 pm
Venue: Council Chamber, Municipal Buildings, Earle Street, Crewe
CW1 2BJ

The agenda is divided into two parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Appointment of Chairman**

2. **Apologies for Absence**

To note any apologies for absence.

3. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any personal and/or prejudicial interests in any item on the agenda

4. **Public Speaking Time/Open Session**

In accordance with Procedure Rules Nos.11 and 35 a total period of 10 minutes is allocated for members of the public to address the Committee on any matter relevant to the work of the Committee.

Individual members of the public may speak for up to 5 minutes but the Chairman will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers.

In order for an informed answer to be given, where a member of the public wishes to ask a question of a Cabinet Member three clear working days notice must be given and the question must be submitted in writing. It is not required to give notice of the intention to make use of public speaking provision, however, as a matter of courtesy, a period of 24 hours notice is encouraged.

For requests for further information

Contact: Cherry Foreman

Tel: 01270 686463

E-Mail: cherry.foreman@cheshireeast.gov.uk with any apologies or requests for further information or to give notice of a question to be asked by a member of the public.

5. **Minutes of Previous meeting** (Pages 1 - 2)

To approve the minutes of the meeting held on 15 July 2010.

6. **Transformation of Highways Services: Highways Maintenance Team - Call in of Decision** (Pages 3 - 12)

The decision made by the Sub Committee at its meeting on 15 July (minute 5 refers) was called in and considered by the Corporate Scrutiny Committee on 26 August. A copy of the report considered by that Committee is attached, along with its Appendices 1 and 3.

The recommendations of the Corporate Scrutiny Committee will be circulated as soon as they are available.

The Sub Committee is now requested to consider these recommendations. In accordance with Scrutiny Procedure Rule 12.8 the Sub Committee is not bound to accept any advice offered to it and has sole discretion on any further action to be taken, including:

1. Confirming with or without amendment the original decision; or
2. Deferring the matter pending further consideration; or
3. Make a different decision.

7. **Progress Report** (Pages 13 - 18)

To receive a report on progress to date in respect of the highways procurement project.

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Transformation of Highways Services Sub Committee**
held on Thursday, 15th July, 2010 at Fred Flint Room, Westfields, Middlewich
Road, Sandbach CW11 1HZ

PRESENT

Councillors J Macrae and P Mason

Councillors in attendance:
C Andrew, D Flude and D Stockton.

Officers in attendance:
Head of Regeneration, Legal Services Manager and Interim Project Manager

1 APPOINTMENT OF CHAIRMAN

RESOLVED

That Councillor J Macrae be appointed Chairman for the meeting.

2 APOLOGIES

Apologies for absence were received from Councillor R Menlove.

3 DECLARATIONS OF INTEREST

There were no declarations of interest.

4 PUBLIC SPEAKING TIME/OPEN SESSION

There were no questions from members of the public.

5 TRANSFORMATION OF HIGHWAYS SERVICES: HIGHWAYS MAINTENANCE TEAM

Consideration was given to the report of the Strategic Director Places.

At its meeting on 20 April 2010 the Cabinet had agreed the general approach to transforming highways delivery and had established the Sub Committee, and an Officer Project Steering Group, to manage the delivery of the project in line with the timescales outlined at that time. It was recognised that the procurement of the Highway Maintenance Contract was a key work stream within the Councils Total Transformation Programme, and was one of six major transformation projects supported by the Council. The existing contract was due to end at the beginning of October 2011 and a new service provider therefore needed to be in place by that time.

It was reported that a considerable amount of detailed work had been carried out to date; this had included visits to, and discussions with, a number of other local authorities. As part of the process a number of key drivers for service delivery had been established and alternative options for delivery had been assessed and scored against these (Appendix 3). Arising from this analysis two potential delivery options had been identified as being the most suitable, these being the Alliance Model and the Managing Agent Contractor (MAC); a detailed analysis of these options against the key and sub drivers was shown in Appendix 4 which also summarised the advantages and disadvantages of the two main procurement options, namely either a restricted procedure or by competitive dialogue.

External legal advisors had provided clear advice that the procurement should be conducted using the competitive dialogue procedure. This would allow the Council to enter into dialogue with bidders to identify solutions to best meet the Council's needs and objectives and upon which final tenders could be sought. A timetable for this procurement process was attached to the report as Appendix 1. It was noted that the average length of time taken for procurement by competitive dialogue was 18 months, but that this had been truncated in order to meet the Council's necessary deadline of October 2011.

Careful consideration was given to report and its appendices; in response to a question concerning the opportunity for involvement in the procurement process by overview and scrutiny it was confirmed that adequate time for its consideration had been allowed. Future performance management measures would also be built into the monitoring of the contract.

RESOLVED

For the reasons set out in the report: -

1. That approval be given to the strategic direction of the procurement by way of the Managing Agent Contractor model.
2. That the structures that are, and have been, put in place to support the procurement, and the significant resource implications, be noted.
3. That the advice concerning the appropriate procurement method, namely by competitive dialogue, be noted.
4. That the timetable shown in Appendix 1 of the report be agreed.

The meeting commenced at 9.00 am and concluded at 9.45 am

Signed
Councillor

CHESHIRE EAST COUNCIL

CORPORATE SCRUTINY COMMITTEE

Date of meeting: 26 August 2010
Report of: The Borough Solicitor and Monitoring Officer
Title: Call In of Transformation of Highways Sub- Committee decision - Transformation of Highways Services

1.0 Report Summary

This report sets out the procedure for the Call In of the Transformation of Highways Sub- Committee Decision relating to Transformation of Highways Services taken on 15 July 2010.

1.1

2.0 Recommendations

- 2.1 That the Scrutiny Committee considers whether or not it wishes to offer advice to the decision maker in response to the Call In.

3.0 Wards Affected

- 5.1 All Wards

4.0 Local Ward Members

- 4.1 All Members for the above Wards.

5.0 Policy Implications

- 5.1 Contained within the attached report.

6.0 Financial Implications

- 6.1 Contained within the attached report.

7.0 Legal Implications

- 7.1 Contained within the attached report.

8.0 Risk Assessment

- 8.1 Contained within the attached report.

9.0 Background and Options

- 9.1 In accordance with Scrutiny Procedure Rule 12.3, any 8 or more Councillors can call in a decision. In this case, 8 Members have called in the above decision for the reasons identified in Appendix 1

- 9.2 In accordance with Scrutiny Procedure Rule 12.6 the Committee has two options in respect of any further action. The Committee may decide to offer no advice, in which case the decision may be implemented. Alternatively, the Committee may decide to offer advice, in which case, the matter must be referred to the decision making sub- committee in order for a decision to be made upon it. In accordance with Scrutiny Procedure Rule 12.8 , the decision maker is not bound to accept any advice offered to it and will have sole discretion on any further action to be taken, such action may include:
- (1) Confirming with or without amendment the original decision; or
 - (2) Deferring the matter pending further consideration; or
 - (3) Make a different decision.
- 9.3 Where the Scrutiny Committee decides to offer advice, this must be clearly documented in the minutes
- 9.4 If the Scrutiny Committee decides not to offer any advice, then the decision of the Transformation of Highways Sub- Committee can be implemented immediately.
- 9.5 Full details of the Call-In Procedure can be found at Scrutiny Procedure Rule 12
- 9.6 The appropriate Cabinet Member and Officer will attend the meeting to explain the background and reasons for the decision and to answer any questions the Committee may have.
- 9.7 The following wording records the Transformation of Highways Sub- Committee decision of 15 July 2010:
- “RESOLVED
For the reasons set out in the report: -
1. That approval be given to the strategic direction of the procurement by way of the Managing Agent Contractor model.
 2. That the structures that are, and have been, put in place to support the procurement, and the significant resource implications, be noted.
 3. That the advice concerning the appropriate procurement method, namely by competitive dialogue, be noted.
 4. That the timetable shown in Appendix 1 of the report be agreed.”
- 9.8 The Transformation of Highways Sub- Committee report is attached at Appendix 2.
- 9.9 A response to the issues raised in the Call-In Notice is attached at Appendix 3.
- 10.0 **Appendices**

Appendix 1 – Call In Notice

Appendix 2 –Report of Transformation of Highways Sub- Committee

Appendix 3 – Response to the issues raised in the Call-in Notice

For further information:-

Officer: Mark Nedderman

Tel No: 01270 686459

Email: mark.nedderman@cheshireeast.gov.uk

Background Documents:-

Documents are available for inspection at:

Legal and Democratic Services, Westfields, Middlewich Road, Sandbach, CW11 1HZ

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Appendix 1

Call In of Transformation of Highways Sub- Committee decision (15 July 2010)- Transformation of Highways Services

The 8 listed councillors below have called in the decision of the Transforming Highways Sub Committee to Corporate Scrutiny on the grounds:

1. That because of the value of this contract it should be subject to scrutiny;
2. That Members have not been given the opportunity to scrutinise other options for the delivery of Highway services, for example, alliances with other authorities;
3. The impact on the employment of Highways Staff by the proposed outsourcing.

Cllr Dorothy Flude

Cllr Paul Edwards

Cllr Chris Thorley

Cllr Steve Conquest

Cllr Roy Cartlidge

Cllr Terry Beard

Cllr Michael Parsons

Cllr Margaret Martin

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RESPONSE TO CALL-IN THE DECISION OF THE TRANSFORMING HIGHWAYS SUB COMMITTEE TO CORPORATE SCRUTINY AND ENVIRONMENT SCRUTINY ON THE GROUNDS:

- **BECAUSE OF THE VALUE OF THIS CONTRACT IT SHOULD BE SUBJECT TO SCRUTINY**
- **MEMBERS HAVE NOT BEEN GIVEN THE OPPORTUNITY TO SCRUTINISE OTHER OPTIONS FOR THE DELIVERY OF HIGHWAY SERVICES, EXAMPLE ALLIANCES WITH OTHER AUTHORITIES**
- **THE IMPACT ON THE EMPLOYMENT OF HIGHWAYS STAFF BY THE PROPOSED OUTSOURCING.**

INTRODUCTION

1. This report outlines how the Council is seeking to transform the delivery of highway services, including replacement of the current term maintenance contract, to drive improvement in highway condition, improve customer perception across Cheshire East and deliver increased value for money.
2. Our highway network is a corporate priority and in particular the condition of our roads has been deteriorating for several years. The recent pre-budget consultation has confirmed that most stakeholders recognise that the service should be a priority for Cheshire East Council. As a customer-focussed Council, the customer service aspects of highway services are crucial to managing our residents' perception of the new Council.
3. The procurement of arrangements to replace the existing Highway Maintenance Contract is a key workstream within the Total Transport Transformation programme, one of six major transformation projects supported by the Council. In replacing the existing contract, the Council has the opportunity to modernise the whole of the service by adopting a fresh delivery model.

CONTRACT VALUE

4. The value of the contract is estimated to be up to £21 million per annum, with the contract being offered for an initial 5 years term and a possible extension of a further 2 years.

ALTERNATIVE OPTIONS

5. An options appraisal of the various contract models commonly used in local government highways sector was undertaken. This identified 8 key models and each was evaluated against the following set of drivers:
 - The optimum nature and scale of the 'client' role including retained experience
 - Ability to deliver transformational / cultural change
 - Delivers best practice from elsewhere
 - Flexibility of arrangements
 - Better than current contract performance
 - Timetable for delivery
 - Decision Making (Client, provider, local)
 - Ability to deliver a wide scope of services – Vehicles, Grounds, ITS, UTC

Appendix 3

- Efficiency of £1m is required
- The ability of the model to deliver Quality and Innovation
- Existing model in the established market.

Two of the models scored favourably and these along with retaining the status quo, were then assessed against more detailed criteria.

MEMBER ENGAGEMENT

6. The papers supporting the Cabinet decision in April and the Cabinet Sub-Committee in July were publically available. The latter paper included the evaluation matrix setting out how each of the 8 preferred models rated against the key drivers for the project. It was felt that the additional briefing to Councillors in July was timely, but recognise that some people are disappointed not to have been engaged more actively earlier in the process.
7. The Total Transport project was presented to the Environment Scrutiny Committee on 24th March, which outlined the key workstreams including Highways Procurement.

POTENTIAL IMPACT EMPLOYMENT OF HIGHWAYS STAFF

8. Highways staff currently delivering work which will, in future, be delivered under the new contract will transfer to the new contractor. The law protects staff transferring; Transfer of Undertakings (Protection of Employment) Regulations 2006 (known as the TUPE Regulations) applies when services are outsourced.

Why is there still no decision on VR for staff yet?

9. There is a 'Highways Procurement' Change Process. The VR situation has arisen through the present budget pressure we have to respond to. The significant cuts to capital expenditure in Highways has had an effect on the source of work and income to staff, and that is what we have to address. This is the reason for VR's, not the procurement process. It is imperative that any decisions around VR take account of this year's programme of work. In some instances it has been necessary to defer VR to ensure service delivery is maintained.

Which ever way we go with this process, will we still have enough Cheshire East staff on the payroll to monitor work effectively?

10. The structure of the proposed client team is under development and this will reflect the skills required to manage a contract of this size and type.

With the efficiency target of £1 million set, how much money would we save if we just had VR's, and not a new procurement process?

11. The £1 million efficiency target is linked to re-procuring the Highways Services. The VR process is not linked to the Highways procurement and needed to happen to reflect changing budgets. The absence of a new contract and maintenance of the status quo would mean that the potential savings made by engaging with a private sector partner would not be achieved.

SUMMARY

12. The transformation of the highways service is a key corporate priority and is one of the five workstreams of Total Transport. The decision to progress the procurement of a new highways contract was taken by Cabinet in April and a Sub-Committee was established with delegated powers to make decisions relating to the project within the timelines agreed.
13. The procurement process is using a Competitive Dialogue process which will allow the Council to refine the scope of the new contract through the procurement process over the coming weeks and months.
14. In parallel to the procurement process, the highways service is being re-shaped to reflect the fact that big reductions in capital grant from Government is expected from April 2011. The re-shaping involves voluntary redundancy for some areas of the service. Reductions in future capital spend impacts directly on our revenue income and in simple terms the Council cannot sustain the current structures.
15. Member engagement during the procurement process will be key to shaping the future service. The Cabinet Sub-Committee has delegated authority to make decisions in relation to the new contract. An overview role from the scrutiny process to inform the Sub-Committee will be essential to ensure the new contract meets the needs of the Council from October 2011.

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CHESHIRE EAST COUNCIL

REPORT TO: TRANSFORMATION OF HIGHWAYS SERVICES SUB COMMITTEE

Date of Meeting: 7 September 2010
Report of: Strategic Director - Places
Subject/Title: Transformation of Highways Services
Portfolio Holder: Cllr Rod Menlove / Cllr Macrae

1.0 Report Summary

- 1.1 The procurement of the new "Highway Maintenance Contract" is a key work stream within the Total Transport Transformation Programme which is one of six major transformations projects supported by the Council.
- 1.2 Our roads are a corporate priority and their condition has been deteriorating for several years, consultation has also confirmed that most stakeholders recognise that they should be a priority for the Council.
- 1.3 As a customer-focused Council, the Council aims to transform the delivery of future highways services, including replacement of the current team maintenance contract, as appropriate to driving improvement in highway condition perception across Cheshire East.
- 1.4 This report provides Cabinet Sub Committee with an update on progress made on the Highways procurement project.

2.0 Decision Requested

- 2.1 To note the progress to date.

3.0 Reasons for Recommendations

- 3.1 The Authority needs to have a new service provider in place by October 2011 to undertake the delivery of the Highways Services.
- 3.2 To provide strategic input to the procurement process.

4.0 Wards Affected

- 4.1 All Wards are potentially affected by the proposal.

5.0 Local Ward Members

- 5.1 All Ward Members are potentially affected by the proposal.

6.0 Policy Implications including - Climate change - Health

- 6.1 The Total Transport Transformation programme is providing the framework for this project and will address major policy issues including climate change. One of the drivers for the new highways service will be to deliver cost efficiencies and to limit our carbon emissions.
- 6.2 Policy implications are one of the drivers within the identified Key Drivers for service.

7.0 Financial Implications 2009/10 and beyond (Authorised by the Borough Treasurer)

- 7.1 Within the Policy and Performance/Places Directorate, there are significant resource requirements attached to moving towards the delivery of the preferred option for delivering Highway Services. It should be noted that this procurement exercise will require the use of staff input from the Places Directorate and other key services which will be supported by external professional advisors to ensure successful delivery project.
- 7.2 All planned expenditure is being met through existing Council budgets.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 Bevan Brittan, the external legal advisors engaged to advice on the procurement, has advised that the competitive dialogue (CD) procedure is the most appropriate procurement mechanism for the Council to secure a new service provider. The timescale for completing the CD is tight in order to ensure that a new service to be mobilised in time for the cessation of the existing arrangements. Bevan Brittan has confirmed that the timescales are achievable but this is dependent on the Council clearly identifying its requirements and having sufficient resources in place to deliver the procurement on time.

9.0 Risk Management

- 9.1 There are always risks, financial, safety and reputational in the procurement and delivery of Highways Services, particularly in relation to the level of customer focus, winter maintenance and managing road works. One of the benefits of exploring the options appraisal and selection process is to be transparent and to ensure there is a Member understanding of the different options.
- 9.2 Due to complexity of the proposed Highway procurement it is not best dealt with under the restricted procedure and there would be a very real risk that the Authority would end up with written Tenders that did not fully meet its requirements. The authority would have a much better change of getting a highways contract that's meets its needs from conducting a competitive dialogue process, albeit a very tightly timetabled competitive dialogue.
- 9.3 One significant issue to consider going forward will be the transfer of risk and determining where best a risk should lie under the proposed new arrangements; this will contribute significantly to the shape and nature of the client organisation as well as cost allocation.
- 9.4 The CD process would not normally be delivered in the timescale that is available. There is a risk associated with the timetable and that can only be mitigated by ensuring that the procurement is appropriately resourced. There is undoubtedly a mature market for this work, but it needs to be properly managed within a relatively slick process so that the outcome can be delivered on time.

10.0 Background and Options

- 10.1 A report was presented to Cabinet Sub Committee on 15 July at which:
1. Approval was given to the strategic direction of the procurement by way of the Managing Agent Contractor model.
 2. That the structures that are, and have been, put in place to support the procurement, and the significant resource implications, be approved.
 3. That the advice concerning the appropriate procurement method, namely by competitive dialogue, be approved.
 4. That the timetable for delivery be noted and approved

Careful consideration was given to report and its appendices; in response to a question concerning the opportunity for involvement in the procurement process by overview and scrutiny it was

confirmed that adequate time for its consideration had been allowed. Future performance management measures would also be built into the monitoring of the contract

11.0 Progress and Next Steps

- 11.1 The procurement process is currently in the early stages. An OJEU notice has been issued advertising the contract and Pre Qualification Questionnaires (PQQs) have been returned by 9 potential service providers. The 9 providers include many of the market leaders in this field.
- 11.2 Over the next 3 weeks the PQQs will be assessed and a shortlist will be compiled. The aim is to take between 5 and 8 bidders forward to the next stage. The top 5 bidders will be taken forward, unless the scoring between bidders 5 and 8 is too close to differentiate between bidders and then we will identify where there is a clear cut off point between bidders.
- 11.3 The successful bidders will be informed on or about 15 September 2010. There then follows a feedback period until 24 September 2010. This period is used to give feedback to bidders who require it.
- 11.4 We will issue an Invitation to Participate in Dialogue (ITPD) on or about 25 September. The first Competitive Dialogue sessions will take place between 11 and 22 October. Between now and the Competitive Dialogue starting we will be producing a list of items to be dialogued.
- 11.5 In the forthcoming weeks we will be rolling out a series of communications to all stakeholders. We will be undertaking regular staff and member communications in order to ensure a smooth transfer into the new contract.

12.0 Timetable

- 12.1 The timetable is challenging and a truncated process is not something that is normally undertaken and should not be taken on lightly. Therefore there must be some risk associated with this and it is very important to provide sufficient resources to deliver the procurement on time.

13.0 Resources

- 13.1 So far, external solicitors, Bevan Brittan, have been secured using a government framework with competitive rates available and providing us with advisers that have considerable experience in this

field. They will provide both legal and procurement expertise to supplement the in-house input.

- 13.2 The council has also secured the assistance of Happold Consulting – The council require support and advice throughout this transition process from the identification of contract scope and duration through to contract signature. It is the intention of Cheshire East Council to use the EU competitive dialogue procedure to select an appropriate service delivery contractor. Happold have been secured using a government framework and will support the Council in the development and delivery of a procurement and change programme for its highways services including:

- Development of procurement strategy
- Support during PQQ stages
- Support during competitive dialogue procurement stages
- Development of contract conditions
- Development of service level specifications
- Development of payment mechanism and performance management
- Tender evaluation and contract award
- Mobilisation and implementation of new arrangements
- Support in staff structure development and training

14.0 Overview of Year One and Term One Issues

None

15.0 Access to information.

The background papers relating to this report can be inspected by contacting the report writer:

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