

<b>CABINET</b>	<b>AGENDA ITEM No. 5.4</b>
<b>12 OCTOBER 2009</b>	<b>PUBLIC REPORT</b>

Cabinet Member(s) responsible:	Councillor Matthew Lee (Deputy Leader and Cabinet Member for Environment Capital and Culture)	
Contact Officer(s):	Ben Ticehurst, Deputy Chief Executive	Tel. 452303

**PETERBOROUGH CITY SERVICES (“PCS”)**

<b>R E C O M M E N D A T I O N S</b>	
<b>FROM :</b> Councillor Matthew Lee (Deputy Leader and Cabinet Member for Environment Capital and Culture)	<b>Deadline date :</b> N/A
Cabinet is recommended to endorse the decision process outlined in paragraph 4.7	

**1. ORIGIN OF REPORT**

This report is to update Cabinet following earlier related decisions, namely:-

- 1.1 The Leader of the Council’s decision on 17 January 2008 on implementing the integrated solution for waste management as resolved by Council on 28 February 2007.
- 1.2 On 15 December 2008 Cabinet agreed the concept of establishing special purpose vehicles including those relating to functional activities.

**2. PURPOSE AND REASON FOR REPORT**

The purpose of this report is for Cabinet to endorse the decision-making process to be followed for PCS (Lot 3).

- 2.1.1 This report is for Cabinet to consider under its Terms of Reference No. 3.2.1 and No. 3.2.6 as follows:-

- 3.2.1 “To take collective responsibility for the delivery of all strategic executive functions within the Council’s major policy and budget framework and lead the Council’s overall improvement programmes to deliver excellent services” .
- 3.2.6 “To lead the delivery of Business Transformation within the Council”.

- 2.1.2 The commercial strategy review, referred to in this report is NOT FOR PUBLICATION in accordance with paragraph 3 of Schedule 12A, Part 1 to the Local Government Act 1972 in that it contains information which is commercially sensitive affecting the Council’s/current PCS operation and its workforce. The public interest test has been applied to the information contained in that review and it is considered that the need to retain the information as exempt outweighs the public interest in disclosing it because it would prejudice the Council’s commercial interests in the proposed procurement and would impact on the view that bidders may form of the business and raise issues within PCS workforce thereby undermining the integrity and confidence placed in the Council’s ‘open-minded’ procurement process for innovative and collaborative solutions for PCS.

### 3. **TIMESCALE**

Is this a Major Policy Item/Statutory Plan?	<b>NO</b>	If Yes, date for relevant Cabinet Meeting	
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### 4. **PETERBOROUGH CITY SERVICES (LOT 3)**

#### **Overview:**

4.1 Peterborough City Services (“PCS”) as an entity has become increasingly vulnerable to elements of competition, and a review of the options for the service was undertaken in 2008. The review’s conclusion was that PCS needed to be freed from some Council controls to allow it to grow and develop and there were a range of options on how this could take place. Hence, PCS’s portfolio was included in the Waste 2020 Programme procurement to test the market’s appetite for working collaboratively with the Council to deliver services.

#### **2009 Commercial Strategy Review:**

4.2 A high level commercial review of PCS’s business portfolio was conducted this year. Its purpose was to review PCS’s current operating activities, funding position and development prospects from a commercial perspective.

In broad terms, the 2009 review identified three elements to the portfolio:

- a) core services contributing directly to corporate objectives such as the 65% plus recycling target and Environmental Capital status;
- b) services where PCS, released from current constraints and supported by a suitable experienced partner, should be able to increase income levels (providing a return or future cost mitigation to the Council); and
- c) services which are not core to PCS’s ongoing operation but which are potentially subject to statutory obligations on the Council’s part.

#### **Procurement Strategy:**

4.3 In May 2009 the Council took the opportunity to include PCS in its Industry Open Day for the Waste 2020 Programme to test market reaction to the proposals.

4.4 The programme consists of Lot 1: Energy from Waste facility; Lot 2: Materials Recycling Facility; and Lot 3: Operational Services (PCS).

4.5 Procurement is based on a Competitive Dialogue procedure (recognised as appropriate to procurements which are complex and impossible to define the solution with certainty), allowing the Council and bidders to discuss and develop proposals that would be suitable to the Council and the market.

4.6 The procurement has generated a healthy response from the market for all Lots and the Council is well positioned to test the full range of proposed value added solutions for Lot 3 through this exercise. Responses from the market range from proposals to establish joint venture companies (JVCs) with continuing equity stake by the Council through special purpose vehicles (SPVs) with benefit share arrangements to the more straight-forward partnership/collaborative type arrangements based upon direct out-sourcing. Whatever option is eventually chosen, those eligible in PCS’s workforce will be protected under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).

#### 4.7 The decision process is proposed as:-

- Later in October 2009: conclude evaluation of shortlisting bidders to be followed by a Cabinet Member decision by the Deputy Leader (in consultation with other relevant Cabinet Members) to select the shortlist of bidders (ie. three bidders for individual Lots 1, 2 and 3(PCS) plus three bidders for combined Lots 1, 2 and 3(PCS)) to take forward to Competitive Dialogue to commence with Invitation to Submit Outline Solutions (ISOS). This decision which is on the Forward Plan will also include for delegations to senior officers (in consultation with the Deputy Leader) to enable expedient decisions to be made up to contract(s) award(s) on issues during the procurement for smooth and effective progress of the process (including further reductions of bidders/solutions as appropriate);
- November 2009: ISOS issued to shortlisted bidders enabling them to specify in outline how they intend to satisfy all the Council's requirements followed by further discussions with bidders. This form of market testing will determine the optimum commercial solution.
- End of May 2010: Invitation to Submit Detailed Solutions enabling bidders to specify in detail how they intend to satisfy the Council requirements followed by further discussions with bidders on scope, solutions and other matters;
- By October 2010: finalise Competitive Dialogue so that scope and contract conditions are settled prior to call for final tenders and Call for Final Tender (this could be two bidders for each of the individual Lots 1, 2 and 3 plus two bidders for combined Lots 1, 2 and 3 depending on how solutions progress).
- March 2011: Return date for Final Tenders;
- By June 2011: Conclude evaluation of Final Tenders and recommendation on award;
- July 2011: Further executive decision by Deputy Leader (in consultation with other relevant portfolio holders) to award the contract(s);
- July 2011: Following notice of intention to award contract(s) (in line with Alcatel ruling), award contract(s) as individual contracts for Lots 1, 2 and 3 or award combined contract for Lots 1, 2 and 3.

## 5. CONSULTATION

- 5.1 The Deputy Leader carried out an informal briefing for Scrutiny Committee Members on 8 September 2009 and a further informal briefing for all Members on 29 September 2009, as part of an ongoing process to ensure engagement with all Members.
- 5.2 Sustainable Growth Scrutiny Committee at its meeting on 21 September 2009 received an update report on Lot 3: PCS and expressed support for taking the proposals for PCS forward.
- 5.3 The Lot 3 Project Board (formerly ALMO Board) continues to be consulted as necessary on these proposals.
- 5.4 Trade Unions: There has been an on-going informal consultation with Trade Union representatives at PCS, which will continue to ensure that they are kept engaged in the process.
- 5.5 Staff consultation: The Commercial Services Director has given regular update briefings to staff and these will continue to ensure staff are kept informed, updated and consulted.
- 5.6 Engagement with other departments: PCS provides a range of support functions to all Departments in the Council. Several key clients are represented at the Lot 3 Board by their senior management. A programme of work is being developed to create a streamlined client function which will ensure that governance and performance can be clearly monitored with costs being kept to a minimum for the Council

## 6. ANTICIPATED OUTCOMES

- 6.1 The Cabinet endorses the proposed arrangements for taking this forward through the procurement process.

## **7. REASONS FOR RECOMMENDATIONS**

- 7.1 For Cabinet to endorse a way forward for PCS (Lot 3) to deliver quality service standards, meeting the Council's environmental targets, comprehensive area assessment and local area agreement commitments at a minimised financial cost and risk in the medium to long-term.

## **8. ALTERNATIVE OPTIONS CONSIDERED**

- 8.1 A range of alternative service delivery options has been considered for PCS. Consideration has also been given to contingency plans should the procurement not proceed (e.g. bidders fail to provide an affordable solution). In such circumstances, the Council's principal alternative options would include (i) re-procurement on a potentially different basis outside the Waste 2020 framework; or (ii) maintenance of the status quo with internal re-organisation of PCS and central management functions.

## **9. IMPLICATIONS**

- 9.1 Implications for the Council are wide-spread with impacts upon: Finance, Legal, HR, Shared Services and CAA/LAA Targets.
- 9.2 The Council's Finance Team provides support to the Waste 2020 programme and a procurement process is underway to appoint specialist financial advisers.
- 9.3 The Principal Lawyer (Waste 2020 Programme) represents Legal Services on this procurement and has been consulted on this report. The legal implications are included throughout the report. There will be further executive decisions including one to award the contract (including Lot 3: PCS) as referred to in paragraph 4.7 of this report.
- 9.4 There are implications for around 700 PCS staff. Staff that are eligible will be protected under the Transfer of Undertakings (Protection from Employment) Regulations 2006 (TUPE). Legal and Human Resources are considering these matters and there will be liaison with the Finance and the Pensions Administrator of the LGPS as regards Admitted Body Status for transferring employees. There will also be the appropriate consultation with the Trade Unions representing those employees affected by the proposals.
- 9.5 There are considerable cross service implications, specifically with Operations (for Environmental Services), Strategic Property (for PD&M), Children's Services (for Schools) and Leisure Trust (assuming that initiative proceeds). Reflecting these interactions, there has been a programme of consultation with the key officers and stakeholders in the relevant service departments and this process will continue as the Council develops the necessary lean client management structure going forward.
- 9.6 PCS presently draws upon the Council's shared service infrastructure and bears a substantial central overhead re-charge. Looking forward, bidders could be expected to challenge the commercial value of these charges and may wish to integrate service provision with their own for operational efficiency and cost reduction reasons. This factor will need to be taken into account in the business planning for central support services.
- 9.7 PCS is central to the delivery of key CAA/LAA environmental targets and its importance, and potential future funding requirements will need to be considered if the Council is to meet its aspirations for 65% plus recycling and Environmental Capital status. By means of example, the incremental cost associated with food collection to support the Anaerobic Digestion Facility. Appropriate targets and control mechanisms to ensure delivery, such as tangible KPI's and project milestones, will be reflected in the Lot 3 contract going forward.

## **10. BACKGROUND DOCUMENTS**

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985)

Commercial Strategy Review (exempt)



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