

SUSTAINABLE GROWTH SCRUTINY COMMITTEE	Agenda Item No. 5
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Report of Executive Director – Strategic Resources and Commercial Services Director

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UPDATE ON LOT 3, WASTE 2020 PROGRAMME – PETERBOROUGH CITY SERVICES – VARIOUS OPERATIONAL SERVICES

1. PURPOSE

- 1.1 To keep the Sustainable Growth Scrutiny Committee updated on developments relating to the Lot 3: Operational Services affecting Peterborough City Services (PCS).

2. RECOMMENDATIONS

- 2.1 To consider and comment on the report.

3. LINKS TO THE SUSTAINABLE COMMUNITY STRATEGY

- 3.1 Many of the services provided by PCS are reported back through the Local Area Agreement mechanism.

4. CONSTITUTIONAL

- 4.1 Since Sustainable Growth Scrutiny Committee's meeting on 21 September 2009, Cabinet on 12 October 2009 agreed to the principles for inclusion, and the way forward, for PCS in the Lot 3 procurement which was one of the Lots included in the Waste 2020 Programme.

- 4.2 On 31 December 2009 the Deputy Leader and Cabinet Member for Environment Capital and Culture made a decision on the Lot 1: Energy from Waste Facility; Lot 2: Materials Recycling Facility and Lot 3: PCS Operational Services. With regard to Lot 3 specifically:-

- (a) The six bidders ranked as 1, 2, 3, 4, 5 and 6 referred to in the Exempt Annex to that Cabinet Member Decision Notice would be invited to participate in the competitive dialogue (outline solution stage) and the names of those bidders would be published;
- (b) Delegations were given to the Deputy Chief Executive and/or Executive Director – Strategic Resources (in consultation with the Deputy Leader and Cabinet Member for Environment Capital and Culture and where necessary the Solicitor to the Council and/or the Waste 2020 Project Board) to determine and action:-
 - (i) any issues whether or a strategic, operational or other nature that may need resolution (including any that may cross departments of the Council) during the remaining procurement process to ensure effective and timely progress to be made; and
 - (ii) whether, and if so, how many, and which bidders, were to be selected to take through to the next stages of the procurement process (including invitation to submit detailed solutions, call for final tenders and preferred bidders).
- (c) The final decision on which bidder was to be awarded the Lot 3 contract (as well as Lots 1 and 2) subject to the usual 10 day standstill period required by EU procurement law would

be referred to the Deputy Leader to enable a further executive decision to be made by a Cabinet Member decision notice.

- 4.3 Subsequent delegated decisions have been made by the Executive Director – Strategic Resources in consultation with the Deputy Leader and then Cabinet Member for Environment Capital and Culture and now Deputy Leader and Cabinet Member for Culture, Recreation and Strategic Commissioning pursuant to the executive decision of 31 December 2009:-
- (a) that Amey LG Limited, Enterprise Managed Services Limited, HW Martin Waste Limited and Veolia ES UK Limited be shortlisted for the detailed solution stage of the procurement; and
 - (b) Amey LG Limited and Enterprise Managed Services Limited be shortlisted as the two final bidders for the final tender stage of the procurement.
- 4.4 May Gurney Limited and HW Martin Waste Limited withdrew from the process at outline and detailed stages respectively.
- 4.5 On 18 January 2011 the Deputy Leader and Cabinet Member for Culture, Recreation and Strategic Commissioning made a decision to:-
- (a) note the feedback from the cross party Member visits to the final bidders' locations;
 - (b) note the overview report of the Commercial Services Director on the final bidders' delivery proposals;
 - (c) note the pre-determined evaluation methodology used for the Council's evaluation of the final tenders;
 - (d) note the scores and rankings of the final tenders;
 - (e) identify that Enterprise Managed Services Limited, having submitted the most economically advantageous tender to the Council, be identified as the preferred bidder;
 - (f) agree that the broad range of service elements (including their component parts) to be included in the Lot 3 partnership at commencement are:-
 - refuse and recycling collection;
 - street cleansing;
 - parks, trees and open spaces (including some ground maintenance functions at cemeteries and the crematorium);
 - property design and maintenance;
 - building cleaning;
 - passenger and home to school transport;
 - corporate and schools catering;
 - travellers' site management; and
 - courier services;
 - (g) grant a 23 year partnership terms subject to appropriate break provisions at years 9 and 16;
 - (h) indorse that the Strategic Partnership Board will oversee the partnership providing such strategic direction for the delivery, development and growth and to resolve any escalated issues or other matters which require high level input or direction as part of the governance arrangements;
 - (i) agree that the following are the Council's representatives on the Strategic Partnership Board:-
 - Deputy Leader and Cabinet Member for Culture, Recreation and Strategic Commissioning (who will chair the Board for at least the first year);
 - Cabinet Member for Resources; and
 - Executive Director – Strategic Resources;
 - (j) note the timescales that apply for commencement of the partnership;
 - (k) agree that on expiry of the call-in period, Enterprise Managed Services Limited be formally identified and appointed as preferred bidder for the partnership on suitable conditions to include the award of the partnership subject to:-
 - expiry of the Alcatel period;
 - formal consultation with transferring employees and their Trade Union representatives under the Transfer of Undertakings (Protection of Employment) Regulations 2006;
 - satisfactory resolution of any outstanding matters and completion of the suite of legal

documents applying to Lot 3 (including Admission Agreement in respect of transferring employees' protection under the Local Government Pension Scheme) in readiness for partnership commencement;

- (l) authorise the Executive Director – Strategic Resources/Section 151 Officer in conjunction with the Solicitor to the Council/Monitoring Officer and the Head of Business Transformation to determine any high level strategic or other issues that may require resolution and to authorise any action necessary to be taken on any such matters to enable the suite of legal documents applying to Lot 3 to be completed; and
- (m) authorise the Solicitor to the Council/Monitoring Officer to sign a certificate under Section 3 of the Local Government (Contracts) Act 1997.

4.6 The Sustainable Growth Scrutiny Committee has received updates throughout the Lot 3 procurement. The Committee's last update was in June 2010 and because Members wished to delay the next update due at its November meeting because of other business pressures (such as budget matters) this is the latest update on the process.

4.7 In the meantime, Committee will be aware that the Deputy Leader and Cabinet Member for Culture, Recreation and Strategic Commissioning has continued to keep all Councillors apprised of developments at each stage of this procurement through his regular briefings (meetings and written communications).

4.8 Members will also be aware that the Deputy Leader and Cabinet Member for Culture, Recreation and Strategic Commissioning has invited Enterprise Managed Services to present to all Councillors at All Party Policy on 27 January 2011.

5. PROCUREMENT UPDATE

5.1 Since the last update to the June 2010 Committee, Members will be aware from the ongoing briefings given by Deputy Leader and Cabinet Member for Culture, Recreation and Strategic Commissioning that Amey LG Limited, Enterprise Managed Services Limited, HW Martin Waste Limited and Veolia ES UK Limited were invited to submit detailed solutions. HW Martin Waste Limited subsequently withdrew from the procurement for its own commercial reasons.

5.2 From the detailed stage, Amey LG Limited and Enterprise Managed Services Limited were then shortlisted as the two final bidders for the final tender stage.

6. FINAL TENDER STAGE

6.1 Final tenders were received from both final bidders – Amey and Enterprise.

6.2 The details that follow are relevant to the final tender stage.

7. MEMBERS' VISITS TO FINAL BIDDERS LOCATIONS

7.1 Once the two final bidders had been shortlisted for the final tender stage and at the request of the Deputy Leader and Cabinet Member for Culture, Recreation and Strategic Commissioning, a cross party group of Members, accompanied by two officers from the Waste 2020 Programme Team, visited locations chosen by the bidders as a means of demonstrating their operations elsewhere to give Members the opportunity to see these for themselves. The arrangements for the visits were made by the bidders and the costs of the visits were borne by the bidders.

8. COMMERCIAL SERVICES DIRECTOR'S (PCS) OVERVIEW

8.1 The Commercial Services Director (PCS) having been provided, in confidence, with the final bidders' final delivery proposals submitted an overview giving the view of the PCS senior management team as part of the executive-decision making programme. This was not scored in the evaluation of the final tenders but it gave the decision-maker the Director's overview as the most senior officer currently involved in providing PCS's services to the Council.

9. EVALUATION METHODOLOGY

- 9.1 In line with good, fair, open and transparent procurement practice, the formal invitation for final tenders set out the Council's pre-determined evaluation methodology by which bidders' final tenders would be evaluated.
- 9.2 The underlying principle of the evaluation methodology was for the Council to select the most economically advantageous tender on the basis of an overall 60% quality and 40% price split which has been consistent throughout all stages of the procurement.

10. IDENTIFICATION OF PREFERRED BIDDER

- 10.1 Having carefully evaluated the final tenders in line with the evaluation methodology, both final bidders submitted credible bids. However, the outcome of the evaluation revealed that Enterprise Managed Services Limited provided the final tender that was most advantageous to the Council in terms of operation and economy.

11. SCOPE OF LOT 3 SERVICES

- 11.1 The services consist of a broad range and the following are the services (including their component parts) are the services to be included at the commencement of the partnership:-
- refuse and recycling collection;
 - street cleansing;
 - parks, trees and open spaces (including some ground maintenance functions at cemeteries and the crematorium);
 - property design and maintenance;
 - building cleaning;
 - passenger and home to school transport;
 - corporate and schools catering;
 - travellers' site management; and
 - courier services.
- 11.2 As with partnerships of this nature, it will evolve over time and there is potential to include other services.

12. PERIOD OF THE PARTNERSHIP

- 12.1 Final bidders were required to submit their final tenders on the basis of a 9 year and 23 year period and in the case of 23 years to demonstrate the benefits to the Council as opposed a 9 year term. Having demonstrated the benefits of a 23 year term, this was determined as the optimum period for the partnership and there will be break opportunities included in the Operational Services Agreement at years 9 and 16.

13. STRATEGIC PARTNERSHIP BOARD

- 13.1 As part of the governance arrangements for the partnership, a Strategic Partnership Board is to be established which will have overarching responsibility for the partnership. This Board will meet at least quarterly (or more regularly if required) to give high level strategic direction on the partnership. Broadly, the important matters affecting the partnership and the relationship culture with the Council's partner will be reserved for the Strategic Partnership Board as set out in the Operational Services Agreement (such as the Lot 3 partner's business development plan, additional services, contingency plans, growth proposals, Lot 3 partner's annual accounts and escalated disputes).
- 13.2 This Board will need to be set up during the mobilisation stage (before actual commencement of the partnership) to oversee mobilisation, to deal with such matters as 'branding' for the partnership and to ensure that transfer arrangements take place in a seamless way with no disruption to service delivery.

- 13.3 The Strategic Partnership Board will consist of senior representatives from the Council and the Lot 3 partner. The following are considered to be the appropriate representatives for the Council's purposes:-
- Deputy Leader and Cabinet Member for Culture, Recreation and Strategic Commissioning (as the portfolio holder) who will Chair the Board meetings at least for the first year;
 - Cabinet Member for Resources;
 - Executive Director – Strategic Resources.

- 13.4 Enterprise has put forward the following as its senior representatives to sit on the Strategic Partnership Board:-
- Martin Joyce, Managing Director – Local Government;
 - David Martin, Strategic Business Development Director;
 - Mike Heath, Partnership Director (designate)

14. TIMESCALES AND MOBILISATION

- 14.1 There will be a range of actions required now the preferred bidder has been identified and appointed. The partnership is due to commence on 4 March 2011 (when PCS employees will transfer to Enterprise) with full service commencement as of 7 March 2011.
- 14.2 As part of the final tenders, bidders submitted detailed mobilisation plans with regard to their proposals for ensuring a seamless transfer of services, employees, assets, communications and other matters. Following the appointment of the preferred bidder, it is now necessary to discuss the mobilisation arrangements in further detail to finalise a joint and comprehensive plan (including key stakeholder engagement with Members, residents, schools, neighbourhoods, Trade Unions, PCS employees and wider Council officers).
- 14.3 Discussions have already taken place with regard to consultation with, and engagement by, the Trade Unions in the mobilisation process. It will be essential for the Council and the preferred bidder to work closely with the Trade Unions given the number of employees that will be transferring to the Lot 3 partner.

15. FORMAL IDENTIFICATION AND APPOINTMENT OF PREFERRED BIDDER

- 15.1 Following the expiry of the call-in period on the 18 January 2011 decision, the Council has now appointed Enterprise Managed Services Limited as the preferred bidder. The appointment is subject to certain conditions which include:-
- award of the partnership on expiry of the Alcatel standstill period;
 - formal consultation with transferring employees and their Trade Unions under the Transfer of Undertakings (Protection of Employment) Regulations 2006; and
 - satisfactory resolution of any outstanding matters and completion of the suite of legal documents applying to Lot 3 (including Admission Agreement) in respect of transferring employees' protection under the Local Government Pension Scheme) in readiness for contract commencement.

16. ALCATEL STANDSTILL PERIOD

- 16.1 Under the EU procurement rules, it is necessary to allow for a 10 day standstill period to enable any challenges to be made in respect of the Council's decision.

17. TUPE, PENSIONS AND TRADE UNIONS

- 17.1 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) applies to those employees in PCS who are currently engaged on the services that are to be transferred to the Lot 3 partner. In view of the timescales for the partnership commencement, the formal consultation process is now commencing. In the meantime, employees and the Trade Unions have been kept briefed on an informal and formal (JCF) basis at each stage of the procurement.

- 17.2 As part of the formal TUPE consultation process, arrangements are being made for the preferred bidder to meet with PCS staff so that the preferred bidder can introduce itself and explain how their proposals will affect transferring employees. Separate meetings are being arranged between the preferred bidder and the Trade Union representatives as a means of establishing harmonious relationships with the workforce representatives.
- 17.3 There will also be a series of one to one meetings between the preferred bidder and each PCS employee as part of the TUPE process.
- 17.4 The preferred bidder will need to become an Admitted Body to protect PCS transferring employees on a closed scheme basis as regards the Local Government Pension Scheme. This means that transferring employees who are active members of the LGPS and those transferring employees that subsequently join the scheme will be protected by a Closed Admission Agreement. These arrangements will not be open to any other employees such as new recruits and other pensions arrangements will be put in place by the preferred bidder for any non-transferring employees.
- 17.5 The Admission Agreement and supporting Bond will need to be in place with Cambridgeshire County Council before the TUPE transfer of PCS employees can take place.
- 17.6 The preferred bidder is making its application to Cambridgeshire County Council to become an Admitted Body for the purpose of PCS transferring employees.
- 17.7 The Council's recent call for voluntary redundancy, as part of its measures to address the Comprehensive Spending Review, included PCS transferring employees (as they are currently Council employees and could not be excluded). Bidders were put on notice that where the Council agrees to voluntary redundancy for PCS employees on the TUPE list, the Council would expect a reduction in the service fee and/or other remuneration to offset the fact there will be fewer employees on the TUPE list than at the time when bidders' financial models were submitted.

18. LEGAL DOCUMENTS

- 18.1 The Council and the preferred bidder will be expected to enter into a range of legal documents which is consistent with contracts/partnerships of this nature. These include:-

(a) **CONTRACT RELATIONSHIP:**

The Operational Services Agreement is the principal document that will govern the contractual and partnership relationship, rights, obligations and benefits of the Council and the Lot 3 partner. The governance arrangements for the Strategic Partnership Board are also contained in this document.

(b) **SECURITY:**

Part of the security package will include a Parent Company Guarantee which will provide a guarantee from the preferred bidder's superior company (parent) which will underwrite the preferred bidder's obligations to the Council under the Operational Services Agreement.

(c) **PROPERTY:**

There will be a series of leases. The depot at Nursery Lane will be leased on a full commercial rent and insuring basis which the preferred partner will use as its business hub and from which the business will be grown. The sub-depots around Peterborough will be leased on a non-rent basis but with responsibility on the partner for insuring and maintaining them which the preferred partner will use for delivery of the Lot 3 services in the neighbourhoods. The WEEE facility, based at the former RSG building will be leased to the partner on a non-rent basis but with the partner being responsible for paying a

service charge to the Council to cover such things as insurance (since the WEEE facility is part only of the overall building). Again, realistically it is considered that the WEEE facility is limited in the use this part of the building can be put other than for services connected to Lot 3.

There will also be discussions with the preferred bidder over whether it would wish to exercise an option (at a later date) to buy the Nursery Lane depot which would provide a capital receipt to the Council. That option documentation would contain a mechanism for any such purchase to be at proper market consideration.

(d) **ASSETS:**

The original position adopted by the Council was that assets (vehicles, plant, equipment and ICT) used by PCS (and owned by the Council) would be made available to the Lot 3 partner on a purchase basis and values were provided. However, it transpired that bidders were prepared to offer greater value for money to the Council through their financial proposals if the Council would transfer these at a nominal value.

Where the Council hires/leases vehicles, there were options considered regarding buying out existing leases, novating them to the Lot 3 partner and granting sub-leases at the same hiring/leasing rate that the Council pays the hire/leasing company. However, bidders indicated that they could offer greater value for money to the Council through their financial proposals if the Council were to sub-lease these to the Lot 3 partner at a nominal rate.

(e) **PENSIONS:**

An Admission Agreement (Closed Scheme) and Bond will be entered into to protect PCS transferring employees LGPS rights.

(f) **WARRANTIES FOR THIRD PARTY DESIGN:**

Collateral Warranties will be provided for design work where the partner does work via the Operational Services Agreement for a third party.

(g) **EXISTING THIRD PARTY CONTRACTS:**

Where the Council is novating (transferring) existing contracts to the Lot 3 partner, there will be Deeds of Novation to pass the contracts over to the Lot 3 partner.

19. CERTIFICATE UNDER SECTION 3 OF THE 1997 ACT

19.1 Simultaneously with the Operational Services Agreement, the Council will be required to provide a Certificate under the Local Government (Contracts) Act 1997. This Certificate will confirm that the Council has the power to enter into the Operational Services Agreement. Hence, the authority requested for the Solicitor to the Council/Monitoring Officer to sign such a Certificate on behalf of the Council.

20. OTHER OFFICER DELEGATIONS

20.1 It is not usual for procurements of this nature to have high level issues that need to be resolved and action taken in order to expediently conclude any matters. Hence, the authority requested for the Executive Director – Strategic Resources/Section 151 Officer in conjunction with the Solicitor to the Council and the Head of Business Transformation to determine any high level strategic or other issues that may require resolution and to authorise any action necessary to be taken on any such matters to enable the suite of legal documents to be completed for the Lot 3 partnership.

21. AFFORDABILITY

- 21.1 Bidders were provided with the Council's affordability envelope for the final tender stage and were instructed to provide service proposals that would improve and grow the services on a value for money basis and within the affordability envelope.
- 21.2 Under the Operational Services Agreement, there will be some services (such as refuse and recycling and street cleansing) that will be paid on the basis of one twelfth of the yearly service fee and other services (such as property design and maintenance) that will be paid for on an as undertaken basis with quarterly reconciliations for all services.

22. CONSULTATION

- 22.1 The Waste 2020 Project Board has considered this matter at each stage of the procurement and the recommendations contained in this report are consistent with the outcome of the discussions at the Board on 4 January 2011.
- 22.2 The Deputy Leader and Cabinet Member for Culture, Recreation and Strategic Commissioning has consulted with the Cabinet Member for Resources and Cabinet Member for Neighbourhoods, Housing and Planning.
- 22.3 The Deputy Leader and Cabinet Member for Culture, Recreation and Strategic Commissioning has also been keeping all Members informed throughout by letter and a series of informal briefings on the Lot 3 procurement. At his request, Members have visited the final bidders' chosen locations so that Members can see the bidders' operations elsewhere. Additionally, the Deputy Leader has requested that the preferred bidder present to all Members at the All Party Policy meeting on 27 January to give all Members the chance to meet the preferred bidder, to hear first hand about the preferred bidders' proposals and to give Members the opportunity to ask any questions direct to the preferred bidder.
- 22.4 There has been ongoing dialogue between the Principal Lawyer (Waste 2020) and Head of Human Resources on matters relating to TUPE and pensions and Cambridgeshire County Council (pension's authority) is aware of the Lot 3 procurement. The recognised Trade Unions (Unison, Unite and GMB) have been involved in the evaluation of workforce matters and officers will continue to be consulted and engaged with the transfer and mobilisation arrangements.
- 22.5 PCS employees and the Trade Unions have been informally informed and updated on a regular basis through the Lot 3 procurement.
- 22.6 There has been consultation with the Head of Asset Management with regard to property matters and Head of Strategic Finance on the financial aspects of Lot 3.
- 22.7 The Sustainable Growth Scrutiny Committee has received regular updates in relation to Lot 3.

23. ANTICIPATED OUTCOMES

- 23.1 The outcome of this decision will:-
- (a) Mean that the services, employees and other relevant items will transfer to the Lot 3 partner;
 - (b) Enable services and delivery to be improved and provided on a value for money basis;
 - (c) Provide greater ability and security for PCS (and its employees) to grow its business through a commercial organisation rather than being hampered by legal and public constraints.

24. ALTERNATIVE OPTIONS CONSIDERED

- 24.1 The alternative options that have been considered and rejected are:-

- Maintain PCS as an in-house organisation: this was rejected because:-
 - (a) PCS has become vulnerable as an in-house 'trader' since it is hampered in growing its business due to legal and other constraints placed on it;
 - (b) It will have greater flexibility to grow its business as part of a private company which has wider corporate resources (e.g. investment and marketing ability) and purchasing power (e.g. assets) to develop and grow its business;
 - (c) A new style PCS (as part of a commercial organisation) will be a keener organisation which will enable better prospects to improve service delivery to the Council and its tax payers.

- Negotiate with single suppliers: this was rejected because the Council must comply with the EU procurement rules in procuring a suitable partner for PCS.

- A 9 year partnership term: this was rejected because service delivery of this nature requires investment in terms of finance (to develop, improve and grow services) resource intensity in training and skilling the workforce. A longer term (23 years even with break provisions) enables a commercial organisation to spread its investment costs over a long term and offers benefit to the Council in doing so.

25. BACKGROUND DOCUMENTS

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

Notices placed in the Official Journal of the European Union

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