

WIRRAL COUNCIL

CABINET

22 SEPTEMBER 2011

SUBJECT:	PARKS & COUNTRYSIDE SERVICES PROCUREMENT EXERCISE (PACSPE)
WARD/S AFFECTED:	ALL
REPORT OF:	DIRECTOR OF TECHNICAL SERVICES
RESPONSIBLE PORTFOLIO HOLDER:	COUNCILLOR CHRIS MEADEN, LEISURE & CULTURAL SERVICES
KEY DECISION?	YES

1.0 EXECUTIVE SUMMARY

- 1.1 This report advises Cabinet of the outcome of the recent Parks & Countryside Services Procurement Exercise (PACSPE). The PACSPE timetable envisages a contract being let to commence on 2 January 2012. This is the culmination of a process that was instigated by a Cabinet decision in June 2008.
- 1.2 The tenders submitted have been evaluated against a combination of price and quality and a preferred external provider identified based on the results of the tender evaluation exercise.
- 1.3 Following the July 2010 Cabinet decision that no in-house bid should be submitted as part of the PACSPE process, Cabinet has no in-house bid to compare with the proposals from the external tenderers. However, it is appropriate for Cabinet to consider the possibility of not accepting any tender and Members will need to consider all the risks of awarding, or not awarding, the contract and this report sets out those risks.
- 1.4 The key issues for Members to consider when taking this decision are:
 - (a) Service quality; and the deliverability of service quality improvement over the proposed 10-year contract period.
 - (b) Cost and affordability having regard to the proposed 10-year contract period; and the likely effects of inflation.
 - (c) The financial climate in which the Council will be operating over future years and the identified need to save in excess of £85 million over the next 3 years.
 - (d) The comments of the External Auditor on value for money in relation to PACSPE, following their analysis of the benefits delivered by the Highways and Engineering Services Procurement Exercise ('HESPE').
 - (e) The risks associated with either letting or not letting a contract and the overarching legal obligation on a local authority to act reasonably.

(f) If a contract is to be let, the selection of the winning tender.

1.5 The details of the tender evaluation and options set out in the Appendices to this report contain legal advice and commercially sensitive information relating to the Council and the tenderers. The Director of Law, HR and Asset Management has advised that this should be classed as Exempt Information in accordance with paragraphs 3 and 5 of Part 1 of Schedule 12A of the Local Government Act 1972.

2.0 RECOMMENDATION/S

2.1 Cabinet is requested to:

- (1) Note the advantages, disadvantages and risks related to either awarding or not awarding a contract.
- (2) Make a decision to award or not award the contract for the Parks & Countryside Service.
- (3) If the decision in (2) above is to award a contract, to have regard to the tender evaluation process in selecting an external provider.

3.0 REASON/S FOR RECOMMENDATION/S

- 3.1 The reason for these recommendations is to seek a decision from Cabinet as to the proposed future service delivery arrangement for the Parks & Countryside Service.
- 3.2 The options considered in this report are awarding a new Parks & Countryside Services 2012 – 2022 contract to the preferred external provider or not awarding the contract.
- 3.3 This decision by Cabinet is now of a time-critical nature due to the need for sufficient time to mobilise the new service before the 2012 grass cutting season. In addition, existing external contracts for some of these services expire at the end of December 2011 and tendered rates from external providers are only guaranteed until mid January 2012.

4.0 BACKGROUND

4.1 At its meeting on 26 June 2008 (Minute 96 refers) Cabinet agreed that a review of the Parks and Countryside Service be carried out using the Gateway Review process. On 5 February 2009 (Minute 356 refers) Cabinet resolved that the scope of PACSPE should include all elements of the Parks and Countryside Service together with the Streetscene Services grounds maintenance contract. The procurement process has been overseen by an Officer Project Board (comprised of senior officers of all appropriate departments and disciplines) and also an all party Members' Steering Group. The Project has also been subject to the independent Office of Government Commerce "Gateway" Review process.

- 4.2 On 22 July 2010 (Minute 84 refers) Cabinet considered a revised Outline Business Case prepared by Capita Symonds and approved the recommendation to proceed with Option 3 (Total Service with Single Provider) based on the greater potential for improvements in efficiency and consistency of service delivery using the Restricted Procedure procurement route. The decision was also taken that there would no in-house bid.
- 4.3 The decision was subject to 'Call In' primarily on the basis that an 'in-house bid' should be invited as part of the PACSPE process. The decision by Cabinet was ratified by the Sustainable Communities Overview & Scrutiny Committee on 31 August 2010 on the basis that officers ensure that extensive consultation takes place during the period in which the tender document is prepared, in particular with trade unions and user groups.
- 4.4 A further progress report was considered by Cabinet at its meeting on 13 January 2011 which clarified the detailed scope for the project as agreed by the majority of Members of the PACSPE Member Steering Group. The report also sought approval for the proposed form of contract (NEC3 Term Service Option A).
- 4.5 This decision was also subject to 'Call In' and was considered by the Sustainable Communities Overview & Scrutiny Committee on 17 February 2011. The resolution of the Committee by a 7:3 majority was that the recommendations to Cabinet on 13 January 2011 be endorsed but also an additional unanimous resolution that 'the Director of Technical Services make every endeavour in his negotiations with the successful tenderer to try and ensure that existing staff transferred under the TUPE arrangements are admitted to the Merseyside Pension Fund' (Minute 123 refers).
- 4.6 At Cabinet on 17 March 2011, an updated business case for the project was noted and endorsed and the proposed Outline Benefits Management Strategy for the new contract was approved. Cabinet also gave approval to proceed with the Invitation To Tender based on a select list of tenderers who had successfully passed through the pre-qualification questionnaire (PQQ) stage (Minute 355 refers).

5.0 TENDER EVALUATION PROCESS

- 5.1 On 17 March 2011, Cabinet approved a short-list of tenderers who had successfully passed through a rigorous pre-qualification questionnaire (PQQ) process. At this stage, one particular company had been excluded from the short-list because the Director of Finance had questioned the financial standing/ viability of the company, even though they had performed strongly on the quality aspect of the PQQ assessment. The company challenged this view and further research was undertaken in relation to the financial standing/ viability of the

company. This identified there were no reasons to exclude them on financial grounds and once satisfied of this, the Director of Finance (on the advice of the Director of Law HR and Asset Management) used his delegated powers to make the time-critical decision to include this company on the Select List for the commencement of the Invitation To Tender. The then Leader of the Council was consulted on this decision at this time.

- 5.2 The tenderers short listed by the Cabinet plus the additional company added to this list, as described above, were all invited to submit tenders for the new contract under the restricted procurement procedure. By the return date of 12 July, submissions had been received from seven companies.
- 5.3 A robust tender evaluation process has been carried out by a multi-disciplinary officer team involving corporate procurement, legal, human resources, finance and technical disciplines. The results of this process are set out in the Exempt Appendix to this report with details of the preferred external provider to which Cabinet may decide to give consideration to awarding a new Parks & Countryside Services 2012 – 2022 contract.
- 5.4 The ‘quality’ aspect of the tender evaluation model with a 30% weighting consisted of responses to a number of Method Statement questions under the following headings: Service Provision and Ability To Perform (13.5%), Policy Matters including Compliance with Legislation (9%), and Management Approach and Vision for the Service (7.5%).
- 5.5 The ‘cost’ aspect of the tender evaluation model with a 70% weighting consisted of a total ‘lump sum’ price for the Routine Management and Maintenance of all parks and open spaces (56%), an ‘affordability bonus’ for any tenderer submitting a Routine Management and Maintenance ‘lump sum’ price below a pre-specified figure (7%), and tendered rates for ad-hoc Non-Routine work based on a ‘basket’ of work quantities in a typical year (7%).
- 5.6 If Cabinet make the decision to award a new Parks & Countryside Services contract then it should be noted that in accordance with the Public Contracts Regulations 2006 there is a statutory ten day ‘standstill period’. All unsuccessful tenderers will be entitled to obtain feedback on the Council’s contract award decision and, potentially, lodge a legal challenge if unsatisfied with the legality of the decision. Only after this period could the contract be formally awarded.

6.0 RELEVANT RISKS

- 6.1 Key risks relating to the successful completion of the procurement project and award of a contract to an external provider are described in the PACSPE Project Risk Register and monitored and reported to each Project Board meeting.

- 6.2 The key risks associated with this decision relate to value for money (service and financial issues) and consequential legal issues. A detailed analysis of the service quality offered by the preferred external provider and that achievable if no contract is let is set out in the Exempt Appendix 2. The areas of possible financial risk and some consequential legal issues are described in general terms in this section, with more detail being set out in the Exempt Appendix 2. Members are also referred to the list of relevant issues set out in the Executive Summary.
- 6.3 A key benefit of outsourcing the service and awarding the contract to the preferred external provider is that the vast majority of overall significant operational risks relating to the day-to-day delivery of the service are all transferred to the private sector provider rather than being borne by the Council. However, ultimate legal and reputational responsibility for ensuring the service is provided to an appropriate standard still remains with the Council.
- 6.4 Since embarking upon the PACSPE exercise in 2009 the financial position of the Council has worsened significantly, as indicated in section 10 and it is against this background that the risks associated with entering into a 10-year service contract needs to be considered.
- 6.5 The proposed form of contract contains provision for annual inflationary increases after 2012/13 in line with the Consumer Price Index (CPI). The CPI for July 2011 was 4.4%. The contract contains an obligation on the contractor to deliver an annual 'Gershon saving' of 1.5% on the annual contractual inflation calculation. The contractor is also required to work with the Council to deliver annual efficiency savings through a formal annual value engineering exercise. Based on these figures the contract price would increase by 2.9% per annum at a time when the Council is likely to be faced with making savings, although this would be mitigated by any agreed savings from the value engineering process. The impact of inflation over the proposed contract period is detailed in the Exempt Appendices.
- 6.6 The PACSPE contract form has been designed to have in-built flexibility. However, if the Council were to make significant budget reductions, particularly in the early stages of the contract, or reductions that threaten the overall contract viability (from the contractor's financial perspective), then there would be a significant risk of legal challenge. In addition, if the Council seeks to reduce the value of the contract incrementally, it may lead to a deterioration in relations with the contractor and increase the likelihood of the contractor using litigation (or the threat of litigation) as a deliberate tactic to replace operating profits with payments in settlement of legal claims.
- 6.7 If in future years any contract reductions are broadly in line with percentage reductions to other services, the Council should be able to resist any suggestion that it is acting unreasonably (which the Courts

could stop). Nevertheless, the Council may still have to compensate the contractor for consequential costs, such as redundancy payments. It should be noted, however, that redundancy payments by a contractor may be less generous than under the Council's redundancy scheme.

- 6.8 Outsourcing any Council activity creates the possibility of legal claims against the Council by the contractor. This is a new risk: an in-house service cannot sue the Council; it is part of the Council. It is very difficult to put a financial figure to this risk. However, one factor that is likely to increase a contractor's risk appetite for litigation is where a contractor, either deliberately or inadvertently, 'bids low'. It is probably more likely that a low bid has been submitted if it is 'an outlier' compared to other tenders. Where bids are closely grouped it is more likely that the market has been able to gain a good understanding of the work to be delivered through the contract and the tender bids are deliverable. In this regard, Members are referred to the tender evaluation exercise in the Appendix.
- 6.9 The Council's External Auditor has expressed concerns about whether the Council has been able to demonstrate value for money in the Highways and Engineering Services Procurement Exercise ('HESPE'). In the Audit Commission's September 2011 Draft Annual Governance Report on the Council the Auditor concludes that:

'We have some concerns about whether Wirral Council has proper arrangements to secure value for money in its use of resources. I plan to issue a qualified opinion that draws attention to weaknesses identified in the arrangements for securing value for money in respect of the HESPE contract and other governance and internal control issues arising from whistleblowing issues and from the recording and control of assets. My opinion will, however, conclude that with the exception of these matters, I am satisfied that in all significant respects the Council put in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources for the year ending 31 March 2011.' [Page 4.]

The External Auditor has expressed concern that the Council has been unable to provide sufficient information on pre- and post-contract activity levels, service quality and performance management to be able to demonstrate that letting the HESPE contract has resulted in improved value for the money being spent. These issues would be likely to be repeated if the PACSPE contract is let as management information on the service is even less extensive than for Highways and Engineering Services. In the light of this, the External Auditor has observed that:

'there are risks in letting a 10-year contract if there is only very limited information on the costs and activity levels of the existing service and Members should be made aware of this increased risk. This is because there is nothing to monitor against when assessing whether or not letting the contract has delivered better value for money.'

All these comments by the External Auditor are equally pertinent whether or not any contract is let.

7.0 OTHER OPTIONS CONSIDERED

- 7.1 A robust appraisal of alternatives to Option 3 Total Service with Single Provider were considered by consultant Capita Symonds and reported to Cabinet at the Outline Business Case stage. The business case was updated and endorsed by Cabinet on 17 March 2011.
- 7.2 Further to this work, this report, in the Exempt Appendix 2, now contains a more detailed appraisal of the advantages, disadvantages and risks associated with either letting or not letting a contract.

8.0 CONSULTATION

- 8.1 Extensive consultation and engagement has been undertaken with employees, user groups and other stakeholders and the record of past and proposed consultation and engagement is set out in the Project Communications and Engagement Plan. This includes a series of special Consultation Workshops for Parks, Sports, Golf and Bereavement Services users and stakeholders which took place before Christmas 2010 and a second round of Workshops during March 2011. These were used to inform the development of the contract specification and proposed benefits to be achieved by the new service.

9.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

- 9.1 A key objective of the new service delivery arrangement is to facilitate the development of relationships with the community and voluntary sector.

10.0 RESOURCE IMPLICATIONS - FINANCIAL

PREFERRED EXTERNAL PROVIDER – OUTLINE BUSINESS CASE ASSUMPTIONS

- 10.1 Based on the exclusions from the PACSPE procurement exercise approved by Cabinet on 13 January 2011, the 2010/11 gross budgets (less recharges) for the services to be included in the new contract totalled £8.1 million. These services include grounds maintenance functions for all parks and open spaces, golf courses and cemeteries and the Ranger Service. This also includes the highway verge and arboriculture functions that are already delivered by external contracts.
- 10.2 The Outline Business Case approved by Cabinet on 22 July 2010 was subsequently updated to reflect the refined scope of services to be included in the new contract and this was endorsed by Cabinet on 17 March 2011. Based on this updated business case, it was suggested that

by moving to the new 'Option 3 Total Service with Single Provider' service delivery model, which is the basis for this new contract, the Council should expect to achieve efficiency savings of £440k p.a. This saving was against the original £8.1 million budget and equated to a target maximum total contract value of £7.66 million p.a.

10.3 Following the Council's EVR/VS exercise, the available budget for these services for 2011/12 was reduced by £0.7 million to £7.4 million. This is the total budget available for the services and tenderers were given an indication of the likely funding to be available as part of the Invitation To Tender process in the form of an 'Affordability Guide Price'.

10.4 The comparison of tenders against this 'Affordability Guide Price' is set out in the Exempt Appendix 1 to this report. This confirms that, if the contract is awarded to the preferred external provider, then the target contract price in the updated business case will have been achieved. Furthermore, the tender from the preferred external provider also achieves the more challenging 'Affordability Guide Price' threshold set by the Council as part of the Invitation To Tender process.

10.5 If the service is externalised and a contract is awarded to the preferred external provider then there will be an ongoing pension deficit cost to be paid by the Council as highlighted in the previous report to Cabinet on 17 March 2011. The estimated cost is included in Exempt Appendix 1 and is included in the financial appraisal of letting the contract. However, the actual cost cannot be known definitively until the date of transfer.

10.6 In summary, this means that there is an approved budget of £7.4 million and if the decision is to let a contract for 10 years, members will need to be satisfied that it is affordable, having due regard to the Council's likely overall financial position in future years; the likely impact of contractual inflation; the benefits of contractually guaranteed future efficiencies; and the level of flexibility within the proposed form of contract. The impact of inflation over the proposed contract period is detailed in the Exempt Appendices

NOT LETTING A CONTRACT

10.7 The updated business case referred to in paragraph 10.2 suggested that by keeping the service in-house and proceeding with the 'Option 1 In-house plus External Support' service delivery option, the Council could expect to achieve efficiency savings of £90k p.a. against the original £8.1 million budget and deliver the services within the scope of the new contract in-house for £8 million p.a. As indicated above, the EVR/VS process in 2010/11 resulted in a budget reduction of £0.7 million.

10.8 Since the commencement of the procurement exercise the financial position of the Council has changed significantly and greater flexibility may be required to determine the level (and cost) of the service to be provided than originally anticipated. There were reductions in grant

support of £51 million in 2011/12. The Budget Projections for 2012/13 presently indicate a shortfall of £25 million and, over the period 2012/15, the gap is over £85 million. Against this background, the risks associated with entering a 10-year service contract needs to be considered. As a result, further work has been undertaken to understand the feasibility of the Council continuing to deliver the parks & countryside services – this is set out in the Exempt Appendix 2.

10.9 This report does not recommend any increase to the approved budget for these services.

11.0 RESOURCE IMPLICATIONS - STAFFING

11.1 Following the EVR exercise 155 staff have been identified to transfer to the new contractor under the TUPE Regulations. This does not include approximately 40 people employed by external contractors currently engaged in work that will be part of the PACSPE contract. The majority of the 40 people will probably TUPE transfer, either to the preferred external provider or to the Council if no contract is awarded and all services are delivered in-house.

11.2 More recently, it has been clarified that there are an additional 10 Part-time Seasonal Games Attendants to whom the TUPE Regulations may also apply.

11.3 Proposals for a new Parks Client/ Development Team were endorsed by the PACSPE Member Steering Group and of the 42 staff relating to out-of-scope services it is proposed that the majority would perform similar duties in the new Parks Client/ Development structure if a new contract were to be awarded. In addition to these existing posts, a new Parks & Countryside Services Manager was appointed in May this year.

12.0 RESOURCE IMPLICATIONS – ASSET MANAGEMENT

12.1 As highlighted in previous reports to Cabinet, Building Repair and Renewal sits outside the scope of the new contract and these functions and associated budgets have been transferred to the Director of Law, HR and Asset Management.

12.2 If a contract is awarded, then it is proposed that a number of suitable Council-owned operational buildings and depot facilities will be made available to the successful contractor. Tenderers have been invited to set out their proposals for depot arrangements as part of the tendering process.

12.3 If a contract is not awarded, there would be a need to invest in depots, workshops and associated buildings; and in vehicles, plant, machinery and equipment.

13.0 LEGAL IMPLICATIONS

13.1 The Director of Law, HR and Asset Management is represented on the PACSPE Project Board and has played a key role in the development of the Invitation To Tender contract documentation.

13.2 The Council is under a legal duty to provide a service in accordance with the principles of 'best value' and this is set out in more detail Exempt Appendix 2 to this report.

14.0 EQUALITIES IMPLICATIONS

14.1 A detailed Equality Impact Assessment has being undertaken as part of the procurement project.

15.0 CARBON REDUCTION IMPLICATIONS

15.1 Environmental Sustainability is an important objective for the new service delivery arrangement.

16.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

16.1 Community safety in parks has been highlighted as an important objective for the new service delivery arrangement.

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EXEMPT APPENDICES

Appendix 1 - Summary of PACPSE Tender Evaluation Exercise.
Appendix 2 – Implications of not letting any contract.

REFERENCE MATERIAL

Papers and Minutes of PACSPE Project Board and Member Steering Group meetings.

Papers from the PACSPE Tender Evaluation Exercise including tender submissions from the tenderers.

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Cabinet (PACSPE – Invitation To Tender)	17th March 2011
Sustainable Communities O&S Committee – Call In	17th February 2011
Cabinet (PACSPE – ITT/ Project Scope Definition)	13th January 2011
Sustainable Communities O&S Committee – Call In	31st August 2010
Cabinet (PACSPE – Outline Business Case)	22nd July 2010
Cabinet (PACSPE)	3rd September 2009
Cabinet (Parks & Countryside Gateway Review)	5th February 2009