

CABINET MEETING - 10 SEPTEMBER 2008

HIGHWAY MAINTENANCE PFI PROJECT

REPORT OF THE CHIEF EXECUTIVE, THE EXECUTIVE DIRECTOR, DEVELOPMENT, ENVIRONMENT AND LEISURE, AND THE DIRECTOR OF CORPORATE RESOURCES

1 PURPOSE OF REPORT

1.1 This Report seeks Members' approval for:

- the scope of services to be included in the Highway Maintenance PFI Project ("the Project");
- the financial and other resources required to deliver the Project (including, in particular, the procurement costs);
- the procurement strategy for the Project; and
- the delegations required to take the Project through to contract award.

1.2 The Report also updates Members on the development of:

- the proposed client arrangements for the management of the contract; and
- the future arrangements for the Council's services affected by the Project but which fall outside the scope of the PFI contract.

2 BACKGROUND TO REPORT

2.1 The Council has developed a Highway Maintenance PFI Project which will:

- provide a step-change in the condition of the City's roads within five to seven years from the start of the contract, and sustain that improvement over the remainder of the contract;
- make the City's streetscene more welcoming and more widely used;
- encourage greater access to and increased usage of public transport;
- reduce crime and the fear of crime;
- improve road safety, including reducing road traffic accidents;
- reduce vehicle maintenance and fuel costs;
- reduce the cost of claims from trips and slips; and
- contribute to enhancing and protecting the environment.

2.2 The Council approved the development of the Project in July 2006 – see Cabinet Report attached as Appendix 1 – and a bid for Private Finance Initiative ("PFI") funding was submitted to the Department for Transport ("DfT") in September 2006 and updated in February 2008 at the DfT's request.

2.3 This Report is in response to the award to the Council of PFI Credits of £663.8m for the Project, subject to the DfT's approval of the Council's Outline Business Case ("OBC").

- 2.4 This is the largest award of PFI Credits ever made for a local government project. Despite their name, these credits are grants not loans. They represent all new money to the Council, except for a small proportion representing Local Transport Plan (“LTP”) maintenance funding rolled up into the PFI Credits. The PFI Credits headline figure is a notional amount, from which the annual grants will be calculated. These grants are payable over the life of the PFI contract as an addition to the Council’s revenue income, and, with interest, will amount to around £1.2 billion (just under £50m a year).
- 2.5 The 2006 Report requested that Officers report back to Cabinet on the outcome of the funding bid to the DfT, the development of the Project and the content of the OBC. This Report fulfils that requirement.
- 2.6 In parallel with the development of the Highway Maintenance PFI Project, the Council has also developed and obtained approval for a stand-alone Streetlighting PFI Project. The Council always made clear to the DfT that it intended to include its Streetlighting proposals in the Highway Maintenance PFI Project if the bid for funds for the latter was successful, and the two Projects have now been merged.

3 ENVIRONMENT AND SUSTAINABILITY

- 3.1 Bidders for the Project will be made aware of the Council’s commitment to environmental improvement and sustainability and will be evaluated on the environmental impact and the sustainability of their proposals.
- 3.2 Bidders will be expected to identify how improved maintenance of the highway network will contribute to the City’s ambition to be an attractive, sustainable, low-carbon city.
- 3.3 In particular, Bidders will be expected to:
- use sustainable materials;
 - minimise waste;
 - re-use materials;
 - minimise energy consumption and improve energy efficiency; and
 - minimise the environmental impact of construction and maintenance vehicle movements.
- 3.4 Bidders will also be expected to come forward with proposals to reduce the length of time roadworks are in place, which will, in turn, help to reduce vehicle emissions.
- 3.5 In general, the Council will be looking for and assessing how far Bidders can offer innovative solutions which could minimise levels of CO₂ and other greenhouse gas emissions.

4 SCOPE OF THE PROJECT

- 4.1 The vision for the Project is for a holistic and co-ordinated approach to Highway Maintenance throughout the City, aiming to create user perceptions of a seamless service, and to restore the streetscene to a quality which meets the Council's aspirations.
- 4.2 To achieve this, it is proposed that the Project should be City-wide, and should include all adopted roads, encompass all forms of highway maintenance and relevant enforcement, and extend to a "fence-to-fence" approach.
- 4.3 The services which it is recommended should be included in the contract comprise Core Services, which would be paid for through a Unitary Charge, and Non-Core Services, which would be available from the Service Provider as and when requested and for which separate and additional payment would be made.
- 4.4 The Unitary Charge will be a regular monthly payment to the Service Provider to cover all Core Services. A separate charge will be incurred by the Council based on the amount of electricity used for the streetlights etc. Non-Core Services will be paid for at pre-agreed prices, negotiated with the Service Provider during the procurement process.
- 4.5 The Council's key requirements for the delivery of both Core and Non-Core Services will be set out clearly in a specification, detailing in output terms what the Service Provider will be required to provide and achieve, including, where appropriate, reference to relevant codes of practice. However, the Council will, not be prescribing what work should be done or when or how it should be done in order to meet the outputs. Payment will be closely related to outputs and the Output Specification will be backed by a Payment Mechanism which will specify the response and rectification times allowed to the Service Provider for the correction of failures, and permit the Council to apply financial deductions if those time periods are not met. The Payment Mechanism will, in this way, incentivise the Service Provider to meet performance standards and to correct any failures as quickly as possible.

5 CORE SERVICES

- 5.1 The services which it is recommended should be included within the scope of the PFI contract as Core Services are set out in Appendix 2.
- 5.2 Set out below are some of the key service standards for the principal elements of the Core Services which will form the basis of the Output Specification.
- 5.3 Carriageway rehabilitation and maintenance
 - 5.3.1 The Output Specification for the rehabilitation and maintenance of carriageways will be based on a Network Condition Index ("NCI"), combining various attributes of the carriageway such as skid

resistance, rutting levels, surface deterioration, and ride quality. The Service Provider will be required to raise the average value of the NCI universally across the City. Different versions of the index will be required for different types of roads, categorised as primary, secondary, link and local roads.

- 5.3.2 The Service Provider will be required to achieve, as a minimum, the required average NCI value in each of the proposed seven Community Assembly areas. As a result, work will be carried out in all areas of the City in each year of the contract.
 - 5.3.3 The Service Provider will be responsible for determining which roads are to be treated and what treatments are to be used. In order to achieve the required outputs, it is expected that the Service Provider will need to treat all roads twice during the life of the contract. Treatments could vary from replacement of the bituminous upper layers to surface dressing depending upon the carriageway conditions.
 - 5.3.4 Disruption will be minimised by agreeing with the Service Provider the maximum lengths of the primary roads (the “A”-roads and other heavily trafficked roads) which can be made unavailable for road-users at any time due to the Service Provider’s operations.
 - 5.3.5 Threshold levels for each attribute of the NCI will be specified by the Council to ensure that the condition of each individual section of road does not fall below a minimum value.
 - 5.3.6 The Service Provider will also be required to sustain the structural condition of the primary roads over the life of the contract.
 - 5.3.7 The Service Provider will be responsible for reactive maintenance throughout the contract, although eventually less should be required than at present, as a result of the higher level of programmed maintenance.
- 5.4 Footway, Cycleway and Urban Rights of Way rehabilitation and maintenance
- 5.4.1 Condition indices, similar to the NCI for carriageways, are being developed for these parts of the highway network.
 - 5.4.2 Again, two treatments are likely to be applied during the life of the contract. The primary treatment is likely to be microasphalt (a very thin surfacing).
- 5.5 Bridges and Retaining Walls
- 5.5.1 The Output Specification for the maintenance of structures is likely to be primarily based on achieving targets set out in a Bridge Condition Index and covering bridges, retaining walls and other structures.

There will also be a separate and overriding requirement to meet load capacities.

- 5.5.2 The Project will result in the backlog of identified maintenance work, particularly in relation to bridges, being removed and a general improvement in the standard of routine maintenance.

5.6 Streetlighting rehabilitation and maintenance

- 5.6.1 The standards of lighting will be improved to meet relevant British and European standards. To achieve this, around 85% of the City's streetlights are likely to be replaced during the first five to seven years of the contract and a small number of further columns added to improve lighting quality in certain areas.

- 5.6.2 In key locations, such as the heart of certain Conservation Areas, an enhanced standard of lighting column will be specified. The Service Provider will be encouraged to refurbish and re-use cast iron columns reclaimed from across the City in these areas. Where this is not possible, an embellished form of standard column may be used in those locations.

- 5.6.3 The Service Provider will be responsible for reactive maintenance of streetlights, including responding to outage reports. Again, this should be at a significantly lower level than at present as a result of the replacement of older equipment and a higher level of programmed maintenance.

- 5.6.4 The Service Provider will be responsible for liaising with the electricity suppliers who have a statutory monopoly for making and repairing connections to the mains supply. This will be particularly important during the early years of the contract when co-ordination with the electricity suppliers will be vital to the Service Provider's programme, to ensure timely connection of new lighting columns.

5.7 Traffic Signals, Signs, Street Nameplates and Road Markings

- 5.7.1 It is envisaged that up to 40% of traffic signals and 25% of street signs are likely to be replaced during the first five to seven years of the contract, with the remainder being replaced in later years. Road markings and street nameplates will be renewed as necessary.

5.8 Drainage

- 5.8.1 The Project is likely to require the replacement of all old-style gulleys, which are particularly difficult to maintain. The Service Provider will also be required to undertake regular gulley emptying and to deal with any blocked gulley connections. Known highway flooding locations will be treated and the Service Provider will be required to address any new problem areas which may occur in the future.

5.9 Environmental Maintenance on highway

5.9.1 The Service Provider will be required to provide a similar basic level of service in relation to verge cutting and street cleaning to that currently provided. The Council's requirement will be output based and may relate, for instance, to minimum and maximum acceptable lengths of grass or maximum acceptable levels of litter, rather than specifying a set number of grass mowings or street sweeping operations. In addition to the basic service, there will be flexibility for Community Assemblies to request additional services at pre-agreed prices (see paragraph 9 of this Report).

5.9.2 The Service Provider will be required to keep verges in repair, which may result in the worst and most regularly damaged verges being protected or hardened.

5.10 Highway Trees

5.10.1 A significant improvement in tree maintenance will be achieved, with large numbers of over-mature trees replaced by more appropriate species, and others pruned, crowned or otherwise maintained in a safe condition. One aim of the Project will be to return to a more balanced age-profile of the highway tree stock. The overall number of highway trees will be sustained at current levels.

5.11 Winter Maintenance Service

5.11.1 The Service Provider will be required to provide a winter maintenance service at a similar level to that currently provided.

5.12 Other activities

5.12.1 There will be a number of other activities which the Service Provider will be required to undertake, such as strategic assistance, inspection of Statutory Undertakers' works, and dealing with insurance claims (and providing an indemnity to the Council against such claims).

5.12.2 The Service Provider will also be the Council's "eyes and ears" in relation to Highway Enforcement and will make the initial approach on issues such as stones on verges, A-boards, overhanging vegetation etc.

5.13 Programming of Works and Services

5.13.1 The Service Provider will be required to produce annual programmes of work, together with 3-year indicative programmes, having first consulted with Community Assemblies, Statutory Undertakers, the Traffic Manager etc. The Council will have the opportunity to comment on these programmes, and their implementation will be

subject to the approval of individual schemes by the Council's Traffic Manager.

6 NON-CORE SERVICES

- 6.1 Non-Core Services are those which the Service Provider will only be required to provide as and when requested by the Council. These will not be covered by the Unitary Charge and additional payment will be made for those services as and when they are delivered. Non-Core Services will include a wide range of works and services related to, but not central to, the key obligation to refurbish and maintain the highway network. The services which it is recommended should be included within the scope of the PFI contract as Non-Core Services are set out in Appendix 2.
- 6.2 In particular, it is proposed that the Design and Build service currently provided by Street Force, in relation to highway schemes, should transfer to the Service Provider, who would be required, as and when requested, to undertake the design and build of LTP integrated transport schemes up to an agreed scheme value. The Service Provider may also be required to provide a design and build service in relation to other highway improvement schemes. Should some of these schemes be undertaken by a third party, the Service Provider could also be required to provide a design and construction checking service, again on a call-off basis.
- 6.3 The Service Provider will be required to provide the Council with assistance in civil and other emergencies, such as the floods of last year.

7 CHANGES TO SCOPE

- 7.1 The PFI contract will allow the Council to change the scope of the contract or the required standard of service at any time. The latest standard PFI documentation (with which the Council is obliged to comply), makes this process easier than formerly, but any change to a PFI contract can be time-consuming and costly, especially if additional borrowing is required by the Service Provider. Depending on the nature of the change, the Unitary Charge may be increased or decreased or the price of non-core services may be adjusted appropriately.
- 7.2 The Highway Network will continue to change throughout the contract, as new developments, LTP schemes, public realm schemes etc are completed. There will be provision within the contract for these changes to be accrued to the Project at the Council's option. This will normally be at an additional cost to the Council, so, in the case of new schemes, it will be necessary for the promoter, such as DEL's Transport & Highways division in the case of LTP schemes, to provide an up-front sum or a commitment to meet any additional future maintenance costs resulting from such new works.

8 FUTURE ARRANGEMENTS FOR SERVICES OUTSIDE OF SCOPE

- 8.1 It is recommended that the Council should retain a number of highway functions for strategic and policy reasons as outlined in Appendix 2.
- 8.2 These retained services will include Transport Policy, Road Safety, Development Control, Highway Adoptions, Highway Records, Traffic Information and Control, Highway Regulation (other than the first approach to defaulters, which will be made by the Service Provider) and Highway Coordination. Other functions which it is recommended should remain outside the scope of the PFI contract are the maintenance of Rural Rights of Way (other than significant structures on these routes), Parking Services, Environmental Enforcement, abandoned cars, and Environmental Education and Community Development.
- 8.3 It is further recommended that the Council's duties and responsibilities under the Traffic Management Act should be retained in-house.
- 8.4 It is also recommended that environmental maintenance (such as grass cutting and cleaning) of non-highway land should not be included within the scope of the PFI contract and that the Council should consider alternative ways of delivering these services. This is because of the need for a clear focus within the PFI contract on highway services, which have a well-defined and separate identity, and, in particular, have a strongly imposed legal regime codifying and defining what the extent and level of the Council's responsibilities are in respect of highways, in a manner significantly different from its responsibilities for non-highways land. Work is under way to allocate land between highway and non-highway land, in order to ensure the most appropriate provision for the maintenance of all land in the Council's ownership.
- 8.5 The Council will retain the right both to allow and to carry out street advertising, and the Service Provider will have no right to advertise on the street without the Council's consent. An allowance for potential income from street advertising has been built into the forecasts for the Project.

9 ROLE OF AREA PANELS/COMMUNITY ASSEMBLIES

- 9.1 The Service Provider will work closely with Community Assemblies, the proposed successors to the current Area Panels, in drawing up programmes of work so as to ensure that those programmes are fully responsive to local circumstances and the contents of Community Plans.
- 9.2 The procurement documents for the Highway Maintenance contract will be finalised over the next few months. This will be carried out in consultation with the team responsible for the establishment of Community Assemblies, in order to ensure that the key role of Community Assemblies in representing their local areas is fully reflected in the requirements on the Highway Maintenance Service Provider.
- 9.3 These requirements will include an obligation for the Service Provider to be represented at each Community Assembly meeting in order to report on the

progress of programmes for the rehabilitation of the highway network and on any changes to those programmes, and to receive comments on work done and to be done, so that improvements can be measured and comments fed back into the programmes.

- 9.4 Similarly, the Service Provider will report to Community Assemblies and be held to account by them for the delivery of routine streetscene maintenance services. Reports will include details of service standards achieved, reports of faults and any service failures and how they have been dealt with.
- 9.5 It is proposed that each Community Assembly should have available a budget of £200k a year to allocate between additional highway services (such as streetcleaning) commissioned from the Service Provider and non-highway services (such as Parks and Libraries) which, where appropriate, could be commissioned from local Small and Medium Sized Enterprises (“SMEs”) or community enterprises, subject to any procurement restrictions. Community Assemblies will be asked to provide a list of additional services which they may request for their areas from the Service Provider so that agreed prices can be negotiated with the Bidders during the procurement phase to ensure that best value is obtained.

10 PROPOSED CLIENT ARRANGEMENTS

- 10.1 The Council will establish a client function for this Project using Intelligent Client principles as currently being developed by the Council’s Commercial Director. The Project has been designed to achieve high levels of public satisfaction and this will be closely monitored alongside the technical management of the contract.
- 10.2 The Highway Maintenance Project is a key element of the Council’s strategy to improve and develop the City. Within the overall context of seeking greater efficiencies in the way in which services are delivered, this will inevitably require some growth in management functions, because of the complexity of the contractual relationship between the Council and the Service Provider. This will however be kept to a minimum, and duplication between the Service Provider’s monitoring of performance and the Client Team’s overseeing of performance will be avoided, except so far as necessary to validate the Service Provider’s self-monitoring regime.
- 10.3 It is proposed that the Contract Manager be appointed on a Chief Officer grade. This would be the only additional Chief Officer appointment required for this Project and is a consequence of both the scale and importance of the Project and the merger of the DEL client function and the Street Force management function, where a number of Chief Officer posts will be deleted.
- 10.4 It is proposed that the Contract Manager should be appointed during 2009-10. The Contract Manager would then become a member of the Project Team, would attend the Project Board and would work alongside the Project Director during the contract negotiation phase to advise on the acceptability

of commercial issues from the point of view of the future Client Team.

- 10.5 The Contract Manager would also be responsible for establishing the Client Team and creating the systems, procedures and protocols which will be required to manage the contract from service commencement.
- 10.6 It is currently estimated that there will be a need for approximately 20 staff in the Client Team and a provision of £1.2m a year at current prices has been included to meet the staffing and other costs of this function throughout the contract term. The PFI Client Team will be larger than the present DEL client team, but the ratio of overall client cost to direct expenditure will reduce significantly.
- 10.7 A provision of £400k has been identified for the cost of the Contract Manager and the establishment of the client function prior to the letting of the contract. Thereafter, the cost of the client function will be met from ongoing revenue budgets.
- 10.8 The specific tasks within the client function will include:
- Mobilisation and setting up of systems, protocols and procedures, including document management systems and contract analysis;
 - Performance monitoring, including the reviewing of baseline surveys, annual condition surveys, customer surveys and ongoing service delivery monitoring;
 - Programme and works approval, including initial capital, ongoing lifecycle works, and LTP and other non-programmed work approval and integration;
 - Payment and deduction management, including payment mechanism issues, excusing causes and payment processing;
 - Change management, including authority and contractor changes arising from regulatory and technical change;
 - Emergency, standby, handback and retendering arrangements;
 - Liaison and other contract meetings, including dispute resolution;
 - Customer interface, including customer satisfaction surveys;
 - Governance, monitoring and reporting, including annual reviews and reporting on stewardship of contract;
 - Budget management, including contract and client costs and client risk management;
 - Risk management and mitigation of those risks retained or shared by the Council;
 - Policy and strategy development and management, including benefits realisation and Key Performance Indicator monitoring;
 - Stakeholder management, including publicity, communications and complaints handling in partnership with the Service Provider, and Freedom of Information Act responses; and
 - Other commercial issues, including refinancing, termination issues, benchmarking and market-testing of soft services, energy and insurance.

10.9 The establishment of the Client Team within DEL's Transport & Highway division will necessitate a reorganisation of the division to accommodate the new function and to provide for the most effective way to deliver the retained functions. This reorganisation will be conducted in accordance with Council processes for implementing change, including full consultation with staff affected.

11 PROJECT MANAGEMENT AND GOVERNANCE

11.1 The Project is being managed in accordance with the Council's Programme Management standards and national recommendations for the delivery of PFI projects.

11.2 The Council has appointed a Project Sponsor, set up a Project Board and established a Project Team. An organisation diagram of the Project Delivery Team is attached at Appendix 3.

11.3 A Project Director has been appointed, and is assisted by a Project Manager and a Project Secretary. To complement this core team, it is proposed to appoint a Project Support Officer to assist with the day-to-day administration of the Project.

11.4 Within the Project, a number of Workstreams have been established. The identified workstreams are: Technical; Legal; Financial; Procurement; Business Transfer; and Human Resources. Each Workstream is led by a senior Council officer, the majority of whom are engaged full-time on this Project, backed by further Council officers and/or external advisers. A further Workstream dealing with Communications is to be added.

11.5 Specialist external advisers have been appointed to advise the Project Delivery Team on technical, legal and financial issues. The advisers appointed are Mott MacDonald, DLA Piper and PricewaterhouseCoopers respectively.

11.6 The Project Delivery Team is chaired by the Project Director and is made up of the Workstream Leaders, together with the external advisers.

11.7 A Working Group has been established, consisting of the Cabinet Member for Culture, Leisure and Streetscene and her advisers, and representatives of the Project Board and Project Team. It is proposed that this Working Group should continue throughout the Project to ensure that Members are fully involved, consulted and briefed at all stages.

11.8 In addition to the representation of the DfT on the Project Board, strategic meetings are to be held with senior DfT representatives at approximately quarterly intervals.

11.9 DfT are also appointing Transactors to the Pathfinder Programme to work with the three Pathfinder authorities as they prepare their OBCs, to assist the DfT during this period, to help to share best practice between the Pathfinders

and to take this best practice forward into a wider programme at a later stage.

12 PROCUREMENT STRATEGY

- 12.1 The 2006 Report recognised that PFI is the best route for achieving the Council's strategic objectives for maintaining the highway infrastructure. In many respects, the PFI procurement process is closely prescribed.
- 12.2 The Council will advertise the PFI contract in the Official Journal of the European Union ("OJEU") under both Works and Services in order to ensure compliance with UK and EU procurement law. A copy of the OJEU advertisement will also be published on the Council's website.
- 12.3 In order to give early notification to the market of the Council's intention to procure a highways maintenance service provider, a Prior Information Notice ("PIN") has been placed in the OJEU. An Industry Event is taking place in early September 2008, which all interested parties who have registered their details with the Council, will be invited to attend in order to be briefed on the Project.
- 12.4 Previous PFI projects procured by the Council have used the Negotiated procurement procedure. However, Procurement Regulations now require that Authorities use the Competitive Dialogue process when procuring particularly complex projects, defined as those where the technical means to satisfy the needs or objectives of the authority or the legal and financial make-up of the project cannot be fully specified. It is likely that all PFI contracts in the UK will fall within this definition, and the Council intends to procure the PFI contract using the Competitive Dialogue procedure.
- 12.5 The Competitive Dialogue process provides the opportunity to incorporate successive tender stages, during which Bidders will develop and refine their proposals to meet the Council's requirements. The number of Bidders progressing through the successive stages of the Competitive Dialogue process will decrease as the procurement advances. This method of procurement should result in comprehensive, fully priced tenders being submitted to the Council at the final stage of the Competitive Dialogue process.

13 PROJECT TIMETABLE

- 13.1 The Project Timetable has been developed by considering the requirements of and outcomes expected from each of the key stages of the process assessed individually. The time-scales are believed to be realistic and, importantly, achievable, taking account of the complex scope of the Project, and the time and resources which will be required to undertake the dialogue and evaluation phases of each stage of the procurement process.
- 13.2 The key dates in the indicative Project timetable are as follows:

PIN placed in the OJEU	August 2008
Submission of OBC	October 2008
PRG Meeting	January 2009
OJEU Advert published	February 2009
Submission of Outline Solutions	May 2009
Submission of Detailed Solutions	November 2009
Submission of Refined Solutions	June 2010
Submission of Final Tenders	November 2010
Preferred Bidder selected	January 2011
Commercial and Financial close	April 2011
Contract Commences	August 2011

13.3 All dates after January 2009 are subject to the approval of the OBC by HM Treasury by the end of that month.

13.4 Gateway Reviews are being used to check that the Project is ready to move to each successive stage.

14 EVALUATION METHODOLOGY

14.1 The Council is obliged under Procurement Regulations, as confirmed by recent case law, to publish its detailed award of contract evaluation criteria, sub-criteria and all attributed weightings, by including them in the OJEU notice or accompanying procurement documentation.

14.2 It is proposed that Bidders' tenders be evaluated in accordance with the Council's Standing Orders and that the contract be awarded to the bidder proposing the most economically advantageous tender, as provided for in the Procurement Regulations.

14.3 The following criteria and weightings are recommended for the evaluation of bids during the Competitive Dialogue phase of the procurement process:

Technical Proposals	50%
Legal and Commercial Proposals	30%
Financial Proposals	20%

- 14.4 Sustainability will be a key criterion for the evaluation of Bidders' technical proposals, and staffing and pension issues will be evaluated as part of the consideration of Bidders' legal and commercial proposals.
- 14.5 Evaluation Teams for each of these criteria will be established, led by Workstream leaders and consisting of specialist in-house and external advisers and in-house procurement officers who will guide the teams through the evaluation process. Each of the Evaluation Teams will develop and agree with the Project Director and the Project Sponsor the sub-criteria and weightings for their area of responsibility. As noted above, these details will be required to be published in the procurement documentation.

15 FUTURE DECISIONS AND DELEGATIONS

- 15.1 In view of the time-critical decisions which have to be made throughout the procurement of major PFI projects, Members have agreed on previous large and complex projects to delegate authority to make certain decisions to a senior officer or officers of the Council, in consultation, where applicable, with appropriate Cabinet Members.
- 15.2 In the case of the current Project, it is recommended that authority to determine the matters listed below be delegated to the current Project Sponsor or such person as the Chief Executive of the Council may nominate to carry out the role of Project Sponsor from time to time.
- 15.3 Those matters are:
 - 15.3.1 appointment of consultants and advisers, commissioning of surveys and the procuring and letting of other contracts required to support the development of the Project;
 - 15.3.2 approval of minor amendments to the scope of the Project;
 - 15.3.3 financial modelling and other assumptions for the development of the OBC and subsequently the contract;
 - 15.3.4 submission of the OBC;
 - 15.3.5 approval of the terms and conditions of the contract, including any derogations from standard PFI contractual terms;
 - 15.3.6 approval of any required delegation of the Council's functions as Highway Authority, Lighting Authority or Traffic Management Authority;
 - 15.3.7 approval of any required appropriations of land into or out of the highway;
 - 15.3.8 approval of the period of the contract;

- 15.3.9 development, modification and determination of evaluation criteria and sub-criteria and the weightings to be attributed to each;
 - 15.3.10 acceptance or rejection of variant bids for evaluation;
 - 15.3.11 approval of amendments to the Project timetable;
 - 15.3.12 selection of bidders to be invited to submit Outline Solutions, Detailed Solutions, Refined Solutions and Final Tenders;
 - 15.3.13 execution of the main contract and all related agreements and other documents, including the signing of all necessary Certificates under the Local Government (Contracts) Act 1997 (subject to the process of consultation referred to in paragraph 15.5 below); and
 - 15.3.14 any other matters reasonably necessary for the development and procurement of the Project.
- 15.4 The selection of the Preferred Bidder will be the subject of a further report to Cabinet. In order to maintain the Project Timetable, this report may need to be considered by Members after a shorter period of prior consultation with officers and Members than would be usual if this Report related to a new initiative.
- 15.5 Once all matters have been clarified with the Preferred Bidder and the Council is in a position to enter into the contract, it is recommended that the Project Sponsor should consult with the Cabinet Members for Culture, Leisure and Streetscene and for Finance and Customer Focussed Services (or any successors with Member responsibility for streetscene and financial matters respectively), the Assistant Chief Executive, Legal and Governance (or any successor as Statutory Monitoring Officer or officer with similar responsibility) and the Head of Corporate Resources (or any successor as Statutory Section 151 Officer or officer with similar responsibility), prior to exercising the delegated authority to authorise the execution of the contract.

16 CONSULTATION AND COMMUNICATION STRATEGY

- 16.1 A preliminary Communications Plan was prepared in June 2006 and subsequently approved by the Highways Project Board. The plan was developed following a series of workshops involving a cross-corporate team of Council officers representing all departments likely to be affected by the Project and has recently been updated. The principal stakeholders identified in the Communications Plan will be kept informed of progress at key stages of the Project.
- 16.2 In order to further develop, implement, monitor and review the Project's Communication Strategy, it is intended to appoint a Communications and Consultation Officer. This post will form part of the Council's Communications Team but be dedicated to the Project.

- 16.3 The Communications and Consultation Officer will lead the proposed Communications Workstream of the Project, a key function of which will be to brief, consult and liaise with stakeholders on the development and progress of the Project and on how the Project will affect them, and to manage stakeholder expectations of the outcomes and benefits of the Project.
- 16.4 The Communications and Consultation Officer will also lead on consultation with the local community during the development and delivery of the Project and will work closely with Community Assemblies and with the Service Provider's own communications team to ensure that local circumstances and concerns are fully represented and taken into account.
- 16.5 During the delivery phase of the Project, the Communications and Consultation Officer will also ensure that consultation is undertaken with the Chamber of Commerce and local businesses to ensure that they are fully aware of the programme of works to be carried out in their areas and to seek to minimise the impact of those works on their business operations during the Project implementation phase.
- 16.6 Trades Unions are being consulted through a monthly Joint Trades Union Forum. A staff newsletter has been developed and, to date, six issues have been published. In addition, employees have received information on and been able to ask questions about the Project at Street Force staff roadshows.

17 FINANCIAL IMPLICATIONS

- 17.1 The PFI Credits of £663.8m will be payable by way of Special Grant on an annuity basis over 25 years at an amount of £49.5m pa (including interest at 5.5%, subject to HM Treasury approval being received in 2008/09).
- 17.2 The February 2008 Updated Proposals were underpinned by shadow bid and affordability models based on a number of assumptions developed by officers in consultation with financial and technical advisers, and designed to work in the context of the Council's wider financial strategies. The most important of these assumptions, from a financial viewpoint, are:
- 17.2.1 The Council will commit to the scheme Transport and Highways annual budgets of £27.1m and additional resources of £9.6m pa (at 2007/08 prices) and these will be subject to annual inflation increases. The additional resources take account of an average of around £1.0m a year (at current prices) of interest receivable on the positive cash flows generated for the Council by the Project;
- 17.2.2 Services retained by the Council, together with the cost of the client function for the PFI contract, will cost £7.3m pa (at 2007/08 prices and subject to inflation increases) and be accommodated within the above budgets and the PFI grant income;
- 17.2.3 Unfunded pension liabilities, Street Force trading surpluses and irrecoverable fixed overheads will need to be provided for at £3.9m

pa (at 2007/08 prices and subject to inflation increases) and accommodated within the above budgets and the PFI grant income;

- 17.2.4 The Council will pay the Service Provider an annual Unitary Charge, an element of which is likely to be subject to inflation increases (see below). The Unitary Charge will escalate in 5% bands from 65% of the whole Unitary Charge in year one of the contract to 100% of the unitary charge after year seven of the contract;
 - 17.2.5 There will be an initial seven-year period during which capital and lifecycle costs will be incurred by the Service Provider, followed by a remaining 18-year contract period during which the Service Provider will incur further lifecycle costs. Through increased efficiencies assumed in the above costs, economies of scale and technical innovation, the Service Provider will be able to reduce unit capital and lifecycle costs;
 - 17.2.6 As well as maintaining the highway network in good condition by providing planned and reactive maintenance, the Service Provider will provide soft services, such as street cleaning and maintenance of grass verges. Through increased efficiencies assumed in the above costs and economies of scale, the Service Provider will be able to reduce unit maintenance and operating costs. The contract will make provision for some of the soft services to be subject to periodic market testing;
 - 17.2.7 The Service Provider will be responsible for the volume of Streetlighting energy used, although the tariff risk will remain with the Council. The energy will continue to be procured by the Council unless the Service Provider can provide a better price. Base unit costs are assumed to be unchanged from present;
 - 17.2.8 All cost assumptions are inclusive of appropriate levels of optimism bias, i.e. a reasonable allowance for potential underestimation of costs;
 - 17.2.9 The Project will be funded on a standard project finance basis with a mixture of debt and equity funding;
 - 17.2.10 The Service Provider will acquire for value the Council's operational assets used in the delivery of the services at the date of transfer.
- 17.3 The assumptions to be used in the development of the OBC are not expected to vary materially from those set out above. Any delays in obtaining HM Treasury approval of the OBC or in the procurement process could reduce income or increase costs.
- 17.4 As with other PFI schemes, once the contract is signed, the Council will need to commit RPIX-linked funding to the Project for the duration of the contract.

- 17.5 Inflation has been modelled at 2½%, based on RPIX increases estimated at the time of modelling, and the Council's financial contribution to the scheme, which will begin in 2011/12, will need to allow for actual inflation increases at RPIX, between 2007/08 and the start of the contract in 2011/12, whatever their outturn. This requirement is independent of any changes to the Transport and Highways budgets between 2007/08 and 2011/12, including any cash-limit or other constraints imposed by the budget-setting process between now and the start of the contract.
- 17.6 Inflation, as measured by RPIX, has in recent years fluctuated within reasonably narrow bands. However, in the current uncertain economic climate, inflation has become more volatile. General inflation is currently well above 2½% although current economic predictions are that it may well fall substantially during 2009. Each 1% of inflation above the forecast rate will increase the additional resource requirement by £0.4m a year at current prices.
- 17.7 The Council will seek proposals from Bidders as to how the inflation risks of the contract can best be managed, with a view to finding the optimal inflation risk allocation in the interests of achieving best value for money.
- 17.8 The Council will also need to commit to the scheme additional funding for expansion of the network, which experience has shown to be around 0.25% pa. An element of the Council funding from Central Government is related to increases in the size of the network, and such funding will need to be earmarked for the scheme.
- 17.9 The Council will follow HM Treasury guidance in demonstrating value for money. Overall value for money in the contract will be assured through the strong competitive pressures of the multi-stage procurement process. The need for the Service Provider to seek out and achieve efficiencies will be guaranteed through the expected keen market pressure for the contract and the encouragement of Bidders to bring forward world-class innovation and methods of working. These efficiencies will then be enshrined in contractual method statements and built into the pricing of the contract throughout the contract period.

18 PROJECT RESOURCES

- 18.1 The development of a PFI project from its initial stages through to the signing of a contract is a long, complex and resource-intensive process, and the breadth and scope of the current Project indicates a need for significant input from internal staff of Transport & Highways division, Street Force and Central Departments, and for the use of technical, legal, financial and other advisers. The Project is in a sector that is substantially untested, and involves the transfer of a large number of staff in an area of activity that intersects with a number of other Council services.

- 18.2 The current approval for procurement costs, up to OBC, is £3.3m. It is estimated that a further £6.0m will be required for the procurement phase of the Project. A breakdown is set out in Appendix 4.
- 18.3 The procurement costs, together with the initial client function set-up costs referred to in paragraph 10.7 above, will be temporarily funded from existing PFI Cash Reserves and paid back to those reserves, with interest, over the contract period.
- 18.4 Some of the major risks to the delivery of the Project by the Council have already been overcome with the conditional award of PFI Credits. The remaining hurdles are approval of the OBC and the procurement phase itself. In the unlikely event of the Project failing to obtain OBC approval, then costs of approximately £4m would be outstanding, and if the Project failed at a late stage in the procurement then £8m could be outstanding, requiring recovery from revenue budgets.
- 18.5 To repay £8m to the PFI reserves over, say, sixteen years would cost, with interest, around £0.6m a year (at 2007/08 prices). However, this is very much a worst-case position.

19 LEGAL IMPLICATIONS

- 19.1 The existing Contracting Out of Highway Functions Order 1999 and its proposed replacement both enable the Council to make arrangements with a third party to carry out the services referred to in this Report on the Council's behalf and in the manner envisaged.
- 19.2 The Council, as Highway and Streetlighting Authority for its area, has numerous powers and duties in the Highways Act 1980 to carry out maintenance, improvement and repair work. None of the arrangements with the Service Provider outlined and proposed in this Report would relieve the Council of those powers and duties.
- 19.3 The Council's functions and responsibilities as Traffic Management Authority under the Traffic Management Act 2004, including the operation of permit and lane rental schemes and the linked functions and responsibilities under the New Roads and Street Works Act 1991 of co-ordination of works in the highway, will broadly remain outside the scope of these arrangements, although the Service Provider will undertake inspection of utility works and may carry out other related duties on the Council's behalf.
- 19.4 No formal delegation of functions is considered necessary to give effect to the proposed contractual arrangements, although some minor delegation may be required in respect of inspection of utility reinstatements.
- 19.5 Contractual documentation and protocols will be agreed with the Service Provider in relation to all interface issues between the functions to be carried out by the Service Provider and those to be retained by the Council so as to

give clarity to the risk allocation.

- 19.6 Any claims against the Council as Highway or Streetlighting Authority, even if they relate to matters within the proposed contract, will still remain the ultimate responsibility of the Council. The Service Provider will, however, provide an indemnity to the Council against such claims in so far as they relate to the services to be delivered under the contract.
- 19.7 The procurement is subject to EU Procurement Regulations and, as such, could lead to the Council being challenged by a Bidder if the procurement process was deemed to be unlawful or discriminatory. Measures to avoid such challenge are detailed in sections 12 to 14 above.
- 19.8 In addition to the main contract, a number of other contractual arrangements will need to be put into place, including direct agreements with lenders and sub-contractors, pension agreements, property transfer agreements, and a Business Transfer Agreement to cover transfer of the Street Force business to the Service Provider.
- 19.9 The main contract and one or more other agreements will need to be certified under the Local Government (Contracts) Act 1997 to protect the Service Provider and its Funders against the remote possibility of a challenge to the powers which the Council will be relying on to enter into contractual arrangements.

20 HUMAN RIGHTS IMPLICATIONS

- 20.1 There are not considered to be any human rights implications arising out of this report.

21 HUMAN RESOURCES IMPLICATIONS

- 21.1 Street Force currently employs approximately 760 staff. It is likely that a significant number of these employees will transfer to the Service Provider, or to sub-contractors of the Service Provider, in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"). Other staff within the Council and employees of Council sub-contractors who provide support services to the Council's Highway Maintenance functions may also transfer under TUPE.
- 21.2 A Joint Trades Union Forum has been established as the single body for consultation and communication on staffing matters relevant to the Project.
- 21.3 In accordance with TUPE, the Council will formally consult with employees and their Trade Union representatives over the proposed transfer, and these consultations and the transfers will be carried out in accordance with the Council's Code of Practice for staff transfers agreed with the Trades Unions.
- 21.4 The Code of Practice covers pension issues as well as employment terms and conditions. The Council cannot require, but will encourage, the Service

Provider to provide transferring employees with the opportunity to continue membership of the South Yorkshire Pension Fund.

22 EQUALITIES IMPLICATIONS

- 22.1 An Equalities Impact Assessment (“EIA”) has been undertaken to assess the effects that the Project is likely to have on the different groups within the City.
- 22.2 The EIA highlights the universal benefits of the Project to all users of the highway network and streetscene by improving safety, reducing crime and the fear of crime, making neighbourhoods more accessible to all and improving use of public transport. In particular, the Project will, through the improvement of footway surfaces, be of great benefit to those with mobility problems, wheelchair users and people with young children using prams and pushchairs.
- 22.3 An Action Plan has been drawn up to reflect the outcome of the assessment, and progress against the Action Plan will be monitored as the Project develops. This ongoing monitoring includes ensuring that the benefits identified in the Project are achieved and that customer satisfaction with the condition of the City’s roads and pavements improves.

23 ECONOMIC IMPACT

- 23.1 Bidders will be required to set out their proposals for enhancing the social and economic prosperity of the City. The social and economic benefits offered will be incorporated into the contract and will help to address some of the City Strategy’s key features that define a successful city, particularly:
- strong economy; and
 - high employment and high skills in a learning City.
- 23.2 Benefits which may be offered include the development of sustainable supply chains, training opportunities for the local labour market, employment opportunities for hard-to-reach groups and training programmes for the transferring workforce. Bidders will be expected to use their purchasing power to assist in the development of the local economy through encouraging SMEs to bid for work opportunities arising from the Highway Maintenance contract.
- 23.3 Meetings have been held with the Voluntary and Community Sector to make them aware of the opportunities which may be available to the third sector under the Project. The Service Provider will be required to meet the Council’s policies with regard to working with the third sector and to assist in building capacity within that sector.

24 COMMUNITY SAFETY IMPLICATIONS

- 24.1 A better maintained highway network will have a number of positive community and safety implications. Good footway surfaces will result in

fewer personal injury accidents, and good carriageway surfaces, complemented by clear signs and markings, will provide a safer environment for motorists, cyclists, horse-riders and pedestrians, leading to fewer road traffic accidents.

- 24.2 A well-maintained streetscene will help to make everyone feel safer but particularly the elderly and the vulnerable. It will also give residents a clear signal that the area in which they live is important and well cared for, giving a message of reassurance and dispelling feelings of social exclusion.

25 PROPERTY IMPLICATIONS

- 25.1 Within the City there are a number of Council depots, which are currently utilised in support of the Highway Maintenance function, principally Olive Grove where the headquarters of Street Force is based.
- 25.2 The Service Provider will be allowed, if it so wishes, to use existing depots on the basis of a licence which will automatically terminate on expiry of the contract or earlier termination, so that the Council can obtain immediate access to the sites required to deliver the services, should this become necessary.
- 25.3 Officers are currently carrying out work to ensure that the Council's existing records of land held for highway purposes or forming part of the highway are up-to-date. This may require appropriation of land into and out of the highway.

26 AREA PANELS/COMMUNITY ASSEMBLIES AFFECTED

- 26.1 The Project will provide major benefits for all Area Panels/Community Assemblies as the services to be supplied under the PFI contract are to be delivered universally across the City.
- 26.2 The role of Community Assemblies in the development and delivery of the Highway Maintenance contract is set out in more detail in paragraph 9 above.

27 RECOMMENDATIONS

- 27.1 Members are recommended to:
- 27.1.1 Welcome the conditional award by the DfT of PFI Credits of £663.8m for a Highway Maintenance PFI Project;
 - 27.1.2 Approve the scope of services to be included in the PFI contract as set out in this Report;
 - 27.1.3 Approve the financial commitments to the Project set out in paragraph 17 of this Report, including, in particular, the commitment of existing budgets of £27.1m per annum and additional resources of

£9.6m per annum, all at 2007/08 prices and subject to RPIX inflation increase, for the duration of the contract term;

- 27.1.4 Approve additional procurement resources of £6.0m, to be funded from existing PFI Reserves;
- 27.1.5 Note the proposed appointment of a Contract Manager, a Project Support Officer and a Communications and Consultations Officer as referred to in sections 10.3, 11.3 and 16.2 above respectively;
- 27.1.6 Approve the Procurement Strategy, Project Timetable and Evaluation Methodology for the Project, as set out in this Report;
- 27.1.7 Approve the delegations set out in section 15 of this Report and note that a further Report will be received by Cabinet prior to, and recommending, the appointment of a Preferred Bidder.

29th August 2008