

## **Cabinet – 17 July 2024**

### **Interim provision of street lighting services**

<b>Portfolio:</b>	Councillor Murphy – Street Pride
<b>Related portfolios:</b>	Councillor Andrew – Economic Growth & Regeneration
<b>Service:</b>	Street Lighting - Highways, Transport & Operations
<b>Wards:</b>	All
<b>Key decision:</b>	Yes
<b>Forward plan:</b>	Yes

#### **1. Aim**

- 1.1. The council has a statutory obligation to maintain the highway in a safe condition. This includes the maintenance and management of highway lighting to provide a safe environment in which road users can navigate the road network efficiently and effectively.

#### **2. Summary**

- 2.1. The streetlighting service is provided through a contract with Walsall Public Lighting (WPL) Ltd under private finance initiative (PFI) arrangements. The 26 year PFI arrangement commenced on 28 March 2002 and expires on 30 April 2028.
- 2.2. WPL and their subcontractor Amey are responsible for the maintenance and operation of the borough's adopted highway lighting assets for the period of the contract and are required to manage them appropriately to deliver the lighting standards detailed in the contract. On expiry of the PFI, this responsibility will fall back to the council and therefore, appropriate service delivery arrangements will need to be in place.
- 2.3. In October 2023, Cabinet considered the future service delivery options and resolved to approve the commencement of preparations for a procurement exercise for a combined highway infrastructure services contract. Additionally, Cabinet resolved to enter negotiations with Walsall Public Lighting with a view to extending the Public Lighting PFI contract by 11 months.
- 2.4. Subsequent discussions with the Infrastructure Projects Authority and Department for Transport have indicated that this is likely to be unacceptable to HM Treasury, citing the 2018 Budget when the Chancellor announced that the government would no longer use PFI or PF2 for new projects as it was

considered inflexible, overly complex and a source of significant fiscal risk to government.

- 2.5. Advice has therefore been sought in respect to alternative approaches and this is set out in the report.

### **3. Recommendations**

- 3.1. That, following consideration of the confidential report in the private part of the agenda, Cabinet approve Cabinet delegate authority to the to the Executive Director for Economy, Environment and Communities, in consultation with the Cabinet Member for Economic Growth & Regeneration, to enter negotiations with Amey with a view to directly awarding a contract for delivery of public lighting services for the 11-month interim period between the end of the PFI contract and the commencement of the combined highway services contract.

### **4. Report detail - *know***

#### ***Context***

- 4.1. The council has a statutory duty to maintain around 528 miles of highway network across the borough, excluding the M6 motorway and the A5 trunk road. This network has a gross replacement value in excess of £1.5billion, including street lighting assets to the value of £50million, making it the most valuable asset owned, managed and maintained by the authority.

- 4.2. The council's highway infrastructure includes 30,098 lit highway assets, comprising streetlights, lit signs, lit bollards and other ancillary lighting. Although the council has no obligation to light the adopted highway, there is a statutory obligation to maintain existing lit highway assets in a safe condition.

- 4.3. A recommendation was put forward to the council's Cabinet on 18 October 2023:

That cabinet delegate authority to the Executive Director for Economy, Environment and Communities, in consultation with the Cabinet Member for Regeneration, to enter into negotiations with Walsall Public Lighting with a view to extending the Public Lighting PFI contract by 11 months [Option 3].

- 4.4. The proposed contract extension was intended to commence on 1 May 2028 to 1 April 2029 with an estimated indicative contract value of £2million.

- 4.5. The Cabinet resolved to:

- approve the commencement of preparations for a procurement exercise for the Combined Contract; and
- delegate authority to the Executive Director for Economy, Environment and Communities, in consultation with the Cabinet Member for Regeneration, to enter into negotiations with Walsall Public Lighting with a view to extending the Public Lighting PFI contract by 11 months [Option 3].

- 4.6. Subsequent council engagement with the Department for Transport (DfT) and Infrastructure Projects Authority (IPA) highlighted that at Budget 2018, the Chancellor announced that the government would no longer use PFI or PF2 for new projects as it was considered inflexible, overly complex and a source of significant fiscal risk to government.
- 4.7. The advice given by DfT and IPA officers was that the council would need to provide HM Treasury (HMT) with a full and detailed business case and that, based on previous experience, the end-to-end process would likely take two years. Furthermore, based on the Budget 2018 position and an understanding of HMT's response to a request for a PFI extension in another sector, it was unlikely HMT would support an extension to the contract.
- 4.8. It isn't clear if HMT could veto any attempts to extend a PFI without their prior approval and neither DfT officers nor IPA officers have been able to advise on this point.
- 4.9. In view of the ambiguity and costs involved in extending the PFI, an alternative approach, namely directly awarding the 11 month interim contract to the incumbent subcontractor Amey, has been explored.
- 4.10. To inform the recommendation to Cabinet, legal advice was sought from Bird & Bird, an international team of lawyers dedicated to advising both the public and private sectors on all aspects of procurement law.
- 4.11. The advice received from Bird & Bird can be found in **Appendix A**.

### ***Council Plan priorities***

- 4.12. Well-maintained highway lighting advances the council's corporate plan priorities by contributing to safety, sustainability, and community well-being.
  - Effective lighting provision enhances road visibility, reducing accidents and promoting safe travel for residents and visitors alike, aligning with the council's commitment to public safety.
  - An approach that embraces innovation and promotes energy-efficient lighting options. lower electricity consumption and align with the council's sustainability goals, reducing environmental impact, and cutting costs.
  - Intelligently lit streets create a sense of security and encourage positive nighttime activities, fostering vibrant and connected communities.

### ***Risk management***

- 4.13. In their advice, Bird & Bird have noted that directly awarding a contract is rarely without risk however, notwithstanding this, there are very strong practical and commercial reasons for the council's decision to pursue a combined highway service contract. To do this, a short-term, interim arrangement to bridge the gap on street lighting between the expiry of the existing contract and the new combined contract is essential.
- 4.14. Bird & Bird consider that from an audit perspective, so long as this decision is robustly justified in terms of the benefits to the council in respect of economy,

efficiency and effectiveness, it should be possible to explain and justify this to a local government auditor.

- 4.15. Bird & Bird believe that it is relevant to consider the wider implications, not least the effort, time and cost likely to be incurred in each case.
- 4.16. Given that some procurement risk will inevitably accrue in pursuing this approach, Bird & Bird have set out practical options for mitigating any procurement risk that might be associated with its implementation:
  - Manage the narrative around the interim contract, including managing prospective bidders understanding of why the interim contract has proved necessary and providing reassurance that a new procurement is planned.
  - Ensure bidders have confidence that the council is taking a professional and open approach with respect to the combined highway services contract.

### ***Financial implications***

- 4.17. The annual spend on street lighting service delivery, excluding energy costs, is £3.985million. This includes PFI credits which are fixed at £1.595million for the life of the PFI and partially offset the service element of unitary payments. The balance, £2.390million is funded from the PFI reserve.
- 4.18. The earmarked PFI reserve is forecast to be fully utilised by the end of the current PFI term.
- 4.19. There is an electricity budget of £0.727million. Volatile contractual inflation remains a high financial risk.
- 4.20. The fall out of the PFI credits will form part of the budget setting process.
- 4.21. The net controllable revenue budget for post PFI street lighting services, excluding electricity, is £2.209million, assuming investment is given for fall out of the PFI credit. The interim arrangement will be met from the existing cash limit for the service including the allowance for indexation.
- 4.22. External capital grants may be available for specific works but will be subject to strict conditions restricting their use and requiring the authority to demonstrate that they have not been used to replace existing budgets.

### ***Legal implications***

- 4.23. The legal implication of not maintaining street lighting is a complex and context-dependent issue. However, some general principles are:
  - A highway authority may provide and maintain street lighting for any highway or proposed highway for which they are responsible.
  - A highway authority may alter or remove any works constructed by them or vested in them for street lighting purposes.
  - A highway authority shall pay compensation to any person who sustains damage by reason of the execution of works for street lighting.

- A highway authority has a duty of care with respect to maintaining street lighting in a safe condition.

The procurement advice considers the council's options in the context of the Local Audit and Accountability Act 2014, the Public Contracts Regulations 2015 and the Procurement Act 2023.

### ***Procurement Implications/Social Value***

4.24. The October cabinet report considered a number of potential procurement options have been considered in preparing this report. These were:

- A dedicated procurement exercise
- Commissioning the service via an existing framework contract
- Concluding the Highway Infrastructure Services Contract [HISC] earlier than planned
- Varying the scope of the HISC to include the street lighting service.
- Direct award to the current service sub-contractor [Amey].
- Extending the PFI.

4.25. The procurement advice on which the recommendation is based, is provided in **Appendix A**.

### ***Property implications***

4.26. Amey are now co located with the wider Highways, Transport and Operations service at the council's environmental depot. To mitigate the risk of duplicated legal fees the lease was drafted with a mutual break clause in 2028 in the event that the council do not negotiate a contract extension to the end of March 2029.

### ***Health and wellbeing implications***

4.27. A well-maintained highway network, including well-lit assets, significantly bolsters health and wellbeing. Adequate lighting enhances road safety, reducing accidents and anxiety-inducing driving conditions. Improved visibility lowers stress levels and fosters a sense of security, positively impacting mental health. Well-lit highways facilitate smoother traffic flow, curbing congestion-related air pollution and promoting cleaner air quality. Accessible and well-lit roadways enable faster emergency responses, potentially saving lives and minimising trauma. Additionally, illuminated highways encourage nighttime mobility, promoting active lifestyles and social engagement.

### ***Reducing Inequalities***

4.28. A well-maintained highway network, including well managed highway lighting, plays a pivotal role in reducing inequalities by enhancing accessibility and connectivity. It supports equal opportunities for economic growth, social development, and improved quality of life. In remote or marginalized areas, a reliable highway network connects residents to essential services, education, healthcare, and employment opportunities in urban centres. This access

enables people from all backgrounds to participate in the economy and access resources previously out of reach.

- 4.29. A functional highway network facilitates the efficient movement of goods and services, fostering trade and market integration for both rural and urban areas. This, in turn, promotes equitable economic development and reduces regional disparities. By levelling the playing field and enabling efficient interactions, a well-maintained highway system stands as a tangible catalyst for reducing inequalities and fostering a more balanced, inclusive society.

#### ***Staffing implications***

- 4.30. The recommended approach has no direct staffing implications for the council.

#### ***Climate Impact***

- 4.31. The provision of highway lighting has a significant impact on the council's energy consumption. A project to convert 23,000 of Walsall's streetlights to energy efficient LED technology is nearing completion and will dramatically reduce consumption.
- 4.32. By securing a long-term delivery partner who can drive innovation, the council will be best placed to implement further measures to mitigate the climate impact of the highway infrastructure they maintain.

#### ***Consultation***

- 4.33. Post PFI options were initially appraised in March 2023 at a partnership day. A workshop led by an independent facilitator involved council officers, Equitix [the investors owning Walsall Public Lighting], Amey [the contractor] and a representative from the Infrastructure and Projects Authority [IPA]. The session saw all parties consider the options for post PFI service delivery and the associated opportunities and risks.
- 4.34. As set out above, following the partnership day, discussions with a small number of national contractors, local authorities and peers on the ADEPT Engineering Board were used to better understand the market position and best practice. This provided helpful context and the benefit of lessons learned. Their feedback also indicated that the approach set out by Bird & Bird was something that they would consider to be reasonable not something that they would likely challenge.
- 4.35. In May 2023 the cabinet members for Regeneration and Street Pride were consulted in respect to priorities, outcomes and the options being considered by the council.

## **5. Decide**

- 5.1. Cabinet previously considered several options in respect to the future of the street lighting service:
- Option 1: Create an in-house provision by in-sourcing the street lighting service.
  - Option 2: Procure a standalone street lighting service.
  - Option 3: Procure a combined highway services contract comprising the scope of the current highway infrastructure services contract and street lighting
  - Option 4: Establish a shared street lighting service with neighbouring authorities
- 5.2. Option 3 was recommended and approved by cabinet. In responding to the approval, the Executive Director for Economy, Environment & Communities, in consultation with the Portfolio Holder for Regeneration, was to enter into in principle negotiations with WPL Lid in respect to an 11 month extension to the PFI.
- 5.3. In view of the advice from the government departments and the procurement advice from Bird & Bird, Cabinet need to consider if a direct award to Amey is an acceptable amendment to this approach.
- 5.4. If the direct award is not acceptable, the council will need to progress a short term interim service procurement noting the risk of little market interest due to the following points:
- There is a long-term incumbent already “on-site”.
  - It is likely to take most of the proposed 11 month term to mobilise/transition the contract.
  - Competitive pricing may prove challenging as any provider, other than the incumbent, will likely need to recover the cost of mobilising the contract over a short duration.

## **6. Respond**

- 6.1. Subject to approval, the Executive Director for Economy, Environment & Communities, in consultation with the Portfolio Holder for Street Pride, will enter into in principle negotiations with Amey in respect to an 11 month interim public lighting contract.
- 6.2. If negotiations are successful, a report regarding the contract award, will be provided to Cabinet.

## **7. Review**

- 7.1. Progress will be monitored against the key milestones and high-level project plan established for the expiry of the PFI. Highlight reports are provided to the portfolio holders and Walsall Network Board on a quarterly basis.

7.2. Details of plans for the expiry of the Street Lighting PFI and the procurement strategy for the combined highway services contract will be presented to Cabinet in autumn 2024.

## 8. Appendices

8.1. Public Lighting Procurement Advice

## 9. Background papers

9.1. Cabinet Report - October 2023 - [Future provision of street lighting services](#)

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4 July 2024



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4 July 2024