



DERBY CITY COUNCIL

COUNCIL CABINET
28 November 2006

Cabinet Member for Planning and
Transportation

ITEM 8

STREET LIGHTING PFI PROJECT: APPROVAL OF FINAL BUSINESS CASE

SUMMARY

- 1.1 Negotiations on finalising commercial agreement between the Council and Connect Roads Derby Limited (Balfour Beatty), and the development of the Final Business Case, have been delayed.
- 1.2 A revision to the British Standard governing street lighting standards has had an impact on the cost of the PFI, and has delayed the proposed date for financial close.
- 1.3 The delay in reaching financial close has lead to Balfour Beatty increasing the price for the scheme.
- 1.4 Subject to any issues raised at the meeting, I support the following recommendations.

RECOMMENDATIONS

- 2.1 That the Council submit an application for additional PFI credits to the Department for Transport, to cover the cost of the revisions to the British Standard and the increased cost of undertaking the project. Should that bid fail, a revised negotiation strategy would need to be considered.
- 2.2 To note that a further report will be submitted to Cabinet seeking approval to enter into the Final Contract after consideration of the Final Business Case.

REASON FOR RECOMMENDATIONS

- 3.1 Everything possible should be done to ensure that the Council has an affordable scheme whilst doing whatever is possible to minimise the risk of delays in signing of the contract.



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Report of the Corporate Director – Resources and Corporate Director -
Regeneration and Community

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SUPPORTING INFORMATION

- 1.1 At the meeting of the Cabinet on 1 August, a confidential report on the current progress in negotiations with the Preferred Bidder, Balfour Beatty, was presented indicating an affordability gap for the Project.
- 1.2 The strategy for dealing with the shortfall in funding was set out in the last report; this included an application for further PFI credits from the Department for Transport, DfT.
- 1.3 Since the application for additional credits was made, a change to the British Standard (BS) for street lighting has taken effect and the implications are that there will be an increase in the number of columns required to achieve the revised lighting standards and a corresponding increase in the cost, of construction, maintenance and energy.
- 1.4 The change to the BS had not followed the usual consultation processes and so was not widely known by the Lighting Industry or the Authority until September 2006, even though the change actually came into effect in April 2006.
- 1.5 Consequently, the application to DfT for additional PFI credits was understated. Discussions with the DfT have resulted in an agreement to put 'on hold' the existing application for additional PFI credits, until such time as the full implications of this revision can be determined. DfT have indicated that they would be prepared to consider a revised application for additional PFI credits, based on the original application and the BS revision implications.
- 1.6 The price submitted by Balfour Beatty to carry out the scheme was fixed until the end of November 2006, which would have been sufficient time to achieve financial close, had the application for additional PFI credits been approved and if the BS revision had not occurred. Following negotiations, Balfour Beatty has agreed to hold the current price until 1st January 2007.
- 1.7 It is not possible for either Derby or Balfour Beatty to absorb the increase in the cost of compliance with the BS or the price increase from January 2007. The most appropriate way forward would be to submit another application for additional

credits, based on the original application, cost of complying with the new BS and the price increase.

- 1.8 The financial implications of these revisions are contained within a confidential report elsewhere in the agenda.
- 1.9 If a revised application for additional credits is made, the application will exceed the original PFI credit allocation by more than 10%. The implications of this are that the application will then need to be approved by not only the DfT but also the Project Review Group (PRG) and Partnerships UK (PUK), who act on behalf of the Treasury.
- 1.10 The result of this additional level of project review is that we would be unlikely to receive PFI credit approval until March 2007 at the earliest. This would mean that the contract commencement could not occur until early summer 2007.

OTHER OPTIONS CONSIDERED

- 2.1 One option would be not to sign the contract. Many of the expected benefits would obviously then not be realised.
- 2.2 A second option would be to ignore the revisions to the British Standard and to continue with the original PFI credit application. This would be a high risk option, as British Standards are the benchmark by which schemes are governed, and the basis of the original PFI application to DfT was that all new lighting would conform to British Standards.
- 2.3 A third option would be to reduce the scale of the project and to remove more columns from the specification. While not achieving the original goals of the project, this might be a final option should others not be possible.

For more information contact:	Officer: Martin Follows Tel: 715050 e-mail: martin.follows@derby.gov.uk
Background papers:	None
List of appendices:	Appendix 1 – Implications

IMPLICATIONS

Financial

- 1. The Financial implications are included within the Private section of the Confidential report which includes commercial data for the Project.**

Legal

- 2.1 The Council is entering into the contract under powers contained in sections 2 – 5 Local Government Act 2000, Section 111 Local Government Act 1972, the Local Authorities (Contracting Out of Highway Functions) Order 1999 (made under the Deregulation and Contracting Out Act 1994) and section 97 Highways Act 1980.
- 2.2 The Council will be required to issue certificates to the contractor and its funder under the Local Government (Contracts) Act 1997 as to the powers relied upon by the Council.
- 2.3 The procurement has been carried out in accordance with EU procurement requirements.
- 2.4 As part of the Private Finance Initiative the procurement and contract documentation is subject to extensive guidance from and the requirements of central government. The contract documentation has been based on model documentation issued by government and any derogations from the model form will require approval. Experienced external legal advisers have been retained throughout the procurement process to act for the Council on the preparation and negotiation of the formal contract.

Personnel

3. A PFI procurement means the transfer of staff to the private sector, under TUPE arrangements. The staff affected by the transfer have been consulted during the process and their pension rights have been safeguarded by the Council's insistence on the Preferred Bidder getting Admitted Body Status to the LGPS
The number of posts scheduled to transfer under TUPE is 13, comprising 12 at Stores Road, and one from the client based in Regeneration and Community. Of the 12 designated posts at Stores Road, one is currently vacant and there are no plans to fill it.

Equalities impact

4. The impact of the Project should benefit those living in areas being improved both in terms of the degree of lighting and the effect on crime levels.

Corporate priorities

5. The Project will help to support the Quality of Life in Derby's neighbourhoods and also help to deliver excellent services, performance and value for money.