

REPORT TO: POLICY AND RESOURCES COMMITTEE - 12 SEPTEMBER 2011

REPORT ON: EAST CENTRAL TERRITORY HUB

REPORT BY: CHIEF EXECUTIVE AND DIRECTOR OF FINANCE

REPORT NO: 346-2011

1. PURPOSE OF REPORT

- 1.1 This report advises the Committee as to progress in developing the East Central Territory Hub.

2. RECOMMENDATIONS

- 2.1 It is recommended that the Committee:
- (i) notes the contents of this report;
 - (ii) agrees to consider a further report covering the appointment of the private sector development partner, the establishment of hubco and the entering into of the Shareholders Agreement, the Participants' Agreement and the Territory Partnering Agreement at a special meeting on 28 November 2011, following its consideration by the Education Committee earlier the same evening; and
 - (iii) instructs the Chief Executive to communicate to the East Central Territory Programme Board the City Council's expectation that in selecting the Preferred Bidder adequate weighting will be given to the proposed methodology for demonstrating value for money on individual hub projects, to the potential for hubco making use of in-house design teams, to individual authorities having a choice of local contractors for carrying out construction and maintenance works and to the wider community benefits that will be delivered through the hub procurement programme in areas such as employment, training and business development.

3. FINANCIAL IMPLICATIONS

- 3.1 There are no direct financial implications resulting from this report other than travelling expenses etc in attending meetings.

4. MAIN TEXT

Background

- 4.1 Reference is made to Article II of the minute of the meeting of the Policy and Resources Committee of 26 April 2010 when the Committee considered Report No 207-2010 and agreed inter alia to participate in developing the East Central Territory Hub.

- 4.2 The purpose of Hub is to act as a procurement vehicle for delivering the infrastructure that supports the community services provided by local authorities, health boards and other public agencies in partnership with a private sector development partner. Although projects will be primarily new build, they can also include refurbishment and asset management services of existing infrastructure. The hub structure will also encompass both privately financed and traditionally funded developments.
- 4.3 The first step in developing the East Central Territory Hub was the establishment of the East Central Territory Programme Board (comprising one officer member and one substitute officer member from each public sector participant) that was to be responsible for overseeing the selection of the private sector development partner with whom it would form the private public sector joint venture referred to as "hubco". The Board was formally constituted on 16 August 2010. The 17 participant authorities are noted in Appendix A.

Procurement Programme

- 4.4 The programme for procuring a private sector development partner commenced with the issue of the East Central Territory OJEU on 30 September 2010 and nine Pre-Qualification Questionnaires were returned by the deadline for their submission on 19 November 2010.
- 4.5 All nine submissions passed the financial and legal compliance requirements but one submission failed to achieve the minimum requirements in several critical technical areas and was therefore deselected leaving eight bids to be further evaluated as to their technical experience and capacity.
- 4.6 Subsequently, on 10 February 2011, the East Central Territory Programme Board approved a shortlist of three bidders who were invited to participate in the Competitive Dialogue Process which will lead ultimately to the appointment of the private sector development partner. The shortlist comprised Amber Blue (Robertson Group [Holdings] Ltd, International Public Partnerships Ltd, Forth Holdings Ltd), Alba (Cyril Sweett Group Plc, Miller Corporate Holding Ltd) and inspiredspaces (Carillion Plc).
- 4.7 The competitive dialogue process comprised a series of structured meetings with the individual bidders which were each followed up by interim submissions from the bidders. These submissions were evaluated and feedback provided to bidders prior to the next timetabled meeting. The intention was to ensure that when final tenders are submitted they are comprehensive and robust and that the bidders fully understand Hub's requirements and priorities.
- 4.8 The competitive dialogue commenced with the three bidders in early March 2011 and closed in early August 2011. Invitations to submit final tenders were then issued with these to be received by 30 August 2011. It is intended that, following evaluation of the final tender submissions, the Preferred Bidder will be approved by the East Central Territory Programme Board on 12 October 2011 and thereafter ratified by the Hub National Programme Board on 13 October 2011. Prior to Financial Close, which is currently scheduled for 8 December 2011, the individual participant authorities' approval to the appointment of the Preferred Bidder as private sector development partner and the establishment of hubco will be sought.

Hubco

- 4.9 The equity and working capital of hubco will be split amongst the private sector development partner (60% A Shares), public sector participant authorities (30% B Shares) and the Scottish Futures Trust (10% C Shares), with each class of shares carrying the same voting and distribution rights. The subscription price of the shares will be nominal, circa £100 in total, whereas the initial working capital will amount to approximately £300,000 in total although the cost of the participant authorities' investments will be met from enabling funds made available by the Scottish Futures Trust. All shareholders will also have the opportunity (but no obligation) to provide loans to hubco for additional capital requirements.
- 4.10 The rights and obligations of the hubco shareholders will be detailed in a Shareholders Agreement which will require to be entered into by all participating parties and a Participants' Agreement detailing the B Shareholders' decision taking and approval responsibilities will also require to be entered into by the public sector participant authorities. In addition, all participating parties will require to enter into a Territory Partnering Agreement which governs the partnering relationship between the public and private sector participants in hubco. The Territory Partnering Agreement will be for an initial term of 20 years with the option to extend for a further 5 years.

Hub Projects

- 4.11 NHS Boards are now required to procure all primary and community health facilities with a capital value exceeding £750,000 through Hub. In addition, any joint NHS/local authority project exceeding £750,000 in capital value where the lead participant is NHS must also be procured through Hub.
- 4.12 Local authorities and the other public agencies have been asked by the Scottish Government to participate in Hub although procurement of capital projects through Hub is not currently obligatory.
- 4.13 However the Scottish Futures Trust have advised that the preference is that school projects financially supported by the Scottish Government under Scotland's Schools for the Future programme, e.g. Harris Academy, should be procured through Hub unless the local authority can demonstrate that better value could be achieved by using an alternative procurement route. The only Dundee City Council project currently included in the East Central Territory Hub's list of proposed projects is Harris Academy.
- 4.14 Key issues that the bidders were required to fully develop during the competitive dialogue process included:
- a robust methodology for evidencing value for money on individual projects;
 - the scope for using in-house design teams on hub projects; and
 - a choice of local contractors to carry out construction and maintenance works.

These will be taken into account in the selection of the Preferred Bidder.

Legal Perspective

- 4.15 The complex legal structures proposed to be used for Hub are based on the legal structures adopted in England for their Building Schools for the Future programme, with some fairly minor variations to reflect Scottish circumstances and improvements that suggested themselves in the years since the start of the English programme, with the intention that with respect to any contract awarded or to be awarded (provided the project falls within the scope of the original hubco procurement), the participant's use of hubco to deliver the project through the arrangements set out in the Territory Partnering Agreement during its 20 year (or longer) term will be regarded as having been properly awarded in terms of Directive 2004/18/EC and the Public Contracts (Scotland) Regulations 2006 (as amended), without further advertising being necessary.
- 4.16 Opinions have been obtained from leading Counsel in England and Scotland, and from Pinsent Masons, Solicitors, to the effect that this is a legally sound means to negate any legal requirement for project specific advertising of future construction activities by participant organisations such as the Council. This reflects the understanding of the law as at the date of the Opinion concerned, the most recent of which is June 2011. However there is no guarantee the legal position will not change over 20 or more years.

Conclusion

- 4.17 Following the East Central Territory Programme Board's and the Hub National Programme Board's approval of the Preferred Bidder on 12 October and 13 October 2011 respectively, the approval of the individual participant authorities to the appointment of the Preferred Bidder as private sector development partner and the establishment of hubco will be sought, including inter alia the entering into of the Shareholders Agreement, the Participants' Agreement and the Territory Partnering Agreement.
- 4.18 Accordingly, it is proposed that a report covering these matters will be submitted for the consideration of the Policy and Resources Committee at a special meeting on 28 November 2011, following its consideration by the Education Committee earlier the same evening.
- 4.19 It will be noted from paragraph 4.14 that the bidders were asked during the competitive dialogue process to provide evidence of how they would address key issues such as value for money on individual projects, the use of in-house design teams and a choice of local contractors.

5.0 POLICY IMPLICATIONS

- 5.1 This report has been screened for any policy implications in respect of sustainability, strategic environmental assessment, anti-poverty, equality impact assessment and risk management. There are no major issues. An Equality Impact Assessment has been carried out and will be made available on the Council website: <http://www.dundee.gov.uk/equanddiv/equimpact/>

6.0 CONSULTATIONS

- 6.1 The Depute Chief Executive (Support Services) has been consulted on this report.

7.0 BACKGROUND PAPERS

7.1 Report No 207 - 2010 considered by Policy and Resources Committee on 26 April 2010

Equality Impact Assessment

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01 September 2011

East Central Territory Hub Participant Authorities

Angus Council
Clackmannanshire Council
Dundee City Council
Falkirk Council
Fife Council
Perth & Kinross Council
Stirling Council

Fife Health Board
Forth Valley Health Board
Tayside Health Board

Central Scotland Police
Central Scotland Fire & Rescue
Fife Constabulary
Fife Fire and Rescue
Tayside Police
Tayside Fire and Rescue
Scottish Ambulance Service