



**Cabinet
Tuesday, 16 July 2013**

ADDENDA

ITEM OF SPECIAL URGENCY

The Leader of the Council has agreed to the addition of the following item to the agenda.

In accordance with Rule 16 (Special Urgency) of the Access to Information Procedure Rules of the Council's Constitution the Chairman of the Performance Scrutiny Committee has given her assent to the inclusion of this item on the agenda.

21. Highways Contract - Buy Out of Atkins Highways by Skanska (Pages 1 - 8)

Cabinet Member: Environment

Forward Plan Ref: 2013/111

Contact: Mark Kemp, Deputy Director for Environment & Economy – Commercial & Delivery Tel: (01865) 815845

Report by Director for Environment & Economy (**CA 21**).

The information contained in the appendices is exempt in that it falls within the following prescribed category:

5 - Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings

It is considered that in this case the public interest in maintaining the exemption outweighs the public interest in disclosing the information, in that disclosure would be to the detriment of the Council's ability properly to discharge its fiduciary and other duties as a public authority.

Atkins was awarded the Oxfordshire Highways Partnership contract in April 2010. The approximate annual value is between £20M to £25M. The scope of the contract covers highway maintenance, design services and construction.

Atkins notified the Council in September of its intention to restructure its business by seeking a purchaser of its local highways contract. On 28 February, Atkins issued a briefing to the City and its staff about its proposal to sell the operational services part of the UK Highways & Transport business to Skanska. It hopes to complete the sale during the summer. Clearly this course of action will have a very significant impact for

the Council.

Cabinet is recommended to:-

- (a) approve in Principle to the transfer of the performance of the Highways Contract from Atkins to Skanska subject to the following details being agreed:***
- Publish a Voluntary Ex Ante Transparency (VEAT) Notice***
 - Suspend entry into the arrangement/transfer for a 10 days standstill period following publication***
 - Agree appropriate indemnities to mitigate the risk for the Council from Atkins and Skanska***
 - Secure the necessary Parent Company Guarantee from Atkins and Skanska***
 - Completion of due diligence***
- (b) approve to delegate the decision on the proposed transfer of the performance of the Highways Contract from Atkins to Skanska to the Chief Executive in consultation with the Director for Environment & Economy along with the Executive Member for Highways and the County Solicitor.***

Division(s): All

CABINET -16 JULY 2013

HIGHWAYS CONTRACT

BUY-OUT OF ATKINS HIGHWAYS DIVISION BY SKANSKA

Report by Director for Environment & Economy

Introduction

1. Atkins was awarded the Oxfordshire Highways Partnership contract in April 2010. The approximate annual value is between £20M to £25M. The scope of the contract covers highway maintenance, design services and construction.
2. Atkins notified the Council in September of its intention to restructure its business by seeking a purchaser of its local highways contract. On 28 February, Atkins issued a briefing to the City and its staff about its proposal to sell the operational services part of the UK Highways & Transport business to Skanska. It hopes to complete the sale during the summer. Clearly this course of action will have a very significant impact for the Council.
3. The County Council has to agree with the proposed transfer in order for it to take effect in respect of the specific contract between Atkins and Oxfordshire County Council

Exempt information

4. Legal issues associated with the proposals have been considered in detail – a summary of that assessment is in **Annex 1**.
5. The public should therefore be excluded during consideration of the Annex because its discussion in public would be likely to lead to the disclosure to members of the public present of information in the following categories prescribed by Part 1 of Schedule 12A to the Local Government Act 1972 (as amended): paragraph 5 – Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. Since it is considered that, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information, in that disclosure would be to the detriment of the Council's ability properly to discharge its fiduciary and other duties as a public authority.

Benefits to the Council

6. Skanska is a major blue chip organisation with a predominantly contracting background and experience of the highway maintenance sector (with the Highways Agency).). Although Skanska has no local authority highway contracts this transaction is seen as a potential benefit to the council. Atkins has struggled to meet the contract standard and a provider with a contracting background (rather than consultancy) may bring the operational drive that is required
7. Continuity of current contractual arrangements negates the need for a re-procurement exercise which would cause a degree of service disruption. With Atkins changing their business model their focus will not be on this sector of the business and will lack investment and direction. Therefore it is in the council's interests to ensure the delivery of the services is with a provider that is focussed on these business activities and this transaction provides the most straight forward means of achieving this.
8. Atkins have struggled to deliver added value to the required standard nor added value to the maintenance services. Skanska, in view of their background, is likely to bring a fresh impetus to the maintenance services of the contract whilst, as a result of the agreement between Atkins and Skanska, will also be able to draw on the consultancy resources from Atkins if and when required.
9. The council is under no obligation to allow Skanska to provide these services in place of Atkins. Whilst the council is seeking assurance over a number of service issues the council is also minded to consider a betterment arrangement that has benefits for the public purse. To that end the council is in dialogue with Atkins and Skanska on a range of options that could add beneficial value to the service provided.
10. Skanska have excellent sustainability and Green initiatives in the Construction business. This will add value to the Council's efforts in delivering the low carbon agenda.
11. Skanska has been voted a better place to work than Google by students. A recent survey of Swedish graduates also ranked Skanska (Sweden) above IKEA and Volvo for newly qualified engineers looking for work and has a strong track record of positive staff relationships and recognition.

Risk

12. Prior to transfer the Council will need to enter into a period of due diligence with Skanska and transfer will only proceed subject to the satisfactory conclusion of this area of work. The due diligence framework will cover the following: -
 - Skanska's competency and ability to deliver the Highway services in Oxfordshire

- Skanska's approach to current obligations under the Contract and agreement of the contractual arrangements
 - Skanska's approach to innovation and future aspiration for continuous improvement
 - Financial stability of Skanska and track record (parent company guarantee, Health and Safety and environmental performance).
13. The due diligence Framework is likely to take a number of weeks and the Council will need to ensure that the pre-sale representations by Atkins to Skanska are accurate and the financial basis of the contract is sustainable. The agreement between Atkins and Skanska is reported to be worth £18M and Skanska will be seeking a return on this investment. The £18M covers a number of existing Atkins contracts with local authorities (namely Bath and North East Somerset, Cambridgeshire County Council, Gloucestershire County Council, Oxfordshire County Council, Somerset County Council, Kingston Upon Thames Council and the Highways Agency Contract/s).
14. OCC Senior Managers contacts to date with Skanska counterparts have been constructive in tone and Skanska's Senior Managers appear to understand the team approach to service delivery and achieving common outcomes.

Financial and Staff Implications

15. As part of the transfer arrangements Skanska will agree with Atkins that it will perform all of obligations of Atkins under the contract with an acknowledgement that Atkins will retain legal responsibility to the Council for compliance with its obligations under the contract.
16. Skanska's obligations to Atkins will be underpinned by appropriate Parent Company Guarantee from Skanska to Atkins.
17. It is envisaged that staff currently employed by Atkins will TUPE (Transfer Undertaking Protection of Employment) across to Skanska at the point of transfer.
18. Due to the necessity of the TUPE transfer Skanska have applied to attain Admitted Body status under the LGPS arrangements via the Council's Pension Committee as set out under the Council's Constitution. All other terms and conditions with regard to staff employment contracts will be protected under TUPE regulations.

Recommendation

19. Cabinet is recommended to:-

- (a) approve in Principle to the transfer of the performance of the Highways Contract from Atkins to Skanska subject to the following details being agreed:
- Publish a Voluntary Ex Ante Transparency (VEAT) Notice
 - Suspend entry into the arrangement/transfer for a 10 days standstill period following publication
 - Agree appropriate indemnities to mitigate the risk for the Council from Atkins and Skanska
 - Secure the necessary Parent Company Guarantee from Atkins and Skanska
 - Completion of due diligence
- (b) approve to delegate the decision on the proposed transfer of the performance of the Highways Contract from Atkins to Skanska to the Chief Executive in consultation with the Director for Environment & Economy along with the Executive Member for Highways and the County Solicitor.

HUW JONES
Director for Environment & Economy

Background papers:

Contact Officer: Mark Kemp
Deputy Director – Commercial

July 2013

By virtue of paragraph(s) 5 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

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