

## **CABINET – 19 APRIL 2016**

### **STREET LIGHTING CONTRACT AND INTERIM POLICY**

#### **Report by Director for Environment and Economy**

#### **Introduction**

1. This report sets out a proposed emergency interim arrangement for the Street Lighting Service (Maintenance) as the result of early termination of the existing contract at a break point within the contract.
2. A reduced service provision is proposed for the short-term to enable the county council to identify and procure a new service which better meets our medium and longer term needs, along with reflecting the advancements and changes in the industry since the original contract was awarded.

#### **Background**

3. The Council's current Street lighting contract with Scottish & Southern Electrical (SSE) was developed in 2007, running from April 2008 until March 2024, however, the contract contained a single break point at 1<sup>st</sup> April 2016.
4. In July 2015, SSE served notice on the County Council that they intended to activate this break clause as the contract was not affordable to them for its full duration, in particular with making financial losses on the maintenance.
5. Notwithstanding this, during early discussions with SSE they indicated that their actions were as a result of there being a single opportunity to break the contract, and should the county council be in a position to include additional opportunities to break the contract within the next two years then, they would be happy to continue for a further two years. The county council therefore informally agreed to a one year extension of the break clause with the potential for an additional year subject to performance.
6. However, when trying to finalise such arrangements it became apparent that SSEs requirements were unrealistic and not in the council's interest to agree to. SSE had requested:
  - (a) A formal extension of the contract for two years at which point it should terminate and that there be no formal break clauses within that period.
  - (b) An increase of fifteen specific rates to current market levels.
  - (c) An increase of all other rates by 20%.
  - (d) A revised performance framework with which to be measured against.

7. Furthermore, EU procurement regulations do not allow for the authority to renegotiate contract rates to this extent and therefore their request is beyond the ability for the Council to agree.

## **Proposals**

### *Short-term (up to 18 months)*

8. To reduce the street lighting service to deliver emergency support only – making dangerous situations safe. This reduced level of service requires the county council to adopt an interim policy as set out at Annex A.
9. Due to the urgency of implementing a new contract, and the fact that we are only looking to operate the emergency-only service for a short period of time, it is proposed to utilise a Crown Commercial Services Framework.
10. Officers have also investigated the potential of delivering this work through Skanska, through an emergency procurement, but, given that street lighting was not specifically included in the highways contract, this provides considerably greater risk to the authority in terms of potential legal challenge and is seen as a route of last resort.
11. Following the establishment of the longer-term strategy and council's requirement there would be an opportunity to review and enhance the interim policy and associated contract if the county council wished. It may be desirable to do this over the winter months.

### *Longer-term*

12. The termination of the current street lighting contract provides the county council with an opportunity to procure a new and improved street lighting contract, taking advantage of recent improvements in technology and general advancements within the sector.
13. This should enable a more effective and efficient service enabling the council to continue to maintain an effective street lighting service - vital with a large and growing asset as a result of the significant growth across ensuring road and community safety, social inclusion and quality of life.
14. The development of the longer-term contract will be progressed urgently with the view to procure a new service at the earliest opportunity reducing the interim policy period.

## **Implications**

### Street Lamp Replacement Programme

15. The county council has a street lamp replacement programme commitment, funded through DfTs challenge funding. It is intended that separate

procurement arrangements will be made to enable the continuation of this one-off capital programme of works.

#### New Supply / Termination

16. The provision of new a new supply or termination of existing for capital projects will be procured directly as part of those works.
17. New permanent or temporary supplies for third parties will require them to make alternative provisions with prior approval & licence from the county council.

#### Fault Reporting

18. All faults received and not fixed under these interim arrangements will be kept and actioned at a future point at the appropriate time, either as a one off programme of works or incorporated into future general maintenance regime arrangements.
19. A message to explain the county councils interim policy and emergency contract arrangements will be sent to anyone logging a fault.

#### **Legal Implications**

20. A new contract will need to be agreed and approved.

#### **Financial and Staff Implications**

21. The provision of establishing an interim contract, and the development and procurement of a longer-term street lighting service for the county council, will be met within existing operational budgets.

#### **Staffing Implications**

22. Following discussions with legal we have established that TUPE does not apply in relation to the ending of the current street lighting contract. This is because the scope of the new service (keep safe emergency only) is sufficiently different in scope to the current service that the service requirement is fundamentally different and so there is no service provision change and TUPE does not apply. SSE has confirmed they are in agreement with this.

#### **Equalities Implications**

23. See assessment at Annex B.

## RECOMMENDATION

24. **The Cabinet is RECOMMENDED to:**

- (a) approve the proposed policy change and contracted level of service in relation to the street lighting maintenance service; and
- (b) note the proposed use of the short term call off from the Crown Commercial Service Contract

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