

**Agenda Item: 10**

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**Meeting:** Executive

**Date:** 14 April 2009

**Subject:** Highways Services Contract

**Report of:** Portfolio Holder for Sustainable Communities

**Summary:** The report updates Members on negotiations with Bedford Borough Council regarding the governance arrangements for the highways contract.

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**Advising Officer:** Gary Alderson, Director of Sustainable Communities

**Contact Officer:** Basil Jackson – Assistant Director Highways and Transport

**Public/Exempt:** Public

**Wards Affected:** All

**Function of:** Executive

**Key Decision** No

**Reason for urgency/  
Exemption from call-in  
(if appropriate)** N/A

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**RECOMMENDATIONS:**

**1. that the Executive note that:**

- (a) from 1<sup>st</sup> April the Highways Contract transferred to Bedford Borough Council (BBC) who, as lead authority, will hold the contract in trust until such time as other arrangements are agreed between both authorities and put in place.**
- (b) negotiations are continuing with BBC to novate the highways contract to Central Bedfordshire Council (CBC) before June 2009.**
- (c) by exchange of letters, agreement has been reached to enable CBC to directly manage highways services provided by Amey within its area.**
- (d) the option of splitting the existing Highways contract into two stand alone contracts, one for CBC and one for BBC, is no longer considered acceptable**

**(e) In the event that negotiations are unsuccessful a further report will be brought to Members.**

<i>Reason for Recommendations:</i>	<i>To update Executive on the progress being made on negotiations with BBC to secure highways services in Central Bedfordshire. To make Executive aware of any risks to the provision of highways services within Central Bedfordshire.</i>
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## **Background**

1. Following the report to the 17<sup>th</sup> February 2009 Shadow Executive entitled "Highways Contract Options" the Shadow Executive resolved that:
  - (a) officers be instructed to negotiate with BBC to transfer the highways contract to CBC;
  - (b) in the event that the negotiations in (a) above cannot be negotiated successfully, that officers negotiate with BBC and Amey LG with a view to splitting the existing Highways contract into two stand alone contracts; one for CBC and one for BBC; and
  - (c) In the event that the action under 1 (a) and (b) above both fail and the contract transfers to Bedford Borough Council under the contract default procedure, officers provide a more detailed report on the financial and operational risks of the remaining options before seeking Member agreement to terminate the contract in accordance with option 5.
2. Members should note that both authorities have now taken legal advice on the option of splitting the existing Highways contract into two stand alone contracts (one for CBC and one for BBC) and concluded that option (b) above is unacceptable.

## **The Current Position**

3. Under the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008 (The Regulations), CBC and BBC are required to use their best endeavours to reach agreement before 1 April 2009 as to the transfer of the rights and liabilities of the former County Council under the Term Contract for Highway Services. As no such agreement has been reached, the Secretary of State has nominated BBC as the "caretaker" council to whom the rights and liabilities shall transfer from 1<sup>st</sup> April and be held on trust for itself and CBC until further arrangements are agreed and put in place.
4. CBC and BBC have agreed that the contract will transfer to CBC, if practical, before June 2009. Officers from both authorities are preparing a draft novation agreement which sets out the terms under which the contract will transfer to CBC.
5. A service level agreement (SLA) has also been drafted to regulate the manner in which highway services will be delivered to CBC, and the arrangements for payment, until such time as the contract transfers. This document is being considered by BBC officers.

6. In the absence of a formal agreement between CBC and BBC, a letter has been sent to Amey LG which covers the salient points of the SLA. This informs Amey that CBC officers will manage highways services in Central Bedfordshire directly and gives an undertaking that CBC will pay Amey LG directly, on the terms set out in the original contract with Bedfordshire County Council.

### **Risks to Service Delivery**

7. During the interim “caretaker” period, the ability of CBC to develop the contract (i.e. in terms of managing costs, quality, programmes and innovation) will be limited. However, it should be noted that the “caretaker” period is only expected to last until June. Whilst this is not ideal, and there may be some limited risks, there is officer commitment from both authorities to deal with issues amicably over the short interim period until the contract is transferred.

### **Conclusion and Next Steps**

9. Although a letter has been sent to Amey LG setting out the interim management arrangements for highway services in Central Beds, it does not address the many issues covered by a formal contract. The preferred situation would be to have either a signed SLA or a novated contract. Until either is achieved officers will seek to manage any risks associated with the interim position as they arise on a day-to-day basis.
10. Officers will continue to negotiate the novation of the contract to CBC before June 2009.
11. In the event that a novation agreement does not appear likely before the end of June 2009, officers will provide members with a more detailed report on the financial and operational risks of any remaining options.

## **CORPORATE IMPLICATIONS**

### **Council Priorities:**

The Council priorities affected by this paper are:

- creating safer communities;
- managing growth effectively; and
- promoting healthier lifestyles:

### **Financial:**

CBC has agreed to pay Amey the amounts certified in the contract as they relate to CBC including 62% of the lump sum elements.

### **Legal:**

In the interim, as stated at recommendation 1(c), agreement has been reached by way of letter to cover the period until novation of the contract takes place.

**Risk Management:**

Negotiations are continuing with officers of BBC who are keen for the contract to transfer to Central Bedfordshire. Other options (including early termination) will be explored in more detail in the event that the current negotiations fail.

**Staffing (including Trades Unions):**

N/a

**Equalities/Human Rights:**

N/a

**Community Development/Safety:**

n/a

**Sustainability:**

n/a

**Appendices:**

N/a

**Background Papers** (open to public inspection):

N/a

Location of papers: Priory House, Chicksands