

**Report of Executive Commercial Solicitor, PPPU**

**Report to Director of City Development**

**Date: 16<sup>th</sup> November 2015**

**Subject: Appointment of Legal Advisors in respect of the Leeds Street Lighting PFI (the "Appointment")**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: 10.4(3)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

**Summary of main issues**

1. The Council has recently been approached by the owners of the Council's street lighting PFI service provider (**SSE**) regarding their publicly stated objective of divesting themselves of their shares in the service provider (the **SSE Proposals**).
2. SSE has set a tight timetable in this regard, which assumes the sale is completed by March 2016.
3. The Council's street lighting PFI is the subject of a peculiar structure more particularly described in this report. Therefore, in order to facilitate the proposed share sale, it is anticipated that a significant restructuring of the project needs to take place, and that this will require the Council's approval.
4. In order to fully analyse the Council's position and recommend the best course of action, external legal advice, expertise, due diligence and support is required.
5. Given the involvement of DLA Piper in respect of the street lighting PFI project until recently (including negotiating and drafting the initial agreement and in respect of the settlement of the recent dispute resolution process relating to programmed maintenance service failures in December 2014), the complexity and peculiarity of the project structure, the recent dispute and settlement, the relatively urgent need to instruct, anticipated value of the Appointment and the competitive rates offered, it is intended that DLA Piper is appointed by direct call-off via Lot 8 of the Crown Commercial Services framework.

## **Recommendations**

6. It is recommended that the Director of City Development:
  - a. Notes the contents of this report; and
  - b. Agrees to the appointment of DLA Piper as the contractor to provide the required services (and other ancillary services).

## **1 Purpose of this report**

1.1 See Summary of main issues section.

## **2 Background information**

2.1 See summary of main issues section.

## **3 Main issues**

3.1 Ordinarily, at this stage of an operational PFI, a share sale would have little impact on the wider PFI and the Council would have little say in whether such a share sale may be made.

3.2 However, the Council's street lighting PFI is the subject of a peculiar structure more particularly described in the Appendix.

3.3 Therefore, in order to facilitate the proposed share sale, a significant restructuring of the project needs to take place, and this requires the Council's approval.

3.4 The Council needs to consider the full impact of this restructuring and its options in such regard, as more particularly described in the Appendix.

3.5 In order to fully analyse the Council's position and recommend the best course of action, external legal advice, expertise, due diligence and support is required. Details of the scope of this advice required is set out at section 2 of the attached Appendix.

3.6 Given the involvement of DLA Piper in respect of the street lighting PFI project until recently (including negotiating and drafting the initial agreement and in respect of the settlement of the recent dispute resolution process relating to programmed maintenance service failures in December 2014), the complexity and peculiarity of the project structure, the recent dispute and settlement, the relatively urgent need to instruct, anticipated value of the Appointment and the competitive rates offered, it is intended that DLA Piper is appointed by direct call-off via Lot 8 of the Crown Commercial Services framework.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

4.1.1 Officers in Highways, the PPPU, the street lighting PFI Project Board and the City Solicitor have been consulted in this regard.

### **4.2 Equality and Diversity / Cohesion and Integration**

4.2.2 There are no equality and Diversity / Cohesion and Integration issues.

### **4.3 Council policies and City Priorities**

4.3.3 The Appointment supports the Council's Best Council Plan in spending money wisely and being a more efficient and enterprising city. The Appointment complies with the Council's Contracts Procedure Rules and procurement law.

### **4.4 Resources and value for money**

4.4.4 Some/all of the cost of the Appointment will be covered by SSE.

### **4.5 Legal Implications, Access to Information and Call In**

4.5.5 The Appointment is a call-off from Lot 8 of the Crown Commercial Services Legal Services Framework which is an Approved Framework Agreement. The Appointment is therefore made in accordance with the Council's Contracts Procedure Rules, the terms of the Crown Commercial Services framework call-off process and the overriding general procurement principles of fairness, openness and transparency.

4.5.6 The decision to appoint DLA Piper is a significant operational decision, and is not subject to call-in.

4.5.7 This report contains an appendix which is confidential pursuant to Access to Information rule 10.4(3), given that it contains commercially sensitive information relating to SSE's Proposals and the Council's initial consideration of its options in respect of the same, where the disclosure of such information could damage the both SSE's and the Council's commercial positions. Consequently, it is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **4.6 Risk Management**

4.6.8 The Appointment will be managed by the PPPU commercial team. The contract incorporates regular monitoring and reporting, and a number of milestones to be achieved. Any failure to achieve such milestones may give rise to the termination of the agreement.

4.6.9 Contract management will be supported by regular reporting through the street lighting PFI Project Board, and risk will be assessed within that Board. Reports will also be shared with the Director for his consideration.

## **5 Conclusions**

5.1 The appointment of DLA Piper as contractor shall enable the Council to progress its review of the SSE Proposals and consider which of the various options for responding to such SSE Proposals provides the best value to the Council.

## **6 Recommendations**

6.1 It is recommended that the Director of City Development:

- i) Notes the contents of this report; and

- ii) Agrees to the appointment of DLA Piper as the contractor to provide the required services (and other ancillary services).

**7 Background documents<sup>1</sup>**

7.1 None.

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.