

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Cabinet

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AWARDED WATERCOURSES SERVICE – CONTRACT TENDERING

Purpose

1. The purpose of this report is to provide Members with an understanding of the risks and benefits of tendering the service, recommend on the possible use of a mixed economy route and as required by the Council's Constitution obtain Cabinet approval to the principle of contracting out the service and the key elements of the service specification.
2. The Council's Constitution stipulates that this is a matter for Cabinet consideration.
3. This is a key decision because:
 - it is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates.
 - it raises new issues of policy, or is made in the course of developing proposals to amend the policy framework.
 - it is of such significance to a locality, the Council or the services which it provides that the decision-taker is of the opinion that it should be treated as a key decision.

And it was first published in the 1st September 2008 forward plan.

As the procurement process proceeds further key decisions are likely to be required in the future.

Background

4. Under the terms of various Enclosure Acts (mostly in the 19th century) the Council inherited responsibility for the maintenance of approximately 275 kilometres (170 miles) of award drains in various parishes throughout the district. This responsibility is unique in legal terms in that it places a legal duty on the Council to undertake specified maintenance works as outlined in the award document.
5. This duty is significantly different to the types of maintenance or improvements under the Land Drainage Act or the Water Resources Act where 'permissive' powers are exercised. Under these permissive powers, there is no responsibility to improve or to maintain to any prescribed standard. With the award drains however, there is a specific legal onus to carry out works to a standard as outlined in the award document.
6. In the case of many awards, the maintenance requirements are quite specific and detailed with the depth, top and bottom widths being specified. In other cases the requirement is more general and maintenance is specified using phrases such as 'shall appear necessary' or 'as required'.

7. The service is currently undertaken using in-house staff directly employed within Health and Environmental Services. The direct cost of the in-house staff, plant and equipment for the financial year 2008–2009 is estimated at £192,830. However, this cost will be reduced by £25,923 as a result of the staff being engaged on refuse/litter picking works for a period of three months, making the total estimated direct service costs £166,907. The support/overhead cost is estimated at £66,030. Therefore the total service (including handwork, management, planning consultation, desilting, weeding, flailing etc) costs approximately £850 per Km.
8. The last review of the service took place in 1998 following the Easter floods of that year. That review was undertaken by David Noble and Associates and recommended some minor changes to management practices both within village areas and in open country locations. The review also recommended the retention of the in-house resources based on the advantages arising from flexibility and local knowledge but also suggested experimenting with the limited use of contractors.

Considerations

9. The need for the maintenance of the award drain system becomes apparent when it is considered that many Awards serve the drainage dependent flatter parts of the district. As in other parts of the County and elsewhere, it is highly likely that the awards in many of these flatter locations would have formed part of a statutory Drainage District i.e. Internal Drainage Boards had they not been classified as Public Drains and therefore already considered the responsibility of a public body to maintain.
10. The awarded watercourses within the District form only part of a complex drainage system within South Cambridgeshire. Many tributary drains and ditches depend on the awards for their outfall. Without appropriate maintenance to the awards, there would be significant increase in flood risk to property, highways and agricultural land, recreational land and wildlife habitat and problems would occur with the security of all types of services.
11. Neglect of the awards would, therefore, have an impact on land/property well beyond the immediate area of the award drains themselves. As development pressures within the District increase, the level of maintenance and pressure from the public to carry out more regular works also increases.
12. Many of the awards carry very little flow for much of the year. However, during periods of heavy rainfall, they become a very significant part of the local drainage infrastructure. The low flows that occur throughout the year have a significant impact on the self-cleansing capacity of the channels. De-silting and additional vegetation removal is the result of these low flows in the channels.
13. The award drain system is maintained to a high standard when compared with ordinary agricultural ditches or roadside drains. This is necessitated by the legal status of the awards as public drains where there are high public expectations and frequent requests for works on two or three occasions per year. As a result a variety of works are necessary throughout the year. These include the removal of silt, cutting back bankside vegetation, the removal of bed vegetation, removal of obstructions and regular surveillance.

South Cambridgeshire Procurement Strategy for Service Delivery

14. The Council's procurement strategy, adopted in October 2003, sets out the Council's procurement principles as detailed in Appendix A of this report. The strategy also proposes a four-stage service procurement process:
 - (a) Service development objectives
 - (b) Understanding the markets
 - (c) Options appraisal
 - (d) Specification, short listing and selection
15. It makes it clear that the Council believes in a mixed economy approach (i.e. some provided directly by the Council, others by the private sector or in partnership etc) as such a mix provides higher standards, learning and diversity. However it also recognises that decisions must be focused on achieving the best service provider for that particular service to achieve efficiencies, excellent customer service and value for money.
16. Members have expressed a desire to expose the Awarded Watercourse maintenance service to external competition by the traditional contract tender route with no reduction in the level of service provided. This task has been included within the approved 2008/09 Health & Environmental Services Service plan. As a result the Council has therefore already jumped to stage d (paragraph 14) in the procurement process above.

The Changing Face of Local Authority Responsibilities in Relation to Flooding

17. For years SCDC's responsibilities for flooding and surface water management have remained largely unchanged. However, primarily as a result of the floods that affected large parts of the country last summer, this period of stability is set to come to an end.
18. In August 2007, the Government asked Sir Michael Pitt to conduct an independent review of the emergency that took place that year. His interim report was published in December 2007 and his final report at the end of June 2008. Whilst it is not the main purpose of this report to go into substantial detail of the review's recommendations and their possible implications for the Council, which will be the subject of a future meeting of Scrutiny in December when the Government has responded, suffice it to say it is likely to have implications for the Council on the management of surface water drainage systems in the District.
19. Whilst it is difficult at this stage to provide clarity as to what Sir Michael's recommendations will mean to SCDC, his recommendations considered of relevance to this report include:
 - (a) *Recommendation 14:* Local Authorities should lead on the management of local flood risk, with the support of relevant organisations.
 - (b) *Recommendation 15:* Local authorities should positively tackle local problems of flooding by working with all relevant parties, establishing ownership and legal responsibility.
 - (c) *Recommendation 19:* Local authorities should assess and, if appropriate, enhance their technical capabilities to deliver a wide range of responsibilities in relation to local flood risk management.

- (d) *Recommendation 20:* The Government should resolve the issue of which organisations should be responsible for ownership and maintenance of sustainable drainage systems (SUDs).
- (e) *Recommendation 28:* The forthcoming flooding legislation should be a single unifying Act that addresses all sources of flooding, clarifies responsibilities and facilitates flood risk management.
20. As a result of Sir Michael's interim report the Government has already announced its intention of introducing a draft Floods and Water Bill for consultation in 2009. The detailed provisions of the Bill are being scoped but they will reflect Sir Michael's recommendations and the Bill will be designed to cover:
- (a) The legislative and institutional framework within which flood risk management is delivered in England, (established in 1930).
- (b) The simplification and streamlining of flood risk management legislation including the interrelationship of roles and responsibilities between Environment Agency, Local Authorities, Internal Drainage Boards, and Government.
- It is unclear how this will affect the Acts governing the Awards i.e. whether this legislative change will lead to their repeal in favour of another suitable replacement or further requirements being placed on SCDC.
21. The impact of new and altered drainage features as a result of development within the Growth areas needs to be considered. New open ponds and other features are being proposed alongside or along the line of the award drain systems in these areas. These features will have a direct impact on the award drains in the localities and will impact on the Council's ability to fulfil its statutory duty.
22. Sir Michael's recommendation 20 above is of direct relevance here. Should SUDs be forced on the Council or the Council take the view that the most straight forward solution to the long-term upkeep of these is for the Council to adopt their maintenance and exercise future control, then a contractor would claim for additional payment. It is arguable that the Council has more control on these types of unforeseen costs with in-house suppliers by prioritisation of work and marginal costing effects.
23. Flood protection and surface water management is about to enter a period of change and currently commands a very high public and political profile. It is not advisable at this stage for the Council to lock itself into contracts that do not provide the Council with the flexibility to deal with the changes likely to be imposed upon it. However flexibility within contracts do come at a price.

Advantages / Benefits & Disadvantages/Risks

24. The various contract supplier options each have their own advantages and disadvantages and the main ones for the awarded watercourse service are detailed in Figure 1.

Figure 1: Advantages / Benefits & Disadvantages/Risks of Supplier

	Advantages/ Benefits	Disadvantages/Risks
Contracted Out Service	<ul style="list-style-type: none"> • Demonstration of competitiveness • Specialist plant and equipment need not be 	<ul style="list-style-type: none"> • Loss of flexibility • Loss of local knowledge, skills and capabilities

	retained by Council	
	<ul style="list-style-type: none"> • Seasonal workloads risk passed to contractor to manage • Contractor responsible for management of staff, plant and equipment • Possible cost savings on standard service especially flailing works 	<ul style="list-style-type: none"> • Pricing of one-off unforeseen works/ specialist tasks (Contingency figure circa £30,000 to be built in to contract) • Loss of familiarity of service requirements • Increased contract monitoring & supervision costs • Loss of quality control and customer interface
In-House Provision	<ul style="list-style-type: none"> • Opposite of Contracted out Disadvantages / risks • Flexibility, control and familiarity of awards system 	<ul style="list-style-type: none"> • Higher total direct costs due to seasonality of work • Low utilisation of expensive plant and equipment.
Combination of In-House & Contracted Services	<ul style="list-style-type: none"> • The combined use of a limited in-house and contracted service could, if suitably arranged, offer the advantages of both the above approaches. It will be necessary at the time of tender to split the works between mechanised flail mowing, weeding and de-silting and the necessary hand-works. Based on the tenders received, it will be possible to assess the relative costs of each part of the service and make a decision on whether to retain some elements of the service in house e.g. hand-works, emergencies, monitoring of contractors works, surveillance and unforeseen works. 	

25. In addition to those in Figure 1, the following risks are peculiar to the awards service and are not a normal feature in contract tendering considerations;

- (a) The awards are scattered over a very wide area, are complex and all have their own characteristics. It will be difficult for a contractor to have or develop the level of familiarity required. This familiarity is a major advantage regarding the location of the award sections, methods of access to the drains, the work required at each location, the peculiarities of individual land occupiers, location of on-site hazards (services etc), opportunities to enter onto uncropped land and opportunities for disposal of channel materials. All of these risks will have cost implications for tenderers and will need to be taken into account during the tender evaluation stage.
- (b) The works are difficult to specify and accurately measure as they are imprecise and will vary from one year to the next depending on weather and other conditions. There is a risk therefore, of contractual disagreements or overpayment for works.
- (c) Machine work is likely to be attractive to potential tenderers not so handwork and ensuring that this is undertaken, which is vital in many village locations,

will require additional contract monitoring and supervision. In addition the inclusion of handwork in the specification may reduce competition.

- (d) An emergency response capacity will be required as part of the contract and this may prove expensive and difficult to ensure at all times.
- (e) Following flood events in the past, the Council has always offered help and assistance to Parishes where responsibility for drains and watercourses does not rest with the Council. This assistance has taken the form of removing blockages or undertaking maintenance within open ditch systems or piped watercourses – e.g. Willingham drain, Waterbeach drain, Elsworth drain, Caldecote drain in the recent past and in most other Parishes over recent years. Contractual arrangements will make it difficult for the Council to be so responsive and flexible or will come at a price.

Other considerations

- 24. Currently little checking is carried out. Contract supervision will become an important issue if/when contractors are appointed to undertake part or all of the works. Claims will need to be verified before payment using either a method of random sampling (e.g. 10% say) or checking the total claim for payment. This is likely to involve additional staff supervision costs. As the Council's Drainage Manager is becoming more and more involved in planning related matters associated with the growth agenda, his ability to undertake the necessary supervision lessens. The Council may need to look at the level of resources necessary, which may balance out any savings, if any, made on direct costs.

The Tender Process

- 25. The Contract will be tendered through the Restricted EU procedure and as such timetabling of the process will be dictated by those minimum timescales contained in the legislation. In all it is anticipated that the process could be expected to take at least six months, maybe longer, depending on the time taken to finalise the tender documentation including contract specification. It is anticipated that the tenders would be evaluated using the Most Economically Advantageous Tender (MEAT) criteria.
- 26. In order to ensure that any potential contractor is able to maximise the use of plant and equipment and reduce contract price it is anticipated that the Contract will have to run for at least five years.

Options

- 27. The Members, on the basis of the advantages and disadvantages and changing face of Local Authority flooding responsibilities set out above and considering the level of financial commitment, have three options for the future supplier of the service.
- 28. Members need to decide whether to:
 - a. Go through a competitive tendering process and obtain tenders for the works from external contractors and the in-house service.or
 - b. Go through a competitive tendering process and obtain tenders for the works from external contractors only.

- c. And that the tenders so obtained are for all the separate aspects of the works such that the maximum flexibility may be used in the evaluation of the tenders. The contract length to be a minimum of five years. It may then prove beneficial to use a combination of external contractors and a portion of the in-house service.

Implications

29. As included in the considerations section.

30. Financial	If external contractors are engaged, there may be a financial saving on the works aspects of the service for those works that are possible to measure and schedule. However, it is certain that additional costs will be incurred in the future for those works that are not possible to measure or foresee or for emergency provision. It will be very difficult if not impossible to make financial provision for these within the contract documentation.
Legal	The Council will retain its legal responsibilities whether in-house or contracted services are used
Staffing	If the works were transferred to a private contractor, the in-house staff would transfer from the Council to the new contractor under the TUPE provisions.
Risk Management	The in-house service has always fulfilled the Council's responsibilities under the awards. There is a risk that a poorly performing contractor would create a future legal or financial liability for the Council. At this stage it is not possible to quantify the level of these risks. Other risks are outlined in the report.
Equal Opportunities	None

Consultations

31. Some informal consultations have taken place with landowners, farmers and Internal Drainage Broad's in the District. The commonly expressed concern among all the consultees relates to the lack of familiarity that will exist where external contractors are engaged.

Effect on Corporate Objectives and Service Priorities

32.	Work in partnership to manage growth to benefit everyone in South Cambridgeshire now and in the future
	The future maintenance of the award drain system will have particular significance within or adjacent to the growth areas within the District. High levels of maintenance will be expected in the vicinity of housing developments.
	Deliver high quality services that represent best value and are accessible to all our community
	It will be important to ensure that a robust tender evaluation process is put in place in order to achieve Best Value for money.
	Enhance quality of life and build a sustainable South Cambridgeshire where everyone is proud to live and work
	This will be best achieved through the continued high standard of maintenance along the award drains but particularly so in the developed areas of the District

Conclusions/Summary

33. The awarded watercourses service is critical to the efficient drainage of substantial parts of South Cambridgeshire. It is vital, therefore, that consideration is given to the most appropriate use of private contractors and in-house suppliers in order to prevent flooding within the District and obtain best value for money.
34. If Members agree with the recommendations then it is envisaged that tenders will be sought from private sector contractors and the in-house team. The tender documents will be structured in such a way as to offer the maximum amount of flexibility when carrying out the tender evaluation. Following evaluation, it may be desirable to offer the entire service to the successful contractor as a single unit of works. However, it may prove more beneficial to offer part of the works (e.g. flail mowing) to a contractor and to retain part of the in-house team to carry out those aspects of the works that private contractors could find less appealing.
35. The contract will also have to take into account the potential legislative changes that may or may not impact on the Council's service and the need therefore to maintain some flexibility in approach within the contract period.

Recommendations

36. Cabinet is recommended to:
 - a. Go through a competitive tendering process and obtain tenders for the works from external contractors and the in-house service.
 - b. And that the tenders so obtained are for all the separate aspects of the works such that the maximum flexibility may be used in the evaluation of the tenders. The contract length to be five years extendable by mutual agreement for a further two. It may then prove beneficial to use a combination of external contractors and a portion of the in-house service.

Background Papers: the following background papers were used in the preparation of this report:

Noble Report 1998

[The Pitt Review: Lessons learned from the 2007 floods.](#)

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Appendix A

The Council's Procurement Principles:

- a) We will use procurement to deliver economic, effective and efficient services and we have a commitment to improve the quality of services at a reasonable cost.
- b) We will bear in mind that Best Value may not always mean the cheapest option being chosen. Quality products or services which cost more may sustain themselves in the longer term and may be the better option where best value is concerned
- c) We will fully explore the benefits of partnership working or joint commissioning in procuring goods and services wherever possible
- d) We will ensure that continuous improvements and improved customer service is part of the framework for any procurement exercise
- e) We will reduce the administrative burden of procurement and use e-procurement wherever possible
- f) We will achieve efficiencies and savings by making greater use of standard products and economies of scale
- g) We will encourage open and fair competition
- h) We will take environmental concerns and whole life costs into account in purchasing decisions
- i) We will buy locally to support village communities where it represents value for money