

**SOMERSET COUNTY COUNCIL
THE CABINET**

CABINET MEMBER NON-KEY DECISION

Cabinet Member(s): Mr D Huxtable, Cabinet Member-Resources

Contact Details: email djhuxtable@somerset.gov.uk tel. 01278 723120

Date of Decision: 21 February 2011

Date of Publication of decision: 22 February 2011

Date decision comes into force: 28 February 2011

1. Cabinet Member Decision

The Cabinet Member-Resources agreed all of the recommendations set out in the attached officer report. Key elements of these decisions are :

- a) That the Chief Executive and Service Director-Client Services be authorised to commence work to renegotiate the Southwest One (SWo) contract. Any contract changes resulting in revenue savings of £500k or more will be subject to a Member's Key Decision. Any contract changes resulting in revenue savings of £499k or less are part of the usual activities of the Client Services team and will continue to be dealt with through that arrangement.
- b) Authority to initiate and form a Joint Members' Advisory Panel (JMAP), to provide dedicated policy direction and democratic accountability during the process of renegotiating the SWo contract.

2. Reason for Decision (s)

As per the "Reasons for Recommendations" in the report below.

3. Reason(s) for Urgency (where applicable)

None.

4. Any relevant Personal Interest that the Cabinet Member may have under the Council's Code of Conduct for members.

None.

5. Other background information considered by the Cabinet Member before making this decision.

As set out in attached officer report.

Officer Report

– 19 February 2011

Renegotiation of Southwest One Contract

Cabinet Member: Mr D Huxtable, Cabinet Member-Resources

Division and Local Member: n/a

Lead Officer: Matt Jones, Service Director, Client Services

Author: Matt Jones

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Please complete sign off boxes below prior to submission to Community Governance

Report Sign off	Seen by:	Name	Date
	Legal	Catherine Witham	18/02/11
	Corporate Finance	Kevin Nacey	18/02/11
	Human Resources	Richard Crouch	18/02/11
	Senior Manager	Matt Jones	18/02/11
	Corporate Director	Sheila Wheeler	18/02/11
	Cabinet Member	David Huxtable	21/02/11
Summary:	<p>This report sets out a framework for proposed negotiations Somerset County Council (SCC) wish to undertake on the Southwest One (SWo) contract and the areas the negotiations will focus on.</p> <p>This report also recommends that a Joint Members' Advisory Panel (JMAP) is initiated and formed in order to oversee the examination of the SWo contract and monitor progress with the renegotiations.</p>		
Recommendations:	<p>That the Cabinet Member-Resources agrees :</p> <ol style="list-style-type: none"> That the Chief Executive and Service Director-Client Services be authorised to commence the renegotiation of the SWo contract. That any contract changes resulting in revenue savings of £500k or more will be subject to a Member Key Decision. That any contract changes resulting in revenue savings of £499k or less are part of the usual activities of the Client Services team and will continue to be dealt with through that management arrangement. That a JMAP is initiated and formed to oversee the process of reviewing and potentially changing the SWo Contract. That the JMAP is chaired by a Cabinet Member and the Panel's terms of reference agreed at the first meeting. That the Chairman of the JMAP is supported by a Member of the Conservative Group and a Member of the Liberal Democrat Group to be nominated by the Political Group Leaders. Approve the case for Appendix A to be treated as exempt information and to be treated in confidence, as the case for the public interest in maintaining the exemption outweighs the public interest in disclosing that information. 		

Reasons for Recommendations:	<ul style="list-style-type: none">• In light of the significant budget restrictions SCC is facing, and following a number of internal and external reviews, SCC, through the Client Team, wish to renegotiate the SWo contract to achieve further savings, simplify the contract, change the governance and bring some services and functions back to direct SCC control (resulting in some SWo staff transfers). This will make the contract “fit for purpose” as regards to the County Council requirements going forward.• The process of reviewing and potentially changing the SWo Contract will involve many complex commercial, legal and Human Resources aspects. These need to be dealt with confidentially in order to protect the interests of Somerset’s citizens as taxpayers, and enable SCC to maximise the benefits of any renegotiated deal. However, this conflicts with SCC’s desire and responsibility to conduct its business openly and transparently.• It is therefore important to have a process which ensures that SCC achieves a reasonable balance between meeting the potentially contradictory needs of confidentiality versus public accountability.• In order to achieve this balance, a JMAP will be set up. The role of this Panel is primarily to ensure democratic accountability throughout the process. It will also review progress and provide policy direction and advice when required.• Further, by providing dedicated support to the project, the JMAP body will be sufficiently agile and responsive to provide swift advice and direction as required throughout any potential negotiations.
Links to Priorities and Impact on Service Plans:	The process of reviewing and potentially changing the SWo Contract supports the aim of “Reducing the size of Somerset County Council whilst increasing its flexibility, effectiveness and influence” under the “People” theme in the County Business Plan.
Financial Implications:	Contained in Commercially Sensitive Appendix A.
Equalities Implications:	None arising at this time, although Equalities Impact Assessments are programmed into the Plan as appropriate to identify any impacts of changes that are proposed.
Risk Assessment:	<p>The renegotiation process will feature a dedicated risk management process as part of the project delivery, reporting escalations as required.</p> <p>By setting up a JMAP, there is a risk of minor reputational damage if SCC is perceived as not being fully transparent about the way it conducts its business. However the public interests safeguarded by the creation and operation of a JMAP outweighs this concern.</p>
Scrutiny Recommendation (if any)	None.

1. Background

- 1.1. SCC has to respond to major reductions in funding and deliver savings targets set by the Medium Term Financial Plan 2011/12-2013/14 that was agreed by Full Council on 16 February 2011.
- 1.2. One of the key areas to find savings is through SCC's major contracts with suppliers. This includes the contract with SWo and SCC makes no distinction between this contract and any of its other contracts in terms of ensuring it is fit-for-purpose and delivers savings.
- 1.3. As the needs and future shape of the Council have changed, so SCC must ensure that the SWo contract does the same. It must deliver its share of the savings SCC is required to make in order to balance the budget and it must be flexible enough to accommodate further changes required or forced upon SCC.

2. Options Considered

- 2.1. SCC could terminate the SWo contract. This would be expensive, as it would involve significant transition costs for example, and contractual early termination financial penalties apply. It would be risky, as SCC could not be sure that the replacement arrangements would deliver benefits to exceed the costs. It would also damage relationships with Partners (IBM, Taunton Deane Borough Council, and Avon & Somerset Constabulary).
- 2.2. SCC could consider continuing and enforcing the present arrangements. This is considered not to be acceptable as the size and shape of SCC has changed. Further, all partners have learnt a great deal from the experience of working together and operating the venture during the first three years. SCC should seek to apply that experience and secure benefits by making changes as appropriate.
- 2.3. With regard to options considered rather than setting up a JMAP, the process of renegotiating the SWo contract could be reported through the existing SCC democratic structure. However, given the commercially sensitive nature of the subject matter, it would be impractical, intensely bureaucratic and probably impossible to report progress and options in a timely manner without compromising SCC's commercial interests, and by extension the interests of Somerset's taxpayers. Any renegotiation which meets the key decision criteria will be the subject of further reports and publication in accordance with the Council's Access to Information Rules.

3. Consultations undertaken

- 3.1. The Service Director – Client Services has consulted with the Leader, the Cabinet Member with responsibility for SWo, the Leader of the Opposition and Chairman of Scrutiny Committee.
- 3.2. The Service Director – Client Services has consulted with SCC's Chief Executive and the Service Directors for Finance, HR and Legal.

- 3.3.** The Service Director – Client Services has consulted with the SWo partners in TDBC and the ASP as well as the SWo Management Board about the intention to renegotiate.

4. Implications

- 4.1.** An outline of the work that the renegotiation process will involve includes:

- Looking again at the contracted Output Specifications to ensure they remain fit for purpose across the remaining contract term.
- Looking at how the contract can properly reflect changes in the scope and volume of SCC to allow fairer pricing.
- Looking at how the 'value added' aspects of the contract have supported and furthered the organisation and what changes need to be made.
- Looking at how the contract can be simplified generally, to reduce unnecessary complexity in current processes.
- Looking at how the ongoing transformation project (procurement) needs to change in order to reflect the learning of the initial three years' delivery and the requirements of it across the remaining term.

- 4.2.** SCC understands that its Partners may have concerns with this process. In accordance with the Principles within our shared Memorandum of Understanding., SCC want to be as open as possible, and will work to minimise any prejudice to its partners interests. It is hoped that Partners will recognise that SCC is working to accommodate both the priorities of its changed political administration and the impact of major organisational change through the process to reshape the role and purpose of SWo going forward.

- 4.3.** There is a risk that, by setting up the JMAP, the public perceive that SCC is not being transparent in the way it conducts its business. Consequently SCC may suffer some reputational damage. However, SCC should put the interests of Somerset's citizens first, and in order to protect SCC's ability to negotiate and maximise the benefits arising from any changes to the Contract, this risk of minor reputational damage should be accepted in order to secure the best overall deal.

- 4.2.1** The recommendation to initiate a Joint Members Advisory Panel to oversee this work is in keeping with the Freedom of Information (FoI) Act. The sections of the FoI Act most relevant here are sections 41 (exemption for information provided in confidence) and 43 (exemption to protect commercial interests).

- Section 41 provides an absolute exemption for the disclosure of any information which would constitute an actionable breach of confidence (that is, where disclosure would give the person to whom the obligation of confidentiality was owed the right to take action through the courts).
- Section 43 exempts the disclosure of information that would, or would be likely to, prejudice the commercial interests of any person (including a public authority). This is subject to a public interest test – that is whether the balance of public interest is in favour of maintaining the exemption.

5. Background papers

- 5.1.** There have been numerous reports to a range of SCC Committees since the

launch of the SWo venture. All of these are available via the SCC website and form a commentary in regards to the performance of SWo over its initial years of operation.

5.2. Note this should include all relevant previous reports considered by the Council

Note For sight of individual background papers please contact the report author

A Cabinet Member **must** have regard to officer advice before exercising delegated powers. All Cabinet Member decisions shall be notified via this template by email to the Group Manager – Community Governance – Julian Gale – (copied to Scott Wooldridge) Please ensure that any local county councillor for any electoral division significantly affected is consulted prior to the exercise of the delegated power and informed of any subsequent decision taken.

Decisions taken by Cabinet Members shall be recorded and notified to all Members of Council via the Council's website within 2 working days of the decision being made. Any Member may ask the Leader (or when absent, the Deputy Leader) of their Political Group to require the decision to be referred to the decision maker for consideration within 3 working days of being published on the Council's website. If there is no referral the decision can be implemented at the expiry of the 3 day notification period. If referred to the decision maker, the decision shall not be implemented until the decision maker has determined the referral. The only exception to this rule shall be 'urgent' decisions requiring immediate implementation – see urgency provision below.

Urgency can only be applied where delay in implementing a decision would be to the detriment of the interests of the Council. The case for urgency must be agreed by the Leader (or Deputy Leader in the absence of the Leader) prior to the decision being implemented.

All decisions and supporting material shall be recorded on the Council's website and be available for public inspection at any time.