





**Highways PFI**

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## Highways PFI

## 2: Summary

- 2.1.1 The proposed Highways Maintenance PFI is a hugely significant issue for the City Council involving a 25 year contract and expenditure which could over that period, at outturn prices, exceed £2 billion. It is therefore highly desirable that the Council as a whole has ownership of the decision as to how to proceed.
- 2.1.2 The PFI involves complex judgements on service transfer/retention and risk assessment; the financial modelling and methodology and the interface with other Council policies such as localisation, conservation and human resource issues. We have, therefore, spent a lot of time familiarising ourselves with thJT\*0 0.78 5hrh(tcfC3(h)-4.1(e )3.1(e )3.



## Highways PFI

2.1.7 The fourth set of questions concern the future of staff under any PFI and the impact on local employment. Would the PFI respect the reasonable interests of our staff in their new work environment? And would there still be a strong enough retained client role to ensure proper monitoring and enforcement?

2.1.8



## Highways PFI

the project framework. Specifically, this means that the PFI should include the complete highway network but exclude certain other services. A grid showing our views on proposed inclusions and exclusions is shown in para 5.2.1 of our report.

- 2.1.15 These decisions concerning the modified scope of the PFI will ensure that a range of services delivered in the Districts are able to be directed from the local level. We were told, however, that how this influence will be achieved was, at this stage, still to be defined. This work must now be done urgently.
- 2.1.16 We recognise that proper arrangements can be made for the transfer of staff to the PFI provider through TUPE/TUPE Plus or staff remaining directly employed by the City Council through either secondment or sub-contract arrangements. Whilst we also recognise that these are never going to be easy discussions between Management and Trade Unions, we were concerned to hear from the Unions of their view that there has been a dearth of consultation. This is in stark contrast to the information we have received from officers that the trade unions have not availed themselves of the many provided opportunities for consultation. This stand-off is in no one's interest.
- 2.1.17 We want a "whole Council" feel to these very important decisions. Using our report and our conclusions we hope that the full Council will agree a way forward which can then be central to the formal decision by Cabinet.



## **3: Terms of Reference**

### **3.1**



## Highways PFI

### 3.2 The Terms of Reference

3.2.1 In order to provide a mechanism to channel that work, Co-ordinating O&S Committee agreed on 12 December 2003 the terms of reference for a scrutiny exercise. The objectives were:

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## Highways PFI

*Services Advisory Team then accepted the recommendations of the Best Value Advisory Team and also only approved the Year 1 Key Improvements."*

- 4.1.6 At this stage there was a pause in public reporting on the issues. It was clearly not the case that work had ceased – the Executive's Forward Plan contained an item expecting a decision on the Highways Maintenance and Management PFI every month since the very first issue in December 2001. Despite that, however, and despite the recommendation of the Audit Commission that decisions on procurement options should be taken by May 2002, no report came forward to a public political forum for some considerable time.
- 4.1.7 When this long period without public reporting came to an end, it did so suddenly. In Cabinet on 27 October 2003 the then Leader referred to a Government announcement that day, and the Department for Transport issued its decision letter on 28 October. The report was issued on Thursday 30 October under "Supplementary Reports 2" and taken by Cabinet under the urgent items provisions on Monday 3 November.
- 4.1.8 It was then that Cabinet decided formally to accept the award by the Department of Transport of PFI credits for a future Highways Maintenance and Management Service – the decision which was followed by the call in, the City Council debate referred to in section 3 of this report, and indeed by this scrutiny exercise.
- 4.1.9 It is clear that a major initiative is required to renew Birmingham's highways. City Council officers have confirmed to us that:
- the road network in its current condition cannot provide an acceptable service; it needs a



## Highways PFI

### 4.2 Financial Options

- 4.2.1 Gaining an understanding of the PFI proposals and what alternative financial options might be available has been central to much of our considerations.
- 4.2.2 During the first stage of our review we asked Dr Peter Watt, INLOGOV, University of Birmingham to give us some advice. We had 2 meetings with Dr Watt whose view was that whilst he felt that the PFI looked the most advantageous to the City Council we should also make sure that the new availability of prudential borrowing was thoroughly explored.
- 4.2.3 For our most recent meeting we received a helpful paper from the Strategic Director of Resources which carefully looked at other possible sources of funding.

#### **In-house delivery through supported borrowing**

- 4.2.4 The Government gives each local authority an annual allocation to support capital expenditure, either by way of supported borrowing or by capital grant. This is known as the Single Capital Pot which in the current financial year amounts to £87.856 million. It is allocated as follows:

	£'000
Education	23,940
Housing	33,789
Transport	16,082
Social Services	528
Flourishing Neighbourhoods	13,517
<b>Total</b>	<b>87,856</b>

If additional resources were to be directed to Transport (Highways) then funding would need to be taken from other policy priorities. This "robbing Peter to pay Paul" in part accounts for the position in which we now find ourselves and would not work. We therefore discounted this option.

#### **In-house delivery through unsupported borrowing under the prudential borrowing arrangements**

- 4.2.5 The City Council is no longer restricted to the amount it may borrow provided that it can demonstrate that it is able to service the debt.
- 4.2.6 We have had some concerns about the way some of the figures have been presented - we have, for example, found it much more helpful to see the impact of the borrowing requirements in terms of current day prices rather than outturn prices which builds in automatic inflation





## Highways PFI

	£m
<b>Inner Capital</b>	
Highway Drainage	5.927
Skid Resistance	1.858
Recovery of road and footway backlog	53.877
Street lighting	80.816
Structures - bridges, culverts, etc	47.248
	<b>189.726</b>
<b>Whole Cycle</b>	
Resurfacing	272.006
Reconstruction	155.425
Urban Traffic Control	28.718
Street lighting	70.023
Tree replacement	7.002
	<b>533.174</b>
Client costs Result	28.718



# Highways PFI

## Configuring the PFI

- 4.2.17 With the consideration of certain exclusions of services from the current scope of the PFI, attention has been given to what this would mean to the Outline Business Case and the award of PFI credit.
- 4.2.18 The PFI credit implications of excluding certain services are shown in Fig 2. This identifies the implications of the various elements of the current scope proposed for removal from the contract. Values are cash over the duration of the PFI contract (25 years).

Activity	Lost PFI Credit £m
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## Highways PFI

dismissal and would therefore likely be reluctant to be bound by performance indicators. There is also the possibility that a secondment arrangement may, in legal terms, amount to a TUPE transfer.

### Sub Contracts

- 4.4.5 The Council's DLO could sub-contract to the service provider to provide a range of highway services. However, the City Council would need to be able to demonstrate that this amounted to a sufficient risk transfer to the provider to permit the PFI to proceed. Further exploration of the possibilities of sub-contracting should be undertaken.

### Client Arrangements

- 4.4.6 Having only last year completed a scrutiny review of the housing repairs service we are very aware of the problems caused by a weak client function. In our meetings officers assured us that lessons had been learnt and that there will be a strong retained client function to ensure that the City Council's policy control is not diminished.

### Local Employment

- 4.4.7 We regard it as most important that the specification to the PFI provider goes as far as possible to secure maximum employment for the citizens of Birmingham. See also paragraph 5.4.5

## 4.5 District Committees and Locality Considerations

- 4.5.1 Throughout the review the O&S Committee was aware that financial issues, and the provider arrangements, are very important but not the only considerations. This is why in the second phase of our work we broadened the aperture to look at a range of other related and important issues.
- 4.5.2 The various services under consideration for the PFI have a considerable impact on localities and also interface with other City Council policies and services. Examples include parks and nature conservation; cleansing of land beyond the highway; refuse collection; and heritage and conservation issues. Related environmental factors are exemplified by noise, local air quality, bio-diversity and water quality; in addition there are



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- 4.5.4 We commissioned a paper from the Strategic Director of Local Services which addressed local service provision and environmental considerations. This is included in the Appendix.
- 4.5.5 On the one hand, the PFI proposals have been developed on the basis of a "back of footway to back of footway" concept, and from some perspectives there is a logic in all services affecting the highway being



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- 4.5.10 Accordingly, we were interested to see evidence as to how such accountability and influence could be maintained over highways services under a PFI.
- 4.5.11 We understand that the basis of the PFI proposal is to deliver a consistent and reasonable base line standard across the city. Enhancement would be possible in the words of the Strategic Director "where additional local funding is made available".
- 4.5.12 The Strategic Director's report pointed out that:
- "Processes will need to be put in place whereby the District team and Engineer can identify local priorities with Local Strategic partners, Users and Elected Members, and feed them into the HMM PFI programming and planning process."*
- 4.5.13 During our investigation, no specific mechanism has been put before us to demonstrate clearly how District Committees could exercise an ongoing role of setting priorities for services included within the PFI.
- 4.5.14 Similarly with respect to those services which could be delivered outside a PFI arrangement, the exact role of District Committees and the mechanism through which they could exercise local influence was not fully spelt out. Trees and street cleansing are prime examples here. We heard views both in favour of their inclusion in the PFI and in favour of their exclusion. The evidence of their importance to the local environment, and indeed to whether a neighbourhood could be described as "flourishing", was striking. But equally it would have been useful to have received clearer statements as to how precisely District Committees (as distinct from district managers) could influence policy and operational priorities for these services whether delivered through a highways maintenance PFI or not.
- 4.5.15 Keeping with the issue of trees, we have seen the City Council's tree policy statement. This contains statements such as: "The Council will do all it can to care for its trees to ensure our tree stock thrives for the benefit of the people and the wildlife of Birmingham." And "The Council recognises the value of trees in the community because we see them as part of our everyday lives. They may line the streets where we live or work and the importance of these trees in enhancing our quality of life is acknowledged by the City Council." These are precisely the reasons why it would be inappropriate just to address trees as an obstruction that happened to grow beside the highway and where the highway alone should be the sole determinant of their management and maintenance.

### Other pertinent considerations

- 4.5.16 The phrase "the devil is in the detail" is particularly apposite in relation to the PFI. It is very important that in taking the broad policy decisions the City Council is fully aware of issues which come in their wake. We flag 4 such issues.



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### (i) Tariff Mechanism

- 4.5.17 The papers we have seen advised that a payment mechanism is currently being produced. Twelve performance standards will form the core of this mechanism. Deductions from the unitary charge will then be made where the performance standards are not met.
- 4.5.18 In considering these performance standards the Committee noted that, at this stage, several were imprecise. Furthermore, we were concerned that a number of them related to the speed or volume of PSVs and HGVs using City roads. If retained, these need to be extended and revised to include benefits to a4.5(tsi55(ty roas upers 6( i) cntractors tomaximciss thegtai rfoa p



## 5: Conclusions

### 5.1 Should we proceed with a PFI?

5.1.1 We have looked in detail at possible alternative sources of finance, namely:

- Supported borrowing
- Unsupported borrowing under the new prudential borrowing arrangements
- A joint venture partnership
- Financing through issuing bonds

Our CONCLUSION is that a PFI scheme with its attendant "PFI credits" - which generate additional grant - is the only option currently available that will bring the additional resources to the City Council at the level needed to bring about the major maintenance and restoration of the highway network. No other options that we have been able to identify produce Government support for investment on this scale which means that the work would need to be funded from the City Council's resources, with consequent effects on other service revenue or capital programmes, or the level of the Council Tax.





## Highways PFI

Street Column Replacement / Maintenance	In*	Subject to confirming that local considerations on desirability, location (i.e. front or back of footpath) and design can be determined by Districts.
Highways Horticulture (excluding trees)	Out	The retention of highways horticulture would keep the current "holistic" approach to the maintenance of the City's green environment.
Highway Trees	Out	The PFI Officer Project Team did not have a uniformity of view. The engineering opinion prevailed that this should be included in the PFI. But it is recognised that the "handing over" of this service area could have a negative environmental impact. It is also accepted that this service, with significant District level influence, may be incompatible with the PFI.
Emergency Response	Out	It is considered important to keep direct control of these functions.
Temporary Event Management	Out	Again, it is considered important to keep direct control of this function.
Public Place Management	Out	Ensure better co-ordination with related Council services.

5.2.2 Of the services which it is now proposed to exclude from the PFI, only highways trees replacement (and maintenance) will result in a loss of

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## Highways PFI

- 5.3.3 Having last year completed a scrutiny review of the housing repair service, we are very conscious of the problems that a weak retained client function can cause. Throughout the Districts, Elected Members and Housing officers were faced with the situation where they had very little day to day influence over the management of the service. As an





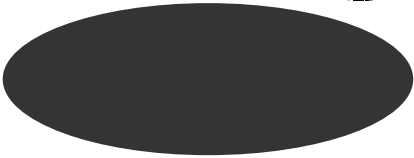
## Highways PFI

5.5.4 Turning to the PFI itself, we were told that there would be tight specification and control of services. Specifications will, as a minimum, be at national standard or above if the City Council currently provides a higher level of service. The Service Provider will then need to:

- Engage with District Committees as well as local communities; and
- Respond to local priorities and



**Highways PFI**



**Appendices**



**Highways PFI**

**A1.1 Pro-forma for the Review**

# Proposed Scrutiny Review

A	Subject of review	Highways Maintenance and Management PFI
	Overview and Scrutiny Committee	Co-ordinating O&S Committee
B	Reason for review	



# Highways PFI

J Estimated Number of Working Days  
to Conduct Review

It is envisaged that there will need to be an initial intensive phase, which might require additional meetings of the Committee. Thereafter it is anticipated that the work will be undertaken in the Committee's regular monthly cycle.

Per Member

Officers

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## Highways PFI

### **A1.2 A Framework provided by the Chair, Co-ordinating O&S Committee**

#### **The Scrutiny of the Proposed Highways Management and Maintenance PFI - a framework provided by the Chair, Co-ordinating O&S Committee**

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##### **1. Context and Overall Timescale**

- A1.2.1 The new administration of the City Council is reviewing the PFI in order to ensure that it not only serves as a vehicle to provide finance to bring the highways up to a satisfactory standard, but, is also, on a broad range of grounds, in the best interests of those who live and work in Birmingham.
- A1.2.2 This is to take place quickly, leading to a conclusion at the City Council on Tuesday 12 October. The intention is for this debate to be informed by views both from the Executive and from the Co-ordinating O&S Committee on the best way forward.
- A1.2.3 This timescale is necessary because, should the decision be to proceed with a PFI, the current overall PFI timeframe can then be utilised.
- A1.2.4 The Cabinet Member and the Chair of the O&S Committee have agreed on the scope of the work each will oversee. This allows the linked exercises to draw on a common information base but to avoid duplication. For its part, the Co-ordinating O&S Committee intends to devote a substantial



## Highways PFI

there should be a series of presentations lasting around 15 minutes each, highlighting the key issues from the papers.

A1.2.8 The first paper should be a statement of the current position, including:

- the state of the highway in Birmingham
- the level of service
- the spend – revenue and capital
- how the service is organised, managed and delivered
- how the maintenance programme is decided
- how service users and elected Members currently influence service delivery.
- 
- This will provide a benchmark against which options for service delivery in the future can be judged.
- 

A1.2.9 The other papers need to set out clearly the possible options, together with their implications. These should include anticipated benefits, likely disbenefits, and areas of uncertainty.

A1.2.10 The first of this set of papers should concern highways issues, with the aim of describing as clearly as possible the outcome of each option in terms of the future standard of the highway. It should also highlight any organisational, management and service delivery issues, and the degree of flexibility retained by the City Council. The options here fall into three categories:

- network coverage – e.g. Principal Road Network only; classified network; whole network
- services included – e.g. all services as defined in the Outline Business Case; or a smaller number, as specified in paragraph 2.7 below
- service specification and control – e.g. a single city-wide specification; degrees of locality-based specification.

A1.2.11 The material on the services included should be presented in a way which corresponds to a "maxi PFI" (i.e. the currently proposed, comprehensive (material) of the PFI) J18.7246 0 TD





## Highways PFI

- traffic signals
  - winter maintenance
  - signage and seats
  - emergency response
  - event management
  - road markings
  - provision of footway crossings
  - public place management
  - and should also vary the lighting column replacement requirements so as to allow district discretion over which roads to include or exclude and also over retaining the position at the front of the footway.
- A1.2.12 This highways paper should also set out any implications which may arise from the form of any contractor body, focussing here on the "maxi-PFI", the "mini-PFI" and a "localised PFI body" which has been separately suggested by Cllr Olley. The Appendix to this note outlines the "localised PFI body" proposal.
- A1.2.13 It is envisaged that this paper would be produced by the Chief Highway Engineer.
- A1.2.14 The second of the options and implications papers should concern financial matters, and which would need to be prepared by the Strategic Director of Resources. It needs to cover the following financial options:
- in house delivery through supported borrowing
  - in house delivery through unsupported borrowing under the prudential borrowing arrangements
  - a joint venture partnership
  - financing through issuing bonds (with the identification of any possible income stream)
  - the currently proposed PFI (i.e. "maxi PFI")
  - a less comprehensive PFI (i.e. the "mini PFI")
  - the "localised PFI body" as outlined in the Appendix
  - any other option which officers consider should be brought to Members' attention.
- A1.2.15 Material on the "mini PFI" should cross-refer to the options considered in the highways paper.
- A1.2.16 The finance paper should also clarify the consequences of contractor default, renegotiation arrangements, and the question of residual value. It should also spell out the effects of changes to the tariff mechanism, such as removing from the payment scheme the



## Highways PFI

adjustment for the average speed of Public Service Vehicles, and indeed the effect of an introduction of congestion charging.

- A1.2.17 Next, a paper on employment and human resources issues is required. It is envisaged that this would be prepared by the Strategic Director of Resources in conjunction with the Director of Corporate Human Resources. Where the various highways and financial options require differing employment vehicles, this paper needs to describe them briefly but clearly and set out the implications. It should also detail the extent of consultations with the trades unions to date.
- A1.2.18 The final paper in this set needs to address the impact on the wider locality. The various services under consideration have a considerable impact on localities and also interface with other City Council policies and services. So this paper needs to set out implications for services such as parks and nature conservation; cleansing of land beyond the highway; refuse collection; and other heritage and conservation issues, such as the control of the appearance of conservation areas. The effect on other environmental factors such as noise, local air quality, bio-diversity and water should also be noted, as should the impact of various options on safety and crime. The paper also needs to cover the impact on the ability of service users and elected Members to influence the delivery of highways maintenance services in their locality.
- A1.2.19 It is suggested that this paper be put together by the Strategic Director of Local Services.
- A1.2.20 Finally, the Committee also wishes to be informed of the timetable required for the letting of a PFI contract, with an explanation of which dates are at present fixed, and which are desirable but have some flexibility.





## Highways PFI

The preferred make up of a localised PFI body would be COB Direct Services, three or more principal local contractors, a design consultant and, if the model required by the client dictated, a financial organisation. Each principal would hold a single share and the localised PFI would be run on a "not-for-profit" basis.

The work would be allocated to the PFI



## Highways PFI

The localised PFI body would have less of a vested interest in the “big-hit” option than a national FM provider as the localised PFI body would be more concerned with the longer term workload, service levels and effect on the local economy than the national provider who would be more interested in the short term maximisation of profits.

The next step would be to “flesh out” the proposals for the localised PFI body and instruct solicitors to draw up a draft head of agreement. This would obviously involve some expenditure by the localised PFI body partners who would therefore need some indication that the



## Highways PFI

### **A1.3 Alternative Options for Highways Management and Maintenance Service Provision**

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## Highways PFI

kilometres (approx.) out of a total network of 2,490 carriageway kilometres. Thus the project objectives would only be achieved for these parts of the network.

- 2.3.2 The unclassified road network would be managed by the City Council under the existing arrangements. This option does not deal with the structural backlog on the unclassified network.
- 2.3.3 The implications, benefits, delivery issues and flexibility are the same as given above for the PRN but for increased network coverage.

### **2.4 Whole Network (approx. 2490 carriageway km)**

- 2.4.1 Under this option, the whole ne







# Highways PFI

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**Service Description**

**Element of Service**



## Highways PFI

- 3.2.2 Each service has been fully assessed in line with the brief detailed in Section 1 of this paper. Detailed analysis of the services being considered for retention by the City Council is contained in Appendix 3.



## Highways PFI

a sufficiently robust Client function to ensure that quality services are delivered. How the interface between the City Council as Client and the HMMPFI Service Provider works will to a large extent depend on what employment solutions are decided. These are outlined in Paper 4 – Employment and Human Resources Provision.

### **5.2 Reduced Scope of Services as specified in Co-ordinating O & S Committee HMMPFI Framework Document - 'Mini HMMPFI'**

5.2.1 The reduced scope of services (i.e. taking out those services as identified in section 2.2) will have the same delivery mechanism as in section 4.1. However, those services taken out may require restructuring in order to obtain the best interface with the Service Provider.

### **5.3 Localised HMMPFI Body**

5.3.1 There are many issues to be addressed should this option be pursued e.g. whether this option would satisfy the requirements of FRS5 (Financial Reporting Standard 5: Reporting the Substance of Transactions: Private Finance Initiative and Similar Contracts) and therefore give the City Council a HMMPFI project. This matter is dealt with in Paper 3 – Financial Considerations. The delivery mechanism in utilising such a body, if deemed acceptable, would have the City Council still planning and ordering the works utilising shorter term contracts.

.....  
NEIL DANCER  
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# Highways PFI

## Appendix 1

### Proposed Highways Management and Maintenance PFI Paper 2 – Alternative Options

#### Brief

- § To consider the following alternative option categories:
  1. **network coverage** - e.g. Principal Road Network only; classified network; whole network
  2. **services included** - e.g. all services as defined in the Outline Business Case; or a smaller number, as specified in Co-ordinating O & S Committee HMMPFI Framework Document
  3. **service specification and control** - e.g. a single city-wide specification; degrees of locality-based specification,
- § To produce a clear exposition of each option and an evaluation of each
- § To concentrate on what each option would bring to the service users and their democratic representatives
- § To set out clearly the possible options, together with their implications, including anticipated benefits, likely disbenefits, and areas of uncertainty
- § To describe as clearly as possible the outcome of each option in terms of the future standard of the highway.
- § To highlight any organisational, management and service delivery issues, and the degree of flexibility retained by the City Council
- § To present material on the services included in a way which corresponds to a "maxi HMMPFI" (i.e., the currently proposed, comprehensive model) and to a "mini HMMPFI"
- § To lay out the implications of the City Council retaining a wider range of services and excluding from the HMMPFI the following functions:
  - 3 highway tree replacement
  - 3 street cleansing
  - 3 horticulture
  - 3 traffic signals
  - 3 winter maintenance
  - 3 signage and seats
  - 3 emergency response
  - 3 event management



## Highways PFI

- 3 road markings
- 3 provision of footway crossings
- 3 public place management
- § To vary the lighting column replacement requirements so as to allow district discretion over which roads to include or exclude and also over retaining the position at the front of the footway.
- §





## Highways PFI

2.2	New Roads & Street Works Act 1991	Programming of openings  Supervision and monitoring of Undertaker
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<b>Functions</b>		<b>Examples Of Services</b>
2.3	Event Temporary Traffic Management	Signing and Barricades, etc.
2.4	Third Party Claims and Damage to Council Property	Investigation and repair of accident damage







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<b>4</b>	<b>Operational Responsiveness</b> So that the HMMPFI Service Provider will be able to discharge its obligations to maintain a safe and serviceable network, responsibility for winter maintenance and emergency response are included in the current proposal.	
4.1	Winter Maintenance	Pre-salting of pre-defined routes Reactive ploughing and salting during snow periods Grit bin maintenance
4.2	Emergencies	Removal of immediate danger on highways e.g. deep potholes, debris on carriageway



## Highways PFI

### Appendix 3

#### **Analysis of Services being considered for Retention by the City Council**

The following services have been considered for retention by the City Council:

- 3 highway tree replacement
- 3 street cleansing
- 3 horticulture
- 3 traffic signals
- 3 winter maintenance
- 3 signage and seats
- 3 emergency response
- 3 event management
- 3 road markings
- 3 provision of footway crossings
- 3 public place management

There is an introduction given for each service giving the rationale for current inclusion in the maximum scope.

Each service listed will be evaluated against the criteria below on the basis that it is partially or totally removed from the scope of the project:

- § Implications for Service Users and their Democratic Representatives

Benefits, Disbenefits and Areas of Uncertainty, which will contain implications to the current PFI credit offer and the Council's financial resources. These are contained in a tabular format shown in Appendix 1 to the Financial Considerations paper

- § Impact on Future Standard of Highway
- § Organisational, Management and Service Delivery Issues

Degree of Flexibility retained by the City Council







## Highways PFI

### 3.1.4 Impact on Future Standard of Highway of Service Removal

There would be relief events for the HMMPFI Service Provider adjacent to trees where such trees have or are likely to have an effect on the Service Provider activity. This may lead in time to a noticeable differing standard.

### 3.1.5 Organisational, Management and Service Delivery Issues of Service Removal

Retention of Highway Tree Replacement by the City Council will present the following issues / challenges:

Managing the costs of road / pavement damage	Where surfaces for which the contractor is responsible are considered to be below the standard required in the specification, the contractor will be able to disclaim responsibility where he can argue that the damage is a consequence of tree roots. In such cases, the Council will not be able to make a deduction under the payment mechanism. Indeed in some circumstances, the Service Provider may be able to claim compensation for the damage done.
Managing performance in relation to street lighting, traffic signs and signals	Where lighting output on the ground does not meet the specified standard or the visibility of signs is obscured by trees, the Service Provider will be able to claim relief from payment deductions
Managing claims related to falling trees	Any damage or liabilities arising from a falling tree will fall on the Council unless it can prove that this was a result of the action or omission of the Service Provider
Potential reduction in PFI Credit support	An element of the capital costs (£200k per annum) included in the project relates to the cost of replacing more trees than would be possible within existing Council budgets. If this element is removed from the HMMPFI scope, then it is likely that the HMMPFI credit support by government would be reduced accordingly. As this would be part of the cash grant to the City Council, the City would have to otherwise find the money from its own financial resources.

In essence BCC would retain all direct and associated risks.





## Highways PFI

### 3.2 Street Cleansing

#### 3.2.1 Current Scope and Rationale

The HMMPFI project leaves policy with respect to Street Cleaning with the City Council.

The rationale for including Street Cleansing within the HMMPFI is that it provides clarity over the management of service performance risks. For example:

- § co-ordinated approach to street scene service
- § responsibility for service performance to HMMPFI Service Provider
- § Removal of interface risks and liabilities e.g. drainage system affected by litter, leaves etc , leaf fall contributing to unsafe road conditions and accidents
- § optimise economies of scale

Currently, the HMMPFI project requires the Service Provider to:

- § Develop a method statement during the tender period to demonstrate how he intends to implement Council Policy during the delivery of the service.
- § This method statement would include details of the manning arrangements, frequencies etc and once agreed would be bound in the legal agreement.
- § put in place a programme for replacement of litter bids and other receptacles

#### 3.2.2 Implications for Service Users and their Democratic Representatives of Service Removal





## Highways PFI

This nil effect does not take into account the cost of risk transferred back to the City Council or the cost of Council management and supervision of this element of the service

However, the HMMPFI Service Provider may attach their own risk premium to the interface risk associated with litter and fallen leaves blocking the drainage system and the consequential damage to the structure of the highway caused by water in the sub-structure. He will also look for relief from claims resulting from ice and or slippery condition resulting from blocked drainage system or fallen leaves on the carriageway / footways.

### Benefits of removing the service from the scope

- No Impact on current contractual/working arrangements
- Neither litter nor rubbish recognises boundaries of responsibility whether they are Departmental or Ward. A significant amount of Street Cleansing work is carried out on land that extends beyond the highway and is undertaken in a co-ordinated way on behalf of other Departments, agencies and owners to provide a seamless service. This would not be affected should the service be retained by the City Council.
- The indiscriminate placing of sacks on the footway on days other than the scheduled day of collection can and does cause inconvenience and litter. By operating a combined refuse collection and Street Cleansing service such







## Highways PFI

### Benefits of removing the service from the scope

- The retention of Highways Horticulture would keep the integrated horticultural maintenance regime and the "holistic" approach to the maintenance of the City's green environment.

### Disbenefits of removing the service from the scope

- Reduction in the overall co-ordinated street scene approach



## Highways PFI

### 3.4 Traffic Signals

#### 3.4.1 Current Scope and Rationale

The current HMMPFI proposal includes for both Traffic Signal Maintenance and Traffic Signal Management (including management of the Urban Traffic Control Centre). Therefore the service needs to be considered for retention by the City Council in 2 distinct areas:

On street Maintenance of the Traffic Signal Equipment

Day to Day management and control of the Urban Traffic Control Centre

The HMMPFI project leaves policy with respect to traffic signals with the City Council.

The rationale for including Traffic Signals Maintenance and Management of the UTC within the HMMPFI is that it provides clarity over the management of service performance risks. For example:

- § co-ordinated approach to street scene service
- § responsibility for service performance to HMMPFI Service Provider
- § responsibility for HMMPFI Service Provider to fund technological and equipment upgrades
- § co-ordination and optimisation of lane use and availability

Currently, the HMMPFI project requires the Service Provider to:

- § develop a method statement for the on-street maintenance of traffic equipment during the tender period to demonstrate how he intends to implement Council Policy during the delivery of the service. This method statement would be bound in the legal agreement.
- § develop a method statement to demonstrate how he proposes to assist in the management of the UTC and the level of that involvement during the tender period and to demonstrate how he intends to implement Council Policy during the delivery of the service. This method statement would be bound in the legal agreement.

The City Council will continue to install new equipment but HMMPFI Service Provider would take over maintenance once installed.

#### 3.4.2 Implications for Service Users and their Democratic Representatives of Service Removal

It is important that Service Users can feel confident that traffic signal installations are being properly and safely managed. In addition they need to feel that the efficiency of the network in relation to signal timings and delay minimisation is being continually monitored and improved where practical.

#### 3.4.3 Benefits, Disbenefits of Service Removal and Areas of



## Highways PFI

contract will lead to a loss of operational efficiencies within the contract. This may lead to an affordability issue. The interface risk arising will be priced into the HMMPFI contract.

Removing Traffic Signal Management (UTC) from the scope of the HMMPFI contract will lead to a possible loss of PFI Credit (grant) and a loss of operational efficiencies within the HMMPFI contract. In combination these may lead to an affordability issue. The interface risk arising will be priced into the HMMPFI contract.

The financial implications are outlined in Paragraph 1.6 of the Financial Implications Paper 3.

### Disbenefits of excluding Traffic Signal Management & Traffic Signal Maintenance from the HMMPFI arrangement.

#### Maintenance

- The risk of peak requirements for replacement of traffic signal equipment by the Authority is removed and a positive planned replacement programme can be implemented.
- There is the potential to deploy new technology for traffic signal heads as an investment, to reduce overall costs.
- The deployment of UTMC will require new communication services. It may be a prudent capital investment to install new communication networks as highways are refurbished. Use some of the network for highway management and market the remainder to other Service Providers. Partnership may be an option.

#### Management

- The system's function is management of the Highway network, which is one of the aims of the HMMPFI to aid maintenance operations.
- The deployment of UTMC and additional services will require significant capital. This would be securitised in a HMMPFI arrangement. There will also be cyclical replacement capital costs as systems reach the end of their service life, approximately every 15 years.

### Benefits of excluding Traffic Signal Management & Traffic Signal Maintenance from the HMMPFI arrangement.

- Management of the Highway Network becomes direct. This may have specific implications when emergencies occur.
- There is a need for an "Intelligent Client". Nationally there is a serious (50% plus) shortage of people with the necessary skills. The skills are very specialist and development of them requires a "hands on" methods. The HMMPFI may create a barrier to the development of these skills.



## Highways PFI

### 3.4.4 Impact on Future Standard of Highway of Service Removal

There would be no significant impact on Traffic Signal Equipment maintenance should the service be removed from the project. However, the City Council would need to ensure that sufficient budget is allocated to cover the increasing pressure to replace ageing equipment.

It will be necessary to clearly define the level of traffic signal management input required from the HMM PFI Service Provider to have management input to ensure sufficient integration between HMM works and traffic control in a strategic context.

Removal would remove any doubt of HMM PFI Service Provider using the contract to do HMM works to the detriment of free flow of traffic on other areas of the network.



**Highways PFI**







## Highways PFI

### 3.6 Signage and Seats

#### 3.6.1 Current Scope and Rationale

Signage within the current scope of the HMMPFI includes for the following:

- § Maintenance and replacement (as necessary) of Direction Signs
- § Maintenance and replacement (as necessary) of Street Name Plates

Seats refer to the maintenance of existing seats within the highway. It does not include resources for the provision of new seats. The HMMPFI project leaves policy with respect to Signage and Seats with the City Council.

The rationale for including Signage and Seats within the HMMPFI is that it provides clarity over the management of service performance risks. For example:

- § co-ordinated approach to street scene service
- § responsibility and liability for service performance to HMMPFI Service Provider

Currently, the HMMPFI project requires the Service Provider to develop a method statement during the tender period to demonstrate how he intends to implement Council Policy during the delivery of the service. This method statement would be bound in the legal agreement.

#### 3.6.2 Implications for Service Users and their Democratic Representatives of Service Removal

There would be minimal impact on these services whether or not they are included or excluded from the contract.

#### 3.6.3 Benefits, Disbenefits of Service Removal and Areas of Uncertainty

Removing Signage and Seats from the scope of the HMMPFI contract will lead to a loss of operational efficiencies within the contract. This may lead to an affordability issue. The interface risk arising will be priced into the HMMPFI contract.

The financial implications are outlined in Paragraph 1.6 of the Financial Implications Paper 3.

##### Disbenefits:

- Performance and liability for sign condition and performance would lie with the Council. The HMMPFI Service Provider would seek relief from consequential events resulting from poor or missing signage.
- Loss of economies of scale and utilisation of labour and other resources.
- Public perception of responsibility





## Highways PFI

### 3.7 Emergency Response

#### 3.7.1 Current Scope and Rationale

The HMMPFI project leaves policy with respect to Emergency Response with the City Council.

The rationale for including Emergency response within the HMMPFI is that it provides clarity over the management of service performance risks. For example:

- § co-ordinated approach to street scene service
- § responsibility and liability for service performance to HMMPFI Service Provider
- § direct linkage between make making safe , temporary and permanent repairs
- § provision of 24 hour response service

Scope of service with HMMPFI

- § Currently, the HMMPFI project requires the Service Provider to develop a method statement during the tender period to demonstrate how he intends to implement Council Policy during the delivery of the service.
- § This method statement would set out the Service Providers proposals in respect of response times, attendance at incidents, resources, back up resources, interfaces with other emergency plans etc and once agreed would be bound in the legal agreement.
- § The HMMPFI Service Provider provides 24 hour, 365 day cover to respond to all emergencies within 15 minutes and make safe within 1 hour. Depending upon the circumstances, the permanent repair would normally be covered by the HMMPFI Contract or where it is a relief event, paid for through the Schedule of Rates.

#### 3.7.2 Implications for Service Users and their Democratic Representatives of Service Removal

Provided that the same level of service is being provided through compliance with the various standards and the Best Value Code of Practice, there would be minimal impact on service users whether or not the service is removed from the scope of the project. Policy is maintained in either case, although there may be uncertainty of operational responsibility should the service be excluded from the contract.

#### 3.7.3 Benefits, Disbenefits of Service Removal and Areas of Uncertainty

Removing Emergency Response from the scope of the HMMPFI contract will lead to a loss of operational efficiencies within the contract. This may lead to an affordability issue. The interface risk arising will be priced into the HMMPFI contract.



## Highways PFI

The financial implications are outlined in Paragraph 1.6 of the Financial Implications Paper 3.

### **3.7.4 Impact on Future Standard of Highway of Service Removal**

Provided that the same level of service is being provided through compliance with the various standards and the Best Value Code of Practice, there would be minimal impact on the standard of the highway.

### **3.7.5 Organisational, Management and Service Delivery Issues of Service Removal**

Retention of Emergency Response by the City Council will present the following issues / challenges:

Provision of the same level of service, at the same cost, than that which would have been provided by the HMMPFI Service Provider.

Resource availability, both manpower & equipment to deal with incidents

### **3.7.6 Degree of Flexibility retained by the City Council due to Service Removal**

Similar to the flexibility installed in the HMMPFI Contract but without the responsibility or liability



## Highways PFI

### **3.8 Temporary Event Management**

#### **3.8.1 Current Scope and Rationale**

The HMMPFI project leaves policy with respect to event temporary management with the City Council.

The rationale for including Temporary Event Management within the









# Highways PFI

Areas of uncertainty include road markings where contractors undertake patching, overlays and reconstructions etc. If the HMMPFI Service Provider is expected to replace markings in these circumstances, there will be an increase in cost and risk premium due to the small and irregular quantities available.

### Loss of economies of scale and flexibility

The in-house provider will be required to operate to the same performance specification as would otherwise have been in the HMMPFI

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## Highways PFI

### **3.10 Provision of Footway Crossings**

#### **3.10.1 Current Scope and Rationale**

It was anticipated that, although not directly included in the HMMPFI









## Highways PFI

- § responsibility and liability for compliance with BS EN 13201 and the Best Value Code of Practice
- § risk of uncoordinated approach to the provision of a street scene service and resultant lack of optimisation of lane availability
- § interface risk with the HMMPFI Service Providers programmes and working arrangements

The HMMPFI Service Provider will seek an increasing number of relief events

### **3.12.4 Impact on Future Standard of Highway of Service Modification**

Provided that the same level of service is being provided through compliance with BS EN 13201 and the Best Value Code of Practice, there would be minimal impact on the future standard of the Highway



## **A1.4 Financial Considerations for Highways Management and Maintenance Options**

### **BIRMINGHAM CITY COUNCIL**

### **PROPOSED HIGHWAYS MANAGEMENT AND MAINTENANCE PFI**

### **PAPER 3- FINANCIAL CONSIDERATIONS**

#### **1 OPTIONS FOR DELIVERY OF A HIGHWAYS MANAGEMENT AND MAINTENANCE PROJECT**

Options for financing a Highways Maintenance and Management Project are considered in detail in the paragraphs below. The result of the appraisal is that all options apart from the PFI option as currently proposed (option 5) and possibly the less comprehensive PFI (option 6) fail to bring additional resources to the City.

##### **1.1 Option 1 : In house delivery through Supported Borrowing**

1.1.1 The Government gives each local authority an annual allocation to support capital expenditure, either by way of supported borrowing or by capital grant. This is known as the Single Capital Pot which in the current financial year amounts to £87.856m and was allocated by the City Council on 24 February as follows:

	<b>£'000</b>
Education	23,940
Housing	33,789
Total	87,856

1.1.2 Of the Transport allocation, £8m is spent on capitalised repairs to the classified road network with the balance being used to undertake minor highways schemes. The £8m relates to the 2004/05 Local Transport Plan settlement, and this value could vary year on year.

1.1.3 If additional resources were to be directed to Transport (Highways), then funding would need to be taken from other policy priorities. This would amount to between £10.600m and £44.069 m per annum in addition to the £8m allocated for the classified network mentioned above. However, the level of supported capital expenditure is such



**Highways PFI**





# Highways PFI

Table 1



## Highways PFI

- 1.2.4 In reality the profile will be slightly different to the PFI solution in that procurement process costs will be spread over the 25 years rather than being incurred up front. It has also been assumed that the profile of client costs will be the same.
- 1.2.5 The resources in either the third or fifth columns would need to be found from the City Council's revenue budget. Members will need to assess where the provision of an improved highway ranks with the provision of other services if this option was pursued and Council Tax was not to increase. Alternatively, if this option for funding were used without any reductions elsewhere, Band D council tax would rise by £3.59 for every £1.0m that is required to service and repay the debt. This amounts to a 0.36% increase. The Government does have reserve powers to limit the increase in Council Tax so it may not be possible to raise the necessary funds in this way.

### **1.3 Option 3 : A Joint Venture Partnership**

- 1.3.1 Joint ventures are usually appropriate for the delivery of services where there is an externally funded income stream available to the Joint Venture Partnership, such as



## Highways PFI

### 1.5 Option 5 : The currently proposed PFI

- 1.5.1 The project as currently proposed brings guaranteed additional investment to the City Council's roads of £778m over 25 years as follows:

**Table 2**

	£m
<b>Initial Capital</b>	
Highway Drainage	5.927
Skid resistance	1.858
Recovery of road and footway backlog	53.877
Street lighting	80.816
Structures - bridges, culverts etc.	47.248
	<b>189.726</b>
<b>Whole Cycle</b>	
Resurfacing	272.006
Reconstruction	155.425
Urban Traffic Control	28.718
Street lighting	70.023
Tree replacement	7.002
	<b>533.174</b>
Client costs	<b>52.518</b>
Procurement	<b>2.563</b>
<b>Total</b>	<b>777.981</b>

- 1.5.2 As mentioned in para 1.1.2 above there is currently £8m per annum allocated via the LTP process for capitalised repairs to the classified road network, although this figure is not guaranteed for future years and would probably tail off as the classified network improves. Following initial discussions with the Department for Transport (DfT)



## Highways PFI

this annual LTP allocation will now be subsumed into the PFI credit and will become guaranteed; the effect of this change is that an amount equivalent to the LTP funding will be available for investment on the whole of the network including footways. Assuming that this money would be forthcoming from the Government for each of the next 25 years, it will have the impact of reducing the amount of new resources (supported by PFI Grant) by £280m. The amount of new investment will therefore be around £500m.

- 1.5.3 The above figures in Table 2 are at outturn prices assuming 2.5% inflation. The net present value of £778m is £379m, which is the PFI credit awarded to the project.
- 1.5.4 Any affordability gap between the cost of the specified level of service under the PFI contract and current levels has been covered by the Government's confirmation of grant determined by the PFI credit. With effect from the commencement of the project the City Council will receive a guaranteed grant which under current rules will amount to £40.2m in the first year. This will reduce by 4% per year meaning that excess grant is payable in the early years with grant continuing after the conclusion of the project. The Government is currently consulting on ways to address this mismatch which may result in grant being paid on an annuity basis over the life of the project. If this were to be the case grant of around £30m will be paid each year for 25 years. The total award of grant under these 2 methods would be approximately the same but paid under a different profile.

### **1.6 Option 6 : A less comprehensive PFI**

- 1.6.1 A number of specific services within the current mandatory scope of the HMMPFI are to be considered for exclusion from the project. These fall into 4 broad categories
- 1.6.2 Those Services identified for possible exclusion within the mandatory variant bids where no capital investment is envisaged; these services are Horticultural Maintenance (excluding Trees) and Street Cleansing. By identifying these services as mandatory variant bids the DfT will not require a reconsideration of the City Council's Outline Business Case (OBC), and there is no loss of PFI credit should they be withdrawn from the scope. However the PFI Service provider may include interface risk costs within the price.
- 1.6.3 Those Services identified for possible exclusion within the mandatory variant bids where capital investment is envisaged; this service is Horticultural Investment and Maintenance (Trees). By identifying this service as a mandatory variant bid the DfT will not require a





## Highways PFI

- 1.6.9 The main elements of current scope that are seen to transfer sufficient risk to the PFI Service Provider (a requirement of FRS5) are likely to be
- All aspects of Carriageway and Footpath Investment and ongoing Maintenance, including management of footway crossing installation. .
  - All aspects of Street Lighting Investment and ongoing Maintenance (the Street Lighting investment element of the scope provides the vast majority of the cost benefit analysis justification for the project overall).
  - All aspects of Highway Structures Investment and ongoing Maintenance.
  - Winter Maintenance
  - Tree investment and maintenance
  - Signage and Road Markings
- 1.6.10 A further consideration in identifying elements of the scope for removal is the mix of work types within current workforce groups e.g. Winter Maintenance is carried out by the same group of staff that deliver carriageway reactive maintenance.
- 1.6.11 To secure the PFI grant it is also essential that the contract be seen as being for the provision of services (e.g. upgrade and ongoing maintenance) rather than just for the procurement of works.
- 1.6.12 A significant reduction in scope may also lead to potential procurement process challenge from consortia who did not consider they could deliver the current mandatory scope(s).

### **1.7 Option 7 : A 'localised' PFI body (the "Cllr Olley option")**

1.7.1 The financial implications of this option are dependent on the arrangement meeting the tests for a PFI project, resulting in the payment of PFI grant. The City Council's financial consultants have already commented on the proposal and have come to the conclusion that it fails to meet the requirements for a PFI project in several regards. Full details of the proposal and issues are shown in Appendix 1 to this paper.

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## Highways PFI

### **1.8 Option 8 : Any other option which officers consider should be brought to Members attention.**

- 1.8.1 The only options that will secure the PFI grant are the full scheme currently proposed and, subject to Government approval, a less comprehensive PFI project. Other options do not secure the PFI grant. If the project were to proceed it would mean directing resources from other services or increasing council tax. Raising £30m per annum from Council Tax would involve an extra £107 on a Band D property, a 10.9% increase.

### **2 CONTRACTOR DEFAULT.**

- 2.1 If the PFI scheme proceeds a financial institution will be part of the successful consortium, and will provide the funding for capital investment. The financial institution will service the consortium's debt through the unitary fee paid by the City Council. Should a contractor default in a fundamental way, for example through becoming insolvent



## Highways PFI

### **4 RESIDUAL VALUE.**

- 4.1 The contract will require that at the end of the contract period all elements of the highway network should be fit for purpose. However, in order that the network does not deteriorate after the contract period it will be necessary for the City Council to continue to invest to avoid the network returning to the position we are today.

### **5 TARIFF MECHANISM.**

- 5.1 Your officers are preparing a payment mechanism that is currently







## Highways PFI

For the 'localised PFI contractor' to be successful in being awarded a PFI financed contract, it would mean: -

- The proposed localised PFI Co would have to 'bid' like all other interested consortia. This would involve substantial upfront costs at risk.
- The localised PFI Co would have to be in place at the appropriate point in the procurement timetable (this point has already passed for the current DfT approved timetable).
- The appropriate risk tran





## Highways PFI

### Appendix 2

#### Draft Payment Mechanism : Performance Standards

The following 12 Performance Standards form the core of the Payment Mechanism:

- PS1 Focused on *Network and Infrastructure Condition* so that as this improves during the CIP, the level of deductions reduces until all the minimum condition standards are reached.
- PS2 Focused on *Network and Infrastructure Availability and Performance* so that where availability of the various aspects of the infrastructure are not available for use to the standards specified in the Service Requirements, the payment to the Service Provider is reduced accordingly.
- PS3 Focused on the maintenance of *Environmental Standards* so that (for example) where streets do not meet the specified cleanliness standards appropriate deductions are made from the payment to the Service Provider.
- PS4 Focused on the achievement of *Winter Maintenance* standards so that where maintenance is not undertaken or does not achieve the required network availability a reduction is made in the Service Provider's payment.
- PS5 Focused on *Emergency and Operational Responsiveness* so that on each occasion where the Service Provider does not respond to an







## Highways PFI

ODPM (Circular O3/2003), which requires contractors to provide a comparable Pension Scheme or to apply for admitted body status to the Local Government Pension Scheme. Further discussion in respect of TUPE and Pension issues is covered in Appendix 1.

Whether or not TUPE applies is a matter of law, which is covered further in the report, and should be considered as the starting baseline position for any PFI contract.

### **2.2 TUPE Plus**

2.2.1 There has, also, been a practice for some local authorities to include







## Highways PFI

### **3 EMPLOYMENT VEHICLES IN THE CONTEXT OF THE FINANCIAL OPTIONS**

3.1 If the Council funds the required improvements to its highway infrastructure through the adoption of a non-PFI arrangement, e.g. Prudential borrowing or other methods of supported borrowing or the issuing of bonds, it can continue to do so either through use of an in-house workforce or through contracting with one or more external providers.

3.2 If the Council chooses to adopt either a mini or maxi PFI the employment options for those services included in the PFI package would need to be considered as follows:

#### 3.2.1 TUPE

As stated above whether or not TUPE applies is a matter of law. The Council and the HMMPFI service provider and the affected employees cannot "contract in" or "contract out" of TUPE by labelling the transaction as TUPE or non-TUPE. Therefore where a group of employees spend the greater part of their time either in a labour intensive undertaking or using a significant amount of assets and either they and/or such assets are taken on by the HMMPFI service provider from the City Council, it is likely that TUPE will apply. Any proposed Transfer of Undertaking is subject to the normal consultation machinery.

#### 3.2.2 TUPE Plus

If the City Council was to adopt the TUPE Plus approach, it would need to provide additional protection for the transferred workforce by developing with the HMMPFI service provider a Transferred Workforce Protocol. This could include (for example) requirements that:-

- The HMMPFI service provider consult with the City Council before taking major employment decisions with respect to significant numbers of the transferred workforce;
- The transferred workforce's conditions of employment are not worsened during the core investment period.

During 2003 there has been extensive consultation between Council officers and the recognised non-teaching trade unions on the drafting of a TUPE Protocol. The protocol is being developed so that all parties have a clear framework within which to facilitate the personnel issues associated with transfer.



## Highways PFI

### 3.2.3 Secondment

There is one major legal difficulty and one major practical difficulty with all secondment arrangements. The legal difficulty relates to the application of TUPE and the practical difficulty to the issue of control of the employees.

There is the possibility that a secondment arrangement may, in legal terms, amount to a TUPE transfer – irrespective of being an agreed secondment.

In practical terms, the fact that the staff are directly employed by the authority itself (although under the direct control of the service provider), means that ultimately it is difficult to transfer responsibility for the quality of the work performed or for the productivity of those workers to the service provider. The service provider will not have the right to discipline or the ultimate sanction of dismissal and therefore likely to be reluctant to be bound by performance indicators or a price/payment mechanism, which is dependant on staff performance. General issues of liability, Health and Safety etc would need to be resolved.

Further more in order to progress HMMPFI the Council needs to satisfy the DfT that the contract will be off balance sheet in accordance with FRS5<sup>1</sup>. Insofar as secondment would leave much of the employee cost and performance risk with the Council, it is very likely that adopting secondment for core parts of the HMMPFI contract e.g. any part where there is a strong relationship between the capital and on-going maintenance costs, would create difficulties in this respect.

### 3.2.4 Sub-contract

The Council's DLO could sub-contract to the HMMPFI provider to provide a range of highway and street lighting related services. The Association For Public Service Excellence (APSE) states that there would appear to be no legal impediment to a sub-contracting solution. However, as with secondment the key issue will be to demonstrate that the capital is off balance sheet in accordance with FRS5<sup>1</sup>. The difficulties in this respect will depend on the type of services subcontracted e.g. the issue will be less significant for services considered to be 'soft' such as street cleaning and grass cutting but significantly more challenging in areas such as highways and street lighting.

<sup>1</sup> A reference to Financial Reporting Standard No.5, which sets out the



## Highways PFI

principle of "substance over form."

The 'test' of risk transfer will essentially be an expert judgement from an independent specialist accountant, verified by the authority's independent auditor. In terms of FRS5 there is no specific reference to the involvement of DLO's being factors to adversely affect the issue of risk transfer. Moreover from an employee relation's point of view the realisation that BCC is still retaining workforce responsibility from the contractor could act as a powerful determinant in engaging with the workforce and their trade union representative.

A further requirement in respect of this option is that it is necessary for the Secretary of State to designate the HMMPFI Service Provider as a Public Body under the Local Authorities (Goods and Services) Act 1970.

### 3.2.5 Joint Venture Partnership

The analysis above does not specifically consider the option of a Joint Venture Partnership as this is neither a finance nor an employment option. Rather, it is a form of company structure through which external services to the Council could be provided, whether or not PFI is the funding vehicle used. As such it could be used in conjunction with any of the employment vehicles discussed above.

A joint venture could be structured so that the Council has less than 20% stake, as in the Kirklees Schools PFI Project, and, if this was the case, it is unlikely that this would have any significant influence on the Council's



## Highways PFI

### **4 TRADE UNION CONSULTATION**

4.1 A series of meetings were held



# Highways PFI

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## Highways PFI

### 1 Further issues in respect of TUPE and Pension Matters

- 1.1 The HMMPFI Treasury guidance document states in the context of value for money that:

*"The Government's commitment to PFI is based on its ability to deliver value for money in public investment, whilst protecting the terms and conditions of employees. Therefore – as the Government has always made clear – value for money should not be achieved at the expense of staff terms and conditions."*

- 1.2 The TUPE regulations themselves, as stated, do not protect pensions but they are protected by the new Code of Practice on Workforce Matters in Local Authority Service Contracts, which applies to all contracts advertised after the 13<sup>th</sup> March 2003.
- 1.3 The new Code lays down a number of responsibilities for the outsourcing employer, in this case BCC, and the incoming 'service provider'. Primarily the parties must identify pensions arrangements and how the service provider intends to treat new employees who will work alongside existing employees i.e. the two tier workforce.
- 1.4 In respect of Pensions the Code specifies that new joiners must be offered a reasonable pension that could mean:
- Membership of the LGPS
  - Membership of a good quality Employer Pension Scheme or
  - Membership of a stakeholder pension scheme with an employer contribution (of up to 6% but either party can pay more)
- 1.5 Essentially the Code requires that where there is a TUPE transfer and the transferee (in this case the HMMPFI service provider) employs new joiners (i.e. employees recruited directly by the HMMPFI service provider to work alongside the transferred workforce then the new joiners have to be employed on no less favourable terms than the transferred employees (i.e. the employees transferred under TUPE by



## Highways PFI

- 1.8 There will be a single integrated workforce to deliver the project objectives and no justification for any relief from the consequences of a failure to perform the HMMPFI contract where the Transferred Workforce is responsible for such failure.









**Highways PFI**

**Appendix 2**





## Highways PFI

provider who may be affected by a second generation TUPE transfer			
Street Sweeping and Cleansing	228	14	242
	<b>418</b>	<b>195</b>	<b>613</b>





# Highways PFI

<p>Employment Options</p>	<ul style="list-style-type: none"> <li>• Directly employed</li> </ul>	<ul style="list-style-type: none"> <li>• TUPE</li> <li>• Secondment</li> <li>• Sub-Contract</li> </ul> <p>To JV Company</p> <p>(As PFI if to be structured as a PFI transaction)</p>	<ul style="list-style-type: none"> <li>• TUPE</li> <li>• Possibly secondment and/or sub-contracting, but only realistically for 'soft' services</li> </ul> <p>To PFI Service Provider</p>	<ul style="list-style-type: none"> <li>• TUPE</li> <li>• Secondment</li> <li>• Sub-Contract</li> </ul> <p>To Service Provider</p>
<p>Specific issues</p>		<p>New group accounting requirements</p> <p>(As PFI if to be structured as a PFI transaction)</p>	<p>A PFI transaction is required to meet the ODPM/DfT/PRG criteria for PFI recond Twing,</p>	<p>I if toff(meet the )TjT*-0.0011 Tc9.0017 al</p>











## Highways PFI

- have embraced joint performance evaluation via the ISO 2000 system;
- currently delivers the service in accordance with the City Council's Tree Policy, Nature Conservation Policy and Sustainability Action Plan;
- achieves local service variation;
- ensures that the City Council's legal responsibilities for trees are dealt with in accordance with the Tree Policy.

2.17 For the last 4 years, the highway service providers have developed working practices and processes to improve harmonisation and ensure that where services interface with each other, they do so effectively and efficiently. Clearly there is always room for further improvements and the Street Scene Approach will require strengthening and formalising of these interfaces which will be beneficial to citizens.

2.18 Whilst it could be stated that inclusion of Grounds Maintenance and Trees within highway corridors is in the best interest of the street scene, all other Council owned areas will suffer as a consequence which, when taken across the Parks and Nature Conservation Service as a whole, is not necessarily in the best interests of those who live and work in Birmingham.

2.19 The Council's Tree Policy requires that a formalised relationship between the Council and any contractors or utility companies who carry out works on the highway which may affect trees, be established within the contract documentation. Such a relationship will need to be included within the HMMPFI documentation, which can draw upon existing SLA and contract documentation, working practices and experience, so as to safeguard the health and safety of the trees, as well as the highway/footway surfaces.

### **3. STREET CLEANSING AND REFUSE COLLECTION**

3.1 There has always been a dilemma between including street cleansing within the HMMPFI on the basis of its' influence on the condition of the highway or excluding it due to it being an integral part of the Waste Management function which includes refuse collection, recycling, abandoned vehicles and a waste disposal. Whilst the original scope of the HMMPFI promoted a back of footway to back of footway concept it excluded refuse collection and street cleansing activities taking place beyond the highway. There were also several remaining interfaces between service providers, i.e., refuse sacks placed on the footway awaiting collection, recycling banks located on the footway, and abandoned vehicles, which remained outside the scope.







## Highways PFI

- 4.4 The contract should ensure that current standards for lighting are delivered like for like with due regard paid to the need for a different style and character of equipment and furniture within conservation areas.

### 5. ENVIRONMENTAL FACTORS

The following issues could be dealt with by including them in the output specification:

#### 5.1 Noise and Air Quality

- 5.1.1 The continuous development of the street cleansing service as a flexible but integrated element of City Council activity indicates that more locally based service delivery is the best way forward, with local employees operating within smaller neighbourhoods using small-scale equipment and vehicles. This approach allows potential reductions in vehicle use with the consequential benefits of reduced noise and improved local air quality.

- 5.1.2 Birmingham City Council were a lead partner in a European research project from 2001-2004 called URGE - the Development of Urban Green Spaces to Improve the Quality of Life in Cities and Urban Regions. This established the important objectives (Regional) of the project.



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Its summary concluded that "trees are an integral part of the urban environment, affecting communities - ecologically, socially, economically and physically and they benefit human health."

### **5.2 Bio-Diversity**

- 5.2.1 The importance of urban trees and established hedgerows within the urban environment, including those within the highways curtilage, to benefit biodiversity is considerable. The ecological dependency and diversity of populations and species between mature trees and hedgerows increases over time.
- 5.2.2 It is for this reason that the Nature Conservation Strategy for



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tanks as a vital part of the storm water management within cities. A recent example of this would be the installation of such a system within New Road, Frankley to relieve the Frankley housing estate from localised flooding, and holding waters back from the upper reaches of the River Rea, so reducing the pressure on the channel downstream.

5.3.3 Such approaches will need to be integrated into the HMMPFI.

### **5.4 Safety and Crime**

5.4.1 The street cleansing service wo







## **A1.7 Timetable Implications**

### **BIRMINGHAM CITY COUNCIL PROPOSED HIGHWAYS MAINTENANCE AND MANAGEMENT PFI PAPER 6 - TIMETABLE IMPLICATIONS**

#### **1 INTRODUCTION**

- 1.1 The table at Appendix 1 attached shows key dates (3 programme versions) to inform Committee what is required for the letting of a Highways Maintenance and Management PFI (HMMPFI) contract.

#### **2 TIMETABLE**

##### **2.1 Column 1**

Shows the target key dates presented at the 20<sup>th</sup> April 2004, Cabinet Committee. This was to ensure that the project would reach contractual (commercial & financial) close by the 31<sup>st</sup> March 2006, and therefore meet the conditions of the Department for Transport's (DfT) offer letter of PFI credits. The offer letter dated the 28<sup>th</sup>



## Highways PFI

of Birmingham. The Cabinet Member also pointed out to both Bidders and DfT that full but final consideration of this review would be laid before Council on the 12<sup>th</sup> October 2004.

### 2.3 Column 3

Shows a further revised timetable based upon the working assumption of a clear Council decision being given on the 12<sup>th</sup> October 2004. The timetable assumes that:-

- The revised project scope can proceed utilising the pre-qualification process that has already occurred and that the outline proposals already submitted can be utilised to determine a Bidders shortlist (maximum of 4).
- After the BCC Scrutiny process, but before a mid October 2004 Executive Decision (following City Council), a delegation of officers informally meet with the DfT to ensure that the proposed changes to be decided by the Council are in general acceptable to DfT together with moving the 'close date' to June 2006. The June 2006 date is still considered by officers as a significant challenge to meet, since whilst it is recognised that the scope of the project may be reduced, the clarification of the interface issues and possible working arrangements may increase in their complexity.

2.3 In summary, all the dates up to, but not including 'Contract Close' are to a degree flexible. However, once the City Council's requirements are re-established and agreement reached with the DfT, dates such as Formal Intention to Negotiate (ITN), appointment of Preferred Bidder and then Contract Close should be practically fixed, ensuring project development can be fully monitored and out-turned to the criteria required.

- Appendix 1 Table of HMMPFI Programmes
- Appendix 2 DfT letter dated 28/10/03 to the Strategic Director of Development

NEIL DANCER  
CHIEF HIGHWAY ENGINEER AND  
HMMPFI PROJECT DIRECTOR



# Highways PFI

PROGRAMME VERSION			KEY PROGRAMME ITEM
COLUMN 1	COLUMN 2	COLUMN 3	
20 <sup>TH</sup> APRIL 2004 CABINET COMMITTEE	POST BIDDERS CONFERENCE WITH <u>NO SUBSTANTIAL CHANGE TO SCOPE</u> *	BCC DECISION ON FUTURE OF HMM PFI AT MID OCTOBER 2004	
March 2004	March 2004	March 2004	Cabinet Committee approval of scope of project.
May 2004	May 2004	May 2004	OJEU Notice published to seek expressions of interest.
June 2004	June 2004	June 2004	Closing date for Contractors / consortia to express interest. BCC issue Information Pack, Pre-Qualification Questionnaire (PQQ) and Invitation to Submit Outline Proposals (ISOP) to bidders expressing an interest in the project.
July 2004	July 2004	July 2004	BCC Presentation to potential contractors / consortia – Bidders Conference.



# Highways PFI

August 2004	August 2004	August 2004
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## Highways PFI

**ATTACHMENT TO LETTER DATED 28 OCTOBER 2003 TO BIRMINGHAM  
CITY COUNCIL**



## Highways PFI

minimise the risk of delays to contract signature. You will not be able to rely on existing letters as entitling your authority to a PFI credit and failure to secure prior agreement to deviations will invalidate any undertaking by the Department or PRG to support your scheme.

Revenue support will be paid as Special Grant and calculated according to the formula set out in the Special Grant Report which will be published for the relevant financial year. Revenue support will start in the first year in which your authority's payments under the contract are made. Your authority will need to ensure that funds are available to cover that part of the payments to the contractor which will not be met by central Government.

Revenue support is not intended to match or correlate directly to the payments that arise under a PFI contract. However, the Government is committed to supporting good PFI projects and to assisting the development of PFI in the local authority sector. Its policy is therefore to maintain revenue for PFI projects in the long term, consistent with the long-term nature of PFI contracts, even though formally such support cannot be guaranteed as it forms part of the annual Local Government Finance Settlement.

Variations or termination of a PFI contract would not of themselves lead the Government to reassess the level of revenue support due other than in exceptional circumstances, such as, for example, where continuation of support would unduly enrich or reward a deliberate abuse of the PFI contract. In such exceptional circumstances, however, the Government would expect to take steps to ensure that you were not thereby prevented from meeting in full your resulting liabilities to the PFI contractor and its funders for capital assets already delivered.

You must inform this department immediately if, following contract signature, it becomes clear that a significant variation in the nature of the outputs required from the contract, or the capital assets being delivered by the Contractor will be necessary. This may, in some circumstances, result in a reduction in revenue support.

**Department for Transport**

**28 October 2003**

Highways PFI Report - Appendix A/Cabinet