

EXECUTIVE SUMMARY

DATE: 6 February 2018

SUBJECT: Appointment of preferred bidder and consequential award of contract to that bidder in relation to the procurement of the Sunderland 'Go Ultra Low Filling Station' and the approval of associated lease and sub-lease

REPORT OF: Monitoring Officer

The report requests the consent of:

1. The Chair of the Overview and Scrutiny Committee under Paragraph 13 of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017 (the '**Order**'); and
2. The Chairs and Vice-Chairs of the North East Combined Authority under sections 32 and 33 of the Leadership Board Rules of Procedure set out in Part 4.1 of the NECA Constitution.

The request is made on the basis that it is impractical to include the matter on the NECA Forward Plan for a period of 28 clear days before the decision is made. **Consent or refusal should be communicated to the Monitoring Officer as soon as possible following due consideration.**

OUTLINE:

The NECA Head of Paid Service will be invited to exercise authority contained in Part 3.7b (HPS4) of the Constitution to take operational action which is required as a matter of urgency in the interests of NECA, in consultation with the Chair of the Leadership Board, Monitoring Officer and Chief Finance Officer as far as is practicable.

The decision follows a fully compliant OJEU procurement process conducted on behalf of the Combined Authority by Newcastle City Council, with expert procurement guidance from North Tyneside Council.

The decision is not one falling within the requirements of Paragraph 7 of the *Openness of Local Government Bodies Regulations 2014* and it would not be considered a key decision under the Overview and Scrutiny Committee's call-in protocol (discussed at its meeting of 5 February 2018). However, this protocol has not yet been consented to by the Leadership Board.

The decision is urgent as if it were to be delayed until 25 March 2018 (being the end of the call-in period following the Leadership Board on 20 March 2018), the project would slip beyond ERDF funding constraints and thereby create a technical breach.

RECOMMENDATIONS:

The Chair of the Overview and Scrutiny Committee and the Chairs and Vice-Chairs of NECA are each requested to consent to permit the decision to be made without it being entered onto the Combined Authorities Forward Plan as a key decision.

NEXT STEPS:

In accordance with Paragraph 12 (1(b) and (c)) of the Order, a copy of this report will be published on the North East Combined Authority website indicating whether consent has been given.

Subsequent to the consent of the Chair of the Overview and Scrutiny Committee and the Chair or Vice-Chairs of the North East Combined Authority, the North East Combined Authority Head of Paid Service will be invited to make the following decision:

‘To approve the following as an urgent decision in accordance with HPS4 in relation to the Go Ultra Low Filling Station to be located at West Wear Street, Sunderland and, to the extent necessary, the filling station to be located on the Science Central site.

1. Name a bidder as the preferred bidder and to whom the Authority would award the contract, subject to completion of the necessary ‘stand-still’ period.
2. To award the contract to the preferred bidder.
3. That the Authority enter into a lease with Sunderland City Council and sub-lease with the preferred bidder.
4. Authorise the Monitoring Officer to finalise and execute all deeds or documents desirable to give effect to the transactions described above.’

1. Background

- 1.1 The NECA Leadership Board has received regular reports in relation to this project, most recently in the Thematic Leads Report for Transport and Digital Connectivity on 16 January 2018. The Leadership Board received a confidential report on the proposed bid for European Regional Development Fund Programme Investment on 20 September 2016. This paper clearly identifies that the Authority will procure two filling stations and gives authority in relation to designing the procurement model if the bid is successful.
- 1.2 On 21 March 2017 the NECA Leadership Board gave project approval for the Go Ultra Low North East Programme in the sum of £1.53m awarded to NECA from the Office of Low Emission Vehicles; £1.5m awarded in principle to NECA from the ERDF and noting the contribution of £1.3m awarded to Newcastle University.
- 1.3 It is clear from the paper that the Authority will undertake a procurement process for the filling stations (for example it is mentioned in the risk management table at 7.4.2). Regular updates also appear in Thematic Lead Reports.
- 1.4 The Monitoring Officer is concerned that the authority delegated by the Leadership Board on 21 March 2017 does not adequately extend to the decision to award a contract or associated leases. Accordingly, the Head of Paid Services will be invited to confirm the contract award and associated operational actions using constitutional delegation for decisions in cases of urgency.

2. Proposals

- 2.1 Following the evaluation of tenders, it is proposed to enter into a contract with the preferred bidder and to enter into a lease and sub-lease in relation to the occupation and ownership of the site.
- 2.2 An OJEU compliant, open procurement process, preceded by a pre-qualification questionnaire, resulted in six compliant bids. These were evaluated by a team of five evaluators, supported by three specialist panel advisors. The Newcastle City Council Procurement team are entirely satisfied with the quality and robustness of the procurement process and the evaluation. The evaluators recommend the preferred bidder and eventual contractor. The scores demonstrate that theirs represents the best value for money as the most economically advantageous tender.
- 2.3 The Authority must take a lease from Sunderland City Council for the site in order to allow the filling station to be constructed and to satisfy ERDF funding conditions. The site will then be sub-let to the operator for the period of the contract.

3. Reasons the Decision is Urgent and Cannot Reasonably be Deferred

- 3.1 This project is funded from three sources – the Office of Low Emission Vehicles, the European Regional Development Fund and Newcastle University. Funding is provided in accordance with conditional grant agreements. For the grant conditions to be met, certain milestone dates must be achieved.
- 3.2 The procurement exercise took considerably longer than originally planned. It was commenced in accordance with the project plan but additional clarification requirements in relation to certain bids delayed the evaluation such that the decision could not be taken at the Leadership Board held on 16 January 2018. Programme funding approvals anticipated project completion by 30 September 2018 and delays to this completion date will have a detrimental effect on funding and may impact on price certainty.
- 3.3 The tender process and evaluation has been led by the Regional Transport Team, supported by Newcastle City Council Specialist Procurement Officers and other specialist legal support.

4. Alternative Options Available

- 4.1 The alternative option would be for the Chair of the Overview and Scrutiny and the Chairs and Vice-Chairs of NECA to decline to make the decision to enable the decision to be made without being put on the Forward Plan. The result would be a delay of 28 clear days, plus five days call-in period from publication of the decision notice.

5. Next Steps and Timetable for Implementation

- 5.1 The Head of Paid Service will be invited to make an urgent decision in accordance with constitutional delegation HPS4. A copy of this report and any decision notice will be published on the North East Combined Authority website
- 5.2 The Authority will notify the preferred bidder, and other bidders, of the intention to award a contract to the preferred bidder. The Authority is then required to 'stand-still' for a period of ten days to allow challenges to the process.
- 5.3 It is the Authority's intention to award the contract to the preferred bidder for the West Wear Street, Go Ultra Low Filling Station immediately after the stand-still period.

The leases for the site and the subsequent sub-lease to the preferred bidder will be entered into around the same time as the contract award.

6. Potential Impact on Objectives

- 6.1 Successful delivery of the project will assist the Combined Authority and Local Enterprise Partnership in delivering the Strategic Economic Plan and the NECA Transport Manifesto objectives.

7. Financial and Other Resources Implications

7.1 Any delay in this decision would impact on the external funding and price certainty.

8. Legal Implications

8.1 NECA Legal Officers have been extensively involved in this project and all legal documentation continues to be checked in order to ensure that there are no legal implications for the NECA.

9. Key Risks

9.1 The project timescales are a key risk and are linked to the funding agreement which the NECA has entered into with the Department of Communities and Local Government. Every opportunity is being progressed to meet these timescales. The agreement to contract award is a fundamental step to achieving these timescales.

10. Equality and Diversity

10.1 There are no equality and diversity issues arising from this report.

11. Crime and Disorder

11.1 There are no crime and disorder implications directly arising from this report.

12. Consultation/ Engagement

12.1 Both Officers and Council Members have been kept abreast of project developments.

13. Other Impacts of the Proposals

13.1 The project is not known to have any impacts.

14. Appendices

14.1 None

15. Background Papers

15.1 The NECA Leadership Board report of 20 September 2016 '*Go Ultra Low North East ERDF Bid (Confidential Report)*'; NECA Leadership Board report of 21 March 2017 '*Project Approvals – Local Growth Fund and Going Ultra Low*' and the NECA Leadership Board report of 16 January 2018 '*Updates from Thematic Leads: Transport and Digital Connectivity*'.

NORTH EAST COMBINED AUTHORITY

Request for Special Urgency



16. Contact Officer(s)

16.1 Name: Peter Judge
Title: Monitoring Officer
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17. Sign Off

17.1 The Chief Officers listed below must be satisfied that the matter is urgent and cannot reasonably be deferred, and must specifically authorise that a request for special urgency is made. Recorded below are the comments and confirmation of consent of the Chief Officers.

- Head of Paid Service: ✓
- Monitoring Officer: ✓
- Chief Finance Officer: ✓

18. Glossary

18.1 ERDF – European Regional Development Fund
OLEV – Office for Low Emission Vehicles
DCLG- Department of Communities and Local Government

Approval Record:

Chair/Vice-Chair Overview and Scrutiny Committee	Approved	6 February 2018
Chair of NECA	Not applicable	
Vice-Chair of NECA	Approved	7 February 2018
Vice-Chair of NECA	Approved	7 February 2018