

WEST OXFORDSHIRE DISTRICT COUNCIL

FINANCE AND MANAGEMENT OVERVIEW AND SCRUTINY COMMITTEE

WEDNESDAY 11 JULY 2018

LEGAL COSTS FOR ELECTRIC VEHICLE CHARGING POINT FRAMEWORK

REPORT OF THE GROUP MANAGER COUNCIL ADVISORY SERVICES

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1. PURPOSE

To report on the progress to-date with the Electric Vehicle Charging Point (EVCP) procurement and consider financial implications for developing a framework.

2. RECOMMENDATION

That the Committee recommends that the Cabinet either:-

- (a) Approves a revenue allocation of up to £35,000 to enable Legal work to be procured to put a Framework for EVCPs in place (this sum will be reduced to 50% (£17,500) or 33.3% (£11,667) if Cotswold District Council and Forest of Dean District Council also agree to part fund these costs and the total costs are then shared equally between each partner), or,
- (b) Agrees that the work to prepare a Framework ceases and EVCPs are procured via an ESPO Agreement.

3. BACKGROUND

- 3.1. Following interest at both West Oxfordshire and Cotswold District Councils from Members in developing an EVCP network, work commenced to consider options, particularly as the market offers differing subsidies for EVCPs depending on the funding arrangements and degree of control retained by the authority.
- 3.2. The EVCPs could be procured using an existing ESPO Framework but this would only provide for fully funded purchase by the Council and would not enable the Councils to consider opportunities presented by different manufacturers who offer various subsidies. These varying financial arrangements may enable the Councils to facilitate the installation of additional EVCPs across a wider network area, providing greater benefit to motorists.
- 3.3. Initially the intention was to procure EVCPs based on each Councils current need but in consultation with Procurement it was decided that more investment in time now, preparing and procuring a Framework agreement would mean each Council could procure its current needs but also continue to call off from the Framework over the next few years if the first few EVCPs are successful and the decision is made to install more.
- 3.4. The Framework Agreement Invitation to Tender (ITT) has been prepared which includes the specification and different Lots asking bidders to price for different options where the Council would pay full costs and have total control on location, charging etc. or where they part fund but would then impose conditions i.e. where EVCPs are located. Members can then make an informed decision based on costs and the related conditions, which option they wish to pursue.

- 3.5. The Forest of Dean DC was approached as it was understood their Members also wished to install some EVCPs and they have joined the draft Framework, which means all three Councils and Publica will be able to call off from the Agreement. There will be flexibility as each authority may wish to call off different options. Publica could call off from the contract on behalf of other authorities, for which fees could be charged.
- 3.6. Following discussion with Legal regarding the draft contract that would be required to accompany the ITT, it became apparent that significant specialist legal advice would be required, which was not available in-house. Legal have therefore obtained a cost from an external legal firm who can assist with this work. The costs are set out below. If the decision is made to buy in this legal support and commence procurement, bids for each Lot will then be brought back to Members and a decision can be made on which funding arrangement Members wish to pursue. A site specific 'quick and easy' mini tender can then be completed based on the number of EVCPs required.

Scope of Legal work and financial implications

- 3.7. The following sets out the work deemed necessary to prepare the legal agreements for each element of the framework. As the draft legal agreements must be supplied to bidders along with the ITT, these costs must be incurred before the procurement. Unfortunately until the procurement has taken place the Councils will not know what the cost for each Lot will be and therefore which Lot may be preferable so all the agreements need to be prepared for both Lot 1 and Lots 2/3.

Lot 1 (EVCP fully funded by Council):

- **Framework Agreement:** To prepare a suitable framework agreement (either fully bespoke or based on the FAC-I Framework Alliancing Contract), discuss to align with the Council's preferred process and incorporate one (1) round of comments fee of **£4,200** (plus VAT and disbursements).
- **Delivery Contract (Supply and Install):** To prepare a suitable schedule of amendments to the JCT Design and Build Contract (2016), discuss these and incorporate one (1) round of comments, fee of **£4,580** (plus VAT and disbursements).
- **Maintenance Agreement:** To prepare a suitable bespoke maintenance agreement, discuss and incorporate one (1) round of comments, fee of **£3,700** (plus VAT and disbursements). Based on assumption that bidders will have standard services and will bid on the basis of an agreed fee structure.

Lot 2/ 3 (EVCP part funded by Council):

- **Concession Agreement:** To discuss the requirements for the concession agreement, prepare an initial draft (with a list of key points for instructions), discuss and incorporate one (1) round of comments, fee of **£14,440** (plus VAT and disbursements). Assuming a substantially similar approach on the contract documents for both Lot 2 and Lot 3. Concession document will be relatively complex, setting out both parties' obligations, processes for performance measurement and drafting dealing with investment and funding claw back risk. The need for bespoke drafting to capture the Council's requirements, particularly around the issues of choice of location.
- **Property documents:** Assuming that Lot 2 includes Council sites, it is assumed the Provider would want the additional security of a lease and/or easement covering the

footprint of the installation. A fee estimate of **£3,220** (plus VAT and disbursements) for property flow down issues for the tender document.

The above fees do not cover negotiation/clarification of the documents with the preferred bidder, which would be on the basis of the agreed hourly rates. In order to provide some contingency, should these additional costs arise, and to provide for disbursement costs, it is recommended a funding allocation of up to £35,000 is requested.

4. ALTERNATIVES

The Council can choose to either:

Option 1 – Fund the legal costs and commence Framework procurement. (costs shared with other partners subject to their agreement).

Option 2 – Fund the legal costs subject to them being shared with at least one other District Partner.

Option 3 – Cease the work to develop a Framework and instead consider direct purchase of EVCPs via a ESPO agreement.

5. RISKS

The Council needs to consider the following key risks:

- Failure to secure appropriate legal advice and draft agreements exposes the Councils(s) to considerable risk of reputational damage, spiralling revenue costs, loss of control or services which do not meet their needs once the EVCPs are installed.
- Without draft legal agreements, the procurement process may be flawed, quotes may not be comparable or capable of being fairly evaluated and the process could be challenged.

6. FINANCIAL IMPLICATIONS

6.1. The capital and revenue cost of installing and maintaining the EVCPs will be covered in a subsequent report following procurement.

6.2. The breakdown of costs for the legal agreements is set out above, the total cost being £30,140. However, it is recommended that a funding approval of up to £35,000 is requested to provide some contingency should additional legal work be required. The costs will be shared should Cotswold and/or Forest of Dean District Councils agree to continue as partners in this procurement.

7. REASONS

Protect and enhance the environment of West Oxfordshire and maintain the district as a clean, beautiful place with low levels of crime and nuisance; and be recognised as a leading council that provides efficient, value for money services.

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