



ESPO MANAGEMENT COMMITTEE – 7 MARCH 2013

AGENDA ITEM 5

REPORT OF THE CONSORTIUM SECRETARY AND CONSORTIUM TREASURER

CONSORTIUM AGREEMENT

Purpose of Report

1. To present the draft Consortium Agreement and its schedules (including the ESPO Constitution) to Management Committee, for approval.

Background

2. Following approval at a special meeting of the Management Committee on 24 September 2010 and through to June 2011, a fundamental review of the role and purpose of ESPO was undertaken through a Member led Business Strategy Review, which resulted in a revised Vision and service model, together with a number of recommendations to improve the operational efficiency and effectiveness of ESPO.
3. An Outline Implementation Programme was approved at the 24 June 2011 meeting followed by a Programme Initiation Document on 3 November 2011 which set out the scope, approach and delivery plan for the implementation of the ESPO Change Programme. A separate report setting out the conclusion of the Change Programme and recommending its formal closure is elsewhere on the agenda for this meeting.
4. The ESPO Change Programme introduced within the Programme Initiation Document (PID) a key priority to reduce Member Authorities' exposure to risk and provide greater transparency and accountability for decision making (Priority 2).
5. The PID tasked a Law and Governance SubGroup, led by Warwickshire County Council, with preparing a clear set of governance documents to support this priority which are supplied at **Appendix A** to this Report comprising:
 - (a) Consortium Agreement: Underpinning the fundamental principles of the Consortium and setting out the relationship between the Member Authorities in relation to functions, responsibilities and liability.
 - (b) Schedule 1 to the Consortium Agreement: ESPO Constitution, setting out clear responsibilities for key decision making, detailing remit and powers

of the decision makers and incorporating the Terms of Reference for the Finance and Audit Committee (Appendix 1), the Terms of Reference of the Chief Officers' Group (Appendix 2), the Delegations to the Consortium Secretary and Consortium Treasurer (Appendix 3), the Functions and Delegations to the Director of ESPO (Appendix 4), the Procedural Standing Orders of the Management Committee (Appendix 5), the Financial Regulations of the Management Committee including the Standard Financial Instructions (Appendix 6) and the Contract Procedure Rules (Appendix 7).

(c) Schedule 2: ESPO Services to be delivered through ESPO to the Member Authorities and Customers.

(d) Schedule 3: Functions of the Servicing Authority.

6. **Appendix B** to this Report summarises the key provisions of the new Consortium Agreement. This paper also summarises how the new ESPO governance model is strengthened covering performance management, the risk management framework and the transparency of decision making. This paper should give assurance to the Management Committee that Priority 2 has been achieved.

Consideration by the Chief Officer Group

7. The Chief Officer Group, as the Change Programme Board, has directed the development of the new Partnership Agreement and Constitution over the last 12 months, undertaken through the Legal and Governance SubGroup, led by Warwickshire County Council. On 5 February 2013 the Chief Officer Group considered a final draft of the Partnership Agreement, and subject to minor drafting amendments, its submission to the Management Committee for approval, subject to the raising of the following final outstanding issues for resolution:

Outstanding Issues

Consortium Agreement, Clause 14.3 (Liabilities and Indemnities)

8. Six of the Consortium authorities are satisfied with the wording proposed by the Law and Governance Group to address where an individual Member Authority feels it has suffered loss due to the activities of ESPO, i.e. to be referred for dispute resolution under clause 18, but that Leicester City Council remains dissatisfied;

Schedule 1 (Constitution), Appendix 5 (Procedural Standing Orders)

9. Leicester City Council is of the view that the principle of officers being able to speak on behalf of Consortium Authorities at meetings of the Management Committee, or for Members to call for an adjournment to enable advice to be taken from such officers, should be included in the Procedural Standing Orders. This is considered to be inappropriate by other Authorities as it is a Member level body, with the forum for officers to raise their views being at the COG and

SOG. However, it is noted that the Procedural Standing Orders contain a clause providing the Chair with the full power to conduct the meeting in the way he or she considered most expedient and can call on any person present to speak if considered appropriate or necessary;

Approval Process

10. Subject to final approval by Management Committee, the Partnership Agreement and its schedules, approval will then need to be sought from each Consortium Authority's appropriate Executive body prior to its execution.

Resources Implications

11. Implementation of the Change Programme, of which preparation of this Consortium Agreement formed a part, was mainly provided through a combination of existing resources, both financial and staff, of ESPO and Member Authorities.
12. A specific budget of £400,000 was set aside by the Management Committee on 24 June 2011 to support its implementation. In terms of the Consortium Agreement, only a small proportion of this budget was required through the use of specialist resources (a locum to support the development of legal documentation). The overall cost of the Programme, inclusive of the locum was £57,350.

Recommendation

13. That the Management Committee:
 - (a) considers and resolves the outstanding issues outlined in paragraphs 8 and 9 of this report;
 - (b) subsequent to (a) above, approves the Consortium Agreement and its schedules, attached as Appendix A to this report, and recommend it to the individual Consortium Authorities for their Agreement;
 - (c) authorises the Consortium Secretary to:
 - i) make any necessary final drafting amendments to the Agreement arising from this meeting;
 - ii) Liaise with individual Consortium Authorities in order that the Agreement be considered for approval by their appropriate Executive body;
 - iii) Subject to ii) above, arrange for the timely execution of the Partnership Agreement.

Background Papers

Joint Report of the Consortium Secretary and Treasurer to the ESPO Management Committee, 'Review of the Business Strategy for ESPO', 24th September 2010.

Joint Report of the Consortium Secretary and Treasurer to the ESPO Management Committee Business Strategy Review: Outline Implementation Programme, 24 June 2011.

Joint Report of the Consortium Secretary and Treasurer to the ESPO Management Committee - ESPO Change Programme Progress Report, 3 November 2011.

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Equal Opportunities Implications

14. An Equality Impact Assessment (EIA) was undertaken as part of the ESPO wider Change Programme during the implementation phase (which included both service design performance and employment) to help identify any equality issues. Equality Impact Assessments have also been identified as a key operational document going forward to help monitor, scrutinise and manage ESPO's operations.

Risk Assessment

15. Appendix B to this report summarises the key provisions of the new Consortium Agreement and which also summarises how the new ESPO governance model is strengthened covering performance management, the risk management framework and the transparency of decision making.

Appendices

- Appendix A** - Draft Consortium Agreement including Constitution
Appendix B - Briefing Note on the Key Provisions of the Consortium Agreement