

Report

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Report to:	Enterprise Resources Committee
Date of Meeting:	14 September 2011
Report by:	Executive Director (Enterprise Resources)

Subject:	Routes to Work South - Structural Change and Funding 2011/2012
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1. Purpose of Report

1.1. The purpose of the report is to:-

- ◆ Advise on action taken in terms of Standing Order No. 36(c) because of the timescales involved, by the Executive Director (Enterprise Resources), in consultation with the Chair and ex officio member, to outline changes to the structure of Routes to Work South and propose the award of a contract for service delivery by RTWS in 2011/2012.

2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendation(s):-

- (1) that the following action taken, in terms of Standing Order No. 36(c), by the Executive Director (Enterprise Resources), in consultation with the Chair and ex officio member, be noted:-
 - agree a revision to Routes to Work South (RTWS) company structure, including appropriate changes to the Board structure, as set out in section 4 of this report
 - that a contract is awarded to RTWS to deliver the ERDF funded Job Brokerage Hub and associated support services in 2011/2012 on the basis of a "Teckal" exemption details of which is provided at paragraph 4.6

3. Background

3.1. Since its inception in 1998, Routes to Work South (RTWS) has provided valuable support services to unemployed and disadvantaged client groups in South Lanarkshire. RTWS is a company limited by guarantee registered with OSCR and Companies House. It is primarily governed by the Charities and Trustee Investment (Scotland) Act 2005 ("the 2005 Act") and company law. To date the constitution of RTWS has the following members:

- South Lanarkshire Council
- Scottish Enterprise Lanarkshire (SEL) and
- an individual nominated by the Secretary of State for Work and Pensions (DWP).

3.2. RTWS had been informed that both SEL and DWP no longer wish to continue to be members. DWP's rationale concerns potential procurement conflict. SEL no longer exists. Given this, a review was undertaken of the company on fundamental issues such as ownership, its relationship with the Council and the Board structure. The possibility of the Council becoming a sole member arose out of this review.

4. Current Proposal

4.1. The Board originally considered the principle of sole membership at its meeting on 18th January, 2011. The directors agreed that they were happy that the company operate in future with the Council as sole member on the basis that the objectives of the company would in essence match those of the authority.

4.2. Independent legal advice was sought by the Council on any relevant implications which could arise. This indicated that OSCR would be likely to agree to the Council being the sole member of RTWS provided the independence of the company was protected through its Board. The only implication for the Council in becoming the sole member of RWTS would be that it alone would bear liability in the event of the Company being wound up. However, that liability is limited to £1. OSCR has now approved a revision to the company's Memorandum and Articles which reflected this change amongst others.

4.3. The Board make-up was also considered as part of the revision. This confirms that from a Board of 10 directors, 4 places should be reserved for Council nominees, with the remainder for individuals with relevant skills and experience involved in supporting the company. The Council will therefore maintain significant influence over the management of the company with ultimate control exercised through its single membership.

4.4. Two of the existing Directorships are held by Councillor Pam Clearie and Simon Carey, Regeneration and Inclusion Manager. It is proposed that these are confirmed as Council representatives within the new structure. It is also proposed that appropriate senior officers from the Council are nominated to the remaining two Board places in due course.

4.5. Given these revisions, legal advice was also sought on whether an open procurement route for delivery of services by RTWS was required or whether, as a single member company, RWTS could be awarded work directly without the need for tendering on the basis of the so called 'Teckal' exemption arising from a decision of the European Court.

4.6. The 'Teckal' exemption acts to exempt a contract which an authority proposes to enter into with a distinct legal entity from the EU public procurement rules on the basis that it is not a public contract for the purposes of those rules and as such does not have to be subject to a procurement process. The following requirements must be satisfied before the Teckal exemption will apply:-

(1) control – the control the authority exercises over the body must be similar to that which it exercises over its own departments;

(2) function – the body must carry out the essential part of its services with the authority which controls it; and

(3) ownership – there should be no private ownership of the body.

- 4.7. Given all these criteria are now satisfied, it is proposed that a contract for the delivery of the ERDF-funded Job Brokerage Hub, together with some continuing support for engagement and delivery of support services to disadvantaged client groups, be awarded to RTWS without a procurement process being undertaken. This maximises the investment the Council has already made in the company's infrastructure. The value of this investment in 2011/ 2012 is approximately £880,000.
- 4.8. The proposed funding package will be linked to a robust and detailed agreement with relevant schedules identifying the services to be delivered by RTWS in exchange for the approved funding and specific outcome targets. Service delivery and performance will be closely monitored.
- 4.9. This proposed agreement is separate from the wider South Lanarkshire Works 4 U Framework Agreement which has been established to allow delivery of the bulk of ESF funded activities. The value of the wider activities procured through this Framework is estimated at £3.5 million.

5. Employee Implications

- 5.1. There are no employee implications.

6. Financial Implications

- 6.1. The recommended funding of £880,000 for 2011/2012 will be met from existing Enterprise Resources budgets and EU grant awards.

7. Other Implications

- 7.1. A risk assessment has formed part of the wider review and recommended changes. The proposed funding package will be formalised through relevant schedules containing outcome targets. As noted the Council will maintain significant influence over the management of the company with ultimate control exercised through its single membership.

8. Equality Impact Assessment and Consultation Arrangements

- 8.1. As there is no new policy involved in these proposals, an impact assessment is not required.
- 8.2. Consultation has taken place with Legal Services, OSCR and RTWS.

Colin McDowall

Executive Director (Enterprise Resources)

26 July 2011

Link(s) to Council Objectives/Improvement Themes/Values

- Supporting the local economy
- Tackling poverty and deprivation

Previous References

Routes to Inclusion Reports to Enterprise Committee

List of Background Papers

None

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

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