

# NORTH EAST COMBINED AUTHORITY

## Urgent Decision Report

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**DATE:** 7 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 and Senior Specialist Transport Planner

The report is a public document, however, the Schedule appended to this report (as highlighted in Section 14.1) is **confidential and not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, Information relating to the financial or business affairs of any particular person (including the authority holding that information).**

### EXECUTIVE SUMMARY

The purpose of this report invites the NECA Head of Paid Service 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).

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 Head of Paid Service is recommended 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.

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1. Name the bidder set out in the Schedule as the preferred bidder to whom the Authority would award the contract, subject to completion of the necessary 'stand-still' period.
2. To award the contract to the bidder named in the Schedule.
3. That the Authority enters 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 Service has been 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 named in the Schedule, and to enter into a lease and sub-lease in relation to the occupation and ownership of the site.

## **3. Reasons for the Proposals**

- 3.1 Urgency: The procurement exercise took considerably longer than first anticipated. It was commenced in accordance with the project plan, however, the repeated need to clarify bids throughout the process delayed 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.
- 3.2 The tender evaluation was delayed due to a potential challenge.
- 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.
- 3.4 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 outcome of the evaluations appears in the Schedule. 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 bidder named in the Schedule as the preferred bidder and eventual contractor. The scores demonstrate that their tender submission represents the best value for money as the most economically advantageous tender.

- 3.5 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.

#### **4. Alternative Options Available**

- 4.1 To refuse to make the decision under the constitutional delegation HPS4 and to refer the matter to the Leadership Board for decision.

#### **5. Next Steps and Timetable for Implementation**

- 5.1 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.
- 5.2 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.
- 5.3 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 Schedule

**Confidential – Not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, Information relating to the financial or business affairs of any particular person (including the authority holding that information).**

**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*'.

**16. Contact Officer(s)**

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### 17. Sign Off

- 17.1
  - 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