

<b>Subject:</b>	<b>INTERREG IV A 2 Mers Seas Zeeen, Graduate &amp; Apprenticeship Placement Scheme (GAPS) Project &amp; Avanta Work Programme Contracts</b>		
<b>Date of Meeting:</b>	<b>3 August 2011</b>		
<b>Report of:</b>	<b>Strategic Director, Place</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Geoff Raw</b>	<b>Tel:</b> 29-0726
	<b>E-mail:</b>	<b>geoff.raw@brighton-hove.gov.uk</b>	
<b>Key Decision:</b>	<b>Yes</b>	<b>Forward Plan No: PEERCMM23781</b>	
<b>Wards Affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE**

Note: The special circumstances for non-compliance with Council Procedure Rule 3, Access to Information Procedure Rule 5 and Section 100 B(4) of the Local Government Act 1972 are that the contractors require an urgent decision as to whether or not the Council will be proceeding with the contracts.

**1. SUMMARY AND POLICY CONTEXT:**

1.1 In the light of a full understanding of the business risks to the Council, this report seeks agreement to step down from proposals to enter into a contractually binding agreement with Avanta - for the Council to act as a sub contractor provider for the Work Programme initiative.

**2. RECOMMENDATION:**

2.1 That the Cabinet Member for Planning, Employment, Economy and Regeneration:

- (a) Agrees that the Council should withdraw from negotiation with Avanta in relation to a Work Programme placement contract for 18-24 year old job seekers in the city for reasons set out in this report;
- (b) Requests the Strategic Director Place to enter into urgent discussion with partners to the GAPS Project and the Interreg Delivery initiative as part of the INTERREG IV A 2 Mers Seas Zeeen programme with a view to the Council securing an alternative match funding arrangement or if unsuccessful to put in place alternative arrangements.
- (c) Delegates authority to the Strategic Director Place to proceed with the INTERREG Delivery initiative if an alternative match funding arrangement is secured, including entering into the relevant contractual and partnership arrangements.

### **3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**

- 3.1 Previously an urgency report was brought to the 7 July PEER CMM concerning proposals for the Council to enter into contractual commitments with Avanta (a prime contractor with government for delivery of the Work Programme initiative) whereby the Council would act in a sub-contracting capacity to facilitate placement of 18-24 year old job seekers into work placements with local employers. It was also proposed that this initiative be match funded by a Graduate & Apprenticeship Placement Scheme (GAPS) project under the auspices of the INTERREG IV A 2 Mers Seas Zeeen programme.
- 3.2 The proposed contract with Avanta would oblige the Council to enter into a payment by results performance arrangement wherein payments would be triggered by a three tiered set of criteria. If the criteria were not met, the Council would be obliged to underwrite any deficit between income and the cost of running the service. Match funding from the Interreg programme GAPS project is contingent on the Work Programme initiative.
- 3.3 The recommendation agreed at the 7 July 2011 PEER CMM enabled the Strategic Director Place to enter into contract with both Avanta and partners to the GAPS project "subject to the final issues set out in section 5.2 (of the report) being agreed between the Council and Avanta..". Bringing the report as an urgency item to CMM ensured that the matter could be considered in a public domain but allowed for prompt action if needed by the Strategic Directors Place in consultation with the Cabinet Member for PEER.
- 3.4 In relation to the Avanta contract, Section 5.2 of the CMM report stated:

'The Work programme element of the project is to be delivered through a 'flow down' contract with Avanta. In brief, Avanta have contracted with DWP to provide specified services subject to agreed terms and conditions, and their legal obligations under that contract will flow down to the Council.

The services which Avanta requires the Council to deliver are described in the flow down contract with Avanta. The Council will be legally and operationally responsible for the provision of those services in accordance with the contract. Liability under the contract will be covered by the Council's insurance (a maximum liability of £5million has been agreed). The contract is governed by English law and under the exclusive jurisdiction of the English courts.

The Council is currently finalising its negotiations with Avanta on the draft contract. There are a few important outstanding issues which should be agreed prior to conclusion of the contract. These concern term/termination of the contract and confirmation of the service description.

The recommendation in section 2 is proper to be referred to the Cabinet Member for approval as the decision to enter into these contracts is a key decision for the Council. In addition, in accordance with Contract Standing Order 3.1, authority to enter into any contract worth more than £500,000 must be given by either Cabinet or the relevant Cabinet Member.'

- 3.5 Subsequently the Council's legal team came to the end of the road in negotiations with Avanta, in so far as they were able to progress disclosure of potential liabilities in the primary contract between Avanta and the government. In addition to ongoing concerns about the risk of revenue deficit other outstanding concerns include Avanta's 'step in rights' and their right to change 'services to be provided'. In the light of this, having further reviewed the risks of performance failure and taking into account the budget pressures on the Council over the next few years, it is considered that the most prudent decision is to withdraw from entering into the contract with Avanta.
- 3.6 Withdrawal from the Avanta contract has a knock on impact on the Council's capacity to match fund and lead the Interreg GAPS project. Mindful of the expectations that have been created around this project with partners and the Interreg Programme funders, the Strategic Director of Place has committed to find alternative funding options in order that Council can continue to support the initiative and minimise disruption to partner and the Interreg Programme funders. It should be noted, however, that the Council has not entered into any formal contractual commitment to fund the GAPS project and as such the Council can reasonably withdraw from the project without incurring financial penalty should this be necessary.
- 3.7 Securing paid employment for those seeking work in the City remains a strong focus of concern for the Council. Whilst the recommendation of this report is to withdraw from one particular initiative, the Council is supporting other initiatives across the city such as apprenticeships with its Housing repairs and maintenance contractor. It continues to support the City Employment Skills Group and will work with partners, such as City College, to extend apprentice, training and other work experience opportunities in the City.

#### **4. CONSULTATION**

- 4.1 Avanta, GAPS partners and Interreg programme funders have been consulted on the implications of approval of the recommendations of this report.

#### **5. FINANCIAL & OTHER IMPLICATIONS:**

##### Financial Implications:

- 5.1 Withdrawal from the Avanta Work Programme contract will not involve further significant cost to the Council. Staff directly involved are on temporary contracts which are due to expire in September 2011.
- 5.2 The contract for the INTERREG project is valued in total at €4,598,541 Euros over two years involving 6 partners. For the Council element of the project to proceed, the Council would need to demonstrate that it is contributing approximately £300,000 per annum, of eligible match funding. As the Council has not entered into any formal contractual commitment to fund the GAPS project, it can reasonably withdraw from the project without incurring financial penalty should this be necessary.
- 5.3 Should it be possible for the Council to proceed as a lead or contributing partner, it is proposed that the Council set aside a risk provision of up to £100,000 to cover any underperformance as previously reported to the July PEER CMM. The

provision will be reviewed each financial year. Participation in the Interreg initiative, however, is dependant on an eligible match funding source being found. At the time of drafting this report, it has not been possible to confirm that a suitable funding source can be found.

- 5.4 Should the Council proceed as lead partner for the INTERREG project there is a legal liability for the full amount of match funding money, estimated at £2.021 million, if the Managing Authority were to ask for full repayment of the programme. Should the Council proceed, a partnership agreement will be in place that places the financial risk of each partner within their own area, and any repayment due to their mismanagement of funds would be legally reclaimable from them.
- 5.5 This INTERREG project has 4 out of 7 public sector partners, and all of the partners have previously or are currently involved with other INTERREG projects. Once the partnership agreements are in place the authority's maximum liability over the two year period would be approximately £468,276.
- 5.6 INTERREG funding is claimable 6 months in arrears so in agreeing to this programme forward funding, estimated at £117,069, will be required in the first year to support the Council's programme.
- 5.7 If the Council is able to proceed as a lead partner, it will be responsible for submitting claims to INTERREG on behalf of all partners and in receiving payment for passing on in accordance with partners authorised claims; a small operational team will be responsible for managing any associated risks. Payments will be made in Euros and processes will be put in place to minimise the risks on currency rate fluctuations.

*Finance Officer Consulted: Nigel Manvell*

*Date: 01/08/11*

Legal Implications:

- 5.8 The outstanding issue (mentioned in the 7<sup>th</sup> July CMM report) regarding confirmation of the service description by Avanta has not been resolved during negotiations. The service deliverables and performance targets for BHCC are not clearly set out in the contract draft. As such, BHCC cannot be certain of what it is obliged to deliver and therefore there is risk that the Council may not be able to deliver under the contract. If that were the case Avanta could exercise "step in" rights and charge BHCC for the reasonable costs of alternative service delivery. BHCC declined to sign a letter of intent proposed by Avanta during negotiations and made clear that negotiations on the contract were subject to contract and the necessary BHCC approvals. BHCC have not started to perform the contract. Therefore no intention to create legally binding arrangements has been established. BHCC can inform Avanta that it does not wish to proceed further with the contract without incurring liability. If the Council proceeds with the INTERREG project, it will be liable for the match funding as set out in the financial implications.

*Lawyer Consulted:*

*Elizabeth Culbert*

*Date: 01/08/11*

#### Equalities Implications:

- 5.9 The target group for the Work Programme and GAPS project initiatives are 18-24 year olds. Should the Council withdraw from the Work Programme, it is likely that the prime contractor, Avanta will allocate referrals to other sub contractors operating in the City without significant detriment to the number of job seekers looking for employment placements. In terms of the GAPS project, should the Council be unable to go forward as the lead partner, alternative arrangements will be sought to enable the project as a whole to proceed.

#### Sustainability Implications:

- 5.10 Whilst the Work Programme initiative would have contributed to the sustainability of the city economy by providing employment and training to local people, alternative initiatives are in place and being planned.

#### Crime & Disorder Implications:

- 5.11 Whilst the Work Programme initiative, combined with other initiatives may have contributed to crime reduction, alternative initiatives are in place and being planned.

#### Risk and Opportunity Management Implications:

- 5.12 **Avanta Contract:** Avanta have been contacted to explain that a report seeking withdrawal from the contract negotiations is being considered and that the Council will continue to work with a variety of commercial, public and voluntary sector partners to address employment and training needs in the City.

**INTERREG IV A GAPS Contract:** Exposure to the Interreg contract is substantially greater in that the Council is pledging to provide 50% match funding to £300,000 of ERDF. As 'Lead Partner' the Council is also potentially liable to the managing authority Nord-Pas de Calais for the entire €2,299,270.50 of partnership ERDF. Should the Council proceed as lead partner, it will seek to mitigate the risk of delivery failure by the partners by entering into memorandum of understanding which allows recovery of funding, if ever required, from the relevant partners member state.

**Reputational:** As highlighted in the previous CMM report, both the Avanta and Interreg contracts involve a significant element of risk and reward. It is entirely appropriate for the Council to review the financial and legal risks to safeguard the interests of the Council once negotiations have completed. The Council have alternative initiatives in place to address the needs of young unemployed people, such as an apprenticeship scheme with Mears its housing repairs and maintenance contractor. It will continue to work with partners to try to find other initiatives which afford an appropriate balance of risk and rewards during a financially difficult period.

**Staffing:** There are currently 8 staff based in the Employment Initiatives Team. Staff are currently employed on temporary contracts extended until September 2011. One of the staff is on a freelance contract. Appropriate measures will be put in place to advise staff of the implications on their employment contract with the Council.

Corporate / Citywide Implications:

- 5.13 The decision to withdraw from these initiatives and to explore alternative options is being taken in the light of safeguarding the financial and reputational profile of the Council.

**6. EVALUATION OF ANY ALTERNATIVE OPTION(S):**

- 6.1 The recommendations commit the Strategic Director of Place to explore alternative funding options for the GAPS project.

**7. REASONS FOR REPORT RECOMMENDATIONS**

- 7.1 As the total contract value is over £500,000.00, it is a constitutional requirement that the Lead Cabinet Member can evaluate the risks versus the outcomes and then make the decision to sign the contracts or not based on that assessment.
- 7.2 In the light of contractual negotiations being exhausted with Avanta and in reviewing the financial risks to the Council.

**SUPPORTING DOCUMENTATION**

**Appendices:**

None

**Documents In Members' Rooms**

None

**Background Documents**

1. INTERREG IV A 2 Mers Seas Zeeen, Graduate & Apprenticeship Placement Scheme (GAPS) Project & Avanta Work Programme Contracts - Report to 7 July PEER CMM.