

Approval of admission of Lincolnshire County Council to the shareholding of Hoople Limited

Decision maker: Chief Executive

Decision date: Monday, 27 July 2021

Report by: Senior solicitor, major projects

Classification

Open

Decision type

Non-key

Wards affected

(All Wards);

Purpose

To approve admitting Lincolnshire County Council as a 3% shareholder of Hoople Limited.

Hoople Limited ("Hoople") has identified a commercial opportunity for the provision of a number of "back office" services including finance and payroll; HR administration, and customer service centre to Lincolnshire County Council through the Business World, providing resilience and increased knowledge.

Hoople is a company that benefits from the exemption under Regulation 12 of the Public Contracts Regulations 2015 (PCR). This exemption would facilitate a relatively straightforward contract enabling shareholders to trade directly with Hoople. To allow Lincolnshire County Council to benefit from the services of Hoople, it is proposed that the existing shareholders pass a resolution granting authorisation to the Directors of Hoople for Lincolnshire County Council to be admitted as a new shareholder to the shareholding of Hoople. It is proposed that Lincolnshire County Council would have a 3% shareholding.

Recommendation(s)

That:

- a) approval is given to admitting Lincolnshire County Council as a 3% shareholder of Hoople.**
- b) The s151 Officer or the Solicitor to the Council are authorised to take all operational decisions with regard to admission of Lincolnshire County Council to the shareholding of Hoople.**

Alternative options

1. To not admit Lincolnshire County Council as a shareholder. The exemption contained in Regulation 12 of the PCR would then not apply leaving two options for Lincolnshire County Council either (i) a full PCR compliant procurement or (ii) a delegation function to the council, which leaves the council financially liable.

Key considerations

2. Hoople was established in 2011 to deliver a number of back-office services to the council, Wye Valley NHS Trust and Hereford PCT. Following abolition of Hereford PCT in 2013 Hoople's current shareholding is split between Herefordshire Council (84%) and Wye Valley Trust (16%). The Hoople Board would like to admit a third shareholder, Lincolnshire County Council, who would have a 3% share. If the recommendation is approved the Hoople shareholding would be Herefordshire Council (82%), Wye Valley Trust (15%) and Lincolnshire County Council (3%).
3. This is a commercial opportunity for Hoople, strengthening the annual turnover and profit of Hoople. Profits are reinvested in the company to provide benefit for the shareholders. Lincolnshire County Council wish to award a contract to Hoople, with an annual value of £400k to Hoople, for Business World support and development services.
4. To enable Lincolnshire to award the contract to Hoople under Regulation 12 of the PCR it is proposed that the council gives, in return for a contractual commitment from Lincolnshire County Council a 3% shareholding. This shareholding will cause a minor dilution of the council's shareholding from the 84% current shareholding to 82%.
5. Hoople's articles of association prohibit the payment of dividends. The articles permit the distribution of previously accrued surpluses but only to the contributors (the shareholders) at the time that the surplus was accrued. The distribution would be in proportion to the contribution to the surplus. Lincolnshire's 3% shareholding would not give them rights to any previously accrued surpluses.
6. It is anticipated that the monies received by Hoople under the Service Level Agreement between Hoople and LCC will be invested in Hoople which will benefit the council as these monies can be used to invest in a more skilled Business World support function, providing much greater resilience in the current service provided to the council with wider knowledge and experience.
7. Hoople currently derives just over 80% of its income from its shareholders; this figure must remain above 80% to retain the exemption under Regulation 12 of the PCR. The new business will increase the income derived from shareholders and will strengthen the exemption calculation, avoiding any challenge on the exempt status as this secures compliance with the relevant provisions of the PCR requiring that *"more than 80% of the activities of that legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authorities..."* - Regulation 12 (4) (b) PCR.

Community impact

8. The contract provides jobs locally in Hereford in the Business World support team. The extended team will provide resilience to all users of Business World system. This meets with the corporate plan priority to secure better services, quality of life and value for money.

Environmental Impact

9. Whilst this is a decision on back office functions and will have minimal environmental impacts, consideration has been made to minimise waste and resource use in line with the Council's Environmental Policy.

Equality duty

10. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
11. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this is a decision on back office functions, we do not believe that it will have an impact on our equality duty.

Resource implications

12. The business world support team will require larger resources to accommodate the contract; this includes application specialists and helpdesk support, which are expected to be recruited locally. The cost of the team and recruitment are built into the Hoople project set up with Lincolnshire County Council. The greater resources provides additional resilience to all customers, through increase skilled knowledge and resource cover.
13. There are no financial implications for the council to this decision.

Legal implications

14. Amending Hoople's existing articles of association and adoption of a new shareholding agreement would enable the issuance of shares to Lincolnshire County Council with the resultant effect that instead of being wholly owned by the council and Wye Valley NHS Trust, Hoople would be jointly owned and controlled by the council, Wye Valley NHS Trust and Lincolnshire County Council (the Shareholders) entitling all shareholders to benefit from the exemption under Regulation 12 of the PCR.

15. In simple terms, Hoople's current arrangements with the council and Wye Valley NHS Trust will be increased to include services to Lincolnshire County Council.
16. The legal implication of another local authority becoming a shareholder of Hoople is that all shareholders, including any new local authority shareholder will need to demonstrate that the following three cumulative conditions are met in accordance with Regulation 12(4) of the Regulations:
 - (i) the shareholders have to joint control over Hoople, the level of control being similar to that which they would exercise over their own department;
 - (ii) as confirmed at paragraph 7 above, more than 80% of Hoople's activities and its income must be derived from the Shareholders; and
 - (iii) there cannot be any private capital participation in Hoople.
17. The requirements of the exemption as outlined above will be strictly applied by the courts, therefore control needs to be delivered both on paper and in substance. Lincolnshire County Council must be able to show that it has an involvement in the running of the service otherwise, the absence of this could evidence that it does not exercise a sufficient level of control over Hoople this will be secured through shareholder reserved matter in the new shareholder agreement.
18. Ensuring that all shareholders are able to exercise strategic control over the direction of the company. The council will remain the majority shareholder and have a majority representation on the board of Hoople.
19. In so far as Hoople continues to comply with requirements outlined above, Lincolnshire County Council can utilise the Regulation 12 PCR exemption to award contracts to Hoople without going through a procurement process and there will be no limitation on the nature of the contract that can be awarded or on what the subject matter of that contract can be.
20. This approach facilitates a relatively straightforward contract structure in which there is a direct relationship between Lincolnshire County Council and Hoople.
21. The council and Wye Valley NHS Trust have a long standing relationship with Hoople and have relied upon the Regulation 12 PCR exemption since the incorporation of Hoople, therefore the risk of challenge to an award of contract by Lincolnshire County Council to Hoople on the same basis is low.
22. This is a non-key decision as it will not result in the council incurring expenditure or making savings which are significant and is not considered to be a strategic decision affecting the communities living and working in Herefordshire.

Risk management

| Risk / opportunity | Mitigation |
|---|--|
| Reputational risk for the existing shareholder from non-delivery of the contract. | Hoople have experience of delivering this service successfully to other customers. This is a risk for Hoople to manage and delivery of services to each shareholder is governed by each individual Service Level Agreement |

Recruitment of resource to deliver the contract.

Hoople have confirmed that initial resource has been identified for the initial set up and ongoing support of LCC. Service levels to the council will be monitored in accordance with the terms of the councils Service Level Agreement with Hoople.

Consultees

23. The council's Section 151 Officer and Monitoring officer have been briefed

Appendices

None.

Background papers

None identified.

Please include a glossary of terms, abbreviations and acronyms used in this report.

PCR – Public Contract Regulations 2015