



Single Contractor Negotiations – Clean Air Zone Mitigations Application and Case Management System

Call In by the Resources O&S Committee

1 Request for “Call-In”

- 1.1 On 27 January 2020, the Cabinet Members for Transport and Environment, and Finance and Resources, took a decision to:
- Note the content of Exempt Appendix 1.
 - Under Standing Order 2.5iv, approve the commencement of single contractor negotiations by the Assistant Director, Transport and Connectivity with the recommended supplier identified in Exempt Appendix 1 for the provision of a mitigations application and case management system, and application support for up to 5 years commencing in January 2020.
 - Delegate authority to the Interim Director, Inclusive Growth in conjunction with the Assistant Director, Development and Commercial (or their delegate), the Interim Chief Finance Officer (or their delegate) and the Acting City Solicitor (or their delegate) to award a contract, subject to the satisfactory outcome of negotiations above.
- 1.2 A request for Call-In was made to the Resources Overview and Scrutiny (O&S) Committee by Councillors Robert Alden and Ewan Mackey on 28 January 2020.
- 1.3 The Resources O&S Committee considered the request for call-in at a meeting on 10 February 2020. At the meeting the Committee heard from Councillor Tristan Chatfield, Cabinet Member, Finance & Resources, Rajesh Parmar, Senior Solicitor, Mike Smith, Head of Category (Procurement) and Tim Oakley, Assistant Category Manager.

2 Request for Call-In

- 2.1 Councillor Robert Alden stated the following call-in criteria applied:
- 5 – the Executive appears to have overlooked some relevant consideration in arriving at its decision;*



- 6 – the decision has already generated particular controversy amongst those likely to be affected by it or, in the opinion of the Overview and Scrutiny Committee, it is likely so to do;*
- 8 – there is a substantial lack of clarity, material inaccuracy or insufficient information provided in the report to allow the Overview and Scrutiny Committee to hold the Executive to account and/or add value to the work of the Council;*
- 9 – the decision appears to give rise to significant legal, financial or propriety issues;*
- 10 – the notification of the decision does not appear to have been in accordance with council procedures.*

2.2 He and Cllr Mackey summarised the key reasons for the call-in request:

- The Constitution states that the Chief Finance Officer and City Solicitor should certify single contractor negotiations (SCN) prior to their commencement; this is needed to proceed with the SCN. The Committee has not seen evidence of this.
- The Constitution also states that “SCNs are not to routinely be used as a means to award or extend contracts that have failed to be re-procured in sufficient time”, yet that is the justification given in this report. As has been previously discussed, not having enough time is not proof of urgency. Also, national legislation is clear that there should be a fixed deadline to enter into SCN and that is not the case here, as the implementation of the CAZ has already been deferred once.
- The private report states the name of the supplier; that should not have been private, but available to the public to take a view as to if this is an appropriate award of a contract. There can be no commercial issues for not revealing this. Furthermore, the information in paragraph 3.7 could allow the identification of the proposed supplier.
- The public report should reference information on the private; that is not the case here.
- Concerns were also raised about the use of soft market testing, with only two suppliers, already supplying to the council, being consulted.
- This is public money and the Constitution and due process should be followed.

3 Executive Response

3.1 In response to the questions raised, the Cabinet Member and officers responded that:

- There is work on-going in managing procurement pipelines, it is currently not perfect, and is dependent on information from directorates;
- There is a deadline in relation to the CAZ, as there is pressure from Government to deliver this;

3.2 However, following a discussion in which it became clear that there were different interpretations of both the Constitution and the decision under consideration, and anomalies in the drafting of the report, the Cabinet Member accepted that this justified the call-in to allow him and officers to review and clarify before the report could be signed off.



- 3.3 It was also agreed that there was no need to include the name of the company on the private appendix and that would be reviewed.

4 The Committee Resolution

- 4.1 The Committee resolved to call-in the decision for reconsideration by Cabinet by a unanimous vote of members present. The call-in arises because of lack of clarity in the report presented to Cabinet, and in how the Constitution has been interpreted. The relevant criteria are:

8 – there is a substantial lack of clarity, material inaccuracy or insufficient information provided in the report to allow the Overview and Scrutiny Committee to hold the Executive to account and/or add value to the work of the Council;

9 – the decision appears to give rise to significant legal, financial or propriety issues.

- 4.2 In the course of the discussion it became clear that the Constitution had not been followed in two respects:

- There was no evidence that the Chief Finance Officer and City Solicitor had “certified in writing prior to the commencement of such negotiations” the current SCN approach. Indeed, it was indicated in the discussion that negotiations had commenced before the Cabinet Member had approved the report;
- The reason given in the report for the call-in for using SCN, namely “Due to the limited time available to procure an effective business solution it is therefore proposed that the Council enters into single contractor negotiations with an organisation to deliver the solution by the required deadline.”

- 4.3 Secondly, the discussion revealed a lack of clarity about the decision itself. The recommendation to the Cabinet Member was to approve commencement of SCN, and then to delegate authority to award a contract. But the report text, and verbal evidence, suggests this was not a new contract but a variation to an existing one. The decision made does not refer to that. As in previous call-ins, the Chair noted that what was being said in the meeting was not what was in the report. The report recommendation does not say that this is an extension of a contract, and that was the information the Cabinet Member and Chief Officer acted upon.

- 4.4 There is a clear lack of clarity here and a difference between what is happening and what Members understand.

- 4.5 The Committee therefore asks Cabinet to re-consider the decision in the light of the above and satisfy itself that the Constitution has been properly adhered to, and that processes have been properly followed.

- 4.6 The Resources O&S committee will support the Executive by taking a look at procurement processes at a future meeting.

Councillor Sir Albert Bore, Chair, Resources Overview and Scrutiny Committee