

# Birmingham City Council

## Executive Response to Call-In

17<sup>th</sup> March 2020



**Subject: Single Contractor Negotiations – Clear Air Zone and Case Management System**

**Report of: Interim Director, Inclusive Growth**

**Relevant Cabinet Member: Cllr Waseem Zaffar, Transport and Environment, Cllr Tristan Chatfield, Finance and Resources**

**Report author: Steve Arnold, Head of Clear Air Zone**

Does the report contain confidential or exempt information? ☐ Yes ☒ No

If relevant, provide exempt information paragraph number or reason if confidential :

### **1 Executive Summary**

- 1.1 On 28<sup>th</sup> January 2020, a request for a call-in meeting was made to the Resources and Overview and Scrutiny (Q&S) Committee in respect of the Cabinet Member's Report: Single Contractor Negotiations, the purpose of which is to procure a mitigation application and case management system for the CAZ Programme to allow full implementation of the CAZ by July 2020.
- 1.2 Senior officers from the Council along with Councillor Chatfield attended a call-in meeting with the Resources O&S Committee on 10<sup>th</sup> February. Subsequent to that meeting, senior officers have responded to the points raised by members in an updated decision report. A summary of these additions and amendments are detailed below.
- 1.3 Cabinet members are asked to review the updated report and to give approval to Council officers to proceed with negotiations with Spacecraft Creative Ltd and subsequent award of a contract to the supplier.

### **2 Reasons for Call-in**

- 2.1 The key reasons for the call-in request are noted as follows:
  - 2.1.1 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 process.
  - 2.1.2 The name of the supplier should be included in the Public Report.

2.1.3 Concerns were raised that “SCNs are not to be routinely used as a means to award or extend contracts that have failed to be re-procured in sufficient time”, yet this is the justification given in the report.

2.1.4 Concerns were also raised about the use of soft market testing, with two suppliers already supplying services to the Council.

### **3 Response to Reasons for Call-In**

3.1 The recommendations in 2.1, 2.2 and 2.3 of the Public Report are unchanged apart from the contract commencement date in 2.2 which has been amended (in italics) as follows:

2.2 Under Standing Order Part D2 para 2.5iv, approves the commencement of single contractor negotiations by the Assistant Director, Transport and Connectivity with the recommended supplier, Spacecraft Creative Ltd, for the provision of a mitigations application and case management system, and application support for up to 5 years commencing in *March 2020*

3.2 The Public Report has been updated with the name of the supplier: Spacecraft Creative Ltd.

3.3 In reference to section 3.6 of the Public Report and the introduction of the CAZ in the summer of 2020 and no earlier than 1<sup>st</sup> July 2020, at the time it was identified that a procurement exercise needed to be undertaken to commission a business solution to process mitigation applications, it was clearly understood by the Council that the implementation date was driven by the desire to comply with a ministerial direction.

3.4 In reference to the soft market engagement exercise discussed in section 3.8 of the Public Report, this determination was made in-line with Regulations 40 and 41 of the Public Contracts Regulations 2015 which permits market consultation and obtaining advice from market participants.

3.5 The single contractor negotiation (SCN) process necessitates some form of dialogue with providers. It is not possible to follow the SCN route with any level of confidence without firstly exploring options including establishing the feasibility of the service requirements and whether a provider can deliver the requirements in the timescales available.

3.6 It should be noted that the emphasis of the soft market engagement exercise did not focus on the merits of individual suppliers, it included no element of supplier selection or bid evaluation and involved no commitment on the side of the Council; therefore, it was in keeping with the requirements of “not distorting competition”, transparency and non-discriminatory pursuant to Regulations 40 and 41. Procurement submits that the Council attempted to gain a balanced view of the market rather than consider individual merit/responses in accordance with Regulation 41.

3.7 The risk of challenge around Regulation 40 (3) and the ‘effect of distorting competition’ was assessed by Corporate Procurement Services, and it was considered to be low when compared to the risk of not having a business solution in place and the impact of reputational damage this may have on the Council not processing applications at the time of launch of the CAZ. Namely, the CAZ Programme’s inability to process mitigation applications from citizens who would be eligible including taxi drivers, CAZ workers and local business; and the need to comply with legally enforceable limits for nitrogen dioxide. Therefore, the only

option that would deliver the business solution in time, was to follow single contractor negotiations with Spacecraft Creative Ltd.

- 3.8 If a procurement challenge was made and was successful, then the Court could hold that the contract was ineffective, and in the circumstances would most likely require the Council to pay a civil financial penalty for failing to comply with the Regulations. The penalty would have to be effective, proportionate and dissuasive and reflect the seriousness of the breach and behaviour of the Council. It should be noted that a procurement challenge could be raised by an existing leading IT provider to the Council already delivering a similar business solution of this type elsewhere in the country. Furthermore, the risk of challenge is considered to be low given that the IT provider in question was given the opportunity to explore development options with the CAZ Programme; however, they chose to decline the opportunity on the basis that they did not have the capacity to deliver the solution in the timescales available.

3.9 Changes to paragraphs in the Report:

3.9.1 The following paragraphs are new insertions:

3.2, 3.3, 3.4, 3.7, 3.9, 3.11 and 3.12

The following paragraphs have been reworded:

3.5, 3.7, 3.8, 3.10, 4.1

The following paragraphs have had amendments made to the date only

1.1 and 2.2

3.9.2 Changes to paragraphs in the Exempt Appendix 1

The estimated costs have changed in 2.1 and paragraph 3.2 has been reworded.