

BIRMINGHAM CITY COUNCIL

RESOURCES O&S COMMITTEE – PUBLIC MEETING

1000 hours on Monday 10 February 2020, Committee Rooms 3&4

Present:

Councillor Sir Albert Bore (Chair)

Councillors: Meirion Jenkins, Paul Tilsley and Lisa Trickett

Also Present:

Councillor Robert Alden

Councillor Tristan Chatfield, Cabinet Member for Finance and Resources

Councillor Ewan Mackey

Simon Ansell, Finance Business Partner

Stephen Arnold, Head of Clean Air Zone

Tim Oakley, Assistant Category Manager

Rajesh Parmar, Senior Solicitor

Mike Smith, Head of Commissioning and Procurement

Jayne Bowles, Scrutiny Officer

Emma Williamson, Head of Scrutiny

1. NOTICE OF RECORDING/WEBCAST

The Chairman advised that this meeting would not be webcast for live transmission but was being recorded and would be published as an archive version via the Council's Internet site (www.civico.net/birmingham) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2. APOLOGIES

Apologies were received from Councillors Muhammad Afzal, David Barrie and Yvonne Mosquito.

3. DECLARATIONS OF INTERESTS

None.

4. REQUEST FOR CALL IN: SINGLE CONTRACTOR NEGOTIATIONS – CLEAN AIR ZONE MITIGATIONS APPLICATION AND CASE MANAGEMENT SYSTEM

(See documents 1, 2 and 3)

The Chair referred to Exempt Appendix 1 and advised that if this was brought into the discussion then the meeting would move into private session.

Cllr 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.

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.

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;

In the course of the discussion which followed, and in response to Members' questions, the following points were raised:

- In terms of the public report not identifying the contractor, the Cabinet Member accepted that was a valid point and, unless legal advice stated otherwise, could see no reason why the supplier name could not have been made public;
- With regard to procurement timelines, there had been issues in the past and work is on-going to improve the process;
- It was pointed out that Procurement can only go on advice provided by directorates;
- Whilst emails from Legal, Finance, Procurement and the Director had been provided, these were the usual approvals for the report and not the written authority which the Constitution requires;
- It was agreed that there is clearly a need to tighten up the wording in the Constitution as there is a lack of clarity about the meaning of that clause;
- However, the Chair's view was that the Constitution is clear and the fact that has not been abided by is not a reason for saying the procedure is in order;
- Members were told that when IT was transitioned into the council from Capita, this contract, like many others, was novated in;
- This led Members to question whether this was in fact a new contract or an extension of an existing contract, as the report is written in a way which leads you to conclude it is a new contract;
- It was confirmed that this is a variation to a contract and this route to market had been considered the most appropriate in view of the timelines;
- The Chair made the point that, as he has said before, it reports had been better written some call-ins would not have been requested and in this case the recommendations do not state that it is an extension of the current contract;
- He therefore suggested that the way forward was for the committee to agree to call-in the decision and the Cabinet Member agreed that this was the right decision, given the issues which need to be addressed;
- In summing up, the Chair highlighted the need to bring the issue of the procurement process to a future committee meeting to have a look at how the process has been managed in the past and whether changes need to be made;
- There is also a need to tighten up the way reports are written and the timetable acted upon, because too often things are being dealt with at the last minute and this cannot happen on a regular basis;
- Committee will look very closely at what happens now with this report regarding future actions of the Executive.

RESOLVED:-

The Committee agreed to call-in the decision for reconsideration by Cabinet by a unanimous vote of members present.

5. OTHER URGENT BUSINESS

None.

6. DATE AND TIME OF NEXT MEETING

Noted.

7. REQUEST(S) FOR CALL IN/COUNCILLOR CALL FOR ACTION/PETITIONS RECEIVED (IF ANY)

None.

8. AUTHORITY TO CHAIRMAN AND OFFICERS

RESOLVED:

That in an urgent situation between meetings, the Chairman jointly with the relevant Chief Officer has authority to act on behalf of the Committee.

The meeting ended at 1045 hours.