

**DRAFT UNRESTRICTED MINUTES OF CABINET PROCUREMENT AND
INSOURCING COMMITTEE**

MONDAY 19 JULY 2021

Chair Cllr Robert Chapman, Cabinet Member for Finance

Councillors Present: Cllr Anntoinette Bramble, Deputy Mayor (Statutory) and Cabinet Member for Education, Young People and Children's Social Care
Cllr Christopher Kennedy, Cabinet Member for Health, Adult Social Care and Leisure
Cllr Caroline Woodley, Cabinet Member for Families, Early Years, and Play

Apologies None

Officers in Attendance Rotimi Ajilore – Head of Procurement
Andrew Spragg – Governance Services Team Leader

Remote attendees

Cllr Vincent Stops

Mary Aladegbola – Head of Energy and Carbon Management

Ruth Angel – Housing Regeneration Project Manager

Rachel Bagenal – Interim Head of the Housing Supply Programme

Candace Bloomfield – Category Lead (Construction and Environment)

Dawn Cafferty – Category Lead Social Care

Polly Cziok, Strategic Director Engagement, Culture and Organisational Development

Miranda Ferrier – Project Manager Regeneration

Judith Hughes – Category Lead – Corporate

**Angela Jones, Project Manager, Regeneration
Jon Markovic – Head of Projects and Programme Mgt, Neighbourhoods and Housing**

Patrick Rodger – Senior Lawyer – Procurement - Legal & Governance

The meeting was live-streamed here:

<https://www.youtube.com/watch?v=btmbu-t8prA>

1. APOLOGIES FOR ABSENCE

There were no apologies for absence.

2. URGENT BUSINESS

There were no items of urgent business.

3. DECLARATIONS OF INTEREST - Members to declare as appropriate

There were no declarations of Interest.

4. NOTICE OF INTENTION TO CONDUCT BUSINESS IN PRIVATE, ANY REPRESENTATION RECEIVED AND THE RESPONSE TO ANY SUCH REPRESENTATIONS

There were no representations received.

5. TO CONSIDER ANY DEPUTATIONS, QUESTIONS OR PETITIONS REFERRED TO THE CABINET BY THE COUNCIL'S MONITORING OFFICER

There were none received.

6. Unrestricted Minutes of the previous meeting of Cabinet Procurement & Insourcing Committee held on 7 June 2021.

RESOLVED:

That the unrestricted minutes of the Cabinet Procurement & Insourcing Committee held on 7 June 2021 were approved.

7. NH R61 Agreement for the Supply and Maintenance of Street Furniture with and without Advertising - contract variation

7.1 The report was introduced by Polly Cziok, Strategic Director Engagement, Culture and Organisational Development. It was highlighted that the reduction in Hackney Today circulation meant less opportunities to reach people via non-digital channels, and that this remained an important element of providing information during the pandemic. It was commented that there was a need to protect income via the advertising revenue generated by the current arrangements.

7.2 The Committee was informed that the proposed extension was not an indefinite endorsement of the contract or approach. The Strategic Director Engagement, Culture and Organisational Development acknowledged Cllr Stops' concerns about the advertising creating public accessibility issues. It was stated that there had been no complaints recorded at a corporate level, though these may have been received by Ward Councillors directly. The Committee was told that the 12 months would enable the Council to review each site in turn to see what remedial work might be required.

7.2 Cllr Stops was invited to speak and set out his opposition to the proposed extension. He requested his statement was attached in the minutes and it is set out in **appendix 1**. The Senior Lawyer, Procurement, confirmed that the extension of the contract was a procurement matter and therefore it was appropriate for the Committee to consider.

7.3 Both Cllr Kennedy and Cllr Chapman responded to Cllr Stops indicating that they believed the 12 month extension would give the opportunity to weigh options and ensure Councillors were able to debate the Council's policy regarding on-street advertising, and any subsequent re-procurement. Deputy Mayor Bramble indicated she supported the need to reach people with critical information during the pandemic, and the role on street advertising had played in this. The Chair thanked Cllr Stops for his submission. Cllr Woodley made a commitment to review the information Cllr Stops had provided.

7.4 Cllr Stops reiterated a number of concerns, and expressed the view that the Committee was disregarding an established policy position.

7.5 The Committee was informed that the delegation to the Director to extend a further six months was a precaution in case the review work had not concluded in 12 months. The Chair asked that every effort was made to conclude the work in 12 months.

RESOLVED:

to approve the extension of the existing Concessions contract for 12 months and a further 6 months (subject to Director's approval without going to CPIC or HPB).

REASONS FOR DECISION

Complete the assessment of the costs, risks and benefits of the two options 1 and 2 in the report. This will ensure a sound basis for whatever decision the Council takes going forward. This will also require an extension of the current contract which is due to expire at the end of August 2021. It is estimated that an extension up to 18 months, subject to agreement by the provider, should be sufficient to complete the study and implement any decisions taken. A 12 months and a further 6 months (subject to Director's approval without going to CPIC or HPB) is preferable and will be easier to agree with the incumbent provider and allow sufficient time to present a Business Case in January 2022, with well-investigated and jointly agreed options, for CPIC's consideration. This will ensure a smooth transition to whatever option is decided by CPIC, with minimum adverse impact on staff, the Council and the public.

8. NH R 1. Remedial works to Bridport House - Contract Award

8.1 Jon Markovic, Head of Projects and Programme Management, Neighbourhoods and Housing, introduced the report. The Committee asked what scope there was to support the Council's policies around sustainability and employment. It was highlighted that there were limited opportunities to innovate, however the building had been designed with a green agenda in mind. There would be no degradation of these green features. The Head of Projects and Programme Management, Neighbourhoods and Housing commented that once the contractor was appointed, there would be an opportunity to explore what more could be done to

support the Council's policies in the two areas identified. The Chair requested that the Committee was provided with a written update outside of the meeting as to how this had been taken forward.

RESOLVED:

To approve award of contract for remedial works to Bridport House to "Contractor A" (identified fully in exempt Appendix 1) for an estimated total contract sum of £4.68M, and a total capital project cost of £5.89M as set out in this paper

REASONS FOR DECISION

The tendered works are required to remediate various defects in the construction of Bridport House, a recently built residential development consisting of 41 flats (ranging from one to four bedrooms), all for social housing. The development was originally constructed in 2010, and has since been found to suffer from a number of significant problems relating to both design and workmanship.

9. CE R 66 Procurement of a design and build contractor for Colville Estate Phase 2C

9.1 Miranda Ferrier, Project Manager Regeneration, introduced the report. She highlighted how the design had been updated as a result of consultation, and to accommodate a number of regulatory changes in respect to producing sustainable low carbon solutions. The Committee was informed that a planning decision was expected to be made in the next two months.

9.2 The Committee welcomed the actions to amend the energy strategy through a Section 73 application. Cllr Kennedy sought assurances about the timeframe to move away from the existing temporary energy centre for the Britannia Leisure Centre, and was informed that construction would commence in March 2022. It was anticipated that June 2024 would be the completion date, and options to utilise the boilers from the temporary site.

9.3 Cllr Woodley asked for further detail on how the design would meet the Council's objectives in respect to making Hackney a child-friendly borough. The Project Manager confirmed that there were plans to consult with the young people on the estate to identify how the regeneration could benefit them both in terms of the physical space and in other ways. The Committee was also informed that of the 93 properties, 52 would be for social rent and be for residents on the estate after the decant and construction had completed.

9.4 The Committee was told by officers that the proposal to procure the energy centre was considered an integral part of the next phase of regeneration. The two stage tender process would enable officers to explore the options available around how the energy centre provided for both the Colville Estate and the Britannia leisure centre. The Chair requested that the Committee be provided with a written update outside of the meeting as to how the sustainability priorities had been taken forward through the process.

9.5 The Chair asked it be noted that the Committee did not in general support delegating its authority, though he recognised the need to so in order to ensure the

project was delivered in a timely manner.

RESOLVED:

i) To agree to initiate a two stage tender process using the Procure Partnerships Framework which is compliant with Regulations 26(4) of the Public Contracts Regulations 2015 for the construction of Colville Estate Phase 2C. The project comprises the demolition of three existing residential blocks, and the construction of 93 mixed tenure homes, a new community centre, an energy centre and associated landscaping and public realm improvements.

ii) To agree to the delegate the approval to enter a Pre-Construction Services Agreement (which may include, but is not limited to enabling works, demolition, surveys, utilities) with the preferred contractor to the Group Director, Chief Executive's Directorate, where required, and in consultation with the Group Director of Finance and Corporate Resources.

iii) To agree to delegate the approval of the Contract Award for the design and build contract to the Group Director, Chief Executive's Directorate, where required, and in consultation with the Group Director of Finance and Corporate Resources, in order to meet the commitments made to the GLA and in the Mayoral manifesto.

iv) Subject to the award of contracts in ii) and iii) above, to authorise the Director of Legal to agree and enter into all necessary legal documentation in relation thereto.

REASONS FOR DECISION

The preferred option is to procure a construction contractor through an existing framework, compliant with the current regulations applicable to the Public Sector. This will allow the Council to comply with the Public Contracts Regulations 2015, and will be a more expeditious process than carrying out a procurement exercise under the 'Find a Tender' portal that has replaced OJEU requirements in the UK. The use of a framework will also help to mitigate costs to the Council as it will reduce the complexity of the procurement process.

10. CE R 57 Procurement of a Design and Build Contractor for Nightingale Block E

10.1 Ruth Angel, Housing Regeneration Project Manager, introduced the report. The Committee discussed how the plans had engaged young people, including local schools. Officers highlighted that they had worked with those responsible for producing the Child-Friendly Borough Supplementary Planning Document as well, in order to share expertise. This information was welcomed by Cllr Woodley and Deputy Mayor Bramble. It was highlighted by the Committee that it was important to give feedback to the young people involved about how their input had informed the design.

10.2 The Committee was informed that the procurement process would be supported by a set of quality questions relating to sustainability and apprenticeships. The Chair asked that his concerns regarding delegation of authority were noted.

RESOLVED:

i) To agree to initiate a single stage procurement using either the Notting Hill Genesis or London Borough of Islington Frameworks (to be agreed by the Director of Regeneration) which are both compliant with Regulation 26(4) of the Public Contracts Regulations 2015 for the construction of Nightingale Block E. The project involves the construction of 70 homes for social rent, two retail units, improvements to Olympus Green and a new temporary community centre.

ii) To agree to delegate the approval of the Contract Award to the Group Director, Chief Executive's Directorate, where required and in consultation with the Group Director of Finance and Corporate Resources, in order to meet the commitments made to the GLA and in the Mayoral manifesto, and authorise the Director of Legal to agree and enter into all necessary legal documentation in connection with such contract award.

REASON FOR DECISION

The Council's preferred option is to appoint a contractor on a JCT 2016 Design and Build contract, with Hackney amendments. As a Contracting Authority, the Council must comply with the 'Find a Tender' procurement processes and so will need to either tender through this portal, in line with the prescribed timescales and regulations, or through a framework which was set up as compliant under the Public Contract Regulations 2015.

Following a review of a number of options for the procurement of this project with the Employer's Agent and the Council's Procurement team, and as set out in this report, the preferred option is to procure a construction contractor through a framework. The advantage of using a framework is that the overall time taken to procure the project should be reduced, as the pre-qualification stage of procurement has already been completed and accepted bidders have already achieved the required compliance. The costs of using a framework are also likely to be less than using a bespoke process.

11. CE S005 Selection of a procurement route for the development of a mixed tenure housing development at Frampton Park Estate

11.1 Angela Jones, Project Manager, Regeneration, introduced the report. Cllr Woodley expressed support for the proposals. Cllr Kennedy asked for a point of clarification on the potential adjustments. It was clarified that any potential adjustments would be to ensure that proportion of affordable housing remained the same if the 'hidden homes' referenced in the report could not be delivered.

11.2 The Chair requested that further information be circulated to the Committee regarding how the procurement process had delivered on the Council's sustainability objectives.

11.3 The Chair asked that his concerns regarding delegation of authority were noted.

RESOLVED:

i) To agree to the use of the Find a Tender Competitive Procedure with Negotiation procurement route for the selection of a principal contractor for the construction of a mixed tenure housing development of up to 69 homes on the Frampton Park Estate, along with associated landscaping and public realm improvements.

ii) To agree to potential adjustments to the development to maintain the viability of the project and the Housing Supply Programme once tenders have been returned.

iii) To agree to delegate the approval of the Contract Award to the Group Director, Chief Executive's Directorate, where required, and in consultation with the Group Director of Finance and Corporate Resources, and authorise the Director of Legal to agree and enter into all necessary legal documentation in connection with such contract award.

REASONS FOR DECISION

The pre-tender estimate for the works exceeds the UK Threshold for Works of £4,733,252 and is therefore subject to the Public Contracts Regulations 2015. The procurement opportunity must therefore be advertised on Find a Tender (the new e-notification service for high value procurements) or procured from a suitable framework contract that was subject to the relevant EU procurement procedures at the time the framework was established.

A comprehensive review of the procurement options has been undertaken by the project team, Employer's Agent and the Council's Procurement team. Further to this, as set out in Section 5.4 of this report, the preferred option is to procure using a single stage design and build process, through a 'Find a Tender' Competitive Procedure with Negotiation. This process is divided into four stages:

- Stage 1 - pre-qualification of bidders
- Stage 2 - Full tender
- Stage 3 - Negotiation
- Stage 4 - Final bids

Pre-qualification of bidders is supported by soft market testing carried out by the project team, which indicated that contractors tend to favour being one of a smaller number of bidders, than one of many. Soft market testing responses suggested that, although some contractors will not currently engage in a single-stage tender process, there are others that are still happy to do so, provided that the number of bidders is restricted at the procurement stage. It is therefore proposed that a single-stage procurement will be used for this scheme.

12. CE S010 Early Years Catering Service Call Off Contract Extensions

12.1 Lauren Wheatcroft, Senior Category Manager, introduced the report. The Committee was informed that it was being asked to consider it as the proposed extension took the whole life value of the contract above the constitutional threshold.

12.2 The Chair asked for additional detail on the Key Performance Indicators (KPIs), and it was agreed that a written update would be provided to the Committee. It was noted that the performance of the contract had been good.

12.3 The Committee expressed support for exploring what meals could be provided to encourage healthy and sustainable eating. Cllr Woodley also thanked the Children's Centres for providing food parcels during the pandemic.

RESOLVED:

To agree the extension of the Early Years Catering Service Contracts for a further 18 months (from 1st August 2021 until 31st January 2023) to allow sufficient time for an insourcing review to be completed.

REASONS FOR DECISION

The further extension period of 18 months will enable sufficient time for the insourcing review to be completed, and for the service to either be insourced or outsourced accordingly.

Additional time to complete the insourcing review is required due to the following reasons:

- There is a lack of capacity to undertake the insourcing review, particularly in light of the ongoing pandemic;
- The centres are currently in the middle of an Early Help review which brings uncertainty to the future of the services;
- Children's centres have savings to make in the next year and do not know the future of the provision. If the Council were to in-source the service now, TUPE would apply to 13 members of staff currently delivering catering services at the Centres.

13. FCR S014 Energy Contract Award Report - For Information Only

13.1 Mary Aladegbola, Head of Energy and Carbon Management, introduced the report. The Committee was informed that it was challenging to deliver the Council's procurement objectives on a supply arrangement with energy companies, and this was recognised in the procurement policies.

RESOLVED:

i) To note the outcome of the purchasing arrangements which have placed Supply contracts with the Energy companies as follows:

The Half Hourly and Unmetered Electricity Supply contract is awarded to Total Gas & Power (Supplier A), estimated contract values of £3.4m

The Non-Half Hourly Electricity Supply contract is awarded to Supplier A and British Gas (Supplier B) at an estimated contract value of £4.1m and £306k.

The Gas Supply contract is awarded to Supplier A at an estimated contract value of £2.08m. However, some supplies remain with Corona Energy (Supplier C) at £8k. These supplies with Supplier C have not

migrated over to the new Supplier A due to outstanding account debts.

ii) To note the indicative aggregate cost impact for Hackney, including Housing and Schools, from these tender awards is a 17% increase against last financial year's projection, the actual impact will be monitored via OFP.

14. FCR S008 Delegated Power Report of the Acting Chief Executive - School Cleaning Service Framework Contract Award - For Information Only

14.1 Lauren Wheatcroft, Senior Category Manager, introduced the report. It was confirmed that there was no impact on Council budgets as it was something the Council had procured on behalf of schools in the borough. The special urgency and delegation were required to ensure the contracts were in place in time for the school holiday.

RESOLVED:

To note the Delegated Powers Report

15. Any Other Unrestricted Business the Chair Considers To Be Urgent

There was no other urgent business to consider.

16. Dates Of Future Meetings

16.1 CPIC noted the dates of future meetings.

2021

9 September,
4 October,
8 November, and
6 December

2022

17 January,
14 February,
7 March, and
11 April

End of Meeting

Duration of the meeting: 16:00 - 17:20

Contact:

Andrew Spragg, Governance Services Team Leader
andrew.spragg@hackney.gov.uk

APPENDIX 1 - Item 7 - Cllr Stops' Submission

I am here because for the past 20 years this council, the administration and the Labour Group has sought to end this contract and have these hoardings removed. This committee is being used to reverse this policy. You are being asked to extend a contract that was explicitly agreed would not be extended without any knowledge of the history or even the contracts themselves.

I was told by Cllr Kennedy there had been no explicit decision made to terminate the contract. I am being asked to prove a negative.

But I can do that. I and the former CEO, as you will hear later 'hold the history'.

Colleagues, advertising to motorists on the pavement with giant hoardings is counter to our policies on improving the look and the feel of our streets and public spaces; they discourage, not encourage walking, and make life even more difficult for those that have enough difficulties navigating our streets. We want a Hackney for everyone. The legal status of advertising on the pavement like this is at best a grey area. I believe unlawful.

The council has enforced against traders advertising on the pavement with zero tolerance, yet is seeking to grant itself the right to do exactly that for income - the hypocrisy of this is unsustainable.

Any reading of all this that says the council was at any point content with the arrangement is perverse.

Can I firstly comment on para 2.3 of your report..... Some officers... ref. Tim's email

Can I point out the contracts should be background papers, the fact they aren't alone should lead to deferment. But to my substantive points.

I have sent you four emails. I have a couple of extras now.

The first are from Tom McCourt. The Director of Environment and then public realm. The officer then responsible.

Email 0 1 August 2006 Trigger for contact not started. No record of payment for 5 years. Decaux subsequently triggered contract.

Email 1 5 October 2007- Give them due notice, instruct them to remove their obstructions from our highway... failure to comply will mean we will remove...

Email 24 October 2007- We are coming from the point of terminating the contract as our main approach....

Email 21 April 2008- We may not be able to break the contract.... the Mare Street advertising to be removed.

Email 5 10 March 2021-

"I am aware that you and I hold the history on this issue as many have left. As far as I am concerned they need to go."

Email 6 Tue March 15 2016 outlines the history that I concur with.

“The variation to the contract dated 22 February 2013 removed any right of extension, which means the agreement unequivocally ends on 31 August 2021.”

The relevant clause of the contracts.

2013:

“The term of this agreement shall automatically expire on 31 August 2021” and

2017:

“The company shall remove advertising equipment on the termination of the Principal Agreement and will be responsible for all the costs of removal and making good all surfaces with matching materials.”

These clearly show the intention of the council - to terminate the J. C. contract and have the boards removed.

There was plenty of opportunity to re-write a new contract, but this was not done because the intention was to terminate.

I reminded Ian Williams not to take account of the income as it would cease. I reminded the Mayor not to take account of the income as it would cease. I reminded Cllr Kennedy by email not to take account of the income as it would cease.

Email 7 Feb 24 2020 Me to Cllr Kennedy

My present reason for raising is to ensure the income that is in our budget is not assumed as ongoing..

Email 8 Feb 23 2020 From Cllr Kennedy

...Ideally we would just remove them?

Frankly I am shocked at this report. It has none of the key history. It is dismissive of the council's members and senior officers. It doesn't discuss our policy position and the breach this would be.

This is not a routine contract extension. The use of a procurement committee to “extend this contract” as a vehicle to “seek to re-tender the Council's External advertising contract” is, frankly outrageous- see extract from your committee report below.

Preferred Option: Option 3: Para 6.5

The preferred option would be for the Council to agree to extend this contract by 12 months, and a further 6 more months if necessary (subject to Director's approval without going to CPIC or HPB). Work will be carried out with internal stakeholders (Planning, Hygiene Services and procurement), and a full Business Case will be presented to seek approval to re-tender the Council's External Advertising contract.

There is ZERO input from our streets teams that have led on this work for 20 years

Monday, 19 July 2021

and trivial mention of policy.

This contract unequivocally terminates at the end of August 2021. You have no powers or policy support to arbitrarily extend it. And in the words of the CEO they should be removed.