

Report of : Julie Hatton

Report to Chief Officer, CEL

Date: 19 August 2014

Subject: Ratification of Decision to Extend the Contract for the Supply of Frozen Foods reference LCC5225 (“the Contract”) from 5 August 2014 until 4 January 2015

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. On 30 July 2014 the Chief Officer, CEL signed two decisions, namely the extension of the Contract for the provision of frozen foods (a Key Decision) and the seeking of resubmissions in the ongoing procurement process to replace the Contract (a Significant Operational Decision). Both decisions were supported by the same report. (“the Report”).
2. The Decision in relation to the ongoing procurement process was appropriately published as a Significant Operational Decision on 13 August 2014.
3. However, an administrative error meant that the necessary time periods for publication of the report were not met prior to the required date for the taking and implementation of the Key decision to extend the Contract.
4. Due to the circumstances set out in this report the decision was implemented despite procedural errors in its publication.

Recommendations

5. The Chief Officer, CEL is recommended to:
 - i. take this decision as a key decision, in accordance with the Council’s constitution, to ratify the implementation of the decision to extend the Contract;

- ii. confirm that the General Exception under 2.5 of the Executive and Decision Making Procedure rules applies and that this decision is exempt from Call-in as per 5.1.3 of the Executive and Decision Making Procedure Rules.

1 Purpose of this report

- 1.1 To explain the procedural errors that have arisen in relation to the Report and set out the proposed method of rectifying these.
- 1.2 To seek the Chief Officer, CEL's approval to the ratification of the decision to extend the Contract for a period of 5 months from 5 August 2014 to 4 January 2015

2 Background information

- 2.1 The Report, published on moderngov on 13 August 2014, was prepared in support of two linked decisions to be taken by the Chief Commercial Services Officer. A copy of the Report of the Head of Catering and Cleaning to the Chief Commercial Services Officer dated 25 July 2014 with appendices is attached as Schedule 1 to this report for ease of reference.
- 2.2 The first decision was to extend the Contract in accordance with its terms in order to allow for service provision to continue until such time as the current procurement process being undertaken could be completed. This decision was of a value of £600,000.00 over five months and therefore considered a key decision under the Council's constitution.
- 2.3 The second decision was to seek resubmissions from bidders in the current procurement process in order to obtain a clearer picture of the costs involved and enable the Council to meet its obligation to secure best value for money through a fair tender process. This was considered to be a direct consequence of the previous decision to procure, and therefore could be treated as a Significant Operational Decision. As such the decision was taken on 30 July and published on 13 August 2014.
- 2.4 The process of resubmission from bidders, whilst a necessary part of the ongoing procurement, would incur a delay in the timescales for the procurement process, necessitating the extension of the Contract, hence the first decision. Given that the decision to extend was necessitated by the unforeseen delay to the procurement process, the expiry of the Contract was imminent at the time of the Report, making it impracticable to defer the taking of the key decision until such time as it had been included on the List of Forthcoming Key Decisions for a period of 28 calendar days. Further, the urgency to continue with the current service provision also made it impractical to submit this key decision to the Call-In process.

3 Main issues

- 3.1 The report was prepared on 25 July 2014 which would have allowed for the publication of the report for five days in advance of the decision in accordance with 2.5 General Exception of the Executive and Decision Making Procedure Rules. However, due to an administrative error, this publication was omitted.
- 3.2 The decision was signed by the Chief Commercial Services Officer in reliance upon the Report and the extension of the contract was implemented before it

could expire. The oversight of the publication effectively means that this decision was not in place when this step was taken, however, and so this report is seeking to clarify that it was the intention to give the authority to extend the Contract and allow that authority to be properly given, in order to continue with the service provision.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 Appropriate consultation was undertaken and detailed in the Report relating to the decision to extend the Contract.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 An updated Equality, Diversity, Cohesion and Integration impact assessment screening was carried out for the purposes of the Report.

4.3 Council policies and City Priorities

4.3.1 In line with the Council's value of being 'open, honest and trusted', the Council aims to be as transparent as possible in its decision making. Due to the procedural errors set out in this report this wasn't fully adhered to. This report and decision seeks to ensure that the decision-making arrangements are not circumvented and transparency is maintained.

4.4 Resources and value for money

4.4.1 The Contract is an essential resource for the Council. Were the service provision under the Contract to cease pending the outcome of the current procurement process the Council would be unable to provide services to a number of user groups.

4.4.2 The Contract was procured through a robust procedure that identified the provider as the most economically advantageous for the Council, and the extension period was provided for when this was advertised.

4.4.3 The Council would not be able to secure a new interim contract that could demonstrate value for money in the way that continuing with this extended contract will.

4.5 Legal Implications, Access to Information and Call In

4.5.1 The decision required to extend the current contract was intended to be dealt with in accordance with CPR 21 as a new decision that was not a consequence of the initial decision to procure. Therefore, in accordance with Article 13 of the constitution, this decision was categorised as a key decision for the purposes of the Executive and Decision Making Procedure Rules.

4.5.2 The Council aims to be as transparent as possible in its decision making. However, due to the circumstances set out in this report, there have been some administrative and procedural errors in ensuring this transparency, which have

resulted in the decision not being treated appropriately for a key decision. It is therefore recommended that this decision to ratify the decision that was intended be treated as a key decision itself.

- 4.5.3 So that the risks to the Council associated with not taking this decision appropriately before implementation are minimised and to ensure that clarity and certainty can be obtained as soon as possible, it is considered impracticable to defer the taking of this key decision until such time as it has been included on the List of Forthcoming Key Decisions for a period of 28 calendar days. Further, the urgency to ratify the position in continuing with the current service provision also makes it impractical to submit this key decision to the Call-In process.
- 4.5.4 The legal implications of extending the Contract were detailed in the Report and considered minimal. The Contract provided for such extension within its terms, the extension provisions had not yet been exhausted and the contract had not expired. It was considered that remaining in contract with a contractor appointed following a robust procurement process, and who has demonstrated performance capability over a three year period, would provide the best value for money at short term for continued provision of this nature.

4.6 Risk Management

- 4.6.1 The potential for risk in extending the Contract to allow for continued service provision is considered very low, particularly in contrast to the risk of allowing the Contract to expire, as was set out in the Report. This ratification decision is therefore ratification of a low risk decision.
- 4.6.2 The risk of having committed procedural errors in establishing the authority to proceed with extending the Contract prior to doing so is somewhat higher. Without the appropriate authority to continue with the provider the Council could be seen to be acting ultra vires and contracting without the power to do so. However the publication of this report is considered to go some way toward the mitigation of this risk, by complying with governance legislation and ensuring that the Council follows its own reasonable procedures.

5 Conclusions

- 5.1 It is risky to continue to receive service provision under the Contract without ratification of the decision to extend it, therefore it is recommended that governance procedures are followed and the decision is published and properly taken.

6 Recommendations

- 6.1 The Chief Officer CEL is recommended to take this decision as a key decision, in accordance with the Council's constitution, to ratify the implementation of the decision to extend the Contract.
- 6.2 The Chief Officer CEL is also requested to confirm that the General Exception under 2.5 of the Executive and Decision Making Procedure rules applies so as to exempt this decision from publication for 28 calendar days and that the urgency is

such that this decision is exempt from Call-in as per 5.1.3 of the Executive and Decision Making Procedure Rules.

7 Background documents¹

7.1 Schedule 1 - Report of the Head of Catering and Cleaning

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.