

**MINUTES OF THE MEETING OF THE OVERVIEW & SCRUTINY COMMITTEE  
HELD ON TUESDAY, 23 APRIL 2019**

**COUNCILLORS**

**PRESENT** Derek Levy (Chair), Tolga Aramaz, Sinan Boztas, Edward Smith, James Hockney, Rick Jewell, Joanne Laban and Michael Rye

**STATUTORY CO-OPTES:** *1 vacancy (Church of England diocese representative), Mr Simon Goulden (other faiths/denominations representative), Mr Tony Murphy (Catholic diocese representative), Alicia Meniru & 1 vacancy (Parent Governor representative) - Italics Denotes absence*

**OFFICERS:** Sarah Cary (Executive Director Place)  
Jeremy Chambers (Director of Law & Governance)  
Melanie Dawson (Senior Regeneration Lawyer)  
Lisa Woo (Design and Planning Lead Meridian Water)  
Peter Alekkou (Head of Service – Place)  
Andy Ellis (Scrutiny Officer)  
Elaine Huckell (Scrutiny Secretary)

**1089**

**WELCOME & APOLOGIES**

The Chair, Councillor Levy welcomed all attendees to the meeting. Apologies had been received from: Councillor Nesil Caliskan (Leader), Councillor Susan Erbil, Councillor Huseyin Akpinar, Councillor Gina Needs and Councillor Lee David-Sanders.

Councillor Rick Jewell was substituting for Councillor Gina Needs. Councillor Sinan Boztas was substituting for Councillor Susan Erbil. Councillor James Hockney was substituting for Councillor Lee David—Sanders and Councillor Michael Rye was substituting for Councillor Edward Smith for item 3 (Call In :ESPO Framework 664-117 Contract Awards) as Councillor Smith was leading on this Call-In. Councillor Laban was leading on the Call-In for item 4 (Procurement of External Legal Advisers for the Meridian Water Programme).

**1090**

**DECLARATIONS OF INTEREST**

There were no declarations of interest.

**1091**

**CALL IN: ESPO FRAMEWORK 664-117 CONTRACT AWARDS**

## OVERVIEW & SCRUTINY COMMITTEE - 23.4.2019

The Committee received a report from the Director of Law and Governance outlining details of a call-in received on the Portfolio decision taken by the Leader on -ESPO Framework 664-117 Contract Awards (Report No:222).

NOTED that this report was considered in conjunction with the information in the part 2 agenda. All discussion was held under the part 1 section of the agenda.

Councillor Levy reminded everyone that discussion on the call-in should be about the specific reasons for call-in given in the papers and response to this.

The Chair invited Councillor Smith to outline the reasons for call-in.

Councillor Smith said he was not criticising the report but the outcome from the procurement process.

He highlighted his concerns as follows:

1. That only one bid had been received for the provision of multi-disciplinary planning and design services over the next four years at Meridian Water. Value for money for this was not demonstrated.
2. The report describes the procurement process employed. The decision was made to use the ESPO Framework (Eastern Shires Purchasing Organisation), with a 'Lot selection' (Lot 8g) applied for the services we required. He explained that other frameworks could have been used. Of the ten companies who could have been approached to tender for this work from the framework he anticipated that four or five would be interested and he thought they should have been spoken to by one of our senior representatives to determine their interest. From this we should have been able to determine whether the 'Lot' we had applied was appropriate or whether another should have been used.
3. Only four weeks was given for bidders to respond to this multi-disciplinary planning and design service and the field invited to tender was too large for the firms to have a realistic chance of success.
4. The parent company in the US of the successful bidder had been in various contractual disputes with the US Government and others. It was questioned whether the Leader would have been aware of this fact, when she took this decision. It was thought this should have been a consideration when deciding to award the contract.

Councillor Smith said he thought the procurement system used appears to be flawed, the arrangements used should be reviewed as it appears that the only opportunity to scrutinise decisions of this kind is through the call-in process.

Responses given were provided by Sarah Cary, Peter Alekkou and Lisa Woo as follows:

1. When considering the aspect of 'value for money' it is not only the financial details but also efficiency that should be shown. In August we

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had looked at using a multi- disciplinary approach, to work across a range of projects.

2. In September 2018 the Council invited tenders from all Service Providers contained within Lot 8g 'Regeneration and Regional Development' to submit a tender, except for those who had requested to be excluded from the tender. Of the 10 appropriate suppliers, five had confirmed their interest.
3. The four weeks given for bidders is not unusual, sometimes a period of two weeks can be given. A set- time period would not have been given without having a dialogue with bidders first. Of the bidders, five said they were interested and three that they were not. Sometimes bidders might ask for us to extend the deadline but in this case they did not. Afterwards we contacted those that had not tendered. The main reasons given for not tendering were that they were unable to take on further commitments and that they did not have the required resources for the project.
4. It was confirmed that a rigorous evaluation process had been undertaken.
5. In answer to a question from the Chair it was confirmed that all service providers including the winning bidder on the ESPO framework, are governed by UK and EU Public Contract Regulations.

Other points discussed included:

1. Councillor Rye said it was unfortunate that the person who had made this decision was not at the meeting. He was happy with the four weeks that had been given for bids to be received but as a figure of 4% above the market rate had been mentioned, he did not feel that we had demonstrated value for money had been given. Sarah Cary stated that we were happy to tolerate figures given.
2. The parent company is in the USA and the bidding company is an operational company based in the UK. The state of litigation of the parent company was not relevant for us in determining the winning bidder. Whilst Sarah Cary did not think the Leader would have been aware of litigation in respect of the parent company, she said that this was not relevant.
3. Cllr Hockney asked if the 'break clauses' quoted for the contract were unilateral and could be brought about without reasons given. It was confirmed that this was the case. It was also confirmed that the scope of the contract was refined by us at an early stage.
4. It was asked if the value of the contact quoted was based on a fixed price element – an answer was given that it was based on day rates. Our teams had come together to look at the services we may require for the future, it would be 'needs driven'.
5. It would be possible to use our 'in house' people more in future as we are building capacity. The contract would be useful in this respect.
6. It was asked if the UK company had been in any disputes such as those mentioned for the parent company, it was thought this was unlikely as they remain on the ESPO framework.
7. In answer to a question as to whether it was considered that we should have a re-bidding process as only one bid had been received, an

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answer was given that the framework agreement allows us to take just one bidder if we think it acceptable and value for money.

8. Confirmation was given that officers considered the framework used was appropriate for our needs.
9. Councillor Hockney requested that a copy of the day rates quoted would be sent to him.
10. It was confirmed that the decision to retender would not be taken lightly as it may deter all bidders.

Councillor Smith was asked to summarise, which was as follows –  
He said whilst it is not a crime to have a single bidder, it is not ideal and although an interesting discussion had been held, it is not clear why, if the council went to the trouble of contacting all bidders and five had stated that they were interested, that only one bidder had tendered.

In response, it was stated that the other potential bidders had cited lack of resources and capacity as the reason they did not put in bids.

Following the discussion, Overview and Scrutiny Committee considered the reasons provided for the call in and responses given. Having considered the information, the Committee agreed to confirm the original portfolio decision:

- To award the contract to Consultant A

Cllrs Levy, Aramaz, Jewell and Boztas voted in favour of the original decision, Cllrs Rye and Hockney abstained. The original Portfolio Decision was therefore agreed.

Councillor Smith exchanged places with Councillor Rye at this point and Councillor Rye left the meeting.

Councillor Joanne Laban led the Call-in on the following item -

### **1092**

#### **CALL IN: PROCUREMENT OF EXTERNAL LEGAL ADVISERS FOR THE MERIDIAN WATER PROGRAMME**

The Committee received a report from the Director of Law and Governance outlining details of a call-in received on the Operational Decision taken on Procurement of External Legal Advisers for the Meridian Water Programme (Report No. 221)

NOTED that this report was considered in conjunction with the information in the part 2 agenda. All discussion was held under the part 1 section of the agenda.

The Chair invited Councillor Laban to outline the reasons for call-in.

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Councillor Laban highlighted the following:

1. It is not clear why the decision to continue with the original contract - Trowers and Hamblins LLP was taken so late, when it had expired on 4 March 2019. Therefore, there had been a break in continuity.
2. Although it had been stated that the Procurement and Commissioning Board had approved the procurement and use of the CCS (Crown Commercial Service) Framework in August 2018, it took eight months to award the contract. Using the framework had taken longer than it would have done using the OJEU (Official Journal of EU). Knowing that the contract was due to expire 4 March 2019 it is not clear why there was this delay.
3. Although it has been stated that best value has been achieved, it is not clear how this has been assessed, for example whether there has been any benchmarking undertaken.
4. Under the contract we are paying via an hourly rate system, it is not clear why this should be preferable to using a capped fee service.

Cllr Boztas left the meeting at this point.

The Chair said it may be helpful if the Director of Law & Governance could explain why it was considered a crucial time for the contract to continue with the same provider rather than to transition to an alternative. Also, why if this is crucial why the contract is only for a year.

Responses given were provided by Jeremy Chambers and Melanie Dawson as follows:

1. Throughout the delivery of the Meridian Water Project, there will be different points where it may be advantageous to have a new procurement for legal advice. However, this is not the time for this as we are in a transitional phase and there are significant benefits in terms of efficiency and effectiveness in ensuring continuity of service with Trowers and Hamblins LLP. This company have extensive knowledge of the complexities of the Meridian Water project and their experience would be necessary as the next phase of Meridian Water is brought forward.
2. Robust contract monitoring is undertaken. We are sourcing our own in-house team and this would be helped by extending the Trowers & Hamblins LLP contract for the one year term. Trowers & Hamblins LLP would support the in-house team only where there is insufficient capacity or expertise in-house. Council officers are currently exploring the possibility of an arrangement whereby trainee solicitors at the council undertake a period of work at Trowers and Hamblins LLP, at no cost to the council.
3. It was acknowledged that delays had occurred. This was primarily because the CCS framework had not been ready, the launch date of the CCS Framework was outside officer's control. Had it been ready, and the decision could have been taken earlier, Jeremy Chambers stated that the same decision would have been reached.
4. In terms of using a capped fee service – the framework did not allow for this and costs are usually much heavier, Jeremy Chambers would not

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advise using a capped fee arrangement. The response to reasons for call- in also states that given the uncertain scope of services that will be required over the next 12 months it would be unrealistic to expect any firm of solicitors to agree to a capped fee at the outset of the contract.

Other points discussed included:

1. Councillor Smith said it had been noted that the 'Framework' had not been ready, and he asked if officers in the Legal Team were responsible for this or was it those in Regeneration? Jeremy answered that it was the Crown Commercial Service who had launched it later, with insufficient information provided.
2. It was confirmed that Trowers and Hamblins LLP had originally been included on a framework for a four- year period.
3. That some of our trainee solicitors may for a short period during the term of the contract be placed with Trowers and Hamblins LLP who are providing mentoring – this will be beneficial to our 'in house' solicitors 'growth of knowledge'. The arrangements for this are being finalised.
4. Councillor Hockney asked for the approximate number of days of billing the contract figure was based on. It was stated that this is a fee rate basis, there are not a set number of fixed days given. The money assigned would be determined by need.
5. It was confirmed that we were happy that the quality provided by the company was robust, they have embedded knowledge in respect of areas of land at Meridian Water. This is not a good time to change provider but this may change in future – we shall be using more in-house staff as we build capacity, however there is not a time-line for this.
6. Councillor Hockney asked if we had looked at the use of retainers for rolling over 3 month, or 6 month periods. It was stated that this would have been an expensive way to continue. The most expensive way would have been to continuously place orders on an ad hoc basis.

Councillor Laban did not wish to add anything further.

Following the discussion, Overview and Scrutiny Committee considered the reasons provided for the call in and responses given. Having considered the information, the Committee agreed to confirm the original portfolio decision:

1. To approve the direct award of contract to Trowers & Hamblins LLP (in accordance with the CCS Framework for Wider Public Legal Services) for the provision of legal services in relation to the Meridian Water Programme for a one-year period.

Cllrs Levy, Aramaz and Jewell voted in favour of the original decision, Cllrs Smith and Hockney abstained. The original operational decision was therefore agreed.

## 1093 DATES OF FUTURE MEETINGS

**NOTED** the dates of future meetings as follows:

Call-In Meeting

Wednesday 1 May 2019.

Councillor Levy thanked everyone for attending the meeting.