

PURCHASE OF STREETSCENE VEHICLES

**CLEAN STREETS, RECYCLING AND ENVIRONMENT
(COUNCILLOR MICHAEL)**

AGENDA ITEM: 1

Appendix 1 to this report is exempt from disclosure as it contains information pursuant to paragraph 14 and 21 of the Local Government Act 1972 and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Reason for this Report

1. To seek approval to proceed with the purchase of Streetscene Vehicles, primarily Refuse Collection Vehicles (RCVs) and Road Gritters.

Background

2. Gulliver's Truck Hire Ltd (GTH) went into administration on 18th of December 2018. GTH had been supplying the Council with specialist vehicles relevant to the delivery of a range of Streetscene Services.
3. On the 18th December KPMG were appointed as the administrator to deal with the sale of assets, as GTH could not find a buyer to take over the business as a going concern. As a result, the Council has been working closely with the receiver to ensure continuity in the use and maintenance of the vehicles in question.
4. Furthermore, these vehicles were provided to Cardiff Council with a maintenance-included lease, so on 18th December 2018 the Council immediately brought the maintenance back in house to enable business continuity. This allowed the Council's Transport Services (CTS) to support the running, maintenance and compliance of the fleet for the Planning Transportation and Environment directorate.
5. Overall, as a result of these complex discussions the opportunity has arisen for Cardiff Council to purchase a range of Streetscene vehicles at an appropriate market value. This will serve to deliver best value for the Council and, crucially, safeguard the continuity of services supported by these vehicles.

Issues

6. There are a number of issues that pertain to the purchase of these vehicles:
 - i. **Service Continuity:** There is a compelling case for the Council to secure greater control over Streetscene vehicles. Critically, given the current position facing GTH, a significant risk is posed to the Council's ability to deliver key services. Furthermore, at times throughout 'busy' periods of the year the need exists to 'spot hire' vehicles in a way that is unsustainable and inefficient. Moving forward increasing the proportion of the vehicles that are owned by the Council develops a more robust long-term position and improved services for the community.
 - ii. **Cost:** It will be important to justify the purchase of the vehicles in terms of the relative costs and benefits of purchasing vehicles as compared with the cost of leasing. A full business case is provided in Appendix 1.
 - iii. **Timing:** Given the fact that the vehicles have been offered for sale by the administrator, there exists the need to respond to this opportunity urgently. As a result, discussion have been taking place with the relevant parties to ensure that the intentions of the Council are clear and that there is no hindrance to immediate purchase once a decision is taken.
 - iv. **Existing Procurement:** On 15th November 2018 Cabinet agreed to proceed with a procurement to replace some Streetscene vehicles by establishing a medium-term leasing arrangement. The proposal in this report to purchase Streetscene vehicles would not remove the need to proceed with this procurement. However, it would allow the timing of this process to be reviewed in the context of the Council already owning, managing and maintaining some of these Streetscene vehicles itself. In the medium-term this will result in a significantly more resilient and cost effective position for the Council in terms of service delivery.
 - v. **CTS Development Strategy:** CTS possesses an excellent workshop space. It is currently developing a strategy that highlights the need for developing more commercial and insourcing opportunities. Already, the maintenance of some Streetscene vehicles has been brought 'in house' with emerging financial and organisational benefits. The proposal to purchase further Streetscene vehicles integrates effectively into this ambitious long-term strategy

Budget Framework

7. The Council needs to ensure that all expenditure is carried out within the budgetary framework agreed by Full Council. However, no provision has been made in the 2018/19 budget to support the expenditure proposed in this report. In the exceptional, and unforeseen, circumstances outlined

above, the Council needs to consider taking an urgent decision outside the budgetary framework.

8. It is not practicable to convene a quorate meeting of the full Council to consider this issue in time for the Council to secure the vehicles for business continuity purposes. The constitution delegates to Cabinet, in discharging its executive functions, to “take a decision which is... contrary to or not wholly in accordance with the Budget approved by Council if the decision is urgent”. Party Group leaders have been advised that Cabinet will be considering the issue. The Monitoring Officer considers that any delay caused by a call in may seriously prejudice the public interest and Councillor Walker as the relevant scrutiny committee chair has also agreed that the decision is of an urgent nature and is therefore not subject to call in.
9. If Cabinet approves the recommendations of this report, a full report on the decision will need to be submitted to the Council meeting of 31st January in accordance with the Council’s constitution.

Reason for Recommendations

10. To allow the Council to purchase the relevant Streetscene vehicles to support effective service provision and continuity.

Financial Implications

11. The report proposes the acquisition of Streetscene vehicles. Should the recommendation in this report be accepted, a new budget line will be created in the Council’s Capital Programme for 2018/19 for the acquisition of vehicles on an invest to save basis. Existing revenue budgets for lease hire costs including maintenance would be utilised as the first priority to repay initial investment for acquisition costs. Any vehicles acquired are to be maintained by the Council, assumptions have been made about the costs of this maintenance, and the period over which the vehicles can sustainably be retained which a procurement exercise for replacement vehicles is undertaken.
12. Should vehicles be retained for the periods indicated, there is a potential long-term saving to be realised in after the initial investment has been repaid. However, it is recommended that this be retained to manage fleet procurement risk and risks identified in this decision.

Legal Implications

13. The report recommends purchasing various vehicles due to the current Supplier going into administration. The legal implications deal mainly with the procurement of such vehicles.
14. It is understood that the total value (and 2 of the 3 groups of vehicles) exceeds the EU procurement threshold for the purchase of goods and accordingly the Public Contract Regulations 2015 (PCR 2015) would apply.

15. Regulation 32 (5) (d) of the PCR 2015 provides that the negotiated procedure without prior publication maybe used 'for the purchase of supplies or services on particularly advantageous terms, from either a supplier which is definitely winding up its business activities, or the liquidator in an insolvency procedure, an arrangement with creditors, or a similar procedure under national laws or regulations'. Put simply, what this means is that the Council can procure vehicles without competition in the above circumstances.
16. Legal Services are instructed that the ground under Regulation 32(5)(d) referred to above applies in this circumstance and the client department is satisfied as to the reasons why the Council should place reliance on regulation 32(5)(d). Legal Services have advised that there is a requirement to publish a contract award notice under the PCR 2015 and it is understood this is how the client department intends to proceed. The body of the report sets out the factors that the client department have taken into account and considered in recommending the way forward.
17. There is always a risk that matters maybe challenged. That said, the client department are satisfied that the ground referred to above applies and on that basis Legal services will work with the client department to progress arguments to defend any such challenge, if required.
18. In considering this matter, the decision maker must have regard to the Council's duties under the Equality Act 2010 and to the Council's wider obligations under the Wellbeing of Future Generations (Wales) Act 2015.
19. With regards the terms and conditions of purchase, Legal Services are working with the client department to advise/conclude any contract. However, it should be noted that given the urgency any contract will be based on seller's standard terms and conditions.
20. Under part 3 of the constitution, Cabinet can take urgent decisions which are contrary or not wholly in accordance with the approved budget. In addition the Rules of Procedure relating to the budget state that urgent decisions outside the budget or policy framework may be taken if the decision is urgent; and a quorate meeting of the full Council cannot be called in time; and if the chair of a relevant Scrutiny Committee agrees that the decision is urgent.

The reasons why it is not practical to convene a quorate meeting of full Council and the chair of the relevant Scrutiny Committees' consent to the decision being taken as a matter of urgency must be noted on the record of the decision. In the absence of the chair of a relevant Scrutiny Committee, the consent of the Lord Mayor, and in the absence of both, the Deputy Lord Mayor, will be sufficient.

(b) Following the decision, the decision taker will provide a full report to the next available Council meeting explaining the decision, the reasons for it and why the decision was treated as a matter of urgency. Under the scrutiny rules, the call-in procedure set out above shall not apply where the decision being taken is urgent. A decision will be urgent

if either the Head of Paid Service, the Monitoring Officer or the S151 Officer certifies that any delay likely to be caused by the call-in process could seriously prejudice the Council, or the public interest, and the Chair of the relevant scrutiny committee or, in his/her absence, the Chair of the Council, or in both their absences, the Vice-Chair of the Council, agrees that the matter is urgent.

The record of the decision and notice by which it is made public shall state whether the decision is an urgent one, and therefore not be subject to call in. Decisions taken as a matter of urgency must be reported for information to the next available meeting of the Council, together with the reasons for urgency.

The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted to Council with proposals for review if necessary.

HR Implications

21. There are no HR implications arising from this report.

RECOMMENDATIONS

Cabinet is recommended to:

1. authorise the Director of Planning, Transport & Environment, in consultation with Cabinet Member for Clean Streets, Recycling & Environment and Corporate Director Resources, to proceed with the purchase of the relevant Streetscene vehicles as outlined in this report
2. Note that in accordance with the Council's constitution a report on this decision will be presented to the Council meeting due to take place on 31 January 2019

SENIOR RESPONSIBLE OFFICER	ANDREW GREGORY Director of Planning, Transport & Environment
	4 January 2019

The following confidential appendix is attached:

Appendix 1 – Business Case.