

Exercise of emergency functions – Award of a contract to successful tenderer as a consequence of the all-out strike action by Unite union which is deemed necessary on urgency grounds to ensure the continuous functioning of the waste collection business of the City Council to the residents.

1. Part 2M of the constitution of the City Council provides for the Scheme of Functions delegated to Employees including to the Chief Executive/Head of Paid Service.
2. Paragraph 3.8(a) of Part 2M of the Constitution enables the Chief Executive, in consultation with the Leader to make decisions required in an emergency.

Executive Summary

3. The Council has been the subject of strike action by members of the Unite union since December 2021 to date. The reasons for the strike action are well publicised in the public domain and as such are not reiterated in this note. The consequence of the strike action in my view means that there is a rapidly developing and present danger being caused to the pollution of the environment and human health and wellbeing which is being compounded by the pandemic situation within the City on the basis that we now have a significant increase in household waste which is accumulating on the streets. Whilst ongoing discussion between the City Council and Unite have been ongoing to date, On 11th January 2022, we received notice of an all-out strike from Unite which is to take place throughout February and March meaning no waste collection during that period.
4. The Council entered into a contract on the 1st February 2022 for 2 months which was to act urgently to put temporary alternative measures in place to minimise pollution to the environment and harm human health and this temporary alternative measure needs to be put in place as soon as possible. Regulation 32 of the Public Contract Regulation 2015 was utilised to enter into a direct award contract.
5. The Council were notified that the strike would continue, therefore made the decision to tender the Services Contract on the open market. The Council used an Open (accelerated in accordance with Public Contract Regulation 2015 Regulation 27(5) "*Where a state of urgency duly substantiated by the contracting authority renders impracticable the time limit laid down in paragraph (2), it may fix a time limit which shall be not less than 15 days from the date on which the contract notice is sent.*")
 - 5.1. **Urgency:** it is critical to show that it is not possible for the Council to carry out a regulated procurement process (due to a lack of time) and that it was not foreseeable that the Council would find itself in this position where there would be no collections whatsoever for this considerable period. The Council was hoping that the strike would be

resolved by 31st March 2022. Up until that point the Council was hopeful that there would be a resolution to in negotiations and that we did not foresee the situation escalating to the extent that it has. Because of this, the Council did not consider it necessary to start looking at other options to deliver the service ahead of the 14th March date; at this point we expected the situation with the Union to be resolved and for the service to continue. With 14th March the key date, it is clear that there would not have been time for the Council to carry out a traditional open procurement and to secure a contractor by the 1st April. Therefore the Council followed an accelerated open procedure (which could technically be concluded in 15 days) as it falls within the requirements to do so.

Financial Implications

6. The value of the contract will depend on the duration the arrangement needs to be put in place for, most notably the duration of the strike action. The initial term is for 6 months which expires on the 30th September 2022, however there is the ability to have two further 6 month extensions in the event the strike action continues. The initial cost of this contract [REDACTED] depending on additional services or extensions being called off.

Equality Implications

7. The public sector equality duty, as set out in section 149 of the Equality Act 2010, requires the Council, when exercising its functions, to have “due regard” to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act, to advance equality of opportunity and foster good relations between those who have a “protected characteristic” and those who do not share that protected characteristic. The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
8. Due to the urgency of the situation, formal assessments have not been undertaken in respect of the decision which are the subject of this note. Such formal assessments are not a requirement of the duty. An underlying purpose of the recommended decision to put into effect the temporary arrangement is to have regard to the protection of those with protected characteristics. In the circumstances, I do not consider that there are any adverse equality impacts.

Subsidy Control Implications

9. The contract has been tendered therefore there is no subsidy control.

Human Rights Act Implications

10. It is not considered at this time that there are any breaches of the Human Rights Act arising from the decision which is the subject of this report.

Use of Agency workers

11. Regulation 7 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (SI 2003/3319) precludes the provision of temporary workers to perform the duties normally performed by a worker who is taking part in a strike or other industrial action. An employment business supplying workers in these circumstances will be committing a criminal offence, and the employer could be found to be aiding and abetting that offence.
12. The City Council has ensured that no agency workers are used for the provision of the services being provided in the contract.

Recommendation

13. In light of the above I am satisfied that the decision being taken pursuant to this emergency provision constitutes an emergency and I am making the decision that the City Council:
- 13.1 Approves the award of the contract for the provision of waste collection services under Regulation 27 of the Public Contract Regulations 2015 for the initial period commencing on 1st April 2022 to 30th September 2022 (with option for two further 6 month extensions).
- 13.2 Delegate authority to the Director of Law and Governance to negotiate and finalise the terms of the contract and to enter into any necessary legal agreements and contract award notice to give effect to recommendation 1 above.

Conclusion

14. have consulted with the Leader of the City Council to confirm his agreement to this course of action.
15. A report will be taken to Council at the next appropriate meeting that will include information about this emergency decision.

Signed:



Chief Executive of Coventry City Council

Dated: 1st April 2022