


Business Bulletin

Governance, Risk and Best Value Committee

10.00am, Tuesday, 2 May 2023

Dean of Guild Court Room, City Chambers / Microsoft Teams

Governance, Risk and Best Value Committee

Convener:	Members:	Contact:
<p>Councillor Kate Campbell</p> 	<p>Councillor Jule Bandel Councillor Marco Biagi Councillor Katrina Faccenda Councillor Stephen Jenkinson Councillor Adam McVey Councillor Claire Miller Councillor Joanna Mowat Councillor Jason Rust Councillor Edward Thornley Councillor Lewis Younie</p>	<p>Jamie Macrae Committee Officer 0131 553 8242</p>

Recent news	Background/Contact
<p>First Line Governance and Assurance Model</p> <p>To agree that progress updates should be provided in each GRBV Committee Business Bulletin from November onwards, including an update on the finalised structure and recruitment.</p> <p>A report providing this information will be presented to GRBV Committee on 1 August 2023. Recruitment within the Governance team has now been completed and staff are beginning to implement the business partnering approach with directorates. The report in August will outline the work that has been undertaken over the past few months and also how the approach links with other corporate governance initiatives.</p> <p>Annual Assurance Schedule - Corporate Governance</p> <p>To request a schedule of HR policies, indicating which have been reviewed, are to be reviewed and those which are out of date, be circulated to members. To request a Business Bulletin update on this to Committee in May.</p> <p>A briefing note providing this information was circulated to GRBV committee members on 17 April 2023.</p>	<p>Nick Smith</p> <p>Service Director: Legal and Assurance, Corporate Services Directorate</p> <p>Tel: 0131 529 4377</p> <p>Margaret-Ann Love</p> <p>Acting Service Director: HR, Corporate Services Directorate</p> <p>Tel: 0131 529 6476</p>

[Response to Emergency Motion – Edinburgh’s Christmas](#)

Asked the Convenor to write to the Minister for Business, Trade, Tourism and Enterprise on behalf of Committee, courtesy copying the Finance and Resources Convener, outlining the risk and impact of public procurement procedures on concession contracts which prevented the Council from conducting due diligence on the price bid by tenderers and which compelled the Council to award contracts despite concerns regarding financial deliverability. The letter would also request that lengthy procurement processes were reviewed to enable a dialogue to take place in order to reduce risk in certain circumstances.

Letter from GRBV Committee Convenor and response from former minister for Business, Trade, Tourism and Enterprise letter attached below.

[Councillor Kate Campbell](#)

Convenor GRBV
Committee

Tel: 0131 529 4933



Cllr Kate Campbell
Convener of the Governance, Risk and Best Value Committee

Ivan McKee MSP
Minister for Business, Trade, Tourism and Enterprise
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

Dear Ivan

Following on from well publicised issues that Edinburgh had in relation to the procurement of the Christmas Market this year, a report was discussed at the Governance Risk and Best Value committee which I chair.

One of the actions which came out of those discussions was that committee requested that I write to you to raise some of the specific issues which Edinburgh faced in relation to the current procurement rules, and how these impacted on the process, the outcome and ultimately put the Christmas celebrations at risk.

Committee feels that there may be scope for changes to the procurement regulations which would allow for enhanced due diligence and reduction of risk in public procurements.

Following a recent council procurement review on an 'Open' procurement procedure it was found that whilst the Public Contracts (Scotland) Regulations 2015 (PCR) provide authorities with a duty to apply further due diligence of tenders where the price or costs proposed appear abnormally low (Regulation 69¹ - abnormally low tenders), there is nil such express provision where the price proposed appears abnormally high or otherwise indicates an outlier when compared to the tenders received following a competitive tender process.

The absence of such further due diligence opportunity in these circumstances is of particular concern in relation to concession contracts. The Concession Contracts (Scotland) Regulations 2016 do not have an equivalent regulation to the PCR, Regulation 69, requiring the authority to seek an explanation of the price (income)

offered or for the tenderer to provide any evidence to satisfy the authority that the proposed high-level offer is acceptable.

In such circumstances the only course of action left to the authority is to either 'abandon' the competitive tender and publish a new tender with revised evaluation criteria or to progress with the award with limited assurances from the tenderer that the offer presented will be honoured. Neither of these options is satisfactory and may result in increased cost for the authority and for the tenderers where the tender is abandoned, or increased risk for the authority where potential income offered may not be relied upon.

In addition to the above, concerns have also been raised in relation to the lengthy procurement processes where 'dialogue' is included in the procedure, such as Competitive Dialogue procedure PCR, Regulation 31². Past experience of such procedures is that the end-to-end process takes on average 18 to 24 months to complete and therefore should be avoided.

There are few examples by way of best practice which offer a solution to the perception that a dialogue approach will likely result in a significant increase in procurement timescales and will be costly and resource intensive³ and therefore should be avoided. The Council would be interested to learn of any competitive dialogue tenders undertaken in other Scottish public sector organisations which offer a best practice solution to overcome these perceptions and that could be utilised by the Council.

Committee hope that by raising this with you the Scottish Government will be able to consider these concerns, and review if there are changes which could help address these.

Yours sincerely

Kate Campbell
SNP Councillor - Portobello/Craigmillar
Convener of the Governance, Risk and Best Value Committee

Minister for Business, Trade, Tourism & Enterprise
Ministear airson Gnothachas, Malairt, Turasachd agus
Iomairt
Ivan McKee BPA/MSP



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Kate Campbell SNP Councillor Portobello Craigmillar
Cllr.Kate.Campbell@edinburgh.gov.uk

Our Reference: 202300341081
Your Reference: -

28 March 2023

Dear Kate,

Thank you for your letter on 27 January 2023 relating to the City of Edinburgh Council's recent procurement of the Christmas Market.

It is not possible, nor appropriate, for me to comment specifically in relation to the procurement exercise undertaken by the City of Edinburgh Council. This is because I do not have all the information in relation to that exercise and, of course, because local authorities operate independently from Scottish Ministers for their procurement activities. Whilst it is not appropriate to comment on this procurement exercise specifically, I can offer some general observations.

The procurement regulations in Scotland are designed to ensure that public purchases are made in a transparent and fair manner with a view to achieving value for money for the taxpayer. The public procurement landscape in Scotland is diverse; as are the goods, services and works that are bought by public sector organisations across Scotland. That is why it is essential for an individual body to determine which sets of rules apply in any given circumstances and for selecting the appropriate procedure, where applicable.

You mentioned in your letter the Committee hope that by raising the issues experienced by the City of Edinburgh Council, the Scottish Government will be able to consider the concerns you have outlined. My officials would be happy to respond on specific concerns, however, it would be helpful if you, or your officials, could set out in more detail the procurement procedures used by the Council and the specific issues with the rules that inhibited the Council from achieving a value for money outcome in a reasonable timeframe.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

Tha Ministearanna h-Alba, an luchd-comhairleachaidh sònraichte agus Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

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You also indicate within your letter that the Council would be interested to learn of any competitive dialogue tenders undertaken in other Scottish public sector organisations. I am pleased to advise that the procurement policy forum, at which the Council is represented, is a cross-sectoral forum that is in place to share and learn from experiences (including, for example, experience of the use of procurement procedures for particularly complex procurements). My officials would be happy to facilitate your request via that forum. I would ask that your officials contact [REDACTED] in the first instance.

Yours sincerely

[REDACTED]

IVAN MCKEE

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Tha Ministearanna h-Alba, an luchd-comhairleachaidh sònraichte agus Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

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