

# Governance, Risk and Best Value Committee

10.00am, Tuesday, 22 November 2022

## Response to Emergency Motion – Edinburgh’s Christmas

Executive/routine Wards Council Commitments	Executive All, particularly City Centre
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### 1. Recommendations

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- 1.1 Governance, Risk and Best Value Committee are asked to note the contents of this report and to discharge the action arising from the emergency motion approved on 11 October 2022.

#### Paul Lawrence

Executive Director of Place

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## Response to Emergency Motion – Edinburgh’s Christmas

### 2. Executive Summary

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- 2.1 This report responds to the emergency motion which was approved at Governance, Risk and Best Value Committee on 11 October 2022.

### 3. Background

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- 3.1 On 11 October 2022, Governance, Risk and Best Value Committee approved the following emergency motion by the SNP, Green and Liberal Democrat Groups:
- 1) Notes the Council awarded a contract for Christmas events to Angels Event Experience Limited to begin during winter 2022, following a procurement process carried out by the Council's Commercial and Procurement Services (see item 7.5 at Finance & Resources Committee on 16th June 2022).
  - 2) Notes that Angels Event Experience Limited has been unable to deliver all events that it was contracted to provide during year 1 of the contract and therefore the contract has collapsed.
  - 3) Notes the range of impacts and risks caused, such as risk and cost to the Council, potential loss of events by the community and visitors, and risk to jobs and the local economy.
  - 4) Committee notes that most Councillors were only alerted to this collapse on 28th September with no prior briefings to suggest any event planning deadlines had been missed or that any other aspects were going wrong.
  - 5) Notes the decision of Finance and Resources in June 2022 to approve the contract which agreed that regular briefings would take place.
  - 6) Notes concern about the robustness of the process which led to the signing of the contract with Angel Events Experience Ltd which led to the collapse of the contract.
  - 7) Agrees that GRBV will receive a report in one cycle covering:

- a. The accuracy of the information and assurances given to Finance and Resources in June 2022 relating to the deliverability and finances of the bid which led to the report's recommendations.
- b. The due diligence carried out on the finances within the bid and any potential opportunities to scrutinise this component of the bid further that could have been legally pursued within the process and were not.
- c. The compliance of this process to the Scottish Government's procurement guidelines and any practise within the guidelines that was not utilised.
- d. Alternative approaches that could have been taken to the presentation of recommendations to Councillors - including any concerns relating to the deliverability and finances of the bid when submitted.
- e. Possible alternative methods of presenting the decision to Councillors which may have allowed committee to take account of any concerns and potentially even chose another bidder.
- f. The subsequent management of the delivery of the tendered contact, including ongoing risk analysis, internal escalation, management of missed deadlines and financial exposures. This should include itemised dates of information being reported to any Councillors. This information should include but not limited to when information was briefed relating to the financial risk and when information was briefed in relation to missed deadlines and failure to deliver aspects of the contract.

8) Request an audit of procurement service is added to the audit plan for 2023/24.

3.2 A report (B Agenda) to the Finance and Resources Committee on 10 October 2022 on Edinburgh's Christmas has also been referred to this Committee for noting.

## 4. Main report

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### Award of Contracts for Winter Festivals

4.1 On [16 June 2022](#), Finance and Resources Committee agreed the award of contracts for Edinburgh's Winter Festivals.

4.2 This report focuses on the award of a contract for Edinburgh's Christmas (Lot 1) to Angels Event Experience Limited (AEEL). The contract was awarded on the basis of commencement on 11 July 2022 for an initial period of three years, with the option of two further extensions of 12 months each.

4.3 The main elements of the bid received from AEEL included income of £5.5m (£938,000 in year one) to the Council over a period of five years and the following core elements:

- Markets in East Princes Street Gardens (not lower lawn), West Princes Street Gardens, Mound Precinct;
- Funfair on East Market Street;
- High Street Scottish Makers Market;
- Castle Street 3rd Sector/Voluntary stalls;
- Ice rink on George Street;

- Spiegeltent in Grassmarket;
- Circus Tent in Festival Square; and
- Munich tent on George Street.

4.4 On 22 September 2022, AEEL advised the Council that they were not able to fulfil the contract and on 26 September 2022 they advised that they wanted the Council to release them from the contract for Edinburgh's Christmas. The contract was subsequently terminated by the Council (following the meeting of Finance and Resources Committee) on 10 October 2022.

## **Procurement Approach**

### **Due Diligence**

- 4.5 The intended approach to due diligence on the financial elements of each tender was published in the [Tender documentation](#).
- 4.6 The evaluation criteria to be applied to the economic and financial standing of the tendering organisations was agreed with the Council's Finance team (as is standard practice). The criteria included:
- 4.6.1 Current ratio (current assets divided by current liabilities, highlighting an ability to address short term obligations), where a ratio of not less than 1.10 was required;
  - 4.6.2 Minimum annual turnover. As income levels were variable, this assessment was aligned to the proposed income value and an assessment made on the financial health of the organisation; and finally
  - 4.6.3 The requirement to have minimum insurance requirements of £5m Employers Liability, £10m Public Liability and £5m All risk insurance.
- 4.7 On all three indicators, the assessment concluded that AEEL met the evaluation requirements.
- 4.8 The pricing schedule required the tenderers to set an annual offer in relation to each of the core sites available for the event. The pricing schedule also required tenderers to separately confirm the number of days on site (for which minimum day fees were set by the Council) would apply, alongside details of the reinstatement bonds to be paid annually.
- 4.9 There were five tenders received, of which two were discounted due to minimum standards not being met.
- 4.10 The price offered by AEEL was significantly higher than the others, and so advice from Legal services was sought on the options available to the Council to provide further assurance that the 'higher' offer was robust, without breaching the principle of equal treatment.
- 4.11 In line with the advice received, a clarification email was issued to the Tenderer and the response confirmed the price offered was correct.

## **Compliance with Procurement Regulations**

- 4.12 The contract was published as a 'lot', within a single contract notice which included a service contract for Edinburgh's Hogmanay (Lot 2) and a concession contract for Edinburgh's Christmas (Lot 1). As such, this was considered a 'mixed' procurement.
- 4.13 The combined offer to the supply market was made under the Public Contracts (Scotland) Regulations 2015.
- 4.14 The Regulations provide a choice of procedures:
- Open;
  - Restricted;
  - Competitive procedure with negotiation;
  - Negotiated procedure without prior publication (this can only be used in specific situations);
  - Competitive dialogue; and
  - Innovation partnership.
- 4.15 Further information on these possible routes to market are outlined in Appendix 1.
- 4.16 Based on market research, risk assessments, lessons learned from previous tender exercises and the timescale to ensure that Edinburgh's Christmas 2022/23 would be delivered, the project team decided that an Open Procedure was the most appropriate route to market. This was agreed and signed-off following the development of a detailed Procurement Strategy, in line with Scottish Government procurement best practice guidance.

## **Alternative Approaches**

- 4.17 The report to Finance and Resources Committee in June 2022 presented a true reflection of the outcome of the Tender process, was accurate and provided standard contract award information.
- 4.18 The procurement procedure was followed as published, with most economically advantageous tender (MEAT) criteria to determine the result of the evaluation. The evaluation was completed applying the MEAT criteria (this had been set out in advance in the tender documentation).
- 4.19 The Finance and Resources Committee decision was limited to approval or rejection of the recommendation, not to replace the recommendation of a procurement evaluation panel with a different outcome. The Council does reserve the right not to award a contract, however there was no justification at the time of the report in June not to proceed.

## **Contract Management**

- 4.20 In line with the Council's approach to contract management, a first contract meeting was scheduled for 26 July 2022. The purpose of this meeting was to establish the Council's expectations in respect of contract delivery and to discuss:

- 4.20.1 The 'red lines' from the consultation feedback (e.g. reduced use of greenspace, economic accessibility, local trader involvement and city spread;
- 4.20.2 Key Performance Indicators (KPIs);
- 4.20.3 The need for clear communications and stakeholder engagement;
- 4.20.4 That some areas of the proposal were unlikely to be deliverable e.g. zip line on George Street;
- 4.20.5 Details of the event planning process in Edinburgh and the key officer contacts within the Council e.g. Public Safety, Planning, Licensing, Roads;
- 4.20.6 Payment dates for the Fixed Fee Rental Income; and
- 4.20.7 Next steps and meeting schedule.

4.21 Thereafter, weekly contract management meetings were set up, with a recurring agenda which included:

- 4.21.1 Progress update;
- 4.21.2 Key issues and concerns (risks);
- 4.21.3 Finance update;
- 4.21.4 Permissions;
- 4.21.5 Stakeholder and community engagement;
- 4.21.6 Marketing and PR - announcements;
- 4.21.7 Ticket Sales; and
- 4.21.8 KPIs.

4.22 As summarised in the table below and in the report to Finance and Resources Committee, in the weeks to mid-September it became increasingly clear that the initially proposed programme would not be deliverable, and that information required (particularly programme and financial information) was not being provided.

4.23 Council officers continued to provide support, guidance and revised timelines (where deadlines were missed) for AEEL to work to in order to complete the various activities required to deliver Edinburgh's Christmas programme.

4.24 The following table provides a summary of the information requested from AEEL, the deadline for submission and the date the information was received:

<b>Information Required</b>	<b>Date Requested</b>	<b>Date Received</b>
Planning Application(s)	At Initial meeting on 26 July 2022; Timescales for deadlines set out on 19 August 2022; Continued requests until 20 September 2022.	Incomplete applications received on 20 September 2022

Licensing Application (s)	Initial meeting on 26 July 2022; Timescales set out on 19 August 2022.	Not received
Financial Information	Initial meeting on 26 July 2022. Requested weekly thereafter.	20 September 2022
Programme Information	Initial meeting on 26 July 2022. Requested weekly thereafter.	20 September 2022

### **Escalation of Contract Issues**

- 4.25 The timeline for AEEL’s request to be released from the contract for Edinburgh’s Christmas is set out in paragraph 4.4.
- 4.26 Following a meeting with AEEL on 21 September 2022 at which they confirmed that the programme and anticipated income would be significantly reduced, a formal escalation of the issues was made to Senior Officers, and as noted below, also to Elected Members.
- 4.27 On 22 September 2022, a briefing for the Council Leader and Conveners of Culture and Communities and Finance and Resources Committee was held to outline the implications of AEEL’s confirmation that the programme and anticipated income would be reduced.
- 4.28 On 3 October 2022, an All Party Oversight Group (APOG) took place. Elected Members were updated that AEEL had requested to withdraw from the contract.
- 4.29 At the APOG, officers also confirmed that Unique-Assembly had submitted a proposal to deliver Edinburgh’s Christmas for 2022/23.
- 4.30 On 10 October 2022, Finance and Resources Committee considered a report on the termination of the contract with AEEL and the award of the contract to Unique-Assembly (as set out in the report to this Committee (B Agenda).

## **5. Next Steps**

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- 5.1 The actions agreed by Finance and Resources Committee on 10 October 2022 are included in the referral report being considered on today’s agenda (B Agenda). The actions are summarised below.
- 5.2 The Festivals and Events APOG is now meeting fortnightly to discuss both Edinburgh’s Christmas and Edinburgh’s Hogmanay.
- 5.3 Further reports on Edinburgh’s Christmas will be presented, including:
- 5.3.1 Referral of the report from Finance and Resources Committee on 10 October 2022 to Culture and Communities Committee on 13 December 2022;

- 5.3.2 Report to Finance and Resources Committee in early 2023 on the procurement process for events, including lessons learned from this contract award;
  - 5.3.3 Report to Culture and Communities Committee on the outcome of the 2022/23 event, with a referral to Finance and Resources Committee, if appropriate, to seek approval to proceed with the second year of the contract agreed on 10 October 2022; and
  - 5.3.4 Report to Culture and Communities Committee on the options for delivery of the Christmas market by 23 May 2023.
- 5.4 In due course, a report will be presented to Finance and Resources Committee on the proposed arrangements for Edinburgh's Christmas in future. This will be informed by the lessons learned from this contract award.

## **6. Financial impact**

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- 6.1 The financial information associated with this contract is provided in the report referred from Finance and Resources Committee on 10 October 2022 (B Agenda).
- 6.2 The procurement arrangements relating to the contract with AEEL are summarised above.
- 6.3 Finance colleagues were consulted further on the robustness of the evaluation and confirmed that the financial assessment met the legal requirements of the procurement legislation.

## **7. Stakeholder/Community Impact**

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- 7.1 In 2021, an extensive public consultation exercise on the future of the city's Winter Festivals was undertaken following concerns over the size, scale and location of some of the events. The results of the consultation were reported to Policy and Sustainability Committee on [30 November 2021](#).
- 7.2 The findings of the consultation on the future of the Winter Festivals highlighted several key principles.
- 7.3 The responses to this consultation provided clear guidelines and principles of how the Winter Festivals should look and be delivered going forward.

## **8. Background reading/external references**

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- 8.1 Edinburgh's Christmas Report – Governance, Risk and Best Value Committee, 22 November 2022 (B Agenda).

## **9. Appendices**

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- 9.1 Appendix 1 – Possible Routes to Market.

## Appendix 1 – Possible Routes to Market

### Glossary of Terms:

**Single Procurement Document (SPD) Scotland** - Standard questionnaire produced by Scottish Government for Contracting Authorities to identify suitably qualified and experienced bidders. It contains questions on both exclusion and selection criteria. The SPD is a self-declaration form and suppliers do not need to provide any evidence upfront unless there are clear reasons for doing so.

**Invitation to Tender (ITT)** – Suite of documents inviting potential suppliers to quote for business. Also known as a bid pack. Includes specification and selection questions pertaining to both the Quality and Pricing aspects of the requirement.

Procedure	Description	Advantages	Disadvantages
Open – Single stage process	Bidders invited to single stage comprising both SPD & ITT stages. Bidders are still assessed on agreed selection criteria (SPD & ITT) but not as discreet stages.	Quickest route to market due to no separate selection stage.  Used when market research has identified a low volume of potential bidders.	If volumes of bids are unexpectedly large, then evaluation stage can be onerous and time consuming.  No negotiation permitted (only clarification of bids).
Restricted – Two stage process with set timescales for each stage	Bidders are shortlisted with set selection criteria using SPD selection step before then being invited to a further ITT stage.	Only bidders who have successfully passed the SPD stage are invited to ITT stage. This reduces the resource for both bidders and evaluators (due to only successful bids being evaluated).  Used when market research has identified a large volume of potential bidders.	Having an evaluation between SPD and ITT stages makes the procurement process significantly longer.  No negotiation permitted (only clarification of bids). Onerous for bidders and not recommended where a limited number of capable suppliers have been identified.
Competitive Procedure with Negotiation	Allows clarification of bids with bidders after their submission of fully formed initial tenders. Bidders are still assessed on SPD selection criteria. ITT criteria is not fully formed.	Used when buyer is unable to a specification and/or technical requirements and/or unable to specify the legal or financial requirements of a tender.	Having a multiple negotiated stages and a number of formal meetings during the ITT evaluation stage makes the procurement process significantly longer. There are

			also risks around proposed scope and budget for requirements.
Competitive Dialogue	Allows bidders to submit initial solutions after being successful at initial SPD selection stage.	Allows tenderers to submit initial solutions after being successful at the selection stage. Proposed solution can then be negotiated.  Encourages bidders to discuss possible solutions where no specification is available.	Having a stage for proposal of initial solutions (as opposed to an ITT evaluation stage) makes the procurement process significantly longer.  There are also risks around proposed scope and budget for requirements
Negotiated Procedure without Prior Publication	Only used in very exceptional circumstances such as emergencies and where there are no bids for a tender.	Allows for emergency solutions and award of contracts where there are limited options for a competitive process and the circumstances are not of the organisations making.	Significant legal, financial, and reputational risks. Needs to be fully justified.
Innovation Partnership	Only used where there is a need for the development of an innovative product or service and the subsequent purchase of these cannot be met by solutions already available on the market.	Enables solutions to an existing problem i.e. organisations not being able to purchase directly from the developer without further competition. This was because the original research and development contract was awarded without competition.	Significant legal, financial, and reputational risks. Needs to be fully justified.