

POLICY REVIEW AND DEVELOPMENT PANEL REPORT

REPORT TO:	Corporate Performance Panel		
DATE:	27 th November 2024		
TITLE:	Report of the Taxi Testing Informal Working Group		
TYPE OF REPORT:	Informal Working Group Report		
PORTFOLIO(S):	Councillor Moriarty – Planning and Licensing		
REPORT AUTHOR:	Oliver Judges – Executive Director		
OPEN/EXEMPT	Open	WILL BE SUBJECT TO A FUTURE CABINET REPORT:	No

REPORT SUMMARY/COVER

PURPOSE OF REPORT/SUMMARY:
<p>This report presents recommendations from the Taxi Testing Informal Working Group for the Panel to consider.</p>
KEY ISSUES:
<p>At the Corporate Performance Panel meeting on 4th January 2024, the Panel agreed to establish an Informal Working Group. The Terms of Reference of the Group were agreed at the Corporate Performance Panel meeting on 26th February 2024.</p> <p>The Group were tasked with reviewing the performance of the procurement service with regards to its decision in the appointment procedure for the 2021 Taxi Testing Contract, and identified any lessons learned from the process, which could be considered during the process for the letting of the next taxi testing contract</p> <p>The recommendations from the Informal Working Group, to the extent agreed by the Panel, will need to be onwards recommended to Cabinet as Procurement forms part of Cabinet's executive functions.</p>
RECOMMENDATIONS:
<p>1. The Informal Working Group make the following recommendations to the Corporate Performance Panel ("CPP") for onwards recommendation to Cabinet in terms of preparation for the next taxi testing contract:</p> <ol style="list-style-type: none"> a. The new tender to be advertised on Delta E-Sourcing and Find-A-Tender, and the Council's own website. Any contractor wishing to apply shall be advised to register on Delta. Direct invitations from the Delta tender box shall not be sent. b. All correspondence after the competition is opened to be sent through the Delta portal. All enquiries received outside the portal are to be redirected through Delta. c. To consider and discuss with the legal team, including in the Contract Standing Orders, the ability to invite bidders to tender. d. In line with the new Procurement Act 2023 for under threshold procurements, checks would be put in place to ensure that businesses were bona fide businesses. Financial information could be requested, but businesses showing a loss in accounts would not be excluded from then being awarded a contract. The reason for requiring financial information was purely to evidence that the business was legitimate. e. Questions and criteria to be included in the tender process would need to be agreed with officers, in consultation with the Portfolio Holder for Planning and Licensing. f. It would not be left to the discretion of one officer if additional stations were brought forward to become testing stations after the initial contract was awarded.

Consultation with the Portfolio Holder for Planning and Licensing would be required.

Whilst not strictly falling within the terms of reference of the IWG, this additional recommendation was made for CPP's consideration:

- g. Should an external review of Council processes be required, it should be instructed in writing by an officer independent of the originating matter and not involved in any previous internal review.

2. The Taxi Testing Informal Working Group has now concluded its work and is disbanded.

REASONS FOR RECOMMENDATIONS:

To ensure that lessons learned from the 2021 taxi testing contract process are considered during the process for the letting of the 2024 contract.

REPORT DETAIL

1. Introduction

The Taxi Testing Informal Working Group was set up by the Corporate Performance Panel at their meeting on 4th January 2024, with the following Terms of Reference.

- 1. To review the performance of the procurement service with regards to its decisions in the appointment procedure for the 2021 Taxi Testing Contract, and identify any lessons learned from the process, which can be considered during the process for the letting of the 2024 taxi testing contract.*
- 2. The Informal Working Group to report back on their findings to Corporate Performance Panel in (May/July?) 2024.*
- 3. The report on findings and any discussions held at Corporate Performance Panel in (May/July?) to be fed into the Environment and Community Panel for consideration when the contract is next appointed. NB. The report must be completed in time to feed into the E&C meeting before the next taxi licencing contract is progressed.*
- 4. The Informal Working Group to comprise of (5?) members and will be supported by (Oliver Judges, Executive Director?).*
- 5. The Informal Working Group to elect a Chair and Vice Chair at its first meeting.*
- 6. The Informal Working Group can meet in person or remotely.*
- 7. The Informal Working Group may draw input from a range of Members as required.*
- 8. The Informal Working Group will be provided with any and all such documents as is reasonably needs with it requires to support its work.*
- 9. The Informal Working Group will cease once the review has been completed and the groups findings have been reported to Corporate Performance Panel.*

The Group met on three occasions:

5th September 2024 – Briefing Session where officers outlined the Council’s position, policies, Contract Standing Orders and the process followed for the 2021 Review.

10th October 2024 – Evidence Session – evidence provided from Members on what they felt was not being adhered to during the 2021 review.

16th October 2024 – Meeting to formulate recommendations to be presented back to the Corporate Performance Panel.

The Agenda and Minutes from the Informal Working Group meetings are available for Members to view on Mod.Gov.

2. Proposal

In considering the information presented by Officers and the evidence presented by Members, the Informal Working Group propose the following recommendations to be considered by the Corporate Performance Panel and onward consideration by the Environment and Community Panel when considering the Contract.

- a. The new tender to be advertised on Delta E-Sourcing and Find-A-Tender, and the Council’s own website. Any contractor wishing to apply shall be advised to register on Delta. Direct invitations from the Delta tender box shall not be sent.

The Group felt that this was a fairer approach than formally inviting businesses to tender and it also provided an Audit Trail.

- b. All correspondence after the competition is opened to be sent through the Delta portal. All enquiries received outside the portal are to be redirected through Delta.

Again this recommendation is put forward by the Panel to ensure that an Audit Trail is maintained.

- c. To consider and discuss with the legal team, including in the Contract Standing Orders, the ability to invite bidders to tender.

This recommendation relates to recommendation a. and deals with ensuring that no businesses are given an unfair advantage by being informed of the tender exercise.

- d. In line with the new Procurement Act 2023 for under threshold procurements, checks would be put in place to ensure that businesses were bona fide businesses. Financial information could be requested, but businesses showing a loss in accounts would not be excluded from then being awarded a contract. The reason for requiring financial information was purely to evidence that the business was legitimate, and aligns with the new Act’s requirement for purchasing authorities to have regard to barriers to SMEs and do what they can to remove these barriers.

- e. Questions and criteria to be included in the tender process would need to be agreed with Licencing officers, in liaison with the Portfolio Holder for Planning and Licencing.

- f. It would not be left to the discretion of one officer if additional stations were brought forward to become testing stations after the initial contract was awarded. Liaison with the Portfolio Holder for Planning and Licencing would be required.

It was noted by the Group that additional stations had been added and removed during the contract. The Group felt that to ensure transparency and fairness, liaison with the relevant Portfolio Holder was required before any mid contract award processes were carried out.

Although outside the scope of the Group's Terms of Reference, the Group would like the Panel to consider the below as included in their recommendations:

- g. Should an Independent Review of processes be required, it should be instructed in writing by an officer independent of the tender and not involved in any previous internal review.

Evidence was provided by a Member of the Group relating to an Independent Review of the process. The Group felt that to ensure transparency, all correspondence instructing a review should be made in writing so that there was an Audit Trail and should be made by a separate officer to the one who had conducted any Internal Review.

3. Issues for the Panel to Consider

The Panel are requested to refer to the notes of the Informal Working Group, available on Mod.Gov for full detail of the discussions held.

4. Corporate Priorities

The recommendations from the Group contribute towards providing the efficient and effective delivery of our services that meet the needs of the local community

5. Financial Implications

None.

6. Any other Implications/Risks

Delay in awarding the next contract.

Further legal advice has been sought in relation to whether the taxi testing contract is a services contract or concession contract, and the position remains the same under the new Procurement Act 2023 that this contract has elements that would be deemed a concession contract and elements that would exclude it from being a concession contract, and that ultimately this question could only be answered by a Court.

Irrespective of the grey area around the technical definition of the contract, the underlying legal position is that the contract is a below statutory threshold contract and therefore the technical definition makes absolutely no practical difference to how the Council can choose to award the contract.

Accordingly, when the contract is next tendered, a review will take place on the terminology used for the contract that serves to be accessible and user friendly, rather than focused on legal terminology that makes no practical difference to the Council's process.

7. Equal Opportunity Considerations

None.

8. Environmental Considerations

None.

9. Consultation

Members of the Taxi Testing Informal Working Group
Portfolio Holder for Planning and Licensing.

10. Background Papers

Agendas and Minutes from the Taxi Testing Informal Working Group