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Sent to: GRBV Committee

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**AGENDA ITEM 8.13 - Award of Contract for Edinburgh's Winter Festivals
CT2978 - EDINBURGH WINTER FESTIVAL TENDER**

Dear Councillors,

These notes list our concerns regarding irregularities arising from the tender process for opportunity CT2978 Edinburgh Winter Festivals. Specifically in relation to concerns we have regarding the probity, transparency and fairness of the process, and possible issues of bias, conflict of interest, loss of control of sensitive tender submission information by City of Edinburgh Council Officers, and partial information being presented to councillors to support the appointment of the preferred bidder.

For context, GC Live is a Scottish events sector business, that plans and delivers major public festivals and events around the UK from London to the north of Scotland. We have 20 years of experience in drafting and submitting event sector tenders of varying scale and complexity, with values ranging from a few thousand to many millions of pounds. The GC Live team are very familiar with the process and laws of tendering, and the rules that govern the tender process and sensitive tender information, to protect both the client and the bidders.

We have been resistant to bringing these concerns forward in this manner before now because we had anticipated that the process was to be fair and open to all as it had been presented to us by Council Officers, and because we have expected due process to have taken place, especially in light of the concerns raised previously by others about this tender process in previous years.

<https://news.stv.tv/east-central/edinburgh-christmas-market-deal-exposed-significant-issues-in-council-contract-awards>

However, having observed the F&R Committee meeting 1st May 2024 on the subject, and having read the standstill letter from Council Officers, I am concerned that this was not an open opportunity and the information being presented to councillors by Council Officers is incomplete.

I have focussed these concerns on the following sections, for ease of presentation and reference, as follows;

- 1. FINANCIAL ASSESSMENT CRITERIA**
- 2. BIAS TOWARDS THE PREFERRED BIDDER**
- 3. OUR STAGE 2 TENDER DOCUMENT**
- 4. CONCLUDING STATEMENT & RECOMMENDATIONS**

1. FINANCIAL ASSESSMENT CRITERIA

Simple Pass / Fail Criteria

Stage 1 of the 4-stage tender process included pass/fail financial assessment criteria, such as minimum turnover and a minimum required ratio of 1.2 (assets / liabilities. Simply put; what you have needs to be 1.2 x what you owe). This was noted at the F&R Committee meeting on 30th April 2024 by Council Officers to councillors in response to a question on the process and assessment criteria for bidders. What Council Officers didn't say in that moment was what the results of this process and assessment criteria were. They simply stated that there was a process.

The preferred bidder, Unique Assembly Ltd, appears to have been set up by Unique Events Ltd and Assembly Festival Ltd at appointment of contract as a Special Purpose Vehicle (SPV) to deliver this contract. This means that this company will likely only trade once a year at Christmas time. This is relevant because if the preferred bidder only trades at a certain time in the year, the financial information from the year prior would apply at the time of the original assessment timeframe (Stage 1 of the process).

From our own review of publicly available information for the two bidders that completed the full 4-stage tender process, and using the Council's own assessment criteria published within Table 1 and 2 of Appendix 2 of the Tender Specification documents, we are querying how it is possible from our own assessments that the preferred bidder managed to pass Stage 1 of the process at the time of the Stage 1 assessment.

- Is it possible that Council Officers changed the process and financial assessment until after January 2024 to allow the preferred bidder to trade another year in order to better their business performance and pass the assessment criteria?

Changing What is Assessed & When

Normally on a multi-stage tender, we would expect a detailed financial check to be carried out at Stage 1, to prevent a bidder who does not pass the financial criteria checks from proceeding to later stages, resulting in them wasting considerable time and money creating a full and detailed submission that cannot be assessed.

- What information did each bidder put forward at Stage 1 that enabled Council Officers to progress each bidder to Stage 2? The only numbers the preferred bidder, or any bidder, put in at that time was the numbers from YE23 accounts.
- Did the information put forward by each company exceed the minimum pass/fail criteria stipulated by the tender process? If not, which bidders did not meet the criteria?
- Were any bidders at Stage 1 excluded from Stage 2 because they failed the Stage 1 pass / fail criteria?

The reason this question is important is because we believe one bidder was excluded from the process at this stage for not meeting the criteria, however we believe the preferred bidder also did not pass the criteria but was allowed to continue in the process.

- Did Council Officers loosen the assessment criteria at any stage of the process to enable any of the bidders to continue in the process that would have otherwise have failed the criteria?

If it is true that assessment criteria (at any stage) was in fact loosened, that would be considered a material change to the tendering process. In this case;

- Why was this change not communicated to the bidders?

Would Others Have Submitted Bids?

We understand that 5 bidders were invited to submit for stage 2, but only 2 bidders submitted.

- With only 2 bidders submitting Stage 2, would the loosening of assessment criteria by Council Officers have resulted in more bidders going for the opportunity, who might have previously excluded themselves due to the published assessment criteria?
- Did the preferred bidder, who is also the incumbent company, benefit from the loosening of the assessment criteria by Council Officers?

Changing & Not Telling

At the F&R committee meeting, Council Officers stated that when it came to assessments, they decided not to “look back”, but rather “look forward” in terms of the information they wanted to assess. What we presume the Council Officers meant by that statement is that they changed the assessment rules and assessed current financial information rather than completed year end information that has been verified as correct and submitted to Companies House.

This is another change in the assessment criteria and process. If this change in the assessment criteria and process had been communicated to the tendering companies, this information could have been prepared for submission by other bidders.

- Why was this change made and why was this change not communicated to the bidders?
- Did the preferred bidder, who is also the incumbent company, benefit from this change in assessment criteria by Council Officers?

According to Council Officers at the F&R Committee meeting, Council Officers checked the following criteria as part of their due diligence and financial checks of the preferred bidder:

- Cash in bank
- Credit rating
- Balance sheet
- Assets / Debtors ratio

The Numbers

According to the tender rules set out at Stage 1 by City of Edinburgh Council, recent year and also year prior accounting information should have been presented for assessment. This means Year End 2022 and Year End 2023, not draft Year End 2024.

To assist Councillors with this point, using publicly available information on the preferred bidder and ownership structure at the time of Stage 1, Unique Assembly Ltd had the following stats in relation to these exact checks Council Officers declared at the F&R meeting:

- Cash in bank: Preferred Bidder: £52,645 V's GC Live: £342,505
- Credit rating: 14 (Assessed to be Maximum Risk by Experian) V's GC Live: 88 (low risk)
- Balance Sheet:
 - Current Assets (i.e. what they have): £220,285 V's GC Live: £346,010
 - Current Liabilities (i.e. what they owe): £727,807 V's GC Live: £5,863
 - Balance sheet net worth: negative (£507,522) V's GC Live: £442,316
 - Working Capital: negative (£507,522) V's GC Live: £340,147
- Current Assets / Current Liabilities ratio: 0.3 (min pass/fail requirement of 1.2) V's GC Live: 59.6

These stats, if assessed at Stage 1 (November 2023), would have resulted in the preferred bidder failing the process. From the numbers we are able to access, it looks as though they owe over £700,000, and have a negative working capital of more than £500,000. They also have an asset / debtors ratio of 0.3 against pass / fail criteria minimum of 1.2.

Unique Assembly Ltd is owned by All In Hand Events Ltd and Assembly Wings Ltd, not Unique Events Ltd and Assembly Festival Ltd. The same stats for the two companies that own Unique Assembly Ltd at the same time period were as follows:

All In Hand Events Ltd:

- Cash in bank: £0 (zero)
- Credit rating: 0 (not scored)
- Balance sheet:
 - Assets (i.e. what they have): £2
 - Liabilities (i.e. what they owe): 248,307
 - Balance sheet net worth: £2
 - Working Capital: -£248,305
- Current Assets / Current Liabilities ratio: 0 (min pass/fail requirement of 1.2)

Assembly Wings Ltd:

- Cash in bank: £476
- Credit rating: 15 (Assessed to be within Maximum Risk band by Experian)
- Balance sheet:
 - Assets (i.e. what they have): £576
 - Liabilities (i.e. what they owe): £1,921
 - Balance sheet net worth: -£1,241
- Current Assets / Current Liabilities ratio: 0.18 (min pass/fail requirement of 1.2)

Unclear Statement To Councillors

Whilst Council Officers were correct to state that they did additional checks, what Council Officers didn't make clear to Councillors at the F&R Committee Meeting is that Council Officers assessed different information to that stated within the tender documents, nor that the assessments were delayed and carried out specifically at a time when the preferred bidder had just traded another peak season.

At the F&R Committee meeting Council Officers alluded to this by stating that they had used 'up to date' information. Our understanding of that statement is that Council Officers were justifying **assessing different information to that stated in the tender documentation and at a time to suit the preferred bidder's status**. Councillors would not have known that this was a change to the assessment criteria.

By delaying the official financial assessment and adjusting the criteria to include draft financial information for Year End 2024 instead of Year End 2023 and Year End 2022 at the time of Stage 1, these changes by Council Officers to the process appear to have enabled the preferred bidder to continue in the process when we believe that they should have been eliminated using the Councils own assessment criteria (as illustrated above) because from our own assessment, the preferred bidder did not meet the minimum pass / fail criteria at the time, nor did the other companies in the preferred bidders ownership structure.

2. BIAS TOWARDS THE PREFERRED BIDDER

We consider the City of Edinburgh Council and its officers to have a bias towards the preferred bidder, Unique Assembly Ltd. Our reasoning for this opinion is as follows:

Circumstances Surrounding The Appointment of Unique Assembly Ltd in 2022

We believe the bias started when the City of Edinburgh Council allowed the appointment of the emergency Christmas contract in 2022 to Unique Assembly Ltd. Unique Assembly Ltd only formed on 2nd August 2022, and therefore did not exist prior to that point. Because it did not exist, it therefore had not gone through the tender process or any financial checks by Council Officers.

It is apparent from the information publicly available on Companies House that Assembly Festival Ltd was originally set up with Unique Events Ltd and Assembly Festival Ltd as the shareholders, thus making Unique Assembly Ltd a Special Purpose Vehicle (SPV) for the delivery of the contract. We presume that City of Edinburgh Council then contracted with Assembly Festival Ltd in the knowledge that Unique Events Ltd and Assembly Festival Ltd were shareholders / owners of the SPV, Unique Assembly Ltd.

- Under what contractual terms or tender rules were the City of Edinburgh Council able to appoint the contract to an SPV and not to Unique Events Ltd directly?

Change of Ownership Structure of Unique Assembly Ltd

The bias continues when Council Officers allowed Unique Events Ltd and Assembly Festival Ltd to change the ownership structure of the SPV, Unique Assembly Ltd, to different entities (All In Hand Events Ltd and Festival Wings Ltd). All In Hand Events Ltd appear not to have traded for a number of years and are showing a negative working capital of £248,305. Assembly Wings Ltd show a cash balance of £476 and debtors of £1,921.

- Is this change of structure an attempt to remove liability from Unique Events Ltd and Assembly Festival Ltd?
- Were the F&R committee made aware of these important changes to the structure of the SPV, Unique Assembly Ltd, at the time the change was made?
- Are councillors aware of the implications of these changes given the financial position these companies were in?
- What assurances or guarantees did Council Officers seek to protect the City of Edinburgh Council as a result of this change?
- Did Unique Events Ltd and Assembly Festival Ltd seek permission from Councillors for this change prior to the change being made?
- Have Councillors asked Unique Events Ltd and Assembly Festival Ltd why they changed the shareholding and liability structure of Unique Assembly Ltd, and not declare it for 12 months?
- If Council Officers knew about this significant structure and liability change, were Councillors informed and given opportunity to agree this change?
- If Council Officers did not know about this significant structure and liability change, was this change permissible under the contract?

Council Officers Under Investigation

We believe bias continued when City of Edinburgh Council allowed Council Officers who are apparently being investigated to continue their involvement in the process. We are aware that on the 15th November 2023, concerns were raised about a potential conflict of interest involving senior officers in connection with an ongoing investigation around Edinburgh Christmas by Pinsent Mason. We understand these concerns were raised directly with Pinsent Mason.

Typically, such a situation where a clear conflict of interest exists would necessitate the involved parties to recuse themselves from the process to maintain the probity and integrity of the process.

In response, we understand that Alistair Wood of Pinsent Mason acknowledged in an email on 27/11/2023, that he had forwarded the concerns to the relevant persons within the Council. Critically, this investigation was ongoing through the current tender process.

- Who did Pinsent Mason forward these concerns to within City of Edinburgh Council?
- Who decided to allow officers under investigation to continue participating in the process?

This matter is particularly pertinent since the party that lodged the complaint forms part of a consortium team within the tender process. This raises significant questions about the probity, fairness and transparency of the process, with the officers still involved.

Whistle Blowing & Appointment

We are aware that Council Officers involved in the recent tender assessment process are part of an ongoing whistle blowing investigation for not performing correct due diligence, or the necessary checks and balances, prior to the appointment of the preferred bidder in 2022 through to 2024.

- Do councillors consider it appropriate that Council Officers who were under investigation for issues relating to the appointment of the preferred bidder for the Edinburgh Winter Festival tender under these conditions, were able to continue their involvement and lead the current tender assessment process, resulting in the recommendation of the same bidder being awarded the contract again?

Complaints On The B-Agenda

We are aware that there are complaints about Edinburgh Christmas on the GRBV Committee's B-Agenda. The B-Agenda is private and not visible to the public. We consider this to be highly significant because this is a public procurement exercise.

- Should complaints in relation to Edinburgh Christmas 2022 through to 2024 not have been heard and the complaints process completed prior to decisions being made about appointment of the preferred bidder to subsequent contracts?
- Could these complaints bear relevance to the decisions being made by councillors during committee?
- If there is no bias, why are there complaints about Edinburgh's Christmas delivered by the preferred bidder on the B-Agenda?

Financial Assessment Criteria

The financial assessment criteria set out in Tables 1 and 2 of Appendix 2 of the tender specification clearly states the assessment of financials will be based on the last 2 years of accounting. Typically, and under normal assessment conditions, that would mean the last 2 completed years of accounting. In this case, that is Year End 2022 and Year End 2023.

Under the assessment criteria, Unique Assembly Ltd in 2022 was a new company and therefore had zero trading, assets or cash. In 2023 according to information on Companies House, Unique Assembly Ltd was showing a significant loss. Additionally, given the structure change of Unique Assembly Ltd from Unique Events Ltd and Assembly Festival Ltd to All In Hand Events Ltd and Assembly Wings Ltd, Unique Assembly Ltd would have failed the assessment criteria.

- Was the preferred bidder only assessed on their current year (Year End 2024) draft trading information? We were not advised that this was now the assessment criteria. Council Officers confirmed to us on the tender platform that the assessment criteria was Year End 2022 and Year End 2023.

Loosening of Criteria

We believe bias continued when the pass/fail financial assessment, which is normally at the beginning of a multi-stage tender process, moved to the end of the process and included draft 2024 management accounting information to suit the preferred bidder.

- If there is no bias, why did Council Officers loosen the financial assessment criteria and move the financial assessment from Stage 1 to Stage 4, when clearly the preferred bidder should not have passed stage 1?
- If there is no bias, why was draft year-end 2024 accounting information asked for, instead of completed year-end 2022 and year-end 2023 accounting information as per the tender documentation and processes listed in Table 1 and 2 of Appendix 2?

Unfair Process By Negotiation

We believe bias continued when Council Officers claimed at the F&R Committee meeting Tuesday 20th April 2024 that the process was by negotiation. By the very nature of negotiation, it will be possible for a bidder to change their offering and proposal as a result of the negotiation process. The council only negotiated with one bidder, making the process unfair.

- Did the value of the offer proposed by the preferred bidder within the cell on Tab 8 titled "Total Contract Period and Extensions" on the commercial document change between Stage 2 and Stage 4 and as a result of negotiations that took place between Council Officers and the preferred bidder?
- If this was to be a fair process, why did Council Officers only negotiate with the preferred bidder and not both bidders at stage 4?
- Did the preferred bidder, who is also the incumbent company, benefit from being invited to negotiate their submission with Council Officers?

On 12th March 2024, after not hearing from Council Officers since our interview on 28th February 2024, we posed a question on the tender portal asking for a discussion / negotiation session around our commercial submission. Council Officers replied turning down the opportunity.

- If there was no bias, why was this request to meet and negotiate turned down, when Council Officers were already meeting and negotiating with the preferred bidder – and critically the preferred bidder was then able to amend their submission during those negotiations?

Premature Statement By The Council Leader

The Leader of the Council went out with a statement regarding the award of the contract to preferred bidder, just 33 minutes after the recommendation report was issued.

- Who crafted this communication for release?
- Were Council Officers involved?
- Who issued this communication to external media contacts?
- If there was no bias within City of Edinburgh Council towards the preferred bidder, why did the Council Leader not wait for the F&R Committee and Councillors to democratically vote on the recommendation before making his announcement?

Evidence of communications can be provided.

3. OUR STAGE 2 TENDER DOCUMENT

At our Stage 3 interview, we printed out 7 copies of our Stage 2 submission document. Our stage 2 submission document included our entire proposal, including draftings, creative concepts, schedules, operations and drawings. We handed these documents out at the interview and talked the panel through the document as part of our presentation.

The information within this document formed the entirety of our submission. It therefore, by its nature, included trade secrets, commercially sensitive information and details of our proposed Christmas and Hogmanay plans – which included a £1m lighting trail that was free to enter, a light tunnel down George Street (subject to sponsorship, which we think we had secured) and a Santa Train that connected each of our nodes as well as a free to attend Christmas fringe style event.

Our Submission Out With Council Control

We later learned that Council Officers had allowed our Stage 2 document to go home with panel members after the interview and ahead of the preferred bidders interview the following day.

Upon reading the recommendation report to the F&R committee on Wednesday 1st May 2024, we got in touch with Council Officers via the tender platform to request the return of our Stage 2 document. Council Officers originally replied stating that there were 2 copies within their possession, that the other 5 had been commercially shredded, and that they would return the two copies within their possession to us by post.

Upon a follow up message 5 days later after not receiving the documents, Council Officers replied on the platform saying that they were trying to retrieve one of the documents from an external party.

Doubt Cast Over Probity

This admission by Council Officers on the tender platform casts serious doubt over the security of our commercially sensitive information, and the probity of the process beyond this action, because our entire submission document and the information within was out with Council Officers control from Wednesday 28th February 2024.

Questions:

- How many copies of our tender document were allowed to leave Council Officers control during the course of the tender process?
- Is it possible that our stage two document was seen by others out with Council Officers assessing the submissions?
- Are Council Officers or Councillors able to answer that question with absolute certainty?
- When asked where our documents were, if Council Officers did not give us a complete answer at our first time of asking, what other questions presented by others to Council Officers have been responded to initially in a similar way?
- Was any critical information presented by the preferred bidder changed after the 28th February, and during the negotiation stage?
- Confidential shredding is commonly certified. Can Council Officers provide documentation to confirm the confidential destruction of the 5 copies?

Evidence of communications can be provided.

4. CONCLUDING STATEMENT

The proposed re-appointment of the incumbent under the circumstances, with the evidence presented and the legitimate questions that have been raised, forms our opinion that there is clear and obvious bias towards the preferred bidder. For the reasons given, we believe that this has not been the open opportunity that it should have been, and as it had been presented to us and to others by Council Officers.

We are concerned that Council Officers have loosened tender rules, changed tender processes without communication and altered assessment criteria, which has appeared to favour the incumbent by enabling their progression and assuring their appointment as preferred bidder.

We are also concerned that our Stage 2 tender document in its entirety was allowed to leave council control part way through the tender process. Perhaps what is more concerning is that Council Officers were less than candid with us about where our documents were in the first instance when we asked for our documents back.

This is not the first time that concerns have been raised around this procurement process. We are of the opinion that this process, and the way it has been conducted again, has not been in the best interests of the public, or the city of Edinburgh. We therefore ask councillors to reject the current Council Officers recommendation to re-appoint the incumbent and preferred bidder to the Edinburgh Winter Festival Contract for the full 3+1+1 term, either until such time as the issues we have raised with the tender process have been investigated, and the serious questions we have asked about the probity, transparency and authenticity of the process have been suitably answered, or councillors consider our suggested route forward below.

Only 2 bidders submitted on this occasion for what is a very prestigious project. The council are at risk of finding this becoming a non-competitive process. There are real concerns within the industry that this opportunity is perpetually a foregone conclusion. The reappointment of the incumbent under the circumstances and with serious questions again being asked around the process, only confirms this concern.

These questions we have raised are for Councillors to raise directly with Council Officers, so that Councillors can get answers to each question in order to be able to assess for themselves with the probity of this process, that there has not been any bias or irregularity, and the outcome is in the best interests of the public and the City of Edinburgh Councils reputation.

You will be aware that we have engaged legal counsel on this matter, and are poised to take legal action against the City of Edinburgh Council on the following points should Councillors vote the motion to appoint the preferred bidder to a 3+1+1 contract, given the seriousness of the concerns raised and the various forms of proof we have that substantiates these concerns.

- The loosening of assessment criteria and the timing of assessments to benefit the preferred bidder
- Bias via a number of means
- Allowing senior Council Officers in the process who were under investigation for matters relating to Edinburgh Christmas to continue in the process. A process which has resulted in the recommendation and re-appointment of the preferred bidder
- The release of our stage 2 tender document out with Council Officers control during the tender period

We appreciate the implications on Edinburgh's Christmas 2024 should councillors reject the recommendations to appoint the preferred bidder. It is reasonable to ask councillors to make their decision under current time constraints to accept or reject the recommendation by Council Officers given the serious implications for the City of Edinburgh Council either way.

Therefore, we propose to Councillors the following solution for consideration.

Appoint the preferred bidder for a single year and re-run the process for 2025+

We currently have legal counsel assessing each of these points in preparation of a legal challenge. Our interest is the city of Edinburgh, the people of Edinburgh and the businesses of Edinburgh. Therefore, it is not in our interest, or in the interest of the city, to ruin Christmas for 2024 and pursue a legal challenge, however we are prepared to do so if the preferred bidder is awarded the 3+1+1 contract under these circumstances.

On the basis that Councillors agree to what we are proposing below, we will forego this year's opportunity, drop this current legal challenge and accept the recommendation of Council Officers to appoint the preferred bidder, as follows:

1. Only 1 year is granted to the preferred bidder (no additions and no changes in any other terms)
2. The process is re-run properly with suitable safeguards and oversight in place
3. Council Officers, who are under investigation, are not involved in the process
4. All bidders are treated equally and fairly
5. Submissions are assessed entirely independently. This is to ensure absolute probity of process, and to ensure the community benefits that are required of this contract are achieved for the citizens of Edinburgh.
6. This approach has the added benefit of aligning the Christmas and the Hogmanay contracts, which are currently out of step.

This is about restoring good faith and reputation. Currently what business would now risk the time and expense of tendering for an Edinburgh Council opportunity?

I trust the concerns raised to councillors will be treated seriously, that the matters raised will be investigated and the necessary action will be taken in order to circumvent a time intensive and costly legal challenge, whilst also protecting the interests of the public, the probity of the process and to re-assure all that City of Edinburgh Council is committed to a fair and open process.

Without prejudice.



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