

SHEFFIELD TREE ACTION GROUPS

Press Release

11 July 2017

Sheffield City Council face serious questions about Amey's eligibility to win the £2.2bn 'Streets Ahead' contract.

Freedom of Information requests reveal that Amey withheld information about a criminal conviction for a workplace fatality, which could have disqualified them from bidding for the contract.

On Wednesday 5th July a petition was presented at the Full Council meeting by Richard Davis, an experienced Health and Safety Practitioner. The petition raised serious questions about Amey's bid for the 'Streets Ahead' contract and their transparency during the bid process. Should they have even been allowed to bid for the contract, much less win it? Substantive evidence has been unearthed which raises serious issues that need to be addressed by the Council and Amey immediately.

The Petitioners are seeking an immediate contract suspension until the Council clarify exactly what was (or wasn't) declared by Amey during the procurement process, or until the Council's external auditors, KPMG, have reported any findings via the Audit and Standards Committee.

Mr Davis said *"We want to see Sheffield's highway infrastructure improved - but if Amey have not been honest in their declarations, then questions have to be answered about the integrity of the company that is doing this work."*

"In an [article published in the Sheffield Telegraph](#) in February of this year, the Cabinet Member for Environment and Streetscene, Cllr Bryan Lodge, stated that he would be willing to renegotiate the 'Streets Ahead' contract. Now is the time for him to step up to the mark and do this. Likewise, Leader of Sheffield Council, Cllr Julie Dore, stated at the full Council meeting in January that she would be prepared to terminate the contract on health and safety grounds, the Public Contracts Regulations make provision for her to do this."

Mr Davis continued *"I really hope that Cllr Dore and Cllr Lodge have the leadership qualities and conviction to deliver on their promise to take health and safety seriously, otherwise it is a clear sign that we have weak and ineffectual politicians in charge of this city. This is not about unsafe working practices as Cllr Lodge likes to think: it is about an organisation with an unenviable safety record who withheld important and highly relevant information from their bid, and potentially provided false or misleading information too. Absolute transparency is required concerning this, hence our request for intervention by KPMG."*

In terms of re-negotiation of the 'Streets Ahead' contract (something Cllr Lodge has said he was prepared to do in an article published in The Sheffield Telegraph), the petitioners are seeking the continued improvement of Sheffield's highway infrastructure, but with a guarantee that residual healthy street trees remain in situ for the remainder of the contract, and that alternative engineering solutions funded within the contract are used to retain these trees.

The leader of the Council, Cllr. Dore, has stated at a previous Council meeting that she would be prepared to terminate the contract for breaches of health and safety. The Government's Crown Commercial Services department has been contacted about termination clauses: the response from a Senior Policy Advisor was that *the Public Contracts Regulations stipulate that a contract must make provision for termination if, at the time of award, the contractor had been in breach of the exclusion grounds (which she confirmed included breaches of health and safety law), and therefore shouldn't have been awarded the contract in the first place.*

Due to a lack of confidence in Council transparency, on the advice of the National Audit Office we have requested KPMG, the Council's external auditors, to look into this as part of the scope of their next audit which is due imminently. Although it is not related to the annual accounts, Tim Cutler, partner at KPMG, has confirmed in writing that he is prepared to consider this matter as part of his wider powers under the Local Audit and Accountability Act.

The main points of the petition on 5th July to Full Council were:

1. A request made under the Freedom of Information Act revealed that Amey did NOT inform SCC during the bidding process of a criminal conviction for a H&S offence arising from a workplace fatality (significantly, on a highways contract). This could be perceived as being a deliberate act by Amey in order to stay in contention to win the contract, especially so close to submission of their final tender.
2. Amey were required to inform SCC of point 1 above, as per the terms of the 'Bid Process Agreement' - the consequence being disqualification from the bidding process, but SCC clearly failed to enforce their own disqualification clause.
3. By virtue of Amey not informing SCC of their criminal conviction, there is a likelihood that they also withheld information, or provided false/misleading information in their 'Pre-Qualification Questionnaire' concerning the fatality and criminal legal proceedings pending against them at the time - this was a requirement of the Public Contracts Regulations which could have excluded Amey from even bidding for the contract in the first place.
4. A Senior Policy Advisor from the Government's Crown Commercial Services department has confirmed to me [Richard Davis] in writing that breaches of H&S law are grounds for exclusion from bidding for the contract, and the Public Contracts Regulations allow for termination of the contract if it should not have been awarded in the first place.
5. A Procurement Policy Note (also issued by the CCS) advises that a misrepresentation allows for the contracting authority to sue the contractor for damages and rescind the contract as per the Misrepresentation Act 1967.
6. Tim Cutler, partner at KPMG, has confirmed to me [Richard Davis] in writing that he is considering this matter as part of the next audit in accordance with his wider powers under the Local Audit and Accountability Act 2014.

Cllr Lodge was unable to respond to these points and he requested a follow-up email – one was sent on 5th July (the petition and follow up email are appended to this release). A reply was sent by the Head of Democratic Services on 7th July stating that Bryan Lodge would respond within 28 days. We anticipate a response before 4th August, although this is some days after the court hearing is due to finish. As of 5.00pm 10th July no response has been received.

END.

Notes to editor:

The Petition as presented to Council on 5th July 2017

[Richard Davis - H&S Practitioner with a background in contract management and internal audit].

My petition today is with regard to health and safety irregularities in the contracting process for the Streets Ahead project. As such, the Petitioners are seeking an immediate suspension to the contract and either its renegotiation or termination on the following grounds:

The first stage of the contracting process was Amey's completion of the Council's 'Pre-Qualification Questionnaire'.

In accordance with the Public Contracts Regulations 2006, Amey were asked if they had committed any 'act of grave misconduct', or if any criminal legal proceedings were either threatened or pending against them. H&S falls under criminal law.

As such, did Amey declare that they'd had a workplace fatality – significantly on a highways contract, and as a result had criminal legal proceedings pending against them for H&S offences?

If it was declared, it could mean that the Council didn't exercise due diligence in accordance with the Public Contracts Regulations, or worse still, possibly turned a blind eye to a serious criminal offence.

Irrespective of whether they declared this or not, Amey were required to sign and abide by the terms of the Council's 'Bid Process Agreement' which stated that the Council must be informed in writing of 'any change at any time' to the information submitted in their bid.

A request made under the Freedom of Information Act has revealed that Amey did NOT inform you of their subsequent conviction for the H&S offence - the Council stated that they were unable to locate or identify any information relating to this. As Amey failed to inform you of their criminal conviction, it is reasonable to suggest that they possibly didn't inform you of the fatality or prosecution on the original questionnaire either.

The Bid Process Agreement goes on to say [paraphrased]:

'the Authority reserves the right to disqualify the Bidder at any point during the process if it is found that the Bidder has not informed the Authority of a change to the information submitted in the Questionnaire, or if the Bidder has submitted false or misleading information in the Questionnaire...'

On that basis, why did the Council not enforce the terms of their own Bid Process Agreement by not disqualifying Amey from bidding for the contract?

Amey were convicted in December 2011, just three months before they were due to submit their final tender. Some people might take the view (not myself of course), that they deliberately withheld details of their criminal conviction in order to remain in contention to win the contract.

Finally...Following Cllr. Dore's comments at a previous Council meeting that she would be prepared to terminate the contract for breaches of H&S, I contacted the Government's Crown Commercial Services department to ask about termination clauses, and received this response from a Senior Policy Advisor:

'The Public Contracts Regulations stipulate that a contract must make provision for termination if, at the time of award, the contractor had been in breach of the exclusion grounds (which she confirmed included breaches of H&S law), and therefore shouldn't have been awarded the contract in the first place'

And according to a Procurement Policy Note, also issued by the Crown Commercial Services department:

'A serious misrepresentation which induces a contracting authority to enter into a contract may have the following consequences:

- the contracting authority may sue the supplier for damages; and
- may rescind the contract under the Misrepresentation Act 1967'

Due to a lack of confidence in Council transparency, on the advice of the National Audit Office we have requested KPMG, the Council's external auditors, to look into this as part of the scope of their next audit which is due imminently. Although it is not related to the annual accounts, Tim Cutler, partner at KPMG, has confirmed in writing that he is prepared to consider this matter as part of his wider powers under the Local Audit and Accountability Act.

The Petitioners therefore seek an immediate contract suspension until the Council clarify exactly what was (or wasn't) declared by Amey during the procurement process, or until KPMG have reported any findings via the Audit and Standards Committee.

In terms of re-negotiation of the contract (something Cllr Lodge has said he was prepared to do in an article published in The Sheffield Telegraph), we are seeking the continued improvement of Sheffield's highway infrastructure, but with a guarantee that all residual healthy street trees remain in situ for the remainder of the contract, and that alternative engineering solutions are used in all instances.

Alternatively, we are seeking contract termination on H&S grounds as per Cllr. Dore's comments at a previous Council meeting, either through the invoking of termination clauses as per the Public Contracts Regulations, or rescinding of the contract as per the Misrepresentation Act.

This is not a spurious petition nor is it based on conjecture, it is supported by substantive evidence. I am not accusing the Council or Amey of misconduct, but the tangible evidence in my possession supports that possibility - therefore the Council need to provide equally tangible evidence (not just words) to refute this.

Thank you for your time. That concludes my petition.

The follow-up email sent on 6th July 2017

Dear Bryan

Did Amey withhold information, or provide false/misleading information to Sheffield City Council in order to secure the £2.2bn Streets Ahead contract? Substantive evidence would point towards that being the case.

That was the crux of my petition yesterday which I feel you completely missed, by virtue of not addressing any of the points raised:

1. A request made under the Freedom of Information Act revealed that Amey did NOT inform SCC during the bidding process of a criminal conviction for a H&S offence arising from a workplace fatality (significantly, on a highways contract). This could be perceived as being a deliberate act by Amey in order to stay in contention to win the contract, especially so close to submission of their final tender.
2. Amey were required to inform SCC of point 1 above, as per the terms of the 'Bid Process Agreement' - the consequence being disqualification from the bidding process, but SCC clearly failed to enforce their own disqualification clause.
3. By virtue of Amey not informing you of their criminal conviction, there is a likelihood that they also withheld information, or provided false/misleading information in their 'Pre-Qualification Questionnaire' concerning the fatality and criminal legal proceedings pending against them at the time - this was a requirement of the Public Contracts Regulations which could have excluded Amey from even bidding for the contract in the first place.
4. A Senior Policy Advisor from the Government's Crown Commercial Services department has confirmed to me in writing that breaches of H&S law are grounds for exclusion from bidding for the contract, and the Public Contracts Regulations allow for termination of the contract if it should not have been awarded in the first place.
5. A Procurement Policy Note (also issued by the CCS) advises that a misrepresentation allows for the contracting authority to sue the contractor for damages and rescind the contract as per the Misrepresentation Act 1967.
6. Tim Cutler, partner at KPMG, has confirmed to me in writing that he is considering this matter as part of the next audit in accordance with his wider powers under the Local Audit and Accountability Act 2014.

A full transcript of my petition is attached.

Something else (which I deliberately omitted from my petition due to time constraints) was that Amey possibly used smoke and mirrors when bidding for the contract. The criminal conviction for the H&S fatality was recorded by the courts against Amey Infrastructure Service Ltd. According to papers submitted to Companies House, AIS changed their name not long after the fatality to...Amey LG, the principal subcontractor named in the bidding documents (confirmed by another FOI request). However, AIS were not dissolved as a legal entity, it was merely a cosmetic change of name. Amey Infrastructure Services and Amey

LG are effectively the same company. I consulted with my professional body (IOSH) who confirmed that due to AIS not being dissolved and Amey LG not being a 'new' company, the conviction was still likely to stand.

I get the impression that senior figures within the Council see this PFI contract as a proverbial albatross around their neck (in many different ways). If the Council want to renegotiate the contract or even 'get out' of it, this is probably your best shot at doing so, due to Amey having withheld information about their criminal conviction (as established by my FOI request), and the possibility that they also withheld or provided false/misleading information in their PQQ. However, according to a statement by SCC last week to a reporter from 'The Yorkshire Post' (he forwarded it on to me), Amey apparently provided you with all information required in the PQQ - which would therefore suggest that it is actually SCC at fault for not exercising due diligence in the procurement process. So did Amey inform you of the fatality and pending prosecution in the PQQ, or not?

Something else that I deliberately omitted from my petition yesterday (again, due to time constraints) is that there is no provision whatsoever in the Public Contracts Regulations 2006 for 'self cleaning', whereby a bidder can demonstrate that they have made the necessary changes and improvements to remain in the bidding process. Such a provision does exist within the 2015 regulations, but this was obviously not law at the time of contracting (2009 to 2012).

For clarification, the petition only attracted seven signatures by virtue of it being drafted so close to the date of the Council meeting and me wanting to make sure there were just enough signatures to 'get it over the line' to be heard. The number of signatures is not indicative of public opinion as the petition was not made available publicly.

In your response yesterday, you raised (yet again) that the HSE had not taken any enforcement action to date - although true, this was not what my petition was about. I also refute your response at the Council meeting that Amey have a 'better than average safety record'. Information in the public domain highlights:

- THREE convictions for workplace fatalities (x2 highways, x1 rail)
- a fourth fatality with a likely prosecution pending (waste/refuse)
- implicated in a fifth fatality (also a highways contract)
- two further convictions (one of which was on a highways contract for a serious, life threatening injury - amputation)
- three improvement notices issued by the HSE against nine breaches of H&S law
- four prohibition notices issued by the HSE against fifteen breaches of H&S law
- and finally, to date on the Streets Ahead contract, no less than 18 RIDDOR incidents reported to the HSE by Amey or their subcontractors (as determined by FOI requests)

Who can argue with those statistics?!

Yes, accidents do happen, but as a safety professional myself, I would be utterly ashamed of those figures.

I have cc'd Julie Dore into this email as I mentioned her yesterday in context of previous remarks by her that she would be prepared to terminate the contract on H&S grounds. I have also included John Mothersole as it was he who oversaw the Streets Ahead project from its inception and was also Chair of the Project Board.

I look forward to hearing from you in due course.

Kind regards
Richard Davis

An audio recording of the petition presentation and the Council's response in chamber can be found via this link:

https://drive.google.com/file/d/0B120-S7_9abJcHNKOGFwUE5oSG8/view?usp=sharing

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