

REPORT TITLE: ENVIRONMENTAL SERVICES CONTRACT – PROCUREMENT PROCESS

19 JUNE 2019

REPORT OF CABINET MEMBER: Cllr Lynda Murphy (Cabinet Member for Environment)

Contact Officer: Steve Tilbury Tel No: 01962 848256 Email stilbury@winchester.gov.uk

WARD(S): ALL

PURPOSE

The report seeks approval of the key terms and evaluation criteria for the new waste collection contract which is to be subject of a full tender process this year. The new contract will commence on 1st October 2020. All of the other terms and conditions for the contract (i.e. those not specifically mentioned in the report) will reflect the existing waste collection service updated in line with operational best practice and the Council's policies for the management and procurement of major contracts. The contract documents will all be publicly available after the commencement of procurement process.

RECOMMENDATIONS:

1. That Cabinet approves the key terms to be included in the tender of the waste collection contract as set out in this Report (and further detailed in Appendix 3 to the report) and notes the timetable for the tendering process.
2. That Cabinet approves the proposed procurement route of Competitive Procedure with Negotiation and the tender evaluation based on 50% price, 50% quality scoring criteria and the use of the quality evaluation process set out in Exempt Appendix 4.
3. That the arrangements for (i) priced options in respect of a food waste collection service and (ii) the mobilisation of the contract extension, be noted.

IMPLICATIONS:

1 COUNCIL STRATEGY OUTCOME

- 1.1 The provision of high quality services for waste collection and the promotion of recycling are consistent with the outcomes the Council has set in the Council Strategy.

2 FINANCIAL IMPLICATIONS

- 2.1 The Council has a statutory duty under the Environmental Protection Act 1990 to provide an efficient service for the collection and disposal of household waste (including provision for recycling) and must budget to fulfil this basic requirement. Tenders received will therefore determine the budget provision which must be made from 1st October 2020. Green garden waste is not classified as household waste and a free kerbside collection service is not a statutory requirement at present which means that the Council does have discretion (at the moment) over the means and extent of the service provided. The tender package offered to the market will incorporate the choices the Council makes and the prices offered by tenderers will reflect their pricing of the services the Council requires.
- 2.2 Where the Council is uncertain as to whether a service component would be affordable and wishes to test market pricing, it is prudent for this to be included as a 'priced option' in the tender process. This allows the Council to incorporate these if sufficient budget provision is available.
- 2.3 There are therefore no proposed amendments to the existing service which would constitute a material pre-emption of how resources will be used, and the outcome of the tender process will provide the Council with the financial information on which decisions can be based.

3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 The Council is under a statutory duty as described in paragraph 2.1. The means by which it discharges that duty is for the Council to determine and may include the appointment of a contractor. The value and nature of the service means that pursuant to the Public Contracts Regulations 2015 (PCR) the Council is under obligation to conduct an OJEU procurement (i.e. appoint a contractor after formal advertisement and tender process). The procurement process to select the contractor will therefore be compliant with the PCR, as well as the Council's Contract Procedure Rules for a contract of this size. The process is being managed by a project team incorporating specialist officers with external consultants WYG advising. The Council has appointed Browne Jacobson LLP as external legal advisors who are providing advice on contract strategy and documentation. Browne Jacobson LLP have reviewed this report and the Appendices.
- 3.2 The proposed route for procurement is known as Competitive Procedure with Negotiation (CPN), being one of the available statutory procurement routes

under the PCR). This procedure allows for the acceptance of a winning bid on first submissions or, if necessary, negotiation with bidders to clarify their submissions prior to final offers being submitted. This also provides a mechanism for the Council to consider whether to incorporate any priced option into the final submissions. It is a suitable procurement route under the PCR and is allowed where “*the contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of risks attaching to them*”, as is likely to be the case if it is not possible to accept a winning bid without negotiation. This procurement approach also enables consideration of priced options, as referred to in paragraph 2.2 above.

- 3.3 The PCR (and CPN route) allow the Council to determine what evaluation weighting and criteria it shall use for evaluating tenders; these being published with the procurement documents and therefore made clear to contractors bidding for the contract. It is proposed to evaluate tenders on the basis of a 50% price, 50% quality evaluation criteria. The project team and WYG suggest that it is appropriate to give a 50% weighting to quality because the contract is of substantial scale and duration which carries significant reputational risk. 50% weighting for price is appropriate given that the contract cost will be material to the Council’s financial outlook. Cabinet is asked to approve this price/quality split and the quality evaluation process which is attached as Exempt Appendix 4 (exempt because it should not be disclosed prior to the start of the tendering process).

4 WORKFORCE IMPLICATIONS

- 4.1 There are no additional workforce implications arising from the report. The ‘soft’ transfer of the client team to work separately on Winchester and East Hants duties has now taken place and the final TUPE transfer of those staff will be completed by the end of the joint contract arrangements.
- 4.2 TUPE transfer of staff between contractors, should that be necessary, is a statutory requirement and the necessary provisions to facilitate this will be included in the contract documents.

5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 The Council will offer a lease of the depot at Bar End as part of the contract to enable the contractor to operate and maintain their fleet locally. Soft market testing indicated that this would be an attractive offer to potential tenders. The terms of the lease will be determined by the Corporate Head of Asset Management.

5.2 CONSULTATION AND COMMUNICATION

- 5.3 The Council has considered matters relating to the waste collection contract on several previous occasions and through an extensive options appraisal process including public consultation which was conducted jointly with East Hampshire District Council.

- 5.4 Members participated in a workshop in February 2019 which provided useful feedback on policy and performance concerns and wherever possible these are reflected in the proposed terms for the contract. Members supported the core elements of the waste and recycling service and the arrangements for assisted properties. Members were keen to see appropriately sized collection vehicles used wherever necessary and for the Council to extend its range of recycling options whenever possible.
- 5.5 The Council has taken an active interest in the recent consultation by DEFRA on the implementation of its Waste Strategy, participating actively in discussions with Hampshire County Council and Project Integra. Officers have sought advice directly from DEFRA on the implications of the timetable for the implementation of the Waste Strategy on the Council's tendering exercise.
- 5.6 A 'soft market testing' exercise has been undertaken to test the interest of potential tenderers in the Winchester contract. Six companies took part in the process and provided important information on a range of issues including market conditions, the impact of particular contract terms on their interest in bidding, fleet and equipment options and mobilisation requirements. Where appropriate, the recommendations in this report seek to ensure that competitive interest is maximised. An anonymised summary of the comments made by contractors at the soft market testing is attached as Exempt Appendix 5.

6 ENVIRONMENTAL CONSIDERATIONS

- 6.1 At its meeting on the 5th June 2019 Cabinet made the declaration of a climate emergency and a target to make the Council's operations 'carbon neutral' by 2024. Anticipating this decision the project team has given careful consideration to how the specification for the service can be adjusted to reduce carbon emissions and enhance the environmental performance of the district.
- 6.2 The disposal of waste and the promotion of recycling are very important issues in promoting greater environmental sustainability and reducing negative impacts on human and animal health and wellbeing, on ecosystems and on the use of natural resources. This has been recognised at a national level with the publication of the government's Waste Strategy in December 2018 and in the current consultation on measures to implement the strategy. It is likely that this will result in the government setting a mandatory framework for the collection and disposal of waste with which local authorities will have to comply.
- 6.3 In addition the Council is part of Hampshire wide system of waste collection and management. In particular, the Council is responsible for collecting waste but not for disposing of it. This is the responsibility of Hampshire County Council and the City Council must work with the infrastructure the County provides.

- 6.4 While it is likely that there are other measures that Members might wish to see as part of the contract, such as the collection of a wider variety of plastics for recycling, these are dependent on the waste management authority, or some other organisation, providing cost effective infrastructure for their handling and recycling. Where these do not yet exist then for Winchester to collect these items separately would not serve any useful purpose until there is a national transformation in the reprocessing infrastructure available or such items are removed from the waste stream. It is important to note that the government's new Waste Strategy does address a wide variety of these issues, and if it is introduced and operates as proposed it could make a significant difference to the type and quantity of materials which are presented for recycling or disposal.

7 EQUALITY IMPACT ASSESSEMENT

- 7.1 The Equality Impact Assessment was carried out for the waste contract in 2010. This has been reviewed and there are no changes proposed in the service being delivered through this contract which are considered likely to have any impact on that EIA.

8 DATA PROTECTION IMPACT ASSESSMENT

- 8.1 The nature of the waste collection contract is such that some personal data will need to be collected and held from time to time to deal with service requests and complaints from householders. This might be held by the Council, the contractor, or possibly shared. The contract documentation will not specify in detail the means or mechanisms for the Council and the contractor to handle this information because it is not proposed to specify that a particular system for processing complaints and service requests is used. The Council and the successful contractor will work together to implement an IT solution which is as streamlined and efficient as possible. Within this process, data protection issues will be considered carefully to ensure compliance with all relevant and necessary legislation and good practice.

9 RISK MANAGEMENT

- 9.1 A full Risk Management Schedule is required for this major project and is attached as Appendix 1. A project timetable which shows the key milestones and decision points for the retendering process and the contract extension is attached as Appendix 2. From this timetable it can be seen that whilst there is sufficient time to complete the retendering process, it is important to keep closely to the dates set in order to allow sufficient time for bidding (which is essential to promote competition) and mobilisation, including the procurement of specialised vehicles.

10 SUPPORTING INFORMATION:

- 10.1 In September 2018 Cabinet considered Exempt Report CAB3044 and agreed to retender the existing waste collection contract, currently operated by Biffa UK, to start on 1st October 2020. It was subsequently agreed by Cabinet in December 2018 when considering Report CAB3108 that a four weekly kerbside glass collection service should form part of the base service for waste collection across the District.
- 10.2 Full details of the background of the Council's contract arrangements with East Hampshire District Council and the reasons for pursuing a tendering process have been given in previous reports. The purpose of this report is to seek confirmation from Cabinet as to the service which it wishes the Council to provide from October 2020 and on some other details of the procurement process where a Member decision is required. In all other respects the contract documents will contain provisions which reflect the delivery of those services in a safe and effective manner consistent with operational good practice and the Council's agreed procurement policies and procedures.
- 10.3 As can be seen from the project timetable, to allow sufficient time (between six and nine months) for any new contractor to order and be supplied with a new fleet of vehicles after the contract is awarded it is essential that the procurement process starts at the end of June and this precludes waiting for the first meeting of the new Health and Environment Policy (HEP) committee in July. However, the Chairman of that committee has agreed that officers should make a presentation of the key terms, conditions and process issues for the contract at that meeting.

Service Provision

- 10.4 A summary schedule of all the key terms proposed for the new contract is attached as Appendix 3 which Cabinet is asked to consider and approve. More detail on some elements is set out below.
- 10.5 It is proposed that the 'baseline' service for the new contract should be:
- a) Alternative weekly collection of residual and mixed recycled waste using 240 litre bins (140 litre if requested by householders)
 - b) No change to current arrangements for difficult access households, assisted collections, large household collections, bulky waste or clinical waste
 - c) A four-weekly collection of kerbside glass in 40 litre containers (this service will commence in October 2019)
 - d) A fortnightly collection of green garden waste in 90 litre sacks free to every household, with provision for this to be amended if the Council decides at any time to introduce an alternative system.

- e) The collection of small electrical and electronic items including batteries separate from other household waste
- f) That the contractor provides the a trade waste service as required for the Council to meet its statutory obligations

Consideration of Food Waste Collection

- 10.6 It is proposed that the tender process should include a 'priced option' (i.e. an item which the Council will decide upon after it sees the cost) for the provision of a weekly collection of food waste from each household using a 23litre (or similar) outside storage caddy issued free to households into which householders place their food waste from a smaller (also free issue) caddy used inside their property.
- 10.7 The reason for including food waste as a priced option is to allow the Council to assess the financial impact of introducing the service, either from 2020 or from 2023 (the reason for 2023 being relevant is discussed below). A commitment to introduce the service from 2020 without this information could create a budget pressure that has unintended consequences for other services.

Consideration of Garden Waste Collection

- 10.8 Cabinet will be aware that many local authorities (including all bar one other in Hampshire) already charge for the collection of green garden waste at the kerbside as they are legally allowed to do. The provision of a 'free' service (which is of course paid for by all households through Council Tax) is a substantial cost for the Council which Cabinet may need to re-evaluate in due course. The contract will therefore contain provisions which would allow the introduction of a charged service at a later date if this becomes Council policy. If such provision is not explicitly included it may not be possible to alter the system until the contract is tendered again.

Consideration and impact of the national consultation on the Waste Strategy

- 10.9 The government's new Waste Strategy contains important proposals for local authority waste collection services. The government proposes that from 2023 there will much greater consistency in the type of materials collected for recycling across the country, with less scope for individual local authorities to determine their own approach. Within the recent consultation on the implementation of the Strategy it is proposed that it will be a requirement for food waste to be weekly collected from 2023 – or at the earliest date thereafter when it is practicable to do so, for instance on the renewal of a contract or the purchase of a new fleet. The strategy also proposes that recycling collections are based on a system of multistream kerbside sort where householders are required to present their recycling pre-separated into different materials. This differs fundamentally from the current co-mingled system operated by Winchester and many other local authorities.

- 10.10 The consultation asked for views on whether there should be funding for every local authority to provide a free garden waste collection service.
- 10.11 Also contained in the recent consultations is a mechanism for a significant proportion of the cost of local authority recycling services to be paid for by the producers of packaging waste on a 'polluter pays' principle. This funding would be introduced alongside the new service obligations. What is not clear from the Strategy or the consultation is what, in practice, the level of funding provided will be and what conditions will attach to it. Although, in principle, it would appear that local authorities will have a new source of funding to provide and expand services, there is every reason to be cautious about the actual net funding which will be obtained, what level of compliance will be necessary to obtain it and when it will be introduced. The proposal is that new services and new funding would both become requirements in 2023, but this cannot currently be relied upon.
- 10.12 All local authorities currently at a similar decision making stage face the same dilemma regarding the government's proposals. If fully implemented as set out they would represent an ambitious and potentially very helpful mechanism for improving recycling and a significant new source of funding for local authority services. However, none of the proposals has gone beyond the very first stage of consultation and much could change before implementation, not least the timetable. It is therefore a judgement for Cabinet as to whether it would be prudent to 'assume' the impact of the Strategy on the City Council's services and finances, or to proceed cautiously, providing as much flexibility as possible to implement new measures without committing to them at this stage. Advice from DEFRA, which is responsible for Waste Strategy, is (unsurprisingly) that local authorities currently tendering services should try to make as much provision for flexibility in their contracts to allow for change in government policy and new legislation.
- 10.13 Contractors at the soft market testing exercise all suggested that it is unlikely that very favourable prices will be obtained for services being introduced part way through a contract when the time available to properly spread the cost is reduced. In particular the cost of a change from a co-mingled to multistream recycling mid-contract would be excessive. The introduction of a food waste collection service as an additional service might also be proportionately expensive, but would not require the same fundamental level of service change.
- 10.14 It is for these reasons that it is recommended that the option of food waste collection being introduced in 2020 or 2023 should be included as a priced option (as well as introducing it from the outset). A change to multistream sort will not be a priced option but the contract terms will contain provisions to allow new arrangements to be introduced should they become a mandatory requirement for local authorities as a result of legislation.

Other Contract Terms

- 10.15 Based on feedback from soft market testing, and having regard to the commercial interests of the Council, other key terms for the contract which should be agreed by Cabinet are:
- a) Length of contract to be 8 years plus an option to extend the contract for up to a further 8 years by mutual agreement. This aligns with the lifecycle of the vehicles that will be deployed on the contract and is considered to be the most attractive option to potential bidders (thereby likely to secure value for money bids).
 - b) A performance framework is to be included in the contract which sets out reasonable expectations for both performance and the rectification of errors. The proposed performance framework is attached as Exempt Appendix 6.
 - c) The contractor should no longer be required to return to collect bins where the householder has failed to present their bin(s) for collection at the appropriate time. New vehicles will be fitted with cameras which will assist in settling disputes over whether bins were presented.
 - d) The new refuse freighters and support vehicles are required to meet at least Euro 6 standards of emissions performance. The first all electric powered refuse freighters are only now coming to the market and none of the contractors at soft market testing considered that there can be sufficient confidence that this generation of vehicles will have the range or performance to manage a large rural area such as Winchester. This will undoubtedly change as technology improves, and when the contract is extended or retendered in 2028 it is highly likely that the new fleet will be electric or some other type of ULEV. For now it would represent a significant cost and service delivery risk to mandate the use of such vehicles. It should be stressed that this does not prevent such vehicles being trialled, tested or introduced to the contract by agreement.
 - e) The new contractor be required to fulfil the Council's legal obligation in relation to a request from a business to provide a trade waste service but that the Council does not actively promote a trade waste service via the in-coming contractor.
 - f) The contractor be required to pay its staff at least the appropriate Living Wage Foundation rate of pay in accordance with Council policy for new contracts.
 - g) Tenderers be required to provide a bond as part of the tender process which will be priced by them into their contract sum. The option will be included for the Council to agree to substitute a parent company guarantee in place of the bond (with a price reduction accordingly) if

the Council considers the successful tenderer can provide a guarantee of sufficient strength.

Arrangements for the Contract Extension with Biffa

- 10.16 The Council's client team and Biffa's local management are currently working on arrangements for the contract extension which will start at the end of September 2019. As Cabinet will recall, the extension requires a full mobilisation programme because it involves new 'Winchester only' rounds instead of the existing combined service with East Hampshire and because it involves the introduction of the new glass collection contract. Those rounds are being planned now and will be finalised in the next two to three weeks for implementation in October. It should be possible to provide the HEP committee with more details in July.
- 10.17 A communications strategy has been devised to provide householders with advance notice of their collection day for existing bins and their new box for glass and for the distribution of the boxes for glass which will take place over the summer. A contract for the supply and distribution of boxes has been let with an experienced supplier but this is a significant logistical exercise and considerable efforts will be needed to ensure it goes smoothly.
- 10.18 All of the commercial terms for the extension with Biffa have been agreed and lawyers are now working with Biffa and with East Hampshire District Council (which is currently the contracting authority) to have the contract documents finalised.

11 OTHER OPTIONS CONSIDERED AND REJECTED

- 11.1 The Council has already considered its options in relation to the provision of the waste contract and agreed the strategy on which this report is based.

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

Exempt Report CAB3044 –19 September 2018

CAB3108 – 18 December 2018

Other Background Documents:-

None

APPENDICES:

Appendix 1 - Project Risk Register

Appendix 2 - Project Timetable

Appendix 3 - Schedule of Proposed Contract Terms

Exempt Appendix 4 - Evaluation Process

Exempt Appendix 5 - Soft Market Testing Notes

Exempt Appendix 6 - Performance Schedule