

**Open Report on behalf of Andy Gutherson, Executive Director – Place**

Report to:	<b>Executive</b>
Date:	<b>05 November 2019</b>
Subject:	<b>County Mixed Dry Recyclables Procurement</b>
Decision Reference:	<b>I018884</b>
Key decision?	<b>Yes</b>

**Summary:**

The report explains the strategy behind and seeks approval for the procurement of a new mixed dry recycling (MDR) contract commencing in 2020.

Approval is also sought for a short extension of existing arrangements in order to enable the most advantageous procurement process to be followed and ensure appropriate transition arrangements to a new service if necessary.

**Recommendation(s):**

That the Executive:

- 1) Approves the procurement of a contract for the collection from Council designated collection points, haulage and processing of mixed dry recyclates collected from the kerbside by Lincolnshire waste collection authorities to commence on 1 July 2020 with a duration of five years with the ability to extend for two periods of one year to a maximum duration of seven years;
- 2) Approves an extension to the existing interim contract with New Earth Solutions (West) Limited for a period of three months to expire on 30 June 2020;
- 3) Delegates to the Executive Director - Place in consultation with the Executive Councillor for Commercial and Environmental Management the taking of all decisions necessary to progress the procurement up to but not including the award of the contract.

**Alternatives Considered:**

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|----|---|
| 1. | To build and operate a materials recovery facility (MRF), either directly or via a contractor. This was rejected due to volatile international market conditions and uncertain legislative position in the UK due to the Government's new resources and waste strategy. New legislation required for the policies in the strategy to be implemented by 2023 could fundamentally change the current risk profile meaning that a decision to build and operate a MRF could prove to be costly and not compliant with the legislation. |
| 2  | To do nothing. This is not an option as the Council has a statutory duty to dispose of household waste collected by the waste collection authorities including mixed dry recyclates.  |

**Reasons for Recommendation:**

The proposed contract term, scope and pricing mechanism reflects market intelligence gained through research establishing where commercial operators see current risks in the market. The outcome based specification allows bidders to offer their best technical proposal to increase the quality and quantity of recyclates that can be recovered through their process.

Use of the competitive procedure with negotiation allows the Council potentially to discuss key risk issues with bidders to improve the value for money available to the Council

All of these should deliver the best value solution the council can obtain from the market at the time of the tender.

**1. Background****History**

- 1 Until June 2019 the Council's mixed dry recyclate (MDR) collected by the Lincolnshire waste collection authorities was collected and processed by Mid UK Recycling Limited (Mid UK). This contract dealt with approximately 70,000 tonnes of recyclates and was due to expire on the 31 March 2020.
- 2 However as a result of financial failure on the part of Mid UK leading to administration a short contract was let to a new contractor (New Earth Solutions (West) Limited (NESWL)) from 21 June 2019 to 31 March 2020. The decision to award the contract to NESWL was taken as an urgent decision by the Executive Councillor for Commercial and Environmental Management on 14 June 2019. Mid UK's staff and assets have transferred to the new contractor which continues to trade as Mid UK. The service has continued without disruption.

- 3 In the waste management sector there are emerging sector-wide challenges that will have an impact during the next contract period:
- International outlets for separated recyclables are now facing stricter import controls after years of high contamination levels in exported materials;
  - Falling values across the range of recyclable materials particularly plastics;
  - The intention by the Government to implement deposit return schemes to reward residents for using bring back facilities in supermarkets and shops – this will remove material from the mixed recyclables stream, possibly decreasing its value;
  - Manufacturers being penalised for producing single use plastics;
  - In the past, processing a mixed recyclable stream through a MRF could be at zero cost or the council could receive an income for some materials after separation. That is no longer the case. The alternative of separating recyclates at source results in a higher quality and therefore higher value commodity and is something to consider for the future.
- 4 During the next contract period Lincolnshire County Council and the district councils will be implementing service changes which will have an impact on the volume and quality of material put through the contract:
- Addressing and reducing contamination levels in the mixed material stream to improve the quality of the targeted materials through more effective partnership working with the districts through communications, engagement and enforcement;
  - Potentially rolling out separate paper and card recycling collections beyond the trial area;
  - Potentially starting separated glass collections on a trial basis.
- 5 An initial round of market engagement took place in June 2018 with responses from six providers. Further discussions have also taken place this year with two more. Their positions can be summarised as follows:
- Half would accept our contamination at its current level and half would not;
  - Typical contaminations reported for their contracts varied considerably from 5% to 50% with an average of approximately 15% compared to Lincolnshire County Council's 27%;
  - Suppliers consider that mitigating price changes is not possible or at least very difficult due to market volatility. Ask suppliers to do so and they will offset this risk through higher prices therefore payment mechanisms need flexibility to cope with a volatile market so that the real cost of provision over time can be reflected;

- Extracting value from recyclate can be achieved through better technology, refuse derived fuel (RDF)/solid recovered fuel (SRF) options, haulage efficiencies and improved sorting but this requires significant capital investment and a long contract term of 10 years plus;
  - Preferred contract terms varied from a minimum of 3 to 'the longer the better' with a rough average of 5 years but longer than this if the wish was for a high technology solution;
  - All suppliers are happy to haul waste materials;
  - Reducing haulage carbon footprint can be achieved through maximising loads and high capacity trailers.
- 6 Taking these issues into account the test for any procurement strategy and its resulting contract must be its ability to deal with future uncertainty.

### **Proposed Commercial Approach**

- 7 Market engagement indicates that a reasonable proportion of the market would prefer to include haulage in the same contract as the processing/recycling. Combining the requirements does not preclude processor-only businesses bidding as they can subcontract the haulage. Given the uncertainty about recyclate tonnages and composition over the next few years the proposal is to let a single contract to cover processing and haulage to maintain the attractiveness of the procurement.
- 8 For similar reasons the proposal is to let a single contract for the processing of all dry recyclates collected by the Lincolnshire waste collection authorities from the kerbside. This means that extracted paper and cardboard *would* form part of the contract as would any future recyclable materials separated at source. However, the contract would provide for pre-sorted materials to go straight to the re-processor so that already sorted materials are not put through a sorting facility. This would take advantage of the provider's expertise and capacity in sourcing buyers and remove risk from the contract associated with falling volumes as more sorting takes place at source.
- 9 The market is keen to have long contracts to justify the cost of tendering; as TUPE may operate to transfer staff to the successful tenderer creating potential redundancy cost on exit and to justify the release of haulage and processing capacity and investment in technology.
- 10 As outlined above considerable change is expected over the next three to five years in relation to legislation implementing the Resources and Waste Strategy, national standardisation on an England-wide standard dry recyclate specification and locally across the Lincolnshire Waste Partnership (LWP). As a result the proposal is for a 5+1+1 contract as it would allow the changes to work through, a new strategy to be devised in the light of that change and for the subsequent procurement and transition to take place whilst retaining capacity to develop other more complex areas of the service.

- 11 Central to allowing for the required flexibility within the contract will be the payment mechanism. This will be based on a gate fee for mixed and pre-separated dry recyclate which will need to be sufficiently flexible to take into account different;

- Volumes of recyclate;
- Composition of recyclate and the extent of processing required;
- Levels of contamination;
- Sale values of recyclable materials.

Subject to the above the payment mechanism will be as straightforward as possible as experience has shown that complex payment mechanisms are difficult to operate and are treated with mistrust by suppliers. There will be a small number of performance indicators which if breached will result in proportionate deductions in payment to maintain high levels of performance.

- 12 This approach to the contract will be underpinned by an output based approach which will enable the market to identify their preferred solutions so as to harness to the best effect the knowledge and experience of the market in dealing with types of issues the Council faces.

### **Recommended Procurement Route**

- 13 The Council will seek to manage the risk of limited market interest by being proportionate about the risk it is passing to providers. We will do our best to make this clear in the contract and procurement documentation and to strike the right balance whilst still securing a reasonable price, but if the market does not like the contract or if we cannot get a price which we think is fair we will want to be able to negotiate with bidders.
- 14 That can only be done through adopting the Competitive Procedure with Negotiation (CPN) procedure recently used on the Highways 2020 contracts procurement to good effect.
- 15 The procedure follows the usual two stage route of (i) selection of tenderers with the necessary capacity and capability to deliver the services and (ii) the award of the contract to the tenderer who provides the most economically advantageous tender. However CPN allows the Council to enter into negotiation with selected tenderers to identify ways in which their solutions as set out in their initial tenders may be improved.
- 16 Negotiation is not mandatory and the Council may decide to proceed without negotiation where it does not consider it would lead to improvement to initial tenders. The Council can also identify the matters on which it is open to negotiation which enables the discussions to be focussed on those matters which are likely to lead to the biggest improvements.

- 17 The down side of use of the CPN is that the pre-selection process which is required will add eight weeks to the procurement timetable. This will mean that the procurement could not be completed and a reasonable mobilisation period allowed for before the end of June 2020 some three months after the expiry of the existing contract. If we did not use the CPN we would be unable to negotiate in the event of unaffordable tenders and would have to abandon the procurement and start the procurement again. The proposal therefore is that the Council agrees a three month extension with the incumbent now to the end of May 2020 as this would permit use of the CPN route.
- 18 If the incumbent is not agreeable to this then we would have to use the open procedure which would mean that we could deliver the procurement assuming no slippage by the 23 March 2020 but with only a week for transition.

## **2. Legal Issues:**

### Procurement

- 19 The procurement of the replacement MDR contract described in this Report will be undertaken in accordance with the Public Contracts Regulations 2015 either through the CPN or the open procedure.
- 20 The securing of a short 3 month extension of the existing contract with the incumbent is considered to be a permissible variation under Regulation 72 of the Public Contracts Regulations.
- 21 However the value of the extension is some £1,000,000 and the Council's own Contract Regulations would normally require competition for a contract of that value. Where an Executive Director recommends adopting an alternative approach as is being recommended in this case that alternative approach can be approved by the Executive. The adoption of recommendation 2 of this report would grant the necessary approval.
- 22 Although the Contract Regulations would normally expect competition for this value of services, the Council is committed to carrying out a full EU wide competitive process which will already be in process at the time the extension takes effect. The extension of three months is the minimum necessary to enable a CPN procurement with a reasonable transition period to ensure the efficient handover of the services should this be necessary. In the circumstances it is considered appropriate to approve an exception to the Contract Regulations in these circumstances.

## Equality Act 2010

- 23 Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:
- \* Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
  - \* Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
  - \* Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 24 The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation
- 25 Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:
- \* Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
  - \* Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
  - \* Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low
- 26 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities
- 27 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding
- 28 Compliance with the duties in section 149 may involve treating some persons more favourably than others
- 29 The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process

This report relates to a service that is delivered after waste has been collected and therefore after interaction between the waste service and individuals and communities. As this is therefore a secondary stage and any Equality Act implications arise at the point of collection or receipt of these materials, when individuals have deposited them in receptacles for the collecting districts and then the county, there are not considered to be any further implications of this particular service.

Joint Strategic Needs Analysis (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

- 30 The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision

The specific service being procured secures a legally compliant treatment solution for materials delivered to us by the collecting authorities. As the service forms an integral part of the process of diverting waste from landfill and applying to it the waste hierarchy to limit the environmental impacts of disposal the service contributes directly to the health and wellbeing of the people of Lincolnshire

Crime and Disorder

- 31 Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

Obligations and responsibilities under this act are not deemed applicable to this procurement.

**3. Conclusion**

- 32 The County Council has a statutory duty to (i) make disposal arrangements for waste collected by the districts including collections of recyclates (ii) take all such measures available to it as are reasonable in the circumstances to apply the waste hierarchy of prevention, preparation for re-use, recycling, other recovery and disposal and (iii) to secure that the amount of biodegradable local authority collected municipal waste sent to landfills in any year does not exceed the Council's landfill allowances for the year.
- 33 Having in place a contract for the efficient collection, haulage and treatment of dry recyclates is a key element in delivering these obligations. The Report sets out a proposed procurement and contracting strategy for arriving at an appropriate contract that establishes a proportionate sharing of risk with the market to enable a best value solution.



#### **4. Legal Comments:**

The Council has the power to enter into the contract and to extend the existing contract as proposed. The detailed legal considerations are dealt with in the Report.

The decision is consistent with the Policy Framework and within the remit of the Executive.

#### **5. Resource Comments:**

Approval of the recommendations set out in this report has no direct financial implications for the Council. However, the proposed approach to procurement and contracting potentially enables the Council to secure the best value for money solution available in the current market. The expectation being that the cost of the resultant contractual arrangements can be met from the resources available for the delivery of this activity in the budget the Council approves for the periods from April 2020.

#### **6. Consultation**

##### **a) Has Local Member Been Consulted?**

n/a

##### **b) Has Executive Councillor Been Consulted?**

Yes

##### **c) Scrutiny Comments**

The decision will be considered by the Environment and Economy Scrutiny Committee at its meeting on 22 October 2019 and the comments of the Committee will be reported to the Executive.

##### **d) Have Risks and Impact Analysis been carried out?**

Yes

##### **e) Risks and Impact Analysis**

See the body of the Report

#### **7. Background Papers**

No Background Papers within the meaning of section 100D of the Local Government Act 1972 were used in the preparation of this Report

This report was written by John Coates, Head of Waste, who can be contacted on 01522 843272 or [john.coates@lincolnshire.gov.uk](mailto:john.coates@lincolnshire.gov.uk).

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