

**Open Report on behalf of Richard Wills, Executive Director for Environment and Economy**

Report to:	<b>Councillor R A Shore, Executive Councillor for Waste &amp; Recycling</b>
Date:	<b>13 March 2017</b>
Subject:	<b>Award of short term HWRC and green waste contracts</b>
Decision Reference:	<b>I013250</b>
Key decision?	<b>No</b>

**Summary:**

To allow time to confirm the optimum contract documents and due to the timescales involved in undertaking the proposed Dynamic Purchasing System (DPS) process, there is a clear need to continue the existing waste disposal contracts for two months, until the 1<sup>st</sup> June 2017, to ensure there is a robust DPS in place.

**Recommendation(s):**

That the Executive Councillor approves direct award of HWRC disposal and WCA green waste contracts to the existing providers for two months as set out in Appendix A

**Alternatives Considered:**

1. Not to award the contracts. There is not enough time to implement a new contract from the 1st April 2017 through the DPS in a robust fashion. Either the DPS contracts will not be fit for purpose or the Council will have no contracts and will not be able to dispose of HWRC and green waste.

**Reasons for Recommendation:**

The introduction of the DPS is expected to generate savings and be a more effective management procurement process. The two month extension will allow time to ensure that the DPS is correct and fit for the purpose of managing the presented Waste Services material streams.

## 1. Background

Waste Services is continuing looking for improvements and potential cost savings in providing its services and one element of this is the provision of waste disposal at Household Waste Recycling Centres (HWRC) and disposal of green waste collected by the Waste Collection Authorities. The service is provided through three elements: haulage; staffing and disposal.

Savings have already been made by the award of a 7 year haulage contract and a new staffing contract, which has maintained the number of site operatives, to continue the high level of customer service.

With regards to the waste disposal, we have decided to use the fledgling procurement system of the Dynamic Purchasing System (DPS), rather than the conventional tender process. It is expected that further savings can be made and contract efficiencies made.

The DPS is defined in the Public Contracts Regulations 2015, Regulation 34 and is a fully electronic. The Council will be using the Due North ProContract platform to host the system. The DPS works in two stages. Firstly, a contract notice is published inviting suppliers to apply to join the DPS. The Council must allow a minimum of 30 days for suppliers to apply to join the DPS before it advertises any specific requirements.

In response to the invitation, Applicants complete a 'suitability' questionnaire which is assessed within 10 days to ensure the supplier meets the required suitability criteria. All Applicants who pass the 'suitability' questionnaire must be admitted to the DPS and there is no limit to the number of Applicants that will be admitted to the system.

The second stage of the process is to invite tenders, as and when needed by the Council. The first invitation to tender will be issued at least 10 days following the end of the initial opening period of the DPS, i.e. 10 days following the initial 30 days from publication of the OJEU notice.

The DPS will be valid for a period of five years from the commencement date of the 1st June 2017 with options to extend the DPS for a further five years. The Council reserves the right to close the DPS prior to this date.

The Council expects the contracts awarded following a further competition from the DPS to run for differing time periods for each Lot depending on the volatility of the market in question.

With the DPS only having been used once before in the Council in Passenger Transport Services there is growing knowledge on how to best manage the DPS and this is particularly complex within Waste Services, when we do not know what types and quantities of waste will be presented by the public, throughout the year. Consequently to allow time to confirm the optimum contract documents and due to the timescales involved in undertaking this DPS process, it is clear that this will not be achieved by the 31<sup>st</sup> March 2017, when the existing contracts end.

Consequently, there is a need to award short term contracts to the existing providers for two months, until the 31 May 2017, to ensure there is a robust DPS in place. The existing contractors have all confirmed that that will continue the service provision for the two month period.

Ordinarily, contracts of the values in question would require some degree of competition under the Council's Contract Regulations. However, where an Executive Director proposes a direct contract award this can be done as long as it is approved in accordance with the Constitution. Where the value of the contract is £75,001 to £250,000 in value the direct award must be approved by the relevant Executive Councillor.

The present contract costs are detailed in Appendix A and show the amounts for the April and May periods for 2016. It should be noted that these amounts can only be used, as an expected comparison of the costs for April and May 2017, due to the unknown quantity of presented waste. However, inflation (at 2.59%) has been added to each figure to reflect the annual price rise built in to the existing contract.

The values of the contracts listed in Appendix A are below the threshold at which the Council would be required to advertise under the EU procurement regime. However, the Treaty principles of transparency, equal treatment and non-discrimination would usually require a contract to be advertised unless in the view of the Council the contract would not be of cross-border interest – i.e. would not be of interest to a contractor in another member state of the EU.

In reaching its decision, the Council must take into account such factors as the value and duration of the contract and the nature of the market. In this case it is not considered that the contracts would be of cross-border interest given the very low values of the contracts and their very short durations.

## **2. Legal Issues:**

### Equality Act 2010

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.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation

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.

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

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

Compliance with the duties in section 149 may involve treating some persons more favourably than others

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

The contract mechanism for disposal of waste from HWRCs and green waste collections does not have any impact on people with a protected characteristic. In particular HWRCs will be accessible and the green waste collection services will be delivered regardless of protected characteristics.

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

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

In this case, the services considered in this Report offer the opportunity to the public to dispose of unwanted items and green waste originating from their household and thereby contribute to environmental wellbeing. That opportunity will still be provided throughout the HWRCs in accordance with the Council's policy.

#### Crime and Disorder

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

The Council HWRC policy and operating procedures will continue to manage the HWRCS, with regard to preventing criminal behaviour and disorder, and this is not affected by this contract extension.

### **3. Conclusion**

Waste Services is striving to challenge its own Service provision and the DPS is expected to deliver a more effective and efficient system, with the resulting costs and staff time savings. Consequently, the present HWRC disposal contracts need to have a two month continuation to allow this opportunity to be realised.

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

The Council has the power to enter into the contracts proposed. The legal considerations are dealt with in detail in the Report.

The decision is consistent with the Policy Framework and within the remit of the Executive Councillor if it is within the budget.

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

Approving the awarding of these contracts as per the recommendation will enable best value for money to be achieved for these services. The costs of these contracts can be met from existing approved budgets for this service.

### **6. Consultation**

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

n/a

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

Yes

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

This has not been considered by a scrutiny committee.

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

See the body of the Report

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

See the body of the Report

## 7. Appendices

These are listed below and attached at the back of the report	
Appendix A	Contracts and values

## 8. Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

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