

County Offices
Newland
Lincoln
LN1 1YL

28 October 2019

Executive

A meeting of the Executive will be held on **Tuesday, 5 November 2019** in **Committee Room One, County Offices, Newland, Lincoln LN1 1YL** at **10.30 am** for the transaction of business set out on the attached Agenda.

Yours sincerely



Debbie Barnes OBE
Head of Paid Service

Membership of the Executive
(8 Members of the Council)

Councillor M J Hill OBE, Executive Councillor for Resources and Communications (Leader of the Council)

Councillor Mrs P A Bradwell OBE, Executive Councillor for Adult Care, Health and Children's Services (Deputy Leader)

Councillor C J Davie, Executive Councillor for Economy and Place

Councillor R G Davies, Executive Councillor for Highways, Transport and IT

Councillor E J Poll, Executive Councillor for Commercial and Environmental Management

Councillor Mrs S Woolley, Executive Councillor for NHS Liaison and Community Engagement

Councillor C N Worth, Executive Councillor for Culture and Emergency Services

Councillor B Young, Executive Councillor for Community Safety and People Management

**EXECUTIVE AGENDA
TUESDAY, 5 NOVEMBER 2019**

Item	Title	Forward Plan Decision Reference	Pages
1	Apologies for Absence		
2	Declarations of Councillors' Interests		
3	Announcements by the Leader, Executive Councillors and Executive Directors		
4	Minutes of the Meeting of the Executive held on 1 October 2019		5 - 14

KEY DECISIONS - ITEMS TO BE RESOLVED BY THE EXECUTIVE

5	County Mixed Dry Recyclables Procurement <i>(To receive a report from the Executive Director – Place, which explains the strategy behind and seeks approval for the procurement of a new mixed dry recycling (MDR) contract commencing in 2020)</i>	I018884	15 - 24
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Please Note: for more information about any of the following please contact the Democratic Services Officer responsible for servicing this meeting

- Business of the meeting
- Any special arrangements
- Copies of reports

Contact details set out above.

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**EXECUTIVE
1 OCTOBER 2019**

PRESENT: COUNCILLOR M J HILL OBE (LEADER OF THE COUNCIL)

Councillors C J Davie (Executive Councillor for Economy and Place), R G Davies (Executive Councillor for Highways, Transport and IT), Mrs S Woolley (Executive Councillor for NHS Liaison and Community Engagement), C N Worth (Executive Councillor for Culture and Emergency Services) and B Young (Executive Councillor for Community Safety and People Management).

Councillors R B Parker (Chairman of the Overview and Scrutiny Management Board), S P Roe (Vice-Chairman of the Highways and Transport Scrutiny Committee) and L Wootten (Chairman of the Roundabout Sponsorship and Advertising Scrutiny Panel) were also in attendance.

Officers in attendance:-

Debbie Barnes OBE (Head of Paid Service), Karen Cassar (Assistant Director Highways), Andrew Crookham (Executive Director Resources), James Drury (Executive Director Commercial), Cheryl Evans (Democratic Services Officer), Jonathan Evans (Senior Project Leader), Michelle Grady (Assistant Director for Strategic Finance), Andy Gutherson (Executive Director Place), Tracy Johnson (Senior Scrutiny Officer), Carl Miller (Commercial and Procurement Manager - People Services), Samantha Neal (Chief Commissioning Officer), Carolyn Nice (Assistant Director, Adult Frailty & Long Term Conditions), Mick Phoenix (Network Management Commissioner), Mark Rainey (Interim Strategic Commissioning Manager), Heather Sandy (Interim Director of Education), Professor Derek Ward (Director of Public Health) and Nigel West (Head of Democratic Services and Statutory Scrutiny Officer).

24 APOLOGIES FOR ABSENCE

The Leader of Council welcomed everyone to the meeting and wished everyone a Happy Lincolnshire Day.

Apologies for absence were received from Councillors Mrs P A Bradwell OBE and E J Poll.

It was noted that Carolyn Nice (Assistant Director – Adult Frailty and Long Term Conditions) was attending the meeting on behalf of Glen Garrod (Executive Director – Adult Care and Community Wellbeing).

25 DECLARATIONS OF COUNCILLORS' INTERESTS

There were no declarations of interest.

26 ANNOUNCEMENTS BY THE LEADER, EXECUTIVE COUNCILLORS AND EXECUTIVE DIRECTORS

The Leader of the Council referred to the debate at the meeting of the County Council on 17 May 2019 concerning climate change and advised that consideration was being given to possible actions the Council could implement to reduce its carbon footprint, one being the reduction of the use of paper.

Furthermore, it was advised that the agenda and reports for meetings of the Executive would be circulated only in an electronic format, with councillors and officers expected to make effective use of the technological options available. The Leader advised that this was the first paperless meeting of the Executive.

27 MINUTES OF THE MEETING OF THE EXECUTIVE HELD ON 3 SEPTEMBER 2019

RESOLVED

That the minutes of the meeting held on 3 September 2019 be signed by the Chairman as a correct record.

28 CAPITAL BUDGET MONITORING REPORT 2019/20

Consideration was given to a report from the Executive Director – Resources, which updated on capital spending compared with budgets for the financial year which started on 1 April 2019.

The Assistant Director – Strategic Finance presented the report to the Executive and in doing so highlighted that the tables in the report detailed the actual expenditure and any grants and contributions for the first five months of the financial year to 31 August 2019, along with the projections for spending and a comparison of the projections against the approved budgets.

It was advised that the net capital spending was projected to be £47.824m less than the budget at the end of the financial year; and gross capital spending was projected to be £56.625m less than the budget at the end of the financial year.

The report had shown that there was likely to be significant slippage in the 2019/20 Capital Programme.

The Chairman of the Overview and Scrutiny Management Board advised that the Board had considered the report at its meeting on 26 September 2019 and had agreed to note the current position of the capital budget. The comments of the Board were circulated prior to the meeting.

It was highlighted that the Board had questioned the slippage in the 2019/20 Capital Programme and highlighted the need to ensure effective budget profiling across the life of schemes/projects.

The Board had recommended the need for a defined programme of work for the IMT capital projects in order to ensure the required outcomes were delivered. Officers confirmed that additional assurance on the IMT capital projects would be included as part of the January 2020 capital budget monitoring report.

During the discussion, the following points were noted: -

- Officers confirmed that the capital programme comprised schemes which often span a number of financial years and could be challenging to profile over multiple years. However, officers would continue to improve the way in which schemes were profiled, with an aim of factoring in any potential delays.
- It was highlighted that the capital budgets for IMT were towards the middle to late stages of the project and that the underspend, as detailed in the report, was expected to reduce as the project progressed. Officers confirmed that a better awareness of IMT requirements had been achieved and would be reflected in future budget setting.
- The Holbeach Food Enterprise Zone was discussed and it was advised that there were issues with the power supply to the site. Officers at the County Council were liaising with Western Power to try and address the issue. Furthermore, it was highlighted that there was a similar issue at Teal Park, Lincoln. It was suggested that the issue of power supply could be an area of consideration by the relevant scrutiny committee.

RESOLVED

That the current position on the capital budget be noted.

29 REVENUE BUDGET MONITORING REPORT 2019/20

Consideration was given to a report from the Executive Director – Resources, which provided an update on revenue spending compared with budgets for the financial year which started on 1 April 2019.

The Assistant Director – Strategic Finance presented the report and advised that the tables in the report showed the actual income and expenditure for the financial year to 31 August 2019, along with the forecasts for spending and a comparison of the forecasts against the approved budgets.

It was reported that the total revenue spending was forecast to be £5.017m less than the total budget; general reserves at the year-end would be within the 2.5% to 3.5% range, but this assumed that some of the forecast underspend would be moved to earmarked reserves to avoid general reserves being above 3.5% of the total budget; savings built into the 2019/20 revenue budget were forecast to be delivered with the exception of the £0.100m saving relating to the Coroners Service (page 26 of the agenda pack refers); and following assessment, the Council's financial resilience remained strong.

The Chairman of the Overview and Scrutiny Management Board advised that on 26 September 2019, the Board had considered the Revenue Budget Monitoring

Report 2019/20 and had agreed to note the current position on the revenue budget. The Board's comments were circulated in advance of the meeting.

The Board had challenged the level of impact on IMT services as a result of the on-going infrastructure issues and had queried whether the estimated budget had been allocated without a full awareness of the requirements or a defined programme of work for IMT service improvements. Further to the discussion under Minute 29, detailed work had been undertaken to identify the Council's IMT requirements, which would be reflected in future budget setting.

The significant on-going work to modernise technology and overall IT performance was welcomed by the Executive and the Board.

RESOLVED

That the current position on the revenue budget be noted.

30 FINAL REPORT FROM THE ROUNDABOUT SPONSORSHIP AND ADVERTISING SCRUTINY REVIEW

Consideration was given to a report from the Executive Director – Resources, which presented the Final Report from the Roundabout Sponsorship and Advertising Scrutiny Review.

The Chairman of the Roundabout Sponsorship and Advertising Scrutiny Panel presented the report and in doing so advised that the report had been considered and supported by the Highways and Transport Scrutiny Committee at its meeting on 15 July 2019. The comments of the scrutiny committee were detailed on page 47 of the agenda pack.

The Scrutiny Panel's report made a total of four recommendations to the Executive which were detailed on pages 51-52 of the agenda pack.

The Panel had been established in March 2018 to review the current policy dealing with the sponsorship of roundabouts; to develop the policy to enable effective management of roundabout sponsorship and advertising in Lincolnshire; and to consider the economic and commercialisation opportunities.

The Panel had examined the current guidance and data regarding the suitability of roundabouts in each district for sponsorship and advertising. It had approached each of the district councils to find out what the current situation is with roundabout sponsorship across Lincolnshire. The Panel had discovered that currently only Boston Borough Council and City of Lincoln Council had sponsorship schemes in place.

The Panel was proposing that the County Council explored a countywide sponsorship scheme to cover those areas of the county where no other council scheme existed, but provided discretion to those district councils with a current sponsorship scheme to continue operating as they were.

The Executive expressed a desire for a countywide policy to avoid any confusion and to remove any inconsistencies across the county. The Executive requested the Executive Councillor for Highways, Transport and IT to make arrangements to respond to the report within two months indicating which recommendations had been accepted and to bring forward an action plan for implementation.

It was also highlighted that there was a need for co-ordination between the planning authorities and the Road Safety Partnership to ensure the sizes of the signs were deemed safe.

RESOLVED

- (1) That the Roundabout Sponsorship and Advertising Scrutiny Review final report be noted.
- (2) That arrangements be made to respond to the report within two months:
 - (a) to indicate in the response which recommendations have been accepted; and
 - (b) where recommendations are accepted, to bring forward an action plan for their implementation.

31 HOUSING RELATED SUPPORT SERVICES

NOTE: As the reports for Minute Items 31 – Housing Related Support Services and 32 – Commissioning of Supported Accommodation: Children's Services as they were interlinked, it was agreed that the discussion for both items would be combined, with the decisions being taken separately.

Housing Related Support Services for Adults

The Director of Public Health; the Chief Commissioning Officer; and the Commercial and Procurement Manager - People Services presented information relating to the Housing Related Support Services for adults. The contracts comprised of:

- Emergency accommodation based support.
- Non-emergency accommodation based support.
- Floating support (not linked to designated accommodation).
- Rough sleeper outreach.

The services worked together to form a structured model of support for people who were currently homeless or at risk of losing their home.

The Council had also commissioned the following services, linked to housing, which were packaged together with housing related support services when they were last commissioned in 2015:

- Two domestic abuse refuges.
- Mental health crisis houses.

With the exception of the floating support and rough sleeper outreach elements, which were due to conclude on 31 March 2021, the above contracts were due to end on 30 June 2020, and as a consequence decisions would need to be made about the future commissioning of the services.

The report presented the case for re-commissioning a reconfigured housing related support service for adults in Lincolnshire.

The proposed service access pathway had been redesigned to ensure that district councils' housing and homelessness reduction duties, as specified in the report, were considered first, with Lincolnshire County Council-commissioned housing related support being used only by those who met the revised eligibility. The revised eligibility was detailed on page 115 of the agenda pack and the referral process was illustrated in Appendix A to the report. It was confirmed that the County Council had been working closely with the district council in developing the proposals.

Commissioning of Supported Accommodation: Children's Services

The Children's Services Commissioning Manager presented information on the re-commissioning of the Children's Services Youth Housing Service and the overall Supported Accommodation offer for young people.

The new proposed model, as set out in Appendix A to the report, would operate in a similar way to current arrangements, using a single gateway as the referral mechanism with support continuing to be commissioned across three main hubs – Boston, Grantham/Sleaford, and Lincoln/Gainsborough. There would be no change to the age of the eligible cohort.

The Executive was asked to approve the proposal to procure the new service model through an open competitive tender with an indicative budget of £1.613m. It was also recommended that a contract be awarded for five years (3+ a maximum of 2 years extension), commencing on 1 July 2020.

The Chairman of the Overview and Scrutiny Management Board advised that the Adults and Community Wellbeing Scrutiny Committee had agreed to support the four recommendations in the Executive report, which would deliver a reconfigured housing related support service for adults in Lincolnshire. The comments of the Committee were detailed on page 126 of the agenda pack.

It was also advised that the Children and Young People Scrutiny Committee had agreed to support the recommendations to the Executive on the commissioning of support accommodation: Children's Services. The comments of the Committee were detailed on page 155 of the agenda pack.

During discussion of both reports, the following points were noted: -

- The 72 units of support accommodation to be commissioned with Youth Housing along with the 10 units of in-house provision would meet the demand for accommodation by homeless 16/17 year olds, Looked After Children and Care Leavers up to 21 years old, and could be provided within the proposed budget.
- A fundamental element of the new model for adult services was that people would be directed through to district councils as their first port of call. District councils accept any referrals made via the referral platform, ALERT.
- Funding had been secured to introduce a dual-diagnosis service for mental health and substance misuse services for adults.
- The new eligibility criteria restricted the numbers of people who would be eligible for housing related support services in future by approximately 37%, aiming to focus resources on those that are most vulnerable. There were two main groups that would no longer be eligible: people with a low level of need who have accommodation but were at risk of homelessness; and people who have no 'local area connection' to a district in Lincolnshire. It was requested that the technical definition of the 'local area connection' be emailed to the Executive for information.
- It was confirmed that there was a protocol in place with the district councils relating to Looked After Children to ensure they were not disadvantaged.

As stated above, the Executive recorded its votes on the two sets of proposals separately. The vote on the Housing Related Support Services for Adults was taken first, on which it was:

RESOLVED

- (1) That approval be given to the commissioning of a housing related Support service, and the undertaking of procurement to establish a contract, to be awarded to a single provider of a countywide service effective from 1 July 2020.
- (2) That approval be given to the commissioning of services to provide two domestic abuse refuges, and the undertaking of procurement to establish a contract(s), to be awarded to a single provider of service at each refuge site, effective from 1 July 2020.
- (3) That approval be given to the commissioning of a mental health crisis houses service funded by Lincolnshire Clinical Commissioning Groups to be awarded to a single provider of the service, effective from 1 July 2020.
- (4) That the Executive Director - Adult Care and Community Wellbeing be delegated authority, in consultation with the Executive Councillor for Adult Care, Health and Children's Services, to determine the final form of the service; the procurement and the contract; the award of the contract; and entering into the contract, and any other legal documentation necessary to give effect to the above decisions.

32 COMMISSIONING OF SUPPORTED ACCOMMODATION: CHILDREN'S SERVICES**RESOLVED**

- (1) That approval be given to the proposed model, as detailed in Section 3 of the Commissioning Plan (Appendix A).
- (2) That approval be given to the procurement of a new Youth Housing Service through an open competitive tender from 1 July 2020 for a contract term of three years plus the option of extending for a further two years.
- (3) That the Executive Director for Children's Services be delegated authority, in consultation with the Executive Councillor for Adult Care, Health and Children's Services, to take all decisions necessary to conduct the procurement process up to and including the award and entering into of the contract.

33 HIGHWAYS 2020 CONTRACT AWARD DECISION

Consideration was given to a report from the Executive Director – Place, which presented the results of the Highways 2020 Procurement, described the process adopted and the solutions arising.

It was advised that as the discussion of this item may result in the disclosure of information that was either prohibited by, or under an enactment, or related to the business affairs of bidders in a confidential procurement provided to the Council. Any questions relating to the confidential Appendices A, B and C would be considered in private session.

The Executive was requested to consider and approve the award of a contract to:

Lot 1 (Highway Works) – Balfour Beatty Group Ltd

Lot 2 (Traffic Signals) – Colas Ltd

Lot 3 (Professional Services) – WSP UK Ltd

The Senior Project Leader and the Assistant Director – Highways advised that the Council had undergone a thorough and comprehensive procurement that had delivered a final tender for each lot offering the most economically advantageous tender to the Council.

The submitted tenders for each lot had been rigorously evaluated against the Council's published scoring methodology and criteria and the recommended contractors were those that had scored highest in that evaluation process. No other combination of contractors could be awarded the contracts without breach of the Council's procurement obligations.

The final tender would enable the Council to deliver an affordable service through a delivery model that would provide the most efficient and effective mechanism for delivering the Highway Service in Lincolnshire.

The Chairman of the Overview and Scrutiny Management Board advised that the Highways and Transport Scrutiny Committee had considered the Executive report on 16 September 2019 and unanimously supported the recommendations to the Executive. The comments of the Committee were circulated in advance of the meeting.

In response to a question, the Executive was advised that the current levels of service would be maintained as part of the end of the current contract and during the mobilisation of the new arrangements. It had been agreed that the Highways 2020 Project Board would continue to meet during the mobilisation of the contract to ensure a smooth transition.

NOTE: At this stage in the meeting, the Executive moved into confidential session. Officers responded to the questions raised, following which the Executive moved back into open session.

RESOLVED

That the Executive:

- (1) Notes the progress made and the outcome of the final tender evaluation.
- (2) Approves the award of and decides to award a contract for the delivery of:-
 - a) Highway Works to Balfour Beatty Group Ltd;
 - b) Traffic Signals to Colas Ltd; and
 - c) Professional Services to WSP UK Ltd.
- (3) Authorises the Executive Director - Place to notify all bidders in the procurement of the Council's decision to award contracts as set out in recommendation 2 above.
- (4) Authorises the Executive Director - Place to appoint Balfour Beatty Group Ltd, Colas Ltd and WSP UK Ltd as the Preferred Bidder in respect of the contract for Highway Works, Traffic Signals and Professional Services respectively.
- (5) Delegates to the Executive Director - Place authority to approve the final form and the entering into of all contract and other legal documentation necessary to give effect to the above decisions.

The meeting closed at 12.10 pm.

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

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

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:

- | | |
|----|---|
| 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 recycle (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

On 22 October 2019, the Environment and Economy Scrutiny Committee considered the strategy behind the procurement of a new mixed dry recycling (MDR) contract commencing in 2020.

The Committee supported the recommendations for the procurement of a contract for the collection of mixed dry recyclates, as well as an extension of existing interim arrangements in order to enable the most advantageous procurement process.

In addition, the Committee highlighted the following points for further consideration as part of the procurement process:

- The Committee recommended that further consideration should be given to reduce the carbon footprint from haulage from the transport of mixed dry recyclables as part of the procurement process.
- The Committee supported the development of more localised infrastructure to process Mixed Dry Recyclables. The Committee highlighted the benefits of building and operating a materials recovery facility (MRF), either directly or via a contractor and highlighted this as a future aspiration for greater commercialisation.

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.

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