

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

Report to:	Councillor D McNally, Executive Councillor for Waste and Trading Standards
Date:	18 - 22 September 2023
Subject:	Food Waste Disposal Contract Procurement
Decision Reference:	I029446
Key decision?	Yes

Summary:

This Report seeks approval to procure a contract for the treatment of food waste via anaerobic digestion, including collection from waste transfer stations by the supplier.

Recommendation(s):

That the Executive Councillor for Waste and Trading Standards:

- (1) approves the procurement via the competitive procedure with negotiation of a new contract to take effect from 1 April 2025 for the collection of food waste from waste transfer stations and its subsequent treatment.
- (2) Delegates to the Executive Director – Place in consultation with the Executive Councillor for Waste and Trading Standards authority to take all decisions necessary to progress the procurement and to approve the final form and entering into of the new Food Waste Disposal Contract.

Alternatives Considered:

1. Not Proceeding and Awarding a Contract

The Council is obligated to procure services of the value of these services according to the Public Contract Regulations 2015.

From 1st April 2025, the government has proposed all local authorities separately collect and dispose of municipal food waste on a weekly basis. Defra have confirmed that failure to implement separate food waste collections and disposal could result in the Council incurring financial penalties, although Defra have yet to confirm and quantify what any penalties are likely to be. This contract will ensure that the Council avoids receiving penalties, whilst safeguarding the

reputation of the council.

Due to the limited food waste processing capacity in the market, and Local Authorities competing to secure capacity to the same fixed deadline, delaying the procurement will likely result in less competitive rates for processing and haulage. In addition, if capacity in Lincolnshire and surrounding areas is no longer available, higher haulage costs will be incurred by the Council due to material being hauled over longer distances.

2. Open Procedure

The open tender route would allow the Council to get to the market before other contracting authorities which should result in advantageous pricing and security of necessary capacity in good time for the 2025 commencement of food waste collections to allow for the district councils to plan their collection regimes. The open tender process is a one stage process that is for procurements that are generally simplistic in nature, but does not permit the Council to negotiate with bidders. Due to some of the commercial aspects of the contract not being fully known, a competitive procedure with negotiation would give the Council the opportunity to discuss changes with bidders to achieve the aims of the contract and improve value for money, which the open procedure does not allow.

Reasons for Recommendation:

The proposed contract will ensure that the Council is in a position to comply with its legal obligations in relation to the treatment of food waste and thereby avoid receiving penalties, whilst safeguarding the reputation of the council.

The course of action proposed is the Competitive Procedure with Negotiation (CPN) which is compliant with the Public Contract Regulations. The CPN procedure will allow the Council to secure capacity with a provider to treat food waste, and negotiate with bidders during the tender process to discuss and agree changes to the requirements so that the objectives of the contract can be met and value for money improved. The contract will not grant exclusivity to the food treatment provider, or guarantee minimum tonnages, which will ensure the Council has the flexibility to take advantage of technological advances in alternative food treatment methods should they become available.

1. Background

1.1 Context

Pursuant to the Environment Act 2021, the government has proposed all local authorities separately collect and dispose of food waste on a weekly basis from April 2025. Lincolnshire County Council will be placed with a statutory duty to dispose of 35,000 tonnes of municipal food waste per annum. The relevant section in the Environment Act 2021 is yet to be commenced, and final details of what will be mandated and what

implications there will be for a failure to comply with the legislation are yet to be finalised and communicated by Defra. A failure to implement the changes is likely to incur financial penalties. The proposed contract will enable the Council to meet its statutory requirements to dispose of food as a separate waste stream, ensuring that financial penalties are not incurred whilst safeguarding the reputation of the Council.

As a result of these changes food waste will have to be diverted from the Energy from Waste (EfW) facility to a treatment facility. The Council does not currently manage the separate disposal of municipal food waste collected by the District Councils, as food waste is currently incinerated along with general household waste via the Energy from Waste Facility (EfW). Therefore, the Council will require a new contract to be in place to secure food waste treatment capacity by April 2025 at the earliest.

Anaerobic Digestion (AD) is currently the leading disposal technology for municipal food waste and market engagement has informed the Council that is this the most effective tried and tested technology for large volumes of food waste. As such the intention is to specify this treatment method. In order to open up the possibility of alternative treatments arising from rapid technological change the Council will not grant exclusivity or guarantee any volumes of material.

There are a limited numbers of facilities and limited capacity available in Lincolnshire and surrounding areas for AD treatment. Market engagement has established that there is one provider who is intending to extend their existing facility and increase capacity, and there are other providers who have indicated that they are proposing facilities within Lincolnshire which are at the planning and permits stage. Whilst this does not represent actual capacity at present, additional capacity may arise within the County before the Council is required to commence food waste disposal. However it should be noted that there is no guarantee that this additional capacity will be available or that any or all of the known planning and licencing consents will be obtained.

Engagement with the market suggests that the Council's food waste is attractive to AD providers because its composition optimises the AD process. Although market engagement has identified that currently there is adequate existing treatment capacity established within Lincolnshire which meets the Council's needs, this does not significantly exceed the Councils own capacity requirements. The concern is that other local authorities may target the established AD treatment capacity in Lincolnshire and surrounding areas if the Council does not move quickly to secure capacity. Private sector companies within food manufacturing also dispose of food waste via AD treatment, and any additional demands from the commercial sector could increase competition for securing available capacity. If there are delays and the capacity cannot be secured, and additional capacity does not become available, then it is likely that the material may have to be hauled to facilities over longer distances, resulting in higher haulage costs.

Food waste will be segregated by households and placed in caddies, which will be collected at the kerbside by the District Councils and delivered to the Waste Transfer Station (WTS). District Councils will have to procure extra collection vehicles and containers and may not be in a position to deliver food waste to the WTS by April 2025. Therefore, the Council may not need access to the AD facility for some time after that but provision has to be guaranteed from that point and there will have to be a provision in the contract requiring the operator to make available to the Council the required capacity

from a date specified by the Council. The date will be triggered on reasonable notice which the Council considers to be acceptable to the market.

Market engagement has established that most AD treatment providers are capable of handling haulage from the WTS to the treatment facility and as such haulage will be included in the contract. The AD supplier has an economic interest in ensuring a continual flow of material through their facility which is aligned with the Council's goals of minimising volumes of food waste within the WTS, and therefore the contract will specify that collections from the WTS will be made by the supplier on each working day.

Industry indices for the value of material achieved by buyers of AD services for 2023 suggest that the Council may receive an income for the material (by contrast with a net cost for MDR and residual waste disposal). In addition, this material will no longer be comingled with residual waste which is costly to dispose of at £99 per tonne. As such it is likely this scheme will result in a net financial benefit to the Council.

It is the intention that the Council will award to one supplier rather than to multiple suppliers on the basis of lots in order to achieve economies of scale and maximise the attractiveness of the Council's requirement and increase confidence that the facilities would be operational by March 2025. The decision not to provide exclusivity or guarantee tonnages will be useful if it becomes beneficial to revise this arrangement within the contract term for example if a new facility comes online within or near to Lincolnshire.

The proposed term of the contract will be five years with an option to extend for a further two periods of two years providing a maximum contract term of 9 years. Market engagement suggest this term is sufficiently long to be attractive to established AD operators and fits in with their vehicle replacement programmes.

This contract will contribute to a number of the Council's corporate objectives including: increasing the Council's recycling rate (estimated 7% increase); increasing the amount of household waste collected; reducing the amount of household waste diverted to landfill and reducing the Council's CO₂ emissions.

1.2 Procurement Process

The Competitive Procedure with Negotiation (CPN) is to be used to procure AD Waste treatment services. A CPN permits the Council to enter into dialogue with providers to seek improvements to the delivery of the service and costs associated with nominated areas of the Contract. As this is a new requirement and there are some elements that are not fully known to the Council, negotiation with providers may be beneficial. The potential areas that the Council may discuss with bidders to support the aims of the contract and deliver increased value for money are as follows:

- Contracting arrangements – opportunities to increase market resilience, improved processing capacity and value for money;
- Operational arrangements – to discuss opportunities to change the Councils operational arrangements such as changes to the specification or practices that may be adopted to increase value for money and support the aims of the Contract;
- Target / non-target fractions;
- Payment mechanism;

- Income generation;
- Contract terms – changes to commercial elements including but not limited to limits of liabilities, insurance levels and indemnities;
- Key Performance Indicators – changes to the performance management framework, for example minimum or target service levels in relation to the collection or storage of waste that might bring about operational or price benefits.

This procurement route should allow the Council to get to the market before other contracting authorities and therefore result in advantageous pricing and security of necessary capacity in good time for the 2025 commencement of food waste collections to allow for the district councils to plan their collection regimes.

Bidders will be required to declare that they are capable of receiving and treating municipal food waste, including caddy liners, at their own fully licensed / permitted treatment facility. Bids from providers who do not have current capacity will not be accepted by the Council as this will bring added risk to securing adequate capacity for when the Contract goes live or when the Council gives notice to commence collections and treatment.

The award Criteria will have greater focus on quality, with a weighting of 60%, with price being assessed with a weighting of 40%. This is likely to provide a good balance of cost and quality of service.

2. Legal Issues:

Public Services Social Value Act

In January 2013, the Public Services (Social Value) Act 2013 came into force. Under the Act the Council must before starting the process of procuring a contract for services consider two things. Firstly, how what is proposed to be procured might improve the economic social and environmental wellbeing of its area. Secondly, how in conducting the process of procurement it might act with a view to securing that improvement. The Council must only consider matters that are relevant to the services being procured and must consider the extent to which it is proportionate in all the circumstances to take those matters into account. In considering this issue the Council must be aware that it remains bound by the Public Contracts Regulations 2015 which itself through its requirement for transparency, fairness and non-discrimination places limits on what can be done to achieve these outcomes through a procurement.

The food waste treatment service contributes to the environmental wellbeing of the area by contributing to the effective treatment and disposal of household waste.

Ways will be explored of securing social value through the way the procurement is structured. The use of the competitive procedure with negotiation allows the Council to discuss directly with suppliers how the contract may be used to deliver social value.

Under section 1(7) of the Public Services (Social Value) Act 2013 the Council must consider whether to undertake any consultation as to the matters referred to above. The service

and the value it delivers is well understood. This and the market engagement carried out is considered to be sufficient to inform the procurement. It is unlikely that any wider consultation would be proportionate to the scope of the procurement.

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 Equality Act 2010 has been considered, and the decision is not considered to have any implications for people with a protected characteristic.

Joint Strategic Needs Assessment (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 and Wellbeing Strategy (JHWS) in coming to a decision.

The decision is not considered to have any implications for the Joint Strategic Needs Assessment (JSNA) and Joint Health and Wellbeing Strategy (JHWS).

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 decision is not considered to have any implications for the section 17 matters.

3. Conclusion

A Competitive Procedure with Negotiation (CPN) will allow a compliant procurement process that will give the opportunity for the Council to enter dialogue with bidders to discuss and negotiate operational and commercial factors to make changes to the initial requirements that will support the aims of the contract and may increase value for money.

This route to market, and delegating authority to seek tenders and award the Contract will ensure that the Council can quickly secure capacity in the market to meet its statutory obligations, and securing the most advantageous commercial outcomes.

4. Legal Comments:

The Council has the power to procure and enter into the contracts proposed.

The procurement of a new contract using the competitive procedure with negotiation is compliant with the Council's procurement obligations.

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

5. Resource Comments:

Cost pressures or savings from these changes to contracts is expected to be managed within the wider Waste Management revenue budget.

6. Consultation**a) Has Local Member Been Consulted?**

Yes

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 12 September 2023 and the comments of the Committee will be reported to the Executive Councillor.

d) Risks and Impact Analysis

See the body of the Report

7. Background Papers

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

This report was written by Paul Beales and Mike Reed, who can be contacted on paul.beales@lincolnshire.gov.uk or mike.reed@lincolnshire.gov.uk