

MUNICIPAL YEAR 2015/2016 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

KEY DECISION OF:

Cabinet Member for Environment

REPORT OF:

Director – Regeneration and Environment

Agenda – Part: 1

KD Num: 4163

Subject: Co-Mingled Dry Recycling, Mixed Organic Wastes, Food Waste & Garden Waste – Recommendation for Contract Award

Wards: All

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1. EXECUTIVE SUMMARY

- 1.1 This report sets out the background to the proposed contract award of the co-mingled dry recycling, mixed organic waste, food waste and garden waste service. In compliance with the Council's Contract Procedure Rules the procurement process has been advertised in the European Journal (OJEU).
- 1.2 The recommendation is to award the Contract to the bidder who provided the Most Economically Advantageous Tender ("MEAT"). The proposed Contract will provide bulking, processing and disposal of co-mingled dry recycling for both household and commercial waste and household mixed organic waste.

2. RECOMMENDATION

- 2.1 To award the contract to Bidder A.
- 2.2 To delegate authority to the Director of Regeneration and Environment to finalise and approve the terms of the Contract.

3. BACKGROUND

- 3.1 The Council as a Waste Collection Authority has an obligation to collect waste for recycling from households within its area including mixed organic waste.
- 3.2 Since 2009 these materials have been managed under a contract with Biffa Waste Services Limited at their facility in Edmonton. The current contract was initially let for a four year term with an option to extend for a further two years. The contract, following the Council having exercised the option to extend, ends at the end of August 2015.
- 3.3 The current contract contains a risk share mechanism whereby changes in the value of the recycle material are shared between the Council and Biffa. This mechanism has benefited the Council over the life of the contract as the initial processing fee for recycle has been offset by increases in the value of recycle materials. For instance at their peak in August 2011, prices increased by over £50 per tonne. Values however have slowly declined with current values slightly below the initial value.
- 3.4 In April 2013 a significant reduction in the gate fee was negotiated with Biffa which provided additional benefit to the Council for the remaining term of the contract. This reflected the very buoyant material markets at the time.
- 3.5 With the recent slump in recycle commodity prices and increased recycling costs a number of small providers have gone out of business creating fewer, bigger providers with large mixed recycling facilities.
- 3.6 Changes in consumer patterns have seen a decline in certain waste streams. The rise in digital media has meant a considerable decline in paper; a valuable commodity. Glass continues to decline with a manufacturing shift to lighter packaging, such as aluminium and plastics. And falling oil prices has reduced the attractiveness of recycling waste plastics.
- 3.7 In Autumn 2014 Council officers undertook pre-tender market research with potential providers to discuss in broad terms the proposed contract and seek their views on the best approach to achieving the Council's key contractual outcomes. The feedback from providers suggested they would prefer the contract to include a risk share mechanism, a term of 4-5 years and flexibility in bidding for different waste streams.

- 3.8 In March 2015 the Strategic Procurement Board approved the approach to procuring a contract to manage co-mingled dry recycling, mixed organic waste, food waste and garden waste. In April 2015 a procurement advert was placed in the European Journal (OJEU) using the Open Procedure of the Public Contract Regulations 2015 (“Regulations”).
- 3.9 The proposed contract contains a similar risk share mechanism to the existing contract. The waste streams are packaged into Lots to allow bidders to bid for each waste stream separately, but also the Council greater flexibility in the event of future service or market changes. The contract also offers the flexibility to respond to potential changes in the way in which organic waste is source-separated within the borough.
- 3.10 The contract term, commencing from the beginning of September 2015, is initially for five years with the option to extend for a further three, one-year periods subject to satisfactory performance.
- 3.11 In April 2015 Bidders were able to bid for the following Lots:

LOT 1: Co-mingled Dry Recycling (commercial & household) (“CDR”);

LOT 2: Mixed Organic Waste (“MOW”); and

LOT 3: CDR & MOW.

Both Lot 2 and Lot 3 contained the option for the Council to separate MOW into separate streams of food and garden waste (“Separate Organics”) during the term of the new contract.

In addition, the inclusion of a “no-fault” termination right on 6-months’ notice will provide the Council with the ability to retender the organic waste element and take advantage of market changes. This right was not included in the original procurement documentation, but clarification has been sought from Bidder A that inclusion of this right will be acceptable. It is preferable to include this no-fault termination right as part of the executed contract, rather than seek a variation on this basis during the contractor term, as the latter approach could give the contractor the opportunity to improve its commercial position in return. Moreover the procurement risk (which is very low – see 6.2 below) is similar, regardless of which route is taken. There are therefore no obvious advantages to the Council in seeking a post-contract variation rather than effecting this change pre-contract. The Council will therefore include this within the final version of the contract.

3.12 Bidders were required to pass the Eligibility Criteria and Minimum Standards before their bids for each Lot were evaluated.

Bid Submissions

3.13 Three Bidders submitted bids. Bidder A, bid for Lots 1 & 2 and Bidders B and C, for Lot 2 only. No bids were received for Lot 3. Bidder B & C were declared non-compliant.

3.14 Bidder A's bid passed all of the "Pass/Fail" requirements for Lot 1 and, Lot 2, and so was declared compliant.

3.15 The restricted Part 2 of this report provides the Cabinet Portfolio Member with detailed information on the declarations of non-compliance and the evaluation scores.

Evaluation Methodology

3.16 During May and June 2015 the bid submissions were evaluated by an Evaluation Panel comprising of senior Council officers and a specialist waste consultant.

3.17 Bids were evaluated on the basis of the MEAT, with the overall weighted ratio of 70:30 between price and quality respectively.

3.18 The evaluation criteria, scoring and weightings are as set out below, along with a number of "pass/fail" requirements:

QUALITY	30%
Service Quality (which in relation to a Lot 3 submission is split equally with 13.5 marks for each of the organic & CDR element of the submission)	27%
Community Benefit	3%
PRICE	70%
In relation to Lot 3, this is split equally with 35 marks for each of the organic and CDR element of the submission.	
PASS/FAIL	

The following pass/fail elements were also included:

- For any submission, the certain minimum requirements must be met in terms of community benefit;
- Lot 1 submissions must score at least 60% of the available marks for both price and quality;
- Lot 2 Submissions must score at least 60% of the available marks, for both price and quality, in respect of each of the Separate Organics and MOW elements of the submission;
- Lot 3 submissions must score:
 - o at least 60% of the available marks, for both price and quality, in respect of the CDR element of the submission;
 - o at least 60% of the available marks, both for price and quality, in respect of each of the Separate Organics and MOW elements of the organics submission.

3.19 Bids for Lot 3 were to be evaluated against each combination of bids for Lot 1 and Lot 2. Lot 3 therefore provided bidders with the opportunity of including a discount for a combined service. Where a Lot 3 bid provided the best value for money to the Council, the Council would not award Lots 1 or 2 and only award Lot 3. Conversely, should a combination of Lot 1 and Lot 2 bids offer the best value for money to the Council, the Council would decline to award Lot 3.

Quality Evaluation

3.20 Bidders were evaluated on the quality component by their written submissions on how they will deliver against the Council's requirements as set out in six method statements comprising of a series of weighted questions for each Lot covering:

1. Bulking and transportation;
2. Waste processing;
3. Monitoring input of materials for quality;
4. Achieving high quality recycling;
5. Health and Safety – delivery site and facilities;
6. Implementation plan.

3.21 In respect of Lot 1 and Lot 3 there was a "Pass/Fail" score of 60% of the available marks for CDR. Bidder A's submission exceeded the "Pass/Fail" requirements for Lot 1.

3.22 In respect of Lot 2, and the organics element of Lot 3, 50% of the quality marks were awarded for the MOW solution and 50% to Separate Organics. This, and the 60% minimum threshold applied to each of these elements, was to provide a balance between MOW and

Separate Organics, and ensure that a submission offering a poor solution for either would not be successful.

Price Evaluation

- 3.23 The price component of each Lot was evaluated on a total composite price of delivery, transportation, processing and additional hours rates based on the annualised waste tonnage, where available.
- 3.24 The bidder providing the lowest total composite price in respect of the relevant Lot, or element of the Lot, was to be awarded the maximum marks available for price for that Lot, or (in respect of Lot 3) for that element of that Lot. The remaining bidders for the Lot would be assessed against the lowest bidder's price and allocated a percentage of the total 70% (for Lot 1 and Lot 2) or 35% (for each element of Lot 3) score available using the following formula:

$$(\text{lowest bidder's price} / \text{bidder's price}) \times 70\%/35\%$$

- 3.25 In respect of Lot 2, and the organics element of Lot 3, 50% of the price marks were awarded for the MOW solution and 50% to Separate Organics. This, and the 60% minimum threshold applied to each of these elements, was to provide a balance between MOW and Separate Organics, and ensure that a submission offering a poor value for either would not be successful.
- 3.26 As Bidder A provided the only compliant bid it was awarded the full 70% score for price for both Lots 1 and 2. However, in addition to para 3.22, value-for-money tests were also applied as detailed in the restricted Part 2.
- 3.27 In respect of Separate Organics the organic waste recycling provision is rapidly improving with new local processing facilities potentially becoming available within the next few years. For the Council to benefit from such market improvements an agreement was obtained, during clarification from Bidder A, on the inclusion of an additional "no-fault" termination right for the Council on 6-months' notice in respect of organic waste. This will be included in the terms of any contract entered into with Bidder A. The rationale for the timing of this amendment is discussed at 3.11 above, and the procurement risk (which is low) is discussed at 6 below.

Community Benefit Evaluation

- 3.28 For the community benefit component all bidders were required to submit a method statement setting out how they would provide, in relation to the relevant waste services, one apprentice for every £1 million of annual costs (or part therefore) charged to the Council. For example, should the costs under the contract total £2.1 million in year three, the bidder must at that time involve 3 apprentices in the services.

- 3.29 Bidder A's submission passed the minimum requirements by committing to the employment of an apprentice at its processing facility.

Legal

- 3.30 The bidders were required to accept as drafted the proposed form of contract, subject only to project specific amendments required in order to reflect the terms of the submissions; for example in relation to price.
- 3.31 Bidder A confirmed their acceptance of the terms of the contract.
- 3.32 As staff time is split across multiple contracts there is no apportionment of staff time specifically to the current Enfield contract with the existing provider, therefore the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) therefore does not apply.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 A joint procurement with one or more neighbouring borough(s). However, all the neighbouring boroughs are committed to using the North London Waste Authority contract for this service.
- 4.2 The North London Waste Authority has a contract in place for the reception and processing of recyclables which could have been used. However, the current price associated with that contract is higher than currently paid by the Council and is expected to remain so.

5. REASONS FOR RECOMMENDATIONS

To ensure compliance with the UK Supply Contracts Regulations, the maintenance and improvement of service levels, value for money and recycling service and performance.

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES, AND OTHER DEPARTMENTS

6.1 Financial Implications

- 6.1.1 Please refer to the restricted Part 2 report for financial implications.

6.2 Legal Implications

- 6.2.1 The Council has the general power of competence under section 1(1) of the localism Act 2011 to do anything that individuals may generally do provided it is not prohibited by legislation. There is no express prohibition, restriction or limitation contained in a statute against use of the power in this way.

- 6.2.2 The Council is a waste collection authority, and the North London Waste Disposal Authority is its statutory joint waste disposal authority. Under section 45A of the Environmental Protection Act 1990 (as amended by the Household Waste Recycling Act 2003), the Council has responsibility to ensure the collection of at least two types of recyclable waste. Under section 48 of the Environmental Protection Act 1990, the Council is entitled to dispose of such recyclable waste other than through delivery as its waste disposal authority directs.
- 6.2.3 The Council must follow the requirements of section 48 of the Environmental Protection Act 1990, which requires notification of the waste disposal authority, in respect of the proposed disposal arrangements under the contract.
- 6.2.4 The procurement was carried out in accordance with the Council's Contract Procedure Rules and the Public Contracts Regulations 2015.
- 6.2.5 The contract must be in a form approved by the Assistant Director of Legal Services.
- 6.2.6 Allowing the Council to terminate the contract in respect of organics, on a 6-month notice "no fault" basis is a change to the terms of the contract as published as part of the tender documents. Under the Open Procedure used, material changes should not be made. However, this change is to the commercial advantage of the Council and would be likely to present a procurement risk only if a potential bidder could show: (i) that it would have bid had it known that this change was permissible; and (ii) its submission would have had a good chance of success. The risk of a procurement challenge on this basis is therefore low to negligible. As noted at 3.11 above, seeking instead to make this change during the contract term, as a variation, would not materially reduce this procurement risk. It may also be to the commercial disadvantage of the Council.

6.3 Property Implications

None

7. KEY RISKS

- 7.1 The key risk in awarding this contract is that commodity prices continue to fall causing a greater impact on the Council's budgets. The contract does mitigate this risk by including a material price risk share mechanism, whereby the base rate is based on the bid price and any variance will be split equally between the provider and the Council which has worked successfully for the current contract. The alternative is to advertise a fixed price contract for the CDR, however the soft

market sounding has indicated that bids would not be received on this basis as bidders are not prepared to price such a risk.

- 7.2 Contamination levels increase in the collected recyclate, increasing processing costs for the Authority. Policies and procedures have been reviewed to improve householder response to contaminated recycling presented for collection. Recycling communications have been rebranded to increase clarity and keep messages fresh. A specific contamination campaign is to be implemented to reduce contamination levels.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

The contract will maintain continuity of service for the benefit of all Enfield residents and businesses.

8.2 Growth and Sustainability

The Council's Sustainable Procurement Policy is supported by:

- Provider location: local employment opportunities supported as a contractual obligation;
- Environmental impact: household and commercial co-mingled recycling and household organic waste processing and disposal; maintaining the cleanliness of the borough.

8.3 Strong Communities

The service will maintain a clean borough and better overall environment.

9. EQUALITY IMPACT IMPLICATIONS

Corporate advice has been sought in regard to equalities and an agreement has been reached that an equalities impact assessment/analysis is not required for the approval of this contract as it is the re-procurement of an existing service.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

The provider will be subject to the following monitoring requirements:

- Monthly/Quarterly Contract Meetings;
- Monthly Provider Reports, including health and safety reports, weighbridge logs, gravimetric data submissions;

- Council inspections and audit of the service.

Service performance will be underpinned by key performance indicators linked to a payment mechanism.

11. HEALTH AND SAFETY IMPLICATIONS

The recommended bidder meets the Health and Safety requirements

12. PUBLIC HEALTH IMPLICATIONS

Disposing of waste in a cost-efficient and effective manner will improve the public realm and therefore public health.

Background Papers

None

MUNICIPAL YEAR 2015/2016 REPORT NO.

**MEETING TITLE AND DATE:
ACTION TO BE TAKEN UNDER
DELEGATED AUTHORITY**

PORTFOLIO DECISION OF:
Cabinet Member for Education,
Children's Services & Protection

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Agenda - Part:	Item:
Subject: Delegated Authority to Sign off Committee Reports on the School Expansion Programme	
Cabinet Member Consulted: Cllr Ayfer Orhan	

1. EXECUTIVE SUMMARY

This report provides information on the interim senior management arrangements in the Children's Services Department for the period 13 July 2015 until 31 August 2016. To ensure appropriate governance and aid effective decision making, it is recommended that delegated authority is given to the interim Chief Education Officer (CEO) in respect of school places planning and signing off committee reports on the school expansion programme.

2. RECOMMENDATION

Delegated authority on school places planning and signing off committee reports on the schools expansion programme is given to the interim CEO for the period 13 July 2015 until 31 August 2016.

3. BACKGROUND

- 3.1** The retirement of the Director of Schools and Children's Services (DSCS), Andrew Fraser, with effect from 10 July 2015 has opened up an opportunity for the Council to review its top tier management structure. As an interim measure, it is proposed that with effect from 13 July 2015 until 31 August 2016, the position of DSCS will be redesignated as Director of Children's Service (DCS) and the Assistant Director Education to Chief Education Officer (CEO) reporting to the Chief Executive.

- 3.2** The interim DCS post has been ringfenced to the Assistant Directors in the Schools & Children's Department and the Assistant Director Education has assimilated to the interim CEO role in accordance with the Council's recruitment policy.
- 3.3** The DCS portfolio will include responsibility for the protection, wellbeing of children and ensuring satisfactory arrangements are in place to ensure looked after, disabled children and those outside of education have access to appropriate education and training. The CEO portfolio will be accountable for all services to schools. Part of this brief will be to oversee the School Expansion Programme. This will involve signing off reports which agree significant capital expenditure.
- 3.4** The interim arrangement ensures that the two key priority areas for the Council as they relate to Children's Services - Education and Social Care Services both benefit from expert leadership during this period pending a management restructure planned for August 2016. It is therefore recommended that the interim DCS delegates authority for school places planning to the CEO who will be mandated to make decisions about school places in conjunction with the Chief Executive and the Lead Member for Children's Services.
- 3.5** The DCS and the CEO will both report to the Chief Executive during this period and quarterly meetings between the three senior officers and the Lead Member will be arranged to ensure that local children and families continue to benefit from integrated service delivery and future developments. This integration will be further complemented by the Chief Education Officer continuing as a key member of the Children's Services DMT as well as attending CMB periodically. Apart from the change to the line management arrangements of the CEO and the services she manages, all other functions, including budget allocation and executive support will remain unchanged, (the interim organisational structure is attached as appendix 1).

4. ALTERNATIVE OPTIONS CONSIDERED

The Council could replicate the current senior management arrangements and advertise the DSCS position on a substantive basis. However, this would undermine the Council's flexibility to restructure management structures in 2016 when there are significant financial challenges to address.

5. REASONS FOR RECOMMENDATIONS

As detailed in paragraph 3.3.

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

6.1 Financial Implications

The interim arrangements have resulted in additional payments to reflect the increases in responsibility. The Chief Education Officer will be paid an honorarium of £6k pa and the Director of Children's Services will be graded at point 4 on the Directors pay scale (£120,459). With on-costs the additional costs in a full year will be £7,920 and £35,340 respectively. In 2015/16 the part year cost will be £32,450. These will be funded from the remaining salary provision of £186,566 (including on-costs) for the former post of Director of Schools and Children's Services following his retirement.

6.2 Legal Implications

Section 101 (1)(a) of the Local Government Act 1972 permits a local authority to arrange for the discharge of any of their functions by an officer of the authority. The Scheme of Delegation within the Council's Constitution sets out the decisions which may be taken at each level under the authority of this section.

The Scheme of Delegation permits Directors to authorise expenditure within budgets as an operational decision.

The recommendation is lawful and within the legislation and the Council's powers and duties as set out above.

6.3 Property Implications

None

7. KEY RISKS

If effective governance and decision making processes are not put in place, it will leave the Schools & Children's Department in a vulnerable position in relation to an Ofsted inspection and challenges from schools.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Growth and Sustainability

8.2 Fairness for All

8.3 Strong Communities

} The interim management arrangements have been put in place with a view to promoting continuity and stability and enabling the Council to deliver on its priorities.

9. EQUALITIES IMPACT IMPLICATIONS

The interim arrangements provide an opportunity to broaden the experience and potential career development for a female member of staff.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

The interim management arrangements enable the Council to deliver on its priorities.

11. HEALTH AND SAFETY IMPLICATIONS

None

12. HR IMPLICATIONS

Contained in paragraph 3.2

13. PUBLIC HEALTH IMPLICATIONS

None

Background Papers

Appendix 1



