

Report of: Waste Management Contracts Manager

Report to: Chief Officer for Waste Management

Date: 19th March 2014

Subject: Extension of Interim Residual Waste Contract (Lot 1)

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: 10.4 (3) Appendix number: Appendix 1 Appendix 1 to this report has been marked as confidential under Access to Information Procedure Rules 10.4 (3) on the basis that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information) which, if disclosed to the public, would, or would be likely to prejudice the commercial interests of that person or of the Council.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

SUMMARY OF MAIN ISSUES

1. Waste Management Services are currently managing an existing waste treatment/disposal contract which provides a number of service suppliers who can deal with a range of waste materials through a four year framework contract due to expire on 1st December 2014.
2. Public Procurement Regulations 2006 (PPR's) state that a framework agreement must be of a maximum duration of four years "except in exceptional circumstances". The four-year rule exists to ensure that public procurement markets within the EU are opened up periodically to competition, thereby avoiding the locking up of markets for excessive periods. Where any kind of justification for a longer period than four years is relied upon, the grounds for doing so must appear in the OJEU contract notice.
3. In the case of this particular contract it was made clear within the OJEU advertisement that Lot 1 of the contract which deals with residual wastes collected from the Council's kerbside black bin collections may well need to be extended to deal with any delays in the delivery of the PFI funded waste treatment facility which would be dealing with this waste stream in the longer term.
4. The timescales for the delivery of this new facility are now such that it is expected to become available in early 2016, and as such the intention is now to seek Chief

Officer approval to extend this particular Lot within the existing contract to the maximum term through to December 2016 or until the new PFI facility is built, commissioned and fully operational whichever date comes soonest.

5. The extension will not guarantee any tonnages to any contractor and this will be in order to provide the flexibility to deal with the potential for fluctuations in tonnage requirements during the PFI facility commissioning phase.
6. When writing to contractors on the framework explaining how the extension will be implemented, it is intended to include the latest timetable for commissioning and the requirement that contractors will need to provide some flexibility in terms of tonnage profiles through what could be an unpredictable eight week period whilst commissioning takes place and during a period where the PFI contractor may require a diversion of tonnages away from their facility.
7. It is proposed that all other Lots within the framework will be re-tendered to comply with PPR's as there are no exceptional circumstances to suggest a need for delaying the procurement for these waste streams.
8. At this stage the relevant contractors haven't been approached to test their willingness to extend the contract. Once approval is obtained, the Contracts Team will open discussions with a view to extending on the same or improved contract terms.
9. The financial impacts of the proposed extension are described within the confidential Appendix attached to this report

Note that by virtue of Access to Information Rules 10.4.(3) these paragraphs are restricted as confidential. (See Appendix A for confidential sections) This is on the basis that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information) which, if disclosed to the public, would, or would be likely to prejudice the commercial interests of that person or of the Council

10. Contract Procedure Rules dictate that the relevant Chief Officer must be satisfied that an extension to the contract will achieve Best Value for Money and is reasonable in all the relevant circumstances. Furthermore a Delegated Decision process should be conducted in order to invoke the CPR that allows such an extension to take place. This report is intended to provide the supporting information so that the Chief Officer has all the necessary information required to make an informed decision.
11. The report discusses performance issues associated with two of the existing contractors on the framework since its initial award, providing a summary of the measures taken by the Council and regulatory authorities and the resulting improvements in environmental performance.

RECOMMENDATIONS

- § The Chief Officer for Waste Management is recommended to note the content of this report and agree to the Authority entering into negotiations to extend Lot 1 of the

existing interim residual waste treatment and disposal contract such that it expires once the PFI facility is fully operational.

- § The Chief Officer is also requested to agree to the formalisation of the extension on the assumption that the negotiations confirm that contractors are prepared to maintain or improve on existing terms. Should this not be the case then the Chief Officer will be informed and the strategy for securing new contracted outlets for this waste stream will be further discussed and agreed.
- § The Chief Officer is to be satisfied that the proposed extension will achieve best value for money and is reasonable in the relevant circumstances.

1. PURPOSE OF THIS REPORT

- 1.1. To outline the current situation with regard the interim residual waste treatment and disposal framework contract.
- 1.2. To explain the proposal to extend Lot 1 of that framework with contract terms either equivalent to or better than current.
- 1.3. To obtain Chief Officer Approval for the proposed extension.

2. BACKGROUND INFORMATION

- 2.1. In 2010 a restricted EU competitive procurement exercise concluded with the award of a number of organisations onto a framework contract for a range of waste streams. This contract was split into lots based on the different waste streams which included residual wastes, garden wastes, inerts and several other waste streams collected through the Council's 8 Household Waste Sites (HWSS's)
- 2.2. The contractors were tasked with providing facilities where they could accept the materials for treatment or disposal.
- 2.3. The original contract term was to expire on 1st December 2014 and although extensions beyond four years aren't generally available within frameworks, the OJEU advertisement expressly provided such an option to extend in exceptional circumstances by included the following wording which facilitates this.

"The contract is envisaged to be for a 4 year duration commencing in 2010. Dependant on the progress of the procurement/development of the longer term PFI funded facility detailed above, the Council reserve the right to extend the contract to which this notice relates to by up to two years".

- 2.4. The corporate Procurement Governance and Regulations Manager has also advised that in order to provide even further flexibility in terms of the extension duration, if the Council were to give an instruction at any stage prior to the expiry of the two year extended term then we can require the contractor to deliver their services for up to a further 12 months.
- 2.5. In terms of Lot 1 of this contract, although there are a wider range of contractors on the framework, the primary service providers and facilities currently used are as follows:

§ Biffa Waste Services Ltd	- Skelton Grange Landfill Site, Newsam Green, Leeds. - Bradford Transfer Station.
§ Caird Peckfield Ltd	- Peckfield Landfill Site, Micklefield, Leeds.
§ Associated Waste Management	- Gelderd Road MRF, Gildersome, Leeds. - Valley Road MRF, Shipley.

- 2.6. The allocation of tonnages across these service providers is split roughly by 1/3rd each with AWM being the only organisation offering waste treatment and landfill diversion options. Other organisations are available for use under the framework though the evaluations determined that these alternatives weren't as favourable in terms of their prices and operational impacts that they would impose.
- 2.7. Given the nature of this waste stream and the associated operations at the disposal sites, there is the potential for impact on amenity. During the contract term there have been some environmental performance issues in relation to the delivery of services and resulting amenity impact. These issues have been managed effectively through the application of the existing contractual performance mechanism and working closely with the regulatory authorities. Further details on specific issues are detailed in Section 4.6 below. However, it is not believed that these issues provide justification for not extending the arrangement, and the Chief Waste Management Officer is requested to note progress made and measures put in place to manage these impacts and improve operational practices. It should also be noted that the Council's deliveries of waste to these disposal outlets only account for a proportion of the overall wastes received at each of these sites.

3. MAIN ISSUES

3.1. Contract Extension

- 3.1.1. As discussed in paragraph 2 above, the existing contract will expire on 1st December 2014. Whilst a full competitive procurement exercise will be undertaken to secure longer term arrangements for the other material streams within the framework, it is proposed that Lot 1 dealing with residual wastes collected through the Council's kerbside collections should be extended in line with the statement included within the OJEU advertisement as detailed at 2.3 above.
- 3.1.2. This is on the basis that the planned longer term outlet for this waste stream is not available until July 2016 at the earliest according to the latest projections. There remains the desire to continue taking advantage of the favourable rates and the levels of recycling that the original procurement achieved.
- 3.1.3. We are not aware of any additional landfill diversion options that have been developed locally that we could utilise. The other unused options featuring in this framework are still available if required and they could be utilised if any voluntary price reductions were to become available and the total cost of delivering waste to these facilities was proven advantageous.

3.2. New Price Bids

- 3.2.1. Through implementing the extension we would seek voluntary reductions in gate fees for the duration of the extension and it is therefore proposed that the opportunity to re-price is opened up to all the organisations on the framework as opposed to just those that we are actually using currently.
- 3.2.2. The extension will include the retention of the feature whereby no tonnages are guaranteed to any contractor and this will allow for some flexibility in how we allocate tonnages in certain circumstances, for example through the period when the PFI facility is being commissioned.

- 3.2.3. In order to extend the contract for this Lot, both parties (i.e. the contractor and the Council) have to be in mutual agreement and ultimately if this position cannot be reached then a full re-tender will be required.
- 3.2.4. If the negotiations result in anything but the same or more favourable terms then the Chief Officer will be consulted further to determine whether a full re-tender is the most appropriate option rather than agreeing to any less favourable terms than are offered for the extension.
- 3.3. Timing**
- 3.3.1. As already discussed, it is agreed that the remaining materials on the framework are not extended and preliminary steps have been taken towards that procurement. If the outcome of the negotiations for Lot 1 is not acceptable then we would suggest that Lot 1 (to which this report relates) should be included in this new framework procurement.
- 3.3.2. Bearing in mind the timetable for that procurement and the process leading up to contract commencement, it is essential to clarify whether this Lot is to be included and consequently the negotiations being proposed need to be initiated and the conclusion agreed at the earliest opportunity.
- 3.3.3. It should be noted that if new outlets for waste disposal emerge, either from the evaluation of a tender or the negotiation of an extension, or if there is a significant change in the tonnage allocation across existing contractors, then there would be the requirement for some degree of re-routing of the refuse collection service. It is widely acknowledged that the current challenges in terms of implementing future phases of alternate weekly collections, the implementation of IWMS and re-routing work ahead of the PFI commencement are creating resourcing issues currently, and additional re-routing of residual waste collections routes would clearly impact on the progress of these critical projects.

4. CORPORATE CONSIDERATIONS

4.1. Consultation and Engagement

- 4.1.1. It is not considered that the content of this report or the recommendations made will require a wide consultation process and the decision won't have a significant impact on any particular ward or community, however due to some local concerns around the Peckfield landfill site at Micklefield, consultation has already been undertaken with the affected Ward Members in Kippax and Methley and the Executive Board Member for Environment. Those consultees are satisfied that the proposed extension does not impact on our ability to continue effectively managing the issues of concern in their locality.

4.2. Equality and Diversity / Cohesion and Integration

- 4.2.1. It is not considered that the content of this report or the recommendations made will have any impact on any specific individual or group in terms of equality, diversity, cohesion and integration.

4.3. Council Policies and City Priorities

- 4.3.1. Waste Management Services will contribute to the delivery of the Best City and Best Council objective of "dealing effectively with the city's waste", focusing

specifically on “ensuring a safe, efficient and reliable waste collection service, increasing recycling and reducing disposal costs by minimising waste to landfill.”

4.3.2. The issues being discussed within this report and the contracts we are looking to address will have implications with regard to our environmental performance and the aspirations stated within our Environmental Policy. The following are all relevant contributors to meeting the needs of this Council Policy:

- a) Preventing pollution and minimising our environmental impact;
- b) Taking steps to reduce carbon emissions;
- c) Improving our resilience to current and future climate change.

4.3.3. As stated earlier, contractor environmental performance will be managed through application of the existing contractual performance mechanism and close working with the regulatory authorities.

4.4. Resources And Value For Money

4.4.1. ***Note that by virtue of Access to Information Rules 10.4.(3) these paragraphs are restricted as confidential. (See Appendix A for confidential sections) This is on the basis that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information) which, if disclosed to the public, would, or would be likely to prejudice the commercial interests of that person or of the Council.***

4.5. Legal Implications, Access To Information And Call In

4.5.1. The Chief Procurement Officer has advised that the Public Procurement Regulations 2006 provides for an extension opportunity within frameworks beyond the 4 year maximum in the event of exceptional circumstances. As these exceptional circumstances were expressly defined within the original OJEU notice it allows the Authority to utilise these provisions

4.6. Risk Management

4.6.1. Failure to agree and secure a contract extension for Lot 1 of this framework will mean that there is an urgent requirement to undertake a new procurement for this waste stream alongside the remaining lots.

4.6.2. The timescales for this procurement are extremely tight and given the importance of having secure outlets for this major waste stream, the extension of what is a satisfactory arrangement will address the risk of procurement delays that might potentially lead to a gap in service provision between the existing contract expiring in December 2014 and a new arrangement being formalised.

4.6.3. If we do not extend the contract as proposed and should the above scenario become reality, the Authority will not have secure outlets for the materials for which the Council has a statutory duty to collect.

4.6.4. Not having contracted outlets means that the Council is exposed to the following risks:-

1. No guaranteed capacity available.

2. Gate fees and payment terms can be altered without negotiation

3. No control over any adverse service delivery.

4.6.5. A contract extension will protect the Council from the above issues and carries with it a legal framework and formal contractual terms and conditions. This ultimately provides the Authority with assurances that the terms of the specification will be met, and with a means of remedy if they are not.

4.6.6. During the contract term there have been some specific performance issues that are worthy of note in relation to two of the contractors currently receiving residual waste under this framework contract. As referred to in Section 2.7 above, although it is not believed that these issues should prevent a decision to extend this contract, the following provides a summary of the issues, measures taken and improvements made as a result:

4.6.6.1. Associated Waste Management (AWM):

AWM, during the first 2 to 3 years of the contract, were subject to complaints in relation to odour and other operational issues at both facilities listed in Section 2.5 above. Following Local Planning Authority (LPA), Environment Agency (EA), and Waste Management Services intervention, and the associated considerable improvement works undertaken by AWM at their sites and completed during 2013, both facilities are now regarded by the EA as examples of good odour management practice for residual waste processing. Close monitoring and regular open dialogue continue between all of the above listed parties.

4.6.6.2. Caird Peckfield:

Caird Peckfield took ownership of the Peckfield Landfill Site in early 2013 from the previous owner/operator Caird Bardon. There is a significant history of odour complaints associated with the operation of this landfill site from neighbouring residents. Following an initial problematic period, complaints have now fallen to their lowest level for a number of years. This is recognised by the EA and Waste Management Services as being the result of several substantial infrastructure and operational improvements on site. Whilst there is an ongoing programme of continued improvement to be completed at this location, the EA are satisfied with the positive trend in terms of performance. It is worth noting that the Council's waste constitutes less than 20% of the material going into the Peckfield Landfill Site. Even if the Council were not delivering waste to this site, the contractor would need to supplement this from elsewhere, and arguably the Council maintains a greater influence over operational practices at the site by retaining its contractual involvement. The recommended approach is therefore for the Council to use its influence both through applying contractual measures and working alongside the regulatory authorities to ensure that operational practices at the Peckfield site minimise the impact on local amenity. Once again, close monitoring and open dialogue continue between all of the relevant parties.

5. CONCLUSIONS

- 5.1. The current framework contract for residual wastes treatment and disposal with the existing organisations in Lot 1 is coming to an end and there is very little to suggest that a new procurement will provide any benefit for the Authority in terms of improved prices and alternative processing and disposal outlets.
- 5.2. A short term extension leading to an ultimate expiry to coincide with the commencement of the PFI residual waste treatment contract will ensure continuity of service and subject to negotiation will secure the existing or improved terms and conditions.

6. RECOMMENDATIONS

- 6.1. The Chief Officer for Waste Management is recommended to note the content of this report and agree to the Authority entering into negotiations to extend Lot 1 of the existing interim residual waste treatment and disposal contract. Securing agreement to an extension is on the assumption that contractors are prepared to maintain or improve on existing terms. Should this not be the case then the Chief Officer will be informed and the strategy for securing an outlet for this waste stream will be discussed and agreed.
- 6.2. The Chief Officer is to be satisfied that the proposed extension will achieve best value for money and is reasonable in the relevant circumstances.

7. BACKGROUND DOCUMENTS¹

- 7.1. Background reports and papers relevant to this report include the following:
 - § OJEU advertisement relating to the original procurement
 - § Delegated Decision report seeking approval to award the original framework contract.
 - § Signed delegated Decision Notification form approving the decision to award the original framework contract

¹ The background documents listed in this section are available to download from the Councils website, unless they contain confidential or exempt information. The list of background documents does not include published works.