

## Report of Contracts Manager (Waste Management)

### Report to Chief Officer Waste Management

**Date: 10<sup>th</sup> October 2017**

**Subject: Negotiation of contractual savings relating to treatment/disposal of household waste site residual waste**

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? check with governance	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<p>Appendix 1 to this report has been marked as exempt 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. The information is exempt if and for so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. In this case the report author considers that it is in the public interest to maintain the exemption.</p>		

### Summary of main issues

This report outlines proposed changes to the contract with Associated Waste Management regarding waste disposal, because of a smaller amount of waste than anticipated going to landfill.

### Recommendations

The Chief Waste Management Officer is recommended to agree to the acceptance of the proposal to amend the landfill % used in the calculation of AWM's costs for Household Waste Site residual waste treatment/disposal, thus securing the associated savings to the Council.

## Purpose of this report

### **1 Background information**

- 1.1 The Council entered into a framework contract in April 2015 with various contractors for the provision of recycling, treatment and/or disposal of a range of waste streams. One of the contractual lots covers the residual waste arising from the eight Household Waste Sorting Sites across the City, and the Kirkstall Rd waste transfer station. A number of contractors were awarded tonnages under this lot, but with Associated Waste Management (AWM) the only contractor offering any treatment/recycling of this waste stream as opposed to landfill only.

### **2 Main issues**

- 2.1 At the time of tendering, AWM submitted a price which was based on an estimated 35% landfill (along with the associated Landfill Tax), and this landfill proportion was assumed during the evaluation of bids on both price and quality. However, the contractual payment mechanism was devised in such a way that, should the contractor achieve an actual landfill proportion below the tendered assumption of 35%, a sum equivalent to the avoided Landfill Tax (LFT) for this tonnage would be deducted from the charges to the Council.
- 2.2 AWM have consistently achieved a landfill rate below 35% due to the growth in the refuse derived fuel (RDF) market, but in practice costs charged to the Council since service commencement under the contract have been calculated using the landfill rate of 35% and have not included deductions associated with the avoided LFT. Therefore a strict interpretation of the contract would mean that LCC could argue that they have been overcharged since contract start.
- 2.3 However, although not recognised by either party during procurement and at contract award, the way the payment mechanism works does not fully reflect what was intended. Whilst the Council was seeking to benefit from some share of the savings from reductions in landfill, to demand an amount equivalent to the LFT (which is the vast majority of the cost of landfill) would act as a complete disincentive to contractors to reducing landfill, since the costs of recovery through RDF treatment, whilst doubtless cheaper than landfill, are still relatively high. Indeed, AWM have stated that, for the Council to insist upon the letter of the contract in this regard, would result in them having to increase the level of landfill to the tendered 35% in order to cover their costs, which would clearly be a negative environmental outcome. In light of the above, it is not therefore recommended that the Council pursue a strict interpretation of the contract.
- 2.4 Notwithstanding this, the Council is seeking some share in the savings associated with the diversion from landfill achieved, which is what was originally intended under the contract. To this end, the Contract Team have been engaged in negotiations with AWM, and are now recommending acceptance of an offer from AWM, which has been improved through various iterations, that a reduced landfill rate be applied retrospectively and until the end of the contract term such that savings of a projected £137k are realised during the remainder of 2017/18 and 2018/19.

### **3 Corporate Considerations**

#### **3.1 Consultation and Engagement**

3.1.1 The Executive Member for Environment and Sustainability has been consulted on this proposal.

#### **3.2 Equality and Diversity / Cohesion and Integration**

3.2.1 An impact and equality screening assessment has been completed and there are not deemed to be any issues relevant to Equality and Diversity/ Cohesion and Integration with this decision.

#### **3.3 Council policies and City Priorities**

3.3.1 Dealing effectively with the Council's waste and minimising its environmental impact through reducing landfill are Council and City priorities. The proposal set out within this report provides a mechanism which allows some sharing in the financial benefits of avoided Landfill Tax, thus representing value for money, but also retaining an incentive for the contractor to minimise landfill.

#### **3.4 Resources and value for money**

3.4.1 The offer provides a substantial saving of a projected £137k over the next two financial years, an improvement over the costs anticipated in the budget, and involves LCC receiving a share in savings associated with AWM's efforts to minimise landfill, effectively securing a basis of payment consistent with what LCC originally intended under the contract.

3.4.2 Details of the calculation of these savings are included within confidential appendix 1.

#### **3.5 Legal Implications, Access to Information and Call In**

3.5.1 The proposal constitutes a significant operational decision and is therefore not subject to call in.

3.5.2 In terms of procurement risk, the proposed pricing amendment is not deemed to have any bearing on other contractors, most notably because those appointed to the framework for this lot provide landfill disposal only. A proposal to reduce the landfilled proportion is therefore only relevant to AWM, and sees them improve their price over that which saw them originally awarded the vast majority of the available tonnage under this lot.

#### **3.6 Risk Management**

3.6.1 Beyond the issues covered in 3.5 above in relation to procurement risk, it is considered important and beneficial for the Council to now move quickly to secure this offer given the volatility of markets for recycling and waste treatment.

## **4 Conclusions**

- 4.1 As noted above, the proposal from AWM negotiated by the Waste Contracts team provides a substantial saving over the next two financial years, and an improvement over the costs anticipated in the budget, The proposal involves LCC receiving a share in savings associated with AWM's efforts to minimise landfill, effectively securing a basis of payment consistent with what LCC originally intended under the contract. This is therefore deemed to represent value for money, but also retains the incentive for the contractor to minimise landfill and the related environmental benefits.

## **5 Recommendations**

- 5.1 The Chief Waste Management Officer is recommended to agree to the acceptance of the proposal to amend the landfill % used in the calculation of AWM's costs for Household Waste Site residual waste treatment/disposal, thus securing the associated savings to the Council.

## **6 Background documents<sup>1</sup>**

- 6.1 None.

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.