

Request to directly award the Mixed Dry Recyclate contract under Regulation 32 (2) (B) (ii) of the Public Contracts Regulations 2015 to HW Martin Waste Ltd.

Date: 20th March 2024

Report of: Business Officer (Waste Contracts)

Report to: Chief Officer (Environmental Services)

Will the decision be open for call in? (Please see point 50) Yes No

Does the report contain confidential or exempt information? Yes No

Access to information rule 10.4(3)

Brief summary

- The current contract which deals with the treatment and recycling of household mixed dry recyclates collected from the kerbside through green bins, is scheduled to expire on 6th November 2025.
- The Environment Act (2021) sets out new requirements for the list of materials that Councils are required to collect from the kerbside. The main additions being glass and food. The latest update from DEFRA (Department for Environmental and Rural Affairs) is that it expects the new requirements and associated funding to be effective from 2026. However, Councils still await the formal commencement notices and statutory guidance relating to the new requirements, and the detail on how new burdens will be funded.
- Environmental Services (Waste Management) therefore propose conducting a trial to collect glass co-mingled with the other materials already collected in the green bin. To do this, the service proposes awarding a new contract directly to HW Martin Waste Ltd. under a new 2+2 year basis. Provision exists under Reg 32 under (2) (ii) to allow the Council to award a contract directly for technical reasons which are laid out in the following sections of this report.
- This will allow the Council to make a timely and accurate assessment of the impact of collecting glass in this way, to inform a longer-term strategy for the best way to collect and recycle glass. In a way that considers issues such as the amount of household glass that is recovered for remelt, the extent to which other materials are affected by the glass and the customer's view on if this makes recycling at home simpler.
- This proposal will be deliverable utilising the existing collection infrastructure, and, due in main to the processing/disposal savings expected, it is anticipated that this proposal will allow the Council to trial this service on a saving basis (for full details see Appendix 1 of this report).

- As a result of the requirements, savings and the necessary need to trial this service, it is proposed to award a contract to HW Martin Waste Ltd (' Martin')HW for a period of 2 + 2 years using Regulation 32 (2)(b) of the Public Contracts Regulations 2015 (PCR) to allow the service to conduct a trial to co-mingle glass at the kerbside and access immediate savings generated both financially, environmentally and in terms of carbon reduction. Utilising the trial and allowing the impacts of DRS and EPR to become more clearly defined by the government and industry to a point where the eventual re-procurement can be undertaken safely in the full knowledge of what is expected to be collected (as a result of DRS) and what funding will be in place (through EPR).

Recommendations

- a) The Chief Officer for Environmental Services approves the utilisation of Regulation 32 (2)(b)(ii) of the Public Contracts Regulations 2015 in order to award a contract directly HW Martin Waste Ltd to treat the co-mingled recyclate including glass collected through the green bin kerbside collections for a period of 2 + 2 Years. This would see the ultimate expiry of the contract being 2028.
- b) It is also requested that the decision is exempt from call-in due to the reasons outlined in paragraph 50 of this report. The decision has been on list of forthcoming decisions published 29th February 2024.

What is this report about?

(a) Current contract and changing Government strategy/requirements

- 2 The current contract for mixed dry recyclates end date was previously varied in 2019, 2021 and 2023 utilising regulation 72 (1) (b) (i) & (ii) of the Public Contracts Regulations 2015. The current contract which deals with the treatment and recycling of kerbside mixed dry recyclate is scheduled to expire on 6th November 2025.
- 3 Previous reports D50276 in 2019 and D54625 in 2021 justified why these variations were enacted. In the main, this was due to a lack of clarity around what was going to be required of councils in relation to waste management services and the potential impacts of other initiatives under the legislation such as the proposed Deposit Return Scheme (DRS) and the uncertainty of what funding will be available under Extended Producer Responsibility (EPR). Presently some of these same uncertainties still remain.
- 4 The current contract is for the recycling, treatment, and onward sale of materials from co-mingled kerbside recycling collected by the Council. Currently, in the green bin in Leeds residents can recycle:
 - Newspapers and pamphlets
 - Mixed paper and Cardboard
 - Metals (aluminium and steel) in form of drinks cans, aerosols, and tin cans
 - Plastics (types 1,2,4) and PP products such as pots, tubs and trays
 - Tetrapaks
- 5 The Governments Resource & Waste Strategy document in December 2018, and subsequent legislation in the Environment Act (2021) proposes to standardise the range of materials and frequency of collections from domestic properties in England and Wales. Of

the materials mandated by the legislation, Leeds currently doesn't collect glass or food separately at the kerbside.

- 6 The Government is still consulting on and developing its approach to implementing the Environment Act legislation. The commencement notices have not yet been issued and detailed statutory guidance has not been forthcoming. Therefore, there is still a lack of clarity and doubt for Councils about the exact requirements of the Act, how the various streams interrelate, what funding will be available for both capital and revenue streams, and the metrics associated with determining the level of funding given to councils. However, the requirement remains for Councils to deliver the kerbside collection of these materials by 2026. In addition, there are other elements of the legislation such as Extended Producer Responsibility (EPR) and the Deposit Return Scheme (DRS) which whilst expected, are not yet fully defined, and will have significant impacts on tonnages, composition, and the value of this particular element of the waste stream. For example, a successful DRS, will extract plastic bottles and cans (which are typically the most valuable materials in the mix of recycling collected) and divert them away from kerbside collection.
- 7 The government has released further clarification around 'Simpler Recycling' which allows councils to have the flexibility to move away from having to collect materials separately without a need for a Technically, Environmentally and Economically Practicable (TEEP) assessment.
- 8 In November 2023 the Government stated in its published consultation response (with regards to "councils and householders who are concerned about the risk of too many bins cluttering our streets"): *"This was not the intention of the policy, and we know that local authorities can attain high recycling rates with a co-mingled recycling service (collecting all dry recycling together). Having assessed the highest performing councils on recycling rates, we propose to introduce exemptions to allow all councils in England to offer just 3 waste containers (bins, boxes or bags) – for dry recycling, food waste and residual (non-recyclable) waste".* The response added *"On further examination of the evidence base, we consider that there is sufficient evidence that the co-collection of dry recyclable materials will not significantly reduce their potential to be recycled, so long as dry recycling is collected separately from residual and organic waste. Based on available data, co-collection does not have a significant impact on recycling rates."*
- 9 Furthermore, the government proposes to extend producer responsibility to provide funding for the implementation of the above, and a range of other waste management/environmental initiatives, as well as consulting on collection of WEEE (Waste from Electrical and Electronic Equipment) from the kerbside, although no timescale or detail has yet been provided on this.
- 10 With all this current uncertainty still surrounding the forthcoming legislation, a trial of the collection co-mingled kerbside of glass would allow the Council to significantly improve recycling and environmental performance. It would potentially put the Council in a compliant position with the glass kerbside collection requirements for 2026 without additional risk and cost to the Council in terms of service provision. Awarding this contract will allow the wider strategy to become more clearly defined by the government to a point where the long-term competitively tendered re-procurement can be undertaken with much less risk, in the full knowledge of the material flows and mechanisms expected through EPR and DRS.
- 11 Further delays have been announced by DEFRA on the implementation of the Extended Producer Responsibility (EPR) scheme and a proposed Deposit Return Scheme (DRS). DRS was due to be implemented in Scotland last year, however implementation unlikely to start until 2025 now. We anticipate that 2025/26 will be the first year funded by EPR, however, we expect to be informed on the level of funding around November 2024.

(b) Proposed trial

- 12 As detailed in Appendix 1 it is expected that a trial of this nature can be delivered by reducing costs. There is an existing contract in place with HW Martins for the treatment / recycling of mixed dry recyclable materials which does not expire until March 2025. It is a long-standing contract that operates well with an excellent relationship. Therefore, to introduce a trial of kerbside glass collections, there are two options available to us. We can either add it to the existing contract by a variation or tender a separate contract purely for the collection of source segregated glass to run alongside the existing co-mingled collection for Martins as there are no grounds for termination of the existing contract with HW Martins and neither would we want to do this due to the continued high levels of service received. Awarding a separate contract for kerbside glass collection would require a separate additional bin for residents, a different contractor, different disposal locations, additional vehicles, crews, depot capacity, and additional routes being created. This would increase costs, for which we do not have the budget/resources, and most significantly, it would not provide the information we are trying to test which is the viability of collecting glass with the other kerbside materials.
- 13 A 2+2 year contract for a trial would give the Council flexibility to test the proposed method of collection and recycling and if it did not performed as hoped, it provides the ability to reconsider after the first two year trial period.
- 14 Environmental Services (Waste Management) therefore propose conducting a trial to collect glass co-mingled with the other materials already collected in the green bin. To do this, the service proposes awarding a new contract directly to HW Martin under a new 2+2 year basis. Provision exists under Reg 32 under (2) (ii) to allow the Council to award a contract directly for technical reasons which are laid out in the following sections of this report.
- 15 Legislation currently requires the Council to collect a standard set of materials at the kerbside by March 2026, of all the materials mandated; glass and food are the only materials the Council doesn't collect currently. The Government's 'Simpler Recycling' approach will allow local authorities to co-mingle recycling at the kerbside without the requirement of a TEEP assessment. It is worth noting that six of the top 10 local authorities in terms of 'household waste' recycling rate in England in 2021/22 provided a co-mingled service for dry materials.
- 16 With the need to comply with the new kerbside collection requirements laid out in law, and current uncertainty around EPR and DRS, it is proposed that the Council enters into a contract with HW Martin for a period of 2 + 2 years to allow the Council to firstly, to become compliant with the requirements laid out in Environment Act 2021 for March 2026, and secondly, assess and measure collecting glass in a co-mingled system under a trial basis.
- 17 Modelling for co-mingled collections with glass indicated that no new vehicles or crew will be required. To allow the Council to conduct this trial, HW Martins require a mobilisation period to be able to take glass which will be approximately 4 months and will enable the service to collect co-mingled glass by the end of Summer 2024.
- 18 The Council believes that there are grounds to justify the award of contract on the basis of a trial and technical reasons in accordance with Regulation 32 (2) (b) (ii) of the Public Contracts Regulations as further described further in this of this report.
- 19 This proposal would provide substantial benefits for the Council in terms of savings for the length of the proposed contract, immediate savings this financial year, and several other added value benefits. This includes funding for resources to help with recycling initiatives and the potential trailing other new material collection streams.
- 20 Providing a kerbside outlet for kerbside glass will not only increase the amount of waste collected for recycling but divert glass from the Recycling and Energy Recovery Facility

(RERF), providing significant financial savings (as detailed in Appendix 1) as well as environmental and carbon benefits.

- 21 It is expected that by diverting around 80% of the glass currently in the residual bin and approximately 65% from bottle banks, the overall household waste recycling rate will increase by c.3 percentage points.
- 22 We estimate that Leeds residents currently put c.11,400 tonnes of glass in their residual/black bins each year, which if recycled would have huge environmental benefits, including a carbon saving of around 2,600 tonnes of carbon equivalents per year when compared to incineration. When using an assumed diversion of 80%, the carbon saving is around 2120 tonnes of carbon equivalents per year. During the proposed trial the service will also retain glass banks to allow residents to use the existing network if they choose to do so. No new banks will be introduced. Glass banks will continue to provide coverage where kerbside recycling capacity and provision may be limited.
- 23 Once the Environment Act's (2021) associated commencement legislation, guidance and funding details are published, a new Waste Strategy for Leeds will be fully developed. At this point, with the success or otherwise of the trial having been evaluated, the service would look to commence a new procurement exercise with a full understanding around the best way to collect this material in accordance with law and best practice. By this time, the impacts of DRS and EPR will be better understood to inform the new strategy and procurement.

What impact will this proposal have?

- 24 When implemented, this contract will enable residents to put glass containers in the green bin which will also in turn generate significant savings both financially and environmentally from increased recycling rates and through projected carbon reduction.
- 25 Collecting glass this way, would see the diversion of glass away from the RERF moving this material up the Waste Hierarchy and will increase the amount of glass made available to reprocessors for 'remelt' applications in which, waste recycled and reprocessed glass containers are then remade into glass containers. Glass fragments which are too small to be detected will be used in recycling applications such as aggregates, ensuring approx. 95% of the glass collected will either be reused or recycled.
- 26 Collecting additional glass for recycling will also increase the Council's recycling rate.

How does this proposal impact the three pillars of the Best City Ambition?

Health and Wellbeing

Inclusive Growth

Zero Carbon

- 27 Plastics, metal, glass and paper manufacture alongside the extraction of the constituent raw materials of these products are major contributors to carbon emissions and climate change. This contract helps to maintain the Council's ambition to reduce carbon emissions by recycling these materials which in turn avoids the need of, and reliance on virgin and finite materials. This use of recycled materials to manufacture replacement/new products moves the production chain from a linear one of consumption and replacement to a circular one where materials are recycled to be used again.
- 28 The emphasis in procurements of this kind and for these waste streams is to maximise adherence to the waste hierarchy and circular economy where re-use and recycling is selected as the preferred method for dealing with this waste ahead of other waste disposal options.

- 29 Ensuring continuity in the areas of recycling and expanding the materials for collecting for recycling forms part of the Council's efforts to address the climate emergency which has been declared in Leeds and contributes towards the Council's aspiration of becoming a carbon neutral city by 2030.
- 30 By making recycling, especially the recycling of glass more accessible and inclusive to residents as a result of being able to accept glass at the kerbside in the green bins. Additionally, including glass in the kerbside provision will enable residents with present barriers to recycle glass such as; bottle bank locality/coverage, transportation and accessibility issues to be able to recycle glass more easily in Leeds.
- 31 Acknowledging the best way to collect glass and other materials is through source segregation however, a city with the demography and urban layout such as Leeds would be prohibitive as it would require significant investment with regards to vehicles and resources. Additionally, the amount of funding available from EPR is still unclear, therefore making it difficult to plan any future source segregated service – additional containers will also need to be factored in which again, may be prohibitive to some housing. With the update communications from the government regarding simpler recycling, it appears there is a move away from what was required in the original legislation.

What consultation and engagement has taken place?

Wards affected: N/A

Have ward members been consulted? Yes No

- 32 A market sounding document was developed and published on Yortender in October 2021. The Council received 3 responses, from both local and national companies. All three respondents indicated that they would prefer a longer-term contract (5 -10 years) in order to recoup the investment required to put a service in place to deal with these materials.
- 33 Consultation with relevant Executive Member and Scrutiny Chair.
- 34 Consultation with Finance.
- 35 Consultation with Procurement and Commercial Services (PACS) and PACS Legal.

What are the resource implications?

- 36 As part of this trial, officers have negotiated significant savings for the life of the proposed contract and immediate savings for this financial year. These can be found in confidential appendix 1. In addition to contractual savings, there are further financial savings by diverting glass from the black bin, which can also be found in confidential appendix 1.
- 37 HW Martin have also made a financial commitment to contribute to the Council's recycling initiatives of £10,000.
- 38 The current contract includes an innovative open book risk share mechanism whereby a processing cost is charged per tonne for all the mixed material delivered to be processed and separated by HW Martin. Then, according to the tonnage of materials separated, the Council is guaranteed to receive at least the market rate for the materials plus a 50% share of any sales above market value. The gate fee costs, and income offset against each other

which either generates a cost or income to the Council depending on the strength of the markets. The percentage of tonnage delivered deemed as waste after processing incurs a further disposal cost per tonne to the Council. Due to the volatile and international nature of the recyclable material market, which is often reliant on external factors such as demand, capacity, oil/virgin material prices, transport costs and international tariffs, material prices can fluctuate unpredictably.

- 39 As detailed in this report, there are unknown factors relating to EPR and DRS that could impact on the income the Council will receive in terms of price per tonne and volume sold.
- 40 Thanks to the savings as part of this trial and continued use of the financial mechanism within the contract the service believes best value is retained through continued use of the mechanism.

What are the key risks and how are they being managed?

- 41 If the recommendation to award as described within this report is not approved, then the Council will risk rolling out an untried method of collecting glass in Leeds and so will have the necessary data and operational interfaces in place for dealing with glass at the kerbside from 2026 which is mandated by legislation. There are significant savings identified immediately, and through a new contract for the trial as well as from diverting glass from the residual bins. Additionally, the significant carbon savings by dealing with glass in this way, will not be realised.
- 42 Throughout the procurement a risk register has been developed and those risks have been adequately managed. The risk register will continue to be maintained until the conclusion of the procurement but also in terms of the ongoing management of the contract once awarded. Any high risks or escalating risks will be brought to the attention of the Chief Officer for Environmental Services.
- 43 In order to further mitigate any risk with regard to the service delivery, financial models, actual cost, material flow or further legislation the service proposes a 2 + 2 year contract with a break clause after the second year.

What are the legal implications?

- 44 This is key decision and will be exempt from call-in through the general exception rule discussed at point 50. Other than the Confidential Appendix 1, there are no grounds for keeping the contents of this report confidential under the Access to Information Rules.
- 45 Appendix 1 is exempt from publication under access to information rule 10.4(3) (information relating to the business affairs of any person including the Council). The appendix includes detailed pricing information which, if disclosed, would prejudice the commercial arrangements of the supplier. There is a public interest in disclosing details of how the Council's contracts are priced but in this case, it is considered that there is greater public interest in the council being able to enter into confidential pricing discussions with suppliers. Disclosure of this information would seriously impact on the Council's ability to achieve value for money on this and future contracts.

Regulation 32

- 46 It is proposed that regulation 32 (2) (b) (ii) of the Public Contracts Regulations 2015 is used to Award a contract as set out in the terms below:

(2) *The negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases:—*

(b) *where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:—*

(ii) *competition is absent for technical reasons,*

a) In making this modification the above conditions of Regulation 32 (2b) (ii) are deemed to be satisfied for the following reasons:

(i) HW Martin already have a contract with the Council until 2025 and it does not make economic nor technical sense to engage with another supplier for the 2 + 2 year trial period. When clear financial savings and carbon reductions can be realised immediately.

(ii) The Council would need to be compliant with regards to the collection requirements from March 2026. By awarding a contract, the Council becomes compliant in readiness for the date implementation mandated by legislation.

(iii) Any other disposal point would have to have spare capacity available to take the waste, in addition to alternative disposal points would need to be modelled extensively which may increase costs in terms of extra Officer time, vehicles, crews and other costs to the Council. The process of carrying out a contract tender process would also cause significant inconvenience and duplication of costs when provision can be obtained from the incumbent provider.

(iv) To fully assess the implications of the changes required by the Council while looking at any funding opportunities arising from EPR. This trial enables the Council to do that at no cost and furthermore, at a saving.

47 However, if Regulation 32(2)(b) is used incorrectly, and it is subsequently determined that the above conditions are not met, the Council could be open to a procurement challenge that it has breached the Public Contracts Regulations 2015 by not being open, fair, and transparent and proportionate in awarding a contract directly to HW Martin. Further, an aggrieved contractor could potentially argue that it has missed out on a competitive opportunity and thereby seek damages for that loss of opportunity. The risk of a procurement challenge can be mitigated as further detailed in the following paragraphs.

48 In relying on this regulation, the Council will be required to issue a modification notice for publication on the Find a Tender Service (FTS) immediately after the decision to award the contract has been taken and then waiting 10 days to see if any challenges are made. If no challenges are made, the chances of a claim for ineffectiveness being brought are significantly reduced and would only be successful if the Council had used the negotiated procedure without publication of a notice incorrectly. Furthermore, publishing such a notice will also start time running for any other potential claim for breach of the PCR, which must be brought within 30 days of the date that an aggrieved party knew or ought to have known that a breach had occurred.

49 These comments should be noted by the Chief Officer Environmental Services in making the final decision and should be satisfied that doing so represents best value for the Council and is in the Council/public's best interests.

Call in – special urgency/general exception

- 50 In order to generate and access immediate savings as part of the new contract and to ensure mobilisation period of 5 months required by HW Martin to be able to accept co-mingled glass collections by summer 2024. Due to the short timescales required to implement this decision, there is a need to follow the special urgency procedure relating to publicity in connection with Key Decisions. In line with Part 2 of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, and Part 4(b) 2.3.4 and 2.6.1 the relevant Scrutiny Board Chair has provided confirmation that consideration of this matter is urgent and cannot reasonably be deferred. The use of the special urgency provisions on this occasion will in accordance with Executive and Decision-Making Rule 2.6.2 feature in the annual report to the Corporate Governance & Audit Committee.
- 51 The decision has been on the list of Forthcoming decisions published February 29th 2024.

Options, timescales and measuring success

What other options were considered?

- 52 Full re-procurement was considered as part of this project, however, as discussed above the service considered the best option would be to conduct a trial to assess the financial, operational and carbon impacts of adding glass into the co-mingled recycle mix at the same time generating financial an immediate carbon saving for the council.

How will success be measured?

- 53 Success will be measured as part of the contract management process which includes ongoing assessment of material quality, value of materials and recycling/contamination rate. HW Martins currently help the Council with recycling initiatives with the overall aim of the to increase the recycling rate in Leeds through various means which will include co-mingling glass. HW Martins also enable the Council to extract maximum value of materials from the recycling put in the green bin by residents. Monitoring of the diversion rate of glass from the residual bin will be a key indicator of success. Compositional analyses will also inform success.
- 54 The capture, recycling and remelt rates for glass will be measured and monitored as part of the trial. There will be an expectation that HW Martins make adjustments and improvements to the sort process as technology improves, to increase the proportion of glass sent for remelt and to enable the council meet any future national performance targets that may be set by DEFRA.

What is the timetable and who will be responsible for implementation?

- 55 It is anticipated that the contract will be approved in early April 2024, allowing a “go live” date for glass to be included in the Leeds green bin in Summer 2024. HW Martins have indicated a lead in time of about 4 months to make the necessary adjustments to their plant and sorting process. The Waste Management section within Environmental Services will be responsible for the management of the contract process.

Appendices

- Confidential Appendix 1 (not attached)

Background papers

- None .