



Report of: Business Officer (Waste Management - Contracts and Procurement)

Report to: Deputy Chief Officer Waste Management

Date: 11th October 2019

Subject: Extension of Mixed Dry Recyclate treatment Contract

Are specific electoral wards affected? If yes, name(s) of ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has consultation been carried out?	<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
Will the decision be open for call-in?	<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: 10.4 (3) Appendix number: Appendix 1	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

SUMMARY

1. Main issues

- The contract which deals with the treatment and recycling of kerbside mixed dry recyclates is scheduled to expire on 6th November 2019.
- This key contract which is held by HW Martin Waste Ltd enables the treatment and recycling of materials captured in the green bins at the kerbside domestic collections. The current acceptable material mix comprises the following:
 - Mixed paper, newspapers and cardboard.
 - Steel and aluminium cans/aerosols.
 - Plastic products:
 - Type 1 - PET (Fizzy drink and water bottles)
 - Type 2 - HDPE (Milk bottles, bleach, cleaners and shampoo bottles)
 - Type 4 - LDPE (Carrier bags, bin liners and packaging film).
- The release of the Governments Resource & Waste Strategy document in December 2018 includes a proposal to standardise the range of materials which are collected from domestic properties throughout the UK. The range of materials to be included within this standardised list has been proposed but its implementation date

together with the determination of how these materials are collected is subject to a consultation process.

- Furthermore the strategy proposes to extend the producer responsibility to provide funding for the implementation of the above and a range of other waste management/environmental initiatives. Once again though this is all subject to a consultation process, though ultimately implementation should be around 2023.
- Because of the current uncertainty around the above it is proposed to extend the contract with HW Martin for 2 years to allow the strategy to become more clearly defined to a point where the eventual re-procurement can be undertaken in the full knowledge of what is expected and what funding can be made available to implement any changes to kerbside collection systems.
- The extension would also ensure that the existing level of service is maintained without any disruption to domestic kerbside collections. A change of contractor now, and then again in the short term once the strategy is made clear would potentially cause an increase in cost and significant disruption due to the need to re-route collection rounds to potential new facilities.
- The Council believes that there are grounds to justify this extension in accordance with Regulation 72 of the Public Contracts Regulations as further described at paragraph 4.6 of this report.
- This extension provides benefits for the council in terms of; reduction of cost of the service, contribution to fund a position to aid in the recycling efforts in Leeds, expansion of the current recyclable materials collected at the kerbside and a number of other added value benefits.
- Whilst the proposed extension is in place the Service would look to commence a new procurement exercise to provide these services beyond the expiry of the extension. This report therefore also seeks approval for that work to commence. The details regarding procurement methodology, scope and evaluation will be provided through a separate delegated decision in due course.

2. Best Council Plan Implications (click [here](#) for the latest version of the Best Council Plan)

- The collection and subsequent recycling through the green bin kerbside collections is a significant contributor to the recycling rate in Leeds with this being one of the KPIs for the sustainable infrastructure commitment from the Best Council Plan.
- The appropriate contracting of key waste services supports the delivery of sustainable infrastructure under the Best Council Plan with the specific aim of reducing waste and increasing recycling.
- Appropriate and efficient waste collection services help to avoid anti-social behaviour and environmental crime issues which allows safe, strong communities and friendly city priorities to be met.

3. Resource Implications

- The extension will provide a saving for the Council (details of which can be found in the confidential appendix attached to this report).

- As part of the negotiations with HW Martin around the terms of the extension it has been agreed that the contractor will provide funding to support the provision of a recycling and awareness raising resource. The full details of how this resource is to be deployed has yet to be agreed but this will primarily be dedicated in aiding the council's active communication, education and awareness recycling initiatives.

RECOMMENDATIONS

- a) The Deputy Chief Officer for Waste Management is recommended to note the content of this report and agree to the 2 year extension from 7th November 2019 of the existing contract with HW Martin Waste Ltd to treat the recyclates collected through the green bin kerbside collections. This would see the ultimate expiry of the contract being 6th November 2021.
- b) The Deputy Chief Officer is also requested to exempt this decision from call in due to the reasons outlined in the report.
- c) It is also recommended that the service is granted the approval to commence a new procurement exercise to replace this existing arrangement once it expires in November 2021.

1. PURPOSE OF THIS REPORT

- 1.1 Contract Procedure Rule (CPR) 21.1 states that Chief Officer Approval must be obtained prior to taking up any proposed contract extension. Furthermore the Chief Officer should be satisfied that the extension offers value for money. This report ensures that these requirements are fulfilled.
- 1.2 The report also seeks Chief Officer approval to commence a new procurement exercise to provide a longer term arrangement once the extension expires and waste strategy is more clearly defined.

2. BACKGROUND INFORMATION

- 2.1 The current contract which deals with the treatment and recycling of kerbside mixed dry recyclates is scheduled to expire 6th November 2019. The incumbent contractor is HW Martin Waste Ltd who have provided the service since 2013 having developed a purpose built Materials Recycling Facility (MRF) here in Leeds.
- 2.2 This key contract enables the treatment and recycling of materials captured in the green bins at the kerbside which comprises of;
 - Mixed paper, newspapers and cardboard.
 - Steel and aluminium cans/aerosols.
 - Plastic products:
 - Type 1 - PET (Fizzy drink and water bottles)
 - Type 2 - HDPE (Milk bottles, bleach, cleaners and shampoo bottles)
 - Type 4 - LDPE (Carrier bags, bin liners and packaging film).

- 2.3 In 2018/19 the Council captured a total of 40,855 tonnes from Leeds households. The service is a key contributor to the recycling efforts for the city and contributes 9.9% to the city's recycling rate.

3. MAIN ISSUES

Development of a Waste Strategy

- 3.1 Earlier this year the government released a series of consultations regarding the waste industry. One of these consultations questioned whether there should be a 'standard set' of materials collected at the kerbside in England. To which, DEFRA has stated their position based on the initial responses;

'The government proposes that a core set of materials should be collected by all local authorities in England from 2023. The core set will include at least the following dry materials:

- *glass bottles and containers – including drinks bottles, condiment bottles, jars*
- *paper and card – including newspaper, cardboard packaging, writing paper*
- *plastic bottles – including clear drinks containers, HDPE (milk containers), detergent, shampoo and cleaning products*
- *plastic pots tubs and trays*
- *steel and aluminium tins and cans*

Further consideration may see these materials included from 2023. The final makeup of the core set of dry materials for collection will be dependent on final decisions regarding a reformed packaging producer responsibility scheme'

- 3.2 This future legislation will be proposed under the wide ranging Environment Bill which has been put forward by the government recently.
- 3.3 The only materials the council does not currently collect at the kerbside in this list are; Glass bottles and containers and plastic pots, tubs and trays (which aren't PET or HDPE) primarily made out of Type 5 polypropylene. Analysis of the impacts are shown in confidential appendix 1.
- 3.4 In July 2019 the council's executive board approved the interim waste strategy for Leeds, which sets out the vision of the waste service in the run up to 2021 when local authorities can expect firm plans and legislation from the government based on the outcomes of consultations and feedback from the industry.
- 3.5 There is no formal timetable for when the Environment Bill will go through the various stages it needs to and might be passed into legislation and become an Act. DEFRA have indicated that there will be informal discussion between now and the next set of consultations being released, at the moment some point in 2020.
- 3.6 This therefore means there are no firm plans from DEFRA on the mandatory introduction of new materials to be collected at the kerbside, and what potential funding will be available through an 'extended producer responsibility scheme' whereby producers of certain materials will contribute a cost to fund the collection and recycling of materials.

- 3.7 In this, fluid and changing landscape in terms of potential future legislation and whilst also in anticipation of a new waste strategy for Leeds which is expected around 2021 when the legislative picture becomes clearer. A contract solution is therefore required which can be flexible and fulfil the councils current requirements.

Justifications

- 3.8 Officers felt that it wouldn't be a cost effective exercise to re-procure a short term contract for the same service when provision exists for officers to utilise a procedure within the Public Procurement Regulations as set out in paragraph 4.6 below.
- 3.9 The Service is therefore proposing to extend the contract with the current service provider with consideration against the following;
- The scope to extend the existing contract being a legitimate option within the Public Contract Regulations 2015. (Regulation 72).
 - The services already being provided by HW Martin Ltd throughout the contract have been high performing in terms of the effective separation of materials to produce high quality outputs with significant value as a resource. They have remained entirely flexible and accommodating by providing numerous added value benefits such as extensive compositional sampling, extended opening hours at weekends and during Christmas catch-up, and hosting meetings and site visits for schools, community groups and other interested parties. All of these added value benefits have been provided without any additional cost being applied.
 - The MRF offered by HW Martin is ideally located for direct delivery by refuse collection crews. Since the award of the existing contract the service has not been aware of any other similar facilities in Leeds that realistically have the capacity to accept the volumes or types of materials delivered by this service.
 - Conducting an EU procurement for the same services for such a short duration is resource intensive, time consuming and unnecessary when adequate contracting arrangements already exist. The time can then be utilised to properly scope out and plan for a new procurement for a longer term and which provides a contracting arrangement more reflective of the requirements determined by the implementation of the new Environment Bill legislation.
 - Potential impact of re-routing of vehicles. Although this impact cannot accurately be measured without understanding what other options might come forward in a new procurement, the process to re-route collection rounds across the city would inevitably cause disruption for the service and the efficiency of collections. This matter is particularly relevant at this moment in time when the refuse collections service is already in the midst of a city wide review to try and improve and future proof the service.
 - Potential cost in additional routes which will encompass additional staff and vehicles to respond to a potential change in tipping facility location.
- 3.10 Throughout the proposed extension, the Council will continue to respond to the further consultations which will shape the ultimate legislation put forward by DEFRA and the government. With a review of new waste strategy for Leeds due in 2021, the service will be putting in place plans to respond to any necessary changes to

services as dictated by the forthcoming legislative requirements. There will also be a period of consultation and engagement with residents and stakeholders in Leeds.

Terms of the Proposed Extension

- 3.11 Through negotiations with HW Martin and to tentatively test the cost impact of adding in new waste streams to the existing recycling mix in Leeds, officers asked HW Martin for revised prices based on scenarios that reflects the potential makeup range of materials as described within the consultation process referred to above.
- 3.12 Details regarding the prices quoted against different scenarios are provided within the confidential appendix attached to this report.
- 3.13 Thanks to the reduction in price for this extension and the increased availability of stable, secure outlets there is an opportunity to now include materials that aren't currently collected at the kerbside such as tetrapaks and 'Pots, Tubs and Trays'. Further expansion on including different materials at the kerbside will be considered within the scope of the re-procurement which will take place in the near future.
- 3.14 In addition to the price reduction offered by HW Martin throughout the extension, a contribution to part fund an extra resource to aid in the council's active communication, education and awareness recycling initiatives has also been offered.

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 have a significant impact on any particular ward or community, and as such no consultations have taken place.

4.2 Equality and diversity / cohesion and integration

- 4.2.1 An equality impact screening assessment has been completed and 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 the Best Council Plan

- 4.3.1 It is paramount that procurements and related procedures in the authority are undertaken with a view to ensuring openness, transparency and fairness. All appropriate governance arrangements have been followed throughout.
- 4.3.2 The issues being discussed within this report and the subsequent contract that is being extended have specific implications with regards the Councils environmental performance and the aspirations stated within our environmental policy where we are aiming for improved environmental protection. The following are all relevant contributors to meeting the needs of this Council policy:
 - Preventing pollution and minimising our environmental impact
 - Taking steps to reduce carbon emissions

- Improving our resilience to current and future climate change

4.4 Climate Emergency

- 4.4.1 Plastics, metal 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 Leeds City Councils ambition to reduce the emissions associated by the subsequent use of these materials as a raw material that can replace the need and reliance of 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 more of a circular one where materials are recycled to be used again.
- 4.4.2 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.
- 4.4.3 Ensuring continuity in the recycling forms part of the Council's efforts to address the climate emergency situation which has been declared in Leeds, and contributes towards the Council's aspiration of becoming a carbon neutral city by 2030.

4.5 Resources, procurement and value for money

- 4.5.1 The current arrangement is 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 materials separated the council guaranteed to receive at least market rate for these materials then any sales above market value is split 50/50 between the Council and HW Martin. This cost and income offset against each other either generates a cost or income to the council depending on the strength of the markets. The percentage of tonnage delivered deemed waste after processing incurs a disposal cost to the council. Due to the volatile and international nature of the recyclable material market which is sometimes reliant on external factors such as demand, capacity, oil/virgin material prices, transport costs and international tariffs all affect material prices.
- 4.5.2 As with the existing contract, RPIx will be applied commencing at start of the second year.
- 4.5.3 Utilising the extension provision available ensures key waste streams are appropriately contracted, which aligns with Council policies to manage waste effectively and responsibly whilst minimising the impact on our environment.
- 4.5.4 The extension will provide a saving for the council (details can be found in confidential appendix). As well as the opportunity now to expand the current recycling offer for Leeds residents by including 'Pots tubs and trays' and tetrapaks in the materials accepted in the green bin recycling collection.
- 4.5.5 This extension includes commitment from HW Martin Ltd to contribute a financial resource to fund a position/resource dedicated in aiding the council's active communication, education and awareness recycling initiatives.

4.6 Legal implications, access to information, and call-in

- 4.6.1 As a result of the time given to, and the breadth of negotiations undertaken and also analysis required to formulate the recommendations in this report. This report is recommended to be exempt from call in as the duration required would see the contract ultimately expire without extension.
- 4.6.2 **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.**
- 4.6.3 It is proposed that regulation 72 (1) (b) of the Public Contracts Regulations 2015 is used to vary the existing contract as set out in the terms below:

For additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement, where a change of contractor

- *cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, or*
- *would cause significant inconvenience or substantial duplication of costs for the contracting authority,*
- *provided that any increase in price does not exceed 50% of the value of the original contract;*

- 4.6.4 As explained in paragraph 3.1 – 3.9 it does not make economic or technical sense to engage with another supplier for the 2 year interim period. The process of carrying out the interim contract tender process would also cause significant inconvenience and duplication of costs when the resources of the waste service could be better spent carrying out the comprehensive review of service provision.
- 4.6.5 The original contract value is approximately £4m. The additional 2 year term will amount to a sum that is estimated to be less than £2m which makes it less than 50% of the original contract value.
- 4.6.6 The Council will be required to publish a specific form of modification notice on the EU procurement (OJEU) website.

4.7 Risk management

- 4.7.1 If the proposal within this report is not approved then the Council will risk being in a position where no contractual arrangements are in place for dealing with what is a significant waste stream from households and a valuable contributor to the City's recycling rate and income stream.
- 4.7.2 The existing contract will expire 6th November 2019 and if left to expire, the terms and conditions currently applicable would be at risk of change without notice. The Council would also be at risk of the quality and cost of service being affected and being without this protection and therefore any means of redress that a formalised arrangement provides.

- 4.7.3 A risk register is maintained for this contract held by the service and any risks which are seen to rise throughout its term will be escalated to the Deputy Chief Officer for Waste Management.
- 4.7.4 When modifying contracts through regulation 72 there is always the possibility that a supplier will challenge the application of the regulations to the modification that has been put in place. In this case, the Council is using the time granted by this variation to scope a service that will then be put out to competitive tender.

5. CONCLUSIONS

- 5.1 The considerations and negotiations around the potential to re-procure a new arrangement or to extend with HW Martin Ltd has been long and complex during a time when the future landscape for Waste Management both nationally and locally is so uncertain. This being in light of the development of a new Waste Strategy for England and more pertinently here in Leeds. The timescales are now such that the expiry of the contract is looming and an extension is inevitable to allow time to re-procure.
- 5.2 More fundamentally though, an extension is the right path and allows the Council to see how the new National Waste Strategy develops, what new collection systems will look like and which new waste recycling streams will become mandatory affecting this service. The new procurement will then be able to be scoped accordingly.
- 5.3 The extension also offers a significant positive budgetary impact for the next 2 years whilst also providing the council with formal contractual terms and conditions that protects services levels and prices.

6. RECOMMENDATIONS

- 6.1 The Deputy Chief Officer for Waste Management is recommended to note the content of this report and agree to the 2 year extension from 7th November 2019 of the existing contract with HW Martin Waste Ltd to treat the recyclates collected through the green bin kerbside collections. This would see the ultimate expiry of the contract being 6th November 2021.
- 6.2 The Deputy Chief Officer is also notes that this decision should be exempt from call in due to the reasons outlined in the report.
- 6.3 It is also recommended that the service is granted the approval to commence a new procurement exercise to replace this existing arrangement once it expires in November 2021.

7. BACKGROUND DOCUMENTS¹

- 7.1 None.

¹ 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.