

Report of: Business Officer (Waste Management Contracts)

Report to: Deputy Chief Officer Waste Management

Date: 29th January 2020

Subject: **Garden Waste Processing:** Extension for 1 month (March 2020) of the Year 4 tonnage allocation Call-Off Contract with Biffa Waste Services Limited under the Recycling and Composting Framework (9KBA – M62F2H) in accordance with Contracts Procedure Rules (CPRs) 21.1. Waiver for 1 month (April 2020) of CPRs 8.1 and 8.2 to appoint directly to Biffa Waste Services for a further month.

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 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

- A procurement exercise is currently being undertaken to establish a Dynamic Purchasing System (DPS) that includes garden waste processing. The DPS is a collaboration with Bradford Metropolitan District Council that splits wastes into Lots, the garden waste Lot includes waste generated at the kerbside through brown bins, the Household Waste Recycling Centres and other LCC departments such as parks. The timetable for this project has a contract start date, following a call for competition exercise, of 1st May 2020.
- Biffa Waste Services Limited (hereafter referred to as 'Biffa Waste Services') hold the existing Call-Off contract for garden waste processing. This contract was extended under decision D50161 for 6 months split into 5 months plus 1 month from October 2019. The 'plus 1 month' relates to March 2020 and this option needs to be utilised to ensure consistency in service. As Deputy Chief Officer approval for the 6 month extension has already been given, formalising the final part of this extension constitutes as a subsequent decision.

- Contractual arrangements are also required to cover the period of April 2020, which goes beyond the contract period of the Call-Off contract with Biffa Waste Services. It is not possible to extend the Call-Off contract for April 2020, as the extension options have been fully utilised. Biffa Waste Services have performed well for the duration of their contract therefore a waiver of Contracts Procedure Rules (CPRs) 8.1 and 8.2 is recommended using the authority in CPR 1.3 to allow them to continue to deliver the service for the final month before the DPS procurement is concluded. Deputy Chief Officer approval is needed in order to waive CPRs.

Best Council Plan Implications (click [here](#) for the latest version of 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.
- Utilising an existing extension and a waiver to continue with the existing supplier alongside the associated procurement for a longer term solution also indirectly supports a number of other priorities. Appropriate 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.

Resource Implications

- Indicative costs for the one month extension for March and the one month waiver for April are detailed in Appendix 1. Biffa Waste Services are holding 2015 prices so there is no additional budgetary pressure.
- The completion of the current DPS procurement exercise and the subsequent contract management of the awarded contract will be undertaken by the Waste Management Contracts Team. The requirements of both the interim arrangements and longer term contract have been identified in the Waste Management procurement strategy.

RECOMMENDATIONS

- The Deputy Chief Officer for Waste Management is recommended to note the content of this report and approve issuing a one month extension notice for March 2020 to Biffa Waste Services under the Year 4 Call-Off (DN323246) from the Recycling and Composting framework (ref 9KBA-M62F2H) in accordance with decision D50161 and in accordance with CPR 21.1.
- The Deputy Chief Officer for Waste Management is also recommended to approve the waiver of CPR 8.1 and 8.2 to allow a direct appointment to Biffa Waste Services for the processing of garden waste in April 2020 at a value of £56,000.

PURPOSE OF THIS REPORT

- 1.1 The information as set out in this report seeks to provide the Deputy Chief Officer for Waste Management with sufficient information to be satisfied that use of the extension and the approval of a waiver provides the most appropriate course of action for the Council.

2 BACKGROUND INFORMATION

- 2.1 The Recycling and Composting framework was awarded in 2015 and included provision for annual Call Offs for the duration of the contract. The framework has now expired but an extension of the fourth year (2018/2019) Call Off was placed in September 2019, as permitted under the terms of the Call-Off contract. The Call-Off contract Terms and Conditions had scope for a total of 12 months extension with the decision made by the service area that the second 6 month option be taken as 5 plus 1 months.
- 2.2 There has been satisfactory contract performance for the duration of the framework from Biffa Waste Services.
- 2.3 A procurement for a replacement Recycling and Composting Framework has been concluded and the contract started on 1st October 2019. Unlike the previous framework the new Household Waste Recycling Framework does not include garden waste. After changes in circumstances with garden waste providers at a local level, additional work was required to engage with the market and determine the best procurement route for the Council, so the decision was made to contract garden waste separately.

3 MAIN ISSUES

- 3.1 The report for the initial decision to extend with Biffa Waste Services highlighted the extension of the current year 4 Call Off contracts are permissible under clause 6.9.1:
- “Subject to satisfactory performance of its obligations under the Contract by the Contractor during the Initial Contract Period, the Customer may, by giving written notice to the Contractor prior to the last day of the Initial Contract Period, extend the contract for 12 months (such extension may not be taken up more than twice). The provisions of the Contract will apply throughout any such extension period”*
- 3.2 The one month extension which is the subject of this report is not a modification as it has already been provided for in the terms and conditions and as a result the security and service standards that are provided by the contract will be continued.
- 3.3 **Reason for Contracts Procedure Rules Waiver**
- 3.3.1 The implementation of a waiver for April 2020 allows protection of service standards for the full period until the new DPS is in place.
- 3.3.2 Indicative costs for the waiver are included in Appendix 1. Biffa Waste Services are holding 2015 prices and although deliveries will increase during the 2 month period due to the seasonality of the service Biffa Waste Services are only receiving the tonnages they were allocated under the 4th Year Call Off as other material is being handled by Bradford MDC under a separate agreement principally covering the North West of the city.
- 3.4 **Consequences if the proposed action is not approved**
- 3.5 Should the proposed approach not be adopted the Council will be in a position of having no formal contracting arrangements in place until the replacement contract is awarded. This could result in service standards not being delivered or spot pricing being introduced with the Council having no means of redress.

3.6 **Advertising**

3.7 No advertising for either the use of the extension or the implementation of the waiver has been undertaken for the reasons outlined at 4.6.4. Advertising for the DPS has been conducted in accordance with CPRs, this is considered the most appropriate opportunity to engage with the market.

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 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**

4.3.2 It is paramount that procurement activity in the authority is undertaken with a view to ensuring openness, transparency and fairness. All appropriate governance arrangements will be followed throughout the implementation of the extension and waiver and also the procurement of the new garden waste contract to be awarded under the DPS.

4.3.3 The approach detailed in this report ensures key waste streams are appropriately contracted, which aligns with Council policies to manage waste effectively and minimise its impact on our environment.

4.4 **Climate Emergency**

4.4.4 Formal contracting arrangements are needed to maintain the Waste Services provided by Leeds City Council. The emphasis in contracts of this kind is to maximise adherence to the waste hierarchy where re-use and recycling is selected as the preferred method for dealing with wastes ahead of other waste disposal or treatment technologies.

4.4.5 Ensuring continuity in the recycling of garden waste 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 By implementing an extension and waiver in order to conclude the DPS exercise, value for money is being delivered for LCC through ensuring both an appropriate short term solution which takes advantage of historical rates, and a robust longer-term strategy that introduces market competition in the most effective way.

4.6 **Legal Implications, access to information and call-in**

- 4.6.1 As a Significant Operational Decision this Delegated Decision Report is not subject to Call-In but will be published on the register of decisions.
- 4.6.2 CPR 21.1 permits the extension of a contract where it is in accordance with the contract terms, is made before the expiry date of the contract and will deliver Best Value. Due to the matters set out in this report at sections 3 and 4.5 above it is considered that these requirements have been met.
- 4.6.3 The value of the direct award detailed within this report is below the threshold for the application of the Public Contracts Regulations 2015 for the procurement of public services contracts and therefore it is not subject to the full EU procurement rules. However, the Council's Contracts Procedure Rules 8.1 and 8.2 require competition for procurements valued between £25K and £100K and the invitation of at least three written tenders. A waiver of these Contracts Procedure Rules is required to award a contract direct to Biffa Waste Services for one month in April 2020.
- 4.6.4 Awarding a contract direct to Biffa Waste Services without competition could leave the council open to a potential claim from other providers, to whom this contract could be of interest, that it has not been wholly transparent. In terms of transparency it should be noted that CPRs suggests that contracts of this value should be subject to a degree of advertising. It is up to the Council to decide what degree of advertising is appropriate. In particular, consideration should be given to the subject-matter of the contract, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices etc.) and the geographical location of the place of performance. The Deputy Chief Officer for Waste Management has considered this and, due to the nature of the services being delivered, the relatively low value and short length of the contract, is of the view that the scope and nature of the services is such that it would not be of interest to contractors in other EU member states. In awarding the contract to Biffa Waste Services without competition, there is a potential risk of challenge from other providers who have not been given the chance to tender for this opportunity, although this risk is considered low due the reasons set out in this report.
- 4.6.5 Although there is no legal obstacle preventing the implementation of the extension or of a waiver, the contents of this report should be noted. In making the decision the Deputy Chief Officer for Waste Management should be satisfied that the course of action chosen represents best value for money to the Council.

Note that by virtue of Access to Information Rules 10.4.(3) The Appendices attached to this report are restricted as confidential. This is on the basis that they contain 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.

It is considered that the public interest in maintaining this information as exempt outweighs the public interest in disclosing the information, as disclosure may prejudice the outcome of the procurement process, whilst the details of the tender proposals within the appendices also contain the financial details/business affairs of individual companies.

4.7 Risk Management

- 4.7.1 A risk register has been developed and will continue to be maintained in terms of the ongoing management of both the interim arrangements and the longer term procurement exercise. High risks or escalating risks will be brought to the attention of the Deputy Chief Officer for Waste Management.
- 4.7.2 There is always a risk of challenge when awarding a contract through a waiver, however, in this case it has been deemed to be a low risk because of the opportunity for the counterparts of Biffa Waste Services to compete for business under the new DPS.

5 CONCLUSIONS

- 5.1 Garden waste collections are a key waste management function that need to be properly managed to ensure effective and efficient services can be delivered. By extending the current contract with an existing contractor, as has been previously approved, and then implementing an additional waiver for a further month appropriate short-term security can be put in place to allow a robust longer term DPS procurement to be concluded.

6 RECOMMENDATIONS

- The Deputy Chief Officer for Waste Management is recommended to note the content of this report and approve issuing a one month extension notice for March 2020 to Biffa Waste Services under the Year 4 Call-Off (DN323246) from the Recycling and Composting framework (ref 9KBA-M62F2H) in accordance with decision D50161 and in accordance with CPR 21.1.
- The Deputy Chief Officer for Waste Management is also recommended to approve the waiver of CPR 8.1 and 8.2 to allow a direct appointment to Biffa Waste Services for the processing of garden waste in April 2020 at a value of £56,000.

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.

8 Appendix 1

What is your reason for waiving CPRs?

There is a genuine, unforeseeable emergency meaning there is no time to go through a procurement process e.g. to deal with the consequences of extreme weather.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
To purchase supplies or services on particularly advantageous terms due to liquidation/administration.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Requirement to put a contract in place with a current provider whilst a review of the services is completed.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Ran out of time to undertake a new procurement exercise	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Other (please provide summary here) Replacement contract has been subject to delays outside LCCs control.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No