

Subject: Request to modify the Mixed Dry Recyclate contract under Regulation 72 (1) (B) of the Public Contracts Regulations 2015

Date: 01/10/2021

Report of: Business Officer (Waste Contracts)

Report to: Chief Officer – Environmental Services

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

What is this report about?

Including how it contributes to the city's and council's ambitions

Development of a Waste Strategy

1.1 In early 2019 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'

1.2 This future legislation will be proposed under the wide ranging Environment Bill which has been put forward by the government recently.

1.3 The only materials the Council does not currently collect at the kerbside in this list are; Glass bottles. Analysis of the cost impacts of introducing glass at the kerbside are shown in confidential appendix 1.

1.4 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 the end of 2021 when local

authorities can expect firm plans and legislation from the government based on the outcomes of consultations and feedback from the industry.

- 1.5 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 2021. The current national implications of the COVID pandemic has caused the timetable to slip.
- 1.6 This therefore means there are currently 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.
- 1.7 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

- 1.8 In the current climate it wouldn't be a cost effective exercise to re-procure another 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.
- 1.9 The Service is therefore proposing to modify the contract with the current service provider under the current terms and conditions with consideration against the following;
 - The scope to extend the existing contract being a legitimate option within the Public Contract Regulations 2015. (Regulation 72 (1) (b) (i) & (ii)).
 - 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.
 - Additionally, publishing an open procurement exercise via Find a Tender 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.

- Any rerouting exercise would take a minimum of 8 months and so will be factored into the forthcoming procurement project.
 - Potential cost in additional routes which will encompass additional staff and vehicles to respond to a potential change in tipping facility location.
- 1.10 Neighbouring authorities through the Yorkshire and Humber region are taking the same view in that, with uncertainty still prevalent regarding the structure and content of the legislation, or any forthcoming details on financial help from DEFRA which was intimated through the first two rounds of consultations. It makes no sense to change the current service provision/contract.
- 1.11 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 soon, 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

- 1.12 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 and companies through the market sounding mentioned below for revised prices based on scenarios that reflects the potential makeup range of materials as described within the consultation process referred to above.
- 1.13 Details regarding the prices quoted against different scenarios are provided within the confidential appendix attached to this report.
- 1.14 Further expansion on including different materials at the kerbside will be considered within the scope of the re-procurement which will take place during the contract extension period.

Recommendations

- a) The Chief Officer for Environmental Services is recommended to approve the utilisation of Regulation 72 (1b) of the Public Contracts Regulations 2015 in order to vary the contract end date by 2 years from 7th November 2021 with HW Martin Waste Ltd to treat the Recyclate collected through the green bin kerbside collections at a maximum cost of £2 million. This would see the ultimate expiry of the contract being 6th November 2023.
- b) It is also recommended that the service is granted the approval to commence a new procurement exercise to replace the current contract with HW Martin Waste Ltd once it expires in November 2023.
- c) The Chief Officer – Environmental Services and Executive member for Environment and Housing approves the decision that this report is exempt from call in/prior publishing due to reasons given in the report and below.

Why is the proposal being put forward?

- The contract which deals with the treatment and recycling of kerbside mixed dry recyclate is scheduled to expire on 6th November 2021.
- The contract end date was previously varied in 2019 utilising regulation 72 (1) (b) (i) & (ii) of the Public Contracts Regulations 2015. A previous report dated the 11th October 2019 justified why the service took this route, and presently those same justifications for extension still remain. It was anticipated over the course of last year that more firm plans would be laid out by government and DEFRA around the new waste strategy for England, however as a result of the effects of the COVID pandemic no further information or firm requirements have been forthcoming.
- 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 this is all subject to a consultation process, implementation is timetabled for 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 by the government (expected by the end of 2021) 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 Council believes that there are grounds to justify the modification in accordance with Regulation 72 (1) (b) (i) and (ii) of the Public Contracts Regulations as further described in this of this report.
- The modification provides benefits for the council in terms of a reduction of cost of the service and a number of other added value benefits; Including funding for a resource to help with recycling initiatives.
- 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.

What impact will this proposal have?

Wards affected:

Have ward members been consulted?

Yes

No

- 1 The modification would 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.

What consultation and engagement has taken place?

- 2 A market sounding document was developed and published on Yortender in October 2020. 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.

What are the resource implications?

- 3 There is a saving generated by keeping the current gate fee/price (Waste management budget for disposal contracts is increased each year to reflect RPI/CPI increases). HW Martins have also waived the CPI increase applicable in year 2 generating further savings.
- 4 HW Martin have also made a financial commitment to contribute to the councils recycling initiatives.
- 5 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 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. This mechanism is currently providing a net income to the council.

What are the legal implications?

- 6 This is a Key Decision which is subject to call-in as the value of the modification is greater than £500k. A notice has been published on the List of Forthcoming Key Decisions dated 13/08/2021. Other than the Confidential Appendix 1, there are no grounds for keeping the contents of this report confidential under the Access to Information Rules.
- 7 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.

Modification of Contract

- 8 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, and 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.*

9 In making this modification the above conditions of Regulation 72 (1b) (i) & (ii) are deemed to be satisfied for the following reasons:

(i) As explained above it does not make economic nor 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.

(ii) It is anticipated that the government will release more firm information/guidance on the new waste strategy for England before the end of 2021.

(iii) To fully assess the implications of the changes required by the council while looking at any funding opportunities arising from the strategy.

(iv) 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.

10 In relying on this regulation, the Council will be required to send a notice to that effect for publication in the Official Journal of the European Union being that this contract was originally procured whilst the UK was still a member of the European Union.

11 There is no overriding legal obstacle preventing the variation of this contract under CPRs 21.7 (variations) and the contents of this report should be noted. In making the final decision, the Chief Officer for Waste Management should be satisfied that the course of action chosen represents best value for money.

Short notice Decision rule 5.1.3

12 As a result of the time given to, the breadth of negotiations undertaken, and analysis required to formulate the recommendations in this report. This report is recommended to be exempt from call in and prior publishing as the duration required to adhere to call in/publishing would see this key contract ultimately expire without extension. Its nature is such that it would seriously prejudice the Council's interests if there were to be any delay in taking the decision. If the recommendation to extend this contract 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 and a significant contributor to the City's recycling rate, with the kerbside recycling service contributing significantly to the Council's overall recycling rate and amenity. Cllr Rafique has given consent to waive call in/prior publication.

Authority to Procure

13 As the total contract value over the potential life of the contract will exceed the current procurement threshold, there is still a requirement to advertise this opportunity in Find a Tender and run an open procurement exercise. Therefore, competition will be sought through a formal tendering process.

- 14 Future decisions arising from this report, for example the decision to award the contract, will be treated as a consequence of this key decision and will therefore be a significant operational decision at most which will not be subject to call in.

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

- 15 If the recommendation to award as described within this report is not approved then the Council will risk being in a position where no formal contractual arrangements are in place for dealing with a key waste/recycling stream collected by the Council.
- 16 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.
- 17 It is imperative that secure outlets are available for the materials collected by the Council. The risk of not having those outlets in place is that any available capacity may be taken up by other organisations and/or prices and terms may be varied at short notice and without the consideration of the Council as a client.

Does this proposal support the council's three Key Pillars?

- Inclusive Growth Health and Wellbeing Climate Emergency

- 18 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 Council's 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.
- 19 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.
- 20 Ensuring continuity in the areas of 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.

Options, timescales and measuring success

What other options were considered?

- 21 Full re-procurement was considered as part of this project, however, as discussed above the service considered the best option would be to modify and extend the current arrangement through Regulation 72.

How will success be measured?

- 22 Success will be measured as part of the contract management process. 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. HW Martins also enable the council to extract maximum value of materials from the recycling put in the green bin by residents.

What is the timetable for implementation?

23 November 2021.

Appendices

24 Confidential appendix 1

Background papers

25 None used.