

## Authority to Modify current contract (56071) under the Household Waste Site Recycling Framework (DN370317) under Regulation 72 (1) (B) of the Public Contracts Regulations 2015.

Date: 30<sup>th</sup> August 2023

Report of: Business Officer (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

### Brief summary

- A procurement process was conducted in 2019 to establish a 4-year framework to deal with a range of waste streams collected at the Household Waste Recycling Centres (HWRCs). The materials are separated into lots and include residual waste, timber, inert waste and plasterboard.
- The last call off contract under the framework is due to expire on 30<sup>th</sup> September 2023.
- In order to adhere to the requirements of the Council's Contract Procedure Rules, the Public Contracts Regulations 2015, transparent governance and set up a robust Dynamic Purchasing System (DPS) to accommodate changes put forward by Department of Environment Food and Rural Affairs an 6 month extension to the current contracts are required. This will allow officers to fully address regulatory changes whilst ensuring the council has secure and contracted outlets for major waste streams collected at the Council's 8 HWRCs.
- Officers are developing a DPS that will offer the Council increased flexibility compared to a traditional framework, this is particularly important as the Council has an increased need to be agile while changes in waste legislation are having direct impacts on waste management collection services.

### Recommendations

- a) The Chief Officer for Environmental Services is recommended to note the content of this report and approve an extension of the current contracts (1st October 2023 to 31<sup>st</sup> March 2024) relating to:
  - Lot 1 Residual Waste – Associated Waste Management Ltd

- Lot 2 Timber – Timberpak Ltd
- Lot 3 Inert Waste – Associated Waste Management Ltd
- Lot 4 Plasterboard – Associated Waste Management Ltd

Utilising Regulation 72 (1) (B) of the Public Contracts Regulations 2015 on the grounds set out at paragraph 16 of this report

b) The estimated value for the 6 months extension to the contracts totals £2,1m.

### **What is this report about?**

- 1 Residual waste, timber, inerts and plasterboard collected at the HWRCs have been formally contracted under a framework since 2019, the fourth and final call off contract expires on 30th September 2023. There are no extension options available at expiry and so replacement contractual arrangements are needed to protect the Council from inflated pricing and unsatisfactory service standards.
- 2 A Procurement exercise commenced in October 2022 to scope out the requirements for the service going forward. Following an options appraisal, a DPS was recommended as the most favourable procurement route as it offers robust contracts that protect the Council but delivers the flexibility needed in a period of changing waste legislation affecting Council collection services, particularly regarding Persistent Organic Pollutants (POPs).
- 3 In October 2022 Officers put the renewal of the Household Waste Site Recycling framework on the list of forthcoming key decisions, in December 2022 the Environment Agency issued Regulatory Position Statements (RPS) on how to deal with Waste Upholstered Domestic Seating (WUDS) which has been found to contain POPs.
- 4 Councils and waste management companies are required to segregate WUDS, to ensure they aren't in contact with other waste materials, and to prevent any potential release into to the environment. This has had a massive impact on the day-to-day operations at HWRCs and at the Council's Kirkstall Road Transfer station which, through the onsite shed, deals with bulky waste and flytipped material collected by the Councils frontline Cleaner Neighbourhood Services. Previously all this material has been combined and bulk hauled as a mixed waste.
- 5 The focus of both the operational and strategic teams since December 2022 has been to work towards full compliance with the complex new legislation whilst maintaining high standards of operational service delivery. This has had a detrimental impact on resources available to conduct the procurement but more significantly has made the fully detailed scope of the procurement uncertain until all the operational changes needed have been implemented.
- 6 The industry and current contractors offered a solution to deal with WUDS containing POPs with an increase of roughly 170% on current gate fees. This increased financial pressure has driven the needed changes to be made as quickly as possible but also highlights the importance of strong, fit for purpose, contracts and the value of making sure the DPS meets all current and future needs.
- 7 Because of the cost implications of POPs the value of the original framework has altered significantly and is now above the figure quoted in the notification of key decision in October 2022. A subsequent decision has been published to ensure transparency for this change.

### **What impact will this proposal have?**

- 8 The report will allow key waste services to continue to be appropriately contracted, which in turn protects the Council's service standards and budgets.

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

Health and Wellbeing

Inclusive Growth

Zero Carbon

- 9 This contract will maintain the Council's network of destinations to treat a range of waste streams arising at the Council's 8 HWRC's. The emphasis in procurements of this kind and for these waste streams is to maximise adherence to the waste hierarchy where re-use and recycling is selected as the preferred method for dealing with these wastes ahead of other waste disposal or treatment technologies. This demonstrates efforts made to combat 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.

Wards affected: None

Have ward members been consulted?

Yes

No

## What consultation and engagement has taken place?

- 10 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.

## What are the resource implications?

- 11 There has been an increase in rates for some of the materials collected under the household waste site framework which will create an estimated additional budget pressure of approximately £220k for the 6-month variation period. However, the gate fees reflect current markets and the spend relates to essential services for the disposal of waste which is unavoidable.

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

- 12 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 number of waste and recycle streams collected by the Council.
- 13 Throughout the procurement of the DPS 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 DPS once established. Any high or escalating risks will be brought to the attention of the Chief Officer for Environmental Services.
- 14 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.

## What are the legal implications?

### Modification

- 15 It is proposed that regulation 72 (1) (b) of the Public Contracts Regulations 2015 (Regulations) is used to vary/modify the existing contract the terms of which are set out 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”.*

- 16 In justifying using this approach; It does not make economic nor technical sense to engage with other suppliers for 6 month contracts as the process of carrying out full blown tendering exercise for such a short term contract would cause significant inconvenience and duplication of costs for the Council being that it would divert scarce resources away from developing and actioning the formation of the DPS and contractual arrangements going forward.
- 17 The increase in price doesn't exceed the 50% original contract value threshold requirements in the regulations. The original framework had an estimated value of £11.8m so the additional £2.1m spend would represent a 17.8% increase.
- 18 In relying on this regulation, the Council will be required to send a modification notice for publication through the Find a Tender Service
- 19 There is no overriding legal obstacle preventing the variation of this contract under Regulation 72 (1) (b) of the Regulations 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.

## **Options, timescales and measuring success**

### **What other options were considered?**

- 20 The alternative to modifying the existing contract is to utilise a different procurement route or to run services without any formal contractual arrangements in place. An alternative procurement approach for a short period of time will be resource intensive for no additional gain. Running key services for any significant period without formal contractual arrangements breach the Council's Contract Procedure Rules and potentially the Regulations.

### **How will success be measured?**

- 21 Success will be measured through the lack of disruption for the provision of key services and through the budget pressure for this area being minimised. The contract has a performance related incentive mechanism which will be extended and used to ensure service standards are maintained as part of the wider contract management function.

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

- 22 The contract modification will extend existing arrangements from 1st October 2023 to 31<sup>st</sup> March 2024.

## **Appendices**

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## **Background papers**

