

Authority to modify the Corporate Waste and Recycling contract for the Supply of Skip Services contract under Regulation 72 (1) (B) of the Public Contracts Regulations 2015

Date: 24th April 2024

Report of: Head of Passengers Cleaning & FM
Report to: Chief Officer Civic Enterprise Leeds

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

Brief summary

Section 34 of The Environmental Protection Act 1990 imposes a duty of care on persons or businesses concerned with handling waste. This duty of care affects anyone who produces, imports, carries, keeps, treats or disposes of controlled waste, or as a broker has control of such waste.

There is not currently a strategy, or a service dedicated to the management of the Council's waste arisings corporately. In order to procure a long-term service and strategy fit to meet the Council's requirements and ambitions an interim period is required to engage stakeholders and develop a strategy.

A contract was awarded in March 2019 to deliver a corporate waste and recycling contract for the supply of skip services. The contract commenced on 1st May 2019 until 30th April 2023 with no provision for further extensions. The contract was then varied utilising Regulation 72 (1) (b) of the Public Procurement Regulations 2015 and is now scheduled to expire on 30th April 2024.

Due to the issues highlighted in this report at the bullet points below it doesn't make economic sense to re-procure another short-term contract for the same service when provision exists for officers to modify the end date of the current contract under the provisions set at Regulation 72 (1) (b) of the Public Contracts Regulations 2015 as set out below.

Recommendations

- a) The Chief Officer Civic Enterprise Leeds is recommended to approve the utilisation of Regulation 72 (1) (b) (i) and (ii) of the Public Contracts Regulations 2015 (PCRs) in order to vary the contract end date by 12 months from 30th April 2024 with Biffa Waste Services Ltd (Biffa) and Associated Waste Management Ltd (AWM) for Corporate Waste and Recycling (Supply of Skip Services) collections at an approximate cost of £320k to 30th April 2025.

What is this report about?

- 1.1 Section 34 of The Environmental Protection Act 1990 imposes a duty of care on persons or businesses concerned with handling waste. This duty of care affects anyone who produces, imports, carries, keeps, treats or disposes of controlled waste, or as a broker has control of such waste.
- 1.2 A contract was awarded in March 2019 to deliver a corporate waste and recycling contract for the supply of skip services. The contract commenced on 1st May 2019 until 30th April 2023 with no provision for further extensions. The contract was then varied utilising Regulation 72 (1) (b) of the Public Procurement Regulations 2015 and is now scheduled to expire on 30th April 2024.
- 1.3 The contract comprises of 12 lots as follows:
 - Lot 1. Food Waste to Biffa with an estimated annual value of £19,751.
 - Lot 3. Mixed Municipal Waste to AWM Ltd with an estimated annual value of £243,013.
 - Lot 4. Biodegradable Waste to Biffa with an estimated annual value of £41,502.
 - Lot 5. Paper and Card to AWM Ltd with an estimated annual value of £13,867.
 - Lot 6. Scrap Metal to AWM Ltd with a potential opportunity to generate £12k income.
 - Lot 7. Mixed Building Waste to Biffa with an estimated annual value of £22,940.
 - Lot 8. Inert Soil and Stone Waste to AWM Ltd with an estimated annual value of £2,820.
 - Lot 9. Wood Waste to AWM Ltd with an estimated potential opportunity for zero cost per annum.
 - Lot 10. Asbestos Waste to AWM Ltd with an estimated annual value of £0.
 - Lot 11. Gypsum/plasterboard Waste to AWM Ltd with an estimated annual value of £10,694.
 - Lot 12. Unwanted Office Furniture Waste to AWM Ltd with an estimated annual value of £896.
 - Lot 13. Mixed Rigid Plastic Waste to AWM Ltd with an estimated potential opportunity for £17.68 cost per annum.

Lot 2 Confidential Waste is now being delivered internally so is not part of this contract.

The aggregate value of the award is approximately £320,000 per annum.

- 1.4 This report seeks to approve the modification of the contract to extend it to 30th April 2025 which will enable the waste collection strategy for the Council to be reviewed and a new contract procured.

Justifications

- 1.5 The Service is therefore proposing to modify the contract with the current service providers under the current terms and conditions with consideration against the following:
 - The services already being provided by Biffa Waste Services Ltd and Associated Waste Management Ltd throughout the contract have been high performing in terms of the effective separation of materials to produce high quality outputs for both recycling and recovery. Both companies have agreed to the variation of the contract end date from 30th April 2024 to 30th April 2025 prior to the expiry of the original contract.
 - Throughout the proposed period, the Council will continue to respond to the further consultations which will shape the new procurement strategy.
 - As part of the Environment Act the council will be mandated to collect separate food waste arising from Council buildings from 2025. No work or identification of extra budget has

been undertaken around this. It is unlikely the service will be brought in house like general waste and recycling which utilises waste management's contracts for these materials. Further work will have to be undertaken to analyse operational and budgetary impact for food waste collections from council buildings.

Terms of the Proposed Extension

- 1.6 The proposed 12 month extension will enable the Council to be able to put out a corporate contract/strategy that will meet the needs of all the services who use it.
- 1.7 Details regarding the prices quoted against different scenarios are provided within the confidential appendix attached to this report.
- Amendment of the lots and the scope of the re-procurement will take place during the contract extension. The contract which deals with the Corporate Waste and Recycling (Supply of Skip Services) collections is scheduled to expire on 30th April 2024.
 - The contract does not have the provision for extension and has been modified previously for one year to 30th April 2024. Previous variations have adhered to the Regulation 72 requirements and have been lower than 50% the original contract of £1,386,000.
 - The release of the Governments Resource and Waste Strategy which legislation is laid down under the Environment Act 2021 includes a proposal to standardise the range of materials which are collected from domestic and commercial properties/businesses 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.
 - Within the Environment Act 2021 there will be a requirement for businesses to separate out waste by 2025 in the recent summary of changes the Environment Act the government says *'Recycling rates in businesses are often lower than households – it frequently costs businesses more to separate packaging or food waste for recycling. We will take action, including, where necessary legislating, to ensure that businesses present recycling and food waste separately from residual waste for collection and publish or make available information on what is recycled.'*
 - Because of the current uncertainty around the above it is proposed to extend the contract with Biffa Waste Services Ltd and Associated Waste Management Ltd for one year to allow the Council to develop a strategy in response to the legislation becoming more clearly defined by the government to a point where the eventual re-procurement can be undertaken.
 - 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 report.
 - The modification ensures the waste generated by the Council is dealt with in an environmentally sound manner in accordance with its duty of care obligations. Maintaining the way the Council currently collects it's waste ensures a continuity of service whilst re procurement takes place.
 - AWM and Biffa employ the best available treatment and process methods that maximise separation of waste ensuring separated fractions arising from the process can be recycled. While sending fractions that cannot be recycled, for energy recovery ensuring unrecyclable waste is used as resource and not diverted to landfill.

- Varying the end date of the contract allows the Council to develop a Council wide strategy on how it deals with waste internally at a service level. The project team will look to launch a new Council wide service information to allow services to manage their waste more efficiently and effectively. Looking at how the Council manages its own waste has the potential to generate the Council some savings whilst contributing to the Councils carbon reduction aims.

What impact will this proposal have?

- 1 The modification would ensure that the existing level of service is maintained without any disruption to the skip service.

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

Health and Wellbeing Inclusive Growth Zero Carbon

- 1 Materials such as 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 the Council’s ambition to reduce the emissions associated by the subsequent use of these materials.
- 2 The emphasis in procurements 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.
- 3 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.

What consultation and engagement has taken place?

Wards affected:	
Have ward members been consulted?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

- 4 Consultation has taken place with Procurement and Commercial Services Legal team, relevant stakeholders and service users including colleagues attending the Civic Enterprise Leeds Weekly Assurance meeting. Work will continue on a Council wide strategy in dealing with waste that incorporates food waste.

What are the resource implications?

- 5 In a very limited market confined by constraints of locality, the Council’s waste management team believe value for money is still being obtained through the contract when compared to existing contracts/services.
- 6 There is a price rise for the next year and is limited to a normal CPI increase as per contract.

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

- 7 If the recommendation to modify the contract 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 streams collected by the Council.
- 8 Throughout the contract 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, Civic Enterprise Leeds.

What are the legal implications?

- 1 This is a Significant Operational Decision which is not subject to call-in as the value of the decision is less than £500k. Other than the Confidential Appendix 1, there are no grounds for keeping the contents of this report confidential under the Access to Information Rules.
- 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.
- 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
(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, and
(ii) 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”.

- 4 In making this modification the above conditions of Regulation 72 (1b) 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 one-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 Council 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 and enactment legislation on the new waste strategy for England before the end of 2023.
 - (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 £1,386,000. The additional one-year term will amount to a sum that is estimated to be £320,000 which makes approximately 23.1% of the original contract value.
- 5 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.

- 6 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 Civic Enterprise Leeds should be satisfied that the course of action chosen represents best value for money.

Options, timescales and measuring success

What other options were considered?

- 7 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 (1) (b) (i) and (ii) of the Public Contracts Regulations 2015.

How will success be measured?

- 8 Success will be measured through ensuring continued service delivery and compliant procurement expenditure.

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

- 9 April 2024 – Head of Passengers Cleaning & FM

Appendices

- Appendix 1 (confidential)
- Appendix 2 (confidential)

Background papers

- None used.