

Borough Council of
**King's Lynn &
West Norfolk**



Special Cabinet

Agenda

Friday, 6th December, 2019
at 2.00 pm

in the

**Council Chamber
Town Hall
Saturday Market Place
King's Lynn**



King's Court, Chapel Street, King's Lynn, Norfolk, PE30 1EX
Telephone: 01553 616200

SPECIAL CABINET AGENDA

DATE: CABINET - FRIDAY, 6TH DECEMBER, 2019

**VENUE: COUNCIL CHAMBER - TOWN HALL, SATURDAY
MARKET PLACE, KING'S LYNN PE30 5DQ**

TIME: 2.00 pm

As required by Regulations 5 (4) and (5) of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 - Items (9 & 10) below will be considered in private.

Should you wish to make any representations in relation to the meeting being held in private for the consideration of the above item, you should contact Democratic Services

1. APOLOGIES

To receive apologies for absence.

2. URGENT BUSINESS

To consider any business, which by reason of special circumstances, the Chair proposes to accept, under Section 100(b)(4)(b) of the Local Government Act 1972.

3. DECLARATIONS OF INTEREST

Please indicate if there are any interests which should be declared. A declaration of an interest should indicate the nature of the interest (if not already declared on the Register of Interests) and the agenda item to which it relates. If a disclosable pecuniary interest is declared, the member should withdraw from the room whilst the matter is discussed.

These declarations apply to all Members present, whether the Member is part of the meeting, attending to speak as a local Member on an item or simply

observing the meeting from the public seating area.

4. CHAIR'S CORRESPONDENCE

To receive any Chair's correspondence.

5. MEMBERS PRESENT UNDER STANDING ORDER 34

To note the names of any Councillors who wish to address the meeting under Standing Order 34.

Members wishing to speak pursuant to Standing Order 34 should inform the Chair of their intention to do so and on what items they wish to be heard before a decision on that item is taken.

6. MATTERS REFERRED TO CABINET FROM OTHER BODIES

To receive any comments and recommendations from other Council bodies which meet after the dispatch of this agenda.

7. REFUSE AND RECYCLING CONTRACT PROCUREMENT (Pages 6 - 19)

8. EXCLUSION OF THE PRESS AND PUBLIC

The Cabinet is asked to consider excluding the public from the meeting under section 100A of the Local Government Act 1972 for consideration of the items below on the grounds that they involve the likely disclosure of exempt information as defined by paragraph 3 of Part 1 of Schedule 12A to the Act, and that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

PRIVATE ITEM

Details of any representations received about why the following reports should be considered in public will be reported at the meeting.

9. REFUSE AND RECYCLING CONTRACT PROCUREMENT - EXEMPT APPENDICES - TO FOLLOW

The appendices will follow as soon as they are available.

10. REFUSE AND RECYCLING CONTRACT NOVATION (Pages 20 - 25)

To: Members of the Cabinet

Councillors R Blunt, I Devereux, P Gidney, P Kunes, A Lawrence, B Long (Chair), G Middleton and E Nockolds

For Further information, please contact:

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REPORT TO CABINET

Part Open / Part Exempt (apps 3&4)		Would any decisions proposed :			
Any especially affected Wards	Mandatory	Be entirely within Cabinet's powers to decide		YES	
		Need to be recommendations to Council		NO	
		Is it a Key Decision		YES	
Lead Member: Cllr Ian Devereux E-mail: <i>Cllr.Ian.Devereux@west-norfolk.gov.uk</i>			Other Cabinet Members consulted: Cllr Brian Long		
			Other Members consulted:		
Lead Officer: Barry Brandford E-mail: <i>barry.brandford@west-norfolk.gov.uk</i> Direct Dial:			Other Officers consulted: Lorraine Gore, Nathan Johnson, Ruth Wilson & Tina Stankley		
Financial Implications YES	Policy/ Personnel Implications NO	Statutory Implications YES	Equal Impact Assessment NO If YES: Pre-screening/ Full Assessment	Risk Management Implications YES	Environmental Considerations YES
If not for publication, the paragraph of Schedule 12A of the 1972 Local Government Act considered to justify that is paragraph 3					

Date of meeting: 6 December 2019

REFUSE AND RECYCLING COLLECTION CONTRACT PROCUREMENT

Summary

The report details the procurement exercise completed for a new Refuse and Recycling Collection contract with the service to commence in April 2021.

The capital programme to be amended accordingly

Recommendation

The Council enters in to a contract with the preferred bidder identified in Confidential Appendix 3 for the provision of Waste and Related Services and the Chief Executive is authorised to seek any necessary Clarifications and agree them in consultation with the relevant Portfolio Holder and the Leader of the Council.

The capital budget be amended to facilitate the purchase of the refuse collection vehicles and other fleet requirements.

Reason for Decision

To provide a continuation of waste collection arrangements after the conclusion of the current contract with Kier.

1 Background

- 1.1 At its meeting on 1st August 2017 the Council determined to undertake a joint procurement exercise with North Norfolk District Council and others for refuse and recycling services. (Cabinet Minute CAB 39 refers).
- 1.2 The decision was for the process of the procurement to be delegated to the Executive Director Commercial Services up to the point of award of a contract.
- 1.3 The tendering process has sought the same arrangements for services as currently delivered as a minimum. A price for the removal of the food waste service was additionally obtained so that the net cost of the service could be fully established. The benefit of this is it provides a benchmark for claiming additional burdens funding should national policy change.
- 1.4 The procurement exercise was carried out in accordance with the regulations of the OJEU (Official Journal of the European Union). Given the length of the contract (9 years although services are only delivered in this borough for eight years from April 2021) and the importance to residents, the tender process was carried out using the “Competition with Negotiation” process. The use of this process ensures that the Contractor has a complete understanding of the process and that the Council obtain best value.
- 1.5 The three councils involved in the procurement entered in to an Inter Authority Agreement for the procurement of the contract. Failure to award the contract at this stage would be non compliant with this agreement and expose the council to a risk of challenge and costs.
- 1.6 Tenders were received on 15th November 2019 for all elements of revenue expenditure and 3rd December 2019 for capital costs and evaluated by a joint staff team from King’s Lynn & West Norfolk, North Norfolk District Council and Breckland District Council supported by specialist consultants on legal and technical aspects of the evaluation.
- 1.7 A full analysis of the procurement process is attached at Appendix 1.
- 1.8 An analysis of the evaluation of Tenders is Provided at Appendix 2.
- 1.9 The outcome of the Tender Evaluation is provided at Appendix 3 and is exempt from publication**

2 Options Considered

- 2.1 The council may determine that it does not wish to award the contract but this is contrary to the agreements that have been entered in to with North Norfolk District Council and Breckland District Council. The risk position of not awarding the contract is set out at Paragraph 9.11 below.

- 2.2 Full options on service delivery were considered in August 2017 before entering the procurement and it was determined that the procurement of a single contract with other councils had the greatest opportunities of providing best value.

3 Policy Implications

- 3.1 The Council currently has a policy of collecting general waste on a fortnightly basis in a 240 litre wheeled bin. Recycling materials are collected on an alternate weekly basis in a 240 litre wheeled bin. The policy also includes for a weekly collection in bags of residual waste in those areas without suitable storage for wheelie bins. These arrangements would remain unchanged.
- 3.2 The collection of garden waste in 240 ltr wheeled bins as a charged for service with 25 collections each year, no collections in the week containing Christmas Day and New Year's Day remains unaltered.
- 3.3 The council will continue to provide a charged for Bulky Waste Collection Service for householders within the borough.
- 3.4 The weekly food waste collection scheme is retained, with the ability to review its delivery.
- 3.5 Litter bins in parish areas are currently emptied on a weekly basis in most circumstances. Under the proposal arrangements this would remain weekly. Consultation will be held with Parish Councils on how greater efficiency can be delivered in litter bin emptying including through the use of technology.
- 3.6 The ability to divert Bulky Waste from disposal to re-use will be examined during the mobilisation of the contract and this has positive environmental and social benefits.

4 Financial Implications (Exempt From Publication)

- 4.1 **The financial implications are detailed in Appendix 4**

5 Personnel Implications

- 5.1 The procurement has no Personnel implications for the council.
- 5.2 Pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) ('TUPE'), and subject to approval in accordance with the recommendations within this report, the staff will transfer from Kier to the selected bidder, when they commence provision of the waste and related services contract. No staff will transfer from or into the Authorities, and therefore the obligations imposed by these Regulations will fall upon Kier as the 'Transferor Employers' and the selected bidder as the 'Transferee Employer'

6 Environmental Considerations

- 6.1 The joint procurement is intended to deliver environmental benefits through the use of fewer vehicles being deployed across the three councils through vehicle sharing and cross boundary working. This reduces carbon impacts through a reduction in vehicles deployed and reduced emissions in service delivery.
- 6.2 The delivery of a new fleet of collection vehicles will help to reduce emissions during operations.
- 6.3 The retention of Food Waste Collections provides positive environmental benefits including displacement of inorganic fertilisers, reduced carbon impacts and the generation of renewable electricity.
- 6.4 The retention of the Garden Waste collection service provides for composting of garden waste and the provision of soil improver for the agriculture industry in West Norfolk and enhances soil structure and ability to hold moisture supporting the health of agricultural land locally.
- 6.5 The intention to identify and deliver routes for the diversion of bulky waste to re-use locally during the mobilisation period will reduce immediate disposal of items as waste and provide opportunities for repair and re-use of household items.
- 6.6 The requirements of the council that litter bin services in the Parished parts of the borough and tourism areas of the north coast remain unchanged. The requirement that litter bins are emptied each day during peak periods on the promenade at Hunstanton along with those at Heacham North and South Beaches are retained. Issues of safe access prevent increased levels of servicing. Litter bins in other tourism areas will be emptied to prevent them from being over flowing by the end of the working day. Litter bins in villages will be emptied weekly, unless otherwise agreed. The control of litter by the provision and emptying of bins helps prevent the fugitive release of waste in to the environment.
- 6.7 The council will consult with parish councils on the introduction of technology to reduce the number of visits to empty bins that are unnecessary as the bin is not full.

7 Statutory Considerations

- 7.1 The arrangements of the collection of materials comply with the requirements of the Household Waste Recycling Act 2003, meet the duties imposed on the UK, currently subject to consultation on regulations and guidance, to comply with the Revised Waste Framework Directive to have arrangements which comply with the 'waste hierarchy' to minimise waste, reuse waste, recycle, recover value or energy, disposal.

- 7.2 The arrangements proposed meet the requirements imposed under Sections 45, 45A, 46, 47 & 48 of the Environmental Protection Act 1990, as amended, as they relate to the collection of waste, its disposal or delivery for recycling.
- 7.2 The proposed arrangements support the requirements to maximise recycling of specific wastes and to reduce the landfilling of biodegradable wastes where separate food waste collections are implemented.
- 7.3 Nothing in this contract precludes the delivery of the Waste Strategy 2018 'Our Waste, Our Resources: A Strategy For England'.

8 Equality Impact Assessment (EIA)

(Pre screening report template attached)

- 8.1 There are no changes to the services being contemplated and therefore there are no impacts to report.

9 Risk Management Implications

- 9.1 The council has had to manage the risk profile within this procurement very carefully and key decisions on risk acceptance and allocation have been subject to specific advice from the Executive Director or Section 151 officer.
- 9.2 The council will purchase the refuse collection and other vehicles used to provide the services and provision will be made within the capital programme.
- 9.3 The council will pay for the vehicles necessary for the provision of the service, and the vehicles have been identified as needed by the contractor. The contractor will order these with the supplier and council will pay the supplier directly on delivery of the vehicles and the presentation of the vehicles. The contractor will hold specification risk on the vehicles.
- 9.4 The option for the council to own the fleet of vehicles reduces the cost of the vehicles as the contractor due to their purchasing power can obtain best price whilst not passing on specification risk to the council. The council can pay directly for the vehicles and avoid paying overhead and profit on the capital cost of the vehicles to the contractor. The council has a more favourable cost of capital compared to the private sector.
- 9.5 Ownership of the vehicles also reduces risk to the councils in the future provision of services in the unlikely circumstances of contractor failure.
- 9.6 The council is provided with protection of contractor failure and poor performance by virtue of contract termination clauses which covers the cost procuring a replacement contract and any additional costs

associated with a replacement contract up to a capped value of £20 million.

- 9.7 The costs associated with any damage to either vehicles or depots are excluded from the termination cap clauses as are issues contract deductions for performance failures. Any sums due to the council because of such a failure are not included in the capped sum of £20 million.
- 9.8 The interests of the council in providing services in the event of contractor failure will additionally be protected by either a Parent Company Guarantee or a Bond.
- 9.9 Due to uncertainty around Brexit and tariffs vehicle manufacturers will not hold prices for vehicles for more than 30 days. This means that the cost for the vehicles for the commencement of the service in this borough may be higher than initially indicated but any claim for additional cost will have to be evidenced.
- 9.10 Additionally, uncertainty has caused the councils to have accept additional risk associated with change in law relating to both capital and revenue costs. Political and Brexit uncertainty along with the risk of change in policy on waste means that the contractor will be responsible for the first £25,000 in cost of change in law and beyond that in each year for any new changes in law the council will be liable. This liability does not relate to issues around taxation or employment costs such as National Insurance contributions.
- 9.11 The council has entered in to an agreement with North Norfolk DC and Breckland DC whereby should the council fail to award to the bidder who has submitted the most economically advantageous tender as identified in Appendix 3 the council shall be in breach and the implications are set out below.
- The Authorities agree that in relation to this Agreement:
 - In the event that an Authority withdraws from the Procurement, the withdrawing Authority will indemnify the other Authorities against the costs of the Procurement incurred from the publication of the OJEU notice to the date of the Procurement exercise being abandoned, but for the avoidance of doubt shall not include any costs associated with loss of opportunity or loss of projected savings.
 - If the withdrawal of an Authority does not result in the Procurement failing, the withdrawing authority will be liable for one third of the total Procurement costs.
 - If the actions of the withdrawing Authority results in a bidder(s) becoming entitled to compensation or where legal proceedings are issued by bidder(s), the withdrawing Authority will be liable to meet the bidder's costs to the extent and degree that the withdrawing Authority

is the cause of the compensation claim or costs resulting from the issue of legal proceedings.

10 Declarations of Interest / Dispensations Granted

None

11 Background Papers

- Norfolk Joint Waste Contract ISFT version 181019
- 191017_406-07878-00001_Schedule_2_Authorities Requirements_ISSUED
- 191017_406-07878-00001_Schedule-3_Method_Statements_ISSUED
- 191018_406-07878-00001_Schedule-4_Performance_Management_Framework_ISSUED
- 191017_406.07878.00001_Schedule-5_Payment_Mechanism_ISSUED

Pre-Screening Equality Impact Assessment

Borough Council of
King's Lynn & West Norfolk



Name of policy/service/function	Waste Collection and Related Services				
Is this a new or existing policy/service/function?	Existing (delete as appropriate)				
<p>Brief summary/description of the main aims of the policy/service/function being screened.</p> <p>Please state if this policy/service is rigidly constrained by statutory obligations</p>	<p>Provide waste and recycling collections along with additional services of commercial waste collections, brown bin collections and bulky waste collections.</p> <p>The service is constrained by statute</p>				
Question	Answer				
<p>1. Is there any reason to believe that the policy/service/function could have a specific impact on people from one or more of the following groups according to their different protected characteristic, for example, because they have particular needs, experiences, issues or priorities or in terms of ability to access the service?</p> <p>Please tick the relevant box for each group.</p> <p>NB. Equality neutral means no negative impact on any group.</p>		Positive	Negative	Neutral	Unsure
	Age			x	
	Disability			x	
	Gender			x	
	Gender Re-assignment			x	
	Marriage/civil partnership			x	
	Pregnancy & maternity			x	
	Race			x	
	Religion or belief			x	
	Sexual orientation			x	
	Other (eg low income)			x	

APPENDIX 1

PROCUREMENT PROCESS

1. Given the size of this contract the Councils' had to follow the requirements of the EU Procurement Regulations. The councils appointed both technical and legal advisers to provide detailed support to ensure that the best available outcome was achieved from the procurement. Following discussion between the officers of the councils', and taking into account the advice of SLR and Bevan Brittan our retained consultants, it was decided to employ the Competition with Negotiation procedure. ESPO were appointed as procurement handling agents to deliver the mechanics of the procurement.
2. The procurement process commenced on 13 November 2017 with a Market Engagement Day following the publication of a Prior Information Notice. Eight companies accepted the invitation and attended the day and received presentations and informal discussions with officers. At this stage Kier the incumbent contractor for both North Norfolk DC and KLWNBC announced their intention not to bid
3. A Contract Notice was published in the OJEU (Official Journal of the European Union) on 19th February 2019. Several companies decided not to bid at this stage with the most consistent comment being that they did not have the resources available to bid for the contract at this time. By the deadline on 17th April 2019 two completed Standard Questionnaires were received.
4. A detailed and thorough evaluation of the SQs was carried out and officers conducted a financial evaluation of each company and S 151 Officers consulted on the findings to make sure that the councils were content as to the financial stability of each participant. Officers evaluated the Health & Safety submissions of each firm. The evaluation was against weighted criteria which were published in the OJEU Contract Notice.
5. The two companies in the evaluation were invited to participate in the procurement process.
6. They were also issued with a formal Invitation to Submit Initial Tenders (ISIT). The ISIT was based on the requirements identified by the councils and were prescriptive in substantial elements as it was feasible to award the contract on these documents. The second purpose of the ISIT was to reduce the numbers going forward in to the Negotiation phase of the procurement.
7. After extending the initial deadline, at the request of the participants, the Initial Tenders were received back on 2nd August 2019. None of the submissions was

judged to be compliant. On receiving legal advice it was concluded that there was no evident requirement to reduce the number of companies involved in the process so the tenders were not evaluated. All parties agreed that the two bidders were to be retained within the process.

8. The Councils then moved on to the negotiation phase, which was broken down into three stages. In the first two stages meetings were held with each of the participants between 5th September and 19th September.
9. Each company was allocated four days over two sessions and distinct sessions were timetabled for operational and technical discussions, financial matters and legal matters. During these meetings the Initial Tenders put forward by each company were discussed. Feedback was provided on the relative merits of each submission and the innovations proposed were discussed in order to establish the practicality of a number of the ideas put forward. The bidders provided submissions in relation to the contract documentation and the allocation of risk as well as technical information on the deliverability of the project. Additional information was also provided in response to questions from bidders. This stage was concluded with a final day of negotiation with each bidder held during week commencing 7th October. This provided each bidder with detailed responses to issues raised during the negotiation.
10. The councils gave further consideration to the issues of the Invitation to Submit Final Tender (ISFT) in the light of the earlier stages of the procurement and consequences of market difficulty on vehicle provision in volatile circumstances related to Brexit.
11. Invitations to Submit Final Tenders (ISFT) were issued on 18th October and submissions are due to be received by the deadline on 18th November for all items excluding vehicle purchases and the cost of vehicles and other plant on the 3rd December.
12. The companies were each required to supply 13 method statements on how they proposed to supply various elements of the specified services. They were also required to supply tendered prices for each element of the service, including some “provisional” items for some services currently provided 3rd party contractors. Furthermore, they were required to tender prices for the introduction of a separate weekly food waste collection for domestic properties in North Norfolk and Breckland councils areas or its omission for BCKLWN. This was to ensure adequate cover for the risks associated with service change previously consulted upon by DEFRA under the proposals outlined in the Waste Strategy 2018.
13. In line with the evaluation criteria established at the start of the process, and notified to all of the bidders, 50% of the score was allocated to price and 50% to quality, which was split as shown in Appendix 2. Each of the 13 method statements were

allocated to Tier 2 Criteria and allocated weightings according to the perceived importance of each. These weightings were also notified to the participants in advance.

14. Over a two week period, each method statement was evaluated by a panel of officers, drawn from the Councils, and a score out of 10 was awarded to each participant. A consensus evaluation was conducted with SLR and independently supervised by Bevan Brittan to ensure legal compliance. Where discrepancies existed discussions took place to agree a final score. The final scores were then fed into a spreadsheet which had been constructed to adjust for both the relative weightings of each method statement and the split between the three quality elements.
15. At the same time ESPO evaluated the tendered prices and made adjustments to allow for projected growth in household numbers and for inflation in order to arrive at a whole life cost (this is the total cost for the 9 years of the initial contract term) for the contract.
16. Subsequently following submission of the Second element of the Pricing Schedule and its incorporation in to the cost evaluation scheme by ESPO meetings took place on the evaluation on the 4th and 5th December to determine the Final Evaluation and confirm the identity of the Most Economically Advantageous Tender.

APPENDIX 2 – EVALUATION CRITERIA

Cost

This criterion is used to assess over the life of the contract which tender has the most advantageous economic cost to the three councils and includes the cost of delivery of the service (revenue) and the cost of the plant (capital). The cost of the plant is being met by the council as purchase by the councils offers the greatest value.

Tier 2 Cost and Commercial Criteria	Available Scores	Required Minimum Weighted Score	Maximum Weighted Score
Total Contract Cost	0-10	n/a	45.00%
Contractor Risk Position	0-10	2.50%	5.00%
Total			50.00%

The Total Contract Cost criterion will be evaluated in accordance with the following formula to calculate the Tenderer's weighted score for that criterion:

$(\text{Lowest 'Total Contract Cost'} \div \text{Tenderer's Total Contract Cost}) \times 45\%$

The remaining Tenders will then receive scores expressed as an inverse proportion of the lowest price. All results will be rounded to two decimal places.

Contractor Risk Position

The Authorities invited Tenderers to provide comments/mark-ups on the updated Contract with exception to the following areas, as these were considered critical to the successful delivery of the outcomes to the contract.

- Schedule 2 – Authority's Requirements;
- Schedule 4 – Performance Management Framework;
- Schedule 5 – Payment Mechanism;
- Schedule 9 – Performance Bond; and
- Schedule 14 - Parent Company Guarantee.

The mark-up submitted as part of the Final Tender submission should reflect the position agreed with the Authorities during the negotiation stage. The requirement is set this way because detailed negotiations were held with bidders on the contract terms during the process.

Quality Criteria

These criteria are used to assess how the bidder intends to deliver the service whilst meeting the requirements of the councils. It should be noted that the elements labelled Related Services apply to North Norfolk and Breckland only as these services will remain delivered in house in the area of this Council.

Tier 2 Quality Criteria	Tier 3 Quality Criteria (Method Statement)	Available Scores	Individual Question Score	Required Minimum Weighted Score	Maximum Weighted Score
Mobilisation	MS1 – Mobilisation Plan	0-10	2.50%	n/a	2.5%
Management	MS2 – Contract Management Plan	0-10	2.50%	n/a	6.50%
	MS3 – Health & Safety Plan	0-10	2.50%	1.25%	
	MS4 – Customer Care Plan	0-10	1.50%	n/a	
Resources Deliverability	MS5 – Depot Management Plan	0-10	1.00%	n/a	10.00%
	MS6 – Plant & Resourcing Plan	0-10	6.00%	n/a	
	MS7 – Maintenance Plan	0-10	3.00%	n/a	
Waste Services	MS8 – Household Recyclables Collection Service Plan	0-10	7.00%	3.50%	22.00%
	MS9 – Household Residual Waste Collection Service Plan	0-10	7.00%	3.50%	
	MS10 – Other Household Collection Services Plan	0-10	3.00%	0.90%	
	MS11 – Commercial Waste Collection Service Plan	0-10	5.00%	1.50%	
Related Services	MS12 – Street Cleansing Services Plan	0-10	4.50%	n/a	9.0%
	MS13 – Grounds Maintenance Services Plan	0-10	4.50%	n/a	
Total			50.0%		50.0%

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