

POLICY REVIEW AND DEVELOPMENT PANEL REPORT

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| REPORT TO: | Environment and Community Panel | | |
| DATE: | 2 nd December 2019 | | |
| TITLE: | Update on Waste Collection Contract Procurement | | |
| TYPE OF REPORT: | Information | | |
| PORTFOLIO(S): | Environment | | |
| REPORT AUTHOR: | Barry Brandford | | |
| OPEN/EXEMPT | OPEN | WILL BE SUBJECT TO A FUTURE CABINET REPORT: | Yes |

REPORT SUMMARY/COVER PAGE

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| PURPOSE OF REPORT/SUMMARY: |
| <p>This report is to update members on the procurement process undertaken to let a new contract for various services including the collection of household waste, garden waste and trade waste jointly with North Norfolk DC & Breckland DC.</p> |
| OPTIONS TO BE CONSIDERED: |
| <ol style="list-style-type: none">1. Determine if further reports on the details of the contract services its mobilisation are required in the period up to service commencement on 1st April 2021. |
| RECOMMENDATIONS: |
| <ol style="list-style-type: none">1. Note the report.2. The Waste and Recycling Manager arrange update reports during the mobilisation period and before contract start as appropriate for the panel. |
| REASONS FOR RECOMMENDATIONS: |
| <ol style="list-style-type: none">1. To allow the Panel opportunities to gain a better understanding of the contract arrangements, particularly around mobilisation of the contract and to maximise the ability to respond to resident questions that arise appropriately. |

REPORT DETAIL

1. Introduction

- 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.

2. Procurement Process

- 2.1 Since the 1970s, the EU has adopted legislation to ensure that the EU public procurement market is open and competitive and that suppliers are treated equally and fairly. The rules cover aspects such as advertising of contracts, procedures for assessing company credentials, awarding the contracts and remedies (penalties) when these rules are breached.
- 2.2 The EU rules are contained in a series of directives that are updated from time to time. Member states have to make national legislation (regulations) to implement the EU rules in domestic law by certain deadlines.
- 2.3 Following an update of the EU procurement directives in April 2014 the Government implemented the changes, which enable a contracting authority to run procurements faster, with less red tape, and with a greater focus on getting the right supplier and best tender in accordance with sound commercial practice, in the Public Contracts Regulations 2015.
- 2.4 Where a contracting authority has to comply with the full regulations, it can choose to run a competitive procedure from among five types – open, restricted, competitive with negotiation, competitive with dialogue or innovation partnership.
- 2.5 Each of the types suits different size and type of procurements. For complex procurements where the requirements are clearly defined but there is scope for variation around the delivery of those requirements then either Competitive Dialogue or Competitive Negotiation are appropriate.
- 2.6 Competitive Dialogue is ideal for complex relationships where specifications or outcomes of a solution have not yet been clearly defined. It is often used where those procuring need assistance from suppliers to develop the design of the solution.
- 2.7 Competitive Procedure with Negotiation (CPN) is a slightly different procedure to Competitive Dialogue. They both are suited to complex contractual relationships and projects, but CPN requires that you have a clear idea of your

requirements from the outset. One advantage of CPN is that it allows a client to award the contract to a supplier once proposals have all been evaluated, but offers the flexibility to enter into negotiations if necessary. This procedure can be seen as a truncated version of Competitive Dialogue.

2.8 Having considered the five types of procedure it was decided to use a Competitive Procedure with Negotiation (CPN) as it was felt that the requirements of the contract were well defined but, there were multiple ways in which a bidder could deliver a solution to the contract and it provided the authorities with an ability to consider innovation and emerging practices in the waste industry. This in turn could lead to better value for money which is a key requirement under the Procurement Regulations.

2.9 A full analysis of the procurement process is attached at Appendix 1.

3. Evaluation of Tenders

3.1 The award criteria are:

Cost and Commercial Criteria - 50 %

Quality Criteria - 50%

3.2 The overarching Cost and Commercial Criteria and Quality Criteria are known as the Tier 1 criteria. In order to allow for effective evaluation, the Tier 1 Criteria are split into sub-criteria or Tier 2 criteria. For the Quality Criteria the Tier 2 criteria are then further broken down into Tier 3 criteria which reflect the individual Method Statements that bidders submit as part of their Final Tender submission.

3.3 Following the completion of the evaluation of the bids against the Award Criteria a report will be made to Cabinet, on the 6th December, with recommendations from officers on the Award Decision, including elements of the contract relating to the inclusion or exclusion of costed options. Following this meeting, and the Award Decision being made at the other Councils a Notification of Intention to Award will be issued to the bidders. Debriefing unsuccessful bidder will be undertaken.

3.4 The Procurement Regulations require that a 10-day standstill period is observed to allow for any challenge to the Award being made. Once this standstill period has ended, assuming that no challenge has been made then Contract Award documentation can be prepared and issued and then the Contract can be signed.

3.5 At present we are on track for the contract to be signed on or around the 19th or 20th of December.

3.6 An analysis of the evaluation of Tenders is Provided at Appendix 2

4. Policy Implications

- 4.1. 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.
- 4.2. 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.
- 4.3. The council will continue to provide a charged for Bulky Waste Collection Service for householders within the borough.
- 4.4. The weekly food waste collection scheme is retained, with the ability to review its delivery.
- 4.5. 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.
- 4.6. 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.

5. Performance Management

- 5.1. The council retains the ability to manage the performance of the contractor and a robust Performance Management Framework exists which incentivises good performance. The contract is performance based, in which the Contractor's performance in delivering the Services will be assessed against the requirements of the specification using Performance Standards set out in a Performance Management Framework.
- 5.2. The Performance Management Framework is designed to manage and incentivise the Contractor's performance and is not intended to be a mechanism for the recovery of the Authorities' losses. This is covered elsewhere in the contract.
- 5.3. The Performance Management Framework will be applied to each individual Authority's Contract Area in which the delivery of the respective Service element is required, i.e. the Contractor is required to submit individual performance reports against the Performance Management Framework to each Authority.
- 5.4. The primary objective of the authorities is to ensure the collective delivery of a good standard of Service and discretion will be used where appropriate in the application of this Performance Management Framework to promote a collaborative working relationship with the Contractor.

- 5.5. Within the PMF there are a number of Performance Standards set out, these cover all of the services included in the Specification.
- 5.6. In the event that the contractor fails to meet the Performance Standards set out in the contract then a Performance Failure Deduction may apply, although a number of Performance Standards provide the contractor with a degree of leeway before the PFD is applied as explained below.
- 5.7. A number of the Performance Standards include a period of time in which the contractor has opportunity to rectify the failing without any performance deductions being applied where the failing is rectified in this Rectification Period (RP).
- 5.8. The PMF also allows for further deductions should the contractor fail to address the performance standard failure within a subsequent time period referred to as the Repeated Failure Period (RFP).

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. Waste collection fleet requirements for the large rural community of the borough means that diesel is the only practical fuelling option. A new fleet will be compliant with the latest emissions reduction legislation.
- 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.
- 7.3 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.
- 7.4 The disposal of collected residual waste is the responsibility of Norfolk County Council. Currently they treat residual waste collected in west Norfolk by processing in to Refuse Derived Fuel which is sent to Holland for incineration.
- 7.3 Nothing in this contract precludes the delivery of the Waste Strategy 2018 'Our Waste, Our Resources: A Strategy For England'.

8 Risk Management Implications

- 8.1 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.
- 8.2 The council will purchase the refuse collection and other vehicles used to provide the services and provision is made within the Capital Programme.
- 8.3 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.
- 8.4 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.

- 8.5 Ownership of the vehicles also reduces risk to the councils in the future provision of services in the unlikely circumstances of contractor failure.
- 8.6 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.
- 8.7 The costs associated with any damage to either vehicles or depots are excluded from the termination clauses as are issues contract deductions for performance failures.
- 8.8 The interests of the council in providing services in the event of contractor failure will additionally protected by either a Parent Company Guarantee or a Bond.
- 8.9 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.
- 8.10 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. Background Papers