

<b>Report of:</b>	<b>Head of Housing and Waste Management</b>
<b>Contact Officer:</b>	<b>Ian Tennant Joss Presland</b>
<b>Telephone No:</b>	<b>01543 464210 01543 686822</b>
<b>Portfolio Leader:</b>	<b>Environment</b>
<b>Key Decision:</b>	<b>Yes</b>
<b>Report Track:</b>	<b>Cabinet: 18/12/14</b>

**CABINET  
18 DECEMBER 2014  
WASTE COLLECTION SERVICE**

**1 Purpose of Report**

- 1.1 To consider the future delivery of the Council's Waste Collection Service.

**2 Recommendations**

- 2.1 That the Council's Waste Collection Service is subject to an OJEU compliant procurement exercise to secure a single contract for the delivery of all waste collection services, with effect from 1 April 2016.
- 2.2 That an "in-house bid" is submitted for the proposed single contract.
- 2.3 That the outline project plan and timetable (attached as Appendix 1) and the arrangements for undertaking the procurement exercise and "in-house bid" are noted.
- 2.4 That a further report is received on the proposed specification for the future delivery of the waste collection service following an evaluation of "Technically, Economically and Environmentally Practicable" (TEEP) recycling.

**3 Key Issues and Reasons for Recommendation**

- 3.1 A number of the uncertainties which impact on the future delivery of the Council's waste collection services have now been clarified. As a result it is now possible to determine the future delivery of the Council's waste collection service, taking into account two key requirements:-

- (i) The severe budgetary pressures that are faced by the Council's General Fund.
  - (ii) The risk of challenge if the current dry recyclables contract is extended for a further period.
- 3.2 In order to ensure that these requirements are met it is considered that there is only one possible course of action. It is therefore proposed that the Council's waste collection service is subject to an OJEU compliant procurement process, to secure a single contract for the delivery of all waste collection services with effect from 1 April 2016. It is also proposed that an "in-house bid" is submitted for the proposed single contract.
- 3.3 An outline project plan and timetable for the proposed procurement exercise is attached as Appendix 1. The first stage in the process is to determine a specification for future service delivery and this together with the Council's TEEP evaluation will be the subject of a further report.
- 3.4 The submission of an "in-house bid" will necessitate the adoption of formal arrangements to ensure the appropriate separation of duties during the procurement process. These, together with the arrangements for the submission of the "in-house bid", are outlined in the body of the report.

#### **4 Relationship to Corporate Priorities**

- 4.1 Consideration of the options for the future delivery of waste collection services is a specific action within the Environment Portfolio section for the agreed 2014-15 "Place" Priority Delivery Plan.

#### **5 Report Detail**

- 5.1 Cabinet on 17 April 2014, gave preliminary consideration to the future delivery of the Council's waste collection service.
- 5.2 It was reported that a number of uncertainties impacted on future delivery and until these had been clarified it was not possible to specify the future service standards.
- 5.3 Cabinet therefore agreed to defer a decision regarding the future delivery of waste collection services for 12 months and approved actions to continue current service provision through the existing providers during this interim period.
- 5.4 As a result, general (residual) and green waste will continue to be collected by the Council's "in-house team" whilst successful negotiations have been concluded with Biffa Municipal Ltd regarding a proposed 12 month extension of the current Dry Recyclables Collection contract.

5.5 Whilst all of the reported uncertainties have not yet been fully resolved, the situation is now much clearer i.e.

(i) **The Disposal of Dry Recycling Material**

New jointly procured contracts with Lichfield, Tamworth, South Staffordshire and East Staffordshire will shortly be awarded to Biffa Waste Services Ltd, for the continued disposal of dry recyclables at their materials recovery facility at Aldridge until March 2022. As a result, there is now certainty regarding the disposal point for dry recycling material.

(ii) **Recycling Credits**

Whilst the County Council's Medium Term Financial Strategy includes budget reductions in respect of "green waste" recycling credits, County Council officers have stated repeatedly, that these will only be achieved through "joint efficiency savings" and will not be "passed on" to District Councils. Provided that these assurances continue, there is a degree of certainty that the Council's green waste recycling credits will not be reduced.

(iii) **Technically, Economically and Environmentally Practicable (TEEP) Recycling**

Revisions to the Waste Framework Directive (which will come into force from January 2015), requires the Council to undertake waste hierarchy evaluations and practicability tests to ascertain whether the provision of "source separated" collection services are "technically, economically and environmentally practicable". This is commonly known as TEEP.

No guidance has been issued by the Department for Environment, Food and Rural Affairs regarding the new regulations. However, a "route map" has now been developed by the Waste Actions Resources Action Programme to assist Councils in their assessment.

The "route map" has been further developed by the Staffordshire Waste Partnership, through the formulation of an assessment template. It is considered that this, together with other joint working arrangements will enable the Council to undertake the necessary TEEP evaluation.

5.6 As much of the uncertainty in respect of the above issues has been removed, it is now possible to determine the future delivery of the Council's waste collection service.

5.7 In considering this issue two requirements are particularly significant:-

- (i) The Council is facing severe budgetary pressures on the General Fund. Deficits of £176,000 for 2016-17 and £578,000 for 2017-18 are currently forecast within the three year Financial Plan and it is expected that these pressures will continue for the subsequent period.

As the decision regarding the future delivery of the waste collection service will, depending on the length of the contract, impact on the

Council's budgets for a considerable period of time, it is vital that Council secure the most cost effective service.

- (ii) The initial contract for the collection dry recyclables expired on 31 March 2015. It was possible under the Public Contracts Regulations 2006 to extend this for a one year period (in order that it expires on 31 March 2016) as a result of "unforeseen circumstances". However, there is a significant risk that any further extension would be challenged by unsuccessful contractors who may have tendered for the contract.

It is therefore considered that the new waste collection service arrangements must be in place for commencement on 1 April 2016.

- 5.8 In order to ensure that the above requirements are met, it is considered that there is only one possible course of action. It is therefore proposed that the Council's waste collection service is subject to an OJEU compliant procurement exercise, to secure a single contract for the delivery of all waste collection services, with the submission of an "in-house bid".
- 5.9 It is considered that this approach will maximise the opportunities for "economies of scale" and ensure the most cost effective future service through open market competition. In addition, as the timescale for the procurement process will be determined by the Council (in accordance with OJEU requirements), a new contract can be in place on 1 April 2016.
- 5.10 An outline project plan and timetable for the proposed OJEU compliant procurement exercise is attached as Appendix 1. It is proposed that the Restricted Procedure is adopted and that following tender acceptance, a 6 month period is available for contract mobilisation. As the suggested single contract will necessitate the transfer of employees under TUPE, the 6 month mobilisation period will also allow sufficient time for the required employee consultation to take place.
- 5.11 The first stage in the process is to determine a specification for the future delivery of the service and it is proposed that this together with the Council's TEEP evaluation is the subject of a future report. It is also proposed to consult potential providers on the proposed contract requirements through a "bidders day" in early February. A particular consultation issue will be the length of the new contract, although at this stage an initial seven year term, with the option of a further seven year extension is suggested.
- 5.12 The submission of an "in-house bid" will necessitate a "split" in officer responsibilities at certain stages of the procurement process. Whilst the same officers can formulate the specification and determine the "in-house bid", it would clearly be anti-competitive if these officers were involved in the evaluation process. It will therefore be necessary to adopt formal arrangements to ensure the appropriate separation of duties.
- 5.13 It is intended that the Waste and Engineering Manager, with support from the Head of Housing and Waste Management will formulate both the specification and "in-house bid" and that a group of other officers led by the Corporate Director will undertake the evaluation process. It will however, be necessary to

provide technical support to the evaluation team and it is proposed that this is secured from the Staffordshire and Stoke-On-Trent Waste Partnership.

- 5.14 The proposed procurement exercise will have a major impact on the workload of the Waste and Engineering Manager. In order to address this and ensure that the postholder can devote sufficient time to the procurement exercise, alternative arrangements will be made for the “day to day” management of the section for an interim period.

<b>6 Implications</b>
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**6.1 Financial**

The cost of the legal and procurement advice will be met from existing budgets.

Other costs associated with the procurement exercise are estimated to be £20,000 and will be met from the balance of Waste Renewal Grants contained within earmarked reserves.

**6.2 Legal**

In reviewing its services, the Council must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

Procurement of services above the current EU threshold (£172,514) must be carried out in compliance with the Public Contract Regulations 2006 (due to be replaced by new regulations in 2015). This includes the advertisement of tenders in the European Journal.

**6.3 Human Resources**

The Transfer of Undertakings (Protection of Employment) Regulations will apply where a service (undertaking) is transferred to an alternative supplier. Under these regulations, employee terms and conditions of employment are protected following transfer unless there is an economic, technical or organisational reason for a change to be made. Whilst there is no specific timescale within the regulations for undertaking consultation with affected employees, any such consultation should be undertaken in good time prior to the transfer. Communication and dialogue will be undertaken with the employees affected and their trade union throughout the process – and particularly during the mobilisation phase described in 5.10 above.

**6.4 Section 17 (Crime Prevention)**

None

**6.5 Human Rights Act**

None

**6.6 Data Protection**

None

**6.7 Risk Management**

The current contract for the collection of dry recyclables expires on 31 March 2016 whilst the initial contract expired on 31 March 2015, it was extended for a further year as a result of “unforeseen circumstances”. There is however, a significant risk that any further extension would be challenged by unsuccessful contractors who may have tendered for the contract and as a result this report proposes that a new contract is procured and is in place by 1 April 2016.

There are also a number of risks associated with the proposed OJEU procurement exercise. However these will be mitigated by securing appropriate legal and procurement advice, the formal separation of officers’ duties during the procurement process and ensuring adequate resources for the procurement exercise and the “in-house bid”

A full risk register will be established and monitored as part of the project management arrangements.

**6.8 Equality & Diversity**

None.

**6.9 Best Value**

This will be ensured by the proposed OJEU compliant procurement exercise.

**7 Appendices to the Report**

Appendix 1 OJEU Procurement Exercise – Outline Project Plan and Timetable

**Previous Consideration**

Waste Collection Contracts	Cabinet	17 April, 2014
Financial Plan 2014-15 to 2017-18	Cabinet	20 November, 2014

**Background Papers**

**WASTE COLLECTION SERVICES**  
**OJEU PROCUREMENT EXERCISE**  
**OUTLINE PROJECT PLAN AND TIMETABLE**

December 2014	Determine future delivery of waste collection services (Cabinet 18 December, 2014)
January 2015	Issue Prior Information Notice (PIN)
February 2015	Bidders day
March 2015	Determine service specification following consideration of TEEP evaluation (Cabinet 12 March, 2015)
April 2015	Issue Pre-Qualification Questionnaire (PQQ)
May 2015	Receive and evaluate completed PQQ's (following a minimum 30 day period for submission)
June 2015	Issue Invitation to Tender (ITT)
July 2015	Receive completed ITT's (following a minimum 31 day period for submission)
August 2015	Evaluation of submitted tenders
September 2015	Tender acceptance
October 2015	Award of contract / Commence contract mobilisation including TUPE consultations
April 2016	Commence new contract