

OVERVIEW AND SCRUTINY

DATE OF MEETING: 19 SEPTEMBER 2017

TITLE OF REPORT: JOINT WASTE AND RECYCLING TENDER

Report of: Head of Environment and Technical Services

Cabinet member: Councillor Alan Oliver, Contracts

I PURPOSE OF REPORT

1.1 To obtain this Committee's views on the service options, which are being recommended to Cabinet for inclusion in the specification of the Joint Waste Contract, and the Committees comments on the recommendation that Cabinet delegate authority for the final contract award.

2 OFFICER RECOMMENDATION

2.1 That this committee considers and comments on the following Cabinet recommendations.

1. That Cabinet approve the service options recommended in confidential Appendix I of this report for inclusion in the specification of the Joint Waste Contract for negotiation with the preferred bidders provided that this can be contained within Hart's approved budget provision for the waste and recycling service.
2. That Cabinet approve that the Cabinet Member for Contracts and the Joint Chief Executive are jointly delegated authority to approve the final award of the Joint Waste Contract, subject to;
 - a. The decision being made within the decision making framework set out for evaluation previously approved by Cabinet.
 - b. The costs for the contract being in accordance with current budget provision.
 - c. The specification being aligned to the service delivery options approved by Cabinet in October 2017.

3 BACKGROUND

3.1 The current Joint Waste Contract was let in 2011 and will expire in October 2018. The new contract will run for eight years with the option, subject to performance, of an eight year extension.

3.2 Development of the specification for the future waste and recycling contract was carried out in consultation with Hart's Overview and Scrutiny Committee (O&S). During the period September to October 2016 a panel of members from the committee met on four occasions to consider and make recommendations on the proposed specification for the contract and the service options outlined in confidential Appendix I.

- 3.3** Having completed the above, the outline specification for the joint waste contract, proposed tender evaluation and award criteria, and proposed waste contract performance indicators, were drafted and considered by the Joint Governance Group for the Joint Waste Contract (JGG) and O&S before being recommended to Cabinet for approval.
- 3.4** In March 2017 Hart Cabinet agreed:
- i. That tenders would be invited for a new Joint Hart/ Basingstoke and Deane Waste and Recycling Contract to commence on 3rd October 2018.
 - ii. The outline specification for the joint waste and recycling service 2018 onwards.
 - iii. The tender evaluation and award criteria.
 - iv. The outline waste and recycling contract performance indicators.
 - v. The allocation of £10,000 of match funding for the procurement process.
- 3.5** Since March 2017 the following work has been undertaken:
- i. Expressions of interest were obtained from experienced waste and recycling collection contractors.
 - ii. Interested contractors attended a bidder's day, where they were provided with information on the joint service specification.
 - iii. Tender documents were sent out to a short list of six contractors in May 2017.
 - iv. Tenders were returned at the beginning of July 2017.
 - v. An initial evaluation of the tender submissions has been completed and three preferred bidders have been identified.
- 3.6** Further work is required before a preferred bidder is selected and the contract award is confirmed: - the timeline for the remaining procurement process is provided in Appendix 2.
- 3.7** To enable Basingstoke and Deane Borough Council (BDBC) to fully evaluate the implications of alternate weekly collection (AWC), bidders were invited to submit tenders on the basis of two service delivery models (lots). Before negotiations with the short listed bidders can commence, BDBC's Cabinet will need to determine which lot they wish to proceed with.
- 3.8** Hart do not have a decision to make with regard to the lots as the specification for the Hart element of the service is identical in both lots.
- 3.9** Tenders submitted for lots 1 and 2 have been evaluated by officers in accordance with the previously approved evaluation criteria, and three short-listed bidders for each lot have been determined. After BDBC's Cabinet, have agreed which Lot to progress, officers will enter into the negotiations with the short-listed bidders.
- 3.10** To ensure compliance with procurement regulations, no bidder specific information from the evaluation is contained within the body of this report. However, to facilitate informed decision making, an evaluation summary of the optional service provision is attached at confidential Appendix 1.
- 3.11** On 20th September 2017, BDBC's Cabinet will decide whether the procurement should proceed on the basis of lot 1 or lot 2.

4 CONSIDERATIONS

- 4.1** Whilst a decision on the lots will not change the Hart specification, the introduction of AWC in Basingstoke will provide the contractor with greater opportunities to align the service delivery across both districts.
- 4.2** In addition to pricing two lots, bidders were asked to price the service delivery options previously considered by O&S and agreed by Cabinet. These options have now been evaluated and Cabinet will be asked to approve incorporation of the options recommended in confidential Appendix 1 within the specification for the Hart element of the contract.
- 4.3** This report seeks delegated authority to award the contract, in order to ensure that the proposed procurement timescale shown in Appendix 2 is achieved, and to ensure that the mobilisation period between contract award and contract commencement is sufficient. Failure for Cabinet to agree delegated authority could delay the contract start and necessitate negotiations with the existing incumbent for a contract extension.
- 4.4** BDBC have already approved the delegation required to enable a decision on the contract award to be made in accordance with the procurement timescale outlined in Appendix 2.

5 LEGAL IMPLICATIONS

- 5.1** Hart and BDBC are jointly procuring a waste and recycling service. Due to the potential spend over the lifetime of the contract, the procurement activity has had to be undertaken under the EU procurement rules. The EU rules are very detailed on the process, communications and how to challenge any decision.
- 5.2** The tender process is being conducted in accordance with the Public Contracts Regulations 2015 ('the Regulations'), using the competitive procedure with negotiation. This procedure affords the council the ability to negotiate with bidders on the initial and all subsequent tenders submitted by them, except for the final tender, with the aim of improving their content. As a consequence, this helps to ensure that the council is fulfilling its duty to secure best value.
- 5.3** The contract that the councils may enter into, is proposed to be for 8 years with a potential extension of up to a further 8 years, thus in total, up to 16 years. In addition to numerous other factors, the potential term of the contract will mean that any non-successful bidder will not be able to compete for this contract again for a significant length of time in a market place, which has seen the number of providers decline over recent years. Thus the market is very competitive and as a result, this area of procurement activity is subject to significant levels of legal challenge by the providers in this sector. The potential for a legal challenge of our decision making is higher than in other procurement exercises.
- 5.4** Section 21 of the Regulations requires a contracting authority not to disclose information, which has been received from bidders, which they (the bidder) have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

- 5.5** Independent legal advice has been obtained on how both authorities should treat and manage bidders' confidential information for the purpose of this report to ensure that the council can make properly informed decisions, without unduly exposing the council to a risk of challenge. This report has been prepared on the basis of such advice. However, the risk cannot be completely managed away.
- 5.6** Members will consider recommendations for any 'optional service' items and determine, which to explore during negotiations. The more information that is provided to members, the less scope for challenge on the basis that the decision is taken without a proper or sufficient knowledge of the tenders and their evaluation.
- 5.7** However, the more detailed and bidder specific information that is provided to decision-makers, the greater the risk of inadvertent disclosure, which could give rise to a claim for breach of confidentiality under the procurement process. This risk can be mitigated to some extent by anonymising bidders, and by providing information in relative rather than absolute terms.
- 5.8** Some decision makers (or those scrutinising the process) may seek greater detail. A careful balancing exercise has had to be undertaken between informed decision making and maintaining confidentiality through anonymising information, although in some cases bidders may still be able to work out the detail behind the anonymised data.
- 5.9** It will also be important to maintain the confidentiality of tender submissions in order that the integrity of negotiations with the remaining bidders is safeguarded.
- 5.10** It is possible to protect fairly easily against inadvertent disclosure e.g. by way of having limited hard copy circulation of sensitive information. Furthermore, bidders have been informed in broad terms of how a decision will be made and what material will be available to decision makers so they should not be surprised with the nature and detail of information shared with members.
- 5.11** If however, an intentional data breach occurs then the councils will be placed in a very difficult position regarding progressing with the current procurement process, but also in relation to continued service provision.

6 FINANCIAL IMPLICATIONS

- 6.1** The re-tendering of the Joint Waste Contract is an ongoing procurement process and the final contract price will not be established until February 2018. To protect the confidentiality of submitted bids, the indicative financial impact at this stage in the procurement process is outlined in the table provided in confidential Appendix I.
- 6.2** Overall budget provision for Harts waste and recycling contract for 2017/18 is approximately £1.7m.

7 RISK MANAGEMENT

- 7.1** A risk assessment has been completed in accordance with the council's risk management process and has identified the following significant (Red or Amber) residual risks that cannot be fully minimised by existing or planned controls or

additional procedures. A copy of the Risk Management Matrix for this procurement is attached at Appendix 3. The main risks at this stage are as follows:

1. Delay to the procurement process.
2. An unsuccessful bidder challenges the procurement process.
3. BDBC do not reach a decision on whether to proceed with either Lot 1 or Lot 2.
4. Information relating to the initial tender responses reaches the public domain.

8 EQUALITIES IMPLICATIONS

- 8.1** An Equality Impact Assessment has previously been undertaken to consider the impact of the changes proposed in this report for Lot 1 and 2 on the protected characteristics and other potentially vulnerable groups, and the implications for the Public Sector Equality Duty, under the Equality Act 2010. The outcome of this assessment was reported to Cabinet in March 2017.

9 HUMAN RESOURCE IMPLICATIONS

- 9.1** This report has no HR implications on staff employed by Hart District Council or the Joint Waste Client Team. The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) will apply to any staff employed by the current waste collection contractor.

10 ACTION

- 10.1** Subject to the recommendations of this report being approved, negotiations with the preferred bidders will commence in October 2017 and procurement process will proceed in accordance with the procurement programme attached at Appendix 2.

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APPENDICES / CONFIDENTIAL APPENDICES

Confidential Appendix 1 – Summary of the Financial Implications and Optional Service Provision.

Appendix 2 – Procurement Programme

Appendix 3 – Risk Management Matrix

BACKGROUND PAPERS:

- TENDERING OF THE JOINT WASTE AND RECYCLING CONTRACT, Cabinet, March 2017
- TENDERING OF THE JOINT WASTE AND RECYCLING CONTRACT – Overview and Scrutiny Report – February 2017
- MANAGEMENT OF THE JOINT WASTE CONTRACT 2018 ONWARDS – Cabinet Report - February 2016
- Notes of the waste and recycling Joint Governance Group meetings between October 2011 and present.
- OPPORTUNITIES FOR INCREASING HART'S RECYCLING RATE – Cabinet Report – December 2014

- JOINT WORKING ON WASTE WITH BASINGSTOKE AND DEANE BOROUGH COUNCIL – CONTRACT AWARD REPORT – Cabinet Report - April 2011.

Procurement Programme

| | Task | Date |
|----|---|--|
| 1 | Basingstoke and Deane Borough Councils (BDBC), Community Environment and Partnerships Committee will consider the Lot 1 / Lot2 decision and service options | 13 th September 2017 |
| 2 | Hart Overview and Scrutiny Committee will consider the service options and the proposal to delegate the contract award | 19 th September 2017 |
| 3 | BDBC Cabinet to decide on Lot 1 or Lot 2 and service options | 20 th September 2017 |
| 4 | Hart Cabinet to decide on service options and delegation of the contract award | 5 th October 2017 |
| 5 | Bidders to be notified of AWC decision and intention to begin negotiations | 6 th October 2017 |
| 6 | Negotiation commences | 16 th October 2017 |
| 7 | Negotiation closes | 24 th November 2017 |
| 8 | Bidders prepare best and final tenders | 27 th November 2017 to 5 th January 2017 |
| 9 | Evaluation of Best and Final Tenders | 8 th January to 2 nd February 2018 |
| 10 | Joint Chief Executive and Cabinet Member for Contracts in consultation with the Joint Governance Group to approve award of the contract to the successful bidder. | 12 th February 2018. |
| 11 | Notification of Intention to award contract | 16 th February 2018 |
| 12 | Contract issued | 27 th February 2018 |
| 13 | Contract signing, finalisation of specification and preparation for contract mobilisation | 27 th February – 2 nd April 2018 |
| 14 | Mobilisation commences | 2 nd April 2018 |
| 15 | Mobilisation period | 2 nd April – 6 th October 2018 |
| 16 | Contract commencement | 6 th October 2018 |

APPENDIX 3 - V1 - DRAFT

Project:

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| JOINT WASTE & RECYCLING CONTRACT - HART DISTRICT COUNCIL AND BASINGSTOKE AND DEANE BOROUGH | Prepared by: Helen Taylor-Cobb/Sarah Robinson |
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|------------------------|
| Date: 23rd August 2017 |
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Risk Register

| Risk No. | Date Raised | Raised By | Details | Values: 1 - 6 | Values: 1 - 4 | Calculated | Risk Type | Mitigation/Update/Comments |
|----------|-------------|--|---|---------------|---------------|---------------|---|---|
| | | | | Likelihood | Impact | Overall Score | | |
| 1 | 04/05/2016 | JE | Loss of key personnel during the project | 3 | 4 | 12 | Financial; Service; Corporate Objectives; Reputation | Loss of knowledge to inform creation of specifications and evaluation. Comprehensive project documentation and timetable in accordance with corporate project framework. Contingency planning and nominated 'seconds' to provide support and cover where necessary |
| 2 | 04/05/2016 | JE | Delay to procurement process | 4 | 4 | 16 | Financial; Service; Corporate Objectives; Reputation | Would need to extend existing contract which will include a substantive increase in contract cost. Close monitoring of progress against project plan. Seek a further extension to existing contract if necessary. Communicate roles, responsibilities and deliverables to ensure all participants are aware of deadlines. |
| 3 | 04/05/2016 | Highlighted during previous procurement (HDPP) | Two authorities unable to agree on cost apportionment. | 1 | 4 | 4 | Financial; Service; Corporate Objectives; Reputation | Inter-authority agreement provides details of how this is undertaken but would need to be reconsidered in the event agreement could not be reached. Tender documents to segregate authority costs |
| 4 | 04/05/2016 | HDPP | The OJEU notice does not generate any interest from potential bidders | 2 | 2 | 4 | Financial; Service; Corporate Objectives; Reputation | Lack of potential bidders may result in either a need to extend existing arrangement (including substantive increase in contract cost) or in limited evidence of best value in the retendered service. Soft market testing used to inform service specification and procurement process. |
| 5 | 13/01/2017 | SR/HTC | Two (2) lots for the tender causes contractors not to bid for the contract or reduces the number we have to choose from | 3 | 4 | 12 | Financial; Service; Corporate Objectives; Reputation | Final decision required on the lots before the full tender is sent out. |

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Appendix 3

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|----|------------|------|---|---|---|----|---|---|
| 6 | 04/05/2016 | HDPP | An unsuccessful bidder challenges the evaluation process | 4 | 4 | 16 | Financial; Service; Corporate Objectives; Reputation | Would need to halt procurement process whilst investigated or continue at risk until issue is resolved. Use of internal and external procurement expertise to build tender documents. Comprehensive evaluation documentation and robust evaluation criteria published as part of the tender to ensure transparency. Bidders provided with appropriate debriefing so they understand award decision. Clear transparent evaluation criteria included within the tender documents and all evaluators trained on how to conduct an evaluation to ensure uniform approach. Clear, objective comments to support all evaluation activities. We have secured external legal advice with specific reference to the evaluation and its application through the process. Legal advice is sought on any contentious areas. |
| 7 | 04/05/2016 | HDPP | Members challenge the decision making process | 4 | 4 | 16 | Financial; Service; Corporate Objectives; Reputation | May need to halt process whilst investigated or continue at risk until issue is resolved. Consultation with members via scrutiny and CEP. As per item 6 specialist counsel advisor has attended BDBC Cabinet and SMB to provide advice and guidance to Members and Officers. |
| 8 | 04/05/2016 | HDPP | A bid is received which scores highly on price but is unsustainable. | 1 | 3 | 3 | Financial; Service; Corporate Objectives; Reputation | Ensure enough detail is required from potential bidders to enable interrogation of prices that appear unsustainable. Utilising a negotiated process whereby 3 top scoring bidders invited to negotiate reduces impact of single low price bid destabilising the process. |
| 9 | 04/05/2016 | HDPP | Prices come in over budget | 3 | 3 | 9 | Financial | Have built a contingency figure into the budget. Utilising a negotiated process whereby 3 top scoring bidders invited to negotiate maximises competition in the market and mitigates against the most expensive solutions impacting the outcome. |
| 10 | 04/05/2016 | HDPP | Several invitations to tender are sent into the market at the same time making contractors 'selective'. | 4 | 3 | 12 | Financial; Service; Corporate Objectives; Reputation | Ensure specification is 'fit for purpose'. Keep up to date on progress of other tenders. Adhere to procurement timeline to give confidence in our opportunity to the market. This was a high risk but our tender has been released into the market and we see no adverse impact on engagement. |
| 11 | 04/05/2016 | HDPP | Either of the depots sites do not have sufficient capacity for both contracts. | 1 | 3 | 3 | Financial; Service; Corporate Objectives; Reputation | Confirmed viability within soft market testing and have included option for bidders to make recommendations on depot solutions within their tender return. No concerns expressed. |
| 12 | 04/05/2016 | HDPP | Poor performance of incumbent contractor during remaining period of current contract if not successful. | 2 | 4 | 8 | Service; Reputation | Could result in the loss of good staff from the contract, reduced service quality or delays in the creation of tender documents because of lack of evidence for existing service volumes. Maintain good communication and working relationships with local management. Invoke performance defaults if necessary. |

PAPER B
Appendix 3

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|----|------------|--------|--|---|---|----|---|--|
| 13 | 04/05/2016 | SR | TEEP (technically, environmentally and economically practicable) Assessment does not meet the requirements of the legislation. | 2 | 5 | 10 | Financial; Service; Corporate Objectives; Reputation | Tender documents would need to be drafted resulting in possible delay to the procurement timeline and possible increase in support costs as a result of requiring an extension to the existing service. Ensure that this assessment is completed asap - will be undertaken by "Critical Friend" in February 2017. WAs included within the tender specification. |
| 14 | 13/01/2017 | SR/HTC | Alternate Weekly Bins – Proposed criteria for AWC is not followed as part of the AWC go/no go decision. | 4 | 4 | 16 | Financial; Service; Corporate Objectives; Reputation | The selection of either Lot 1 or lot 2 is decided using other undisclosed factors not previously made known to potential providers. Increases the risk of challenge from unsuccessful bidders who may perceive their exclusion to be subjective and not transparent. Mitigated by sharing the process by which the AWC decision is being made with Members, residents and potential providers as part of the Prior Information Notice and published documents. Bidders were provided with a communication document outlining the mechanism for the AWC decision. |
| 15 | 13/01/2017 | SR/HTC | No decision is reached on whether to proceed with AWC or to remain as is. | 6 | 4 | 24 | Financial; Service; Corporate Objectives; Reputation | A default position of remain 'as is' will be implemented to prevent procurement timeline slipping - removing the opportunity to maximise service, recycling and cost improvements if available through the alternative options. |
| 16 | 08/02/2017 | HTC | Information relating to the initial tender response reaches the public domain | 5 | 4 | 20 | Financial; Service; Corporate Objectives; Reputation | Information provided to the authorities as part of the tender process is commercially sensitive and both the councils' and the potential suppliers agree to this as part of the process in accordance with The Public Contracts Regulations 2015. Any derivation (or perceived derivation) from this stance may result in a challenge from suppliers. We would need to halt procurement process whilst investigated or continue at risk until issue is resolved. Mitigation is to only share this information with those evaluating the tender. Information based on the submitted data from the top 3 scoring responses will be anonymised and provided to Cabinet solely for the purposes of reaching a decision on whether to remain with the existing service or not and must be maintained in confidence. |
| 17 | 23/08/2017 | JE | Non delivery of IT solution | 1 | 2 | 2 | Financial; Service; Corporate Objectives; Reputation | Failure to successfully deploy the IT system would result in manual processes to record and create resident collection information and would result in significant service disruption and increase to overhead costs. This has been mitigated by the inclusion of KPI's specific to the delivery of the IT solution which are financially incentivised. |

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|----|------------|------|---|---|---|----|---|--|
| 18 | 23/08/2017 | JE | Cost could increase through negotiation process | 3 | 2 | 6 | Financial; Service; Corporate Objectives; Reputation | The purpose of the negotiation process is to confirm and clarify tenderers understanding on the solutions they have submitted this may result in an increase or decrease to initial submitted prices which is expected as part of the process. Where this is possible this has been mitigated utilising a comprehensive clarification process during the initial tender time frame and a comprehensive suite of supporting materials provided as part of the tender documents. |
| 19 | 23/08/2017 | HDPP | A bidder challenges the AWC process | 4 | 4 | 16 | Financial; Service; Corporate Objectives; Reputation | Would need to halt procurement process whilst investigated or continue at risk until issue is resolved. We have secured external legal advice with specific reference to the mechanism by which the AWC decision is communicated and taken during the procurement timeline. Information relating to how the AWC decision will be reached was provided to Bidders as part of the ITT process following advice and guidance received from external counsel. |
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| Likelihood | Probability |
|------------------------------|---|
| Almost Impossible (1) | Less than 5% chance |
| Low (2) | More than 5% chance but less than a 15% chance |
| Possible (3) | More than 15% chance but less than a 50% chance |
| Significant (4) | More than a 50% chance but less than 85% chance |
| High (5) | More than 85% chance but less than 95% chance |
| Very High (6) | More than 95% chance |

| Impacts | | | | |
|----------------------|----------------------------------|---------------------------------|-------------------------------------|--|
| Category | Negligible (I) | Marginal (II) | Critical (III) | Catastrophic (IV) |
| Financial Impact | £0k - £50k | £50k - £3m | £3m - £10m | £10m plus |
| Service Provision | Minor deterioration in service | Service suspended for 1-2 days | Service suspended for 2-7 days | Service suspended for more than 7 days |
| Health & Safety | Bruising | Broken Bones | Permanent Disability | Death |
| Corporate Objectives | Staff objective not met | Team objective not met | Business Unit objective not met | Council Plan objectives not met |
| Reputation | Short term local media attention | Sustained local media attention | Short term national media attention | Sustained national media attention |

| Project Impacts | | | | |
|----------------------------------|-----------------------------|-------------------------------------|---------------------------|-------------------------------------|
| Category (See notes below) | Negligible (I) | Marginal (II) | Critical (III) | Catastrophic (IV) |
| Costs (variance) | + 10% | + 20% | + 30% | + 50% |
| Timescales as defined by project | Impact scale defined in PID | | | |
| Quality (Where specified) | Minor impact | Medium impact | Major impact | Unacceptable |
| Scope (Detailed requirements) | Minor requirement not met | Multiple Minor requirements not met | Major requirement not met | Multiple Major requirements not met |
| Benefits (where measurable) | - 10% | - 20% | - 30% | - 50% |