

Report to the Cabinet

Report reference: C-071-2012/13

Date of meeting: 15 April 2013



**Epping Forest
District Council**

Portfolio: Environment

Subject: Appointment of consultants to advise on the procurement of the next waste management contract.

Responsible Officer: John Gilbert (01992 564062)

Democratic Services Officer: Gary Woodhall (01992 564470)

Recommendations/Decisions Required:

- (1) That the proposed time table for the procurement of the next waste management contract be noted;**
- (2) That the Environment Portfolio be authorised to accept the most economically advantageous tender received from the procurement exercise, provided that the returned tender is within the currently approved budget; and**
- (3) That, in the event that the most economically advantageous tender is above the currently agreed budget, and given the pressures upon the procurement time frame, the Environment Portfolio Holder be authorised to report directly to Council at the annual meeting in May 2013 so as to keep to the procurement programme.**

Executive Summary:

This report sets out recommendations relating to the appointment of consultants to advise the Council on the procurement of the next waste management contract, with particular reference to ensuring that appointments can be made in good time so as not to prejudice the time table for the procurement exercise. The recommendations therefore suggest the use of delegated authority where the budget is sufficient or a report to Annual Council should the currently available budget be insufficient.

The report also sets out the time table and the assumptions which underpin it, critical to which is the current depot at Langston Road being available at the commencement of the new contract and for at least a further 6 months.

Reasons for Proposed Decision:

To ensure that the time table for the procurement and delivery of the next waste management contract can be achieved

Other Options for Action:

- (1) If the Portfolio Holder is not authorised to accept the tender, then approval will not be available until the June Cabinet. This will put significant pressure onto the time table for delivery; and**

(2) Similarly, if the most economically advantageous tender exceeds the current budget, a request to Council for supplementary funding will be required. If such a request cannot be made to the Annual Meeting of Council, this will not be considered until the next available Council on 30 July. Such a delay would make the time table for the procurement delivery extremely challenging to achieve.

Report:

1. The current waste management contract with Sita UK expires on 4 November 2014, having run its term of 5 years with a 2 year extension. European procurement regulations do not permit that contract to be extended further, and therefore, irrespective of contract performance, a procurement exercise will be required.

2. Whilst the time available between now and November 2014, some 18 months, appears considerable, in reality the procurement of a waste management contract, with its potential gross value of more than £7 million per annum, is a very complex process. The Council will need to consider most carefully how it wishes to package that new contract, and what services might be included or excluded from the contract specification. Furthermore, it has to be assumed that a new service provider might be selected, and therefore a lead in period of at least 4 months has been allowed, to ensure that the handover from one provider to another is correctly managed, and the quality of services maintained.

3. The procurement exercise itself will also be complex, particularly if the Council elects to use competitive dialogue rather than the normal European procurement process. Competitive Dialogue (CD) has a number of advantages in enabling the Council to be more open in its specification, and also enable discussions with potential service providers around contract packaging and the inclusion or exclusion of services and changes / innovations in current service delivery. CD, because of its added complexity, is more expensive and takes longer than a normal tendering procurement. The time frame, as currently prepared, provides 9 months for undertaking the procurement exercise, and assumes that:

- (i) the existing depot at Langston Road remains available for the commencement of the contract and for at least 6 months thereafter; and
- (ii) CD will be the method of procurement.

4. It can therefore be seen that at least 13 months, and potentially 15 months are required to procure the contract from the point at which the Council is ready to issue the tender documentation. Assuming that 15 months is the preferred approach, this means that the formal tender process must commence in August 2013. The time frame is set out as attached at Appendix 1 (**Recommendation (1)**).

5. Previous waste contract procurements have seen the Council appointing specialist consultant advice to assist the Council in:

- (a) drawing up specifications and contract terms and conditions;
- (b) the actual procurement process; and
- (c) the lead-in period and immediate commencement of the new contract.

6. The Environment Portfolio Holder, through a Portfolio Holder decision, agreed to use a Government Procurement Service (GPS) Framework Agreement to tender for specialist consultants (ENV-005-2012/13). That procurement exercise is underway via the Essex

Procurement Hub and is expected to be concluded by the end of the third week in April. It is essential that the appointment is made as soon as possible after the tender assessment has been concluded, to enable a start to be made on the commission. To that end it suggested that the Portfolio Holder be given delegated authority to accept the tender of and appoint the consultant who has submitted the Most Economically Advantageous Tender ('MEAT') provided that the tendered sum does not exceed the current budgetary provision of £100,000. **(Recommendation (2)).**

7. In the event that the MEAT exceeds the currently provided budget, it is further suggested that the Portfolio Holder be authorised to report direct to annual Council in May to seek additional resources. **(Recommendation (3)).** The Cabinet will appreciate that this is not the kind of business which would normally find its way on to the annual council meeting agenda i.e. it is not the usual civic business. There are two factors however which make this is a reasonable option in the circumstances:

- (a) this is one of the largest contracts with which the Council has to deal and the consequences of delays in the procurement timetable are serious; and
- (b) there are no district council elections in 2013 which may make the Annual Council agenda a little less demanding on the civic side and with few, if any, new members who may feel disadvantaged by being involved in such a significant decision so soon after their election to office.

Resource Implications:

The Council, in approving the budget for 2013/14, made District Development Fund provision of £100,000 following the recommendation of Cabinet in February 2013 (Min ref: 13 – 4 Feb 2013)

Legal and Governance Implications:

The use of Government Frameworks via the Essex Procurement Hub is in accordance with Contract Standing Order C2(3). In order to ensure that the time frame for the procurement exercise is achieved, the Environment Portfolio will require delegated authority either to appoint within budget or to seek Council's approval for additional resources at the annual Council meeting. The responsibilities of the Cabinet and the Portfolio holder are set out in the Local Government Acts 2000 and 2007 and the Localism Act 2011.

Safer, Cleaner and Greener Implications:

The waste contract provides services which are important to all residents, businesses and visitors to the District. It is essential that the Council is able to procure best value services and that to achieve this technical advice is secured to ensure the most effective packaging of the contract. It is also important to commence the consultancy and procurement exercise in good time to ensure that the contract is able to commence in November 2014.

Consultation Undertaken:

Essex Procurement Hub, who are prepared to assist the Council in the procurement exercises.

Background Papers:

Report to Cabinet, 4 February 2013 (Formation of a Portfolio Holder Advisory Group and seeking budgetary provision for 2013/14).

Impact Assessments:

Risk Management

The waste management contract has a value in the order of £70 million and possibly more dependant upon what other services are combined with it (e.g. grounds maintenance) and the length of the term of contract. The services are provided to all residents, businesses and visitors to the District and are therefore critically important to the Council's reputation. It is therefore vital that the procurement processes are sound, that the specifications and contractual documents are robust and that the procurement is completed in good time to allow an adequate lead-in period for the next service provider.

It is also essential that the procurement time frame is achieved, since there is no legal mechanism whereby the existing contract can be extended beyond its end date. In order to achieve that time frame, which has very little (if any) scope for amendment, it is critical that speedy decisions are made to enable the preferred consultants to be appointed and for them to commence the commission.

Equality and Diversity

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? Yes

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? Yes

What equality implications were identified through the Equality Impact Assessment process?
A full equalities assessment will be undertaken as part of drawing up service specifications.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
A full equalities assessment will be undertaken as part of drawing up service specifications.