

Report to the Cabinet

Report reference: C/115/2006-07.

Date of meeting: 19 February 2007.



**Epping Forest
District Council**

**Portfolio: Environmental Protection.
Customer Services, Media, Communications & ICT.**

Subject: Waste Management Contract & Specification.

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Recommendations/Decisions Required:

- (1) That in accordance with previous Cabinet decisions the contract be tendered on the following basis:
 - (a) a price be sought for an alternate weekly residual collection but with a weekly collection for the period May to September;**
 - (b) a price be sought for an all year round weekly residual collection; and**
 - (c) both options to retain the existing alternate weekly collection of dry and wet recyclable materials;****
- (2) That the Cabinet's present policy on the waste contractor being responsible for fleet management be reaffirmed, but in addition officers explore the possibilities for alternative methods of fleet procurement including the Council itself purchasing vehicles;**
- (3) That the principle of partnering be accepted and that the new contract contain provisions for a Partnership Charter and Innovation Forum(s);**
- (4) That the specification requires the contractors to collect the widest possible range of recyclable materials and that their collection methodology uses the fewest number of vehicles and passes as is practical;**
- (5) That the specification requires the contractor to put forward proposals for the marketing of recyclable materials and where collection is on a source separated basis to discuss options of income sharing with the Council;**
- (6) That the specification requires the contractor to come forward with proposals for managing the various bring schemes (recycling banks) including options of income sharing with the Council;**
- (7) That the existing Bank Holiday collection arrangements be retained within the specification and that proposals for change be dealt with through the partnership arrangements;**
- (8) That the existing arrangements for the provision of depot accommodation to the contractor by the Council be retained;**
- (9) That, subject to an assessment by the Council's consultants Indecon of the potential increased costs of meeting this enhanced street cleansing standard, the specification for street cleansing etc include the following**

principles:

- (a) all high intensity zones (currently zones 1 & 2) will have an input based specification which will require a high standard to be achieved throughout the day. The time allotted to return to Grade A will be reduced from half a day to 3 hours;**
- (b) the first 10 metres of any road adjoining a high intensity zone will be classified as high intensity and the same standard applied;**
- (c) areas which are subject to the 'evening economy' will be allocated a special EFDC zone with a more stringent standard (high intensity 'plus') reflecting difficulties with takeaway shops, pubs and clubs etc;**
- (d) all medium and low intensity roads (currently zones 3 and 4) will be dealt with on an output based basis, but the contractor will be advised what level of cleansing activity is anticipated in order for the relevant standards to be met. All complaints or reports of standards not being met in medium and low intensity zones will need to be responded to within 1 day;**
- (e) litter picking alone will not be accepted as street cleansing (i.e. where there is a clearly defined kerblines);**
- (f) standards of street cleansing shall never be allowed to fall below the government requirements for BV199(a) and nor shall the standard in one year be allowed to fall below the year which preceded it;**
- (g) that the contract enable the inclusion of graffiti and fly posting removal as part of the street cleansing service;**
- (h) the cleansing & maintenance of all litter bins will be the responsibility of the contractor (replacement and new bins will remain with the Council); and**
- (i) the contractor will provide street cleansing services those local councils who request additional services at the same unit costs as being charged through the contract.**

Report:

1. The procurement process for the new waste management contract is now well underway. Cabinet at its meeting on the 19th of January selected the contractors it considered suitable from those who submitted pre-qualification questionnaires. The next critical stage in the process is to put together the contract, specification and associated tender documents. Indecon Ltd and the Essex Procurement Hub are assisting the Council in this process.

2. It is essential that the procurement process proceeds as quickly as possible so as to minimise the financial effects of the current contractual arrangements. However, given that the new contract will operate for the next 7 years and will have an anticipated value in excess of £25 million over that time period, it is important that the Council considers carefully the nature of the contract to be let and the content of the specification.

3. The current time line proposes that the contract could be operational by the 1 October 2007. This is a very tight timeframe given the statutory components of the EU procurement process. It may also require, dependant upon circumstances, special meetings of Cabinet and/or Council in order to be achieved. The timeline assumes the issue of tender documents to contractors at the end of March. For this to be achieved, Cabinet is being requested to consider at this meeting, a number of key contractual components so that the detailed documents can be finalised and presented back to Cabinet at its scheduled meeting on 12

March 2007.

The Contract Documents:

4. Given the time that has elapsed since the letting of the last contract and the difficulties that arose, officers have taken the opportunity to look at documents prepared by other authorities so as to make use of best practice where possible, alongside those elements of the existing contract that have worked well. Because it has already been agreed that this contract should be let under the auspices of a framework agreement, this means that the contract documents need to be modern in their outlook and allow for a high level of collaborative working between the contractor and the Council. However, a high level of collaboration must not prevent the Council from having the necessary contractual tools within the contract and specification to ensure and maintain the highest levels of service and provide the wherewithal to deal with poor performance should it arise.

5. Officers are also aware that Members, quite rightly, may have reservations about 'Partnering' or 'Partnership' given the travails of the last contract. However, it is important to recognise that a contract will work when the parties to it wish it to work, and in the ideal circumstance, having signed it, there should never be recourse to it again.

6. Most modern contracts have partnership at their core, but with an underpinning safety net of the contract terms and conditions. This provides the flexibility that will be required in the future to manage the on-going changes to waste management in Essex as the new waste disposal facilities come on line. It is therefore suggested that the overall contract documents should have the following component parts:

- (a) the main contract document for the entire waste management service;
- (b) the partnership charter;
- (c) a general specification;
- (d) residual waste specification;
- (e) recycling specification;
- (f) street cleansing specification;
- (g) weed spraying specification; and
- (h) associated appendices & supporting information.

7. Cabinet at previous meetings has reaffirmed earlier decisions on the basis upon which the contract will be tendered. Therefore the contract will be tendered on the following basis:

- (a) a price be sought for an alternate weekly residual collection but with a weekly collection for the period May to September;
- (b) a price be sought for an all year round weekly residual collection;
- (c) both options to retain the existing alternate weekly collection of dry and wet recyclable materials. **(Recommendation (1))**

The Contract:

8. This is the main contractual document for the entire service and will deal with matters such as:

- service changes;
- changes to legislation;
- TUPE;
- health & safety;
- insurances;
- indemnities;
- land;
- premises;
- vehicles and plant;
- payment mechanisms;
- dispute resolution;
- force Majeure;
- open book accounting; and
- guarantees.

9. This will be the fundamental controlling document and will enable the Council to be able to exercise the necessary controls over the contractor to ensure proper contract performance.

10. With specific reference to vehicles it is necessary for particular consideration to be given to how the Council wishes vehicles to be procured and then managed. In the last contract the contractor was made wholly responsible for the fleet including those for which leases with the Council were still in place. The Cabinet reaffirmed this principle in September 2006. The current contractual arrangements have suggested that the Council may achieve greater value by procuring the fleet itself and then transferring management to the contractor. However, care will have to be taken to ensure that this does not create inflexibility within the contract at times when the contractor may wish to make service and vehicle changes. There are ways in which this might be achieved including agreeing a core fleet with the contractor which the Council could then procure, or agreeing the contractor's overall fleet requirements and then in partnership with the contractor agree the most cost effective way of procurement. Whilst accepting the agreed principle of overall responsibility for fleet management, members are requested to agree that alternative procurement options be explored as part of the overall contract procurement process so that best value can be achieved. **(Recommendation (2))**

Partnership Charter:

11. The Partnership Charter is an addendum to the main contract. The charter requires both parties to the main contract to work in partnership to discharge their respective responsibilities under the contract. An example of an arrangement that is recommended to Members establishes a Partnership Board, which meets quarterly, the membership of which includes director level membership of both the Council and the contractor, with senior supporting officers. Each year a member, for example the Portfolio Holder, attends the Board. Members may wish to consider whether the Portfolio Holder should attend more frequently or even each meeting. the functions of the Board include:

- (a) monitoring service performance;
- (b) encourage innovation;
- (c) encourage partnership;
- (d) to resolve differences and disputes; and
- (e) to review the effectiveness of the partnership itself.

12. Members may also wish to consider the establishment of an 'Innovation Forum' the remit of which is service development, response to changing circumstances (e.g. changing legislation) and obtaining external funding. Forums could be established for individual service areas or for the entire service. In order to assist real outcomes, an incoming

contractor would be required to fund the forum(s). The forums would be made up of equal numbers of Council & contractor personnel.

13. Members are requested to agree to the inclusion of the Partnership Charter and Innovation Forums. **(Recommendation (3))**

Specification:

14. There are a number of issues that have arisen either through the officer review of the service or through the recent public consultation exercise. The following are those where member consideration is required at this time to enable the document preparation to continue.

(a) Recyclables

15. The previous contract placed all responsibility for the marketing of recyclables with the contractor. This was subsequently endorsed in principle by Cabinet at its meeting in September 2006 although it was recognised that this decision should be reviewed as part of the procurement process. This system has worked well in that it protects the Council from the vagaries of the recyclables market. It has also enabled the collection of more and more materials since such an approach lends itself to the collection of co-mingled materials. However, co-mingled materials always have a sorting cost associated with them, known as a gate fee. Currently we are paying more than £30 per tonne for the sorting etc of co-mingled recyclables. Collection of co-mingled materials is however simpler, quicker and therefore cheaper operationally.

16. We do however get some income from bring scheme (e.g. bottle banks etc), because these materials are by definition source separated and can be sold direct to the end processors with no intermediate treatment.

17. As part of the County Council waste management strategy, they have, with the co-operation of the districts and boroughs, embarked on a process known as KAT modelling. KAT stands for kerbside analysis tool. What KAT does is to model various kerbside collection systems in order to determine what is the most cost effective way of dealing with both residual and recyclable materials. KAT modelling has been completed for the first two 'pilot' authorities (Harlow & Braintree) and seems to be suggesting that for recycling the most appropriate collection methodology is to collect source separated materials. The modelling for this Council will start in the Spring.

18. The outcome of the KAT modelling is very important, since the preferred collection methodologies will form the basis of the funding by the County of district recycling services. In the future recycling credits will be replaced by an alternative funding stream, whereby the County will assist the districts to reach stretched recycling and diversion targets since that will assist the County to meet its LATS targets. The support funding will however be predicated on districts using the KAT modelled systems, and whilst districts will not have to follow this model, funding will be adversely affected if alternative and less effective methods are used.

19. It is therefore important that options are kept open, but equally that the specification is not so open as to increase risk based costs or deter contractor bids through excessive complication in the bidding process. The current method does involve the use of a lot of vehicles with residents seeing different vehicles for residual waste, green waste, dry recyclables and then glass. It is suggested that the new specification should require contractors to collect the widest possible range of recyclable materials whilst keeping the number of vehicle passes to a minimum. **(Recommendation (4))**

20. At this stage it is not suggested that the specification should be prescriptive as to how this is achieved or that the Council should specify a source separated or co-mingled collection. It is however suggested that the specification invite contractors to put forward detailed proposals that should include, in the event that materials are collected source

separated, how the Council can share in any generated income stream. **(Recommendation (5))**

(b) Bring schemes

21. As indicated above the Council does receive income from some bring schemes. The current bring schemes are very muddled, in that some are owned and operated by the contractor, some by private companies, some by charitable institutions and some by the Council. This results in very mixed level of service as well and problems with maintenance of the banks. It is clear that the situation needs to be improved.

22. The options available are essentially to require the new contractor to take over all bring schemes, update them and manage them on the Council's behalf. An alternative would be for the bring schemes to be kept outside of the contract, and to be managed directly by the Council, through existing or new contracts.

23. In order for the Council to properly weigh up the benefits of these options it is suggested that the specification require contractors to come forward with proposals for managing and updating them and, as with kerbside recyclables, to include how the income stream can be shared. It is further suggested that the contractor be asked to consider whether it would be possible to include a co-mingled component of bring schemes to assist residents who, for example, miss a kerbside collection. **(Recommendation (6))**

(c) Bank Holidays

24. The specification will need to be clear about the management of Bank Holidays. At present, collection days are allowed to slip by 1 or 2 days dependant upon the holidays in question. Despite the issue of calendars to every household and the publication of revised collection dates, this always results in confusion and many hundreds of telephone calls and complaints. There are alternatives, which include allowing collections on certain Bank Holidays (excluding for example Christmas and Good Friday) and/or not slipping dates but missing collections on those dates and allowing the collection of side waste at a later collection. This latter approach is more difficult with alternate weekly collections.

25. At this stage it is suggested that the specification sets out the continuation of existing arrangements, but that through the partnership arrangements, alternatives could be discussed in the future. **(Recommendation (7))**

(d) Depot Accommodation

26. The current contract makes the depot available, at no cost, to the contractor. It also sets out that in the event that the Council disposes of the current site, it will make another depot available for the contractor's use. This issue is now particularly important given the recent developments in Langston Road and the forthcoming sale of the T11 site, which is immediately adjacent to the existing depot site. It is important that the contractor has certainty about depot provision, because otherwise this will be seen as a risk, the costs of which will be passed on through the contract. Furthermore, most contractors will require a relatively local depot location in order to ensure the adequate management of the service.

27. It is therefore suggested that the existing arrangements are retained in the new specification. **(Recommendation (8))**

(e) Street Cleansing

28. This is one of the key areas of concern arising from the review of the existing contract. Members have been particularly concerned about the existing contract's reliance upon an inspection based rather than a cleansing based regime. In considering how best to address these concerns, the street cleansing process needs to be understood. The standards for street cleansing are set out in the Litter Code of Practice (CoP), a document made under the

Environmental Protection Act 1990. The CoP sets standards of cleanliness that should be achieved. These are:

- Grade A: No litter, refuse or detritus.
- Grade B: Predominantly free of litter, refuse or detritus.
- Grade C: Widespread distribution of litter and/or refuse and detritus.
- Grade D: heavily affected by litter, refuse or detritus.

29. The CoP provides photographs as a guide to these grades, and then goes on to assign Zones to certain types of land:

- High intensity: lots of people and vehicles, high level of monitoring/cleansing.
- Medium intensity: regular use but outside centres of retail or commercial activity.
- Low intensity: low pedestrian and vehicle activity, often more rural areas.
- Special: areas where health & safety are predominant considerations.

30. These zones are defined in more detail in the CoP.

31. The final stage in the process is for the CoP to provide response times. Following any cleansing activity Grade A should be attained. If the area falls to below Grade B then it has to be restored to Grade A within:

- High intensity: half a day.
- Medium intensity: 1 day.
- Low intensity: 14 days.
- Special: 28 days or as soon as practicable.

32. The current contract requires that the CoP be met. This approach, known as output based, means that roads are only cleansed when they actually require it i.e. fall below Grade B on inspection. This is intended to reduce unnecessary cleansing and therefore reduces costs. This can, in theory, mean that an area may never be cleansed if it never falls below Grade B. The Council therefore does not have a cleansing schedule, but an inspection schedule, and all Members have been provided with a copy of this schedule. If an inspection, either by a client officer or a contractor supervisor reveals that cleansing is required, it should be undertaken within the time set down by the CoP.

33. However, it was always recognised that the main town centres required a different approach, because of their high usage. Therefore static crews were provided in each of the main towns, with two in some towns such as Loughton, Epping & Waltham Abbey, to ensure a more regular approach to cleansing. This mixed approach, plus the more effective work of the current contractor, has provided a much better street cleansing service. Our performance against BVPI 199, which is the government performance indicator for street cleansing standards, has steadily improved from 32% of areas failing the relevant standard to 12% in 2005/06. This improvement is continuing in 2006/07.

34. However, this is not the public perception, who complain, amongst other things, that they have never seen a street sweeper or have never seen their street/road swept. This is probably not true, but given the CoP output based approach, sweeping in some areas could be relatively infrequent. It is also worthy of note that the Council's consultant expert on street cleansing has formed the view that despite the public perception, the standard of cleansing throughout the district is quite high. This viewpoint mirrors current BVPI 199 performance.

35. The question for Members is the degree to which they wish to see a shift from this output based approach to a more prescriptive input based approach, where the contractor will be required to sweep certain areas irrespective of whether the CoP standard has been breached. Such a shift has the potential to add to costs but should also see an increase in standards and hopefully less complaint.

36. The following principles are therefore put forward for consideration:

- (a) all high intensity zones (currently zones 1 & 2) will have an output based specification which will require a high standard to be achieved throughout the day. The time allotted to return to Grade A will be reduced from half a day to 3 hours;
- (b) the first 10 metres of any road adjoining a high intensity zone will be classified as high intensity and the same standard applied;
- (c) areas which are subject to the 'evening economy' will be allocated a special EFDC zone with a more stringent standard reflecting difficulties with takeaway shops, pubs and clubs etc;
- (d) all medium and low intensity roads (currently zones 3 and 4) will be dealt with on an output based basis, but the contractor will be advised what level of cleansing activity is anticipated in order for the relevant standards to be met. All complaints or reports of standards not being met in medium and low intensity zones will need to be responded to within 1 day;
- (e) litter picking alone will not be accepted as street cleansing (i.e. where there is a defined kerbline);
- (f) standards of street cleansing shall never be allowed to fall below the government requirements for BV199(a) and nor shall the standard in one year be allowed to fall below the year which preceded it;
- (g) that the contract enable the inclusion of graffiti and fly posting removal as part of the street cleansing service; and
- (h) the cleansing & maintenance of all litter bins will be the responsibility of the contractor (replacement and new bins will remain with the Council).

37. It may be necessary, upon the advice of the Council's consultants, to amend some of these principles, particularly that relating to the low intensity zones, where, due to the significant mileages involved, the suggested response time in paragraph (36)(d) of 1 day may be too low and therefore potentially unaffordable.

38. Finally on street cleansing members are requested to consider requiring the contractor to respond to those town and parish councils who may wish to see their towns and villages receive a higher standard of cleansing than our specification would provide. The contractor will be required to provide unit costs for street cleansing activities which the local councils will then be able to buy and pay for. This is considered as much preferable to local councils seeking to take over street cleansing activities in their entirety in their respective areas. **(Recommendations 9(a) to (i))**

Statement in Support of Recommended Action:

39. The report sets out key issues that need to be considered before the contract and specification documents can be formalised. The options put forward are for consideration but reflect known difficulties with the current contract and specification and concerns raised by members over time and recently through the public consultation exercise.

Other Options for Action:

40. No other options are put forward in the report, although Members may have alternatives they wish to bring forward as part of discussions on the report.

Consultation Undertaken:

41. Outcome of the public consultation has been considered in the preparation of the report

Resource implications:

Budget provision: Within 2007/08 budget allocation for the waste management service.

Personnel: Nil.

Land: Nil.

Community Plan/BVPP reference: Procurement of the new waste management contract.

Relevant statutory powers: The Environmental Protection Act 1990.

Background papers: Previous Cabinet reports regarding the waste management contract.

Environmental/Human Rights Act/Crime and Disorder Act Implications: Enhanced service provision providing high levels of recycling, improved customer satisfaction and improved environment.

Key Decision reference (if required): Will advise when key decisions have ref nos.