

Decision by Portfolio Holder



Report reference: ENV-002-2018/19
Date of report: 30-October-2018

**Epping Forest
District Council**

Portfolio: Environment

Author: David Marsh (Ext 4889)

Democratic Services: J Leither

Subject: Waiver of Procurement Rules

Decision:

(1) To issue waiver of Procurement Rule 2.9 (b) in relation to docklands Waste for the removal of hazardous and asbestos fly tipped waste to address the retrospective overspend; and

(2) To agree as per Procurement Rule 2.7 (a) (i) to waive Procurement Rule 2.9 (b) in respect of Docklands Waste until a procurement exercise is carried out to award a District wide contract for the removal of hazardous waste from the public highway.

ADVISORY NOTICE: <i>A Portfolio Holder may not take a decision on a matter on which he/she has declared a Pecuniary interest. A Portfolio Holder with a non-pecuniary interest must declare that interest when exercising delegated powers.</i>	
I have read and approve/ do not approve (delete as appropriate) the above decision:	
Comments/further action required:	
Signed: Cllr N Avey	Date: 30 th October 2018
<i>Non-pecuniary interest declared by Portfolio Holder/ conflict of non-pecuniary interest declared by any other consulted Cabinet Member:</i> None	<i>Dispensation granted by Standards Committee:</i> Yes/No or n/a N/A
Office use only: Call-in period begins: 31 st October 2018	Expiry of Call-in period: 6 th November 2018

**After completion, one copy of this pro forma should be returned to
Democratic Services IMMEDIATELY**

Reason for decision:

To correct a retrospective breach in compliance with Procurement Rules (PR) that has arisen due to expenditure with one contractor exceeding the limits set in the PR and allow some further expenditure soon until the outcome of a procurement exercise.

Options considered and rejected:

There is no other option as the Council is responsible for removal of hazardous fly tipped materials across the District

Background Report:

1. The Council has a legal obligation to clear fly tip waste on the public highway, this waste takes many forms: ordinary domestic household waste, builders waste for example rubble, chemical, hazardous and asbestos (CHA) waste etc. The responsibility for disposing CHA is that of Essex County Council (ECC). Who for several years had let a contract for this across the County. Under the terms of the ECC contract Districts, Town and Borough Councils were required to use this contract for collections as well and pay for both waste collection and disposal and claim back the disposal costs from ECC. If a local authority opted not to use the County contract then it could not claim back any disposal costs which in some instances are significant.
2. The County contract was operated by PHS Waste Management and the contract worked well for several years, however they were brought out by a larger national waste firm. This resulted in several changes both in operation and management of PHS. These changes led to an increase in timescales in obtaining quotations for work and service delivery deteriorated, in some cases there was over five weeks delay in clearing fly tips. In some cases work was not completed fully which led to further problems. During this time the increase in fly tipping in the district continued with an increase of large scale fly tipping of CHA waste including the dumping of Artic trailers and shipping containers.
3. To expedite service delivery it was agreed with ECC that the Council could use alternative contractors to remove CHA waste to help reduce the risks to health and ensure hazardous waste was removed as quickly as practicable. The only caveat, to manage cost risks, was that the costs of disposal for ECC did not exceed a set price per kilogram of waste.
4. Following an agreement with ECC officers negotiated with our contractor Biffa Municipal Limited in 2017 who agreed to undertake removal of small amounts of CHA waste. However due to the nature of the work specialist external training is required before Biffa operatives can be certified to remove this type of waste. This training programme has been completed and Biffa is now able to undertake these small-scale CHA clearances.
5. To ensure service delivery officers have held discussions with a number of specialist waste firms with the required vehicular equipment who could remove the large-scale fly tips of this type. A few contractors, those who could deliver within the price envelope set by ECC, were used on a trial basis.
6. Officers found that most firms were either not well equipped or reluctant to remove waste from the public highway. Most contractors were used to the removal of CHA waste from buildings and refurbishment sites etc and only two firms were reliable and reasonably priced. These were Waste Grab Services for the general large fly tips and Docklands waste for the CHA waste.
7. Due to expediency and the fact that only Dockland waste could clear CHA waste within the price envelope set by ECC the expenditure with them so far in the current financial year is £66,959 which is above the threshold set in Procurement Rule and three tenders should have been sought before incurring this level of expenditure. A retrospective waiver of Procurement Rule 2.9 (b) is sought to regularise the breach in Procurement Rules.
8. Officers are preparing tender specifications for a term contract for dealing with large CHA waste fly tips. The procurement exercise will commence early in the near year and it is

anticipated that a preferred contractor would be in place early in the 2019/20 financial year. until a term contractor is appointed a waiver of Procurement Rules is sought to allow to use Docklands Waste for removal of large CHA waste from the public highway.

Resource Implications:

There are two costs associated with CHA collections from the public highway: collection and disposal. The former is paid out of the waste management budget of the Council and the latter is paid by ECC. Currently there is adequate budget allocation to deal with CHA waste collection from the public highway.

In the past three years the level of expenditure with Docklands Waste on the removal of CHA has been:

2018/19: £66,959
2017/18: £18,179
2016/17: 0

Legal and Governance Implications:

Relevant statutory authorities include the Public Health Acts, the Environmental Protection Act 1990, Controlled Waste Regulations 1992, Local Government & Finance Act 1988 and Household Waste & Recycling Act 2003 Litter & Refuse code of Practise

Safer, Cleaner and Greener Implications:

Current service levels would not be maintained, longer wait times for removal, possible legal action as well as environmental consequences would arise if continued removal of fly tipping was interrupted in an acceptable timeframe.

Consultation Undertaken:

Biffa Municipal (District contract)
Essex County Council

Background Papers:

None

Impact Assessments:

Risk of service disruption which could lead to increased fly tipping and environmental and health issues. Increased costs in covering and sealing off the fly tipped area until removal can be actioned.

Risk Management:

If this decision is not approved then the Council will be criticised for not agreeing a retrospective breach of Procurement Rules and potentially unable to carry out clearance of CHA from the public highway which could result in failure in the Council its legal obligations to clear waste on the public highway.

Initialed as original copy by Portfolio Holder:
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Key Decision Reference (Y/N): No

Equality Analysis:

The Equality Act 2010 requires that the Public Sector Equality Duty is actively applied in decision-making. This means that the equality information provided to accompany this report is essential reading for all members involved in the consideration of this report. The equality information is provided as an Appendix to the report.