

Birmingham City Council

Report to Cabinet

25 April 2023



Subject: Contract Award for the Operation and Maintenance of Tyseley ERF, Waste Transfer Stations and Household Waste Recycling Centres

Report of: Mark Wiltshire – Interim Strategic Director, City Operations

Relevant Cabinet Member: Councillor Majid Mahmood, Cabinet Member for Environment
Councillor Yvonne Mosquito, Cabinet Member for Finance and Resources

Relevant O &S Chair(s): Councillor Chaman Lal, Chair of Sustainability and Transport
Councillor Akhlaq Ahmed, Resources

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 010906 / 2023		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential : Exempt information Schedule 12A to the Local Government Act 1972 (as amended). Paragraph 3. Information relating to the financial or business affairs of any particular person (including the council)		

1 Executive Summary

- 1.1 To approve the award of a contract following the Competitive Dialogue (CD) procurement process for the operation and maintenance of Tyseley ERF (Energy Recovery Facility), HWRCs (Household Waste Recycling Centre) and WTS (Waste Transfer Stations) at Tyseley, Kings Norton and Perry Barr, including the re-development of the Kings Norton (Lifford Lane) waste management facility in accordance with the delegations approved by Cabinet in the strategy report in support

of the Waste Strategy Framework 2017 – 2040 (Forward plan Number: 004374/2017) dated 13 February 2018.

- 1.2 The Climate Emergency is integral to the wider waste strategy which prioritises waste reduction and recycling in line with the waste hierarchy. This ten-year (10) 'transitional' contract will support the generation of the post 2034 solution by preventing Birmingham resident's non-recyclable waste being sent to landfill during this transitional period.
- 1.3 The flexibility of the way residual waste is managed within this contract will enable the Council to respond to the emerging requirements of Central Government's Resources and Waste Strategy and the Environment Act; the details of the guidance are still being determined by DEFRA. This will enable the Council to move materials up the waste hierarchy which may feed into developing recycling schemes.
- 1.4 The Tyseley ERF generates power from non-recyclable waste, that generated 184,157 MWh of electricity in 2021 this helped power approximately 63,000 Birmingham households, equivalent to 15% of the homes in Birmingham.
- 1.5 Nationally, the move away from landfill to energy recovery resulted in a 63% reduction in the waste sector's carbon emissions since 1990, on average every tonne of waste treated at Tyseley ERF saves 0.2 tonnes of carbon dioxide compared with landfill.
- 1.6 In this transitional contract, the use of a local solution for treating our municipal residual waste (i.e. at the Tyseley ERF) avoids the impact of hauling the municipal residual waste over longer distances, which adds additional carbon impact and other emissions to our waste management process. It is only by taking control of our carbon emissions that we will fully understand the impact which will help us to make change during the 10 year period as viable solutions for the Tyseley ERF arise.
- 1.7 This transitional contract has been procured for a minimum term of ten-years to focus on the post 2034 solution procurement strategy, to consider tried and tested innovative technologies when they become available in the market. A brief outline of the future 'Birmingham Total Waste Strategy' can be found under Appendix 2.

2 Recommendations

That Cabinet is invited to:

- 2.1 Note that this report relates solely to the award of a contract for the operation and maintenance of Tyseley ERF (Energy Recovery Facility), HWRCs (Household Waste Recycling Centre) and WTS (Waste Transfer Stations) at Tyseley, Kings Norton and Perry Barr, including the re-development of the Kings Norton (Lifford Lane) waste management;
- 2.2 Authorise the Strategic Director of City Operations in consultation with Cabinet Member for Environment, the Strategic Director of Council Management, the Interim Director of Finance and the City Solicitor to enter into a ten-year (10) Agreement with Veolia for the Transitional Contract for the Operation, Maintenance and Renewal of the Tyseley ERF, Waste Transfer Stations and Household Waste Recycling Centres commencing 17 January 2024 subject to the satisfactory conclusion of the Preferred Bidder stage.
- 2.3 Note that if the Council has to take-up contractual variations in relation to the option to extend for periods of up to a maximum of five (5) years for the Operation, Maintenance and Renewal of the Tyseley ERF, Waste Transfer Stations and Household Waste Recycling Centres this would be subject Cabinet authorisation based on budget

availability, satisfactory performance, and timing of the Post 2034 Waste Disposal contract award/commencement.

- 2.4 Authorises capital expenditure for the redevelopment of the Kings Norton Facility.
- 2.5 Authorise the City Solicitor and Monitoring Officer (or their delegate) to execute, seal and complete all necessary documentation to give effect to the above recommendations.

3 Background

- 3.1 Residual waste was historically treated through landfill but in order to reduce greenhouse gas emissions, the Council built an ERF at Tyseley which has been in operation since 1997. Presently, the ERF processes c374,000 tonnes per annum of Municipal Waste which is collected by the Council from homes in the City and commercial properties.
- 3.2 The Council has always been progressive in its approach to planning for the future. The original development of the Tyseley ERF was made during the 1990s and has provided a stable and reliable waste treatment solution for the city. The Tyseley ERF was one of the first of its type to be developed in the UK and since then other local authorities have developed similar facilities. The ERF is currently the only proven, sustainable and cost-effective solution for treating the (8,800 tonnes) of Municipal Waste collected in Birmingham each week.
- 3.3 The Council first awarded the waste disposal contract to Veolia for Waste Disposal Services and the construction of a new incinerator plant on 09 July 1993 for the duration of twenty-five (25) years, which commenced 17 January 1994, and expired on 16 January 2019.
- 3.4 On 11 December 2018, Cabinet approved a five (5) year Interim Agreement extension with Veolia. That commenced 17 January 2019 and expires on 16 January 2024.
- 3.5 Under the five (5) year Interim Agreement Veolia continued to provide the existing services with the addition of essential refurbishment works of the ERF plant at Tyseley. The rationale for the Interim Agreement was:
 - Ensure continuity of services through plant availability.
 - Ensure asset condition was fit for purpose for the re-procurement strategy developed during 2017 and agreed by Cabinet on 13 February 2018 titled: Operation, Maintenance and Renewal of the Tyseley ERF, Waste Transfer Stations and Household Waste Recycling Centres (transitional contract); and
 - Avoid the Council's exposure to additional landfill tax.
- 3.6 Market Engagement carried out in October 2017 in relation to this transitional contract raised the issue that the level of maintenance and operational risk required would require a minimum term of ten years with an option to extend up to a further five years, that would take the potential total term of fifteen years.
- 3.7 To facilitate the Council's future plans there was a requirement to establish this transitional, ten year (minimum) contract for the operation, renewal, and maintenance of the Council's waste management infrastructure (including the Tyseley Energy Recovery Facility, Waste Transfer Stations, and Household Waste Recycling Centres) and other waste management services. The scope of the Transitional Contract includes:
 - Works and services at the Tyseley ERF site for the treatment of the Council's residual waste;

- Works and services at Household Waste Recycling Centres Facilities at Kings Norton, Tyseley, Sutton Coldfield, Tameside Drive and Perry Barr.
- Works and services at the Waste Transfer Stations at Kings Norton, Tyseley and Perry Barr;
- Works and services at the Tyseley Clinical Waste Incinerator (CWI), clinical WTS or a clinical waste service;
- Transport and/or haulage services of waste and materials including provision of transportation vehicles and mobile plant;
- Provision of waste, recycling, re-use, composting, treatment, processing and disposal services at other sites or facilities.
- Works and services for the development of waste, recycling or energy infrastructure at other sites and/or facilities, including materials recycling facility, composting facilities, anaerobic digestion, biological treatment processes, mechanical biological treatment, thermal treatment facilities.
- Net zero carbon works or services including energy management, services and generation including electricity import/export, private wire, district heating, electric vehicle charging and infrastructure, Solar Photovoltaic (PV) and heating, energy storage, Combined Heat and Power (CHP) infrastructure, use of biofuels.
- Management of residues, materials, products, reagents, chemicals, spares, consumables, auxiliary fuels and commercial waste.

3.8 Due to the transitional nature of the 10 year contract, the cost of implementation and the present condition of the technologies in the waste market, initiatives such as CHP, carbon capture, electric Heavy Goods Vehicles (HGV) will be reviewed as part of the post 2034 strategy.

3.9 In relation to the Kings Norton works as listed under 3.7, although the cost and scope of works have been dialogued, this is subject to obtaining planning permission for the works to proceed. A contingency HWRC will be provided during the programme of works.

3.10 In accordance with the Public Contracts Regulations 2015 and the Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 and delegations approved by Cabinet on 13 February 2018, the Council adopted the Competitive Dialogue (CD) procedure (section 3, regulation 30), which has allowed the Council to dialogue and define the solution throughout the various stages.

4 Options considered and Recommended Proposal

4.1 An options appraisal was conducted and reviewed in 2016, the position of that appraisal remains correct as detailed in Appendix 3.

4.2 Options Considered:

- Do nothing / no solution;
- Not continuing with the procurement;
- Re-engage with market at merger announcement; and
- Consider awarding Single Contractor Negotiation (SCN).

4.3 **Recommended Proposal:** The options considered would not allow any flexibility for this highly complex and risky project or the ability to dialogue a solution and give innovation. The options would not allow the Council to value engineer a solution or dialogue innovation, Net Zero Carbon options etc.

Therefore, the recommendation from the Waste Disposal Sponsorship Board was to follow the Competitive Dialogue procurement process.

5 Consultation

Governance for the Waste Disposal programme was set out in the 13 February 2018 Cabinet Report titled *Procurement Strategy in Support of the Waste Strategy Framework 2017 – 2040*. In accordance with the governance of the Cabinet report the following boards were formed:

5.1 Internal

The **Waste Disposal Programme Board** consists of key members and officers from City Operations, Procurement, Finance and Legal Services to deliver the strategy for waste disposal and associated workstreams who have been involved in the preparation of this report.

The **Waste Disposal Sponsoring Board** consists of Cabinet Member for Environment, Cabinet Member for Finance and Resources, Senior Responsible Officer (City Operations), Strategic Director of City Operations, Director of Street Scene, Chief Finance Officer, City Solicitor and Monitoring Officer, Head of Category (Place) with Programme Board members by invitation who provide political and strategic leadership accountability, direction and oversight to:

- Inform Cabinet on direction change and implementation of the programme and work streams
- Ratify decisions, direction and change identified by the Programme board
- Implementation of the Waste Disposal Improvement Plan
- The procurement of the suite of new waste treatment and disposal contracts.

The **Cross Party Group** were engaged during the early stages of the procurement process on the Council's contract specification.

5.2 External

Specialist Engineering and technical support has been provided by Fichtner Consulting Engineers Limited and Legal advice and support from Bevan Brittan LLP.

6 Compliance Issues:

6.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

6.1.1 'Everyone's Battle and Everyone's Business' As part of the qualitative social value submission, Bidders were asked to respond to :

- Commitment to the health and wellbeing of employees through the adoption of policies such as the Workplace Wellbeing Charter;
- The promotion of diversity and inclusiveness;
- Whistleblowing policies and safeguarding against harassment and intimidation; and
- Recruitment, Selection, and retention policies.

6.1.2 The bid will improve the customer experience at the five HWRCs through better traffic management, clearer signage and communications and recycling or diverting from landfill up to 70% of material arriving at the HWRCs.

6.1.3 The recommended decisions contribute to the Council Plan objectives / outcomes:

- Create opportunities for local people to develop skills and make the best of economic growth;

- Strive to maximise the investment in the city and engage local employer to create quality jobs and opportunities for citizens, especially for those in the most deprived circumstances;
- to work with our residents and businesses to improve the cleanliness of our city; and
- to improve the environment and tackle air pollution.

6.1.4 Following Council's declaration of a Climate Change Emergency in June 2019 the procurement exercise was reviewed and believed to be in line with the commitment for the City to be net zero carbon by 2030, or as soon after as a just transition permits. The Council also has a statutory responsibility to the citizens of Birmingham to collect and dispose of their waste and ensure safety of public health within Birmingham. The award of this procurement is for a transitional recycling and resource management contract. The Transitional Contract with Veolia will assist the delivery of the Council's aspiration to be net zero carbon by seeking to move waste up the waste hierarchy – in other words, the reduction of waste and increasing reuse, recycling, and composting.

The Transitional Contract has been deliberately structured on a ten-year basis to allow the waste, resource, and energy market to evolve and create reliable technologies. This also allows the Council a 10 year period in which new technologies can be developed and tried and tested to deliver the long-term solution to its waste and recycling needs, post 2034. These options are already starting to be explored to ensure that Birmingham has a suitable long term solution to meet both its statutory obligations, our climate commitments, and the needs of Birmingham citizens.

In this transitional contract, the use of a local solution for treating our municipal residual waste (i.e. at the Tyseley ERF) avoids the impact of hauling the municipal residual waste over longer distances, which adds additional carbon impact and other emissions to our waste management process. The release of carbon through the process of disposal is the same as whether we dispose of it at the Tyseley ERF or whether it is transported to another facility in the UK. Through continuing to use the Tyseley ERF we have control and visibility over the impact of our waste arisings, with the additional benefit of electricity income. It is only by taking control of our carbon emissions that we will fully understand the impact which will help us to make change during the 10 year period as viable solutions for the Tyseley ERF arise.

6.1.5 Birmingham Business Charter for Social Responsibility (BBC4SR)

Veolia is an accredited signatory to the BBC4SR and has produced an action plan with commitments proportionate to the value of this contract against the following themes;

- Local Employment;
- Buy Local;
- Partners in Communities;
- Good Employer;
- Green and Sustainable; and
- Ethical Procurement

The commitments will be managed and monitored during the contract period. The current arrangement for engagement with schools including Veolia's virtual programme, school visits to the Tyseley education centre and promotion of re-use and recycling during school visits will continue into the new transitional contract.

- 6.1.6 Delivery of the BBC4SR Action Plan will be monitored throughout the contract period by the Street Scene, Contracts Manager.

6.2 Legal Implications

- 6.2.1 The Council has a statutory duty to act as both a Waste Collection Authority and Waste Disposal Authority under the Environmental Protection Act 1990.

Under S.111 of the Local Government Act 1972, the Council is entitled to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.

The Council has a best value duty under the Local Government Act 1999 to improve the efficiency, economy, and effectiveness of the services it delivers.

6.3 Financial Implications

- 6.3.1 The report seeks approval to enter into a ten year transitional waste disposal contract with Veolia including approval of capital expenditure to fund the redevelopment of the Kings Norton facility.
- 6.3.2 The transitional contract provides the option for a 5 year extension after the initial ten year term. This would be subject to a further Cabinet decision including relevant financial implications.
- 6.3.3 The cost of the ten year transitional contract is affordable within the current Financial Plan 2023-2027 and funded within the existing Waste Disposal budget including additional allocations as per the Medium Term Financial Plan (MTFP) from 2024/25, which was approved by City Council in February 2023. Cost forecasts have been provided by Veolia through their detailed Financial Model as part of the procurement process.
- 6.3.4 The transitional contract includes assumptions on the level of electricity generated and the associated market price. Assumptions are consistent with external advice received in June 2021 and are well below current market prices. There is a risk of electricity price fluctuations over the contract term, however using prudent assumptions within the Financial Model reduces this risk.
- 6.3.5 The transitional contract requires capital investment for the redevelopment of the Council's Kings Norton facility in the years 2024/25 to 2026/27. Milestone payments to Veolia will be funded by prudential borrowing with repayments over 30 years. The Kings Norton business case forms part of the Exempt Report (Appendix D) with the revenue cost of borrowing funded through an additional budget allocation from 2027/28 as per the Financial Plan 2023-2027.
- 6.3.6 Further financial details are contained within the Exempt Report, Appendix 1.

6.4 Procurement Implications

- 6.4.1 The report details the procurement approach carried out in compliance with the agreed Procurement Strategy in accordance with the delegations approved by Cabinet on 13 February 2018 and the Public Contracts Regulations 2015 (regulation 30).
- 6.4.2 To conclude the process the City Council will be engaging in Post Tender discussions to clarify, specify, optimise, and refine without changing essential

aspects of the tender prior to the Preferred Bidder stage, to contract signing and mobilisation.

6.5 Human Resources Implications

6.5.1 The contract will be managed by Street Scene Contract Management.

6.5.2 There are no TUPE implications.

6.6 Public Sector Equality Duty

6.6.1 The Procurement Strategy for Waste Management Services in Support of the Waste Strategy Framework 2017 – 2040 included an Equality Act 2010 and was agreed by Cabinet in February 2018 which operates city-wide.

6.6.2 Birmingham City Council Equality Analysis conducted, reference EA002528

7 Appendices

7.1 Appendix 1 – Exempt Report (Separate document)

7.2 Appendix 2 - Birmingham Total Waste Strategy

7.3 Appendix 3 – Options Appraisal

7.4 Appendix 4 – Environment and Sustainability Assessment

8 Background Documents

8.1 13 February 2018 Public Cabinet report, Procurement Strategy for Waste Management Services in Support of the Waste Strategy Framework 2017 – 2040

8.2 11 December 2018 Cabinet report, Waste Disposal Contract Interim Arrangement Agreement

