

Public Report
Birmingham City Council
Report to Cabinet
3rd December 2018



Subject: Waste Disposal Contract Interim Arrangement Agreement
Report of: Acting Corporate Director for Place
Relevant Cabinet Member: Cllr Brett O'Reilly – Finance and Resources
Relevant O &S Chair(s): Cllr Majid Mahmood – Clean Streets, Waste and Recycling
Report author: Cllr Sir Albert Bore, Resources O&S Committee
Darren Share, Director – Waste Management

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: 005675/2018		
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 type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		

1 Executive Summary

- 1.1 To inform Cabinet of the proposal to enter into a 5 year Interim Arrangement Agreement with Veolia for the continued provision of waste disposal services. A private report deals with the confidential and/or exempt information not covered in the public report and seeks approval of the proposal together with the relevant delegations.

2 Recommendations

- 2.1 That Cabinet:
- 2.1.1 Notes the contents of this report.
- 2.1.2 Authorises the Corporate Director of Place to enter into a 5 year Interim Arrangement Agreement for the provision of waste disposal services with Veolia.

- 2.1.3 Delegates authority to Director of Commissioning & Procurement in conjunction with the Corporate Director of Finance & Governance (or their delegate), Corporate Director of Place and the City Solicitor (or their delegate) in conjunction with the Cabinet Member for Finance and Resources and the Cabinet Member for Clean Streets Waste and Recycling, to finalise and agree the terms of the Interim Arrangement Agreement and execute all other necessary contractual documentation to effect this outcome.

3 Background

- 3.1 The Council first awarded the waste disposal contract to Veolia for Waste Disposal Services and the construction of a new incinerator plant on 9th July 1993 for the duration of 25 years; the contract commenced on 17th January 1994, expiring on 16th January 2019.
- 3.2 On 28th June 2016 Cabinet approved the recommendation of an overrun agreement with a stop date of January 2021. The rationale for this recommendation was that the overrun agreement would mitigate the risk of any delays in the procurement process which could result in the Council not having a waste disposal contract in place before the mobilisation of a replacement provider. The rationale, supporting agreement of this original overrun was to:
- ensure continuity of services through plant availability.
 - ensure asset condition was fit for purpose for the replacement contract.
 - reduce the Council's exposure to additional landfill tax.
- 3.3 A re-procurement strategy was developed during 2017 and agreed by Cabinet on 13th February 2018.
- 3.4 A project group was established in September 2016 consisting of 3 work streams, these being Procurement, Interim Arrangement Agreement and Asset (handback \ condition). The work streams consisted of representation from internal officers and external expertise from within the waste industry. The external representation has been provided by Bevan Brittan providing legal expertise, Price Waterhouse Cooper providing financial expertise, Fichtner Ltd acting as consulting engineers and Ricardo as Energy and Environment Consultants.
- 3.5 Findings (2017 Outage Inspection Report) from plant and site surveys undertaken by external technical experts in readiness for the hand back of assets to the Council identified a number of Essential Works which if not undertaken pose significant high risk to the Council in meeting its continuing obligations to manage waste disposal and reduce waste going to Landfill. During negotiations undertaken with the current provider and our technical experts it was concluded that it is not possible for all of these Essential Works to be completed within the timeframe that the approved 2 year Interim Arrangement Agreement allows.

An alternative option to enter into an enhanced Repairs and Maintenance Programme during the 2 year Interim Arrangement Agreement to include only

some of the Essential Works was considered in July 2018 by the Waste Management Service Programme Board but rejected as it would result in;

- a) Higher costs resulting from delivery of the enhanced R & M as the Essential Works are still required and the risk priced in by bidders in the procurement process due to the uncertainty over the condition of the assets.
- b) Significantly increased risk of plant failure impacting on level of waste sent to Landfill, an enhanced R & M still leaves the Council at risk and there will be extended delays to having the works completed while new providers then source and carry out the remaining works needed.

3.6 Following a Waste Management Service Programme Board in June 2018 the impact of not completing the essential works was discussed. This led to a review of detailed options for an Interim Arrangement Agreement. It was identified that an increased 5 year Interim Arrangement Agreement would facilitate and help effectively deliver the new long term strategic procurement and essential maintenance works. The rationale supporting this would include the fact that:

- a) The interim period will enable a suitably structured and thought through procurement process to be delivered by the Council over an appropriate time period for the recommissioning of the waste disposal service.
- b) All Essential Works will be undertaken at the Tyseley Energy Recovery Facility (ERF) during the interim period.
- c) The completion of the Essential Works that will be carried out during any extension will be advantageous to all bidders in any re-procurement exercise. For example by ensuring that the ERF plant will meet the agreed specification for handover to a new operator so bidders will not need to risk price for uncertainties in this regard
- d) The interim period will allow for suitable mobilisation arrangements to be made and/or secure consents (if required) for any future waste management sites ahead of re-procurement; and
- e) The interim period will enable greater information to be shared with future bidders about performance of the ERF, and potentially including access to the ERF during planned shutdowns for the purpose of conducting their due diligence in compiling tenders in a future procurement process.

4 Options considered and Recommended Proposal

4.1 An in house provision was considered but rejected, details are contained in the private report.

4.2 Exercise the decision of Cabinet on 28th June 2016 and extend the existing agreement with Veolia for a period of 2 years whilst the re-procurement exercise is undertaken. This option was rejected because the required Essential Works cannot be completed within this timeframe. In addition and given the current condition of the plant and the Essential Works required it is highly likely that bidders would include a significant risk premium in their pricing submissions under a new procurement.

- 4.3 Immediately commence re-procurement of a replacement waste disposal contract. This option was rejected because there is insufficient time to complete a tender process and consequently it may leave the Council with a period of time without a contract whilst this process is concluded and the reasons stated above.

5 Consultation

5.1 Internal

Officers from Waste Management, Finance, Commissioning and Procurement and Legal Services have been involved in the preparation of this report and support and recommendation.

5.2 External

- 5.2.1 There has been consultation with specialist Legal and Engineering Companies. The legal issues were raised and mitigated against and are explained in the Private Report due to their commercial nature. Their advice has been used to compile this report.

6 Risk Management

- 6.1 To enable the Council to mitigate the risk of Interim Arrangement Agreement in the procurement and implementation of the new arrangements for the treatment and disposal of waste.
- 6.2 To reduce the risk of plant failure and impact to Landfill which delaying Essential Works presents.

7 Compliance Issues:

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

- 7.1.1 The Council approved and adopted the Council Plan 2018-2020, which identifies strategic outcomes for change in Birmingham (Children, Housing, Jobs and Skills and Health). This decision supports the priorities as follows:
- 7.1.2 We want Birmingham to be a great City to live in. This decision will enable improved facilities at household waste recycling centres at Tyseley, Perry Barr and Lifford Lane whilst reducing the risk of plant failure at the Tyseley ERF which would result in increased waste to landfill whilst any plant failures are rectified. This will not remove the risk of additional waste to landfill from other factors beyond our control e.g. changes in collection or waste flows.

7.2 Legal Implications

- 7.2.1 Maintaining the provision of waste disposal facilities facilitates the discharge of the Council's duty as a waste disposal authority under Section 51 of the Environmental Protection Act 1990.
- 7.2.2 The council has a duty to act as both a Waste Collections Authority and a Waste Disposal Authority under the Environmental Protection Act 1990.
- 7.2.3 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.
- 7.2.4 The Council has best value duty under the Local Government Act 1999 to improve the efficiency, economy and effectiveness of the service it delivers.
- 7.2.5 The legal implications that may occur as a consequence of taking the decision are detailed in the Private Report due to their commercial sensitivity.

7.3 Financial Implications

- 7.3.1 The Interim Arrangement Agreement will contribute towards addressing the existing budget pressures faced by the Service. The financial implications are commercially confidential and are set out in the private report.

7.4 Procurement Implications

- 7.4.1 The Procurement Strategy in support of the outline Municipal Waste Strategy 2017 – 2040 dealing with all long term procurement decisions was approved by Cabinet in February 2018 and this is unchanged apart from the timeline.

7.5 Human Resources Implications

- 7.5.1 It is intended that TUPE arrangements will not be applicable and this will be detailed in the Interim Arrangement Agreement once finalised.

7.6 Public Sector Equality Duty

- 7.6.1 Attached as appendix 1.

8 Background Documents

- 8.1 Appendix 1 - Public Sector Equality Duty Statement
- 8.2 Appendix 2 – Equality Impact Initial Assessment

Appendix 1

PROTOCOL PUBLIC SECTOR EQUALITY DUTY

- 1 The public sector equality duty drives the need for equality assessments (Initial and Full). An initial assessment should, be prepared from the outset based upon available knowledge and information.
- 2 If there is no adverse impact then that fact should be stated within the Report at section 4.4 and the initial assessment document appended to the Report duly signed and dated. A summary of the statutory duty is annexed to this Protocol and should be referred to in the standard section (4.4) of executive reports for decision and then attached in an appendix; the term 'adverse impact' refers to any decision-making by the Council which can be judged as likely to be contrary in whole or in part to the equality duty.
- 3 A full assessment should be prepared where necessary and consultation should then take place.
- 4 Consultation should address any possible adverse impact upon service users, providers and those within the scope of the report; questions need to assist to identify adverse impact which might be contrary to the equality duty and engage all such persons in a dialogue which might identify ways in which any adverse impact might be avoided or, if avoidance is not possible, reduced.
- 5 Responses to the consultation should be analysed in order to identify:
 - (a) whether there is adverse impact upon persons within the protected categories
 - (b) what is the nature of this adverse impact
 - (c) whether the adverse impact can be avoided and at what cost – and if not –
 - (d) what mitigating actions can be taken and at what cost
- 6 The impact assessment carried out at the outset will need to be amended to have due regard to the matters in (4) above.
- 7 Where there is adverse impact the final Report should contain:
 - a summary of the adverse impact and any possible mitigating actions (in section 4.4 or an appendix if necessary)
 - the full equality impact assessment (as an appendix)
 - the equality duty – see page 9 (as an appendix).

Equality Act 2010

The Executive must have due regard to the public sector equality duty when considering Council reports for decision.

The public sector equality duty is as follows:

1	<p>The Council must, in the exercise of its functions, have due regard to the need to:</p> <ul style="list-style-type: none">(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act;(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
2	<p>Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:</p> <ul style="list-style-type: none">(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
3	<p>The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.</p>
4	<p>Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:</p> <ul style="list-style-type: none">(a) tackle prejudice, and(b) promote understanding
5	<p>The relevant protected characteristics are:</p> <ul style="list-style-type: none">(a) age(b) disability(c) gender reassignment(d) pregnancy and maternity(e) race(f) religion or belief(g) sex(h) sexual orientation