

NORTH LINCOLNSHIRE COUNCIL

WASTE CONTRACTS PROCUREMENT PROJECT

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 The object of this report is to confirm the procurement approach to be adopted for the new waste contracts.
- 1.2 The key points in this report are:
 - Current arrangements for the provision of waste treatment and disposal services of municipal waste terminate on 31 March 2011.
 - A report to Cabinet on 9 July 2008 recommended a procurement approach. Approval in principle was given, subject to review once external expertise had been engaged to support the council.
 - The council has since engaged external advisers for legal, finance and technology support. Their opinions and recommendations have been considered and a revised procurement approach is recommended.
 - Approval is required for revised contract packaging arrangements and the procurement process to be adopted for each package, to enable the process to commence under EU procurement legislation.

2. BACKGROUND INFORMATION

- 2.1 Current contracts let to deliver waste management services for the council are scheduled to terminate by 31 March 2011. The council has recognised that in order to meet future landfill allowance requirements (LATS), investment in additional infrastructure in the form of treatment capacity will be required.
- 2.2 The procurement of waste treatment and disposal service contracts with a current annual value of around £6 million must be undertaken strictly in accordance with EU and UK rules. Counsel's opinion was sought in April 2008 on the appropriate procurement route and on the facts presenting at that time, Counsel confirmed that the Council was entitled to use the restricted procedure for the full package of proposed contracts although use of the competitive dialogue procedure was not ruled out.

- 2.3 In July 2008 Cabinet previously approved, in principle, the letting of contracts under the Restricted Procedure for:
- Residual waste treatment
 - Compost site and Household Recycling Centre management
 - Kerbside recycling collections.
- 2.4 Subsequent to this decision, the council has engaged the services of legal, financial and technological experts as external advisers. The firms engaged have long and successful involvements with local councils in procuring services and infrastructure to support local waste management strategies. Their opinions and recommendations were sought on the council's strategy.
- 2.5 Following extensive discussions, with the external advisers, it has been suggested that the residual waste treatment and disposal element of the contracts may be more appropriately procured under the competitive dialogue procedure given the complexities, risks and financial variables associated with contracts of this nature. Whilst under EU rules the restricted procedure is normally the default procedure, where contracts present as 'particularly complex' and it is considered the restricted procedure will not allow the award of the contract, the competitive dialogue procedure may be followed. It is considered that the competitive dialogue procedure would allow the Council sufficient flexibility within which to explore and negotiated with potential bidders solutions to the various issues identified.
- 2.6 In light of these discussions the further advice of Counsel was sought in conference on the 9 October 2008. This presented a useful opportunity to appraise Counsel of the discussions that had taken place with the external advisers subsequent to his earlier advice. Counsel concurred that in light of the particular complexities identified with the residual waste treatment and disposal element of the contract that it would be possible for that element to be procured under the competitive dialogue procedure and in accordance with Regulation 18 of the Procurement Regulations. As those complexities do not present in relation to the remaining elements of the contract (as detailed in 3.3) it would still be appropriate for these to be procured under the restricted procedure.

3. OPTIONS FOR CONSIDERATION

- 3.1 It is proposed that the use of competitive dialogue would relate to the treatment solution for non-recyclable municipal waste. If this constituted one contract then the other services could be tendered using the Restricted Procedure.
- 3.2 It is difficult for the council to be precise in respect of all the details required for tendering under the Restricted Procedure for the residual

waste treatment facilities. This, in effect, means that use of the restricted procedure could compromise the Council's aim of delivering what is required in the optimum time frame at an affordable price. These are key determinants in any decision to use the Restricted Procedure. This is sufficient to make the contract 'particularly complex' under EU Legislation and engage the Competitive Dialogue process.

3.3 In view of this it is proposed the contracts could be packaged as follows:

Contract Scope	Procurement Route	Lots
A. Recyclables	Restricted Procedure	(1) Kerbside collection and processing of dry recyclables; (2) Management of recycling centres; (3) Option - possibly the receipt and processing of cardboard and plastics.
B. Treatment and disposal of remaining materials	Competitive Dialogue	(1) Segregated Biodegradable material (green waste) * (2) Residual wastes.
C. Interim arrangements to meet landfill allowance targets	Restricted Procedure	Residual wastes

3.4 As it is unlikely that a treatment facility will be operational by April 2011, interim arrangements will be required for the waste which is currently landfilled in order that the council can remain LATS compliant (Contract C).

4. ANALYSIS OF OPTIONS

4.1 If the council wishes to continue with the approvals given by Cabinet on 9 July 2008 to tender all the services under the Restricted Procedure then a period of consideration needs to be given to explore the implications with the council's external advisors. This could introduce significant delay into the process.

4.2 Approval for use of the Restricted Procedure was given in principle by Cabinet. It was recognised that the council should not continue until further external expertise on waste management contracts had been engaged. The council is fully and properly entitled to review this approval in light of this advice.

4.3 The council could commence the tendering of services in Contract A using the Restricted Procedure. For the treatment and disposal solution, the council could use a Competitive Dialogue procedure (Contract B). This would enable the council to begin the tendering procedure early in 2009 with contracts being awarded in mid 2010. *If Contract B does not provide a suitable solution for the treatment of Segregated Biodegradable material (green waste) officers will accordingly report back to members on the options available.

- 4.4 The proposal at 4.3 would mean that it is unlikely that a treatment facility will have been built and commissioned by 1 April 2011. The council could use the Restricted Procedure to procure an interim agreement to ensure the council remains landfill allowance compliant and does not suffer financial penalties (Contract C). In the event that negotiations for Contract B offer a satisfactory interim solution then the procurement of Contract C could be halted.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

- 5.1 The estimated contract value of all elements of this procurement assuming a 20 year arrangement is in the order of £150 million. The treatment facility could cost £30 - £50 million, dependent upon the technology and the increasing cost of borrowing. The option to negotiate different financial funding arrangements is available through the proposed process.
- 5.2 The financial implications to the council are the greatest risk. Whether it is penalties for exceeding the landfill allowance or being unable to successfully complete the procurement process the sums involved could be significant. It is considered however that the Competitive Dialogue process will afford the Council more scope to negotiate, through the dialogue process, a solution which is acceptable to both parties in relation to risk which is more likely to achieve a solution which is affordable for the Council.

6. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)

- 6.1 A key success factor is the need to reassure prospective bidders that we have political and executive support of the project given our relative size, 'attractiveness' and the finite capacity of the waste management and construction industries. The more convinced the market is that the council knows what is wanted and how to realise it then the greater the chance of success.
- 6.2 A report and analysis of the strategic and operational risks associated with this project will be submitted to the 24 October 2008 meeting of the Strategic Risk Management Group.

7. OUTCOMES OF CONSULTATION

- 7.1 The original proposals were based on the outcomes of consultation with the Waste Management industry and with the public on the draft Municipal Waste Management Strategy for North Lincolnshire.
- 7.2 The external advisors and the Waste Project board have considered these issues and this report reflects their recommendations.

8. **RECOMMENDATIONS**

- 8.1 Approve the formal commencement of the procurement process and issue OJEU contract notices in line with the contract packaging and procurement routes at 3.3
- 8.2 Submit reports on the technical specifications for each of the contracts when the details have been finalised.

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Background Papers used in the preparation of this report

Cabinet report on same subject 9 July 2008