


Cabinet 28 th July 2015	 TOWER HAMLETS
Report of: Stephen Halsey, Head of Paid Service and Corporate Director CLC	Classification: Unrestricted
Re-procurement of Waste Management Services Contracts	

Lead Member	Cllr Ayas Miah, Cabinet Member for Environment
Originating Officer(s)	Simon Baxter, Interim Service Head Public Realm
Wards affected	All wards
Key Decision?	Yes
Community Plan Theme	A Great Place to Live

Executive Summary

This report sets out the proposed contracting approach for the re-procurement of the waste management services contracts to serve the Borough. These arrangements take into consideration the many complex factors impacting on this process and present a series of recommendations that seek to optimise the outcomes and minimise the risks for the Council as contractor and service users.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Agree that Blackwall Depot is designated as the Council's operational depot for the delivery of refuse, recycling and street cleansing services, within the Council's Asset Management Strategy
2. Approve a 16 month extension of the Municipal Waste (Cleansing) Contract to extend the contract term through until 30th September 2018
3. Approve the transfer of the existing Underground Refuse and Recycling Service to the Municipal Waste (Cleansing) Contract and authorise the Head of Legal Services to enter into all necessary supplemental agreements and documentation necessary to complete the transfer.
4. Approve the procurement of a short term Integrated Recycling Contract to run from 1st June 2017 to 30th September 2018 and authorise the Corporate Director CLC to award the contract and the Head of Legal Services to execute the contract documents.
5. Agree that a review of the Council's policies and service standards in relation to recycling, residual waste services and street cleansing be undertaken and be reported back to Cabinet.

6. Approve the procurement of a waste disposal contract for a contract term of 9 years 6 months initial term plus option to extend for 8 years and authorise the Corporate Director CLC to award the contract and the Head of Legal Services to execute the contract documents.
7. Agree that Northumberland Wharf Waste Transfer Station is offered to the contractor, through a commercial lease that will be co-terminus with the term of the contract, to support the delivery of waste treatment and disposal services
8. Note that the lease of Northumberland Wharf Waste Transfer Station will require the prior approval of the appointed commissioners being disposal of real property as required by the Directions made on 17 December 2014 by the Secretary of State for Communities and Local Government.
9. Approve the procurement of Materials Sorting (MRF) Services on a rolling basis of 2+1 years and authorise the Corporate Director CLC to determine the procurement strategy and specification after consultation with the Mayor and Lead Member.
10. Authorise the Corporate Director CLC to award the MRF contract and the Head of Legal Services to execute the contract documents.
11. Agree that a review of the opportunity for shared service provision with other local authorities for refuse and recycling collections and street cleansing or the opportunity to bring some of the services in-house be undertaken and reported back to Cabinet prior to the procurement of a long term Refuse, Recycling and Street Cleansing Contract.
12. Agree that the waste treatment and disposal contract will include a price change mechanism to avoid inflation driven cuts to services over the lifetime of the contract.
13. Approve the commencement of the procurement of these services in line with the recommendations included in this report.
14. Agree the conduct of consultation regarding delivery of environmental services.

1. REASONS FOR THE DECISIONS

- 1.1 As a Unitary Authority, Tower Hamlets is both a Waste Collection Authority and a Waste Disposal Authority. As such the Council has a statutory duty to collect and dispose of Municipal Waste within its area.
- 1.2 The Council has historically chosen to discharge these statutory duties through a number of externalised service contracts.
- 1.3 There are currently 4 waste management contracts in place that will be expiring in April and May 2017. Therefore the Council must agree the contracting approach to ensure continued service provision through the extension of one of the waste services contracts and the re-procurement of other contracts for commencement when the current contracts expire.

2. ALTERNATIVE OPTIONS

2.1 The alternative options for the contracting approach are as follows:

2.1.1 Whilst the Council has historically provided waste management services through externalised contracts there are alternative service delivery options such as shared services with other Local Authorities or in-house services that the Council is proposing to explore. The review of alternative options would need to demonstrate that shared services or in-house delivery of services would deliver better value for money than the current model of externally provided services.

2.1.2 The alternative option of not offering Northumberland Wharf Waste Transfer Station to support the delivery of waste treatment and disposal services would be likely to result in reduced competition and limited solutions for these services and therefore may increase service costs and reduce value for money.

2.1.3 The alternative option of requiring economic benefits to be delivered for the waste treatment and disposal services would immediately add additional cost to the services as there is a minimum labour element to the service, unsuitable environments for young people, have little or no supply chain opportunities and the facilities are often in remote locations.

2.1.4 The alternative option to require fixed prices for the full term of the waste treatment and disposal contract and have no mechanism to allow for growth as a result of additional housing stock and population would place a significant cost risk on the contractor. Transferring this risk would result in the additional cost to the Council as early years of the contract would have inflated costs to take account of the anticipated capacity necessary for the latter years of the contract.

3. DETAILS OF REPORT

Part 1 - Background to the Proposed Contracting Approach

3.1 As a Unitary Authority, Tower Hamlets is both a Waste Collection Authority and a Waste Disposal Authority. As such the Council has a statutory duty to collect and dispose of Municipal Waste within its area. The Council has historically chosen to discharge these duties through a number of externalised service contracts

3.2 The Council currently has 4 waste management contracts in place that will expire in 2017. Given the scope and value of these contracts the Council needs to be in a position to commence the re-procurement process in October 2015 in order to safeguard a suitable mobilisation period for the new services.

3.3 The 4 contracts requiring re-procurement are listed below:

- **The Waste Disposal Contract** – approx. annual value £9.15m. This contract includes the treatment and disposal of the Council’s Municipal Waste and the management of the Household Waste and Recycling Centre.
- **The Municipal Waste Management (Cleansing) Contract** – approx. annual value £13.2m. This contract includes the refuse collection and commercial waste services, the collection of bulky waste, the collection of clinical waste, the street and parks cleansing service, market cleansing and the removal of graffiti and flyposting.
- **The Integrated Recycling Contract** – approx. annual value £3.56m. This contract includes the collection of co-mingled dry recycling, the collection of food and garden waste and the processing of food and garden waste for compost.
- **The Materials Sorting (MRF) Services Contract** – approx. annual value £800,000. This contract includes the sorting of co-mingled recyclable materials and subsequent onward delivery for reprocessing.

3.4 In setting the scope of the services to be included in the new contracts, the Council must take account of the legislative framework surrounding waste management services whilst being cognisant of a need to drive efficiency. European waste legislation has been subject to recent changes which have specific implications for waste services and recycling targets in the UK.

3.5 The waste hierarchy has been enshrined in UK law as a “priority order” for waste management activities and so the Council is now under an obligation to take all reasonable measures available to apply the waste hierarchy to the waste that it collects. As such the Council should place a greater emphasis on ensuring more of the Municipal Waste is diverted for re-use and recycling. The European Commission is also seeking to impose higher recycling targets, 70% of all Municipal Waste (as opposed to Household waste which is a subset of Municipal Waste) to be recycled by 2030 is the anticipated new target. The impact of a 70% recycling target, in terms of participation, put out rates and capture rates for recyclable materials would mean that just under 90% of people would need to recycle 90% of the available material 90% of the time. Historically, the emphasis of waste containment provision has been focused on dealing with the residual waste stream. This continues at present with a greater volume of bin space for rubbish rather than recyclable material. This ease of access to residual waste bins in all types of housing stock is one of the barriers to speedy and effective behaviour change. Policy changes are therefore required in order to drive behaviour change in the community so that a greater quantity of waste is captured for recycling and composting rather than being disposed of as residual waste.

3.7 The efficiency and effectiveness of the new contracts will also be determined by a number of key structural aspects of the contracts that are offered for procurement such as the scope of the services and standards of performance required, what assets the Council will provide to support delivery of the

services, such as depot and waste transfer facilities, the length of the contracts. To aid the Council's understanding of the risk implications of these contract structure options, officers have undertaken a Soft Market Testing exercise with twelve key suppliers within the waste management service market sector. The responses from the market testing have helped to inform the development of the contracting options being proposed, which are set out in Part 2 below.

Part 2 – Proposed Contracting Approach

- 3.8 The proposed contracting approach has been grouped under service headings and addresses a number of key aspects in relation to the process for continuity of service provision, re-procurement of contracts and operational outcomes. The proposed approach is set out below:

Part 2 A – Arrangements for Refuse and Recycling Collections and Street Cleansing Services for the Short Term

- 3.9 Depot facilities to support the delivery of refuse recycling and street cleansing services
- 3.9.1 The cost efficiency and effectiveness of the waste and recycling collections and street cleansing services will be significantly influenced by the provision and use of depot facilities in the borough. The Council's operational depot for delivering waste management services has recently re-located from Watts Grove to Blackwall Depot. Blackwall Depot provides a suitable location for the delivery of waste management services due to the ease of access to all major routes within Tower Hamlets and major routes out of the borough for the delivery of waste to waste treatment facilities. As such it is recommended that Blackwall Depot is designated as the Council's operational depot for waste services within the Council's Asset Management Strategy.
- 3.10 Extend the Municipal Waste (Cleansing) Contract
- 3.10.1 Currently the refuse collection and street cleansing contract is due to expire at the end of May 2017. However, this contract does include the provision for the contract to be extended. Whilst the Council has for some time delivered the waste management services through external contracts, there are alternative service delivery options, such as shared services with other local authorities or in-house service delivery that may provide better value for money.
- 3.10.2 Extending the current contract with Veolia for a period of 16 months, so that the contract expires at the end of September 2018 would allow sufficient time for a review of alternative service delivery options to be undertaken and the review findings reported back to Cabinet prior to the commencement of any procurement process for refuse, recycling and street cleansing services for the longer term. .

3.11 Transfer the Underground Refuse and Recycling into the Municipal Waste Cleansing Contract

3.11.1 The underground refuse collection service (URS) was set up in 2000 as an internal pilot project to test the viability and acceptability of the collection system for collecting residual waste from flats and estate properties.

3.11.2 The service, which is operated by the Council's Transport Services Unit (TSU), commenced with only one of the specially adapted underground collection vehicles. However, the pilot service proved popular with landlords and developers and has grown significantly since implementation to the extent that the service collects both residual waste and some recycling from 371 bin chambers, using 3 of the specialist vehicles.

3.11.3 Because of the growth of the service, TSU are now heavily reliant on agency staff to undertake service delivery and because the service is delivered in isolation from the main refuse collection and recycling contract TSU have no back up resources if the collection system breaks down.

3.11.4 Going forward, the underground service will need investment to maintain the current level of service and to provide additional capacity in the future, as the borough's population and housing stock will see sustained growth over the next 5 to 10 year period.

3.11.5 Transferring the service into the main refuse contract at this time will provide better contingency arrangements for day to day service delivery but will also allow the service to be embedded into the mainstream services in advance of a longer term refuse and recycling collection contract being procured.

3.12 Procure a short term interim Integrated Recycling Contract

3.12.1 The Integrated Recycling Contract will expire on 31st May 2017 but unlike the refuse collection and street cleansing contract, cannot be extended beyond this date. As the cost and efficiency of these services is also heavily predicted on the location from which they are delivered, procuring a new long term contract is best undertaken after the review of service delivery options.. There is also likely to be cost efficiency to be gained in the longer term by packaging the recycling collection services with the refuse collection service.

3.12.2 As the current contract cannot be extended, it would be necessary to procure a short term, 16 month contract, following which the recycling services would be packaged with refuse collection and street cleansing services for the longer term. The procurement process would need to commence by October 2015.

3.13 Policy Commitments and Service Standards to Increase Recycling

3.13.1 The level to which the Council can encourage the borough's residents and businesses to become committed to recycling as much of their waste as possible can be influenced by a number of policy and service delivery factors.

The volume or quantity that householders are allowed to place out for each collection and how residents are engaged to take part in the recycling services can have a significant influence over residents' recycling behaviour. The Council does provide dry recycling and food waste collection services to all houses in the borough, but the extent to which residents actively take part in these services varies, as does the proportion of recyclable material that residents choose to place out for recycling (known as the capture rate). Persuading more residents to recycle and those residents who are already engaged in the service to recycle a greater proportion of their waste will help drive up recycling performance and mitigate against increased waste disposal costs that are anticipated as the boroughs population continues to rise.

- 13.3.2 For multi-occupancy properties, making the recycling services more visible and increasing the storage capacity for recycling would help to influence residents' behaviour. However, it may also be necessary to review the bin capacity provided for residual waste in order to drive greater levels of recycling in blocks of flats and on estates.
- 3.13.3 In order to achieve behaviour change and improve the Council's recycling performance it is recommended that a review of current policies and service standards be undertaken and a more detailed report be presented to Cabinet outlining examples of best practice and possible policy changes that could deliver significant improvement.

Part 2 B - Re-procurement of Waste Treatment and Disposal Services and Materials Sorting (MRF) Services

3.14 Waste Treatment and Disposal

- 3.14.1 The waste disposal contract is due to expire on 31st March 2017 and has no provision for further extension and so a procurement process must commence by October 2015 in order that a new contract is in place for when the current contract comes to an end.
- 3.14.2 Maximising competition for this contract will be fundamental to ensuring that the Council achieves a cost effective solution through the re-procurement process. As such, offering suppliers the opportunity to utilise the Council's Waste Transfer Station at Northumberland Wharf, through a commercial lease that would be co-terminus with the expiry of the contract, could influence the number of options available for the Councils waste treatment and disposal services and would allow the Council to determine the most economically advantageous solution(s) through the procurement process. The management of the Re-use and Recycling Centre would also be incorporated as part of the waste treatment and disposal services.
- 3.14.3 The waste disposal contract would be procured for an initial term of 9 years and 6 months plus an option to extend for a period of 8 years, to be co-terminus with a potential integrated refuse, recycling and street cleansing contract either at the end of September 2026 or the end of September 2034.

3.14.4 The anticipated growth in population over this period will have an impact on the amount of Municipal Waste that will need to be managed year on year which will influence the annual cost of the service. To ensure that the tendered prices are not over inflated for early years of the contract it will be necessary to include price change mechanisms within the contract terms.

3.14.5 Whilst it is accepted that there will be opportunities to secure economic benefits from the re-procurement of the waste services, the extent and scope of the potential varies across the different waste management services. As there is a minimum labour element within the provision of waste treatment and disposal services and the working environment is not suitable for young people due to health and safety issues and the fact that the facilities are located in remote locations, a requirement to deliver economic benefits from the waste treatment and disposal services will add additional cost. The expectation for the delivery of economic benefits would therefore need to build on those aspects of the contract that can add value for the community whilst not unduly adding to contract costs-

3.15 Materials Sorting (MRF) Services

3.15.1 The materials sorting service is a service that is provided through a Contractor owned MRF facility and is not reliant on the use of any other operational depot. As this contract cannot be extended beyond 31st March 2017, a procurement process will need to be commenced by March 2016 to ensure that a new contract is in place from 1st April 2017.

3.15.2 Materials sorting services are undertaken by a discreet sector of the waste management market and as such this contract can be procured as a standalone service. Materials sorting contracts are generally procured on a short to medium term basis and so it is recommended that the Council procures this service on a rolling 2+1 years contract term basis for the foreseeable future.

Part 2 C – Delivery of Long Term Refuse, Recycling and Street Cleansing Contract

3.16 Review of alternative delivery options

3.16.1 Whilst the Council has for some time chosen to deliver the refuse and recycling collection and street cleansing services through external contracts, there are alternative service delivery options that may provide more efficient and effective services.

3.16.2 Prior to procuring a contract for the delivery of these services beyond October 2018, the Council has the opportunity to undertake a review of the alternative delivery options referred to in paragraph 3.16.1 to determine which service option or combination of options would provide best value. It is therefore recommended that a review be undertaken and the findings of the review be presented to a subsequent Cabinet meeting.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 The report seeks the approval of the Mayor in Cabinet to the proposed contracting approach to be undertaken for the waste management contracts due to expire in 2017. 4.2 Designating the Blackwall Depot as the Council operational depot for the delivery of refuse, recycling and street cleansing services, will provide certainty regarding the availability of depot facilities as part of the contract package. This should ensure that potentially significant variations to the cost of the procurement are considered alongside a cost benefit analysis and a full understanding of the procurement risks.
- 4.3 The proposal recommends the extension of the Municipal Waste Cleansing contract which has a current annual value of approx. £13.2m for a 16 month period to the 30th September 2018. This period allows for the completion of the depot plan and Corporate Asset Management Strategy that enables re-procurement of a contract to commence 1st October 2018. Any extension to the contract must be on the basis of securing value for money for the Council in terms of service delivery and cost implications.
- 4.4 The Underground Refuse and Recycling Service is currently provided by the Council Transport Service Unit at an annual cost of approx. £230,000. The proposal will transfer the existing service to the current contractor for the Municipal Cleansing. The decision to transfer the service to the Cleansing contract is proposed on the basis that it will provide better contingency arrangements going forward. Two of the vehicles are at the end of their useful life and will need to be replaced by the Council as part of the proposed transfer. Due to the specialist nature of the vehicles capital investment will be required to fund the replacement. Therefore the decision made must be on the basis of securing value for money for the Council.
- 4.5 The report further recommends approval of a short term Integrated Recycling contract which has an approx. current value of £3.57m. The period proposed is for 16 months to the 30th September 2018. This will provide sufficient time to enable the procurement of a long term contract to commence from the 1st October 2018 through a Competitive Negotiated Procedure with the proposed contract period term of 8 years with the option to extend for a further 8 years.
- 4.6 The proposed procurement of the Waste Disposal contract which has a current approx. value £9.5m is to commence from 1st April 2017 for a term of 9 years 6 months with the option to extend for 8 years. This will enable the contract to be extended to be co-terminus with the refuse and streets contract if required. Also the inclusion of the Waste Transfer Station at Northumberland Wharf through a Commercial Lease will enable the Council to pursue the most economical solution for the Waste Disposal service.
- 4.7 The Materials Sorting (MRF) Service interim contract arrangement which commenced from February 2015 has seen a substantial shift in the market for materials sorting. The previous contract value generated income of approx.

£780,000. The new contract is estimated to cost the Council approx. £1.6m. This is due to changes in the materials market and legislative changes which have made the checks undertaken to the materials more stringent. Due to the volatility in the current market for MRF services, it is therefore proposed that a rolling 2+1 year contract is recommended. This is in keeping with this type of contract under current market conditions.

- 4.8 The Medium Term Financial Plan already provides a process for reviewing committed growth of specific services demand pressures and inflation impacts. Provision has been included in the MTFP to deal with the unavoidable increases due to growth in the quantity of Municipal Waste and contractual indexation which will be reviewed and kept up to date. Because of the per tonne cost differential in sending waste for recycling as opposed to sending waste for disposal, the actions proposed to support a drive for residents behaviour change to increase recycling performance would help to mitigate the increasing cost of waste services thus reducing the pressure on the disposal budget.
- 4.9 There is no budget provision to support the external resources required for the large scale procurement process. Furthermore, consideration will also need to be given to potential implications that may arise following the undertaking of a review of the opportunity for shared service provision and to bring some of the services in-house prior to reporting back to Cabinet. Any costs should be met within existing budgets in the first instance, but given the scale of the procurement approval for use of contingencies may be required in the future if this cannot be achieved.

5. LEGAL COMMENTS

- 5.1 The Council is a waste disposal authority and a waste collection authority for Tower Hamlets by virtue of section 30(2) and section 30(3) of the Environmental Protection Act 1990. The Council's functions as a waste collection authority include an obligation to arrange for the collection of household waste in Tower Hamlets and to collect commercial waste, dry recyclable waste or food waste from premises if requested to do so. The Council's functions as a waste disposal authority include an obligation to arrange for the disposal of controlled waste collected in Tower Hamlets and to arrange for places to be provided at which persons resident in Tower Hamlets may deposit their household waste. The Council has power to make arrangements for recycling waste for which it is the disposal authority.
- 5.2 The Council has the following duties under section 89 of the Environmental Protection Act 1990 relating to street cleaning and cleansing –
- To keep any relevant highway for which it is responsible clear of litter and refuse.
 - To keep any relevant land for which it is the principal litter authority clear of litter and refuse. This will include land open to the air that is controlled by the Council and to which the public are entitled or

permitted to have access, but which is not highway land or the relevant land of a designated educational institution.

- To keep clean any relevant road or highway or highway for which it is responsible.

5.3 It is proposed that the Council procure waste management services as outlined in the report to support delivery of the statutory functions outlined above. The proposed procurement includes –

- Integrated recycling contract from 1 June 2017 to 30 September 2018
- Waste disposal contract for 9 years and 6 months with an option to extend for 8 years
- Materials sorting services contract for 2 + 1 years
- Transfer of the underground waste service to the Waste Cleansing and collection operator
- Extension of the waste cleansing and collection contract by 16 months.

5.4 As drafted, the recommendations in the report require the Director to finalise the procurement strategy and specification after consultation with the Lead Member and Mayor. This process may be followed, provided the head of paid service, chief financial officer and monitoring officer are satisfied with it. The directions made by the Secretary of State on 17 December 2014 under section 15 of the Local Government Act 1999 require the Council to adopt all recommendations of the statutory officers in relation to the processes and practices to be followed in relation to entering into contracts, unless the Commissioners' prior written agreement is obtained not to do so.

5.5 The values of the proposed contracts are above the relevant European threshold and the Public Contracts Regulations 2015 will apply to any procurement of these services. The services fall outside the remit of Schedule 3 of the Regulations and therefore the Public Contracts Regulations 2015 must be followed entirely. In particular the Regulations prescribe the exact nature of the procurement and the rules that the procurement must follow. A failure to follow the regulations could leave the Council in the position of being challenged and potentially fined.

5.6 The requirements of the Public Contracts Regulations are that the contract opportunity must be publicised in the Official Journal of the European Union (OJEU) but also strict timescales are set for receipt of tenders and other aspects of the tender process. This applies regardless of whether the Council opts to use the Open Procedure or the Restricted procedure as defined under the Regulations.

5.7 The Council is a best value authority under section 3 of the Local Government Act 1999 and required to "make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness". In order to comply with this obligation, the Council has adopted procurement procedures, with which it should comply when procuring the contracts. The Council needs to tender the services referred to in the report in order to obtain a solution with

regard to the restructuring of the existing contracts which leaves the Council in the most economically advantageous position.

- 5.8 By virtue of section 3(2) of the Local Government Act 1999, the Council is required to consult for the purposes of deciding how to fulfil its best value duty. In a number of areas (notably the transfer of the underground waste collection and disposal service) the Council is altering the way in which the service is to be delivered. These changes may require the Council to consult with affected people. Logically these changes need to be consulted upon prior to commencement of any tender (or transfer to a new contract) otherwise the Council will not be able to show that it has considered the results of such consultation. The Council should consider all the areas which would change following the implementation of the new structure and consult on them all at once.
- 5.9 Regulation 13 of the Waste (England and Wales) Regulations 2011 requires that every waste collection authority must, when making arrangements for the collection of waste paper, metal, plastic or glass, ensure that those arrangements are by way of separate collection, and an establishment or undertaking which collects waste paper, metal, plastic or glass must do so by way of separate collection. This requirement will apply from January 2015 when the following two criteria are satisfied:
- (a) Separate collection is necessary to ensure that waste undergoes recovery operations in accordance with Articles 4 and 13 of the Waste Framework Directive and to facilitate or improve recovery; and
 - (b) Separate collection is technically, environmentally and economically practicable.
- 5.10 The contracts requiring re-procurement will need to be designed to meet this statutory duty.
- 5.11 In addition to the procurement of the contracts outlined in the report it is proposed to extend the existing municipal waste cleansing contract for 16 months. This is lawful as the original OJEU advert allowed for a maximum contract period (including extensions) of 15 years and the existing contract period with the additional 16 month extension is still within this 15 year period.
- 5.12 It is also proposed to transfer the existing underground refuse and recycling service to the municipal waste cleansing contract. This is possible without a further competitive exercise as the service was included as an option in the original tender but was not taken up at the start of the contract. This option may now be exercised as it has been subjected to competition under this contract subject to the appropriate consultation as referred to above.
- 5.13 Before deciding to proceed with the project, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010 (e.g. discrimination), the need to advance equality of opportunity and the need to

foster good relations between persons who share a protected characteristic and those who don't (the public sector equality duty). The Council needs to take appropriate steps to identify the needs of the persons affected by any changes to the contracts so in any event should undertake an Equalities Impact Assessment in respect of both the current delivery and any changes thereto to ensure that there is no discrimination between people with protected characteristics and others in the community.

- 5.14 An equalities analysis has been prepared, which is appended to the report. However, there appear to be some structural changes to the way these services will be delivered. The Council must fully understand the impact of such changes on those people who have the benefit of the Equalities Act and it is likely in this area that consultation on the new proposals for the purposes of the Equality Act will also need to be undertaken. The Council needs to ensure that the changes do not cause a person who has a protected characteristic to be disadvantaged by the changes when compared with someone who does not have such a characteristic. Consideration should also be given to suitable alternatives for such people if an imbalance is discovered.
- 5.15 In attempting to understand equality impacts, consideration should be given to whether consultation is required with affected persons in order to fully understand the nature of needs of those people and the impact any changes would have on such persons prior to awarding a new contract. Any consultation carried out for the purposes of assessing the impact of the proposed procurement should comply with the following criteria: (1) it should be at a time when proposals are still at a formative stage; (2) the Council must give sufficient reasons for any proposal to permit intelligent consideration and response; (3) adequate time must be given for consideration and response; and (4) the product of consultation must be conscientiously taken into account. The duty to act fairly applies and this may require a greater deal of specificity when consulting people who are economically disadvantaged. The mayor will need to be satisfied that the level of analysis is adequate for the purposes of the procurement decisions proposed in the report.
- 5.16 The report identifies that a lease of the Northumberland Wharf waste transfer station is to be offered in connection with the waste disposal contract. Under section 123 of the Local Government Act 1972 the Council may dispose of its land in any manner that it may wish. However, the consideration for a disposal of land must be the best that can reasonably be obtained, unless either: (a) the Secretary of State's consent is obtained; or (b) the disposal is by way of a short tenancy, i.e. a term not exceeding 7 years, which would not seem to fit the duration of the proposed contract. Accordingly, the procurement procedure must be conducted in a way that enables the Council to determine the price paid for a lease of the waste transfer station.
- 5.17 If the disposal of the waste transfer station is proposed at less than best consideration, then the Secretary of State's consent would likely be required. The Secretary of State has given a general consent to dispose of land for less than best consideration provided that: (a) the disposal would contribute to promoting improvement of the economic, social or environmental wellbeing of

Tower Hamlets, part of Tower Hamlets or some or all of persons resident or present in Tower Hamlets; and (b) the difference between the unrestricted value of the land and the consideration for disposal does not exceed £2million pounds. If this were to be relied upon, then the relevant case would need to be made prior to disposal.

- 5.18 On 17 December 2014, the Secretary of State appointed Commissioners pursuant to powers under section 15(5) and (6) of the Local Government Act 1999 whose prior written agreement will be required to the disposal of property other than existing single dwellings for residential occupation. Therefore, consent will be required prior to the award of the contract and in reality this is therefore necessary prior to going to tender. This is because should the Wharf be unavailable it would fundamentally change the nature of the required bids.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 The services included within the scope of the contracts are universally provided across all wards. Within the current contracts for the provision of waste and recycling collection services it is recognised that some residents with disabilities need to be provided with an enhanced service level in the form of “assisted collections”. The service specifications for the new contracts will continue to include the requirement for such assisted collections to be provided to residents on a needs basis.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The current contracts for waste and recycling services have a combined annual value of approx. £26.71m. The ability to deliver efficiency savings through the re-procurement process will be determined by the decisions made regarding the scope and volume of the services to be provided and the specific performance targets that are set for the contractor to achieve. The principles of continuous improvement inform the development of the contracts and integral performance management and review processes.
- 7.2 It is proposed in the Recommendations that a review of service delivery options be undertaken to determine whether externally provided services would continue to provide best value or whether shared services or in-house service provision would prove better value for money in the long term.
- 7.3 It is also recommended that consultation is undertaken regarding the services, to support the development of the specification of longer term waste services to help ensure the services are designed effectively to meet the needs of the community.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 The Council's waste management services contribute to the protection of the environment and protecting human health through the effective management of waste arising in the borough.
- 8.2 By moving waste up the waste hierarchy i.e. by ensuring a greater quantity of waste is re-used or recycled as opposed to being disposed of as residual waste contributes to the Council's efforts to mitigate the impacts of climate change by reducing the carbon footprint of the Council's waste management services.
- 8.3 Through the re-procurement of the waste management contracts the Council will ensure the appointed contractor contributes to the Council's sustainability agenda by ensuring the contractor's vehicle fleet meets the latest emissions limits specifications and their own environmental policies mirror those of the Council.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 It has been identified in section 3 of the report that individual aspects of the scope and nature of the new contract(s) carry varying degrees of risk for the Council and the new contractor. The following are the key areas of risk the above arrangements are seeking to mitigate
 - The changing legislative framework for waste management services and the potential that high recycling targets will be imposed by the EU could impact on the cost of the services in the longer term
 - The anticipated growth in population will result in increasing total annual tonnages of Municipal Waste being generated, increasing pressure on the contracted services. Extensive modelling has been undertaken to understand these pressures and inform the contract structure and negotiations.
 - The provision and location of depot facilities could have significant cost implications for the refuse, recycling and street cleansing targets. By designating Blackwall Depot as the Council's operational depot for waste management services will help mitigate the cost of the waste services in the long term.
 - The market for recyclable materials remains volatile and so the re-procurement of the Materials Sorting (MRF) Contract may impact on the future costs of the services. However, should the materials market recover sufficiently prior to the time the next contract is procured, the impact may be positive rather than negative.
- 9.2 Ensuring that the level of risk being transferred to the contractor is balanced and proportional to the Council's overall objectives for the procurement process will help to mitigate the risk of the new contracts becoming unaffordable.

- 9.3 In addition to the individual risks associated with the structural aspects of the contracts, there are a number of more general risks associated with the delivery of a procurement project, such as timetable slippage, a lack of competition through the procurement process and then during the transition period between the mobilisation of the incoming contractor and expiry of the current contracts. These risks will be recorded and managed through the Council's Risk and Project Management procedures.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 The Council's activities for the removal of graffiti and flyposting that are incorporated into the Street Cleansing service contribute to the Council's efforts in managing anti-social behaviour within the borough. The new waste management contract will continue to incorporate the current policy requirement for the immediate removal of racist or offensive graffiti from Council owned property.

11. SAFEGUARDING IMPLICATIONS

- 11.1 There are no safeguarding risks or benefits from the proposals detailed in the report

Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

- Equalities analysis

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- None.

Officer contact details for documents:

N/A