

Cabinet	 TOWER HAMLETS
4 October 2016	
Report of: Will Tuckley, Chief Executive and Acting Corporate Director, CLC	Classification: Unrestricted
Waste Management Services – Delivery Options	

Lead Member	Councillor Ayas Miah, Cabinet Member for Environment
Originating Officer(s)	Roy Ormsby - 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 a revised contracting approach, and timetable for the re-procurement of waste management, and Street Cleansing contracts to serve the Borough. The purpose of the report is for Members to approve the extension of the key contracts to enable Officers time to re-design the services over the next 12 month to ensure they are fit for purpose for the lifetime of any new contract. The extension will provide time to consider the many complex factors impacting on the services,, a report will then be brought back with details of delivery options to enable Members to make an informed decision on how to deliver services in the future.

The report presents a series of recommendations that seek to optimise the outcomes and minimise the risks for the Council in light of the change of administration at the Greater London Authority and the outcome of the EU referendum.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Approve the revised contracting timetable set out in Table 1 at paragraph 3.7 of this report
2. Authorise the Corporate Director of Communities Localities and Culture to complete negotiations with Veolia to extend the Refuse Collection, and Street Cleansing Contract through until 31st March 2020, and to agree and enter into (following consultation with Service Head Legal Services) the necessary contract extension agreement.
3. Agree that the procurement of the Interim Recycling collection Contract, which will expire on 30 September 2018 (and which Cabinet approved in

July 2015), be amended to allow for an optional 18 month extension period up to 31 March 2020 and authorise the Corporate Director of Communities, Localities and Culture to agree and enter into (following consultation with Service Head Legal Services) the necessary contract documentation to give effect to this.

4. Authorise the Corporate Director of Communities Localities and Culture to complete negotiations with Veolia to extend the waste disposal contract until 30th September 2017, and to agree and enter into (following consultation with Service Head Legal Services), the necessary contract documentation to give effect to this.
5. Agree that the Council continues with the procurement process for a new waste disposal contract for an initial period of 9 years and 6 months with a further extension of up to 8 years and authorise the Corporate Director of Communities Localities and Culture to award the contract following consultation with the Service Head Legal Services.
6. Authorise the Corporate Director of Development and Renewal (following consultation with the Service Head Legal Services) to agree the terms of and enter into a new short-term excluded lease or tenancy at will for Northumberland Wharf Waste Transfer Station so that it is co-terminus with the expiry of the waste disposal contract on 30th September 2017
7. Agree that a number of workshops are held with Members, across all parties, to redesign a future service, ensuring the Council provides best value for our residents.

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 between April and the end of May 2017. An initial proposal for delivering these contracts was reported to Cabinet in July 2015, however the service delivery option required further decision by Cabinet.
- 1.4 In addition, since that time a change of administration at the Greater London Authority and the Referendum on membership of the EU has resulted in a majority vote to leave the European Union which could have implications for the longer term waste services.

2. ALTERNATIVE OPTIONS

- 2.1 The report requires Members to agree the extension of the current contracts, which will enable Officers to develop a range of delivery options, and provide detailed information for Members to make an informed decision of how the Council delivers their waste and street cleansing services in the future.

3. DETAILS OF REPORT

- 3.1 The re-procurement of the waste collection and street cleaning contract for Tower Hamlets is one of the most important challenges for the Borough over the next two years, as it will set out how a range of front-line services are delivered over the coming decade.
- 3.2 All public sector organisations are facing major financial challenges in the future, and Tower Hamlets will need to make significant cost reductions and efficiency savings over the coming years. However, as with all front-line services, residents, and visitors to the Borough, demand high standards of service delivery, and this will need to be reflected in any future negotiations.
- 3.3 There are a number of key factors that will impact on future service delivery, with the key challenge being the forecast of future growth in both housing and business development. The rate of these developments is difficult to predict, but any change will impact on the cost of the service in the future, and will need to be considered in the Council's Medium Term Financial Strategy.
- 3.4 The key contracts for waste and recycling collection and street cleansing services were due to be brought together to terminate in September 2018, but although this seems a distance away, it creates a challenging time-table in order to develop service delivery options that will enable Members to make an informed decision on the long-term delivery of these services..

- 3.5 The main challenge prior to any tender process is to undertake a needs assessment to develop the type of service required, and understanding the policy issues that may need addressing to achieve this. This is a key process, and will determine the final specification, and cost of the service to the Council, but it may need some key policy changes to ensure it is affordable, and still meets the increasing expectations of our residents. The contract extensions will enable this detailed work to take place.
- 3.6 Other factors that create uncertainty are the recent changes to the Mayor of London, and the decision to exit the European Union. Both have had a major influence on many of the environmental policies that are now embedded in law, relating to waste collection and disposal, and although it is not expected that these changes will initially impact on service, it needs to be considered in the longer-term plans for future services.
- 3.7 Whilst waste management services have been contracted out for many years, the period leading up to re-procurement provides an opportunity to reflect on service delivery options, and determine the most effective option for the Council, which is one that ensures best value.
- 3.8 To ensure that these issues are given sufficient time for political consideration, and consultation with our residents, it is proposed that a new timetable for the procurement process is put in place. It is proposed that, with the exception of the Materials Sorting (MRF) contract, the current contracts (including the Interim Recycling collection Contract, which is in procurement) are extended in accordance with the revised timetable set out in Table 1 below:

Table 1

Contract	Current End Date	Extension Date	Full New Contract
Refuse Collection and Street Cleansing	30 th May 2017	31 st March 2020	1 st April 2020
Interim Recycling Services (currently in procurement)	30 th September 2018	31 st March 2020	1 st April 2020
Waste Treatment and Disposal	31 st March 2017	30 th September 2017	1 st October 2017
Recyclable Materials Sorting (MRF) Services	March 2017	No change	April 2017 (as previously agreed by Cabinet in July 2015)

The MRF contract is excluded from this process as it will be shorter due to being determined by the markets, which is currently depressed, with no value in recycling materials.

- 3.9 The Council owns a waste transfer station at Northumberland Wharf which is currently leased to a third party through a commercial lease which is due to end in April 2017.
- 3.10 In July 2015 the Council agreed that Northumberland Wharf would be offered through the procurement process for the new waste disposal contract to

support the Council's services from 2017 onwards. As the new waste disposal contract will not commence until October 2017 it would be beneficial to enter into a new commercial lease or tenancy at will for this facility until 30th September 2017 in order that the Council can maximise on rental income.

Service Delivery Options

- 3.11 The revised timetable detailed in Table 1 will allow time for the Council to carry out the detailed work required to enable Members to make an informed decision on future service delivery options.
- 3.12 The Council commissioned a report by consultants Eunomia, to analyse the options available for the future delivery of its waste collection, recycling collection, and street cleansing services, with findings presented to the Council in February 2016. It is expected that the report will form the basis for further analysis, which would include detailed options relating to both in-house and contracted out services.
- 3.13 Detailed work is required on key policies, and over the coming months a Strategy will be developed for Members to debate. This will include how we work with some of our key partners, and how synergies across a range of services could be developed to create efficiencies, but still deliver the high quality services expected by our residents.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 The Council's budget for waste and recycling services is approximately £26.9 million. This covers the cost of the external contracts and the staffing and related costs of the Council's Waste Strategy and contract management functions including income. As part of the Council's Medium Term Financial Strategy provision has been set aside for both unavoidable population growth in tonnages and contract indexation.
- 4.2 In Table 1 of this report the revised timetable for the procurement process is set out. The report recommends an extension to the Waste Disposal contract until September 2017, to provide sufficient time to retender the contract to commence from October 2017. Also recommended, is the extension of the commercial lease at Northumberland Wharf Waste Transfer Station until the 30th September 2017. The rationale for this is that it ensures that the expiry date for the commercial lease is co-terminus with that of the Waste Disposal contract and that a proportion of the £250k annual rental income continues to be received in the intervening period. This will enable the Council to pursue the most economical solution for the Waste Disposal service.
- 4.3 The Refuse Collection service is to be extended to March 2020, whilst the current procurement process for the Recycling contract will now be extended from a 16 to a 34 month period to end in March 2020. 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 cost of the re-procured contracts could be substantial and will need to be factored into the Council's Medium Term Financial Strategy considerations.

The revised procurement timeframe will enable the Council to maximise the opportunity to deliver future efficiency savings from policy changes and service redesign. Further work will need to be undertaken including the development of a strategy that explores the potential implications of future service delivery options and opportunities to make efficiency savings. Any decision taken will need to be made in line with the Council's Medium Term Financial Strategy and on the basis of securing value for money for the Council.

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 1990 Act'). 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 can charge for collections of commercial waste.
- 5.2 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.
- 5.3 The Council also has duties under section 89 of 1990 Act relating to street cleaning and cleansing and which are-
- (a) To keep any relevant highway for which it is responsible clear of litter and refuse.
 - (b) 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.
 - (c) To keep clean any relevant road or highway or highway for which it is responsible.
- 5.4 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 applied 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.
- 5.5 Any changes to policies and standards will need to ensure that the Council still complies with its statutory duties.
- 5.6 The contract requiring re-procurement will need to be designed to meet this statutory duty and the Council must satisfy itself that any arrangement to extend existing contracts continue to meet the statutory duties.
- 5.7 It is proposed that the Council procure and extend certain waste management services as outlined in the report to support delivery of the statutory functions outlined above. In respect to contracts, the recommendations relate to:
- a. An extension to the Refuse Collection and Street Cleansing contract to 31 March 2020. The original published OJEU notice provides for such an extension, as do the provisions of the existing contract. As such, the extension being sought is compliant with procurement legislation.
 - b. An amendment to the approval that was given by Cabinet in July 2015 for the procurement of a 16 month Interim Recycling contract, expiring 30 September 2018. For the reasons set out in the report, approval is now sought to include within that procurement provision for the Council to be able to extend the contract, should it wish, up to 31 March 2020.
 - c. An extension to the Waste Disposal contract to 30 September 2017. The original published OJEU notice provides for such an extension, as do the provisions of the existing contract. As such, the extension being sought is compliant with procurement legislation.
- 5.8 The value of the Interim Recycling contract is such that 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.
- 5.9 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 depending on the type of procedure used.
- 5.10 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”.
- 5.11 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 which leaves the Council in the most economically advantageous position.

- 5.12 The Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, 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 waste contracts and an equalities analysis was prepared and considered at Cabinet in July 2015.
- 5.13 The report identifies that a lease (or a tenancy at will) of the Northumberland Wharf waste transfer station is to be offered for a term until 30 September 2017 in connection with the waste disposal contract. Under section 123 of the Local Government Act 1972 the Council may dispose of its land, which includes the grant of a lease, 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. As the term of the proposed lease will be for less than 7 years, the duty to obtain best consideration is not invoked.
- 5.14 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. As such, the Commissioners' consent will be required prior to any grant of (or commitment to grant) a lease.

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. £30.8m. The ability to deliver efficiency savings through the commissioning 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 the main waste, recycling and street cleansing services continue to be externally provided and that a new contract is procured for commencement in April 2020. The Council can look to achieve greater cost efficiency for these services through the tendering process and explore innovations and options should a Competitive Dialogue process be used.
- 7.3 It is also proposed in the recommendations that the Council explores the opportunity to change the delivery model for some elements of the services, where greater synergies may be achieved by amalgamating services with current in-house functions.
- 7.4 It is also recommended in the report that consultation is undertaken regarding the services, to support the development of the specification of longer term waste services to ensure they 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 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 services 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 outcome of the EU referendum has created a period of uncertainty surrounding how the legislative framework for waste management services may be impacted by the UK leaving, as much of the current legislation has been driven by EU Directives. Ensuring the focus for the new services remains on the waste hierarchy, sustainable good practice, cost efficiency and meeting the needs of the local community, the service can somewhat mitigate the potential impacts of changes to the legislation.
 - The anticipated growth in population will result in increasing total annual tonnages of Municipal Waste being generated, increasing

pressure on future services and the resources needed to deliver those services and the Council's budget. By ensuring the new contracts incorporate appropriate mechanisms to provide flexibility to incorporate the growth with maximum efficiency, the likely cost increases can be mitigated.

- To help mitigate the impact of population growth on the quantity of waste the Council has to manage in future years, the new services will incorporate a greater focus on driving waste minimisation. Being at the top of the waste hierarchy and meaning waste generation is prevented would provide the greatest opportunity to reduce the Council's costs for waste management services.
- The nature of the Council's housing stock provides significant challenges for the delivery of recycling services and aspirations to achieve the higher level of recycling performance the new Mayor of London has pledged. The new services will have a greater focus on driving the right behaviours to improve both the quality and quantity of recyclable materials the council collects. This will help to mitigate the overall costs for waste services

9.2 Ensuring that the level of risk being transferred to the contractor is balanced and proportionate to the Council's overall objectives in the procurement process will help to mitigate the risk of the new contracts becoming unaffordable.

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

- Appendix 1 – Equality Analysis Quality Assurance Checklist

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

- NONE

Officer contact details for documents:

N/A