

**Forward Plan reference number:** FP/803/09/20

<b>Report title:</b> Integrated Waste Handling Contract Service Delivery	
<b>Report to:</b> Cabinet	
<b>Report author:</b> Samantha Kennedy, Director, Environment and Climate Action	
<b>Date:</b> 24 November 2020	<b>For:</b> Decision
<b>Enquiries to:</b> Jason Searles Head of Strategic Development and Compliance <a href="mailto:jason.searles@essex.gov.uk">jason.searles@essex.gov.uk</a>	
<b>County Divisions affected:</b> All Essex	

### **Confidential Appendix**

This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

## **1. Purpose of Report**

- 1.1 To provide information about Essex County Council's arrangements, as the Waste Disposal Authority (WDA), to ensure suitable arrangements for the disposal of certain wastes and the provision of recycling centres.
- 1.2 To seek approval for the approach to the replacement of the current Integrated Waste Handling Contract (IWHC).

## **2. Recommendations**

- 2.1. Agree that after the expiry of the current contract on 31 March 2022 ECC will assume responsibility for operating Recycling Centres for Household Waste (RCHW) and Waste Transfer Stations (WTS) directly.
- 2.2. Agree that the Director, Environment and Climate Change Action will undertake a detailed appraisal of options for the delivery of the RCHWs and WTSs and a recommended approach for delivery will be brought back for a further decision by Cabinet in early 2021.
- 2.3. To agree that ECC will go out to the market to procure contractors to provide:
  - a) Waste Haulage Services;
  - b) Plant and Equipment, including vehicles, operational plant and waste containers for efficient operation of the services;
  - c) Material Marketing Services to sell or pay for the treatment of waste collected

- 2.4 To delegate to the Cabinet Member for Environment and Climate Change Action, in consultation with the Cabinet Member for Finance, the approval of the procurement approach, evaluation criteria, contract length and terms and the award of the contracts.

### **3. Summary of issue**

- 3.1. ECC, as the waste disposal authority (WDA) for Essex, must provide RCHW services, and ensure that suitable arrangements are in place to treat and dispose of all Local Authority Collected Waste (LACW). Such waste arises from the kerbside waste collections undertaken by the Essex Waste Collection Authorities and from the RCHW. As part of this service ECC provides waste transfer stations (WTS) where LACW is bulked for more efficient onward transport.
- 3.2. A Cabinet decision on 1 March 2013 (FP/118/02/13) awarded a contract for the delivery of the IWHC to Veolia ES (UK) Limited (the Contractor) to support delivery of ECC's WDA obligations. The contract expires on 31 March 2022. To continue delivery of these obligations appropriate arrangements must be put in place to maintain the services currently delivered via the IWHC.
- 3.3. The IWHC delivers the following core waste service elements for ECC:
- a) operating and maintaining ECC's RCHW network
  - b) operating and maintaining ECC's WTS network
  - c) treatment and disposal of waste deposited at the RCHW (excluding residual and garden waste)
  - d) bulk haulage of waste from waste transfer stations to treatment and disposal facilities.
- 3.4. The existing IWHC allows for an extension, by negotiation, beyond the initial term of 31 March 2022 for a further period of up to 7 years. ECC commenced dialogue with the Contractor in June 2019 to discuss contract extension options. A Contractor proposal was submitted for a 5-year extension resulting at a cost increase of approximately 30% on the current contract price whilst reducing staffing levels and transferring greater operational and commercial risk to ECC. The price increases were as a result of a changing risk profile and supplier appetite for that profile, alongside increased operating costs. Further discussions did not result in a position acceptable to both ECC and the Contractor and discussions ceased.
- 3.5. Many factors affect ECC's waste service needs and operational requirements. National policy and emerging legislation in the forthcoming environment bill, potential Local Government Reform, European Union exit, local policy and contracting approaches, and shifts in consumer behaviour all contribute to a level of uncertainty within the market, service stability and ultimately market appetite.

- 3.6. Key further consideration for ongoing service delivery is that ECC's future service requirements are likely to be subject to significant change in the medium term (these are outlined in section 1 of Appendix 3). This will impact the composition of LACW, the volumes of waste generated, and have a direct impact on IWHC services. What remains unchanged are ECC's statutory obligations to provide these services. It is, therefore, important to retain control and flexibility to ensure ECC is best placed to adapt and meet these evolving needs, whilst ensuring value for money services.
- 3.7. To help understand the options available for future service delivery, ECC has undertaken a market engagement exercise. This exercise indicated a change since the IWHC was procured. The market for a large integrated service of this nature remains relatively small and is limited to a small number of large waste management companies. The feedback indicated an increased reluctance to accept risk on aspects such as volume risk, waste material value and performance. The market has indicated that an appetite to bid for contracts would be influenced by either ECC accepting greater risk, or by the inclusion of a significant cost premium if risks were to remain with the contractor. These conclusions are supported by our negotiations with the incumbent supplier.
- 3.8. Of the broad options available, ECC have identified three main viable operating models through a process of internal analysis, market engagement and review of other local authority approaches. These three models were subject to qualitative and quantitative reviews to identify a recommended approach to future service delivery. The reviews considered a number of factors including flexibility, market feedback, delivery risk, future fit with ECC ambitions and services, emerging national policy, changing public behaviour and current service operations. These models are:
- a) Fully outsourced
  - b) Disaggregated Outsourced
  - c) Hybrid sourcing

#### **Fully outsourced model**

- 3.9. A fully outsourced model is a continuation of the existing approach integrating the core service elements, delivered by a single primary contractor and would be accomplished by re-tendering the IWHC, by way of a procurement exercise on the existing or similar, commercial terms.

#### **Disaggregated Outsourced**

- 3.10. A disaggregated outsourced model involves procuring different multiple suppliers to deliver aspects of the service by either specialism, geography or a combination of these factors. The existing IWHC could be separated into discrete service contracts such as:
- operation and maintenance of the 21 RCHWs;
  - supply and emptying of all RCHW waste containers;
  - operation and maintenance of the 5 WTS;

- bulk waste haulage from the 5 WTS to treatment/disposal sites and removal of any outputs from the Tovi Eco Park

### **Hybrid Sourcing**

- 3.11. In this model, the operation of RCHW and WTS would be brought in-house for direct delivery by ECC (specific model of delivery yet to be determined) while the following elements would be procured for delivery by contractors
- a) Waste Haulage Services;
  - b) Plant and Equipment, including vehicles, operational plant and waste containers for efficient operation of the services;
  - c) Material Marketing Services; and
  - d) Other ancillary services to meet the operational needs of the recycling centres, waste transfer stations and associated obligations.
- 3.12. Upon expiry of the current IWHC, this option would require transfer of employees and any liabilities associated with them for the RCHW and WTS operations from the Contractor, to ECC and/or to other suppliers. The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) would apply across all considered options for delivery of this service. There are different delivery models into which employees could transfer under this option. These will be subject to further detailed appraisal and brought back to Cabinet for a decision in early 2021. It is important to note that if employees transfer directly into ECC and were to harmonise onto ECC terms they would have access to the Local Government Pension Scheme (LGPS). This is likely to reduce future flexibility as employees transferred out of ECC would retain access to the LGPS. This is likely to deter some organisations from bidding if a decision was taken in the future to put the service back out to the market. It could also require ECC to underwrite some costs. These risks are described and analysed in the Risks Table in Appendix 3.
- 3.13. ECC will request advance employment information from its existing contractors, . While actual TUPE information is not required until 28 days before an actual transfer, this indicative information will allow ECC, and bidders, a high-level understanding of the existing staffing model and any eventual and actual TUPE implications. .

### **Evaluation of options**

- 3.14. To arrive at the recommended approach, officers evaluated the options using qualitative and quantitative techniques, which are outlined in detail in Appendix 3.

### **Indicative Value for Money Results**

- 3.15. A range of scenarios have been analysed against the identified models. The cost range assumed is based on the market intelligence gained throughout the market engagement, baseline vehicle and equipment prices and the

conceptual design around the service area structure. This would need to be developed further and validated as part of due diligence exercises.

- 3.16. The disaggregated model has not been financially reviewed. Without commencing a competitive procurement, no intelligence has been gained to enable a realistic approach to the cost provision. This model has not been financially evaluated due to concerns over delivery viability as detailed in the Appendix 3.
- 3.17. We would anticipate that procuring a Fully Outsourced model on a like for like basis would be likely to result in an increase in the region of £1.7m per annum reflecting indexation which was excluded from the expiring Contract to bring it up to an equivalent cost at today's date.
- 3.18. Since the Contract commenced, the external recycling commodity market has become more volatile and market research suggests that, unlike the with the current contract, any new contractor would not be prepared to bear the pricing fluctuation risk around the cost/income of brokering ECC's recycling in the same way the current IWHC contractor does. This pricing fluctuation risk has been modelled on an estimated price from historic market trends but will be a dynamic variable in all circumstances of contract re-let.
- 3.19. A hybrid sourcing model may have an impact on ECC's insurance premiums if insurers consider that this affects the risk profile of ECC's activities. The insurance implications will require further investigation during the model implementation.
- 3.20. The qualitative assessment and evaluation produces a clear indication that the Hybrid Sourcing Model option, in terms of viability, desirability, achievability and value for money is preferable to the other options as detailed further in the Confidential Appendix and Appendix 3

### **Delivery Models for In-sourcing**

- 3.21. The qualitative and quantitative evaluation undertaken has assumed a Hybrid Sourcing Model that transfers eligible staff directly into ECC. Alternative options are being considered by ECC officers including the creation of a wholly owned trading vehicle to deliver the service and manage the risks.
- 3.22. Options for delivery of the services by ECC are complex and are being investigated and assessed by ECC Officers in ODP, Finance, Legal and operations specialists.
- 3.23. A recommended approach to the delivery model for the in-house portion will be subject to a separate decision brought to Cabinet in early 2021.

#### **4. Options**

- 4.1. Officers have considered a wide range of potential options for the future delivery of the IWHC services. There are two main viable options (Options A and C) available to ECC and three additional options which have been discounted as not viable at this point (Options B and D).

##### **Option A (not recommended): Fully integrated outsourced model**

- 4.2 There is evidence from the market engagement that the global materials market has shifted which means that it is no longer viable for providers to take the risk on this. Appetite for entering contracts without enhanced indexation is low. Critical in ensuring that ECC can drive best value, market analysis has highlighted that dialogue or negotiated tender process is required. Without this process, there is high degree of risk that ECC will not benefit from optimising the structure of the contract. The available timescales do not enable ECC to undertake a competitive dialogue or negotiated tender process. This could result in significantly increased costs (due to contractors charging a risk premium) or lack of motivation to deliver best value (due to incorrect risk apportionment).
- 4.3 This option is not recommended as there are likely to be significant changes in this service area throughout the life of this contract. Whilst contract change mechanisms can be incorporated, such mechanisms lack competitive tension because the changes have to be negotiated with a single supplier. ECC will therefore not see the full financial benefit of these changes.
- 4.4 In addition, there are legislative limits regarding variations on public contracts during their term. Where future flexibility is required from the contractor to protect ECC from future uncertainty, it is likely that contractors will price in the risk, resulting in ECC paying for the flexibility regardless of whether the flexibility is used.
- 4.5 There are a limited number of providers willing to bid for a contract of this scale and they have little appetite to accept the risks currently transferred to them in the existing contract without a significant increase in cost. The risks specifically identified during the market engagement included materials market price and volume of recyclates, inflation and fuel costs. Due to the size of the market, competition will be limited, and it would be difficult to drive value.
- 4.6 If recommended Hybrid Sourcing Model Option D is not carried forward, then at this point, the only deliverable alternative would be this Option B Fully integrated outsourced model and we would need to start immediately to enable delivery within the timeframe.

##### **Option B (not recommended) - Disaggregated outsourced model**

- 4.7 This option is not recommended because this scored poorly in the qualitative appraisal; the interactions between numerous contracts/contractors will be

more challenging for ECC to efficiently manage compared to the other options. This approach would offer less opportunity to deliver future financial savings and service improvements being delivered due to differing motivations of multiple parties.

#### **Option C (recommended):– Hybrid Sourcing Model**

4.8 The approach is recommended as it is best placed to provide ECC with full control of operational elements whilst outsourcing appropriate elements where there is market appetite and improved efficiency can be achieved. In summary this is the preferred option because it:

- Provides control and flexibility to ECC during period of service change and uncertainty
- Provides greater opportunity to align the service with the priorities and values of ECC ensuring whole system benefits are maximised
- Offers value by removing profit margins on many elements that ECC currently pays
- Provides ECC with the best opportunity to minimise the price increase expected if the service were re-procured in its current format
- Provides greater opportunity for small local operators to provide services to ECC
- Ensures any savings achieved fully benefit ECC

The results of the qualitative and quantitative evaluations indicate that this model can offer value for money over a re-procurement of the current service or extension of the current contract with the existing contractor. A table summarising the financial implications of these options can be found in the Confidential Appendix.

4.9 Further detail on both risks and opportunities of this model are provided in the qualitative evaluation and the risk log in Appendix 3.

#### **Option D (Not recommended) – Extend with current provider**

4.10 The current IWHC does allow for an extension. This option was declined as the extension offered by the provider indicated a considerable price increase for no notable improvement to quality, a reduction to staffing levels and transferring greater operational and commercial risk to ECC. The time period for applying an extension to the current contract has now passed and this is not a viable option.

#### **4.11 Next Steps**

4.11.1 If the recommended option as set out in this report is approved, a full analysis of the various in-sourcing options will be undertaken. A recommendation will be made to Cabinet in early 2021 to enable this activity to proceed.

4.11.2 To deliver the recommended option it is proposed to carry out a procurement process for each element of the current IWHC service which is being proposed for outsourcing:

- **Haulage** - procurement of bulk haulage services as required for residual waste and certain biowastes from Essex WTSs to disposal points as nominated in advance by ECC. Vehicle loading will be undertaken by ECC or other contractors. The haulage contractor is also likely to be required to haul Treatment Outputs from the Mechanical and Biological Treatment (MBT) Facility in Basildon to nominated disposal points in accordance with the Treatment Output Material Loading Plan such that maximum stock levels at the MBT Facility are not exceeded. Prices will be subject to indexation according to indices to be agreed via negotiation with bidders along with final contract terms.
- **Plant and Equipment** – purchase or lease of Roll on Roll off vehicle (RoRo) fleet and trailers; materials handlers (or equivalent) and loading shovels for WTS and RCHW operations. Purchase of containers and other equipment as necessary to deliver the RCHW services such as, but not limited to, mobile steps and safety barriers.
- **Materials Marketing Services** - procurement of materials marketing services for all materials (including recyclate and hazardous household wastes) collected across the twenty-one RCHW sites save for green waste and residual waste. ECC will deliver materials to agreed reprocessors or off takers unless collection from RCHW sites is specifically agreed. In addition, the services relating to the collection and disposal of hazardous household wastes as defined by Contract 2111 (which has reached the end of its life) may be included in the procurement in order to maximise the hazardous waste collection and disposal synergies and associated value for money. Costs/income arising from material collection and marketing is likely to be paid on a pass-through basis including a fixed annual management fee for the marketing services and a gainshare where agreed materials price indices are exceeded subject to adjustment for ECC's actual incurred haulage costs. The final payment mechanism will however be subject to negotiation with suppliers. Services may extend to include waste re-use and/or waste recovery services for certain materials as required.
- **Other services** – procurement of other goods and services as necessary to deliver the RCHW and WTS functions such as, but not limited to, provision of uniforms and Personal Protective Equipment. The value of these contracts has been included within the financial modelling but the contracts will not be key decisions and will be procured under delegated authority

4.11.3 Development of the procurement approach and scope for the service elements indicated in recommendation 2.4 and outlined in paragraph above, will be approved by the Cabinet Member for Environment and Climate Change Action with a view to enabling the indicative delivery timeline below to be broadly achieved.

A high-level implementation timeline of key activities for delivery of the recommended approach is detailed in Table 3. The mobilisation period and



lead-in time for services and goods requires an early decision on the adopted approach. If a decision is not taken to enable tenders to be launched in line with the proposed timeline the risk of service and compliance failure is significant.

**Table 3: Indicative Implementation Timeline**

<b>Activity</b>	<b>Timescale</b>
Decide procurement approach for the contracts which will be required.	January 2021
Launch Tenders to the market	February 2021
Cabinet Decision on Delivery Model	February 2021
Invitation to Tender: Marketing Materials and Haulage	April 2021
Invitation to Tender: Plant	April 2021
Evaluate Tenders:	July 2021
CMA for Contract Award	September 2021
Contract Awards	October 2021
Service Mobilisation	October 2021 – March 2022
TUPE CONSULTATION START	January 2022
Receive Full Due Diligence Liability information	March 2022
Service Commencement	1 April 2022

## **5 Issues for consideration**

### **5.1 Employment Implications**

- 5.1.1 If the decision is taken to insource the services as outlined within the Hybrid Sourcing Model option then the Transfer of Undertakings (Protection of Employment) Regulations 2006 Regulations would be likely to apply. At this early (options) stage only indicative due diligence can be undertaken upon information provided by the Contractor in accordance with the contract terms. All modelling (including financial) has been undertaken based on the information provided by the current contractor to date and any outlined assumptions. Any associated benefits / risks should be considered in the same context.
- 5.1.2 The most apparent challenge created by Option C relates to the transfer of staff from the incumbent contractor to ECC and the potential loss of future contracting flexibility and increased costs as a result of the potential pension implications (as highlighted in paragraph 3.12) if staff are transferred directly into ECC. A recommendation on the preferred delivery model to be adopted for Hybrid Sourcing will be subject to a Cabinet decision in early 2021. This will consider the impacts and benefits of the various available options.
- 5.1.3 Good workforce culture is a key to the effective and efficient delivery of such transfers. The staff currently employed by the contractor are committed to the delivery of services which ECC provides to residents. However, such staff

transfers may lead to increases in staff costs. These have been carefully assessed from a financial perspective. As the new employer ECC would be required to take on eligible employees on their existing terms and conditions of employment and would be prohibited from making any changes to the terms and conditions of employment of the transferred employees if the sole or principal reason for the variation was the transfer. However, employers can effect changes to terms where the employer and employee agree the change in circumstances where the sole or principal reason for the variation is an economic, technical or organisational reason for the change.

- 5.1.4 Background information and additional detail of the identified employment and people implications relating to the Hybrid Sourcing Model are highlighted in Appendix 3 section 4.

## **5.2 Financial implications**

- 5.2.1 The Hybrid Sourcing Model recommendation will require Capital Expenditure. An analysis and business case will be presented to ECC's Capital Expenditure Programme to secure capital funding through the 2021/22 budget setting process to support this model.
- 5.2.2 The current Medium Term Resource Strategy (MTRS) 2020/21 contains an increased expenditure post April 2022 for a new contractual provision of £765,000 per annum, against an average annual contract spend of c.£12.8m. There is currently no capital provision allocated for the proposed capital requirement as per table 1, in the confidential appendix ranging from £3.3m to £7.2m dependant on procurement options post tender.
- 5.2.3 Taking the midpoint of the analysis in the table for the in-house position this would instigate a further budget pressure of c.£750,000 which is not included in the MTRS at the current time, from April 2022 including the cost of capital. This is in total less than the cumulative inflationary "true-up" from the current contractual position which would increase this pressure to £950,000, which the service will seek to contain through service transformation initially or, subject to governance, would be met via the Waste Reserve as a last resort if containment was not possible and other funding sources were not identified.
- 5.2.4 The results of the financial modelling indicate that the in-house option delivers the best value for money in terms of mid-point delivery and net present value (NPV). The re-procurement option is marginally less beneficial than the re-procurement of the service, removing third party margins.

### **5.2.5 Financial Risks**

#### **5.2.5.1 Price**

All references to the prices have been supplied as part of the market testing and information gathering carried out during the summer of 2020. Should the procurement generate a different level of lease and capital costs, or should the attractiveness not generate a sufficient competition from that provided as

part of this exercise from either a move in the market, or deliverable third-party capacity (e.g. Covid Restrictions), then the information compiled in this document would need to be subject to re-evaluation.

#### **5.2.5.2 Macro-Economic Risk**

All reference prices have considered indexation within the procurement. The model has recognised this throughout the modelling and assumed an indexation level of 2.5% annually throughout the term. No assumptions have been modelled around currency exchange rate changes or EU Exit risk.

#### **5.2.5.3 Staff**

Staff costs have been modelled over several scenarios and conceptual designs in order to run the service as effectively and efficiently as possible. The Council's Organisation, Development and People (ODP) service have been consulted and approved the methodology applied throughout the scenarios modelled. Final TUPE information would not be available until 28 days before the transfer, although the contractor is required to provide initial information can through the existing contract.

#### **5.2.5.4 Operating Vehicle**

The scenarios demonstrated within this report assume full integration of some staff into the ECC current staffing structure. Officers will continue to evaluate and model implication of using different delivery vehicles to understand risk mitigation and cost efficiency

#### **5.2.5.5 Changes to Service**

ECC may decide during the term of this project to rationalise the RCHW estate or make other changes to the waste portfolio. The project has been modelled on a like for like basis with the same service offering at today. Should any such changes be endorsed, future scenarios would be re-baselined accordingly.

#### **5.2.5.6 Financial Summary**

This paper is based upon assumptions gathered throughout the business case review to source a more financially viable, flexible, and sustainable delivery model for the RCHW and associated residual waste haulage statutory services. The service operation team have been consulted in detail on the modelled assumptions, staff, plant/equipment requirements, and operational costs, approving the model. The continued aim to reduce the impact of costs on the taxpayer drives the financial conclusion, subject to deliverability, affordability and risk mitigation.

The options reviewed are outlined in section 4.

### **5.3 Legal implications**

- 5.3.1 The recommended option of an in-house/outsourced hybrid sourcing model does carry risks which have been highlighted throughout this Report.
- 5.3.2 One significant implication relates to the TUPE of a large workforce from the Contractor to ECC. This, depending on the delivery model adopted, could result in employees being given access to the Local Government Pension Scheme which may cost more than the employees' current pension arrangements both in terms of employer contributions and also in terms of the overall cost of the scheme to ECC if it results in a deficit. Should there be a future decision to re-outsource the service then there will be a requirement to give employees continued access to the pension scheme which will require the employer to become an admitted body to the scheme and ECC will need to give assurances to the pension fund about meeting the future costs of the scheme.
- 5.3.3 By taking direct responsibility for this large physical operation ECC will have the primary duty for the health and safety of employees, customers and visitors at the site. It will therefore be important to ensure that proper procedures are in place for a safe system of work and there will be a need for significant work to ensure the safe operation of the facilities.
- 5.3.4 In relation to the outsourcing of a number of services under any new contracts, ECC is a contracting authority for the purposes of the Public Contracts Regulations 2015 (PCR) and therefore would need to undertake a PCR compliant procurement process where applicable.
- 5.3.5 Any reform of local government is likely to impact all options considered in this Report in particular the outsourcing of a number of services for the new IWHC and drafting may need to be incorporated into these contracts to enable ECC to respond to any changes.

## **6 Equality and Diversity implications**

- 6.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
  - (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
  - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
  - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

- 6.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 6.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

## **7 List of appendices**

Appendix 1 – Equality impact assessment  
Appendix 2 - Confidential Appendix  
Appendix 3 - Evaluation

## **8 List of Background papers**

- IWHC Qualitative Options Appraisal
- IWHC Financial Model
- IWHC contract with Veolia,
- Veolia extension proposal,
- Biffa Hazardous Waste contract (2111)
- Waste Category Plan
- Records of the market engagement exercises.