

**Forward Plan reference number:** FP/258/10/23

<b>Report title:</b> Extension of Residual Waste Framework Service Orders	
<b>Report to:</b> Cabinet	
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<b>Date:</b> 14 November 2023	<b>For:</b> Decision
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<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This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraphs 3 and 5 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

## **1. Everyone's Essex**

- 1.1 Everyone's Essex sets out the Council's strategic commitments for building a better future. A high-quality environment is one of four priority areas for the county.
- 1.2 The Council is working closely with District, City and Borough Councils and service providers to better protect the environment by seeking to reduce the impacts of waste management through waste minimisation, recycling and the adoption of more sustainable services. Although significant steps have been taken in this regard, it remains necessary for ECC to maintain suitable arrangements for the treatment and disposal of residual waste.
- 1.3 The purpose of this report is to seek approval for a 12-month extension to existing service orders for the disposal of residual waste that are due to expire on 31 March 2024. The extension is required to ensure ECC complies with its statutory duty to make disposal arrangements for residual waste collected by Borough, City and District Councils and from Recycling Centres in Essex.
- 1.4 The need for an extension to the existing service orders has arisen following the abandonment of a procurement to secure new medium-term residual waste treatment services. The abandonment was due to no compliant bids being received by ECC. An extension to the existing service orders will ensure residual waste disposal continuity for a period of 12 months from 1 April 2024 to 31 March 2025, enabling sufficient time for a new tender for medium term arrangements to be launched and awarded.

## 2. Recommendation

- 2.1 Agree to extend the service orders awarded to Enovert South Limited and Veolia ES (UK) Limited for Lots 1, 2 and 3 under the terms of Residual Waste Framework Agreement (0538) for a period of 12 months from 1 April 2024 to 31 March 2025.

## 3. Background and Proposal

- 3.1 ECC is the statutory Waste Disposal Authority (“WDA”) for Essex and is required to make appropriate arrangements for the disposal of local authority-collected waste. This includes residual waste, typically comprising of unsorted black bin/black bag waste collected by the Essex Waste Collection Authorities and residual waste collected at the Recycling Centres for Household Waste in Essex.
- 3.2 ECC established a Framework Agreement in October 2017 (FP/756/02/17) for the treatment and disposal of residual waste and transfer and haulage, this was awarded to multiple suppliers under the following Lots:
- Lot 1 Disposal Only of RDF and/or Municipal Solid Waste
  - Lot 2 Disposal Only of Municipal Solid Waste only
  - Lot 3 Disposal Only of Bulky Waste only
  - Lot 4 Transfer and Disposal of direct delivered waste
  - Lot 5 Transfer and Haulage of direct delivered waste
- 3.3 Under this Framework Agreement, ECC has run several mini competitions to award service orders to suppliers for the treatment and disposal of residual waste. The most recent mini-competition was concluded in September 2021 and made awards to the following suppliers in the following Lots for a period of 18 months:

Lot	Provider(s)	Annual Tonnage
Lot 1 and 2 (combined)	Enovert - Colchester	240,000 (inc. guaranteed minimum tonnage (GMT))
Lot 1	Veolia – Ockendon Veolia - Pitsea Veolia - Rainham Viridor - Ipswich	0 – 250,000 0 – 25,000 0 – 100,000 0 – 25,000
Lot 2	Veolia – Ockendon Veolia - Rainham Viridor - Ipswich	0 – 200,000 0 – 50,000 0 – 25,000
Lot 3	Enovert – Colchester Veolia – Ockendon Veolia - Rainham	0 – 50,000 0 – 25,000 0 – 25,000
Lot 4	James Waste - Rochford	0 – 100,000
Lot 5	James Waste - Rochford	0 – 25,000

- 3.4 It is the intention of ECC to replace the current framework arrangement with a new medium-term residual waste treatment contract. The process to procure a new contract commenced on 24 August 2022 (FP/377/04/22) with the publication of tender documents to secure residual waste treatment outlets prior to the expiry of the current service orders.
- 3.5 Unfortunately, for various technical reasons relating to the tender documents the tender issued on 24 August 2022 was withdrawn by ECC in October 2022. A subsequent tender issued December 2022 was also abandoned on 10 May 2023 due to no compliant bids being received by ECC. ECC is planning to launch a further tender in January 2024. However, the period that the waste team require to run a procurement of this complexity and mobilise the solution means new arrangements will not be in place prior to the expiry of the current length of existing service orders. This leaves a residual waste disposal service gap of up to 12 months that must be addressed.
- 3.6 The framework agreement expired in October 2021, so ECC is not permitted to run any further mini competitions under it. However, ECC is permitted under the terms of the framework to extend existing service orders by mutual agreement with the supplier.
- 3.7 The service orders themselves take the form of separate contracts which can be extended on the same terms. This represents a quick and simple way to secure capacity. Given the short term need to secure waste disposal capacity in Essex and the focus of the waste team on undertaking a third procurement, the use of service order extensions is considered the most appropriate route to meet the short-term disposal needs of ECC.
- 3.8 During the period 1 April 2024 and 31 March 2025, ECC has a need for the disposal of residual waste and bulky waste only. Extensions in relation to lots 1, 2 and 3 only are therefore required.
- 3.9 ECC has approached all three contractors with existing service orders under lots 1, 2 and 3 to enquire whether they are willing to extend service orders by up to 12 months until 31 March 2025. There is no requirement to extend service orders issued under lots 4 and 5, as these relate to waste transfer and waste transport services, for which ECC put a Bulk Waste Haulage Contract in place on 5 August 2021.
- 3.10 The proposed extension, which Cabinet is asked to agree would be on existing terms and conditions with only the expiry date being amended. We have informally discussed extension with all providers on lots 1-3. In discussions with Viridor (Valencia) we discussed service order extensions under lots 1 and 2, however, they declined to accept. The recommendation is therefore to extend the existing service orders with the following organisations as detailed below.

Lot	Provider	Award tonnage per annum	12 Month Service Order Extension
Lot 1 and 2 (combined)	Enovert South Limited: Colchester	0 - 266,667	Yes
Lot 2 Municipal Solid Waste only	Veolia ES (UK) Limited: Ockendon	0 – 133,333	Yes
	Veolia ES (UK) Limited: Rainham	0 – 133,333	Yes
Lot 3 Bulky	Enovert South Limited: Colchester	0 – 50,000	Yes
	Veolia ES (UK) Limited: Ockendon	0 – 50,000	Yes
	Veolia ES (UK) Limited: Rainham	0 – 50,000	Yes

3.11 Over the 12-month extension period, circa 334,000 tonnes of residual waste is expected to be generated and require disposal. The suppliers who have agreed in principle to extend their service orders will collectively be able to fully meet the residual waste disposal needs of ECC.

#### 4. Links to our Strategic Ambitions

4.1 This report links to the following strategic priorities in the Organisational Strategy 'Everyone's Essex':

- A high-quality environment

4.2 This proposal links to Everyone's Essex Strategy to deliver a high-quality environment, minimise waste, and contribute towards ECC's net zero carbon ambition. Whilst ECC will continue to work to reduce the amount of residual waste generated it remains necessary to secure disposal outlets for waste. Extension of existing service orders will ensure local compliant routes are secured. By ensuring ECC is able to access local facilities for residual waste will enable ECC to minimise transport distances reducing the environmental impacts and costs associated with moving waste.

#### 5. Options

##### **Option 1: (Recommended) Extend current residual waste disposal service orders for 12 months.**

ECC has a statutory duty to make arrangements for the disposal of local authority collected residual waste. Extending the existing service orders by a period of 12 months will provide the required capacity for the disposal of residual waste whilst a new medium term disposal contract is procured. The terms of the Residual

Waste Framework Agreement (0538) permit an extension of this length. This is the recommended option as it is likely to result in the best value outcome.

**Option 2: Dispose of residual waste via direct award ad-hoc agreements with waste disposal operators.**

As a local authority, ECC must comply with the Public Contracts Regulations 2015. The direct award of service contracts, such as these, with values exceeding £213,477 is unlawful without undertaking a compliant procurement process and may be subject to challenge causing harmful reputational and financial implications.

**Option 3: Undertake a Procurement Process to award a short-term contract for a period of 12 months.**

To undertake a short-term procurement process for 12 months is unlikely to deliver ECC value for money. A contract of this duration is not attractive to the market so is likely to lead to poor competition and therefore an increase in Gate Fees. There would be considerable expenditure required to enable ECC to resource the design of a new tender. Even with a limited duration such as 12 months, the technical requirements associated with awarding a statutory service of this nature are significant and therefore a 'light touch' approach would not be suitable to ensure that risks are fully mitigated and due diligence is exercised. There are the further considerations of operational disruptions and potential impact for the districts and boroughs when attempting to demobilise and mobilise a contract of this complexity within a limited time period. This is not a recommended option.

## **6. Issues for consideration**

### **6.1 Financial implications**

6.1.1 The estimated cost of the award for the preferred option of each annual service order is set out in the Confidential Appendix.

6.1.2 The contractual cost of entering into the service orders set out in this decision, taking into account best value disposal point locations and subject to award tonnage per annum set out in paragraph 3.10 is £42m. Any variation away from the tonnage profiles and disposal point locations assumed will lead to a variation in contractual cost.

### **6.2 Legal implications**

6.2.1 The Framework Agreement was procured and implemented in accordance with a Cabinet Decision taken in March 2017 and the published tender documents.

6.2.2 The Framework Agreement provides for service orders awarded via a mini-competition to be extended by agreement. The mini-competition has been conducted in accordance with the published procedures for awarding service orders under the Framework Agreement and notification letters will be issued to

successful bidders pending approval of this decision. Under The Public Contracts Regulations 2015, a standstill period is not required for awards under a framework agreement.

6.2.3 Subject to approval of this decision, amendments to service orders extending the expiry date will be completed to allow providers sufficient mobilisation time prior to commencement of the services from the 1 April 2024.

6.2.4 Further legal advice is set out in the confidential appendix.

## **7. Equality and Diversity Considerations**

7.1 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.

7.2 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).

7.3 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.

## **8. List of Appendices**

Appendix 1 – Equality Comprehensive Impact Assessment

Appendix 2 – Confidential Appendix

## **9. List of Background Papers**

None