



Committee report

Committee	EXECUTIVE
Date	8 JULY 2015
Title	APPOINTMENT OF SERVICE PROVIDER FOR THE ISLE OF WIGHT'S INTEGRATED WASTE MANAGEMENT CONTRACT
Report of/to	THE EXECUTIVE MEMBER FOR SUSTAINABILITY, ENVIRONMENT AND PUBLIC REALM

EXECUTIVE SUMMARY

1. This purpose of this report is to agree the award of the integrated waste management contract to the Preferred Bidder following recent negotiations to finalise the details of the contract between the council and the Preferred Bidder.
2. The Executive approved the appointment of the Preferred Bidder and the Reserve Bidder when it met on 23 June 2015

CONFIDENTIAL / EXEMPT ITEMS

3. The appendices to this report outline the areas which have been under discussion with the Preferred Bidder and the outcomes that have been agreed. It contains commercially sensitive information and is therefore exempt from publication by virtue of paragraph 3 part 1 section 12A of the Local Government Act 1972 because it relates to the Preferred Bidder's specific operational and technical solutions which are commercially sensitive. Publication of this information could be damaging to the Preferred Bidder's business. At the time of drafting this report these matters were still under negotiation and therefore the appendices will be provided to members as soon as they are available.

BACKGROUND

4. The scope of the procurement of the integrated waste management plan was outlined in the report to Cabinet which included the Outline Business Case (OBC) in February 2013. Both the report to Cabinet and the OBC are available as a background paper to this report.
5. The report to Executive in June 2015 provided detailed background to the procurement exercise to let a new integrated waste management contract for the Island (the new waste contract). That report is available as a background paper to this report.

6. The council entered into an integrated waste management contract with Island Waste Services (part of the Biffa group) in 1997 for the provision of waste management services on the Island. The contract was for a period of 12 years with an option for it to be extended by a further six years bringing the contract period to a maximum of 18 years. The council exercised its option to extend the contract by the full six year period at an early point in the contract in order to allow Island Waste Services to invest in the waste derived fuel plant. This meant that the contract would end in October 2015. There is no further provision in the contract for it to be extended beyond this date. Therefore this contract will expire on 26 October 2015.
7. AmeyCespa LG Limited was appointed as the Preferred Bidder in June 2015 following a rigorous procurement exercise using the competitive dialogue process as provided for in the European law - the Public Procurement Directive (2004/18/EC), as implemented in the United Kingdom by the Public Contract Regulations 2006 (as amended). The Preferred Bidder was selected following evaluation of its solution against the award criteria set out in the contract notice advertised in the Official Journal of the European Union.
8. The council, in its capacity as a contracting authority, is required to comply with the procurement rules referred to in paragraph 7 and devise and publish the award criteria (i.e. setting out how tenders will be evaluated and scored) at the commencement of the procurement. This is to enable any potential providers to understand how the contracting authority will evaluate submissions throughout the procurement.
9. For the first stage of the procurement process – the pre-qualification - a stand-alone evaluation criteria was published. This criteria was developed by the council and approved by the Project Board in consultation with the Member Review Board. The criteria for pre-qualification assessed the financial credibility and experience of potential providers to ensure that they were appropriate to participate in the procurement process.
10. The award criteria for the main stages of the procurement of the new waste contract (from invitation to submit outline solutions through to call for final tenders), was developed by the council and approved by the Project Board with consultation with the Member Review Board with input from external legal, financial and technical advisors. The award criteria applied to the evaluation of all submissions throughout the procurement. All submissions were evaluated using an assessment of quality and price. The quality evaluation of the solutions was assessed under three headings - technical, legal and finance.
11. When devising the award criteria the council was keen to ensure that the balance between the quality and price elements was set appropriately. The quality of the service to be delivered is of great importance to the council but also given the general financial climate it was necessary that price was given sufficient weighting so that savings from the new waste contract could be delivered.

STRATEGIC CONTEXT

12. Since the current waste contract was let in 1997 there have been significant changes in the waste industry, legislation and national waste policy. These changes, along with the expiry of the current waste contract, are the drivers for a new waste contract. The scope of services covered by the new waste contract reflects these developments and is sufficiently flexible to deal with future changes in law as well as it being flexible generally to accommodate changes in circumstances in a timely manner and ensure there is maximum value for money to residents within the available resource allocation at all times.
13. The council's corporate plan, the priorities it sets and the outcomes are designed to achieve the council's vision of ensuring that 'the Island is a great place to live, work and visit'. The procurement of a new waste contract for the collection and management of the Island's domestic waste will support the council in achieving its priorities of:
 - supporting growth in the economy, making the Island a better place and keeping it safe, by encouraging the recycling and reuse of materials above their disposal and in a way that reduces the overall cost of the service to the Island;
 - ensuring that all the resources available to the Island are used in the most effective way in achieving the Island's priorities; and
 - supporting Sustainable Communities (Eco Island) Strategy.

THE NEW WASTE CONTRACT

14. The Preferred Bidder is required to deliver the following core services within the scope of the contract:
 - the collection of household waste and recycle (both chargeable and non-chargeable)
 - the provision of civic amenity sites and bring banks
 - the provision of re-use and minimisation services
 - the treatment and disposal of waste and recycle
 - the treatment and disposal of waste delivered by third parties
 - management and client interface
15. AmeyCespa's solution to deliver the new waste contract incorporated all the core services. A synopsis of the Preferred Bidder's solution is set out in Appendix 1.
16. During the evaluation of the submissions in response to the Call to Final Tender a number of issues were identified which require clarification during the Preferred Bidder stage. The Preferred Bidder was made aware of these issues at the time of its appointment and since that date meetings have been held with the Preferred Bidder (30 June, 1 July and 2 July), to finalise the matters outstanding.

17. The outstanding issues are summarised Appendix 2 and the Preferred Bidder has pledged to work with the council in partnership to resolve these issues.
18. Until these issues are resolved the final details of the new waste contract cannot be published. To this end a further, updated report will be made available to members prior to their meeting on 8 July 2015.
19. The procurement process will end with the expiry of a ten-day standstill period which will start following the award of contract. To reach that point, during the Preferred Bidder stage, the council will:
 - refine outstanding issues in the Preferred Bidder solution
 - commence stakeholder communication stream
 - finalise the contract documentation
 - commence a financial and commercial work stream in preparation for the contract
 - complete the final business case
 - identify contract management arrangements
 - prepare the mobilisation programme.

CONSULTATION

20. Prior to starting the procurement process and throughout the procurement to date, there has been regular contact with a number of stakeholders, including:
 - Bi-monthly meetings of both the Project Board and the Member Review Board. Both the Project Board and Member Review Board make up part of the governance arrangements for this project. The Project Board is made up of senior officers of the council who review the progress of the project and act as a decision making body for the administration of the project. The Member Review Board is made up of both the Leader and Deputy Leader of the council and the Executive Member for Sustainability, Environment and Public Realm. The purpose of the Member Review Board is review the progress of the project and to review decisions made by the Project Board in administering the project.
 - Seven all-member information briefing events have been delivered to keep members updated on the progress of the procurement of the new waste contract
 - Two briefings to CMT/Executive
 - Presentation to chair of scrutiny 2013
 - Customer service survey – October/November 2014 seeking views on future service provisions. The results were passed to potential providers to assist them in developing their respective solutions
 - Discussions with the waste industry (soft market testing). A series of meetings with organisations operating in the waste sector took place during May 2013 prior to the start of the procurement. The purpose of these meetings was twofold: to inform the market of the pending procurement and for the market to gain and understanding of the council's requirements. From the council's perspective, the meetings

were beneficial in that the council gained an understanding of market and received reassurance that there was a mature market which would compete for the contract. It also provided a flavour of the solutions that the market would be able to deliver.

LEGAL IMPLICATIONS

21. Under the Environmental Protection Act 1990, the council, as a unitary authority has the duties and powers associated with both a waste collection authority and a waste disposal authority. The duties include the collection, treatment and disposal of household waste and a duty to provide civic amenity sites where residents can deposit household waste.
22. Under The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, the responsibility to determine matters related to waste is reserved to Executive. Although the agreement to award the new waste contract is reserved to Executive for decision and such decision can be taken by that body only, Full Council will have the opportunity to debate the new waste contract and make recommendations to Executive for it to consider when making the decision to award the contract.
23. The council's current integrated waste management contract expires in October 2015 and does not contain any provision enabling it to be extended. The council must therefore let a new waste contract to commence when the current contract comes to an end.
24. A contract for services with a lifetime value of in excess of £173,934 (at the time this procurement commenced), is required to be let in accordance with the Public Contract Regulations 2006 (as amended) the Public Procurement Directive (2004/18/EC). The council has a choice under this legislation of how it lets this contract and as the contract was deemed to be of a complex nature, the competitive dialogue process was the best process to follow to let the new waste contract.
25. The council has so far followed the steps required in the competitive dialogue process to procure the new waste contract and will complete the procurement in accordance with the Public Contracts Regulations 2006 (as amended).

EQUALITY AND DIVERSITY

26. The council has statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between people who share a protected characteristic and those who do not. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

27. An Equality Impact Assessment was carried out at the start of the project. This will be reviewed and refreshed for contract award and will continue to be reviewed and refreshed at the conclusion of the meetings with the Preferred Bidder and circulated to all members.

FINANCIAL/BUDGET IMPLICATIONS

28. During the development of the OBC various options were assessed to provide an estimate of cost of providing the services starting in 2015. The cost of the new waste contract was estimated to be £13m per annum at 2012 prices and inflated annually thereafter (for on-Island treatment) or £11.3m per annum at 2012 prices and inflated annually thereafter (for off-Island treatment).
29. The cost of the new waste contract will be significant (in the region of £250m over the lifetime of the contract) and appropriate budgetary provision exists to meet the cost of the new waste contract. It was recommended and agreed that the affordability indicated in paragraph 36 be reduced by 20% from the estimated costs to a maximum of £9m per annum in real terms, subject to inflation. The reducing budget of the council makes it necessary to seek savings/efficiencies from the new waste contract.
30. The Preferred Bidder has submitted a solution which falls within the maximum £9m per annum in real (uninflated) terms for each year of the proposed contract period.

OPTIONS

31. Executive is asked to consider the following options in relation to the new waste contract:

Option A – to award the integrated waste management contract to the Preferred Bidder AmeyCespa on the terms negotiated during the procurement process and agreed as at the date of this meeting.

Option B – to award the integrated waste management contract to the Preferred Bidder AmeyCespa on substantially the terms negotiated during the procurement process and agreed during the Preferred Bidder phase with the authority to finalise the details of the terms being delegated to the Managing Director in consultation with the Leader.

Option C – not to award the integrated waste management contract to the Preferred Bidder AmeyCespa; to cease negotiations with the Preferred Bidder and commence negotiations with the Reserve Bidder.

Option D – not to award the integrated waste management contract and terminate the procurement process

RISK MANAGEMENT

32. In considering the options set out above, Executive is asked to have regard to the fact that the current contract comes to an end on 26 October 2015 and the council will need arrangements in place to ensure that it is able to comply with its statutory duties as both a waste collection and disposal authority. However, there are a number of matters which may prevent this from happening.
33. It is possible, but unlikely, that the Preferred Bidder meetings held between 30 June and 2 July will fail to deliver a resolution or a substantive resolution to the outstanding issues. At that point, the council would consider whether it should cease the negotiations with the Preferred Bidder and start negotiations with the Reserve Bidder. This would need to take place with some urgency in order that the Reserve Bidder can mobilise in sufficient time to be in a position to commence delivery of services from 1 November 2015 or to allow the council time to make appropriate interim arrangements
34. The council must have regard to the timetable it intends to follow to obtain agreement to the award of contract and ensure all substantial outstanding issues have been or are being resolved, to mitigate against any exposure the council may have to challenge under the procurement legislation and avoid any suggestion that it had already decided to award the contract to the Preferred Bidder.
35. Any formal challenge mounted under the procurement legislation would mean an automatic suspension of the process which would not only cause delay in the ultimate award of the contract but could cause the process in its entirety to be abandoned resulting in considerable wasted costs on the part of the council and the bidders.
36. The council would expect (and any court would expect), that prior to mounting any formal challenge, if the aggrieved bidder considers it has grounds for a challenge, it would raise them with the public authority in the first instance for consideration and thereby hopefully negating the issue of any court proceedings.
37. There is further risk that unless proper consideration is given at this stage, the council could also be exposed to judicial review. Whilst it can only be accepted that, to date, steps have been taken to ensure that the procurement of the new waste contract is done properly and in accordance with both the legislation relating to procurement and good governance, in acting in haste this could be seriously undermined.

EVALUATION

38. A detailed evaluation of the council's position to award the contract to the preferred bidder will be provided to the Executive following the conclusion of the Preferred Bidder meetings.

RECOMMENDATION

39. The recommendation to Executive is to be proposed following the conclusion of the Preferred Bidder meetings to be held on 30 June – 2 July when an update report will follow

APPENDICES ATTACHED

Appendix 1 - **CONFIDENTIAL** - Synopsis of Preferred Bidder solution under negotiation (to follow)

Appendix 2 - **CONFIDENTIAL** - List of outstanding issues under negotiation (to follow)

Appendix 3 - Equality Impact Assessment (to follow)

BACKGROUND PAPERS

[Cabinet Report – 12 February 2013 and Outline Business Case](#)
[Executive Report – 23 June 2015](#)

Contact Point: Sue Dasent, Strategic Manager: Procurement and Contracts
☎ 821000 e-mail sue.dasent@iow.gov.uk

CLAIRE SHAND
Head of Resources

CLLR LUISA HILLARD
Executive Member for Sustainability,
Environment and Public Realm