



**Executive**  
15 October 2012

**Report from the Director of  
Environment and Neighbourhood  
Services**

Wards Affected:  
ALL

**Managing the Public Realm**

**1.0 Summary**

- 1.1 The current contract for waste, recycling and street cleaning ends on 31 March 2014. This report sets out the proposals for a new contract to manage 'Public Realm' services of waste, recycling, street cleaning and grounds maintenance and requests approval to invite tenders as required by Contract Standing Orders 88 and 89. The aim for the new contract is to improve resident satisfaction through greater joining up of services whilst delivering financial savings.
- 1.2 Soft market testing with a wide range of providers showed a strong interest because of the scale and innovative approach being demonstrated by the four boroughs (Brent, Barnet, Richmond and Hounslow). It also gave useful guidance on how best to bring the proposals to market to maximise the quality and minimise the costs.
- 1.3 Three options for the new contract have been evaluated:  
Option 1 Brent Council and Brent Housing Partnership (BHP) public realm contract only;  
Option 2 a collaborative procurement and on-going management across the boroughs of Brent, Barnet, Richmond and Hounslow and BHP;  
Option 3 a joint procurement across the four boroughs.

- 1.4 A detailed analysis of the risks, benefits and potential savings has highlighted Option 2 - a collaborative procurement as the way forward that would deliver the most benefits and financial savings.
- 1.5 Paragraph 3.6 also sets out proposals for Brent to secure a depot site, as without a site we are limiting the potential providers and hence we are unlikely to achieve the best possible price from the contract.

## **2.0 Recommendations**

- 2.1 The Executive to give approval to the Council participating in a collaborative procurement and service delivery exercise known as 'Managing the Public Realm' for the provision of waste, recycling, street cleaning and grounds maintenance services.
- 2.2 The Executive to note that Brent will act as the Lead Authority for the procurement exercise.
- 2.3 The Executive to give approval to officers to invite tenders for the Managing the Public Realm Services contract in accordance with paragraphs 2.4 and 2.5.
- 2.4 The Executive to give approval to an exemption from Contract Standing Order 88 to allow an advert to be placed and a pre-qualification process to be run without the approval of evaluation criteria and certain other pre-tender considerations, subject to approval of such matters at a future Executive.
- 2.5 That the Executive give approval to certain pre-tender considerations for the proposed Managing the Public Realm Services contract as set out in paragraph 3.8.5 of the report.
- 2.6 The Executive to note the proposed interim governance arrangements set out in paragraph 3.7.1 and ask that Officers report back to the Executive for approval to final governance arrangements once developed further.
- 2.7 That the Executive agree to an amendment of £6.2m to the Council's capital budget for 2012/13 to procure a new depot as set out in section 3.6 of the report. If a suitable site is identified, due to the reasons set out in paragraph 3.6.6, that the final terms of any acquisition including the purchase price be delegated to the Director of Regeneration and Major Projects and the Director of Finance and Corporate Services in consultation with their respective Lead Members. Such purchase price to be contained within the amendment to the Council's capital budget as set out within this report

## **3. Detail**

### **3.1 Background**

- 3.1.1 Overall the Council spends just over £16M per annum on waste and recycling, street cleaning, grounds maintenance and winter gritting. The budgets for 2012/13 are set out below. The One Council Programme saving target for this project is £1.35M pa from 2014/15.

<b>2012/13 budgets</b>	
Grounds Maintenance	£2.35M
Street cleansing	£7.0M
Refuse collection	£2.7M
Recycling and organics collection -	£4.2M
Winter Maintenance	£0.2M
<b>Total</b>	<b>£16.45M</b>

- 3.1.2 'Public Realm' incorporates all areas to which the public has open access. Public Realm operations normally include street cleansing, grass cutting, horticulture, graffiti clearance and toilet cleaning. The purpose of such operations is to improve the way Brent "looks and feels", helping people feel better about their surroundings by making Brent a cleaner and tidier place.
- 3.1.3 Councillors have also highlighted the problems caused for residents when boundary issues affect the quality of service e.g. different people litter pick on street and in parks; different teams of people mow the grass in Brent's parks and on Brent Housing Partnership (BHP) estates; and at borough boundaries these issues are even more pronounced. This project will address some of these issues.

## **3.2 Soft market testing**

- 3.2.1 The London Boroughs of Brent, Barnet, Hounslow and Richmond have been working together to explore options for collaborative procurement and sharing key environmental services. As part of this early thinking, the four boroughs held a soft market testing exercise to understand the potential savings from a collaborative approach. The key findings were:
- This would be a ground breaking, innovative approach to delivering public realm services. It would be the largest contract of its type in the UK.
  - The level of savings from the collaborative option would be greater than a single borough procurement process.
  - To get the best possible price it was essential that Brent and Barnet had a depot site available when the contract documents are published.
  - The creation of one single client and one fully integrated contract bring the most savings.
  - The benefits of full integration will be realised if the contract is of adequate length.
  - To maximise savings, in the short term, the four boroughs should be considered as a group of two plus two (Brent and Barnet, and Hounslow and Richmond). Where possible, during the early part of the contract the specifications would be aligned on a 2+2 basis. Again, where possible full alignment of specifications and services across the four boroughs

should be sought over the life of the contract, delivering further efficiencies and savings.

- In Brent and Barnet there are many similarities in the specification for grounds maintenance and the development of common specifications is possible.
- Different standards of service could be negotiated by one local authority as part of the same contract, for example to maintain Brent's green flag parks.

### **3.3 Scope**

3.3.1 The following activities are within the overall scope of the contract:

- Household waste collections and recycling
- Street Cleansing operations
- Graffiti clearance
- Winter maintenance
- Cleansing of public conveniences
- Grounds maintenance to parks and open spaces (including BHP estates)
- Grounds maintenance to cemeteries and grave digging
- Highway verges and shrub beds
- Playground inspection and maintenance
- Warden service
- Commercial waste

3.3.2 Richmond and Hounslow are only buying waste and recycling services due to other contractual commitments.

3.3.3 Communications, behaviour change and customer contact could be included within the scope of contract. The decision will be made before the procurement process and in discussion with neighbouring authorities.

### **3.4 OPTIONS APPRAISAL**

3.4.1 Three options have been identified and appraised:

- Option one – Brent Council and Brent Housing Partnership (BHP) public realm contract.
- Option two – Full collaborative approach (full alignment of services and specifications, one client structure).
- Option three – Joint procurement only.

3.4.2. The following paragraphs set out the overall analysis of the options and the financial impact is set out in section 4.

#### **Option one – Brent Council only public realm contract**

3.4.3 This option assumes that Brent Council procures waste, recycling, street cleansing and ground maintenance services with BHP. The benefits of this are:

- Waste, street cleansing and grounds maintenance become harmonised and managed as part of the same public realm contract leading to increased customer satisfaction and journey.
- Common data systems, processes and procedures are developed for all public realm functions within Brent.
- The public realm contract leads to the development and retention of a multi skilled workforce.
- Increased local identity as a range of services are managed under one single contract.

3.4.4 The key risks associated with this option can be summarised as follows:

- The size of the contract means that the One Council savings target cannot be achieved without service reductions which would be visible to the public and damage the reputation of Brent Council.
- The client arrangements for the new public realm contract result in significant reductions in headcount and that staff responsible for managing the delivery of the project activities are at risk of redundancy during the key stages of the project life cycle.
- The project organisation structure is not adequately resourced to manage a project of this scale, as staff will need to manage day to day activities.
- Brent is unable to identify suitable land for depot development for the next contract leading to reduced competition and lower efficiency savings.
- Residents continue to see differences in services across borough boundaries.

#### **Option two – Collaborative approach with alignment of services, specifications and one client structure**

3.4.5 In this option, the four local authorities and BHP would work together on the procurement of the next public realm contract. A joint procurement process, contract management and service delivery could deliver a number of savings which will be quantified in detail during the procurement process and include:

- Staffing and overhead costs if the supplier managed the services for the four boroughs as one contract.
- Procurement and legal costs through going to procurement once rather than four separate times.
- Redesigning waste and recycling routes across borough boundaries, meaning that fewer vehicles and fewer teams are required.
- The opportunities to purchase and maintain one fleet across four boroughs.
- Multi-skilled staff able to carry out a range of local tasks in a neighbourhood including street sweeping, litter picking and mowing.

3.4.6 Contractors attending the soft market testing sessions indicated that the maximum level of savings would be achieved from this option. In general the estimated savings were approximately 10-20%; with some projecting savings in excess of 25%.

3.4.7 In the short term the specifications would be designed around a two plus two arrangement (Brent and Barnet; Richmond and Hounslow). Where possible, full alignment of specifications and services will take place over the life of the contract. The specification will be drafted so borough specific requirements are fully taken into account.

3.4.8 The other benefits are:

- The integration of services and local authorities will improve the customer journey as similar services and standards would apply in a significant area of London.
- One client and one contractor delivering the next public realm contract will result in significant cultural harmonisation by shared processes and procedures; one single IT platform; and the same contract monitoring systems.
- The integration of services across the four local authorities would result in new and innovative ways of service delivery.

3.4.9 The key risks associated with this option can be summarised as follows:

- The project does not lead to the projected level of savings suggested by providers during the soft market testing.
- The group of authorities are unable to reach alignment of specifications and harmonisation of services resulting in lower economies of scale and higher pricing from contractors.
- The timetable is tight for a collaborative procurement process and the project is being sufficiently resourced. If any of the partners were to withdraw, Brent will continue and deliver for the 1 April 2014 contract commencement.
- That other local authorities withdraw their commitment to work together on the procurement of their environmental services.
- Due to the financial pressures, the contractor is unable to resource to meet and be responsive to local needs which would affect the quality of the service.
- Not enough consideration is given to the process and time needed to form the new client organisation, agree its structure, legal support and funding provision in relation to Brent's strict procurement timetable.
- Brent and Barnet are not able to identify a depot for the next contract with reduced competition and lower efficiency savings; or that the location of depots and tipping points for the collection and disposal functions are not optimised leading to reduced efficiency savings.
- The West London Waste Authority and the North London Waste Authority are not able to reach agreement on allocation of waste to their respective waste collection authorities and so Brent and Barnet are unable to share fleet or waste collection routes.

## **Option three – Joint procurement**

3.4.10 This option assumes that the four local authorities and Brent Housing Partnership work together on the procurement process of the next public realm contract only. Most of the contractors indicated that the level of savings would be very marginal. The benefits of this approach are:

- Reducing the cost of procurement by sharing it across four boroughs.
- Some knowledge pooling and sharing of good practice could be achieved as a result of this option.

3.4.11 The key risks associated with this option can be summarised as follows:

- The project does not lead to significant level of savings in the contract cost, leading to service reductions to achieve the savings targets.
- Other local authorities withdraw their commitment to work together on the procurement process given the reduced level of savings projected.
- Residents continue to see boundary issues with different levels of service.

### **3.5 Recommended Option**

3.5.1 Considering the risks, the benefits and disbenefits and the financial savings shown in section 4, the recommended way forward is option 2 – the full collaboration project. This means that the London Borough of Brent would procure a contract on behalf of itself and the London Boroughs of Barnet, Richmond and Hounslow for the provision of waste and recycling, and additionally for street cleansing and grounds maintenance services for Brent, Barnet and Brent Housing Partnership together.

### **3.6 Depot**

3.6.1 The soft market testing clearly demonstrated that it was essential for Brent to obtain a depot if it were to get a competitive price from the procurement. A depot would accommodate various public realm operations including refuse vehicle parking, bin storage, a salt barn and a maintenance facility, depending on the site area acquired. Based on the overall future model for delivery of the public realm contract, the size of the site required is up to 5.6 acres. A site is being sought primarily in strategic industrial locations and the Council's desired site search criterion is a six miles radius around Central Wembley in all directions.

3.6.2 During the procurement of the current waste contract, the lack of a Council depot led to the withdrawal of a number of competitors. This lack of competition is estimated to cost the Council circa £270k per annum on the contract price. The Council also currently incurs service associated site leasing costs of circa £286k per annum. A Council depot will therefore give rise to savings of up to £556k per annum and also provide for flexibility around service delivery and joint working arrangements with partner boroughs. The

estimated net annual operational savings being derived from this work stream are included in the financial model.

- 3.6.3 A site is being sought that will accommodate all or some of the public realm operations specified in paragraph 3.3.1, as the search is being determined by the size and configuration of sites available in the market. A cost/benefit analysis will therefore be carried out on each potential site on a case by case basis to support the acquisition.
- 3.6.4 There is no suitable vacant Council owned or leased land that can be made available for use as a depot. Based on sites available in the market and the search criteria, the estimated freehold purchase cost of a site is up to £6.2m. The desired timescale for acquiring the site is prior to March 2013. An amendment of £6.2m to the Council's capital budget for 2012/13 is therefore required.
- 3.6.5 Collaboration with a partner borough on joint depot use is also desirable. The Council is currently in discussions with Barnet on reciprocal site arrangements that could involve two sites that complement each other so that opportunities for co-location of facilities and efficiency savings resulting therefrom can be secured. Each borough has a separate responsibility for the collection of waste. The depot proposal therefore does not compromise Brent's obligations with respect to waste transfer to the West London Waste Authority.
- 3.6.6 Several suitable sites within the search criterion have been identified and negotiations with the land owners are currently underway. However it is known that there are a number of other local authorities and private operators seeking similar sites. So if current negotiations prove fruitful the Council will need to be able to respond swiftly to any opportunity. It is therefore recommended that, if Members approve the principle of the Council acquiring a site, by authorising an amendment to the 2012/13 capital budget, that the conduct and conclusion of the land transaction, including the main terms and conditions be delegated to the Director of Regeneration & Major Projects and the Director of Finance and Corporate Services in conjunction with their respective Lead members. However leasing arrangements will also be considered in the event a site cannot be acquired under freehold purchase.

### **3.7 Project management arrangements**

- 3.7.1 A interim collaborative governance structure for the project management has been put in place with Brent as the lead authority. The management of the project will be based on Prince 2 principles. The sponsor will lead a Project Board supported by a Working Group of service specialists and lead support services. Subject to Executive approval of procurement Option 2, further work will be undertaken to produce a robust final governance structure for the procurement and subsequent operation of the service.
- 3.7.2 The six work streams are:
- Work stream one – Strategy and technical development:



- Public realm strategy development: support the procurement process and establish the vision for the public realm from 2014 onwards
- Specifications: to support the preparation and the on-going delivery of the procurement process
- Waste disposal functions: develop service level agreements with the waste disposal authorities
- Work stream two – Depot. This work stream will identify and secure suitable land to build a depot facility for the next public realm contract
- Work stream three – Procurement. This work stream will manage the whole procurement process until the start of mobilisation
- Work stream four – HR matters:
  - Staff consultation and engagement
  - Transfer of staff currently providing services delivered in house (grounds maintenance and officers from the highways operations team) pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”).
  - Establishment of a small client structure in preparation for the next contract
- Work stream five – Governance and client arrangements. This work stream will account for activities needed to set up the new client structure and how the contract will be managed.
- Work stream six – Mobilisation and service delivery. This work stream represents the activities necessary to successfully mobilise the new contract and introduce medium to long term changes to the services during the life of the next contract. A plan will be developed to minimise the risk of any service failure between contract award and contract start date in the case of a change of contractor. More detailed plans will be developed as the project progresses.

### **3.8 Procurement**

- 3.8.1 It is the intention to seek approval to tender for the contract in this report. However as there are a number of outstanding issues in relation to TUPE, the specification and the final scope of the contract, it is envisaged that a secondary report addressing these issues will be prepared for a future Executive. As Contract Standing Orders 89 requires the approval of certain pre-tender consideration before the tender process starts, and the evaluation criteria are not yet finalised, an exemption is being sought in relation to this provision of Standing Orders.
- 3.8.2 Waste Services are defined as Part A services under the Public Contract Regulations 2006 (the “EU Regulations”) . Grounds Maintenance, which accounts for a smaller percentage of the total estimated cost, is Part B. Where the value of the part A element outweighs the value attributable to the Part B element, then the contract must be treated as a Part A service under the EU Regulations on the basis of aggregation. The procurement process will therefore adhere to the EU Regulations in their entirety.

- 3.8.3 Given the complexities of developing the scope of services, both in terms of individual Borough requirements and the difficulties that collaboration can create, plus the very high value and long term nature of the contract, officers are seeking to let this contract via Competitive Dialogue. The key advantage of the Competitive Dialogue process is that dialogue with suppliers is permissible up until the final submission of tenders. This will allow the Boroughs to develop the specification during the process, reducing unnecessary or expensive processes and giving the opportunity to incorporate innovation. It is anticipated that there will be an initial two stage approach of Pre Qualification followed by an Invitation To Tender (ITT) for selected bidders. The highest three scoring tenders at this stage will be subject to an Invitation to Participate in Dialogue (ITPD) prior to a final specification being agreed and despatched for final return. The exact methodology and numbers of ITT and ITPD have yet to be agreed and a detailed outline will be provided at a future Executive.
- 3.8.4 The soft market testing of nine leading suppliers indicated contract lengths of anywhere from an initial 5 years with an option for 5 years up to a first term of 10 years with extension to 20 years. The majority of responses were around the 7 to 8 years mark with a similar extension term to allow reinvestment at the start of any extended period. Previous discussions with the incumbent supplier identified vehicle write off times as 7 to 8 years and as this is the highest asset in terms of capital investment, it is proposed to have an 7-9 year initial term with an option for another 8 years to allow write off of capital expenditure.
- 3.8.5 In accordance with Brent's Contract Standing Orders 88 and 89, pre-tender considerations have been set out below:

Ref	Requirement	Response
(i)	The nature of the service	Waste, recycling, street cleaning and ground maintenance.
(ii)	The estimated value	Based on current budgets the contract value would be over £16M per annum for Brent and £30M for Brent, Barnet, Richmond, Hounslow and Brent Housing Partnership.  Based on the current budgets, over the 16 year life of the contract the value is over £700M for all four participating boroughs and BHP.
(iii)	The contract term	Up to a maximum period of 16 years with an initial term of 7-9 years and a subsequent term of a further 8 years on condition of satisfactory performance. The cross-borough contract(s) will start from 1 April 2014 and the Brent specific aspect will commence on 1 April 2014 for waste, street cleaning and recycling and 1 September 2014 for grounds maintenance.
(iv)	The tender procedure to be adopted	Competitive Dialogue

Ref	Requirement	Response
(v)	The procurement timetable	<p>Indicative dates are:</p> <ul style="list-style-type: none"> <li>• Preparing for the procurement process (August 2012 – October 2012)</li> <li>• Procurement process (November 2012 – September 2013)</li> <li>• Mobilisation (October 2013 – March 2014)</li> <li>• Service Delivery (April 2014 – onwards)</li> <li>• Full Alignment (during the life of the contract)</li> </ul> <p>Officers will report back to the Executive at a later date with full details of the timetable for procurement process.</p>
(vi)	The evaluation criteria and process	<p>Prequalification documentation and shortlists are to be drawn up in accordance with Brent's Standing Orders and Management Guidelines namely the pre-qualification questionnaire and thereby meeting the Council's financial standing requirements, health, safety and environmental standards, technical capacity and technical expertise.</p> <p>The panel will evaluate the tenders to establish the Most Economic Advantageous Offer. Officers will report back to the Executive seeking approval to the tender evaluation criteria.</p>
(vii)	Any business risks associated with entering the contract	See paragraphs 3.4.4, 3.4.9, 3.4.11.
(viii)	The Council's Best Value Duty	This procurement process and on-going contractual requirement will ensure that the Council's Best Value obligations are met.
(ix)	Any staffing implications, including TUPE and pensions	See Sections 5 and 7
(x)	The relevant financial, legal and other considerations	See Sections 4 and 5

## 4.0 Financial Implications

4.4.1 It is important to highlight that costs and savings used in the financial analysis are to be considered a best assumption of potential future scenarios. The procurement process may highlight issues and complexities which cannot be predicted at this stage. The project costs and forecast savings may change as

a result of the collaborative project (e.g. the costs required to align services across the four organisations over the life of the contract are unknown).

4.4.2 The table below sets out the operating costs assumed for option 2 over the life of the contract. These will be covered from the savings arising from the collaborative project. The estimates will be updated as the project develops.

	£'000
Strategy Development and development of service level agreements	50
Procurement	250
Redundancy	300
Establishing contract governance, partnership arrangements and programme management	270
Service delivery- changes to current service delivery model and aligning future services	1780
TOTAL	2,650

4.4.3 The following table sets out the indicative financial analysis. An estimate of potential redundancy costs and repayment of the Depot's borrowing costs are factored in the net operational savings figures.

4.4.4 Options 1 and 3 both fall short of the £1.31m savings target set by the One Council Programme Board even when the maximum saving per annum is achieved, in 2019/20. The shortfall is even greater in the earlier years with these options. If the council chose to go with Options 1 or 3 it is likely that the quality and/or frequency of service would need to be reduced to address the shortfall.

4.4.5 This shows that Option 2 - full collaborative procurement and service alignment over time would deliver the maximum level of savings over the life of the contract and is likely to be able to deliver a good standard of service. However, in 2014/15 there is a shortfall of £0.3m against the One Council targets and this will be offset against greater savings that follow in later years.

INDICATIVE NET OPERATIONAL SAVINGS			
	OPTION ONE BRENT ONLY	OPTION TWO COLLABORATIVE PROJECT	OPTION THREE JOINT PROCUREMENT
2012/13	(50)	(150)	(110)
2013/14	(227)	(397)	(337)
2014/15	719	997	629
2015/16	999	1,577	949
2016/17	894	1,542	894
2017/18	1,080	1,728	1,080
2018/19	1,080	1,728	1,080
2019/20	1,199	2,184	1,199
2020/21	1,199	2,084	1,199
2021/22	1,199	2,084	1,199
2022/23	1,199	2,084	1,199
2023/24	1,199	2,084	1,199
2024/25	1,199	2,084	1,199
2025/26	1,199	2,084	1,199
2026/27	1,199	2,084	1,199
2027/28	1,199	2,084	1,199
2028/29	1,199	2,084	1,199
2029/30	1,199	2,084	1,199
<b>Total</b>	<b>17,684</b>	<b>30,049</b>	<b>17,374</b>

4.4.6 There would be further savings for BHP. These have not yet been quantified as they would arise for the Housing Revenue Account budget and so cannot be counted as a saving for Brent Council.

## 5.0 Legal Implications

- 5.1 The estimated value of the proposed contract over its lifetime is in excess of £500,000 and therefore the procurement and award of the contract is subject to the Council's Contract Standing Orders and Financial Regulations in respect of High Value Contracts. This is the case irrespective of whether or not the option to procure jointly with other councils is selected as the estimated value of Brent Council's element alone is in excess of £500,000.
- 5.2 As detailed in sections 3.1-3.4 of the report, the proposal is to procure a contract for a number of services, namely waste, street cleansing, recycling and grounds maintenance. These services consist of both Part A and Part B Services under the Public Contracts Regulations 2006 (the "EU Regulations"). When such services are purchased together as part of the same procurement, it is necessary to establish whether the Part A or Part B elements have the greater financial value as that determines the classification. Part A services are by far the largest element of the proposed contract and therefore the procurement will be classed as a procurement of Part A Services. The result of this is that the procurement, given it is over the relevant financial threshold under the EU Regulations, will be subject to the

full application of the EU Regulations. It will therefore be necessary for the Council to observe all relevant procedural rules, time limits etc. required by the EU Regulations.

- 5.3 Under the Council's Standing Orders, as the contract is classed as a High Value Contract, approval of the Executive is required for authority to tender and for authority to award of such contract once the tendering process is undertaken. For High Value Contracts Contract Standing Order 88 states that a report seeking authority to tender should set out the pre-tender considerations detailed in Contract Standing Order 89. This report seeks and exemption from Contract Standing Order 88 to enable an advert to be placed and a pre-qualification process to be run without full consideration of all pre-tender considerations. The intention is however to report back to the Executive with full details of pre-tender considerations prior to inviting tenders. Following evaluation of tenders, Officers will need to report back explaining the procurement process undertaken in tendering the contract and recommending award.
- 5.4 As detailed at paragraph 3.5, Officers are recommending a collaborative procurement. Contracts Standing Order 85 details that any collaborative procurement should comply with the Council's Standing Orders and Financial Regulations. As it is intended that Brent Council should lead on any collaborative procurement, Brent's own Standing Orders and Financial Regulations would be used for the procurement of the contract. In procuring the contract, Brent Council will act as a central purchasing body under the EU Regulations. In advertising the contract, Brent Council will need to be specific as to the description of public bodies or categories of public bodies able to access the contract.
- 5.5 Officer wish to procure the contract in accordance with the competitive dialogue procedure. The EU Regulations provide that the competitive dialogue procedure may only be used in for the procurement of particularly complex contracts where the authority considers the use of the open or restricted procedure will not allow the award of the contract. It is considered that if all 4 authorities are collaborating in the procurement, the contract will satisfy the description of a particularly complex contract in that the council is not able to properly define the technical means capable of satisfying its needs or objectives. In reaching this conclusion Officers have had regard to, inter alia, the requirement of the contract to achieve service alignments between all 4 councils with the complications of staggered start dates and the involvement of different waste authorities.
- 5.6 In any collaborative procurement, it is essential that clear and effective inter-borough arrangements are put in place, not only in connection with the procurement process but also in relation to the subsequent operation of the contract. An interim collaborative governance structure has been agreed as detailed at paragraph 3.7.1 pending Executive approval of procurement options but Officers will need to establish more detailed governance arrangements. Officers will need to ensure appropriate legal, financial and other relevant advice is obtained in establishing suitable governance

arrangements for the project and ensure that under such arrangements there is clear accountability and liability as between the councils. This will be particularly important if Brent Council is to act as lead authority.

- 5.7 The procurement will involve transfers of staff pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”). Currently elements of the service to be procured are outsourced not only by Brent but also by other councils. Staff employed by current contractors would therefore TUPE transfer to any new contractor that may be appointed. In addition to staff transferring pursuant to TUPE from one contractor to another, the intention is also to include within the procurement services that are currently provided in-house. In Brent Council’s case, Officers within the Sports and Parks Service provide grounds maintenance services and some staff in Highways Operations provide cleansing services. These Officers together with those detailed in Section 7 below would be liable to TUPE to a successful contractor on their current terms and conditions. The Council would need to impose contractual requirements on the successful contractor to ensure such staff continue to have access to the local government pension scheme or a broadly comparable pension scheme. Given the numbers of Council staff involved in the proposed outsourcing, Executive approval is required to such proposal. Further information regarding staff is detailed in Section 7.
- 5.8 The proposed contract will impact on staff currently providing services covered by the proposed procurement. Officers will therefore need to undertake a full equalities impact assessment.
- 5.9 Section 149 of the Equality Act 2010 provides that a public authority must, in the exercise of its functions, have due regard to the need to eliminate discrimination, advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. Those functions include the functions as an employer and as the provider of waste, recycling, street cleaning and ground maintenance services. Decisions as to how operations are provided and managed, including a decision as to whether to outsource the arrangements for grounds maintenance, are subject to the equalities duty. Consequently Officers will complete an Equality Analysis as an integral part of the decision making process.
- 5.10 The intention is that BHP will be part of the collaborative procurement in respect of the grounds maintenance element. Detailed regulations have been produced under Section 20 of the Landlord and Tenant Act 1985 (‘the 1985 Act’) which sets out the precise procedure landlords must follow when letting qualifying long term agreement , such as that proposed for grounds maintenance, if the landlord is to be able to recover from any contributing tenant (i.e. leaseholders who have purchased from the Council the leasehold interest of their homes under the Right to Buy) more than £100 in any accounting period (usually 12 months) towards the costs under the agreement. These regulations are the Service Charges (Consultation Requirements) (England) Regulations 2003. As the procurement is subject to

the full application of the EU Regulations, including advertising in the Official Journal of the European Union (“OJEU”), there is a need to consult tenants prior to the issue of the OJEU Notice. There is a 30 day consultation period at this pre-tender stage. There is a similar 30 day consultation period following selection of a preferred contractor and prior to award of contract. The landlord must have regard to any observations made as a result of the consultation. Following the second phase of consultation prior to the award of the contract, the landlord must respond directly in writing to the tenant within 21 days of receipt setting out their response to the observations.

## **6.0 Diversity Implications**

- 6.1 Officers carried out a Predictive Equality Impact Assessment. The preliminary findings are that there is a risk of a differential impact on the grounds of: race, disability and age, if we were to stop providing assisted collections for example. The project will take these potential impacts into account during the procurement process and ensure that any potential adverse impact is mitigated so far as is possible.
- 6.2 In addition, as the proposals for the new client arrangements develop, officers will carry out a separate Equality Analysis to understand the impact on Brent Council’s employees.

## **7.0 Staffing/Accommodation Implications (if appropriate)**

- 7.1 For Brent, whilst the majority of staffing implications are for staff currently employed by the current contractor, there are implications for existing Brent staff in Sports and Parks and Highway Operations. The proposal is that in excess of 50 council staff providing grounds maintenance and a number of staff in other services are transferred to the successful provider. In addition, if the decision is to create a single client arrangement a small number of staff in waste and recycling would be affected.
- 7.2 Council policy concerning the protection of accrued and future pension rights of ex-council employees (if any) and current council employees transferring to a private sector employer will need to be followed in the tendering process
- 7.3 The need for a depot is set out in section 3.6.

### **Background Papers**

None

### **Contact Officers**

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