

 Brent	Decision of Cabinet Member for Environment, Infrastructure and Climate Action
	Report from the Corporate Director, Resident Services
AUTHORITY TO ISSUE A DIRECT AWARD TO WEST LONDON WASTE AUTHORITY FOR THE REPROCESSING OF COMINGLED RECYCLING MATERIALS AND HOUSEHOLD BULKY WASTE COLLECTIONS	

Wards Affected:	All
Key or Non-Key Decision:	Key Decision
No. of Appendices:	0
Background Papers:	0
Contact Officer(s):	Oliver Myers Head of Environmental Strategy, Commissioning and Climate Change Tel: 020 8937 5323 Oliver.Myers@brent.gov.uk

1.0 Introduction

- 1.1 This report concerns the contracts for the reprocessing of comingled recycling materials and household bulky waste collections. This report requests individual Cabinet Member approval to waive the requirement to tender for contracts and directly award them to West London Waste Authority (WLWA) pursuant to Regulations 12, Public Contracts Regulations, 2015 and in accordance with paragraph 13 of Part 3 of the Constitution.

2.0 Recommendation(s)

That the Cabinet Member for Environment, Infrastructure and Climate Action, having consulted with the Leader:

- 2.1 Exercises delegated powers to grant an exemption from the usual Contract Standing Orders requirement to tender High Value and Medium Value Contracts in respect of:

- i) A contract for Reprocessing Comingled Recycling Materials
 - ii) A contract for Household Bulky Waste Collections (non-key)
- 2.2 Confirms there are good operational and / or financial reasons for granting the exemptions referred to in Recommendation 2.1.
- 2.3 Approves award of a contract for Reprocessing Comingled Recycling Materials Services to WLWA for a term of two years in the estimated sum of £2.773M.
- 2.4 Approves the award of a contract for Household Bulky Waste Collections Services to WLWA for a term of two years with an option to extend by a further year in the estimated sum of £297k (the award of contract for Household Bulky Waste Collection is a non-key Cabinet member decision and therefore will not be subject to call-in)

3.0 Detail

- 3.1 On 16 August 2021, Cabinet approved the Redefining Local Services Final Delivery Model and the Integrated Street Cleansing, Waste Collections & Winter Maintenance Contract Procurement Strategy. The Delivery Model adopted a specialist contracts approach and accordingly, it was agreed that the recycles reprocessing element of the Public Realm Contract, let to Veolia, was in future procured as a separate service to the waste collections contract. This will provide the Council with the opportunity to change providers on a more frequent basis (for instance two yearly, to allow adjustment for market changes) rather than including this with the waste collections contract as currently.
- 3.2 The WLWA as the authority was set up specifically as a statutory waste disposal authority responsible for the disposal of waste collected by the London Boroughs of Brent, Ealing, Harrow, Hillingdon, Hounslow and Richmond upon Thames. The authority is governed collectively by councillors that are chosen by the six Boroughs including one councillor chosen by Brent. Officers wish to use the WLWA to procure the reprocessing of comingled recycling materials service on our behalf as it is uniquely placed, as our statutory waste disposal authority, to understand the needs of the council, the region and the marketplace in order to devise the best arrangements for the procurement and delivery of these services. A review indicated that this will provide better value for money and increased income from the recycle materials. WLWA already has a materials reprocessing contractor in place, N+P Group Ltd, which is contracted to provide these services for any of the West London boroughs until 5 June 2025. The direct award to WLWA will be relying on the "Teckal" exemption under Regulation 12, Public Contracts Regulations, 2015 (PCR 2015). The proposed Teckal arrangement will enable

the Council to procure the service by contracting directly with WLWA without the need to undertake an open procurement exercise.

- 3.3 Subject to award of a contract for Reprocessing Comingled Recycling Materials Services to WLWA, the Council will enter into a tripartite agreement between the Council WLWA and N+P Group Ltd., dealing with the practical arrangements for managing the contract.
- 3.4 The decision to award the contract for Reprocessing Comingled Recycling Materials Services to WLWA is classed as a key decision due to the value of the contract and the estimated costs are shown below:

	Year 1 £M	Year 2 £M	Total estimated cost/surplus £M
1) Reprocessing of comingled recycling materials	1.727	1.046	2.773

- 3.5 The pre-tender considerations relevant to the contract for Reprocessing Comingled Recycling Materials Services are as follows:

Ref.	Requirement	Response	
(i)	The nature of the services / supplies / works.	As detailed above	
(ii)	The value.	£2.773M	
(iii)	The contract term.	Two years	
(iv)	The tender procedure to be adopted.	Direct Award	
(v)	The procurement timetable.	Stage in Procurement	Indicative dates
		Contract start date	01.04.23
(vi)	The evaluation criteria and process.	N/A – Direct Award	
(vii)	Any business risks associated with entering the contract.	No specific business risks are considered to be associated with entering into the Contract.	
(viii)	The Council's Best Value duties.	For the reasons set out in paragraph 3.2, it is considered that Direct Award will result in the Council achieving best value.	

Ref.	Requirement	Response
(ix)	Consideration of Public Services (Social Value) Act 2012	Not applicable although the outcome of the Contract is designed to benefit those living in Brent.
(x)	Any staffing implications, including TUPE and pensions.	There are no implications for Council staff arising from the procurement.
(xi)	The relevant financial, legal and other considerations.	Financial – See Financial Implications Section below.
		Legal – See Legal Implications section below.
		Other – N/A
(xii)	Sustainability	Given the nature of the Contract, it is not possible to include specific sustainability requirements.
(xiii)	Key Performance Indicators / Outcomes	Appropriate Key Performance Indicators / Outcomes will be included in the Contract.
(xiv)	London Living Wage	The Contract will require the payment of the London Living Wage
(xv)	Contract Management	A contract manager will be appointed and appropriate contract management provisions will be included in the Contract.

- 3.6 Household Bulky Waste Collections currently form part of the Public Realm Contract which comes to an end on 31 March 2023. This service was included as a provisional item in the specification for the Integrated Street Cleansing, Waste Collections and Winter Maintenance Services Contract (the 'Integrated Contract'), to give the council flexibility to explore alternative options for service provision. The price for the service in the new contract in Year 1 would have been £257k and this would be based on a fixed cost of two vehicles and crews, one for white goods and one for other bulky items.
- 3.7 During the Competitive Dialogue process for the new Integrated Contract, officers established that better value would be achieved for the collection and disposal of household bulky waste by contracting with the WLWA and using the WLWA's Dynamic Purchase System Framework. An assessment has concluded that using this commissioning route will provide a better service for users and the environment, with an estimated annual saving per annum of £158k. Users will receive a quicker collection service as data from the current WLWA household bulky waste collections contractor show that 110,000

movements were carried out last year across the whole of the UK and 99.4% of these were carried out on the day requested (on a same or next day basis generally).

- 3.8 The new commissioning arrangement will be based on a variable rather than a fixed cost basis, which provides much better value than under the Integrated Contract as we pay a fixed rate even if service demand decreases, while we would have to pay for an additional vehicle(s) and crew if demand increases sufficiently. Another benefit is that more of the material collected will be sent for reuse and recycling, as Veolia currently compacts all non- White Goods items which are then sent straight to disposal.
- 3.9 The pre-tender considerations relevant to the contract for Household Bulky Waste Collections Service (the “Contract”) are as follows:

Ref.	Requirement	Response	
(i)	The nature of the services / supplies / works.	As detailed above	
(ii)	The value.	£297,339	
(iii)	The contract term.	Two years plus the option of a one-year extension	
(iv)	The tender procedure to be adopted.	Direct Award	
(v)	The procurement timetable.	Stage in Procurement	Indicative dates
		Invited Bid	27.02.23
		Checking Bid	10.04.23
		Contract start date	22.05.23
(vi)	The evaluation criteria and process.	N/A – Direct Award	
(vii)	Any business risks associated with entering the contract.	No specific business risks are considered to be associated with entering into the Contract.	
(viii)	The Council’s Best Value duties.	For the reasons set out in paragraph 3.7, it is considered that Direct Award will result in the Council achieving best value.	
(ix)	Consideration of Public Services (Social Value) Act 2012	Not applicable although the outcome of the Contract is designed to benefit those living in Brent.	

Ref.	Requirement	Response
(x)	Any staffing implications, including TUPE and pensions.	There are no implications for Council staff arising from the procurement.
(xi)	The relevant financial, legal and other considerations.	Financial – See Financial Implications section below.
		Legal – See Legal Implications section below.
		Other – N/A
(xii)	Sustainability	Given the nature and value of the Contract, it is not possible to include specific sustainability requirements.
(xiii)	Key Performance Indicators / Outcomes	Appropriate Key Performance Indicators / Outcomes will be included in the Contract.
(xiv)	London Living Wage	The Contract will require the payment of the London Living Wage
(xv)	Contract Management	A contract manager will be appointed and appropriate contract management provisions will be included in the Contract.

4.0 Financial Implications

- 4.1 The direct award for the comingled materials contract is initially for two years as WLWA has an existing contract in place that covers this period. Based on an assessment from WLWA, the cost is estimated to be £1.7m in year one. The cost for year two is estimated to be £1m at today's prices.
- 4.2 The annual value of the contract for the provision of household bulky waste collections service is £99k per annum. The award of the contract is for an initial period of two years, with an option to extend for one further year, making the total cost of the contract £297k at today's prices. A net saving of £158k is anticipated as a result of this commissioning route, which will contribute towards the cost of the new Integrated Contract.
- 4.3 Both contracts are subject to inflationary increases and this risk needs to be considered as part of the Council's Medium Term Financial Planning.
- 4.4 The costs will be fully funded from the overall Redefining Local Services budgets. Any savings as a result of this commissioning route will contribute towards the cost of the new Integrated Contract.

5.0 Legal Implications

- 5.1 The estimated value of the Reprocessing Comingled Recycling Materials Services contracts is £2.773M over its lifetime of 2 years and as such is classed as a High Value Contract under the Council's Contract Standing Orders and Financial Regulations. The estimated value of the Household Bulky Waste Collections Service over its lifetime of two years with an option to extend by one year is £297,339 and as such is classed as a Medium Value Contract under the Council's Contract Standing Orders and Financial Regulations. Both contracts are in excess of the PCR 2015 threshold for Services and the award of the contracts are therefore governed by the PCR 2015.
- 5.2 Under the Council's Contract Standing Orders, High Value and Medium Value Contract are to be procured by way of a tender process. However Individual Cabinet Members have delegated authority, in consultation with the Leader, to grant a waiver from this requirement provided to do so would not be contrary to the PCR 2015. For the reasons detailed in paragraph 5.4 below, granting a waiver to permit a direct award would not be contrary to the PCR 2015.
- 5.3 Pursuant to paragraph 13 of Part 3 of the Constitution, Individual Cabinet Members also have delegated authority, in consultation with the Leader, to award High Value Contracts and award Medium Value Contracts, when these are referred to the Cabinet Member by a Chief Officer, subject to such award not being contrary to the PCR 2015. For the reasons detailed in paragraph 5.4, it is considered that direct award is legally permissible.
- 5.4 As stated in paragraph 3.2 above Officers recommend direct award of the contracts to WLWA pursuant to Regulation 12, PCR 2015 (the "Teckal" exemption). Under the Teckal exemption, the Council is permitted to award contracts directly to an entity that meets the requirements of Regulation 12 of the PCR, namely:

"A public contract awarded by a contracting authority to a legal person falls outside the scope of this Part where all of the following conditions are fulfilled:

- (a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;*
- (b) more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority; and*
- (c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.*

- 5.5 A contracting authority shall also be deemed to exercise over a legal person a control similar to that which it exercises over its own departments where it exercises jointly with other contracting authorities a control over that legal person which is similar to that which they exercise over their own departments". Regulations 12(3)(4). The Council is regarded as exercising such control over WLWA.
- 5.6 The award of the contract for Reprocessing Comingled Recycling Materials Services is classed as a Key Decision and as such the decision to award will be subject to a call in period of at least 5 days following publication of the decision on the internet prior to implementation of the decision.
- 5.7 Officers have been advised by the current contractor that there are no staff eligible to transfer to the WLWA under the Transfer of Undertakings (Protection of Employment) Regulations 2005.

6.0 Equality Implications

- 6.1 Pursuant to s149 Equality Act 2010 (the "Public Sector Equality Duty"), the Council must, in the exercise of its functions, have due regard to the need to:
- (a) eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it,
- 6.2 The Public Sector Equality Duty covers the following nine protected characteristics: age, disability, marriage and civil partnership, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 6.3 Having due regard involves the need to enquire into whether and how a proposed decision disproportionately affects people with a protected characteristic and the need to consider taking steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it. This includes removing or minimising disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic.
- 6.4 There is no prescribed manner in which the council must exercise its public sector equality duty but having an adequate evidence base for its decision is necessary.
- 6.5 The proposals in this report have been subject to screening and officers believe that there are no equality implications.

7 Consultation with Ward Members and Stakeholders

- 7.1 Consultation on the Final Redefining Local Services Delivery Model was undertaken in 2021 and the results were included in the 16 August 2021 Cabinet report referenced at para 3.1 above.

8 Human Resources/Property Implications

- 8.1 There services will be provided by an external contractor and there are no human resources implications for Council staff. There are no property implications either at this stage.

9 Public Services (Social Value) Act 2012

- 9.1 The Council is under a duty pursuant to the Public Services (Social Value) Act 2012 (“the Social Value Act”) to consider how services being procured might improve the economic, social and environmental well-being of its area; how, in conducting the procurement process, the Council might act with a view to securing that improvement; and whether the Council should undertake consultation. Officers have had regard to considerations contained in the Social Value Act in relation to the proposed awards.

Report sign off:

PETER GADSDON
Corporate Director, Resident Services