

	<b>Decision of Cabinet Member for Environment, Infrastructure and Climate Action</b>
	<b>Report from the Corporate Director, Resident Services</b>
<b>Authority to issue a direct award to West London Waste Authority for the processing and sale of recycled paper &amp; card</b>	

<b>Wards Affected:</b>	All
<b>Key or Non-Key Decision:</b>	Key Decision
<b>Open or Part/Fully Exempt:</b> (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
<b>No. of Appendices:</b>	None
<b>Background Papers:</b>	N/A
<b>Contact Officer(s):</b> (Name, Title, Contact Details)	Georgia Platt, Senior Environmental Strategy and Change officer 020 8937 3265 Georgia.Platt@brent.gov.uk

## 1.0 Purpose of the Report

- 1.1 This report concerns the contract for processing and sale of recycled paper and card. This report requests individual Cabinet Member approval to waive the requirement to tender for a contract and directly award the contract 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 a medium value contract for the processing and sale of recycled paper and card.
- 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 the processing and sale of recycled paper and card to WLWA for a term of two years with an option to extend by one year in the estimated sum of circa £1.815M.

### **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. A contract for reprocessing comingled recycles was awarded to WLWA earlier this year. This report now concerns a separate contract for the processing and sale of recycled paper and card, which will be collected separately from comingled recycling, when the new alternate weekly twin stream recycling service for kerbside properties starts in October 2023.
- 3.2 This proposed contract will generate an income of circa £1.815 because of the sale of the paper and card to a third-party manufacturer.
- 3.3 The direct award to WLWA will be relying on the Teckal exemption under regulations 12, Public Contracts Regulations, 2015. Teckal exemption allows the Council to contract directly with 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 councilors that are chosen by the six Boroughs including one councilor chosen by Brent. The proposed Teckal arrangement will enable the council to procure the services by contracting directly with WLWA without the need to undertake an open procurement exercise.

- 3.4 The decision to award the contract for the processing and sale of recycled paper and card to WLWA is classed as a key decision due to the value of the contract and the estimated costs are shown below:

	Year 1 £K	Year 2 £K	Year 3 £K	Total estimated surplus £M
Processing and sale of recycled paper and card	-341,866	-708,676	-764,740	£-1,815,282

- 3.5 The pre-tender considerations relevant to the contract for processing and sale of recycled paper and card are as follows:

Ref.	Requirement	Response	
(i)	The nature of the services / supplies / works.	As detailed above	
(ii)	The value.	£1.815M income	
(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.	<b>Stage in Procurement</b>	<b>Indicative dates</b>
		Contract start date	1 October 2023
(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 paragraphs 3.1 and 3.3 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.	
(x)	Any staffing implications,	There are no implications for Council staff arising from the procurement.	

Ref.	Requirement	Response
	including TUPE and pensions.	
(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 income from the sale of recycled paper and card is estimated to be £1.05m over the initial contract term of two years, plus additional £765k if one year extension is applied.
- 4.2 The generated income will be reinvested back to support the waste management service.

#### 5.0 Legal Implications

- 5.1 The estimated value of the Contract for the processing and sale of recycled paper and card is £1.815M over its lifetime of two years plus option of extension by one year. As such, it is classed as a Medium Value Contract under the Council's Contract Standing Orders and Financial Regulations. The estimated value of the proposed Contract is in excess of the PCR 2015 threshold for Services and the award of the contract is therefore governed by the PCR 2015.

- 5.2 Under the Council's Contract Standing Orders, Medium Value Contracts 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 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 contract 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 the processing and sale of recycled paper and card is classed as a Key Decision and as such the decision to award the Contract 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 advised in paragraph 3.5(x) that there are no TUPE implications for Council Staff arising from this Procurement.

## **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.

## **7.0 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.

## **8.0 Human Resources/Property Implications (if appropriate)**

8.1 The 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.

## **9.0 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