

EXECUTIVE MEMBER DECISION



REPORT OF:	Leader
LEAD OFFICERS:	Director of Environment and Operations
DATE:	12 July 2019

PORTFOLIO/S AFFECTED:	Environmental Services
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WARD/S AFFECTED:	All
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SUBJECT: Kerbside Recycling Contract

1. EXECUTIVE SUMMARY

The Kerbside Recycling contract has recently been tendered. Unfortunately, no bids were submitted despite extensive soft market testing and allowing bidders the opportunity to bid back their risk position.

The existing contractor, Biffa, has made it clear that they are not prepared to extend their contract for the collection, haulage and processing of recyclates beyond 31 March 2020.

In order for the Council to discharge its statutory responsibilities as a Waste Collection Authority and a Waste Disposal Authority, it is imperative that provision is made for the collection and disposal of recyclates from residents of the Borough and that an alternative method for continuing this service is put in place to be fully operational with effect from 1st April 2020.

The Council's Waste and Recycling Programme Board has met to consider the options. Given;

- The failure to secure any bid submissions following the recent tender exercise, despite the extensive soft market testing and opportunity for bidders to bid back their risk position
- The fact that Biffa have clearly stated that they will not continue their service beyond 31st March 2020 and,
- The high risks associated if the council undertakes a further tender exercise (i.e. the risk that no bids would be submitted, or if bids are submitted, the risk that the timescales are insufficient to implement a new service by 1st April 2020),

the Board has concluded that the Council must revert to the 'default' position which is;

- to bring the collection service in-house at the end of the current contract on 31st March 2020, and
- to tender separately for the reception, haulage and processing of the recyclates.

In order to ensure that the service can be maintained, and that the Council's statutory responsibilities are met on 1st April 2020, based on the above, the decision to adopt the 'default position' and to begin preparations for the on-boarding of the service is required by the end of July 2019 due to the lead-in time required to manufacture the six refuse vehicles.

2. RECOMMENDATIONS

Given the fact that no bids were submitted in the tender exercise and that the Council must discharge its statutory responsibilities as a Waste Collection Authority and a Waste Disposal Authority, the Leader is recommended;

1. To consider the recommendation of the Council's Waste and Recycling Programme Board and, noting the 'default position', to accept taking the kerbside collection of recycling in-house at the end of the current contract with Biffa, on 31st March 2020.
2. Subject to 1 above, and in order to facilitate the collection of the recyclates, to approve capital funding for the purchase of six refuse collection vehicles.
3. Subject to 1 above, to approve the procurement of these vehicles through an appropriate Procurement Framework Agreement, conditional upon the delivery of the vehicles to the Council in advance of 31st March 2020, to ensure a seamless transition to the new, in-house service.
4. To note that by in-sourcing the kerbside collection of recycling at the end of the current contract with Biffa on 31st March 2020, that there may be TUPE implications; these will be reported to the Executive Board on 8 August.

A report will be taken to the Executive Board meeting on 8th August 2019, to inform Executive Board Members of the Leader's decision regarding the procurement of the six refuse vehicles and to ask the Executive Board to approve the procurement of a contract for the reception, haulage and processing of the recyclates collected, as part of the doorstep recycling service, through an Open Tender Procurement exercise

3. BACKGROUND

Recycling collections are a statutory requirement and the Council has a legal responsibility as both a Waste Collection Authority and also a Waste Disposal Authority.

The current kerbside recycling contract was let in 2010 for a 10-year period, with Biffa selected as the contractor following a tendering process. This contract is due to end on 31st March 2020.

Biffa operate the service from a facility that they lease in Darwen and they also operate with their own fleet of vehicles and employ their own staff to deliver the service.

The service Biffa provides is for the collection of the recyclable glass, tins, cans, plastics, paper, cardboard, textiles and waste electronic electrical equipment from every household within the borough on a 2 weekly cycle. The contract also requires them to remove recycling waste from businesses as directed by the Council. The collected materials are then taken to the Biffa depot in Darwen, where they are sorted for the removal of any visible contamination of the recycling, before the recyclates are transported to a Biffa facility in the North East for processing. For the contract as a whole, Biffa are paid an agreed amount per tonne collected.

Biffa informed the Council that they would not be bidding for the new contract nor would they agree to extend the contract after the current contract end date of 31st March 2020.

During the term of the contract, there have been significant global changes in the waste and recycling industry, with more emphasis being placed on the quality of the recycled materials, and the cessation by China of the majority of their imports of recycled waste, and for those recyclates that they do accept, the now stipulate that this cannot contain more than 1% contamination. This has had a massive effect on recycling across the world, as China was the biggest import destination for recycled

waste. As a result of this action, alternative destinations have been sought, but again those available have followed China's lead and have stipulated maximum thresholds for levels of contamination. There are insufficient outlets for the recycling generated within the UK, with the UK being a net exporter of recycling materials.

The lack of outlets has subsequently depressed market prices for recycling materials and indeed on occasion, charges have been levied for the processing of the materials as the market prices have not covered the costs of recycling the materials at the processing plants.

This seismic change within the industry has seen those private sector companies, who are capable and interested in providing kerbside recycling and processing contracts, become more selective about the individual contracts which they bid for, focussing on those contracts with minimum risk exposure and maximum profitability.

Over the course of the next three years, it is expected that there will be in excess of 70 waste and recycling contracts to be let by councils across the country; as such the private sector companies are now being extremely selective in respect of which contracts they bid for. This information was drawn from the extensive soft market testing undertaken in October and November 2018, as part of our preparation for procuring the new kerbside recycling contract and the Council's energy from waste contract.

This soft market testing process enabled the Council to develop a tender that was suited to the waste and recycling industry requirements.

Tendering the contract for kerbside recycling attracted interest from three companies who completed the tender questionnaire, and two of the three companies were taken forward to the next stage of the procurement process. Unfortunately neither submitted tender submissions; as detailed above, the Council needs to progress the matter urgently to provide an alternative option to ensure service continuity for residents of the Borough on 1st April 2020.

Earlier this year, the Council established a Waste and Recycling Programme, consisting of the Chief Executive, the Executive Members for Resources and for Environment, the Director of Environment and Operations, the Head of Environment and the Head of Communications and Engagement, to drive forward improvements and decision making with waste and recycling services within the borough.

4. KEY ISSUES & RISKS

The Kerbside Recycling contract has recently been tendered but unfortunately no bids were submitted despite extensive soft market testing and allowing bidders the opportunity to bid back their risk position. The existing contractor, Biffa, has made it clear that they are not prepared to extend their contract for the collection, haulage and processing of recyclates beyond 31 March 2020, therefore in order for the Council to discharge its statutory responsibilities as a Waste Collection Authority and a Waste Disposal Authority, it is imperative that provision is made for the collection and disposal of recyclates from residents of the Borough, and that the service must be fully operational with effect from 1st April 2020.

A series of options have been explored by the Council's Waste Programme Board. Members of the Board concluded that in the absence of any bid submissions in the recent tender exercise, the Council must revert to the 'default' position which is;

- to bring the collection service in-house at the end of the current contract on 31st March 2020, and
- to tender separately for the reception, haulage and processing of the recyclates.

In order to provide an in-house collection service, the Council needs to procure a fleet of refuse

vehicles by the end of July due to the lead-in time for their specification, production, modification and delivery; refuse vehicles are manufactured to order and can take a minimum of six months for delivery from the date of placing the order. In recommending approval to purchase these vehicles by the end of July, the Council will need to stipulate that the order is conditional upon delivery of the vehicles to the Council in advance of 31st March 2020 to ensure a seamless transition to the new, in-house service.

If decisions about the purchase of the vehicles is delayed beyond July 2019, the Council will not have sufficient time to a secure a value for money solution for service delivery before the current contract with Biffa ends on 31 March 2020. As such, it would be unable to collect recyclates from residents of the Borough and will be in breach of its statutory responsibilities as a Waste Collection Authority and also a Waste Disposal Authority.

The implications of TUPE will also need to be considered in taking the collection service in-house at the end of the contract with Biffa; HR colleagues will provide support in respect of this.

The feedback on the Government's Waste Strategy Consultation is due to be released within the next few months, which will hopefully provide an indication of the future direction of waste and recycling within England.

5. POLICY IMPLICATIONS

None

6. FINANCIAL IMPLICATIONS

Purchase of refuse collection vehicles

The capital programme will need to be adjusted to provide for the initial purchase of 6 new refuse vehicles.

Following purchase, the Council will explore the financial benefits of the option to finance the vehicles through a leasing agreement. If leasing proved financially to be the best option, the Council would then sell the vehicles to a lease financing entity, and lease them back over a fixed period; from previous exercises, this would probably be over a five-year period. The default would then be the return of the vehicles at the end of the lease to the leasing company, although it is usually possible to negotiate an extension of the lease at the end of the period. If leasing were not the best option, the Council would own the vehicles and finance these through prudential borrowing over a period of five years.

By transferring the collection of kerbside recycling service to in-house provision, TUPE may apply with the TUPE transfer of employees from Biffa to the Council; this could result in an increase in operating costs as the individuals concerned would transfer over to the Council and move on to Council terms and conditions.

The separate tendering of the reception, haulage and processing of the recyclates, will likely see an additional annual cost, however the scale and quantum of the increase will not be known until the return of tenders for this service.

7. LEGAL IMPLICATIONS

The Council, as a Waste Collection Authority (WCA) and a Waste Disposal Authority (WDA), has a legal duty under the Environmental Protection Act 1990 to provide waste collection and disposal services in the Borough. In addition, the Household Waste Recycling Act 2003 provides that waste collection authorities must (except in limited circumstances) ensure that they collect at least two types of recyclable waste together or individually separated from the rest of the household waste.

Therefore, as stated in the main body of report, the Council must continue to provide the kerbside recycling service (whether through a service provider or itself) after 31 March 2020.

Legally and contractually, the existing service provider is not obliged to continue providing the kerbside recycling service to the Council beyond 31 March 2020, and if the service is not re-procured to a service provider, it will need to be provided in-house by the Council in order to meet its statutory duties as a WCA and a WDA.

The recommendations contained within the report relate to the executive functions and decisions of the Council. In accordance with the Council's model of governance, all executive functions are initially vested in the Leader who has delegated them (in accordance with the Constitution) to the Executive Board, to Executive Members and to Officers. Due to the circumstances as stated in the report, and the urgency to initiate the procurement for the 6 refuse vehicles in order to continue with the statutory service after 31 March 2020, the Leader is requested to consider and approve the procurement which must commence before the end of July. This is on the basis that the Leader's approval (if granted) will also be reported to the Executive Board on 8 August 2019 along with the other aspects in relation to the change of the kerbside recycling service from 31 March 2020, such as TUPE and the procurement of a contract for the reception, haulage and processing of the recyclates collected.

Due to the urgency of the procurement process for the refuse vehicles, decisions can be made under Rule 15 (call-in and urgency) Overview and Scrutiny Procedure Rules, which allows for an urgent decision to be taken without the call-in procedure applying. The requirements for applying Rule 15 must be complied with as stated in the Rules.

Procurement exercises will be undertaken in accordance with Contract Procurement Procedure Rules and Public Contracts Regulations 2015. Contracts shall be in a form approved by legal officers in the Contracts and Procurement Team. As set out above, the Transfer of Undertakings Protection of Employment Regulations 2006 are likely to apply to bringing the service in house and will need to be complied with.

8. RESOURCE IMPLICATIONS

The TUPE transfer of staff from Biffa to the Council will require additional support from HR.

9. EQUALITY AND HEALTH IMPLICATIONS

Please select one of the options below. Where appropriate please include the hyperlink to the EIA.

Option 1 Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2 In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision. (*insert EIA link here*)

Option 3 In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision. (*insert EIA attachment*)

10. CONSULTATIONS

The Council's Waste and Recycling Programme Board has been consulted on the options proposed to take the recycling service 'in house'.

Unite Trade Union has been consulted on the potential TUPE transfer of staff to the Council.

Consultation with the waste and recycling industry as part of soft market testing have identified the report recommendations as being the most economically advantageous to the Council.

11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded and published if applicable.

VERSION:	3
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CONTACT OFFICER:	Tony Watson
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DATE:	23 July 2019
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BACKGROUND PAPER:	
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