

**REGENERATION, COMMUNITY AND CULTURE
OVERVIEW AND SCRUTINY COMMITTEE**

7 JULY 2009

**CONTRACTS FOR THE COLLECTION AND DISPOSAL OF
WASTE**

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Summary

To seek recommendations for the award of the contracts for Waste Collection and Disposal Services.

1. BUDGET AND POLICY FRAMEWORK

- 1.1 The Council's Waste Strategy for the period 2005 to 2020 is due to be reviewed and updated in 2011. The current strategy does not specify a preferred method of waste disposal or processing but states that the procurement exercise would have to establish what the industry is able to offer in terms of a deliverable solution and at a viably economic price.
- 1.2 The award of these contracts will in effect extend the Council's Waste Strategy by setting in place a plan for disposal of the Council's residual waste for a period of twenty five years, the processing of garden and kitchen waste for 15 years and waste collection for a period of seven years. Given the value, length and nature of these contracts and the impact on the strategy the Cabinet is recommended, on this occasion, to ask the Council to determine that it wishes to take the decision to adopt the strategy for disposal and collection of waste and to award the contracts. This is an option available under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.
- 1.3 The Committee is asked to accept this as an urgent item to enable its views to be forwarded to Cabinet on 14 July 2009.

2. BACKGROUND

- 2.1 An executive summary to this report has been attached as Appendix 5.

- 2.2 The current waste management contract, awarded by the Council in 2002 ends at midnight on 31 October 2009.
- 2.3 In accordance with EU regulations, arrangements for the procurement of waste management services for the Council, to commence on ending of the current contract, have now reached their final stages prior to the appointment of tenderers to undertake the services.
- 2.4 The new residual waste disposal services contract will run for 25 years with an option to extend the contract for up to five years.
- 2.5 The contract for the processing of garden/kitchen waste is for 15 years; no extensions are being offered by the contractors. In any case the technologies involved in these processes are likely to have made significant advances in that time and the Council's requirements will also, inevitably, have changed. In the circumstances it would be better to seek competitive tenders towards the end of the contract period for this service.
- 2.6 The new collection services contract will run for an initial period of seven years with an option to extend for up to a further two years.
- 2.7 This report is the culmination of a complex series of actions that were initiated by Medway's waste strategy. It takes account of the external advice received on the separation of the services and the results of the options appraisal submitted to meet both the Council's waste disposal and waste collection requirements.
- 2.8 The disposal arrangements were divided into the disposal of residual waste and the processing of garden/kitchen waste. Each service has been treated as an individual contract and both have been dealt with under the EU Competitive Dialogue (CD) process. The main collection services were dealt with as a single service covering collection of residual waste, recycling and garden/kitchen waste and street cleansing. The arrangements for these services have followed the restricted process. The length of the individual contracts will be different in each case.
- 2.9 A number of special or ancillary waste services such as clinical waste collection and disposal and processing of wood waste is being pursued in collaboration with Kent County Council to achieve economies of scale. The collection and disposal of school and other council buildings waste, the management of the Household Waste Recycling Centres (HWRCs) and the provision of capacity at a Materials Recovery Facility (MRF) are also being dealt with separately and will be the subject of separate reports at a later date.

Waste Contract Task Group

- 2.10 A Waste Contract Task Group was set up on 6 February 2008 with the membership of Councillors Hunter, Mrs Haydock, McFarlane and Stamp. The Assistant Director, Frontline Services, the Head of Waste Services, the Waste Minimisation Manager and the Overview and Scrutiny Co-ordinator have been supporting the task group. The membership of the task group was changed partway through the work and now comprises Councillors Hunter, Bright, Tony Goulden and Stamp.

- 2.11 The task group was set up to act as a mechanism to both communicate information on the waste procurement project for Members to provide feedback to officers and the Cabinet.
- 2.12 The group has met on six occasions. The first occasion was a briefing session where Members were given an information pack and notified about European directives and targets, which relate to waste. The first meeting on 21 July 2008 looked at an options report ahead of the Cabinet meeting and recommended option 4f which was based on weekly collection of refuse in a wheeled bin, a fortnightly collection of garden and kitchen waste in a wheeled bin (kitchen waste being placed in the normal refuse in intermediate weeks) and recycling collected fortnightly in a wheeled bin with glass collected at the same time from a separate box. The Cabinet accepted this recommendation.
- 2.13 The group then met on 26 November 2008, 12 March 2009 (which was a site visit to Bromley) where Members were informed about the trialling relating to type and timings of collections and recycling which had brought about an increase in the amount recycled. Further meetings took place on 27 April 2009 and 24 June 2009. During these meetings Members made a number of recommendations to officers about preferred methods of delivery and matters for officers to research further.
- 2.14 At the meeting of the task group on 24 June 2009 Members were advised about the variant collection bid and the means whereby clean paper collection would be separated from the other recyclate. Members were advised that this would offer a saving to the Council as the bidder would be able to gain income from the kerbside paper collection service but would mean that a 2 box system would be necessary

3. SUMMARY OF THE BUSINESS CASE

- 3.1 An updated business case from the original Gateway 1 report is attached at Appendix 1.

3.2 Strategic Context

- 3.2.1 The current contracts for the disposal of residual waste, the processing of garden/kitchen waste, the collection of residual waste and recyclable materials, street cleansing and various ancillary waste collection services end at midnight on 31 October 2009 and must be replaced with new contracts in order to ensure that the Council can comply with its statutory duties for these front line services.

3.3 Whole Life Costing/Budgets

- 3.3.1 Details of the evaluation of the tenders received for the services contain summaries of the whole life costs of each service and these summaries are best seen in the context of the other factors taken into account in the evaluation and detailed in Appendix 4.

3.4 Risk Management

- 3.4.1 Details of the amended risk register updated to include the results of the CD and final tender submissions are given in Appendix 2.

3.5 Market Testing (Lessons Learnt / Bench Marking)

- 3.5.1 The waste strategy and inputs from external advisors, guidance from central government, interviews with representatives of industry and consultation with other authorities who had obtained or required similar services helped to formulate the approach necessary to ensure interest and good competition.
- 3.5.2 The lack of adequate facilities in the ownership of the Council from which to provide all the services by all potential tenderers so as to ensure a level playing field in the procurement procedure remains an impediment to the acquisition of our services.
- 3.5.3 Such facilities that Medway have at present would not be sufficient nor adequate to enable the Council to operate its own independent waste service provision efficiently, if at all. If the Council disposes of the facilities it currently has, it would not be able to provide any waste collection or disposal services under its own control, even in an emergency. Furthermore, in a situation where there was no depot and waste transfer station to offer to external service providers in a competitive tendering situation there would be substantially fewer companies interested in bidding for future collection services. The procurement procedure would then be reliant upon those companies with a waste depot and transfer station within the borough and interested in providing the services. There are currently two such companies, but one of those did not express any interest in the collection and street cleansing services because they predominantly concentrate on waste disposal. They were not successful, however, in being selected to continue to maintain a dialogue under the CD process for the Council's waste disposal requirements.

3.6 Stakeholder Consultation

- 3.6.1 In preparing the waste strategy there was extensive consultation with the public, industry and special groups. These are detailed in the waste strategy. A questionnaire to 5,000 members of the public was organised and evaluated by an external agency and members of the citizens' panel were involved in reviewing and commenting on waste disposal options.
- 3.6.2 As part of the procurement exercise advertisements were placed in the Official Journal of the EU for industry to meet with the Council's waste procurement team and provide their views on the way the waste industry is likely to change in the future, what the Council should take heed of and what they were able to provide. This was conducted to encourage future competition and to ensure that wherever practicable the Council took account of their views in the preparation of the subsequent contract documentation.

3.7 Equalities Issues

- 3.7.1 A Diversity Impact Assessment review was undertaken by Waste Services for the current collection systems in January 2009. It is anticipated that the changes proposed in service delivery will be equitable and similar to the current service as this covers box, bag and wheeled bin collections.

- 3.7.1 All residents receive the same waste collection services and cleansing regime, regardless of gender, race, sexual orientation, religion or belief.
- 3.7.2 In developing the Municipal Waste Management Strategy for Medway, on which the procurement has been based, the Council consulted with a wide range of stakeholders including councillors, parish councils, other local authorities, officers, waste and recycling organisations, charities, resident groups, churches and interested parties, including Medway's diversity forum and Medway ethnic minority and senior citizens association. Opinion polls and questionnaires were invited from all local citizens covering all gender groups and ages during the development of the waste strategy. These were analysed and no significant differences in responses were observed in any gender or age group. The waste services team also worked with the youth parliament to ensure the views of young people were also taken into account.
- 3.7.3 Where a resident is less able bodied, due to disability or age, the Council offers an assisted collection service where their waste is collected from their front/back doors. This applies for black bag waste, recycling and bulky items and can be either temporary or permanent.
- 3.7.4 Where homes are located in rural areas, flats, caravan parks, boats or other locations that might lead to difficulties with the collection arrangements, the Council works closely with the residents to offer the same service but sometimes with different collection points or containers, i.e. bulk bins.
- 3.7.5 Where Medway's residents may have literacy difficulties or use English as a second language, translation facilities are available and pictures are used to explain messages wherever possible, e.g. showing pictures of what materials can and cannot be recycled in addition to using words.

3.8 Environmental Issues

- 3.8.1 The services that form the basis of the contract action being undertaken and described in this report create a number of environmental issues that are addressed in varying ways. The Council has a statutory duty to collect and dispose of household waste generated by residents in the borough. In so doing many other environmental factors are created or affected by the procedures and range from the type of technology used to process or dispose of the waste, the methods used for collection, the type of transport and fuels used, the amount of recycling achieved and the proximity of plants for processing or disposing of the waste or the markets used for any re usable/recycled materials.
- 3.8.2 In addition there are spin off issues such as waste licencing requirements and the need to comply with constantly changing legislation and targets. The method statements required as part of the tender submissions will have required companies to put forward their ideas on, and proposed contributions to, improving environmental factors in the services provided.

4 PERMISSIONS / CONSENTS

- 4.1 In the tenders submitted for disposal, one company (B), proposed to use a waste transfer station that has not yet been constructed. Planning permission has been granted but there will be a need for the company to use an interim arrangement until its planned project has been completed in 2010. The company, however,

has expressed a wish to use Pier Approach Road for a period of 18 months before they would transfer operations to their own premises for use in connection with the waste collection and street cleansing services. The other tenderers have indicated that they wish to use Pier Approach Road and the Civic Centre for the provision of collection services. Company G for collection services has offered to provide potential use of their sister company's waste transfer station in Medway when that has been completed.

- 4.2 The occupation and use of the depot at Pier Approach Road and the Civic Centre would be through a lease arrangement.
- 4.3 The lack of an appropriate and suitably sized depot with an adequate waste licence for transferring waste that the Council can offer to prospective bidders to ensure a level playing field continues to affect the level of competition for collection services. This situation affects both large and small companies who are without extensive regional and local facilities which restricts them in bidding because they have to either sub contract such facilities or rely on a very long lead-in time after the contract award to acquire such facilities. This situation will always be detrimental to the Council because the companies who do not have any existing facilities in the area will be at the mercy of the few companies who do have them and who are likely to resist any sub contracting to minimise competition.

5. INVITATION TO TENDER

5.1 Summary Of Tender Process

- 5.1.1 As a result of the options appraisal report on 8 February 2007 for the procurement of the Council's Waste Services Cabinet decided to separate the various elements comprising the services and to deal with disposal services in advance of collection services. Due to the fact that the anticipated individual values of tenders for the groups of waste services exceeded the EU threshold it was required that they had to be processed through the EU procurement procedures as set out in the Public Contracts Regulations 2006.
- 5.1.2 These groups of services were then separated out into those that needed to be procured using the EU CD arrangements because of their complexity and those that were less complex and the requirement more definitive which meant they could be procured following the traditional "Restricted" process.
- 5.1.3 Full details of the tender procedures undertaken for both the disposal and the main collection services are given in Appendix 3.
- 5.1.4 A key factor in the CD procurement process for disposal services was its flexibility. It enabled the Council to discuss with bidders different disposal processes so as to enable the Council to reach a reasonable conclusion about which was best to meet its needs. Under the CD procedure it was left to the bidders to specify the type of technology to be utilised in their proposals for providing the service.
- 5.1.5 Under the CD procedure four companies were selected after evaluation of the responses to the Pre Qualification Questionnaire (PQQ) to submit outline solutions and three did so. Following through the successive stages of this procedure two companies were invited to submit formal tenders based on the detailed proposals negotiated and agreed by the parties. In the CD process it is

normal and acceptable, eventually, for the terms and conditions of the contract to vary between the bidders involved. Compliant tenders were returned by the deadline and the tenders have been evaluated in accordance with the agreed criteria.

- 5.1.6 Under the restricted procedure for the main collection services seven companies were selected after evaluation of the responses to the PQQ documentation to submit tenders. Three did so; four declined due to time constraints or other factors. A “variant bid” within specified parameters was permitted to the bidding contractors: one variant bid was received.
- 5.1.7 All three tenders submitted were compliant and have been evaluated against agreed criteria. A significant number of clarification questions have had to be raised in order to better understand bidder’s submissions particularly in respect of the variant bid.

5.2 Tender Evaluation

- 5.2.1 The procurement processes for the letting of waste management services contracts have been in accordance with the EU procurement rules and in particular the Public Contracts Regulations 2006. Under these Regulations the requirement is for the tenders submitted to be evaluated on the basis of the evaluation criteria set out in the OJEU notice or Invitation To Tender (ITT) and for the selection to be on the basis of the Most Economically Advantageous Tender (MEAT).
- 5.2.2 The Most Economically Advantageous Tender is the one that has the lowest evaluated cost and not necessarily the lowest submitted price. The objective of the MEAT criteria is to identify the tender that offers best value for money; to compare tenders on commercial, technical and financial terms, i.e not just on the price element and to allow tenders to be evaluated on a lifetime cost basis. Any decision to award must be made on the basis of the ranking of the final quality/price/weighted evaluation scores, i.e. the contract is awarded in respect of the tender with the highest overall score.
- 5.2.3 The evaluation of tenders under the EU Regulations requires 4 key principles to be observed. These are:-
- openness and transparency;
 - objectivity
 - ensuring equal treatment for all tenderers, and
 - consistency.
- 5.2.4 Any decisions to award contracts in violation of these principles will provide opportunities for bidders to successfully challenge the Council with the attendant threat of financial and other consequences.
- 5.2.5 The EU notice and the ITTs for both the waste disposal and collection services stated that contracts would be awarded on the basis of the “most economically advantageous tender” (MEAT) and the published evaluation criteria were based on a cost to technical/professional/quality split of 47% and 53% established by the Saaty process for multi criteria decision analysis. The evaluation criteria were

agreed by the Project Board and are set out in Appendix 4 for both disposal and collection service contracts.

5.2.6 *Summary of options identified*

There are a number of potential permutations of the services including a variant bid for collection services that are best examined in the financial section of this report.

5.2.7 *Key Outputs of the specification/ Deliverables*

The specification and contract documents for all the services have been based on the Waste Strategy and the reports providing the service options appraisals and recommendations accepted at Cabinet on 20 February 2007 and 5 August 2008. Details of the main terms and conditions of the contract for each service together with the specification is available as part of the background documents.

5.2.8 *Pre-Qualification Questionnaire Evaluation Process and Results*

These are provided in the background documents or as part of Appendix 3.

5.2.9 *Long list of Contractors Invited to Tender*

These are incorporated into Appendix 3.

5.2.10 *Tender Evaluation Team*

A temporary team was specifically set up to deal with the waste contracts. When appropriate the team has obtained external professional support on legal, finance and technical issues.

5.2.11 *Tender Evaluation Criteria Used*

These details are included in Appendix 4 and full details of the method statements required are available as background documents.

5.2.12 *Tender Weighting and scoring system applied*

These details are included in Appendix 4 with the evaluation criteria.

5.2.13 *No of Tenderers responded, declined to bid, non-compliant bids, variant bids.*

Details are contained in section 7.1 and in Appendix 3.

5.2.14 *Results of Tender Evaluation*

See comments and results below.

COMMENT

5.2.15 *Disposal of Residual Waste (LOT 1)*

- 5.2.15.1 The procurement procedure used for the disposal services contract was the competitive dialogue procedure (CD). The evaluation was in respect of the two tenders received after the Council declared that the dialogue under the competitive dialogue procedure was closed and invited the last two participants to submit their final tenders.
- 5.2.15.2 Following the review of three detailed solutions submitted by bidders as part of the initial CD led to the submission from Company C being eliminated and the CD continuing for the remaining two Companies A and B. Both companies have available capacity at existing energy from waste (EfW) facilities with tonnages not being processed diverted to land fill. Company B has a limited capacity at their 15 year old plant and Company A is able to provide capacity for all of Medway's residual waste that is capable of being processed at its plant. Some waste from street cleansing and from the HWRCs would have to be land filled.
- 5.2.15.3 The cost of Landfill Tax will rise from £40 per tonne in 2009/10 in £8 per tonne/pa increments until it reaches £72 per tonne in 2012/13. After this time it is likely that further reviews will result in the increase of the tax. There could therefore be a significant impact on cost to the Council in complying with unknown Government targets after 2012/13 with the bid from Company B which relies on a minimum EfW processing proportion of the Council's whole waste disposal requirement.
- 5.2.15.4 In the course of the dialogue the main issues were about the terms and conditions of the contract (T&Cs) and the acceptance criteria for the waste generated. Company A needed to ensure that the T&Cs were acceptable to its parent company and to a subsidiary company within the group that would be responsible for running the plant and another subsidiary company responsible for spare capacity at that plant.
- 5.2.15.5 One of the main issues raised by both contractors concerned the requirement that the companies reimburse the Council for any Landfill Allowance Trading Scheme (LATS) liabilities it became responsible for in the event that the targets they set for the diversion of waste from landfill were not met. In the case of Company A over 80% of the residual waste generated by the Council would be processed at their EfW plant so that the likelihood of the Council failing to operate within its Landfill Allowance Trading Scheme (LATS) allocation was minimised. It is not customary in the waste industry for companies to accept all the risk of a Council not meeting its LATS obligations. In the case of Company A the contractor will accept the cost of LATS permits to a value of £20 if the Council remains within its allocation (i.e. this would represent a lost opportunity cost) or £25 where the Council has exceeded its LATS allocation.
- 5.2.15.6 The situation with Company B was more sensitive because their original proposal was to use the limited capacity available at their EfW plant to process only that amount of residual waste that was required to ensure the Council met its LATS obligations. The remainder would be land filled. In the event that the diversion target was not met and the Council incurred LATS penalties or

were required to buy LATS permits Company B was prepared to compensate the Council to a value of £30 per tonne during non trading years and £50 per tonne during a trading year or the year immediately before that. After this, and in order to mitigate the cost increase in the landfill tax, Company B found further EfW capacity available in later years thus reducing the risk of not meeting the LATS targets. Landfill tax on all residual waste landfilled, however, will be a pass through cost on the payment arrangements and charged for at the relevant rate for the period.

- 5.2.15.7 In the case of both companies, if they were to deliberately landfill residual waste rather than comply with the agreed diversion targets then the companies would be responsible for compensating the Council for the full cost of its LATS losses including the additional costs in respect of the landfill tax. Where either company meets its confirmed target for diverting waste from landfill there will be surplus LATS that the Council will have available which is represented in Ernst and Young's report as an opportunity cost. If a notional value of each LATS permit is taken as being £20, as proposed by the companies for use in the payment mechanism, then the potential opportunity costs from each Company would be as shown in the table in the exempt appendix. This covers the period until 2020 when the current LATS scheme ends. The current permit value is negligible because there has been a surplus of permits to date. Advice from Improvement and Efficiency South East (IESE) however, is that the final annual LATS assessment has not been completed and future years will show a reduction in the permits available thus affecting price.
- 5.2.15.8 Company A stated that its standard commercial practice was to price for the services based upon a liability cap that would be applicable in the event that the other party to the contract exercised its right to terminate the contract. Furthermore they considered the financial compensation on a contract of this size, if it ever had to be paid, would be adequately met from a capped liability of two years of the contract value, estimated to be in the region of £14million.
- 5.2.15.9 Company A's comments were noted during the dialogue stage of the CD procedure and it was agreed that at the close of this procedure they would be allowed to submit a tender that priced for this liability risk on a 2 year or greater period basis. The Council confirmed that they may be unable to accept the risk that a cap suggested would be sufficient to meet all of its reasonable costs particularly if termination occurred in the early years of the contract term. The company was also invited to submit a price to reflect the risks that they felt they would be exposed to where there is no liability cap. In the event the company submitted a cap for two, three and four years only. The tables and commentary in the Exempt Appendix provide details of their bid prices in respect of this risk and the effect of the cap.
- 5.2.15.10 It was deemed by the current contractor providing disposal services for residual waste that TUPE did not apply and that there would be no transfer of staff if the service was to be awarded to another Company. Company A have taken this into account but are concerned about potential future claims. In the current contract the Council has the right to pass on any costs to the current contractor in the event that TUPE should have been applied on transfer of the contract. No transfer of Council staff is involved.

- 5.2.15.11 The type and nature of the contract waste which both companies are able to accept for processing at their respective facilities is subject to a waste acceptance criteria. The waste acceptance criteria describes the type of waste that can be accepted at the facilities being offered for processing and disposing of the waste and the courses of action in the event that different wastes are delivered to the facilities. It is customary to find this control in a contract of this nature due to the sensitivity of the plants involved. As Company B has to transfer and bulk the waste to deliver it on to its processing or disposal site, the waste acceptance criteria applies to the waste transfer station that they propose will be in Medway, sub contracted initially to another contractor for the first 18 months, as at present, but then provided directly by themselves.
- 5.2.15.12 The number of consignments of waste delivered to a waste processing plant over a specific period can be restricted to meet planning constraints. As a result there are controls on the delivery of waste into Company A's plant and there would be slots allocated for deliveries from Medway at specific times during the day to ensure a more uniform effect on local traffic. Any deliveries that are attempted to be made outside of the time slots would lead to increased waiting times and lost productivity. There is less control over the timing of deliveries to Company B's transfer station when that is completed but nevertheless there would be delays if vehicles were to turn up in convoy or at a time when other deliveries were taking place.
- 5.2.15.13 In the event of plant maintenance or shut down the waste would be diverted to landfill or to alternative EfW sites although the latter are at some distance from the South East. In the case of Company A the plant operates with three feed lines so during certain maintenance arrangements the plant has the capacity to continue operating at a slightly lower input. In either case the transfer would be at the company's cost.
- 5.2.15.14 Both companies operate their plant on the calorific value of the waste delivered. The range of acceptability between the two companies is relatively close providing the waste is domestic in origin. The checks are carried out over a period of time to avoid peaks and other distortions and the results are also compared to the values achieved from other sources of waste so that the relevant increase can be apportioned to the appropriate waste provider. In the case of Company B they will not adjust the contract price providing the waste is not pre-treated by the Council including extracting other materials we do not currently recycle.
- 5.2.15.15 Both organisations collect ferrous metals from the output and certain ash outputs are reused in building products and road construction. Fly ash and certain screening materials are land filled at specific designated sites for that type of waste. Both companies organise regular visits to their plant for a range of stakeholders and organisations and provide educational seminars to the general public and schools.

5.2.16 Processing of Kitchen/Garden Waste (LOT 3)

- 5.2.16.1 It should be noted here that LOT 2 was originally intended to provide the requirement for processing just garden waste but this was superseded by the enhanced service requirement for processing both garden and kitchen waste which requires different plant and equipment. As a result the requirement for LOT 2 was no longer necessary.

- 5.2.16.2 The evaluation was in respect of the three tenders received after the Council declared that the dialogue under the competitive dialogue procedure was closed and invited the three participants to submit their final bids.
- 5.2.16.3 Companies D and E propose to provide the services directly through their own plant located on their own sites. Company F is proposing to provide the services through a sub contract with Company E.
- 5.2.16.4 The technology for the services offered by Companies D and E is very similar although the type of plant is peculiar and specific to each company. The location of their plants in relation to Medway is at an identical distance. Both have waste acceptance criteria that are familiar in the industry and set out the standard of materials the Companies can accept for processing and the procedures for dealing with waste that does not fall within the criteria. In respect of Company E they consider the type and amount of contamination likely to be found in garden/ kitchen waste would be primarily plastic based that would be segregated as a fuel for subsequent treatment in the EfW plant at Allington. At Company D the contamination would be landfilled although they are also seeking outlets for plastic contaminants as a refuse derived fuel.
- 5.2.16.5 The outputs from both sites would meet the PAS 100 composting standard allowing the material to be used on agricultural land. Both companies provide soil testing analysis for landowners and Company E has its own resources to accept any surplus material and to deliver and spread the material composted. The majority of the compost material produced is distributed and used within the region that is local to the processing plants.
- 5.2.16.6 In the event of a plant shutdown, whether for maintenance or due to an operational problem, Company D is able to use its other sites in the South East as a temporary measure and can utilise its local site as a transfer station. Company E has links with other organisations that could provide temporary support and it has an investment in another plant in the east of England to which it would be able to transfer waste material for processing. In both cases there would be no additional cost to the Council.
- 5.2.16.7 The sites offered by both companies have adequate time slots for the delivery of garden/kitchen waste, although vehicle convoys or deliveries during specific periods in the day would lead to delays and longer waiting periods. The specified time expected for the delivery and discharge of waste through to exit can be met in most circumstances subject to the most active delivery times in the normal operating day.
- 5.2.16.8 The proposal from Company F is technically identical to that from Company E but Company F wishes to operate with a cap on their liability in the event that the Council terminates the contract. In the course of the dialogue it was agreed that the Company could bid on this basis in order to maintain competition.

5.2.17 Main Collection/Street Cleansing Services

- 5.2.17.1 The EU procurement procedure used for the collection services contract was the restricted procedure. The evaluation was in respect of the three tenders received from seven companies who were invited to submit tenders after being shortlisted following the evaluation of the responses to the Council's pre-qualification questionnaire.

- 5.2.17.2 This service covers the collection of residual waste, recycling and garden/kitchen waste and street cleansing. The procurement procedure involved specifying the services required in detail. Variants were allowed to be submitted within specified guidelines that included a requirement to also submit a tender in respect of the Council's published detailed specification. One Company, Company H submitted a variant bid.
- 5.2.17.3 Tenders were received from three companies i.e. Companies G, H and I. Both Companies G and I are reliant on the Council providing a depot and base from which they can provide and operate the services. Company H will require the use of the Council depot and transfer station at Pier Approach Road for a period of around 18 months; thereafter it would use its own waste depot and transfer station. Company G, which is a sister company of Company A, has indicated that while its tender is on the basis of its use of the Council's sites, if the contract is awarded to them they would be open to negotiation to substitute the Council's sites for their alternative site which would be in an acceptable location for the operation and provision of the services. They maintained that they could offer benefits of using their own site if they operated in conjunction with Company A who say they will provide a waste transfer station in the Medway area, but were unable, at this stage, to quantify in cash terms what benefit would accrue to the Council. Company I maintain their bid is reliant on the Council providing a base from which they could operate for the whole period of the contract.
- 5.2.17.4 The tenders received in the main cover the requirements in the contract documents and specification. All of the tenders received required clarification questions from the Council in respect of the submissions to ensure that the responses to the method statements could be properly assessed.
- 5.2.17.5 In terms of residual waste and recycling collections the bids received are all relatively close and the procedures for dealing with the services are similar. Company G and I have confirmed they will look at collection round structures to get better fuel benefits but will not change, any of the days specified for collection services. Company H has indicated they would amend the rounds to improve productivity and would change some of the days for collections to enable further improvements to be made, but no change would be made without the approval of the Council.
- 5.2.17.6 Companies G and I also included in their bid, as required by the Council specification, the use of GPS location systems in all of their vehicles with the ability for the Council to obtain real time access to the system through the use of passwords. Company H has had to price for this as a separate item and for the cost to be included as an addition to their bid because it was not covered in their original submission. Company G has also included in their bid an in-cab IT system to relay information back to their HQ and for use by the Council for real time progress. All the companies are familiar with operating Council provided IT systems and both Company G and Company H have experience of using "Confirm". All the companies also use their own IT management and control systems which will link up where appropriate with the Council's system. Both Companies G and Company H submitted a broad outline of monitoring arrangements with Company G including significant numbers of random and targeted inspections of their own covering all the services and not just those inspections sufficient to cover the need to meet statutory reporting.

- 5.2.17.7 The service for street cleansing shows a difference between the companies in the number of vehicles and staff allocated to the service. Company G has a reasonable coverage of vehicles but tend to be lower on staff numbers indicating a higher level of mechanical reliance. Company I indicate they would make greater use of manual cleansing teams but the overall number of vehicles proposed is relatively low and there is no indication in the method statement that their use would cover more than an average working day. Company H is proposing to use the most staff and the numbers are greater than those indicated in their TUPE list even though the specification is similar to the service currently being provided. Company G and I have confirmed they would provide whatever resources were necessary to achieve the requirements of the specification at no additional cost to the Council.
- 5.2.17.8 The waiting period for the collection of bulky waste is based on a maximum of 10 days, which is half the current maximum waiting period, and an option has been priced for a five day waiting period. The provision of an express service for a collection to be made within 2 days remains irrespective of the decision to opt for the 5 or 10 day service. A price for the provision of a waste collection service on bank holidays except for those on Christmas Day, Boxing Day and New Years day is also included in the pricing schedule as an option for decision.
- 5.2.17.9 The specification referred to the requirement for a revised collection service involving the provision of and use by residents of 240 litre wheeled bins for residual waste collection. Following a request from one of the bidders all bidders were allowed to submit an open book current provisional price for the supply of these wheeled bins. Under the terms of the contract the price chargeable will be the market price at the time the bins are required with the contractor being required to demonstrate that current market price through open book accounting procedures. In any event the Council retains the right to obtain the bins itself if it so wishes. The costs submitted at this stage are shown in the exempt appendix.
- 5.2.17.10 There has been a disappointing and somewhat vague response from tenderers about their proposed involvement with charities and the type and extent of the services within the contract in which charities could assist them. Company I and Company H indicate they have worked with charities previously and confirmed they are prepared to work with them again. Company H had discussed opportunities with a local charity to recover some bulky items. On collection services third sector involvement is usually linked with bulky waste. Company G indicated they had had discussions with Remade Kent and Medway and with the Furniture Reuse Network and would wish to set up an arrangement with such a charity with the aim of extracting as many white goods and items of furniture from the bulky waste as was possible to re use.
- 5.2.17.11 Both Company G and Company I have indicated in their bids that appropriate TUPE information on staff providing the current service was not provided in good time for them to prepare bids and, in the case of pension information required by Company I, it was provided too late for full account of the information to be taken in their bid. They state that they have therefore had to make certain assumptions and for costs to be made on an "open book" procedure in the event that the TUPE costs on transfer exceed that anticipated. The conditions of the current contract allow the Council to make a

claim against an outgoing contractor in the event that TUPE information provided by them leads to a claim being made against the Council by the new contractor because the TUPE information was not provided, was incomplete or was not correct.

- 5.2.17.12 All the companies maintained they have achieved ISO 9001, 14001 and in some cases 18001 which includes health and safety issues. All confirmed they would seek accreditation to these standards for the collection service contract in Medway. There is an increasing requirement for weighbridge data to be provided in electronic format quickly and accurately and for that data to contain sufficient information to verify its authenticity and for the Council to honour its own obligations on waste data reporting to Government. If the waste or recycling collections, the transfer, bulking and processing or disposal of those materials are carried out by the same contractor there is an added complexity in ensuring that only the waste attributable to the Council is dealt with under the contract. There is confirmation from all tenderers that waste data will be transferred electronically as much as possible and that this will be backed up by weighbridge tickets at an agreed frequency but the procedures to ensure auditable verification of waste origin, segregation and appropriate disposal remain anodyne at best.
- 5.2.17.13 On the service for street cleansing two of the parishes in the borough, Cuxton and High Halstow, expressed a wish to continue with their current arrangement whereby the parish employs its own cleaners to provide the service. The service excludes cleansing the main strategic routes through the parish for health and safety reasons and the disposal of the arisings for logistical reasons. In order to comply with the contract regulations each parish has to submit a price for the service specified and this has to be compared with the prices that were submitted by the private companies.
- 5.2.17.14 The tenders received have shown a significant difference in pricing for cleansing the two parishes. This can be seen more clearly in the exempt appendix. There is a variance between the tendered prices from the private sector for one parish that exceeds 600%. One private sector tender is just 27% of the parish bid. Even if the tendered prices at the extremes are ignored the prices from the private sector that remain do not appear to be logical. Some of the bids, especially the lowest, appear not to have taken account of the TUPE transfer of staff that would need to take place. It is, therefore, difficult to compare the prices on a realistic basis. If the parishes involved were to be offered the lowest price to cleanse their streets it is unlikely they would be able to afford to maintain their current staff because the lowest bid is unlikely to cover the staff wages and they are likely to ask the Council to provide the service instead. Alternatively, the two parishes could be invited to complete the work for the mean between the highest and the lowest bids received added to the price of the lowest bid or the Council could allow the parishes to clean their street for the price quoted by the respective parish. Details of the prices are shown in the exempt appendix.

5.2.18 Variant Bid from Company H on Collection Services

- 5.2.18.1 Company H, in addition to submitting a bid for the specified service also included a variant bid with a guideline cost. The variant bid required a significant number of clarification issues to be raised with the Company to

obtain details in respect of the manner in which the variant service would be provided and on pricing to enable a fuller assessment to be made of the bid

- 5.2.18.2 The essence of the variant bid is based on the supply of a 55 litre box or woven sack to residents instead of a 240 litre blue bin or blue disposable sacks and for paper to be collected in one box/bag and for glass, cans and plastic bottles to be collected in the other existing box already supplied to householders in 2002/03. The rationale behind issuing boxes was that more households would be able to accommodate boxes than 240 litre wheeled bins and thus more recyclable material would be collected, even though the capacity of the boxes/woven sacks were less than a wheeled bin or plastic sack. The service would commence at the start of the contract and the paper would be taken to a delivery point at Chatham Docks with the remaining mixed recyclable materials being taken to the Company's own MRF.
- 5.2.18.3 Details of the anticipated saving to the Council by using this service can be seen in the exempt appendix.
- 5.2.18.4 There are a number of other factors to take into account with this variant bid:-
- 5.2.18.5 It assumes all the existing blue boxes distributed under the current contract are available for use and will be used by residents even though many residents now use blue sacks instead.
- 5.2.18.6 The submitted bid includes the provision of 80,000 boxes/sacks when approximately 90,000 blue boxes were issued under the existing contract and as stated above it is considered that more boxes would be required than wheeled bins.
- 5.2.18.7 The cost of "maintaining" boxes should be applied to the existing boxes as well as the new ones to be provided. In practice a damaged box would be replaced and not maintained and this cost is detailed in the schedule of rates.
- 5.2.18.8 The variant service requires a doubling up of bulk recycling bins at flats. If there is limited space there is doubt as to how the materials will be segregated and collected.
- 5.2.18.9 The proposal does not include the supply of a lid for the additional box. The price of lids are given in the schedule of rates.
- 5.2.18.10 The total capacity of the two boxes will be 110 litres compared to 240 litres of a wheeled bin or to 135 litres being the combined capacity of the existing box and one blue sack.
- 5.2.18.11 The cost of the variant does not include the supply of blue sacks of 80 litres capacity except to those residents who cannot use a box. It is expected that additional recycling will have to be placed in residents' own plastic bags or sacks in which the contents can be seen to establish what material is being recycled.
- 5.2.18.12 It is expected that contamination would be less, because it is easier to identify if in boxes, although there might be a possibility that residents place any surplus recyclables in residual waste.

- 5.2.18.13 There will be a need for extensive public education about segregating the recycling and using the combination of boxes and bags over a very short period before the contract commences.

RESULTS OF THE FINANCIAL AND TECHNICAL EVALUATION

5.2.19 Disposal of Residual Waste (LOT 1)

- 5.2.19.1 The evaluation of the tenders carried out by the procurement team with financial input from Ernst and Young and technical advice from White Young and Green has produced the results detailed in the exempt appendix. The evaluation has been undertaken on the basis of the matters set out in the Council's published evaluation criteria in Appendix 4 which includes details of the weighting apportioned to each method statement and the technical and professional evaluation scoring matrix. The comment on the services under LOT 1 highlights the main differences between the tenders which would account for part of the scoring.

- 5.2.19.2 The results are shown in the exempt appendix.

- 5.2.20 As above.

- 5.2.21 As above.

5.2.22 Interviews/Presentations/Site visit if appropriate

On award of the contracts a presentation can be made by the Company(ies) who submitted the successful bid(s). Visits will be arranged to the waste disposal or processing plants in due course because they have dedicated education facilities on the sites.

6. PREPARATION OF THE NEXT STAGE OF PROCUREMENT

6.1 Resources & Project Management

- 6.1.1 It is proposed that a draft management guide for officers and Members outlining the service requirements of the contracts together with a summary of the respective contractual obligations of both the contractor and the Council in providing the services. Insofar as TUPE is concerned, this is a second generation contract letting which means there will have been no TUPE transfers involving current officers of the Council. The contract does make provision for the contractor to comply with any TUPE requirements arising out of the award of the new contract.

6.2 Contract Management

- 6.2.1 Please see comments in paragraph 6.1.1. Waste Services are resourced to deal with a waste contracts of this size and will have support in monitoring the services by Safer Communities' Officers.

7. INTRODUCTION BY PORTFOLIO HOLDER FOR FRONTLINE SERVICES

- 7.1 The provision of waste disposal and collection services is highly approved of by residents in Medway. The procurement of these services is essential to deliver quality value for money services. The evaluation of the tenders received show

that Medway can select a private sector partner to provide services that meet customer expectations within the costs predicted by the Council.

8. PROCUREMENT BOARD

8.1 The Procurement Board considered this report on 24 June 2009 and the recommendations were approved for review and final approval by Cabinet on the basis that the procurement process followed was robust, transparent, compliant with UK/EU regulations and should deliver best value.

8.2 With regards to the contract for disposal of residual waste, the Board discussed at length the issue of a cap on liability. The Board had regard to the finances but considered that the risks of the cap outweighed any financial advantage to the Council.

8.3 An analysis of the main issues for consideration between the tenders from Companies A and B is shown in paragraph 3.6 of the Executive Summary at Appendix 5.

9. FINANCIAL, PROCUREMENT AND LEGAL COMMENTS

9.1 External consultants were engaged for the evaluation of the tendered bids. It is anticipated that future waste services will be within budget for 2009/2010 and will meet the prediction of Medway's medium term financial plan.

9.2 The contracts have been subject to a EU compliant process under the Competitive Dialogue procedure for the Disposal and Processing of waste and the Restricted procedure for the Collection and Street Cleansing services.

9.3 The project has been undertaken so as to comply with the relevant requirements of the Public Contracts Regulations 2006. Comments in respect of legal implications of the procurement procedure and the submitted bids are set out in the report.

10. RECOMMENDATIONS

The Committee is asked to recommend the following to Cabinet on 14 July 2009:

Disposal of residual waste

10.1 To recommend the award of the contract for the disposal of residual waste to Company B as recommended by the Procurement Board, whilst noting that Company A is the most economically advantageous tender (MEAT), and that Company A is bidding on the basis of a capped liability in the event of contract termination, which potentially exposes the Council to unacceptable financial risk.

Disposal of garden/kitchen waste

10.3 To note the MEAT result for the processing of garden/kitchen waste and recommend the award of the contract to Company E.

The collection of residual waste and recycling and street cleansing service

- 10.4 To note the MEAT result for the collection/cleansing service and recommend the award of the contract to Company H for its variant bid.
- 10.5 To recommend to allow the cleaning of the streets in Cuxton and High Halstow to be carried out by the respective parish on an agency basis at their quoted price.

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Background papers

The following documents have been relied upon in the preparation of this report:

Description of document	Location	Date
Waste Strategy.		2005/06
Cabinet Report. Procurement of Waste Services		20/02/07
Overview & Scrutiny Committee. Update on Waste Procurement.		06/02/08
Procurement Board Report. Disposal and/or Treatment of Household Wastes		18/02/08
WYG Report of Waste Collection Services Option Appraisal		04/2008
Overview & Scrutiny Committee. Options Appraisal for Waste Collection Services		29/07/08
Cabinet Report. Options Appraisal for Waste Collection Services		05/08/08
Pre Qualification Questionnaire	Waste Procurement	
Main terms and conditions of the contract for disposal and collection	Ditto	
Specification for each service	Ditto	
Invitation to submit tenders or to provide outline/detailed solutions for the CD process	Ditto	
Method statements and scoring matrices for disposal and collections services	Ditto	
Financial evaluations and reports	Ditto	
Legal advice obtained externally	Ditto	
Technical reports and advice obtained externally	Ditto	

Note: The key to the identification of the Companies mentioned in the report is given in the exempt appendix.