

CABINET
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**GATEWAY 1 OPTIONS APPRAISAL: CLINICAL WASTE
COLLECTION AND DISPOSAL CONTRACTS**

Portfolio Holder: Councillor Phil Filmer, Front Line Services

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Summary

This report reviews the strategic issues concerning the procurement of clinical waste collection and disposal contract. It considers the options in terms of the methods of procurement.

1. Budget and Policy Framework

- 1.1 The basis of the decision is to ensure that the Council complies with its obligations under UK waste legislation, its duty under EU procurement law and achieves best value in the process of obtaining revised waste services.
- 1.2 The risk analysis tool (RAT) classified this contract as high risk. This is therefore a matter for Cabinet.

2. Background

- 2.1 This report is directly connected to, and follows on from, the Municipal Waste Management Strategy agreed by Council on 19 January 2006 and the procurement of the waste collection and disposal contracts as per Cabinet decisions:
- Procurement of Waste Services 20 February 2007 (decision number 42/2007)
 - Options appraisal for waste collection services 5 August 2008 (decision number 175/2008)
- 2.2 Although this requirement was part of the overall Waste Contract which was presented to Procurement Board and Cabinet previously and has already been subject to a Pre-Qualification Process, both Strategic Procurement and Eversheds (acting as legal advisor for the larger waste contracts) concur that

in light of the huge amount of time since the original OJEU notice was published, it is best to conclude with the current process and commence a new procurement.

- 2.3 It is essential the procurement of these services be co-ordinated with the larger procurement of the waste collection and disposal contracts so that all contracts are aligned from the onset. The anticipated start date is end of September 2010 for all the new waste collection and disposal services.
- 2.4 The procurement of any of these services has to comply with EU procurement and the Public Contracts Regulations 2006. It must also take account of the interchange from current service provision to the potential new arrangement(s).
- 2.5 It is proposed the procurement of the clinical waste contract be undertaken by Kent County Council (KCC). The Waste Services team in conjunction with the Strategic Procurement team will ensure that the KCC project team conform to both EU and Medway's Contract Rules.

3. BUSINESS CASE

3.1 Business Case Summary

- 3.1.1 The provision of a clinical waste collection and disposal service is a statutory duty for the waste disposal authority of an area. Medway Council, as a unitary authority, holds this duty.
- 3.1.2 Medway made the decision in February 2007 to split the current fully integrated contract into separate parts to ensure better competition and hence value for money. This procurement is intrinsically linked to that of the larger household waste collection and disposal contracts. All of the separated contracts must commence on the same day, currently programmed to be September 2010, to ensure service continuity.

3.2 Strategic Context

- 3.2.1 This procurement follows the council's core values to ensure we have services that put our customers at the centre of everything we do, whilst at the same time as giving value for money and fits with the strategic priority of a clean and green environment.
- 3.2.2 Such services need to support the Council's waste strategy that in turn provides the basis for targets in Council Plan and the emerging Sustainable Community Strategy. The primary objectives are to:
 - Ensure compliance with statutory duties.
 - Meet statutory performance targets.
 - Ensure continuity of a front line service.
 - Provide services within agreed budgets.
 - Meet requirements to achieve efficiency gains.
 - Provide environmentally sustainable services.

3.2.3 The current contract for waste collection and disposal has been extended for a period of up to two years (from September 2009 as per the provisions within the current contract terms and conditions), but it should be noted the aim is to complete procurement of the main collection and disposal contracts for commencement at the end of September 2010.

3.2.4 In 2008/09 just over 85 tonnes of clinical waste was generated in Medway.

3.3 Whole Life Costing/Budgets

3.3.1 As these are statutory services, current budget exists for the services and forecast budgets have been put forward. The overall life cost for this contract is estimated to be £700,000 over 7 years.

3.3.2 If KCC run the procurement on our behalf, they have confirmed there will be *nil* cost to Medway.

3.4 Risk Management

3.4.1 Not only are there project risks in letting a viable and affordable contract for the services needed but also there will be a risk obtaining this service within a timeframe that will ensure this smaller contract is able to commence in line with the main collection and disposal contracts.

3.4.2 The risks identified to date are detailed below

No	Relevant Risk	Significance H, M or L	Likelihood H,M or L	Mitigating factors or action to be taken	By whom
1	Insufficient resources to deliver the project.	M	M	Advance planning and action when required. Use of external resources (KCC) for project management, technical and financial advice.	Proc. Board
2	Invitations to tender fail to stimulate a response from the market.	H	H	Ensure contract requirements are packaged appropriately to invoke sufficient interest. Ensure all previous expressions of interest are advised of tender.	Project team
3	Changes in government regulations.	H	H	Incorporate into the contract that which is likely to be a known change.	Project team

				Prepare clear ground rules to be incorporated into the contract conditions for negotiating future changes in law.	Legal services
4	Effect of change as a result of elections May/June 2010.	M	L	Whatever the outcome the council has to continue to comply with legislation.	
5	Tendered prices unacceptable to council	H	H	Build into contract a pricing mechanism arrangement for certain services which allows them to be removed or modified to meet budget constraints.	Proc. Board Cabinet
6	Project fails to achieve a solution in sufficient time to allow a smooth handover from existing to new contract.	M	M	Service providers now being found outside of the larger well known waste service companies so competition improving. Relatively easy to handover.	Project team Project Board

3.5 Market Testing (Lessons Learnt/Bench Marking)

3.5.1 General background: Following publication of a Prior Indicative Notice (PIN) in 2006/7, in the Official Journal of the European Union (OJEU), in a technical journal and in a local newspaper discussions were undertaken with a large number of service providers who had expressed an interest in providing future waste services to the Council. This allowed a soft market testing exercise to take place for all the waste services, including those detailed in this report and provides sufficient justification that the marketplace is sufficient and capable of delivering Medway's requirements. The Council team undertaking this exercise comprised representatives from Waste Services, Legal Services, Procurement, Finance and Corporate Review.

3.5.2 Service providers: During the initial PQQ stage there were 7 companies who expressed an interest in this contract.

3.5.3 Service delivery mechanism: Consideration has been given to the service delivery mechanisms. This includes:

1. Do not have/run any clinical waste collections
As there is a statutory duty for Medway to undertake collections of clinical waste, so this is not an option.

2. Management by another local authority.

As this is a contract for the collection and disposal of clinical waste and there are no other unitary authorities within the Kent area that have responsibility for both functions, management by another local authority is not deemed to be a viable option at this time (although other Kent authorities could bid for the contract through the traditional procurement if it so chose).

3. Traditional procurement

- (i) Procure using in house team
- (ii) Procure in conjunction with other local authorities.
 - No framework agreements can be found for this service.
 - Discussions with Kent County Council has identified an opportunity to share procurement *at nil* cost to Medway.
- (iii) Procure using external consultants

3.5.4 Of the options above, option 3 (ii) is recommended due to lack of appropriate internal resources, significant procurement cost savings, restricted timescales and issues associated with previous waste collection and disposal procurements.

3.6 Stakeholders Consultation

3.6.1 Significant consultations have been held with industry, residents, interested groups and other forums in preparation of the waste strategy. Details are contained within the waste strategy www.medway.gov.uk/wastestrategy and its support documents.

3.6.2 As mentioned in 3.5.1 above, below are the responses for service delivery providers during the initial consultation exercise:

- The need to build in flexibility to enable services to be enhanced and improved, and for the changes to be fully supported across the political spectrum.
- That the project and service risks need to be carefully assessed and allocated appropriately. In certain cases the risks might have to be shared with or even borne by the Council.
- Some of the smaller service providers that specialised on a particular waste or process appeared to be more flexible and responsive in the way they provided their services or their ability to accommodate changes.

3.6.3 Consultation with Kent County Council and other local authorities in Kent has shown that there is an opportunity to share procurement costs and economies of scale for the disposal element.

4 PROCUREMENT IMPACT ASSESSMENT (PRIMAS)

4.1 Equalities Issues. These issues have been dealt with substantially in the waste strategy and were the subject of separate consultations. A Diversity Impact Assessment has been undertaken on the existing waste services

provision and this will be taken into account in the preparation of the specification and terms of contract.

- 4.2 Environmental Issues. A detailed consultation and analysis of the environmental issues of future waste services, particularly in respect of waste disposal, was carried out as part of the waste strategy. A stand-alone document was produced as a result titled "The Best Practical Environmental Option". A summary and conclusion of this document is contained within the waste strategy. Relevant comments and issues will be addressed within the specification and contract terms. In addition environmental issues will form a significant part of tender evaluation criteria
- 4.3 Health and safety. As the record of the waste industry is not always favourable, this is an important issue for the service provision. Health and safety issues will be addressed in the specification and contract terms and in addition will also form a significant part of the tender evaluation criteria. There are very stringent criteria, set out by the Department of Health, Health and Safety Executive and the Environment Agency, that clinical waste collection contractors and clinical waste disposal facilities must adhere to.

5 PERMISSIONS / CONSENTS

- 5.1 There are no other permissions/consents required preventing the commencement of this procurement process.

6 OPTIONS APPRAISAL

6.1 Success Criteria/Key Drivers/Indicators.

- 6.1.1 There are no indicators set for clinical waste collection and disposal, but this is a statutory service we must provide.

6.2 Options.

- 6.2.1 There are three options that have been considered for progressing this procurement.

(1) Via any existing framework agreements

Further to guidance from Strategic Procurement, the Waste Services team has undertaken the research into potential EU compliant frameworks via the following purchasing organisations that could potentially negate the need to undertake a full EU procurement process.

- Yorkshire purchasing organisation
- West Mercia Supplies
- Eastern Shires purchasing
- LCSG
- Essex procurement agency
- Waste information network

No EU compliant framework agreements could be identified for these services.

(2) In partnership with other local authorities

Both Medway Council and Kent County Council need to procure a new disposal route of clinical waste. At this time, Medway also need to procure the collection services. There is an opportunity for Medway to achieve economies by procuring the collection element at the same time as the disposal. This is due to the service providers being the same for both services. KCC have confirmed they can procure both of these together and within our timeframe and at nil cost to Medway Council.

(3) Via stand-alone procurement using EU procurement procedures.

(i) Procure using in house team. Following consultation with the Strategic Procurement Manager, due to limited resources within this and the waste team, the tight times scale for procurement and issues associated with previous procurements, this has not been deemed viable at this time.

(ii) Procure using external consultants. Discussions have been held with Eversheds who are assisting the Council with the procurement of the waste collection and disposal contracts, with technical advice from Entec and financial advice from Ernst and Young. They have the capacity and experience to procure on behalf of the council, but at a significant cost.

6.2.2 Preferred Option. Of the three options above, 2 (procurement 'In partnership with other local authorities') using Kent County Council as the lead is recommended due to lack of internal resources, economies of scale, restricted timescales, the political sensitivity of this procurement and lessons learnt from the waste collection and disposal procurements.

7 PREPARATION OF THE NEXT STAGE OF PROCUREMENT

7.1 EU Implications

7.1.1 All the waste services that are required fall within the scope of The Public Contracts Regulations 2006 that we are obliged to follow. For these services it is proposed that the restricted procedure be used so that the most applicable and resource capable suppliers from a larger applicant pool can be filtered and invited to tender. This will overcome the potential risks of time and resource costs associated with undertaking an open procurement process.

7.1.2 A timetable for this procurement will be developed in partnership with KCC and signed off in conjunction with Medway Council's Strategic Procurement team.

7.1.3 It is proposed that a report will come to Cabinet at Gateway 3 for contract award. Members and Cabinet as a whole will maintain complete control over the final decision making process.

7.2 Resources and Project Management

- 7.2.1 The Director Regeneration Community and Culture acts as Project Sponsor and chairs the Project Board that consists of the Director of Regeneration Community and Culture and senior representation from Waste Services, Legal Services, Finance Division and Procurement Division. This Board provides the strategic overview for the project.
- 7.2.2 It is proposed that KCC will manage the project working closely with officers from the waste team in Medway Council. Project updates will continue to be reported weekly into the senior management team of the Director of Regeneration, Community and Culture, Chief Finance Officer and the Assistant Director (Housing and Corporate Services).
- 7.2.3 Strategic Procurement will also continue to provide strategic support, guidance and Quality Assurance throughout the procurement process to the Assistant Director for Front Line Services and the acting Head of Waste Services.

7.3 Contract Documents

- 7.3.1 KCC will be compiling all contract documents, which will incorporate requirements and will mitigate potential issues identified within this report especially around risk management. Strategic Procurement has advised that KCC must ensure adherence to all internal Gateway requirements and Medway's Contract Rules and this will be managed and ensured via the Waste Services team as part of their engagement within the project.

7.4 Contract Management

- 7.4.1 The management and control of this element of the services will be built in to the specification before contract action is commenced.
- 7.4.2 There will be a need to ensure that contractors appointed provide sufficient accurate data to confirm its performance indicators and comply with the statutory submission of waste data to central government. This will be ensured via contract specification, close examination of tender's management and reporting procedures during evaluation process and by close management following award of contract by the waste services team.
- 7.4.3 Waste Services will act as the client for the management of the contract. The Head of Service manages the strategic direction of the contract with the Waste Contract Manager (and associated Contract Officers) dealing with client issues associated with the daily operational management.

8 PROCUREMENT BOARD

- 8.1 The Procurement Board considered this report on 17 February 2010 and supported the recommendations as set out at section 11.

9 COMMENTS OF THE PORTFOLIO HOLDER FOR FRONT LINE SERVICES

- 9.1 Alongside the provision of an effective waste collection and disposal service for Medway it is vital to ensure that Medway is in a position to grow and develop in the 21st Century. There is a clear need to manage Medway's waste in both a sustainable and effective way. The use of an objective procurement process will allow the Council to assess all the factors and technologies that private sector partners can offer to achieve these aims.
- 9.2 We need to be in a position to contract for the collection/disposal of clinical waste to ensure that Medway maintains a quality service and public realm for its stakeholders.

10 FINANCIAL, PROCUREMENT AND LEGAL COMMENTS

- 10.1 Existing budget provision should enable the service to be provided to specification given the anticipated competition for the contract. The whole life cost of the service to be provided over the 7 year term is expected to be in the region of £700,000.
- 10.2 Strategic Procurement has provided quality assurance and support thus far and will continue to provide such support as requested throughout the remainder of the process. As it is proposed that KCC manage the entire procurement process, it will be their responsibility to ensure that they comply with all EU requirements in light of the new Remedies Directive and with Medway's internal Gateway 2 requirements. Strategic Procurement will provide any support as requested to both the internal Waste Services team and KCC. As per the advice of Strategic Procurement, the client department has researched OJEU compliant framework providers but no contracts exist that would negate the need to undertake a full EU procurement process. Therefore, the proposed restricted procedure is the most viable option to deliver Medway's requirements as it will filter only capable and sufficiently resourced organisations to invite to tender.
- 10.3 The procurement process recommended in this report reinforces the policy of achieving best value for money and the need for compliance with the EU the Public Contracts Regulations 2006 and EU Procurement Directives. It sets out a structured approach to this procurement, is in line with the government's National Procurement Strategy for Local Government Procurement and is in accordance with the Council's procurement strategy. If the contract is awarded to a company other than the existing contractor, there is likely to be a transfer of staff pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006.

11 RECOMMENDATIONS

- 11.1 Cabinet is requested to approve the discontinuation of the current OJEU procedure due to the resultant delays since the original OJEU notice period.
- 11.2 Cabinet is requested approve the commencement of a new OJEU procurement process for the clinical waste requirements.
- 11.3 Cabinet is requested to note and to approve the commencement of recommendation in 11.2, in conjunction with Kent County Council, as a joint procurement with Kent County Council as the lead authority.

12 SUGGESTED REASONS FOR DECISION(S)

- 12.1 This procurement is intrinsically linked to that of the larger household waste collection and disposal contracts. All of the separated contracts must commence on the same day, currently programmed to be September 2010, to ensure service continuity.
- 12.2 Advice from Eversheds and Strategic Procurement (in section 2.2 of this report) is that due to the huge amount of time since the original OJEU notice was published, it is best to conclude with the current process and commence a new EU process.
- 12.3 In addition, the Council needs to revisit its requirements for clinical waste collection and disposal in light of other contractual arrangements for waste services.

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Background papers

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

Description of document	Location	Date
Options Appraisal for Waste Collection Services	Web site & waste services section	August 2008
Procurement of Waste Services	Web site & waste services section	February 2007
Reports on discussions with potential service providers.	Waste services section	Oct to Dec 2006
Municipal Waste Management Strategy	Web site & waste services section	January 2006
Review of Potential Partners for Medway	Waste services section	2006
The Best Practical Environmental Option	Waste services section	2005
Medway Waste Survey Final Report	Waste services section	2004
	Waste services section	
	Waste services section	

