

CABINET

19 OCTOBER 2021

GATEWAY 1 PROCUREMENT COMMENCEMENT: RECYCLING RESOURCE MANAGEMENT CONTRACT

Portfolio Holder: Councillor Phil Filmer, Portfolio Holder for Front Line Services

Report from: Richard Hicks, Director of Place and Deputy Chief Executive

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Summary

This report seeks permission to commence the procurement of the Recycling Resource Management Contract. This Gateway 1 report has been pre-approved for submission to the Procurement Board.

1. Background Information

1.1. Budget and Policy Framework

1.1.1. This report is within the Council's policy and budget framework and ties in with all the identified Core Values, Strategic Priorities, Strategic Council Obligations and Departmental/Directorate service plans.

1.2. Service Background Information

1.2.1. The current Recycling Resource Management contract was entered into via VEAT notice with Veolia and commenced 1st October 2019.

The contract relates to:

- Provision of a transfer station (for clarification a transfer facility is a piece of waste infrastructure where waste is delivered for bulking and onward transportation)
- Treatment of:
 - Kerbside recycling (container mix and fiber)
 - Ancillary recycling (such as bring sites)
- Transfer only of
 - Organic waste

- 1.2.2. The initial term of this contract was two years with a further 1 year extension but thereafter with no provision for extension due to VEAT notice requirements meaning the contract expires 30th September 2022.
- 1.2.3. Kerbside recycling (which is a key feature of this contract) is collected in split back freighters in a mixture of reusable bags (blue/white) and single use plastic bags.
- 1.2.4. Whilst the separation of fiber is encouraged by way of blue bag it is not enforced meaning Medway's container mix is heavily mixed with paper/card.
- 1.2.5. Under the current arrangement recycling is transferred via the Veolia owned and operated transfer station at Whitewall Road, Strood and sent for onward treatment.
- 1.2.6. Under the current arrangement Medway council take full risk on the recycle material prices as dictated by the market conditions at the time. This means that for those materials that produce an income this is offset against the total contract costs payable by Medway Council.
- 1.2.7. The current contract will process 195,000 tonnes (estimated) of recycling throughout its life at an annual average cost of £5.7M (estimated).
- 1.2.8. This report sets out the procurement approach and seeks approval to commence procurement for a contracted solution commencing 1st October 2022.
- 1.3. Timetable
 - 1.3.1. The timetable for this procurement is detailed within Appendix 1 of this report and has been scheduled to allow adequate mobilisation for contract start date of 1st October 2022.
- 1.4. Funding/Engagement from External Sources
 - 1.4.1. Not applicable to this procurement.
- 1.5. Parent Company Guarantee/Performance Bond Required
 - 1.5.1. Due to limited number of economic entities able to deliver this service and their general financial strength and position with their corporate hierarchy, it is proposed that a PCG nor Bond are sought as part of the tender exercise

2. Procurement Dependencies and Obligations

2.1. Project Dependency

- 2.1.1. The Recycling Resource Management contract directly impacts Medway's kerbside recycling collection service as the disposal point handling an average of 64,000 tonnes of recycling per annum.
- 2.1.2. Regardless of the procurement route taken, the Council must have a solution in place by 1st October 2022 that meets our statutory obligations, climate change objectives and gives the best financial value for money.

2.2. Statutory/Legal Obligations

- 2.2.1. As the waste collection and disposal authority, Medway Council has a statutory duty under the Environmental Protection Act 1990 to collect household waste.
- 2.2.2. Medway Council are also required to manage waste according to the waste hierarchy giving priority to waste prevention and reuse/recycling followed by disposal routes.
- 2.2.3. The landfill directive places a duty on Medway Council to reduce the amount of waste it sends to landfill and maximise recycling.

3. Business Case

3.1. Procurement Project Outputs / Outcomes

- 3.1.1. As part of the successful delivery of this procurement requirement, the following procurement project outputs / outcomes within the table below have been identified as key and will be monitored as part of the procurement project delivery process.

Outputs / Outcomes	How will success be measured?	Who will measure success of outputs/ outcomes	When will success be measured?
Secure a contract to manage the transfer and disposal of recycle	The successful implementation of a recycle resource management contract	Waste Disposal team	Quarterly service monitoring

3.2. Procurement Project Management

3.2.1. The management of this procurement process will be the responsibility of the Category Management team.

3.3. Post Procurement Contract Management

3.3.1. The management of any subsequent contract will be the responsibility of the Waste Disposal team.

4. Market Conditions and Procurement Approach

4.1. Market Conditions

4.1.1. Medway Council engaged Eunomia as a consultant at the beginning of 2021 to support with the procurement of this contract.

4.1.2. As part of this procurement exercise a soft market test has been carried out the purpose of which was to measure the interest in the opportunity and gain views on current market conditions. The full report for this exercise is included within the Exempt Appendix of this report.

4.1.3. The key challenges on this contract procurement will be:

- 4.1.3.1. Securing a supplier with a transfer facility within Medway (or within a reasonable operational travel distance)
- 4.1.3.2. The upcoming Environment Bill 2023
- 4.1.3.3. Risk share on recycling material commodities

4.2. Waste Transfer station

4.2.1. A waste transfer station is a piece of infrastructure critical to the operation of waste collections where waste is delivered before onward transportation to treatment facilities. Therefore, the importance of the facilities location is key to this procurement.

4.2.2. Whilst it would be preferable for the transfer station to be located within Medway's boundary (or within a very reasonable operating distance on the boarder) it may limit competition if the Medway location were to be specified as an absolute.

4.2.3. It was recognised through the market engagement that out of the five potential providers only one (the incumbent contractor Veolia) has a suitable site within Medway. Regardless of the transfer station location none the remaining providers ruled themselves out but indicated they would need to work with a third party for the transfer station element.

4.3. Environment Bill

4.3.1. The upcoming changes resulting from the Resources and Waste Strategy and The Environment Bill such as increasing recycling to meet

targets, further waste separation and Extended Producer Responsibility reform pose some uncertainty to this contract.

- 4.3.2. All of the potential providers acknowledged this uncertainty and welcomed proposed contract length of 2 years (with the option for 2-year extension by mutual agreement).
- 4.3.3. Letting a contract beyond this time frame would lead providers to apply risk pricing when tendering for this contract.

4.4. Risk Share

- 4.4.1. Under the current contract Medway Council takes full risk on the recycling material prices. This means that material prices are based on the current market value for that material which results in either a payment or income offset against the total contract cost.
- 4.4.2. All potential providers made it clear that there is no appetite for them to take full risk on waste materials but there is some interest in sharing that risk.
- 4.4.3. The views expressed differed around what the risk share would look like but it is clear that the expectation is for the majority of the risk to sit with Medway Council.

4.5. Procurement Options

- 4.5.1. The following is a detailed list of options considered and analysed for this report:
 - 4.5.1.1. **Option 1 – Do nothing:** This option is not viable. The Council is obliged to take action as it is essential that the Medway kerbside collection service has a treatment route for recycling that meets our statutory obligations, climate change objectives and gives the best financial value for money.
 - 4.5.1.2. **Option 2 – Extend the current Veolia contract:** The current contract with Veolia was entered into for a period of no more than 3 years via a VEAT notice in 2019. On this basis it is no longer possible to extend the current agreement further. It should also be noted that the wording within the notice was clear on the Council's intentions within the three-year period and any extension would go against the original rationale; ultimately making it an unviable option.
 - 4.5.1.3. **Option 3 – Use a Voluntary Ex-Ante Transparency Notice (VEAT):** A VEAT notice is used as a means of advertising the intention to let a contract without opening it up to formal competition. – A VEAT can only be used in a handful of codified situations, the pertinent one being competition is absent and has been illustrated by receiving no compliant bids via a formal open tender activity. The second being

competition is absent for technical reasons and original notice was published stating the transfer station had to be within Medway and there was only one economic entity able to deliver, if the location of the transfer station needs no longer to be within Medway's boundary then this cannot be utilised again.

- 4.5.1.4. **Option 4 – Direct award to Medway Norse:** Through the joint venture established between Medway Council and Medway Norse, it is possible via the 'Teckal' exemption to directly award this to Medway Norse. However, Medway Norse do not have the physical infrastructure locally to support this service.
- 4.5.1.5. **Option 5 – Utilise a framework:** A framework for work of this nature does not exist therefore it is not possible to award through a framework.
- 4.5.1.6. **Option 6 – Open market procurement:** Following soft market testing it is clear that there is more than one provider that is not only interested in this opportunity but that could meet Medway's needs for this contract.
The requirements for this contract in terms of deliverables are very clear. Therefore, utilising the 'Open procedure' along with its established procurement guidelines would allow us to go out to market and encourage competition to ensure Medway Council gets the best possible deal.

4.6. Procurement Process Proposed

- 4.6.1. As the waste collection and disposal authority, Medway Council are obliged to take action as it is essential that the Medway kerbside collection service has a treatment route for recycling that meets our statutory obligations, climate change objectives and gives the best financial value for money.
- 4.6.2. The preferred procurement route is via the open market as detailed in **option 6** as this route ensures the council get the best possible deal through competition.
- 4.6.3. It is recommended that the contract length be a 2-year term with the option to extend for 2 years by mutual agreement.
- 4.6.4. It is recommended that the contract tender is structured into lots to encourage competition as follows:
 - 4.6.4.1. Lot 1 – Transfer station
 - 4.6.4.2. Lot 2 – Waste materials treatment
 - 4.6.4.3. Lot 3 – Both Transfer station and waste materials treatment

4.6.5. It is recommended that we deal with waste materials risk by specifying within the tender documents our intention to ensure this remains comparable between bidders during scoring. The core requirement would be that 100% of the risk remains with Medway council. Further to this we would request a pricing scenario where the risk is split but officers are of the opinion that by asking bidders to propose their own profit split, comparative evaluation will be difficult. Therefore, officers wish to prescribe a fixed percentage split for bidders to otherwise price against. Through market engagement bidders were forthcoming stating the Council would remain liable for the vast majority of risk so it is proposed that the tender includes an alternative risk share split of 80%/20% with the higher risk proportion remaining with Medway.

4.7. Evaluation Criteria

4.7.1. Subject to approval, Medway Council will commence procurement as detailed in the exempt appendix to this report.

5. Risk Management

5.1. Risk Categorisation

Risk Description	Risk Category	Likelihood	Impact	Plans to Mitigate
Changes imposed on how Local Councils collect waste as a result of the upcoming Environment Bill leading to collection methodology changes and potential material composition changes.	Legal	C	III	Secure a contract for recycling management that does not run beyond the Environment Bill implementation date. Clear ground rules will also be set out in the contract in terms of negotiating future changes in law.
Failure to secure a contract post 1st October 2022 leading to Medway Council being unable to deliver a kerbside recycling service and not meeting statutory obligations as set out in this report.	Reputational	D	IV	Secure a contract for recycling management as set out in this report.
Changes imposed on how Local Councils collect waste as a result of the upcoming Environment Bill leading to risk pricing at tender process.	Financial	E	III	Secure a contract for recycling management that does not run beyond the Environment Bill implementation date. Clear ground rules will also be set out within the contract in terms of negotiating future changes in law.
Failure to secure a contract post October 2022 resulting in recycling being disposed of via energy recovery/ landfill routes and Medway Council not meeting statutory	Climate Change	E	IV	Secure a contract for recycling management as set out in the recommendations of this report. Clear ground rules will also be set out within the contract to ensure the appropriate management of recycling materials.

Risk Description	Risk Category	Likelihood	Impact	Plans to Mitigate
obligations set out in this report and climate change objectives				
Given that Medway Council do not own a waste transfer facility the location of this infrastructure is key to this procurement and failure to secure one within Medway's boundary (or within a very reasonable operating distance on the boarder) could lead to financial and operational impacts on waste collection service delivery.	Service Delivery	B	III	Procurement of a contract with a facility within Medway's boundary (or within a very reasonable operating distance on the boarder).
Successful contractor disposes of waste unlawfully leading to reputational damage (for example - waste sent to a foreign market and unlawfully flytipped).	Reputational	E	II	Robust contract clauses ensuring that the successful contractor meets its duty of care responsibilities in line with waste industry regulation. This will be complimented by continued spot checks and audits by the Waste Disposal team to ensure waste is managed properly.

6. Consultation

6.1. Internal (Medway) Stakeholder Consultation

6.1.1. Not applicable to this procurement.

6.2. External Stakeholder Consultation

6.2.1. Not applicable to this procurement.

7. Service Implications

7.1. Financial Implications

7.1.1. The procurement requirement and its associated delivery as per the recommendations at Section 10, will be funded from existing revenue budgets.

7.1.2. Further detail is contained within Section 2.1 Finance Analysis of the **Exempt Appendix** at the end of this report.

7.2. Legal Implications

7.2.1. The proposed procurement is expected to be above the PCR threshold and therefore an FTS notice would be required.

7.2.2. The proposed procedure gives a high degree of confidence that the Council's primary objectives for procurement are met, as required by Rule 1.2.1 of the Council's Contract Procedure Rules ("the CPRs").

7.2.3. Under the Council's Contract Procedure Rules, the proposed procurement is a high-risk procurement, and the process set out in this report meets the requirements for such procurements. The proposed procurement must also be advertised on the Kent Business Portal, in compliance with rule 3.3 of the CPRs.

7.2.4. Medway Council has the power under the Local Government (Contracts) Act 1997 and the Localism Act 2011 to enter into contracts in connection with the performance of its functions.

7.2.5. The process described in this report complies with the Public Contracts Regulations 2015 and Medway Council's Contract Procedure Rules.

7.3. TUPE Implications

7.3.1. To be confirmed. Whilst Veolia employ staff to work on the current contract, it is not currently known whether they meet the 50% threshold to be eligible for TUPE.

7.4. Procurement Implications

7.4.1. The current arrangement was contracted on the back of a VEAT notice due to prohibiting factors at the time of the requirement. Since then, market interest has been generated and without a strict requirement of the transfer station being located within the Medway boundary, more contractors are interested in the opportunity. In line with PPN 06/21, this tender will also be one of the first at Medway to be subject to seeking Carbon Reduction Plans in a formal manner from bidders.

7.5. ICT Implications

7.5.1. The current nor future arrangements will rely on bespoke software solutions as management information is shared back with the Council in spreadsheet format.

8. Other Considerations

8.1. Diversity & Equality

8.1.1. The proposed procurement route will not see any material impact on delivery of this service and as such there are no Equality and Diversity implications for consideration.

8.2. Social & Economic Considerations

8.2.1. The proposed procurement route will not see any material impact on delivery of this service and as such there are no Social & Economic implications for consideration.

8.3. Environmental Considerations

8.3.1. All procurement routes set out in this document have taken into account Medway Council's Climate Change action plan (published in 2021) and specific actions related to waste management:

- Continue to maintain minimum levels of waste to landfill

8.3.2. The proposed procurement route will ensure continued management of recycling through the best available recycling treatment route that meets the climate change objective set out in the plan.

9. Other Information

9.1. Not applicable to this procurement.

10. Recommendation

10.1. Cabinet is recommended to approve the commencement of procurement, as set out in the exempt appendix to the report, using the

open procedure and for the contract length to be two years, with the option to extend for two years by mutual agreement.

11. Suggested reasons for decision

- 11.1. The preferred procurement route gives Medway Council confidence that they are getting the best possible deal through an open market competition and securing a contract ready for 1 October 2022 to meet its statutory obligations.

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Appendices

Exempt appendix:

- Financial Analysis
- External Eunomia report:
 - DMR Procurement – soft market test
 - Procurement considerations from engagement
 - Waste transfer station location

Background Papers

None