

Date	-	10 November 2017
Report of the	-	Lead Director, Dr Anthony Leonard
Subject	-	Tender Procedure and Evaluation

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**Recommendation:** It be **RESOLVED:** That the following key decisions be incorporated into the Specification and Conditions of Contract documents, as appropriate:

- 1) tenders are evaluated for the five service elements that will definitely proceed to Contract (Hastings Collections, Rother Collections, Wealden Collections, Rother Street Cleansing and Wealden Street Cleansing);
  - 2) the Tender Evaluation Model is developed using a 60:40 price:quality split;
  - 3) the Joint Waste Partnership Lead Director be authorised to take decisions as required to finalise the documents for Official Journal of the European Union (OJEU) (provided such decisions have no budget or policy implications); and
  - 4) the timetable for procurement be noted.
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## **Introduction**

1. Work is progressing to finalise the documentation required to procure a new Joint Waste Recycling, Beach and Street Cleansing Contract which must commence on 29 June 2019. Hastings Borough Council (HBC), Rother District Council (RDC) and Wealden District Council (WDC) have now signed the Inter-Authority Agreement (IAA) and committed to a joint procurement.
2. This report describes the progress being made with regard to procurement activities and makes recommendations with regard to tender evaluation.

## **Tender Procedure, Opportunity for Negotiation & Timetable**

3. The preferred procurement route is via a Competitive Procedure with Negotiation (CPN) which is recommended for services which have a variable level of risk attached. This procedure was not available for the Partnership to use in 2012.
4. CPN allows the Partnership to negotiate key points but the specification requirements must be finalised to the point that the Contract could be awarded without a negotiation stage. When initial tenders are received, costs can be considered with sufficient certainty to award.
5. Negotiation can then be used to reconsider the impact on pricing that arises from key contractual provisions (e.g. the approach to inflationary risk, the impact of performance management risks and similar). The specified service

requirements should not be items for negotiation (because that would alter the basis on which tenders have been invited), but Contractor solutions for the delivery of services could offer scope for negotiation.

6. The current timetable provides for the Official Journal of the European Union (OJEU) Notice to be placed December 2017 with initial tender returns expected in July 2018. The negotiation phase (if required) must be completed in September 2018 to enable final tenders to be invited and evaluated for contract award to be made in December 2018. This timetable provides the minimum recommended six month mobilisation period prior to commencement of services on 29 June 2019.

### **Pre-Market Engagement**

7. Pre-Market Engagement (PME) is a key element of the CPN procedure strongly recommended by the procurement guidance to identify key issues and inform the specification. A PME exercise was undertaken by the partnership in July 2017. A summary of the responses received is provided as Appendix 1 and the views of these companies have been considered by officers as the content of each tender document has been developed.

### **Service Specification and Conditions of Contract**

8. The service specification needs to be finalised prior to placing the OJEU notice. Then the selection questionnaire stage (previously known as the pre-qualification phase) is followed by an invitation to tender. The specified service requirements cannot be revised during negotiation, only the contractor solutions (and associated pricing) being proposed by contractors. There is no option to further negotiate after submission of final tenders.
9. In order to finalise the Specification, decisions are required on several key matters. These are dealt with in the Specification Decisions report also on this meeting agenda.
10. In order to finalise the Contract some key financial decisions are required. These matters are dealt with in the Financial Decisions report also on this meeting agenda. CPN offers significant benefit to the Partnership in that if the decisions have an undesirable financial impact, the opportunity exists to invite negotiation on these points.
11. The Contract also requires some other key considerations to be finalised. These matters are dealt with in the Contract Matters: Mobilisation, Contract Period and Performance Management Framework report also on this agenda.

### **Tender Evaluation: Pricing Elements**

12. Tender pricing will be invited in sufficient detail to identify the proportion of the total Contract Price to be funded by each council. However, this level of transparency means the Partnership risks a situation where Bidder A is least expensive for one council but Bidder B is least expensive for another council. Partnership agreement for the Tender Evaluation Model is therefore essential for controlling this potential risk of conflict within the partnership.
13. HBC has resolved to develop comprehensive fully costed arrangements for a potential Hastings street cleansing direct services organisation (DSO), which

subject to meeting best value criteria, could provide street and beach cleansing, fly-tip removal and bulky waste collection services in Hastings from 29 June 2019. The joint procurement will therefore obtain a price for Hastings street and beach, fly-tip and bulky waste services to support the 'best-value' assessment. However, this introduces a complication for the evaluation process in that including the Hastings Street Cleansing price in the evaluation could lead to a situation where the winning bidder would be different should HBC proceed with the DSO. This presents the risk of a procurement challenge from a losing Bidder.

14. HBC has advised that they require a 'best-value' price for comparison and it is their intent to deliver a DSO. Following legal advice and in order to mitigate the procurement risk to the project, it has been concluded that the Hastings Street Cleansing, Bulky Waste and Fly-tip price(s) should not be part of the tender evaluation. However if the winning tender offers an attractive price/solution, then HBC may determine to enter into the joint contract for their street cleansing, bulky waste and fly-tip services.
15. Tenders are therefore to be evaluated on the basis of the five elements that will definitely proceed to Contract (HBC Collections, RDC Collections, WDC Collections, RDC Street Cleansing and WDC Street Cleansing). This reduces the risk of procurement challenge and offers the opportunity to conduct a robust evaluation on the service proposals which the councils are fully committed to.
16. Recommendation:
  - 1) Tenders are evaluated for the five service elements that will definitely proceed to Contract (HBC Collections, RDC Collections, WDC Collections, RDC Street Cleansing and WDC Street Cleansing).

### **Tender Evaluation: Price/Quality Split**

17. The key element of tender evaluation is the split to be used between price and quality considerations. In 2012, joint waste tenders were evaluated 70:30 (price:quality). However, it is considered by most officers that the effect of driving the price element of the evaluation to such a degree meant that bidders who met basic quality requirements still proceeded through the process and that ultimately this has contributed to unsatisfactory performance on the current contract.
18. Officers and consultants considered the effects of 70:30; 60:40 and 50:50 splits. Current experience indicates that 70:30 reduces service quality and other tender experiences demonstrate that a 50:50 split can make it difficult to "tip the balance" one way or the other. The continuing financial pressure on council budgets still means that price needs to be a significant consideration for bidders and therefore, the overall conclusion is to recommend a 60:40 price:quality split for evaluation purposes.
19. Recommendation:
  - 2) A 60:40 price:quality split is used to develop the Tender Evaluation Model.

## **Evaluation of Contractor Solutions (Method Statements)**

20. The requirements of the Contract (as described in the Specification) need to be met by the Contractor and they describe how they intend to meet the requirements in their Method Statements. Each Method Statement is evaluated against the requirements, scored and weighted to result in a final score for each Contractor. The requirements and weightings used in the Tender Evaluation Model are currently being considered by officers and will be presented to the Committee for approval in December.

## **Conclusion**

21. Reasonable progress has been made to develop the suite of documentation required for this procurement and each Councils' requirements are being defined for the specification. The provisions of the Contract are also being finalised.
22. Approval is sought for a 60:40 price:quality approach to the Tender Evaluation Model and the detail will then be developed ready for final approval prior to placing the OJEU notice.
23. In comparison with the intended timetable for this procurement (ref JWC report "Procurement of Joint Waste Services" 16 June 2017), the project has already incurred a delay of one month which means that a second round of negotiation is no longer possible. To deliver a successful CPN, the OJEU Notice must be placed by the end of December 2017 with a comprehensive suite of tender documents.
24. Members are being asked to consider and take decisions regarding several key matters at this meeting. These matters are dealt with by the following reports on this meeting agenda:
  - i. Specification Matters
  - ii. Contract Matters: Financials
  - iii. Contract Matters: Mobilisation, Contract Period and Performance Management Framework
25. To enable the procurement team to finalise the suite of documents for OJEU may also require some final details to be concluded. Such details will not have budget or policy implications. It is therefore recommended that the Lead Director be authorised to take any such decisions as required to finalise the documents having been through the three authority's officer considerations.
26. Members are advised that the final suite of documents will be presented at the next meeting. Approval will be sought for the Performance Management Framework, Tender Evaluation Model and OJEU Notice as well as the final Contract and Service Specification.

Dr Anthony Leonard  
Lead Director

## **Risk Assessment Statement**

Delay in taking the decisions needed to finalise the requirements will hinder the development of the documentation required to start the procurement procedure. This significantly increases the risk of service disruption in 2019.