

Date	-	10 November 2017
Report of the	-	Lead Director, Dr Anthony Leonard
Subject	-	Contract Matters: Mobilisation, Contract Period and Performance Management Framework

Recommendation: It be RESOLVED: That:

- 1) the service mobilisation requirement includes:
 - a. new kerbside collection model to be implemented from 29 June 2019;
 - b. eight week 'grace' period at the beginning of the contract where the PMF will not apply for collections (except clinical waste which will have only a four week grace period);
 - c. eight week 'grace' period following optimisation of routes, where the PMF will not apply for collections; and
 - d. four week 'grace' period for Street Cleansing, Bulky Waste and Fly-tip services.
 - 2) tenders are invited with a Contract Term of seven years, with a possible extension of up to seven years; and
 - 3) tenders are invited using a Performance Management Framework that includes both a deductions mechanism for breach and a points system.
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Introduction

1. The Partnership need to have a predetermined position and a full suite of completed documents at the point of placing the Official Journal of the European Union (OJEU) Notice for tender. There are a number of contractual and commercial considerations that need to be concluded.
2. Bevan Brittan (the Legal Consultants to the project) has their own Waste Precedent Contract which has been developed over a number of years and tested through a number of procurements. This contract has been reviewed and compared to the current form of contract. It is the view of the Joint Waste Team that the Bevan Brittan contract is a more comprehensive document that will better protect the needs of the Partnership. This precedent contract has therefore been developed for this procurement and although the format and layout differs from the document officers are accustomed to using, the benefits are considered to outweigh any disadvantages.
3. The following matters have been considered by Partnership officers and the following recommendations made.

Service Mobilisation

4. The services are to commence on 29 June 2019. The new kerbside collection service will begin on 29 June 2019. The changes to the collection system will be communicated in advance of this date to the general public and members of the workforce. The new collection service will be easier for the public to use and easier for the workforce to collect. The minimal change also decreases the likelihood of significant disruption to the service in June 2019.
5. For waste collections, the incoming contractor will not be permitted to re-route at this date. Discussions have taken place with Ricardo AEA (Waste Consultants) and Bevan Brittan (Legal Consultants). The incoming contractor will be expected to run the same routes as are currently operated by Kier for a period of time to minimise the opportunity for disruption to the service. This approach allows the incoming contractor to engage with staff, familiarise themselves with the unique aspects of the locality and thoughtfully plan how the service will be optimised for delivery moving forwards.
6. The incoming contractor will commence delivery in the summer months, where annual leave for both the Councils' and contractor staff is at its highest level. Due to the timing of 'handover' this can realistically be expected to cause issues in delivery of the service and therefore extra pressure on the service would be unhelpful at this time.
7. The contract proposes to allow a "bedding in" period of eight weeks where the provisions of the Performance Management Framework (PMF) will not be applied to waste and recycling collection services. The exception is for clinical waste services which will be granted a shorter period of four weeks. After this time, the PMF will be utilised in its entirety.
8. The incoming contractor will be permitted to re-route on either a "big bang" (where the entire contract area is affected) or on a roll-out (are by area) basis from between October 2019 and the second week in January 2020. This will give the contractor time to plan and for the Councils to work with the contractor to communicate the changes to residents. During this period of re-routing a second 'grace' period of eight weeks is proposed where performance deductions will not be applied. This has been discussed both with Bevan Brittan and Ricardo AEA and is a common approach for this type of service contract where extensive logistical challenges are faced every working day. Following expiry of the eight week period, the PMF will again apply in its entirety.
9. The new contract starts just prior to the peak summer tourism season. Street Cleansing Services, Bulky Waste and Fly-tip services will be given a 'grace' period of four weeks, after which time, the PMF will apply. These are essential services to the contract but it has to be accepted, that the contractor is mobilising a large contract, and there will be some logistical challenges in terms of vehicles and equipment. The Partnership will work with the contractor as soon as the contract is awarded to minimise any disruption.
10. Recommendation:
 - 1) Contract and supporting documentation for tender includes:

- a. new kerbside collection model to be implemented from 29 June 2019;
- b. eight week 'grace' period at the beginning of the contract where the PMF will not apply for collections (except clinical waste which will have only a four week grace period);
- c. eight week 'grace' period following optimisation of routes, where the PMF will not apply for collections; and
- d. four week 'grace' period for Street Cleansing, Bulky Waste and Fly-tip services.

The Contract Period

11. Pre-Market Engagement (PME) was undertaken in July 2017. PME asked the market for their views on contract length. There were five relevant responses with terms ranging from 7-10 years, with an option to extend. The responses indicate that vehicle life determines optimum contract length, as the potential contractor is able to depreciate the vehicle over a reasonable timeframe. Views were also sought direct from a number of vehicle manufacturers who indicated that vehicle life was around seven years, although this could be extended if the vehicles were maintained to a high standard.
12. East Sussex County Council's (ESCC) Integrated Waste Management Services Contract (IWMSC) ends in 2033. At this time, there will be potential to undertake a significant shift in the way services are managed for both collection and disposal. Views have been sought on the alignment of this contract with the end of the IWMSC. These have been considered and the conclusion is that this contract should plan to end in 2033.
13. Considerations have been given to the length of the initial period of the contract. An initial term of 10 years has been considered, with a possible four year extension. Many issues with the current contract fundamentally stem from the unreliability of the current fleet. An initial term of 10 years would stretch the ability of any contractor to maintain a safe and reliable working fleet with which to run the service. It would also leave only a four year possible extension. If standards were not maintained in the initial term to an acceptable level that would leave a four year contract to let, which would be unattractive to bidders. The reality of a four year extension or a four year contract is that this would be based around hire fleet and in terms of resourcing the contract would be an unsatisfactory way forwards. Hire fleet will not necessarily be equipped with all the requirements of the contract, and there could be issues with availability. The extra cost of utilising hire fleet will also be reflected in the contract price.
14. An initial contract period of seven years is therefore recommended, with a possible extension to the contract of up to seven years, subject to satisfactory performance. A seven year term will allow bidders to recover the cost of vehicles over a reasonable term and should ensure the contract has a robust fleet to deliver the services required.
15. Recommendation:
 - 2) Tenders are invited with a Contract Term of seven years, with a possible extension of up to seven years.

Performance Management Framework

16. When entering into a contract the expectation from both the client and contractor is that requirements can and will be met. However in the eventuality that there is disparity between performance and the specified requirements then there is a need for control measures that seek to improve performance. It is not in either party's interest to terminate so the PMF is an essential contractual provision. The Specification sets out the services that are required together with the standards and level of service expected. The PMF aligns with these specified requirements and ensures that the consequences of poor performance are clear and transparent to the contractor.
17. The PMF must be clear and unambiguous so as to control the potential for misunderstanding with regard to the service standards and avoid different interpretations between the Partnership and the Contractor. The PMF has a potentially significant effect on contractor pricing.
18. If the Councils are too 'penal' in their approach, Contractors will price for this at the outset. If the PMF is not robust enough, it will fail to drive performance on the contract. Officers attended a workshop delivered by Ricardo AEA on the PMF, Key Performance Indicators (KPIs) and Monitoring. As a result of this workshop, a PMF has been developed that will serve the needs of the Councils going forward.
19. The PMF has been streamlined to make the process clearer. It has also been reviewed in terms of client side resource. Some of the previous mechanisms were labour intensive for the Councils and had resource implications. The PMF will include a mechanism for managing whole road misses and non-completion of rounds, which should cut down the workload of the Officer team if this needs to be used. Flow diagrams have also been included in the document for clarity.
20. As well as levying deductions for breach (i.e. a missed bin) that reflect the level of cost of the breach to the Councils, a points system is to be introduced. This will mean that where it is difficult to attribute a cost to a failure to meet an item in the contract/specification (i.e. a Health and Safety failure), there will be the ability to allocate points to the occurrence. The points system could, if fully utilised, lead to termination of the contract. Therefore, it will be a useful factor in driving performance. The PMF is being re-written by Ricardo and will be reviewed both by officers and Bevan Brittan (legal consultants). The revised document will be presented to Committee on 15 December 2017.
21. Recommendation:
 - 3) Tenders are invited using a PMF that includes both a deductions mechanism for breach and a points system that if fully utilised, could lead to termination of the contract.

Conclusion

22. Decisions on these matters need to be made before placing the OJEU notice. However, the CPN procedure allows for an element of negotiation in the delivery of the solution. This means that if the above decisions have a negative financial impact on the solutions proposed, we can open up these

elements for negotiation during the tender process and seek to change our position.

Dr Anthony Leonard
Lead Director

Risk Assessment Statement

Sufficient time for mobilisation of the new contract is an essential requirement with a minimum period of six months following award of the contract. This means the OJEU Notice must be placed by the end of December 2017 and must be accompanied by a comprehensive suite of documents. Decisions therefore need to be taken to allow the Specification and Conditions of Contract to be finalised.

A delay taking such decisions hinders development of the documentation and significantly increases the risk of service disruption in 2019.