

## Joint Waste and Recycling Committee

Agenda Item: **9.1**

Report to	-	Joint Waste and Recycling Committee	<b>CONFIDENTIAL</b>
Date	-	30 November 2018	
Report of the	-	Lead Director	
Subject	-	Appointment of Contractor for Joint Waste and Recycling Contract	

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### **Recommendation:** It be **RESOLVED** That:

- 1) the Tender from Contractor A be accepted for the Waste Collection, Recycling, Street and Beach Cleaning and Associated Services Contract;
  - 2) this contract award recommendation is referred to each partner Council for approval and that each Chief Executive and or Executive Director be authorised to enter into contract with Contractor A;
  - 3) each Council to make financial provision to fund its own proportion of the total Contract Price including allowance for adjustments at the start of the Contract;
  - 4) the Lead Director be authorised to notify Contractors of the intent to award the Contract;
  - 5) each Council to make arrangements to inform residents about the collection system to be implemented from 29 June 2019;
  - 6) each Council to make provision for the review of customer service processes, enhancement of ICT systems and mobile equipment for council staff as necessary;
  - 7) each Council to make financial provision to fund the centralised client costs (the Authorised Officer role);
  - 8) each Council to consider and make suitable provision for the client roles and liabilities under the Contract;
  - 9) each Council to make financial provision for ad-hoc requests and container purchases throughout the Contract Period; and
  - 10) the service risk during mobilisation in terms of the resources and functions that will be available and fully operational at the Contract start date, be noted.
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### **Introduction**

1. Tenders were invited for the Waste Collection, Recycling, Street and Beach Cleaning and Associated Services Contract by way of Official Journal of the European Union (OJEU) notice 37243-2018 published 26 January 2018. Eight Expressions of Interest were received and five Supplier Questionnaires (SQ) returned. The Joint Waste and Recycling Committee (JWRC) considered the activities and outcome of that first stage of procurement (SQ)

at its meeting 6 April 2018 and the four companies were subsequently invited to submit Initial Tenders and attend a Bidders Open Day event in Bexhill.

2. One company withdrew from the procurement at this stage citing the number of municipal tender opportunities currently available to bid for.
3. Three initial tenders were received and all participating bidders were invited to participate in negotiation meetings and subsequently to submit final tenders by 12 October 2018.
4. Three tenders were received and evaluated in accordance with the Tender Evaluation Model (TEM) that was approved (Minute JWC17/20 refers). The scoring mechanism for the Commercial Risk element was clarified and amended following the negotiation meetings.
5. This report provides an analysis of the tenders received and makes a recommendation for Contract Award. The JWRC does not hold constitutional authority to award the Contract on behalf of each Council and must therefore refer the recommendation for Contract Award to each Cabinet (and subsequently Full Council if required). It is obviously essential that the same conclusions are reached by each Council for the Contract to proceed.

## **Negotiation Meetings**

6. The three tenderers participated in negotiation meetings with the Partnership and were given feedback as to the evaluation of their Invitation to Submit an Initial Tender (ISIT) submissions. This allowed each tenderer to understand the reason for their scores. The negotiation meetings also allowed each tenderer to better understand the Partnership's requirements and the provisions in the Main Body Contract.

## **Final Tenders and Evaluation**

7. Three Final Tenders were received on 12 October 2018. All three tenders had been completed and submitted in accordance with the Invitation to Submit Final Tenders (ISFT). The Tenders have been examined fully in accordance with the TEM and the agreed 60:40 cost:quality ratio with 1,000 maximum possible points.
8. Tender compliance checks (including the company credit check) were completed by the East Sussex Procurement Hub in parallel with the initial financial and quality evaluation work. To ensure that financial awareness did not influence quality evaluation, the procurement team has managed separate access to tender documentation and ensured that different personnel from each Council, Ricardo Energy and Environment and Bevan Brittan LLP took responsibility for scoring the pricing elements (out of 510 possible points), the commercial risk elements (out of 90 possible points) and the quality elements (out of 400 points) for each tender.

## **Finance Evaluation: The Pricing Schedules and the Annual Equivalent Sum**

9. Members are reminded that the Annual Equivalent Sum (AES) is not the annual contract price payable by the Partnership to the Contractor. The AES is the sum calculated from the pricing schedules for financial evaluation

purposes but includes the cost for the Food Waste collection service and uses approximate quantities for non-core and ad-hoc services. The AES also includes the impact of capital investments (depot and vehicles).

10. The Financial Evaluation checked the Pricing Schedules for any inconsistencies and obvious errors, including a check that the prices aligned with the intended resources. Clarifications were sought from bidders as necessary and the AES for each tender was then converted into points based on its relationship with the lowest AES. The tenderer with the lowest AES scores 510 points with each of the remaining tenderers awarded points in accordance with the following calculation (rounded to two decimal places):

*(Lowest AES divided by Tenderers AES) multiplied by 510*

## **Finance Evaluation: Assessment of the Bids**

11. Appendix 1 (to follow) tables the total cost (for all partner Councils) for each of the main service items which form the AES.
12. Appendix 1 (to follow) identifies the differences between each of the Contractor bids but it must be noted that the pricing schedules do not identify every item of cost. In practice this means that allocated costs such as office overheads, fuel, utilities, staff training and similar could be allocated to one or more pricing sections as each Contractor considers appropriate. Commentary as to the resources and method of operations employed by each Contractor is provided in the quality evaluation section of this report.

## **Finance Evaluation: Capital Investment in Vehicles and Depots**

13. The negotiations identified a potential opportunity for vehicle purchases and investment in depots to be funded as capital by the Councils. In principle, the Councils would be able to use capital reserves or borrow capital funding at preferential rates but then several associated risks would need to be managed. These risks arise from the need to protect and sustain the value of the assets being purchased and would need to include matters such as insurances, vehicle servicing and maintenance, health and safety liability and similar.
14. Evaluation of the tender bids included an initial capital investment appraisal to determine if there is significant financial advantage to the Partnership from using its own borrowing powers. The conclusion was that insufficient financial benefit can be realised to outweigh the management risks and consequently the successful tender will be required to purchase and retain ownership of the vehicles employed on the Contract.

## **Finance Evaluation: Commercial Risk**

15. The legal evaluation of Commercial Risk is a key element of financial evaluation and forms a maximum 9% of the total evaluation score (i.e. 90 points). The objective is to assess whether the submission includes acceptance of the Contract without amendment or whether amendments have commercial impact on the Council's presented commercial position. Legal evaluation was based on a review of the covering letters, commercial and financial commentary papers and the responses received to clarification

questions.

16. Appendix 1 (to follow) summarises the scores awarded for each part of evaluation and identifies the Commercial Risk scores awarded to each Contractor.

## **Finance Evaluation: Conclusion**

17. The financial assessment of the bids confirms that the lowest AES has been submitted by Contractor A in the sum of £13,919,882.
18. Members are advised that the AES is not the annual contract price. The price together with the implications for each Council budget is considered in the Award and Cost Sharing section of this report.

## **Quality Evaluation: Scoring and Scrutiny**

19. The TEM lists the 12 method statements that were required together with their relative weightings and guidance as to the content required. The submissions were awarded points out of a maximum 400.
20. The 12 method statements included in each of the tender submissions were independently assessed by appropriately qualified and experienced staff from each Council and Ricardo Energy & Environment. Together these personnel form the quality evaluation team and accept principle responsibility for conducting and concluding the evaluation. The quality evaluation team were supported with input from the Human Resources lead for the project in regard of Method Statement 3 (TUPE and Pensions). The quality evaluation team were also supported with input from the ICT leads within each Authority in regard of Method Statements 3 (Service Mobilisation) and 4 (ICT). The final scores awarded for each method statement were agreed by the quality evaluation team through a moderation process.
21. Appendix 1 (to follow) summarises the scores awarded for each part of evaluation and identifies the quality evaluation scores awarded to each Contractor.
22. Appendix 2 (to follow) is the Quality Evaluation Summary which tables the scores and points awarded for each method statement submitted.

## **Quality Considerations and Accumulated Evaluation Scores**

23. The submissions were examined by the quality evaluation team to determine whether they would comply with the specification, how the tenderer proposes to carry out works and whether the proposed resources are considered satisfactory to meet the Contract requirements and performance standards specified.

24. Adding the scores for the financial and quality evaluation together gives the final evaluation results as follows:

<b>Contractor A</b>	<b>Points = 862.00</b>	<b>Ranking = 1</b>
<b>Contractor B</b>	<b>Points = 821.71</b>	<b>Ranking = 3</b>
<b>Contractor C</b>	<b>Points = 832.54</b>	<b>Ranking = 2</b>

## Legal Considerations

25. All the Contractors had opportunity to review the Main Body Contract, raise concerns with regard to the contractual provisions (and propose amendments, if desired) during the negotiation phase of the procurement. The relative advantages or disadvantages to the Councils were considered before the final documentation was issued with the Invitation to Submit a Final Tender.
26. The Councils revised and clarified several requirements as a result of the negotiations with the aim that greater certainty for bidders would decrease risk and thereby allow more accurate pricing. These matters are summarised as follows:

i. Indexation (inflationary mechanism)

A basket of indices to reflect different inflationary impacts on fixed proportions of the total Contract Price. The applicable basket depends on the final position regarding capital investment so that fixed repayment costs are not inflated. The 2 options are summarised as:

- Contractor funds capital: fuel (10%); wages (50%); other (25%); not inflated (10%)
- Authorities fund capital: fuel (10%); wages (60%); other (30%)

ii. Pension Liability

Contractor liability for LGPS pensions will be capped.

iii. Capital Investment (vehicles and depots)

Financial benefit could be realised from securing a low cost of borrowing to support the purchase of vehicles and make improvements to depot sites. This matter is further dealt with in paragraphs 13 and 14 of this report.

iv. Performance Management Framework

The Councils reconsidered the approach being taken to the Performance Management Framework (PMF) and Tenders were invited on the basis that the risk profile generated by the revised PMF be accepted and not subject to change.

To avoid the risk that the same performance failure could be subject to multiple actions under the PMF, the approach taken to the application of performance points for performance failures that have no financial implications and performance deductions for performance failures that do have financial implications has been revised.

The principle being applied accepts that a reasonable number of genuine performance errors are normal during the delivery of the services but widespread and repeated failures and the needs of vulnerable residents

(e.g. customers with assisted collection status) are more directly considered in terms of the payments being made for the services.

- v. Re-Base Quantities and Prices at Service Commencement Date  
To mitigate the risk of high inflation and/or service developments taking place in 2018/19, the Pricing Schedules (quantities and prices) will be updated and inflation applied at Services Commencement Date.
- vi. Street measurements and land use categories (Rother area)  
In response to the information received during the ISIT stage of procurement, Rother District Council comprehensively reviewed its requirements with regard to street cleaning and generally re-categorised the majority of its rural and edge of town locations.
- vii. Transfer of undertakings (Protection of Employment) Regulations 2006 (TUPE) Information  
The TUPE information was refreshed to remove Hastings street cleaning staff and clearly identify all staff pension provisions.
- viii. Pay Award Negotiations (2018) and Staff Retention  
The incumbent contractor (Kier) had not concluded pay negotiations for 2018 so the impact on staff related costs from 2019 onwards could not be accurately stated and will require the financial implications arising from increased salary rates to be reviewed with the final TUPE transfer.
- ix. Bulverhythe Depot  
A rent review in 2018 increased the rental to £86,449 per annum.

## Contract Award

- 27. The process for Contract Award requires that each Council takes the decision to appoint Contractor A. This recommendation is being made to each Cabinet as follows:
  - Hastings: Monday 3 December 2018
  - Rother: Monday 3 December 2018
  - Wealden: Wednesday 12 December 2018
- 28. The award decision will then be taken to Full Council as follows:
  - Rother: Monday 17 December 2018
  - Hastings: Wednesday 19 December 2018
  - Wealden: not required, delegated Authority to Cabinet
- 29. When the final outcome is verified on the 20 December 2018, all three Contractors will be advised of the intent to award the Contract. Approval is sought for the Lead Director to advise Contractors of the award by issuing the letters which prompt the regulatory standstill period. The standstill period is a 10 day pause between the contract award decision and the formal award of the Contract. This is a legal requirement of the EU Procurement Directive which allows unsuccessful bidders to obtain more information on the award of the contract. Unsuccessful bidders can take action to challenge the award decision if they believe they have been treated unfairly. The period is also

commonly known as the 'Alcatel Period'. To maximise the time available to mobilise the new Contract it is unfortunate that standstill period will run over the Christmas – New Year holiday and has therefore been extended to 13 days to allow for the bank holidays and will end on 4 January 2019.

30. Officers consider it likely that a challenge will be received during this period so preparations will be made to monitor and respond to procurement communications over the Christmas holidays.

## **Human Resources (TUPE and Pension) Considerations**

31. The three tenders were submitted on the understanding that the TUPE apply. This provides that employees' contracts of employment will continue after the transfer to the new employer as if they had originally been made with the new employer. In this way employees' contractual rights become enforceable against the new employer.
32. Since 2013 Kier has elected not to pursue harmonisation of terms and conditions across the Contract. In practice this means that several different sets of terms and conditions are now being managed and will transfer to Contractor A in due course.
33. A particular consideration for each Council is the requirement for Contractor A to seek and become party to an Admitted Body Status agreement with the East Sussex County Council (ESCC) Pension Fund to enable ongoing Local Government Pension Scheme (LGPS) pension provision for approximately 50 eligible staff who will transfer under TUPE. The majority of these staff were originally employed by Wealden District Council (although four staff originated from Hastings). The employer contribution for the LGPS is higher than for an automatic enrolment pension and the additional pension cost has been identified as £314,500 per annum.

## **Cost Sharing**

34. Tenders were invited using a detailed schedule of prices to enable cost to split accurately for each partner Council. The tendered rates in the Pricing Schedules total to form the AES, on which the recommended Contractor is selected. As previously stated, the AES is not the cost for actual delivery of the services (the Contract Price) for the reasons stated in paragraph 9 of this report. The actual Contract Price will therefore exclude the provisional sum for Food Waste, saving £1,565,408 per annum from the total.
35. This procurement process has demonstrated that companies are not prepared to accept the level of liability and financial risk that was previously acceptable (i.e. prior to 2013). As such, uncertainty regarding service requirements incurs higher cost because Contractors seek to ensure that any unknown liabilities can be resourced. In practice this has resulted in more waste services being non-core items which are to be paid according to actual demand. The actual quantities of each non-core service will vary each month and the Councils have an opportunity to exert closer management control over services which incur extra cost. For example, the current (Kier) contract price includes the cost of containers but cannot quantify the actual number that will be required each year. Kier therefore estimated the volume that would be needed and accepted the risk that their estimate could be incorrect

and a higher cost incurred. The new Contract will require the Councils to control demand for new/replacement containers as each item ordered will incur extra cost.

36. It should also be noted that following award, the Contract Price will be adjusted at the start of the Contract to take account of inflation, revised quantities, TUPE related adjustments and similar cost elements.
37. The sums which are being recommended for approval by the Councils to award the Waste Collection, Recycling, Street and Beach Cleaning and Associated Services Contract are displayed in Appendix 3 (to follow). A breakdown of the costs for each Council is provided and it is recommended that each Council makes sufficient budget provision to fund its own proportion of the total Contract Price as detailed in Appendix 3 (to follow) and also to allow contingency for the contract commencement adjustments for inflation and quantities.

## **Further Considerations**

38. Customers will experience minimal change in terms of their collection services from 29 June 2019 but they will no longer present glass as a separate material for collection in a box. The Partnership has not made provision for communicating this change so it is recommended that during the mobilisation period each Council decides how to communicate the new recycling collection system to their residents.
39. Responsibility for the disposal of dry recycling will transfer from the incumbent collection contractor (Kier Services Ltd) to ESCC as the Waste Disposal Authority from the start of the Contract (29 June 2019).
40. The close of the current Contract by Mutual Exit is causing significant issues, in terms of staffing and service delivery. These impacts need to be recognised as they have the potential to cause significant issue for service mobilisation of the new Contract, including loss of staff with local knowledge. All these factors will be mitigated as much as possible utilising a thorough mobilisation plan. However, despite the low level changes to the collection system, the need to support service transition in terms of dealing with higher volumes of customer enquiries should not be underestimated.
41. Fortunately the ICT system proposed by Contractor A should minimise the scale of changes required in terms of staff competency and integration with existing CRM systems. The proposed ICT system will require some investment in mobile equipment and staff training. It is recommended that each Council determine its own costs and degree of investment required to enable effective use of the ICT so that the Contractor can manage workflow consistently across the Contract.
42. The role of the Authorised Officer is defined within the Contract and the central client team will undertake these contractual responsibilities as well as working with the local client teams to support the aims of the Partnership. The 2019 forecast cost to fulfil this role is £204,500 and it is proposed that each partner funds this role in line with the proportions of contracted services. It is therefore recommended that each Council makes provision to fund the central client team as tabled below:



**Table 1: Joint Waste Office (centralised client costs)**

	<b>HASTINGS</b>	<b>ROTHER</b>	<b>WEALDEN</b>
Collection Services = 81% of total AES	27%	27%	27%
Cleaning Services = 19% of total AES	Not shared	9.5%	9.5%
Applied to JWO Cost (£204,500)	£55,215	£74,642	£74,642

43. It is likely that some minor errors or absences have been made in the information compiled for tender purposes. To make the necessary corrections may incur some additional costs. Officers have noted that certainty regarding the specific service requirements increases control over the costs being incurred. Non-core service items will require local client and/or customer service control so it is recommended that each Council considers the Contract and makes suitable provision for its client roles and associated liabilities.
44. Contractor A has identified several risks arising from the time available for mobilisation. It is anticipated that some resources and functions may not be available or fully operational at the Contract start date. Officers will work with the Contractor when appointed to prioritise and minimise service disruption and control costs.

## **Commercial Waste and Cesspool Emptying Services**

45. The new Contract allows for each Council to refer requests for commercial waste and cesspool emptying services to the Contractor. This provision allows each Council to meet its obligations under the Environmental Protection Act 1990.

## **Summary and Conclusions**

46. It is concluded that in accordance with the Final TEM, the recommendation is that Contractor A be appointed as the contracting partner for the joint Waste Collection, Recycling, Street and Beach Cleaning and Associated Services Contract and that this contract award recommendation is duly referred to each partner Council.

Dr Anthony Leonard  
Lead Director

## **Risk Assessment Statement**

Each Council has a duty to ensure that waste collection, recycling and street and beach cleaning services are undertaken to appropriate legislative standards. Failure to make arrangements that provide services could result in actions being taken against the Councils.

When employing a contractor, each Council must also be satisfied that the contractor is capable of, and has allowed in his tender, for providing all services in accordance with the contract requirements and shall have executed its fiduciary duty in examining the tender to ensure value for money is achieved.

The Inter Authority Agreement (IAA) created a legal basis to govern the relationship of the parties to this project. In doing so, it sought to manage and reduce the risks to

the parties by confirming the commitment of each party to the procurement process. In the event that one or more partner Councils choose not to proceed and do not enter into the Contract then the IAA financial clause will be applied.

Further consequences would also become apparent if the procurement were to be discontinued. High financial risk would be incurred if the Councils needed Kier to continue delivering services as they are unlikely to do so at the current Contract Price.

(Not for publication by virtue of Paragraphs 3 and 5 of Schedule 12A to the Local Government Act 1972, as amended).