

Date - 16 June 2017  
Report of the - Lead Director, Dr Anthony Leonard  
Subject - Procurement of Joint Waste Services

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**Recommendation:** It be **RESOLVED:** That the Joint Waste Committee complies with EU Public Procurement rules by using the Competitive Procedure with Negotiation to procure a Joint Waste, Recycling and Street Cleansing Contract.

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1. In September 2016, the Joint Waste Committee (JWC) agreed to a Mutual Exit Agreement with Kier Services Ltd which was executed on 21 March 2017. It is necessary to make urgent progress with the work required to procure a new contract in order to deliver services from 29 June 2019. This report sets out the service considerations and recommends the procurement procedure.
2. Implementation of the statutory Public Contract Regulations 2015 changed the procurement options and procedures the Joint Waste Partnership (JWP) must follow. Generally, the regulations now place greater emphasis on public organisations (known as contracting bodies) understanding and clearly describing their requirements before starting the procurement process. The opportunity to evolve some service requirements in response to contractor feedback is still possible but the councils should be in a position to determine the vast majority of their requirements in advance of an Official Journal of the European Community (OJEU) notice being placed.
3. In light of previous committee discussions, officers have reviewed the current set of contract documents and identified several matters described in either the Specification and/or the Contract which need to be reconsidered and the documents subsequently refreshed/amended as necessary. Members are advised that the following matters require further analysis and conclusion prior to commencing procurement:
  - a. The geographical scope of services required (which councils are to be included in the contract).
  - b. The recycling collection system and responsibility for handling and processing recycling materials.
  - c. The frequency of collection services.
  - d. Food waste.
  - e. Client management and local service policies with regard to enforcement etc.
  - f. Performance management.
  - g. Technology Systems and Service Data.
  - h. Customer Services.
  - i. Public Communications.
  - j. Recycling Bring Sites.
  - k. Bulky Waste Service.
  - l. Liability for new and replacement container costs.
  - m. Street Cleansing, Litter and Dog Fouling standards.

4. The Project Management and Resources report, also on this agenda, makes resource recommendations to ensure these matters are finalised in time.

## **Procurement Options**

5. The procurement options being presented to the JWC are:

- (a) Restricted Procedure (RP)

A two-stage procedure with a short list drawn-up at pre-qualification stage prior to the invitation to tender. The RP can be completed to a shorter timescale than other procedures and is less costly than Competitive Dialogue (CD) or Competitive Procedure with Negotiation (CPN). However, the success of this procedure requires all requirements are known prior to commencement of the process.

A major disadvantage is that there is no room for negotiation in the process. We would be obliged to accept the most economically advantageous tender, (even if this were above the estimated cost forecasts for the service).

A soft-market testing exercise (known as Preliminary Market Engagement), should be used to seek contractor views on the likely cost implications of the different approaches which could be taken to each of the matters above (paragraph 3 a to m). However, definitive pricing information cannot be secured through soft-market exercises so while greater understanding of the main costs can be obtained, the JWP would still not have the opportunity to negotiate on price.

- (b) Competitive Procedure with Negotiation (CPN)

This procedure was not available for the JWP to use in 2012, but changes arising from the 2015 Procurement Rules, mean this procedure can now be considered. This procedure is recommended for services which do not have a sufficiently precise specification at the time of going to the market or have risks attached that cannot be priced at the outset. The current level of uncertainty with regard to the final requirements of each Council and the risks associated with handling and disposing of recycling material mean this procedure is suitable for use.

Preliminary Market Engagement is recommended to identify key issues and inform the specification. The specification must then be finalised prior to placing the OJEU notice. The procedure then involves a pre-qualification stage followed by invitations issued to participate in negotiation with regard to the offers being made by contractors. It is important to note that the specified service requirements cannot be revised, only the solutions and associated price being proposed by contractors. Then an invitation to submit final tenders is issued. There is no option to further negotiate after submission of final tenders. This procurement approach would allow the JWP to negotiate key points and consider costs with a higher degree of certainty.

The CPN is being recommended to procure joint waste, recycling and street cleansing services for councils in the JWP and an approximate timetable is provided as Appendix 1.

(c) Competitive Dialogue (CD)

This is the process used by the previous joint procurement. At that time, the councils started with four different service specifications. The dialogue process defined the final requirements in the light of pricing information gathered during three dialogue stages. The key outcome was commitment to a joint contract with only three exceptions in terms of the specified services for each council area.

CD is a longer process than the RP, it is more complex to administrate and requires more resource. CD is typically used where a contract cannot be awarded without negotiation and engagement with contractors to define the specification.

Officers consider the current joint contract fundamentally sound. Some matters, as set out at paragraph 3 a to m above, need to be reconsidered and concluded but CD is not considered necessary to deliver a successful procurement.

## **Conclusion**

6. The Councils need to address the list of matters requiring further conclusion (paragraph 3 a to m) prior to placing an OJEU notice.
7. In terms of cost and resource, the RP requires least resource and time to conduct but incurs significant risk of a higher contract price. The CPN requires more resource and time to conduct but offers opportunity to negotiate on price. The CD procedure requires most resource and time to conduct but offers opportunity to negotiate service requirements and associated pricing.
8. The procurement option which would give the JWC flexibility to negotiate the best price for the delivery of the services and be conducted at a reasonable cost is the CPN.

Dr Anthony Leonard  
Lead Director

## **Risk Assessment Statement**

The method of procurement must be agreed at the earliest opportunity to comply with the EU Public Procurement timetable and enable commencement of a new contract for Waste Management Services.

The Joint Waste Partnership incurs a risk of customer dissatisfaction if the service specification does not meet customer expectations.

The Joint Waste Partnership faces the risk of significantly increased service costs if procurement is delayed to the extent that the incumbent contractor (Kier Services Ltd) must be invited to continue services for any period beyond 28 June 2019.

**PROCUREMENT TIMETABLE: Competitive Procedure with Negotiation**

\*These functions/milestones and dates are indicative only\*

<b>DATES</b>	<b>MILESTONE KEY PROCUREMENT FUNCTION</b>	<b>PROJECT TEAM MATTER</b>	<b>JOINT COMMITTEE MATTER</b>	<b>MATTER RESERVED TO AUTHORITIES</b>
June 2017	Procurement of external advisers to the Project	Yes		
June 2017	Approval and confirmation of external advisers to the Project	Yes		
Oct 2017	Preparation of the Descriptive Document and Pre-Qualification Questionnaire ("PQQ")	Yes		
Oct 2017	Preparation of Evaluation Criteria for all stages of the procurement process	Yes		
Oct 2017	Drafting OJEU Notice	Yes		
Nov 2017	Agreeing OJEU Notice		Yes	
Nov 2017	Agreeing Evaluation Criteria for all stages of procurement process		Yes	
Nov 2017	Issuing OJEU Notice	Yes		
Dec 2017	Organising open days prior to return of PQQ's and Expressions of Interest	Yes		
Dec 2017	Preparing applicant questions response document	Yes		
Jan 2018	Evaluation and Shortlisting of responses	Yes		
Feb 2018	Agreement of short list	Yes		
Feb 2018	Inform successful and unsuccessful applicants	Yes		
Feb 2018	Issue invitation to tender	Yes		
June 2018	Deadline for receipt of tender proposals	Yes		
July/ August 2018	Negotiation Stage – staged process	Yes		
End August 2018	Agreement to shortlist for final ITT		Yes	
End August 2018	Inform all remaining tenders of conclusion and issue final shortlist for ITT		Yes	
End August 2018	Issue of final ITT	Yes		
Nov 2018	Evaluation of responses to final ITT	Yes		
Dec 2018	Evaluation of final tenders and selection of Preferred Bidder	Yes		
Dec 2018	Review of final tenders and selection of Preferred Bidder		Yes	

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Dec 2018	Agreement to selection of Preferred Bidder			Yes
Dec 2018	Final Close Dispatch of Alcatel letters	Yes		
Dec 2018	Agreement and execution of Waste Services Contract			Yes
Dec 2018	Collation of information and provision of information in respect of Waste Services Contract award procedures required under Regulation 86 Public Services Contracts Regulations	Yes		
Dec 2018	Approval of additional expenditure for the Project in excess of the Annual Budget			Yes