

Committee: Cabinet

Date: 15 January 2024

Wards: All

Subject: Waste and Recycling Collections Service Procurement

Lead officer: Dan Jones, Executive Director for Environment, Civic Pride and Climate

Lead member: Cllr Natasha Irons, Cabinet Member for Local Environment, Green Spaces and Climate Change

Contact officer: John Bosley, Assistant Director for Public Space

Recommendations:

- A. That Cabinet note the progress to date on the Waste and Recycling Collections Service procurement process;
 - B. That Cabinet note and agree to the clarification around employee terms and conditions as set out in the report.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. This report updates Cabinet on progress to date on the procurement process for a new Waste and Recycling Collection Service and recommends a clarification to a previous recommendation agreed in February 2023.
- 1.2. Good progress has been made on the production of the documentation for specification, contract and supporting documents. The Invitation To Tender (ITT) is scheduled to be published during January 2024 with an estimated award of contract date of September 2024.
- 1.3. Whilst it is a clear objective of the Council that staff terms and conditions should be protected and maintained during the procurement process, following feedback from the market, it is recommended that clarification is provided to bidders around the staff terms and conditions element of the Tender Specification for the Waste and Recycling Collection contract. This replaces Recommendation E in the previous Cabinet decision in February 2023.
- 1.4. It is therefore recommended to clarify that in the specification bidders will be asked to consider providing employee terms and conditions which are broadly similar to local government terms and conditions in defined areas. See para 2.4 below.

2 DETAILS

- 2.1. Cabinet resolved in February 2023 that a competitive procurement offers the Best Value approach to securing a waste and recycling service; authorised the publication of a Prior Information Notice (PIN) to notify the market of the intention to tender for a waste and recycling service; and confirmed that officers can proceed to prepare all necessary tender documentation.

- 2.2. Alongside this resolution, Cabinet also resolved that the tender opportunity be advertised on the basis that the successful bidder will be required to ensure all employees who are wholly or substantially engaged in delivering the contract have terms and conditions of employment that are “equivalent to the Council’s”.
- 2.3. Following soft market testing and feedback received by potential bidders, it was requested that further clarification was required on what was meant by “terms and conditions of employment that are equivalent to the Council’s”, before tenders were submitted.
- 2.4. It is therefore recommended that bidders are requested in the specification to consider providing employee terms and conditions which are broadly similar to local government terms and conditions in the following areas: pay and payments, working hours, leave, absence and Trade Union representation. All remaining terms and conditions would be for the bidders to decide.
- 2.5. For clarity, under the provisions of The Best Value Staff Transfers (Pensions) Direction 2007 (“the Direction”) the Council must ensure that any former public sector employees who were compulsorily transferred to the private sector and continue to be engaged on the relevant services are offered ongoing membership of the Local Government Pension Scheme (LGPS).
- 2.6. Any employees of the current contractor who enjoy the protection afforded by the Direction will continue to enjoy that protection and on their other employment terms and conditions if the successful bidder is not the current contractor and the employees choose to exercise their transfer of employment rights.
- 2.7. TUPE requires staff to be transferred on the same terms and conditions, as a matter of law. The clarification on the terms and conditions proposed in this report, does not, therefore, affect this group of employees.

3 ALTERNATIVE OPTIONS

- 3.1. Cabinet could decide not to agree to the proposed recommendation; however, this would be at odds with the feedback from the soft market testing and could negatively impact on the procurement process, cause reputational damage to the Council and incur unsustainable additional costs. It is therefore not recommended.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. In arriving at a full understanding of the implications of the proposed basis for tendering the contract, officers have engaged with the market.

5 TIMETABLE

- 5.1. The tender opportunity is scheduled to be advertised in January 2024 and a new operator appointed in September 2024.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. The financial elements of the procurement process will be assessed as part of the procurement evaluation process.

- 6.2. If the recommendation is approved the Council should, when considering the offers from bidders around similar terms and conditions, take account of the Council's Best Value Duty.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. The request for bidders to consider providing broadly similar terms and conditions to local government in respect of pay, payments, working hours, leave, absence and trade unions would need to comply with TUPE and employment law. TUPE requires staff to be transferred on the same terms and conditions, and any employees whose terms are proposed to be changed, whether existing employees of the provider or being TUPE transferred in, will need to give consent for any change to their terms and conditions. Employees could theoretically refuse, although as this is anticipated to be an improvement in terms, it is unlikely that this will occur.
- 7.2. The revised approach set out in this report may mean that the provider will have other staff that are not working on this contract on different terms, giving rise to potential equal pay claims against the provider, and mean that some staff may not TUPE transfer back out from the provider at the end of this contract. It is possible that bidders will seek an indemnity from the council to mitigate the risk and costs in respect of these.
- 7.3. Provided that these proposed amendments to staff contract terms and conditions are in compliance with TUPE and the required legal consultation with staff is undertaken by the provider and the changes agreed with them, then this is legally compliant.
- 7.4. The proposal for bidders to consider broadly similar terms as specified above may give rise to some cost to the Council depending on what bidders come back with, not only in the cost of the tender prices submitted by bidders, but also the improved terms and conditions on which the future re-procurement of this service will be on going forward after contract expiry.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. The terms and conditions of employment proposed in any tender submission will need to be compliant with statutory requirements.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. None arising as a result of this report.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. The proposed clarification of the basis on which the opportunity will be tendered is intended to provide best value, reduce the risk to the Council of a financially unsustainable model and reputational damage.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

None

12 BACKGROUND PAPERS

12.1. [Cabinet Report February 2023](#)