



<b>Mayor &amp; Cabinet</b>		
Report Title	Approval for the Procurement for the disposal of Organic Waste	
Key Decision	Yes	Item No.
Ward	All	
Contributors	Strategic Waste & Environment Manager, Principal Lawyer , Group Finance Manager, Strategic Procurement and Commercial Services Manager	
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Class	Open	Date: 10 October 2018

## **1. Purpose of the report**

- 1.1 The purpose of this report is to seek agreement from Mayor and Cabinet to extend the current food and garden waste disposal contract and to commence a procurement process for the disposal of the combined organic waste.

## **2. Recommendations**

- 2.1. It is recommended that Mayor & Cabinet approves:
- a) the commencement of the single stage open procurement process for the organic waste disposal contract
  - b) and the extension, of the current contract which was previously awarded under a Single Tender Action (STA), of not more than 6 months

## **3. Policy Context & Background**

- 3.1 The Waste Strategy for England was published in June 2007, which sets out how all parts of society will have to share the responsibility of managing waste. The National Strategy sets out its vision and actions to ensure that England meets its targets, which include recycling and composting of household waste of at least 50% by 2020.
- 3.2 Lewisham shares a vision with its partners to make Lewisham the best place to live, work and learn. Lewisham's approach to Waste Management has been stated in the Waste Strategy, which fed into the Sustainable Communities Strategy, as it contributes towards delivering the 'clean, green and liveable' priority outcome.



- 3.3 The strategy also contributes towards delivering the Council's corporate priorities, especially in respect of a 'clean, green and liveable' borough and 'inspiring efficiency, effectiveness and equity'.
- 3.4 The EU Waste Framework Directive (WFD), introduced in 2008 and revised in 2010, provides the legislative framework for the collection, transport, recovery and disposal of waste. The Waste (England and Wales) Regulations 2011 were introduced to deliver on the 2008 Directive and the Waste (England and Wales) (Amendment) Regulations 2012 replaced the earlier version to address the 2010 revision of the Directive.
- 3.5 This requires member states to take appropriate measures to encourage the prevention or reduction of waste production. This is to reduce its harmfulness and the recovery of waste by means of recycling, re-use or reclamation or any other process with a view to extracting secondary raw materials, or the use of waste as a source of energy.

#### **4. Background**

- 4.1 As a result of a number of key drivers including financial, legislation and improved environmental performance and following a resident consultation, a new food waste service was implemented 2<sup>nd</sup> October 2017. The service collects food and (if subscribed) garden waste from approx. 80,000 kerbside properties.
- 4.2 To explore options available to Lewisham for either disposal direct to an In Vessel Compost facility (IVC) or to tip and the waste to be transported to an IVC facility, a soft market testing exercise was carried out with a number of waste disposal contractors, prior to the interim contract being agreed. The outcome identified that no other contractor was able to offer the disposal of combined food and garden waste within a close proximity to the London Borough of Lewisham or within the same price range.
- 4.3 Veolia accept food and garden waste co-mingled and are in close proximity to the London Borough of Lewisham. The Council were unable to deliver direct to a compost facility due to the distance and the time constraints involved. Veolia transport the waste to an in vessel compost (IVC) treatment facility that can process food and garden waste mixed together.
- 4.4 The Executive Director of Resources and Regeneration approved a waiver of the Council's Contract Procedure Rules July 2017; and the contract was awarded to Veolia Southwark for one year.



- 4.5 The arrangement with Veolia Southwark is an interim measure for a one year period only which has enabled Lewisham to gather composition and tonnage data. The data is required for the procurement of the new disposal contract.
- 4.6 Discussions have since been held with the L B Greenwich to identify the possibility of 'piggy backing' the current contract Greenwich have for their disposal of organic waste which expires 2027. Due to the estimated combined tonnage being a greater amount than requested on the original OJEU notice, this is now no longer an option.

## **5. Reason for approval to extend the current contract.**

- 5.1 The original contract was granted under a Single Tender Action. Approval is required to extend the current STA, under 18.5 of the Council's contract procedure rules it states:

*'Where an exemption to the Contract Procedure Rules is sought for a second time in relation to the same contract, then regardless of the value of the contract, that exemption must be considered formally by the appropriate member decision forum'.*

## **6. Reason for procuring service**

- 6.1 The arrangement with Veolia Southwark was an interim measure for a one year period only. The annual agreement was based on an average of 7500 tonnes at the agreed price of £65 per tonne .This agreement is due to expire Oct 2018.
- 6.2 The organic tonnage that Lewisham currently collects for disposal will exceed the amount agreed with Veolia for the interim contract. Since October 2017 a total of 7012 tonnes have been composted. It is estimated that over 11,000 tonnes will have been composted by the end of the interim agreement.

## **7. Contract Terms & Procurement Route**

- 7.1 The contract period is to be for 3 years with possible extensions for up to a further 2 years. This will allow for future possibilities of entering a disposal contract partnership with LB Greenwich.
- 7.2 A single stage open procurement process will be used due to the limited facilities available within a close proximity to LB Lewisham that provide IVC (In vessel composting) or a location for tipping and transportation to a facility that provides IVC.
- 7.3 Given the level of spend on the Contract and the need to deliver significant efficiency savings while at the same time ensuring that



quality of service is maintained, officers are of the view that the evaluation should be undertaken with price and other financial factors having a 60% weighting, and quality and other non-financial factors a 40% weighting within the model used.

- 7.4 Tenderers will be requested to provide price per tonne for co-mingled waste, based on an estimated tonnage of 12,000 tonnes per year.

## **8. Financial implications**

- 8.1 In October 2017, a food waste collection service was introduced. A subscription-based garden waste collection service was already in place in the borough, but with the introduction of a food waste service, a combined disposal contract was sought. An interim arrangement for the disposal of food and garden waste combined for one year, was agreed, allowing the council to gather the composition and tonnage data required to undertake procurement exercise.
- 8.2 A one-year contract was entered into with Veolia Southwark, at a fixed price of £65 per tonne. This contract is due to expire in October 2018. It is expected that the price per tonne will rise to approx. £69 per tonne in the first year of the new contract. Currently, the average monthly cost of disposal is approximately £50k, with the cost of the first six months of the service from October 2017 being £293k. This is funded from a £5.65m refuse disposal budget, which also includes the disposal of general waste via South East London Combined Heat and Power (SELCHP), at a cost of £5.2m in 2017/18.

## **9. Legal implications**

- 9.1 The Council is a Waste Collection Authority under s.30 of the Environment Protection Act 1990 (the Act), under s.45-48 it is under a duty to arrange the collection of household waste and under s.51 it is under a duty to dispose of that waste.
- 9.2 The report proposes procurement of a for three years, at a value of £800,000 a year, with the possibility of an extension for up to two years. The value of the contract therefore is for £5 million which means that it is above the OJEU threshold and is a category A contract according to the Council's Contract Rules. The Council is therefore required to procure this service using an invitation to tender by public advertisement (OJEU Notice)
- 9.3 As this contract will involve an expenditure of more than £500,000 the decision to procure this service is a key decision under Article 16 of the Council's constitution and must be placed on the Council's Forward Plan.



- 9.4 The Public Services (Social Value) Act 2012 requires that when the Council is procuring services above the EU threshold it must consider, before commencing a procurement process, how the procurement might improve the social, economic and environmental wellbeing of the area. It must also consider how the procurement might be conducted so as to secure that improvement. The matters to be considered must only be those relevant to the services to be procured; and it must be proportionate in all the circumstances to take those matters into account. These requirements are part of the Council's Constitution (Part IV.I Contract Procedure Rules).
- 9.5 The Council's Sustainable Procurement Code of Practice will be applied to this contract. This sets out various social, environmental and economic considerations to be applied. The purpose is to ensure that products and services are sourced and produced responsibly; to maximise resource and energy efficiency in the manufacturing and supply of goods and services in order to minimise environmental impacts; and to deliver outstanding value for money over the entire lifetime of the contract.
- 9.6 Information about how social value will be incorporated within the procurement process considered in this report are set out within the report; in particular in the paragraph 10 which address environmental and sustainability issues; London Living Wage / pay approach; apprentices / training.
- 9.7 The report also proposes the extension of the current contract for not more than 6 months. The current contract was previously awarded under a Single Tender Action (that is, rather than by carrying out a competitive process) by the Executive Director for Resources and Regeneration under her powers under Contract Procedure Rules, Rule 18. As is stated in the report, where an exemption to the Contract Procedure Rules is sought for a second time in relation to the same contract, then regardless of the value of the contract, that exemption is to be considered formally by the appropriate member decision forum. The issues to be considered in relation to the decision on whether to approve a further extension include: The Council's Constitution (in Contract Procedure Rules) say that an exemption can only be given in exceptional or unforeseen circumstances. When consideration is to be given to whether an exemption should be given, the following matters should be considered:
- the nature of the market for the services means that the proposed approach is justifiable; or the contract is for services that are required in circumstances of extreme urgency; or there are other circumstances which are genuinely exceptional;
  - it is in the Council's overall interest; and



- there is no breach of legislation. In this case, given the short extension and the circumstances set out in the report, any legal risk is very limited.

9.8 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

9.9 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

9.8.1 eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.

9.8.2 advance equality of opportunity between people who share a protected characteristic and those who do not.

9.8.3 foster good relations between people who share a protected characteristic and those who do not.

9.10 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed above. The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.

9.11 The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>



<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- The essential guide to the public sector equality duty
- Meeting the equality duty in policy and decision-making
- Engagement and the equality duty: A guide for public authorities
- Objectives and the equality duty. A guide for public authorities
- Equality Information and the Equality Duty: A Guide for Public Authorities

The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

## **10. Social Value**

- 10.1 Tenderers will be asked to complete the Employment, skills and Business target schedule indicating the added value in terms of social value they will deliver. Weight will be given at the tender evaluation stage to points covered by the contractor on a number of issues including fair employment clauses (including the London Living Wage), local employment and environmental impacts such as minimising impact on local air quality, minimising noise and minimising water and energy usage.

## **11. Environmental implications**

- 11.1 There are no environmental implications arising from this report. All environmental related implications will be address in the contract documentation process.

## **12. Crime and disorder implications**

- 12.1 There are no crime and disorder implications arising from this report.

## **13. Equalities Implications**

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13.1 There are no equalities implications arising from this report.

**14. Background papers**

14.1 None