



Mayor and Cabinet

Report title: Decision to extend 'Refuse Recycling Agreement' with South East London Combined Heat & Power Ltd (SELCHP)

Date: 11 November 2020

Key decision: Yes

Class: Part 1

Ward(s) affected: All

Contributors: Strategic Waste Manager, Legal & Finance

Outline and recommendations

The report provides a summary of the proposed options available to the Council for residual waste disposal when the current Refuse Recycling Agreement expires with SELCHP January 2024, and the recommended option.

Appendices

Appendix 1 - Finance modelling (confidential)

Appendix 2 – Eunomia Report (confidential)

Appendix 3 –SELCHP history summary (open)

Appendix 4 – SELCHP's financial modelling (confidential)

Summary

- 1.1. The Council has a long term contract with South East London Combined Heat and Power (SELCHP) for the provision of waste treatment services under a 'Refuse Recycling Agreement'. The contract was entered into in 30th May 1991 and will expire

on 1st January 2024. It is a joint contract involving both L B Lewisham and the Royal Borough of Greenwich. The premises from which the services are provided are also known as 'SELCHP'; this is the energy recovery facility on Landmann Way SE14 5RS.

- 1.2. This report considers options for delivery of waste treatment services after the ending of the current contract – that is, after January 2024. Each option has different implications which are detailed below or, if they concern confidential matters, in the Part 2 confidential report and confidential appendices.
- 1.3. Since this is a joint contract involving both L B Lewisham and the Royal Borough of Greenwich it is intended that both Councils will implement the recommended option. That means that any approval of the recommended option would be dependent on the Royal Borough of Greenwich also approving the option. Equally, Greenwich will not approve the option unless Lewisham agree it.

Recommendations

It is recommended that, subject to approval of the same approach by the Royal Borough of Greenwich, Mayor and Cabinet:

- 2.1 Agree to extend the Refuse Recycling Agreement with South East London Combined Heat & Power Ltd (SELCHP) for 5 years from 2nd January 2024, the detailed terms to be set out in a Deed of Variation to the Refuse Recycling Agreement and associated agreements and documents.
- 2.2 Agree to delegate to the Executive Director for the Public Realm the decision about the final terms of the Deed of Variation to the Refuse Recycling Agreement and associated agreements and documents, in consultation with the Director of Law, Governance and Human Resources and the Director of Corporate Resources

Policy Context

- 3.1 The Council's Corporate Strategy 2018-2022 details seven priorities, one of which is to ensure that we will contribute towards making Lewisham greener so that everyone can enjoy our green spaces, and benefits from a healthy environment as we work to protect and improve our local environment.
- 3.2 Legislative frameworks such as the EU Waste Framework Directive and the Waste (England and Wales) Regulations that detail the preferred collection, transport, recovery and disposal of waste should occur. The regulations require member states to take appropriate measures to encourage the prevention or reduction of waste production and to adhere to the waste hierarchy (below) when disposing of waste.

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WASTE HIERARCHY



3.3 The extension of the SELCHP waste disposal contract would be supported through the Waste Strategy once updated. Though recycling and re-use is the preferred disposal method, combined heat and power plants help to divert waste, that is unable to be sorted and sent for recycling or re-use, away from landfill. Residual waste taken to SELCHP is converted into heat and hot water for surrounding homes. The commercial recycling of incinerator bottom ash (IBA) is reused as a secondary aggregate in road construction and the building industry.

4. Background

- 4.1 LB Lewisham and the Royal Borough of Greenwich currently have a joint contract with SELCHP Ltd for the delivery of waste to the energy recovery facility on Landmann Way SE14 5RS ('the SELCHP facility'). That contract expires in 2024. The contract was entered into in 1991, providing initially for the construction of the SELCHP facility and then for the provision of services in relation to residual waste for 30 years. Appendix 3 'SELCHP Summary history' sets out the background to the construction of SELCHP.
- 4.2 A further agreement is in place between RBG & LBL, linked to but separate from the SELCHP arrangement. This is known as the SELWDG (South East London Waste Disposal Group) Agreement. This sets out the terms of the partnership with RBG and agrees how both parties would work together to meet the terms of the SELCHP agreement. Further information about SELWDG is also given in Appendix 3 'SELCHP Summary history'.
- 4.3 The SELCHP facility is operated by South East London Combined Heat & Power Ltd (SELCHP Ltd). Companies within the Veolia group are the major and controlling shareholders in SELCHP Ltd (and the operator of the SELCHP facility); LB Lewisham and RB Greenwich are minority shareholders in SELCHP Ltd. (Again, for further information, see Appendix 3 'SELCHP Summary history')
- 4.4 SELCHP was one of the first energy recovery facilities in London, and at this time most London Authorities were sending residual waste to Landfill. This did not change until 2004 when the Government introduced the Landfill Allowance Trading Scheme (LATS); this scheme fined local authorities for landfilling above their targeted amounts. In addition to this, in 2007 the Landfill tax escalator increased by £8 per tonne per year, making the cost of landfilling waste too expensive for Local Authorities to continue landfilling at their existing rates. As a result, from 1994 to 2004 the SELCHP gate fees were higher than Landfill however, LBL disposed of their residual waste at SELCHP to support the facility and fulfil its LATS obligations. Presently, LBL disposes of its residual waste at SELCHP at not only below landfill rate, but also below market rate for an energy recovery facility which is a subsequent benefit of the relatively high costs that were charged at the beginning of the SELCHP Waste Contract.

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- 4.5 Since 1994, the vast majority of LBL's residual waste from municipal collections have been sent to SELCHP for processing. At present, the Council delivers approximately 84,000 tonnes of residual waste to SELCHP annually. The majority of this waste is collected via the kerbside black wheelie bin and communal collections, with small amounts collected from street cleansing and at the Reuse and Recycling Centre.
- 4.6 The operating period under the SELCHP Waste Contract expires on 1st January 2024 and officers have been investigating the options available for the treatment of LB Lewisham's residual waste post 2024.
- 4.7 On 3rd September 2018 Mayor and Cabinet approved a report for extension of the SELCHP agreement by a further 3 years and 6 months until 30th June 2027. This approach has now been superseded due to the matters considered in this report.
- 4.8 During the term of the contract, SELCHP have delivered a good level of service, whilst being flexible to requests for improvements, innovations, changes and additions to their provision. The contract works well and is a good quality service.
- 4.9 LB Lewisham has recently introduced changes to our Waste Services and have reduced the amount of waste sent to the SELCHP facility by nearly 8%. We have also increased recycling from 17% to over 27% and compostable waste (food/garden waste) by nearly 90%. This is part of our longer term strategy to reduce residual waste. However, as Government suggest that the number of households could increase by approx. 17% by 2033 we will still need to dispose of large amounts of residual waste for the foreseeable future.
- 4.10 A Climate emergency has been declared by LBL, and continued appropriate waste treatment is important to the to the boroughs commitment to tackling climate change. The waste industry since 1990, has made significant reductions in carbon emissions, due to the avoidance of Land fill, and development of heat district networks that capture waste process heat to heat local homes. The Committee on Climate Change stipulates that the waste industry represented only 4% of the total UK greenhouse gas emissions in 2013, with the major contributor to this coming from Landfill emissions. With the negative impacts on the environment and the cost of Landfill disposal, it is important that LBL continue to treat as much non-recyclable waste as possible via this route.
5. Different types of waste treatment technology
- 5.1 Energy from Waste (EfW) – The current contract with SELCHP is an EfW contract. This process is one by which the waste is transported to the incinerator facility and unloaded into a tipping area. Waste is incinerated in a controlled and efficient manner. Emissions are monitored by the Environment Agency to ensure safety to the environment and the local community. The incineration of waste can be used to generate heat and power. The heat generated is utilised in a water turbine which creates steam to power generators for electricity production to the National Grid. Heat is also used to heat water which can be used in a combined heat and power system to provide heat and hot water to local homes via a high-tech district heating network. Ferrous metals which are not combustible can be extracted at the end of the process for recycling.
- 5.2 In terms of environmental benefits, SELCHP has:
- Diverted over 10 million tonnes of waste from landfill.
 - Distributed over 189MWh of heat to over 2800 local homes
 - Achieved the highest efficiency rating for this type of plant; and

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- Reduced CO2 emissions by 7,700 tonnes per year
- 5.3 By disposing of our residual waste locally, we are also following the proximity principle, which states that waste disposal should take place as close to the point of production as possible.
- 5.4 Mechanical Biological Treatment (MBT) is a pre-treatment technology used to treat residual waste which is not suitable for recycling (e.g. black sack waste). MBT treats waste through two processes (mechanical and then biological) to produce two separate usable outputs, extracted recyclable materials and treated solid recovery fuel (SRF). The SRF is then burned in an EfW facility at an income.
- 5.5 Whilst there are some added benefits to the extraction of additional recyclate, there are only two MBT plants in London, one is in East London, which is run by the East London Waste Authority for the boroughs within the remit and the other is in Southwark which is run by Veolia ES Ltd. Both facilities were built through long term PFI contracts and have gate fees that are significantly higher than the SLCHP gate fee, both sites are also operating at full capacity.
- 5.6 Gasification is a process which can be utilised to extract a synthetic gas from waste which in turn can be burned to create energy. Waste is reacted with either oxygen or steam at extremely high temperatures (> 700°C) and a resultant gas is produced. When burned, the gas is more efficient than if the waste had been burned un-treated. This is because the gas can be burned at a higher temperature and with greater control. Currently there are a few large-scale gasification plants in the UK.

PRO – Electricity can be produced from the gas turbines

CON – Waste production energy can off-set the energy created from the gas despite the gas efficiency

- 5.7 LBL are unaware of any gasification plants within London taking municipal waste.
- 5.8 Pyrolysis is a thermal process using high temperatures to break down waste. The process thermally degrades waste in the absence of oxygen, producing a gas similar to that produced by gasification and which can be used as a fuel to generate electricity or steam through use of turbines.
- 5.9 LBL are unaware of any pyrolysis plants within London taking municipal waste.
- 6. Waste disposal Options available
- 6.1 LBL have identified three options in terms of waste treatment post January 2024.
 - Option 1 – a five year extension.
 - Option 2 – a ten year extension.
 - Option 3 – Procurement of a new contract.

Details of options 1 – 3 can be found in the Part 2 confidential report and confidential Appendices.
- 6.2 There is theoretically a no 'do nothing' option. However, the Council has a statutory duty to collect and dispose of Municipal waste and therefore must have a treatment/disposal option for residual waste. As a result, the options need to be either via an extension of the current SELCHP contract or via a procurement process and 'do nothing' is not an available option.

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- 6.3 Full information about the options is set out in the confidential Report and Appendices.
- 6.4 Option 1 is the recommended option, which balances the relevant matters including risks and the financial position.
- 7. Financial implications
 - 7.1 This report is asking the Mayor and Cabinet to consider the available options for the renewing of the Council's Waste Treatment Contract currently with SELCHP. It is also requesting additional funding to pay for the increase in contract price, including the contracts annual inflation.
 - 7.2 The current contract has been in place for 30 years and expires on the 2 January 2024. Over the last two years, senior officers have been involved with high level negotiations with SELCHP aiming to obtain the best possible financial deal for the Council, to help meet the objectives of the Council's mid-term financial strategy.
 - 7.3 This report is presenting three potential options in terms of waste treatment post January 2024. Full details and financial implications of all options can be found in the confidential report and confidential appendices.

8. Legal implications

- 8.1 The Council is obliged to comply with the procurement Regulations (Public Contracts Regulations 2015). Some variations to existing contracts may trigger a requirement to undertake a new competitive tender process. The Council's Contract Procedure Rules set out which variations can be made without a new competitive process (Constitution Part IV I, paragraph 17 of Contract Procedure Rules). This report explains why this extension to the contract for a further five years (the recommended option) is proposed.
- 8.2 The recommended option of extension of the contract for 5 years is considered to be a 'Permitted Extension' under the Contract Procedure Rules (Constitution Pt 4: Section I, Rule 17) and so does not trigger the requirement for a new procurement process. Contract Procedure Rules say that where a contract variation is 'not substantial', the variation can be made (paragraph 17.5). The definition of 'substantial' takes into account matters including the nature and size of the proposed change relative to the original contract, and the likely market effect of the change (including the change to the scope and economic balance of the contract). There is a reasonable argument that the proposed extension is not substantial. As such, the variation does not trigger a requirement to undertake a new procurement. On that basis, therefore, the proposed changes are allowable under the Council's Contract Procedure Rules paragraph 17.
- 8.3 If approved, the contractual mechanism for changing the contract will be used in order to implement the extension.
- 8.4 This is a key decision.
- 8.5 In taking this decision, the Council's public sector equality duty must be taken into account. It covers the following protected characteristics: age, disability, gender

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reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

8.6 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 Mayor and Cabinet, bearing in mind the issues of relevance and proportionality. Mayor and Cabinet 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.

8.7 The Equality and Human Rights Commission (EHRC) has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance. The Council must have regard to the statutory code in so far as it relates to the 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 on the EHRC website.

8.8 The EHRC has issued five guides for public authorities in England giving advice on the equality duty. 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.

9. Equalities implications

There are no Equalities implications arising from this report; the result of adoption of the recommended option would be to continue the current arrangements under which recycling occurs for the benefit of all in the community.

10. Climate change and environmental implications

Ensuring that Lewisham's residual municipal waste is treated by an Energy from Waste plan is in line with the waste hierarchy and minimises carbon emissions from its treatment.

11. Crime and disorder implications

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

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12. Health and wellbeing implications

There are no Health and wellbeing implications arising from this report.

13. Social Value implications

Social value benefits arising will be as in the current SELCHP contract. Changes for the future will be considered in discussion with the provider, and in the preparation for the contract which will take the place of the SELCHP contract in the future.

14. Background papers

None

Glossary

Term	Definition
SELCHP	South East London Combined Heat and Power Ltd Also used to designate premises from which the services are provided, being the energy recovery facility on Landmann Way SE14 5RS.
IBA	Incinerator bottom ash
SELWDG	South East London Waste Disposal Group Agreement, see paragraph 4.2
LATS	Landfill Allowance Trading Scheme, see paragraph 4.4
EfW	Energy from Waste, see paragraph 5.1
MBT	Mechanical Biological Treatment, see paragraph 5.4
SRF	Solid recovery fuel, see paragraph 5.4
CHP	Combined heat and power

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Comments for and on behalf of the Executive Director for Corporate Resources

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