



Mayor and Cabinet

Permission to procure a framework agreement for the provision of a textile collection bring bank service.

Date: July 14 2021

Key decision: Yes

Class: Part 1

Ward(s) affected: All

Contributors: Strategic Waste and Environment Manager, Support and Engagement Officer, Procurement and Contracts Manager, Group Finance Manager, Senior Lawyer

Outline and recommendations

The Council currently have a framework agreement in place with LM Barry for a period of 2+2 years. A call-off contract was entered into which is due to expire at the end of July 2021.

Mayor and Cabinet are recommended to approve this report so that the Council can go out to tender for a new framework agreement for the provision of a textile collection bring bank service for a period of 4 years (3+1).

Timeline of engagement and decision-making

May 2020 – Internal discussions around interim arrangements begun with central procurement team

July 2020 – Resource London declined support on creation of new consortium

February 2021 – Interim arrangements with current contractor, LM Barry, formalised and signed off by Executive Director

1. Summary

- 1.1. The Council's contract for the provision of a textile collection bring bank service expires in July 2021. This contract does not incur any expenditure to the Council, instead, generates income on a quarterly basis. The total value of this framework is estimated at £1,341,419, with approximately £66,500 income for Lewisham.

2. Recommendations

- 2.1. It is recommended that Mayor and Cabinet approves:
- the procurement of a framework agreement for the provision of a textile bring bank service for a period of 3 years with the option to extend for a period of up to 1 year at an estimated value of £1,341,419.
 - an extension of the call-off contract with LM Barry for a period of six months, whilst the Council procures a new framework agreement.

3. 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 benefit 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.



- 3.3. The GLA Act 2007 provided the Mayor of London and the GLA with new powers and roles, which meant that London's waste authorities are required to be in "great conformity" with the Mayor's municipal waste management strategy, backed up by the Mayor's power of direction.
- 3.4. The Resource and Waste Strategy for England (2018) stipulates that local authorities are required to drive waste reduction, and promote methods of reuse wherever possible.
- 3.5. The London Environment Strategy (2018) request that local authorities send zero waste to landfill by 2026. The strategy has a specific waste objective (7.4) insisting that waste authorities maximise local waste sites and ensure London has sufficient infrastructure to manage all the waste it produces.

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4. Background

- 4.1. The Council procured a framework agreement for the provision of a textile bring bank service in 2017. This was a single provider framework, whereby local authorities listed in the OJEU notice were able to call-off from the framework over the life of the framework agreement. The local authorities that signed in to the framework hereafter will be referred to as 'participating authorities'.
- 4.2. Representatives from the participating authorities, alongside Resource London, were involved in the development of the project and the collaborative procurement process in which Lewisham were the lead.
- 4.3. The Council approached Resource London in 2020, to investigate whether there was an interest for them to help in forming a new consortium. Resource London declined, reasoning that the current consortium did not provide the results they expected in terms of council engagement, and due to other priorities, were unable to work on a new consortium.
- 4.4. Following discussions with a number of authorities within London, it's clear that there is still an appetite for a new framework agreement. This will increase market share, and increase the chance of a higher income due to the bargaining power of the participating authorities.
- 4.5. Due to the tight timeframe for turnaround of this contract owing to knock-on effects of the Covid-19 Pandemic, the Council does not have enough time to procure this framework agreement before the current contract with LM Barry expires on 31st July 2021. An extension of six months to the current contract would enable the Council to carry out a one-stage competitive procurement process - and it is therefore recommended that Mayor and Cabinet approve a six month extension to the current contract with LM Barry.

5. Service Delivery

- 5.1. The continuation of the provision of disposal services for textiles is a key and essential service for the council, for the reasons set out in the 'Policy Context' above. The current contract expires in July 2021, and so a suitable route for the provision of this service after this date needs to be found.
- 5.2. Officers have considered various possibilities for the provision of the service, in particular, carrying out a competitive process to find a contractor, insourcing the contract, a joint working contract with another borough and extension of the current contract.
- 5.3. **Insourcing** – it would not be possible to insource the contract for the following reasons:
 - 5.3.1. **Lack of land** – the Council would need a large plot of vacant land to set up a facility for the sorting and selling of textiles. This land would need to be within a reasonable tipping distance. The council does not currently own any suitable land.
 - 5.3.2. **Lack of equipment and resource** – a successful textile sorting facility would require a large amount of staffing resource and specialised equipment.
 - 5.3.3. **High cost** – the council would need to purchase the land, purchase equipment, build a facility and hire staff to operate the facility. This would be a considerable cost. There would also be further operational costs after the initial set up costs.
 - 5.3.4. **Lack of expertise** – the Council does not have the expertise to run a disposal facility, as this requires specific knowledge, particularly around the Environment Agency and central government requirements.

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- 5.4. **Extension of current contract** – a temporary extension of six months can be granted due to COVID-19 relief measures. However, a longer extension would not be appropriate due to the framework having already been extended.
- 5.5. **Procurement via a competitive process** – as outlined throughout the report, this option will allow the Council to ensure a high level of service is provided and maximise the potential for the generation of revenue for the council.
- 5.6. In order to maximise the number of bids it is recommended that the procurement process used is the open procedure. It is recommended that this is a one stage open tender. The procurement will include the collecting, sorting and sale of textiles within the borough. Due to the nature of this contract, it has been agreed that a split of 60% financial and 40% quality is applied to the tender.
- 5.7. The Council will lead on the creation of a new framework agreement on behalf of the participating authorities and, if approved, will work with those authorities (listed 5.13) to secure a framework agreement that's commercially favourable for all.
- 5.8. Textiles are not considered an acceptable item at the kerbside, which means that residents are limited on how to dispose of textiles. The Council regularly communicates that textiles can be reused in a number of ways, such as donating to charity shops, to help in contributing to a circular economy. However, it is clear through the data provided to the Council that residents regularly use the bring sites.
- 5.9. The contract will be a concession contract as the Council receives a payment from the successful bidder as they make money from the collection and sale of textiles. In the current contract the contractor pays the Council a set amount per tonne regardless of the market value of the textiles however given the market volatility at the moment, and to provide greater transparency for both the successful contractor and participating authorities, the pricing schedule will be in line with the Let's Recycle Price Index rather than a set fee. 'Let's Recycle' analyses the waste market to calculate an average across the different types of waste. These averages are commonly used by local authorities and contractors to decide on a 'gate fee'. The gate fee is what the Council or contractor are required to pay, per tonne, for the waste.
- 5.10. The conditions of the waste market at the moment are fluctuating due to COVID-19. Rather than the bidders specifying an amount per tonne that they will pay to the Council for this contract, the Council will use the highest point on the Let's Recycle Price Index to determine the price per tonne on a quarterly basis to ensure complete transparency when the gate fee is set. When the market improves, the gate fee will increase, resulting in additional income. The table below outlines the Let's Recycle Price Index for textiles collected from a bring bank.

Month	Price Band (£ per tonne)
January 2020	100 – 170
February 2020	100 – 170
March 2020	100 – 160
April 2020	0 – 60
May 2020	0 – 60
June 2020	20 – 80
July 2020	20 – 60
August 2020	20 – 65
September 2020	20 – 70

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October 2020	35 – 95
November 2020	40 – 100
December 2020	40 – 100
January 2021	50 - 125

5.11. A working example of the income calculation is included below.

Month	Price Index (£ per tonne)
December 2020	40 – 100
January 2021	50 – 125
February 2021	60 – 130

On average, 31.88 tonnes of textiles were collected from Lewisham from December 2020 – February 2021. Calculating an average using the Lets Recycle Price Index $(100+125+130/3)$ would provide an income of £119 per tonne. This would mean for those three months, Lewisham would be paid £3793.72.

5.12. There is a clear demand for the textiles service – the below table outlines the quarterly tonnages collected in Lewisham from April 2018 to March 2020.

Period	Tonnes
April – June 2018	39.55
July – September 2018	55.87
October – December 2018	31.22
January – March 2019	42.24
April – June 2019	2.32
July – September 2019	27.54
October – December 2019	51.76
January – March 2020	23.92

5.13. The Council contacted a number of local authorities through the London Recycling Officers Group (LROG). The authorities included within the initial consortium will be able to call-off from the framework, and form their own contract with the successful

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contractor. The below authorities have indicated an interest in forming a new consortium:

- Hammersmith and Fulham
- Waltham Forest
- Harrow
- Sutton
- Royal Borough of Greenwich

5.14. It is anticipated that with the other five local authorities, the framework agreement tendered will be commercially appealing to contractors because they will have exclusive access to five borough's textiles output. Within the pricing schedule, bidders are asked to apply a percentage increase based on the total tonnage collected amongst all boroughs, meaning the more tonnage collected, the higher the income.

5.15. The main objectives of this procurement of a Textile Bring Bank Service are to:

- Increase tonnage diversion from disposal (either landfill or other) whilst maximising reuse;
- Maximise income for the Council and other Participating Authorities who participate in the Framework Agreement;
- Expand London's textile bring site provision;
- Deliver a high quality service;
- Realise social benefits.

5.16. The Council and other Participating Authorities of the consortium require the contractor of the Textile Bring Bank Service to:

- Supply a set amount of new textile banks to a specified number of locations across the London Borough, including one at the Reuse and Recycling Centre.
- Empty the banks as required by the Participating Authorities at frequencies to be agreed. Actual schedules to be agreed between the Participating Authorities and the Contractor.
- Maintain the banks as required by the Participating Authorities at frequencies as determined by the specification and contractor Method Statements.
- Pay directly to the Participating Authorities a monthly sum, for the value of the textiles collected.

5.17. The contract will be advertised on London Tender's Portal, the framework agreement will be awarded for an initial period of 3 years, with a potential to extend for 1 year.

6. Financial implications

6.1. This report is seeking the approval of Mayor and Cabinet to procure a framework agreement for the provision of a textile bring bank service for a period of 3 years, with the option to extend of up to 1 year, and the extension of the current framework for a period of six months.

6.2. There are no direct costs associated with the procurement of this framework agreement. The total contract value is estimated at £1.3m and will generate approximately £66k income for Lewisham over the 4-year contract period.

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7. Legal implications

- 7.1 This is a concession contract, which means that the Council do not pay for the service. The contractor receives payment from a third party. The Council will receive an income from the Contractor over the duration of the contract. The value of the contract falls below the financial threshold for the application of the Concession Contracts Regulations 2016 as amended by the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (“the Regulations”) so therefore they do not apply.
- 7.2 A concession contract is a contract for the supply of works or services to the Council where the consideration for the contract consists of either the contractor's right to exploit the works (that is the Council makes no payment), or that right together with payment to the council.
- 7.3 Concession contracts are covered by different legal requirements than those applicable to other contracts, including regarding the estimated expenditure threshold.
- 7.4 Concession contracts are still subject to competition in accordance with the Regulations and the Council’s Contract Procedure Rules. The relevant Category for determining the procurement route under these Contract Procedure Rules will be calculated by calculating the total turnover of the concessionaire generated over the duration of the contract (net of value added tax) as if the entire cost of the services had been paid for by the Council.
- 7.5 In accordance with the Council’s Contract Procedure Rules (“CPR”) this is a Category A contract. The process for procurement set out in this report meets the requirements of the CPR. The appointment of the successful contractor on to the framework agreement and the award of the call off contract must be made by Mayor and Cabinet.
- 7.6 The Council has a public sector equality duty (under the Equality Act 2010 (the Act)). It covers nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.7 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.
- 7.8 The duty is a “have regard duty”, and the weight to be attached to it is a matter for the decision maker, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 7.9 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

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reason would be of evidential value. The statutory code and the technical guidance can be found at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>.

- 7.10 The Equality and Human Rights Commission (EHRC) has issued 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. Further information and resources are available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

8. Equalities implications

- 8.1. There are no direct equalities implications arising from this report.

9. Climate change and environmental implications

- 9.1. Tenderers will be asked to provide evidence on their sustainability objectives and information on their current performance around carbon emissions. Sustainability will be evaluated as part of the procurement process.

10. Crime and disorder implications

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

11. Health and wellbeing implications

- 11.1. There are no direct health and wellbeing implications arising from this report.

12. Report author and contact

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

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14. Comments for and on behalf of the Director of Law, Governance and HR

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