

Bath & North East Somerset Council		
DECISION MAKER:	Cllrs David Wood and Sarah Warren, Cabinet Member for Climate Emergency and Neighbourhood Services	
MEETING/ DECISION DATE:	On or after 30 th May 2019	EXECUTIVE FORWARD PLAN REFERENCE:
		E 3142
TITLE:	West of England Waste Treatment procurement outcomes - approval to award contract	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report: The Councils adopted Zero Waste Strategy https://www.bathnes.gov.uk/sites/default/files/siteimages/waste_strategy_review_2014.p df http://www.bathnes.gov.uk/officerdecisions/detail/1657		

1 THE ISSUE

- 1.1 B&NES, in partnership with the other 3 West of England Waste Authorities embarked upon a competitive tender process in December 2017 to procure residual waste treatment capacity from April 2020 when the existing partnership contract expires.
- 1.2 B&NES is required as part of its statutory duties as a Waste Disposal Authority to have capacity secured to treat all of its residual waste.
- 1.3 The tender process was undertaken in accordance with European legislation and the results evaluated to give the best environmental and economically advantageous solution (evaluated on quality & price) available to the partnership, following extensive market engagement.
- 1.4 B&NES now needs to agree to award the contracts to the highest scoring providers.
- 1.5 The contracts are structured so that B&NES can continue to prioritise the minimisation of waste and invest in recycling services to ensure that maximum quantities of waste are reused and recycled before ultimately being sent for treatment and disposal through this contract.

2 RECOMMENDATION

The Cabinet Members for Environment and Climate Change are asked to;

2.1 Agree that Bath & North East Somerset Council enter into three contracts as a party to the West of England Waste Partnership (the Partnership), for the provision of residual waste treatment from April 2020.

2.2 Lot 1 – Residual waste

a) A Contract with Viridor Waste Management Limited for treatment of up to 120,000 tonnes of residual waste across the partnership;

b) A Contract with SUEZ Recycling and Recovery UK Limited for treatment of up to 50,000 tonnes of residual waste across the partnership; and

2.3 Lot 2 – Bulky Waste, a Contract with ETM Recycling Limited for treatment of up to 45,500 tonnes of bulky residual waste across the partnership.

2.4 Delegates Authority to the Director of Environment to negotiate and enter into all necessary legal agreement relating to the operation of the Contracts including an Inter-Authority Agreement to deal with tonnages, extensions and termination.

3 THE REPORT

3.1 The Council's existing waste treatment and disposal contracts expire at the end of March 2020, including the current joint West of England Waste contract. A joint procurement was agreed as the preferred approach by the West of England partners, and the decision to proceed with a joint tender process was published by the Strategic Director – Place in December 2017.

<http://www.bathnes.gov.uk/officerdecisions/detail/1657>

3.2 This procurement has been undertaken by an integrated project team consisting of officers from all four Councils. North Somerset Council led the re-procurement and South Gloucestershire Council will be the lead authority for the operational phase for the new contracts. The joint procurement allows for the consolidation of all waste into a joint West of England Contract to maximise on price efficiencies through economies of scale.

3.3 A Competitive Procedure with Negotiation process has been undertaken. The tender process did not specify or rule out any potential treatment and processing solutions, with the exception of landfill.

3.4 The contract or contracts are to be for an initial term of 10 years from 1st April 2020, plus extension options for one or more periods up to a further 10 years, by mutual agreement.

3.5 10 years is a realistic timescale for treatment technology to advance and for any new technology to be proven, gain planning consent and become operational within the UK. The partnership will continue to work with industry to assess any new options proposed in advance of the contract end date, to inform future contracting strategy.

3.6 In order to maximise waste minimisation, reuse and recycling initiatives throughout the period, this Contract does not have a contractual minimum tonnage. We will

continue to promote initiatives to reduce waste and maximise the use of our recycling service to achieve the highest levels of recycling possible.

- 3.7 To deal with the fluctuations in waste amounts which will occur over the period of the contract through housing growth, changes in waste collection frequency, increased recycling initiatives and other changes, the Partnership will provide the successful contractors the expected tonnage each year, one year in advance. This will allow for changes to take place and for the contractors to make the necessary adjustments to accommodate this.
- 3.8 Due to the varying composition of the waste collected from households and that of the bulkier waste delivered to our Recycling Centres, the procurement was split into two Lots.
- (1) Lot 1 Kerbside black bag waste
- (2) Lot 2 HWRC/Bulky Waste
- 3.9 Five initial tenders were received of which four were for both residual and bulky waste tonnage, and one bid was for bulky waste only. All tenders were reviewed and evaluated by the Partnership. Three suppliers for residual and HWRC/bulky were asked to enter the negotiation stage, in November 2018
- 3.10 Lot 1 (kerbside black bag waste): No one single supplier could offer capacity for all of the waste, therefore the recommendation is that the two highest scoring bids are awarded contracts:- Viridor Energy from Waste (EfW) recovery facility and Suez EfW recovery facility.
- 3.11 Lot 2 (HWRC/Bulky Waste): ETM scored highest within the tender process. ETM's proposal is advantageous in that they will be diverting a significant amount of this waste which is landfilled currently, through their new recycling and treatment processes.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 The Council has a duty under the Environmental Protection Act 1990 to arrange for the disposal of the waste which it collects in Bath & North East Somerset. In doing so it must follow the waste hierarchy laid down by the revised EU Waste Framework Directive (as detailed in the Council's zero waste strategy, page 8 section 3). The hierarchy gives top priority to preventing waste from arising in the first place. When waste is created, it gives priority to preparing it for re-use, then recycling, then energy recovery (e.g. by generating electricity using waste as a fuel), and last of all disposal (e.g. landfill).
- 4.2 The partnership stipulated that landfill would not be a viable solution during the tender process, recognising that this is at the bottom of the waste hierarchy in the EU Waste Framework Directive.
- 4.3 This procurement process complies with The Public Contracts Regulations 2015.

5 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 5.1 The contracts recommended for award are contained within the Council's allocated budget for residual waste treatment. No increase in budget (other than standard inflationary increases are required).

- 5.2 The contracts will be managed by the West of England Waste Partnership contract officer (as now). There is no additional staff resource required. It is proposed that this officer will continue to be based in South Gloucestershire.
- 5.3 The proposals use plants that are within the West of England, minimising haulage costs and environmental impacts associated with the transportation of waste. The Council's current operational teams will haul the waste from the existing transfer station in Bath without the need to increase our establishment.
- 5.4 B&NES Council currently use the Suez EfW facility to treat a proportion of its residual waste under a contract awarded in 2016. Other waste is treated by mechanical biological treatment at plants in Avonmouth and in Westbury.
- 5.5 The new proposed contracts ensure that waste is wholly treated within the UK. This is in contrast to our existing contracts whereby waste arising from the mechanical biological treatment plants (MBT) is transported to Europe for energy recovery through combined heat & power plants there. The result of this procurement process reduces the carbon impact of B&NES waste treatment from the current position, in line with Climate Emergency declarations.

6 RISK MANAGEMENT

- 6.1 The recommendations for contract award are as a result of a legal tendering process and are the best available to the partnership scoring the highest on both environmental and economic grounds. There are no other viable options that came forward through the tender process and extensive market testing.
- 6.2 The recommendations for contract award represent the best environmental option available at this moment in time. Additional value will be recovered from waste by the contractors recovering both recyclates and electricity which will be exported to the national grid, contributing to reducing the UK's reliance on fossil fuel for electricity production. This is in contrast to our current mechanical biological treatment contracts which export waste to Europe for treatment in Combined Heat and Power plants abroad.
- 6.3 The contract length allows for new technology to be developed and proven in future, whilst the contracts have no minimum tonnage commitment. This allows the Councils to continue to minimise waste and invest in recycling services.

7 CLIMATE CHANGE

- 7.1 The proposed contracts are in accordance with the Council's declared position on climate change. The contracts proposed represent the waste treatment processes with the lowest carbon footprint available to the Council's at this point in time.
- 7.2 Recycling of increased quantities of food waste will be prioritised by B&NES as this has potential for the Council to reduce its carbon emissions further.

8 OTHER OPTIONS CONSIDERED

- 8.1 **Do nothing**; existing contracts expire in 2020 with no options to extend. Due to the value of these contracts and Local Government procurement rules a further procurement exercise was required. Do nothing was ruled out as an option on legal grounds.

8.2 Procure the services as an individual council. In 2017 this was debated and discounted as being inefficient and unviable. It would create competition between the Councils who would all be tendering at the same time and reduce the advantages that economies of scale brings. Joint working allows for additional benefits of shared contingencies, shared overheads, and opportunities to develop shared working in other areas. Should the council decide to revisit this decision, it is unlikely that we would be able to procure and appoint a contractor by April 2020. There is no guarantee that there would be industry capacity to deal with the council's residual waste. Costs would rise as a result of increased overheads and the reduced volume of waste going through a single authority contract. There is a risk that the council would not be able to deliver its' statutory duties to dispose of waste.

9 CONSULTATION

9.1 The Partnership undertook soft market testing in December 2015, with 23 potential suppliers attending. The aim was to explore market options and open pre-procurement dialogue. The soft market testing was followed up by a survey in 2016.

9.2 The decision to embark upon a joint competitive procurement process was registered by B&NES in December 2017.

9.3 The procurement process has allowed for negotiation with potential suppliers.

9.4 The Council's Cabinet Members, Leader, Section 151 Officer, Monitoring Officer, Corporate Director, Director of Environment, Sustainability Manager have been consulted in the production of this report.

10 RISK MANAGEMENT

10.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

10.2 The contract awards proposed are the highest scoring bids from the evaluation of this procurement process. OJEU regulations prevent award on alternative evaluation criteria at this stage. Any attempt to do this would be in breach of procurement regulations and open to legal challenge.

9.3 A delay in the decision to award contract(s) as part of this procurement process could potentially leave us in a position with no treatment and / or disposal outlets from April 2020. This is high risk. Waste treatment capacity in the West of England is sought after and there is currently an under supply nationally. Any delay to the award of this contract may mean that the capacity becomes unavailable to B&NES. This will have adverse financial, legal and environmental consequences.

10 DEMOCRATIC PROCESS - Council Constitution Part 4D (1), Rule 5 Exception to Call-in.

10.1 The Cabinet Member Decision exception to call-in applies in this instance, as the effect of call-in has the potential for the council to miss, or fail to comply with of fulfil, a deadline or duty. Following the WOE procurement process, undertaken in accordance with the 2015 regulations, the award of the contract

has to be completed week commencing 17th June 2019. Failure to award by this date will result in the council laying itself open to challenge on process grounds. and could trigger a requirement for B&NES to re-tender the contracts in isolation of the other 3 partners **This will** significantly increase the risk of the Council failing to deliver on its' statutory duties to arrange for the disposal of waste under the provisions of the Environmental Protection Act 1990 (from April 2020).

Contact person	<i>Carol Maclellan, Group Manager Neighbourhood Environmental Services 01225 394106</i>
Background papers	<p>Link to Officer delegated Decision to enter into procurement December 2017 http://www.bathnes.gov.uk/officerdecisions/detail/1657</p> <p><i>South Gloucestershire Council - West of England Residual Waste Re-Tender Report</i> https://council.southglos.gov.uk/documents/s103782/WoE%20cabinet%20paper%204%20Feb%2019%20v4%20dated%2022%20Jan%202019_Proofed.pdf</p> <p>North Somerset Council – Award of Contracts for the Treatment of Waste http://apps.n-somerset.gov.uk/cairo/docs/doc29413.pdf</p> <p>Bristol City Council – West of England Waste Treatment Procurement 2020 Report https://democracy.bristol.gov.uk/documents/s30097/Decision%20Pathway%20-%20WOE%20Procurement%20March%202019%20cabinet%2020219%20final.pdf</p> <p>Bath & North East Somerset Council's adopted Zero Waste Strategy https://www.bathnes.gov.uk/services/bins-rubbish-and-recycling/waste-strategy-statistics-and-health-safety/waste-strategy https://www.bathnes.gov.uk/sites/default/files/siteimages/waste_strategy_review_2014.pdf</p>
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