



Author/Lead Officer of Report: Mick Crofts,
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Report of: Laraine Manley, Executive Director of Place

Report to: Cabinet

Date of Decision: 13th December 2017

Subject: Waste Contract Review – Next Steps.

Is this a Key Decision? If Yes, reason Key Decision:-	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
- Expenditure and/or savings over £500,000	<input checked="" type="checkbox"/>
- Affects 2 or more Wards	<input checked="" type="checkbox"/>
Which Cabinet Member Portfolio does this relate to? Cabinet Member for Environment	
Which Scrutiny and Policy Development Committee does this relate to? Economic and Environmental Wellbeing	
Has an Equality Impact Assessment (EIA) been undertaken?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
EIA reference number 363	
Does the report contain confidential or exempt information?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-	
Appendix One is not for publication by virtue of Regulation 20(2) Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 because, in the opinion of the proper officer, it contains exempt information under Paragraphs 3 (Information relating to the financial or business affairs of any particular person (including the authority holding that information)) and 5 (Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings) of Schedule 12A of the Local Government Act 1972 (as amended) and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.	
Purpose of Report:	
This report seeks authority to agree terms in settlement of a number of disputes that have arisen between the parties under the Integrated Waste Management Contract (IWMC) and to agree amendments to the IWMC to realise cost savings that will ensure the IWMC remains affordable and sustainable for the Council. The intended outcome of this strategy is to significantly reduce the cost of Waste Services and to allow for a more responsive and sustainable service in the future.	

Recommendations:

That Cabinet:

1. Approves the terms of the settlement of a number of disputes that have arisen between the parties under the Integrated Waste Management Contract (IWMC);
2. Agree amendments to the IWMC in line with this report to realise cost savings that will ensure the IWMC remains affordable and sustainable for the Council;
3. To the extent not already covered by existing delegations authorises the Executive Director of Place, in consultation with the Director of Finance and Commercial Services and Director of Legal and Governance to take such steps as appropriate to implement the above recommendations.

Background Papers:Cabinet Report dated 18th January 2017 – Waste Services Review.Cabinet Report dated 18th January 2017 - Waste Management Policies.

Lead Officer to complete:-		
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.	Finance: Jane Wilby
		Legal: Dave Hollis
		Equalities: NA
<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>		
2	EMT member who approved submission:	Laraine Manley
3	Cabinet Member consulted:	Bryan Lodge
4	I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.	
	Lead Officer Name: Mick Crofts	Job Title: Director of Business Strategy and Regulation
	Date:	

1. PROPOSAL

- 1.1 The Council has an Integrated Waste Management Contract (IWMC) with Veolia, which runs from 2001 to 2036. Pressures to the Council budget meant that the Waste Contract Review was commissioned to consider if there is a deliverable alternative strategy to the current contract arrangements in order to achieve savings required to ensure the service can operate within the Council's reducing budget. The key strategic objective established for the review was to significantly reduce the cost of Waste Services and to allow for a more responsive, flexible and sustainable service in the future.
- 1.2 Consequently on 18th January 2017 Cabinet approved a procurement strategy to go to the market for alternative provision in the event that the current contract was terminated.
- 1.3 The Council's commercial strategy always recognised, however, agreement could be reached with Veolia to reduce the costs of the IWMC and satisfactorily resolve a number of outstanding disputes. Veolia have proposed an annual reduction in payment amounting to £3.558m per annum against the current contract costs plus a total one off settlement of £5.6m (estimated value as at 31st March 2018) which together meet ongoing savings and resolve a number of outstanding disputes. In addition there is also an opportunity to realise a further £1.0m per annum of savings related to service changes that will still be explored. The proposed revised contract also includes an extension of two years for the Energy Recycling Facility which will provide ongoing security of our treatment of waste.
- 1.4 The key principles of Veolia's proposals were agreed in a Memorandum of Understanding (MoU) which was signed on the 27th July 2017 by both parties. A detailed and legally binding deed of variation will make the changes necessary to amend the IWMC and implement the proposal set out in the MoU. The key purpose of this Cabinet Report is to approve entering the amendments needed to implement the savings and will include provisions for the settlement of all outstanding disputes.

Appendix One (Closed) contains the details of Veolia's proposals.

- 1.5 The biggest challenge and opportunity going forward is establishing a new relationship to enable the parties to work effectively together. Without a re-setting of the relationship a revised contract is likely to fail. Both sides are committed to starting afresh. A Partnership Charter and a refreshed governance structure, which are the first steps in resetting the relationship, will be put in place. Our mission is to deliver the high quality Waste Management services to the people of Sheffield and to be recognised as the leading partnership for our collective achievements. This will be done by delivering an ambitious and continually improving set of services through skilled, motivated and focused people that embrace innovation and collective ownership.

2. HOW DOES THIS DECISION CONTRIBUTE?

- 2.1 The strategy in this report contributes to the 'Being an In touch Organisation' and 'Thriving Neighbourhood and Community priorities' identified in the Council's Corporate Plan 2015 – 2018. This is through reducing the cost to the Council of providing waste services and making the best use of public money to have the greatest impact for Sheffield.
- 2.2 Waste Services are a cornerstone of the thriving neighbourhoods and communities priority ensuring our city is clean and tidy.
- 2.3 Sheffield's Green Commission has established a transformative energy principle for Sheffield: An energy secure city with transformative affordable, clean, efficient, low-emission, networked, renewable, resilient, simple and locally owned energy solutions. The Energy Recovery Facility and the District Energy Network are key assets for the city in realising our aspirations.

3. HAS THERE BEEN ANY CONSULTATION?

- 3.1 Changes affecting service delivery were the subject to a separate Cabinet report 'Waste Management Policies' on the 18th January 2017, which involved online consultation on the proposed service changes. Successfully delivering this strategy is a key step in achieving the delivery model for how the Council can secure better value for money waste services.

4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

4.1 Equality of Opportunity Implications

- 4.1.1 Overall there are no significant differential, positive or negative, equality impacts from implementing the proposals.

An Equality Impact Assessment (reference 363) has been completed for where changes are taking place that impact on the Recycling Service that residents receive. The EIA identified that there potentially may be some low negative impacts for customers with reduced mobility, some older people, pregnancy/ maternity, carers, low income households and social cohesion. These impacts are mitigated through the assisted collection scheme and through communications to residents.

There may also be a small number of job losses for Veolia staff due to the changes to the Recycling Service. It is intended that these will be mitigated through a natural turnover of staff and use of fixed term contracts as the recycling service changes will not be implemented for another 12 months or so. If staff redundancies cannot be fully mitigated Veolia will seek to run a voluntary scheme and provide support and guidance through the process which will be in accordance with agreed Veolia policies.

Apart from the changes to the Recycling Service, the rest of the details of

Veolia's proposals are considered to be commercially sensitive as they contain information that relates to the business information of other parties. These proposals do not have any, positive or negative, equality impacts.

4.2 Financial and Commercial Implications

4.2.1 For the Council to be able to accept Veolia's proposals this must be justified having regard to (i) the application of the performance mechanism, (ii) the savings opportunity represented by the proposal and (iii) the associated risks if the Council does not reach agreement with Veolia.

4.2.2 Key advantages of reaching agreement with Veolia, include:

- avoids the significant costs of early termination of the existing contract;
- no service disruption for customers and staff (compared to procurement route and TUPE implications);
- avoidance of ongoing legal and procurement costs (although some legal/project costs will be incurred in order to conclude the amendments to the IWMC);
- savings can be deliverable under the proposals with effect from April 2018. The procurement route would require a lengthy OJEU process and savings, if realised, would not be achieved until at least April 2019 as a minimum;
- there would be greater certainty of savings compared to the procurement route where there is no guarantee of the amount of savings that can be achieved. Although financial modelling suggests that the opportunity for savings via the procurement route is potentially greater than the savings offered by Veolia's proposal, there is no guarantee that such savings can be achieved until fully tested in the market;
- the procurement route proposed would mean that the Council would retain responsibility for the District Energy Network and the risk of major repairs and maintenance;
- providing the opportunity to re-set the relationship and establish a sustainable contract over the remaining term;
- extension of two years for the Energy Recycling Facility which will provide ongoing security of our treatment of waste and avoid landfill;
- continuation of a high level performing service;
- resolution of outstanding disputes means an additional financial benefit in this financial year (further details are set out in Appendix 1);
- although the Council believes it has a strong case on the matters in dispute, as with any litigation or adjudication proceedings there is no absolute guarantee that the Council would be successful.

4.2.3 The key disadvantages of reaching agreement with Veolia, include:

- the lost opportunity to test the market and put in place new contract arrangements that:
 - provide short term flexible contracts for the different services
 - reset of prices and baseline for resources deployed
 - full transparency for pricing and change
 - alternative solution for District Energy Network;
- it may be difficult to maintain the long-term relationship, particularly if the IWMC does not prove to be sustainable over the remaining term.

4.3 Legal Implications

4.3.1 The legal implications of the Veolia proposal are covered in Appendix One.

4.3.2 The work involved to complete these proposals is in itself a significant project and therefore the procurement option and any escalation of outstanding disputes was put on hold until a Cabinet decision is made. If Cabinet does not approve the recommendations as set out in this report the Council can revert to the procurement option as detailed in the Cabinet Report of January 2017 and progress any outstanding disputes.

4.4 Other Implications

4.4.1 There are no other implications arising directly from this report. All the Council's statutory responsibilities will be adhered to.

5. **ALTERNATIVE OPTIONS CONSIDERED**

5.1 There are two alternative options open to the Council:

Option One: No change to current contract;

Option Two: Go out to procurement as set out in the Cabinet Report of January 18th 2017 and pursue the disputes.

5.2 **Option One:** The Council could continue with the IWMC in its current form but this would mean that the Council would not achieve any financial savings. The implications of not achieving budget savings would mean that the Council would need to find savings elsewhere and potentially result in service cuts in other parts of the Council. The Council would also have to resolve any outstanding disputes and as mentioned above there is no absolute guarantee that the Council would be successful in such matters.

This option is dismissed as it does not achieve any financial savings.

5.3 **Option Two:** Proceeding with the procurement is still a viable option, but this report is seeking the opportunity to reach agreement with Veolia to resolve outstanding disputes and realise significant savings. If the

recommendations detailed in this report are not approved we will revert to the procurement route and would need to resolve any outstanding disputes through other means. The key reasons why on balance the recommendation is to reach agreement with Veolia is because of the following key risks in relation to the procurement option:

- **Level of termination payment:** There is a risk that the Council and Veolia may not be in agreement on the compensation payment due to Veolia in the event the IWMC was terminated, which could result in a lengthy and costly court process to resolve.
- **Competition in the market (& tender prices):** Although the procurement option provides an opportunity for savings compared to current contract prices there is no guarantee that such savings can be realised until fully tested in the market.
- **3rd party waste to fill Energy Recovery Facility capacity:** The risk to the Council if a contractor is not able to fully secure the feedstock (other waste) for the Energy Recovery Facility (ERF) which would mean reduced income share to the Council, and could cause operational issues to the ERF. Also the Council's share of income from the ERF will be exposed to energy market price risk.
- **District Energy Network condition:** The short-term Operation & Maintenance contract proposed would only take on low level maintenance risks, so the Council would retain responsibility and the risk of major repairs and maintenance under this model.
- **Management Information:** Through remaining with Veolia the Council is mitigated from the risk of knowledge and information transfer between the existing and any new contractor.

This option is therefore dismissed because the preferred option, although challenging, provides greater certainty of savings that can be applied at least 12 months earlier than the procurement option.

6. REASONS FOR RECOMMENDATIONS

- 6.1 Resolving the disputes that have arisen between the parties under the IWMC and agreeing proposals to realise cost savings will ensure the IWMC remains affordable and sustainable for the Council. The proposals in this report achieve the intended outcome of the Council's strategy to significantly reduce the cost of Waste Services and to allow for a more responsive and sustainable service in the future.

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