

URGENT LEAD MEMBER FOR ENVIRONMENTAL SERVICES MEETING

Date: Wednesday 17 August 2022
Time: 9.00 am
Venue: Maidstone House, King Street, Maidstone

Membership:
Councillor Round

The Chairman will assume that all Members will read the reports before attending the meeting. Officers are asked to assume the same when introducing reports.

AGENDA

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1. To consider whether any items need to be taken in private due to the possible disclosure of exempt information
2. Mid Kent Waste Contract Extension 1 - 10

PART II

To move that the public be excluded for the items set out in Part II of the Agenda because of the likely disclosure of exempt information for the reasons specified having applied the Public Interest Test.

Head of Schedule 12A and Brief Description

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| 3. Exempt Appendix 1 to Item 2 - Mid Kent Waste Contract Extension | Paragraph 3 – Information relating to the financial or business affairs of any particular individual (including the authority holding that information) | 11 |
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INFORMATION FOR THE PUBLIC

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Issued on 12 August 2022

Alison Broom

Alison Broom, Chief Executive

**Lead Member for
Environmental Services**

17 August 2022

Mid Kent Waste Contract Extension

Timetable	
Meeting	Date
Lead Member for Environmental Services	Wednesday 17 August 2022

Will this be a Key Decision?	Yes
Urgency	<p>Urgent</p> <p>28-day notice requirement relating to exempt information has been waived by the Chairman of the Overview and Scrutiny Committee in accordance with Rule 16, Part C4 of the Council's Constitution. Due to urgency, this decision will not be subject to call in.</p> <p>Reason for urgency:</p> <p>This decision is required by the Mid Kent Partnership, which includes Maidstone Borough Council within the next 5 days to enable the contract procurement to continue and to secure the extension of the current contract. Without this, it is highly likely that the Council will not be able to provide statutory waste collection services from October 2023.</p>
Final Decision-Maker	Lead Member for Environmental Services
Lead Head of Service	William Cornall, Director of Regeneration and Place
Lead Officer and Report Author	Jennifer Stevens, Head of Environment and Public Realm
Classification	<p>Public report with exempt appendix</p> <p>Exempt Appendix 1: Contract Costs</p> <p>The appendix contains exempt information as classified in paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 in that they contain information relating to the financial or business affairs of any particular person (including the authority holding that</p>

	<p>information). The public interest in maintaining this exemption outweighs the public interest in their disclosure.</p> <p>Appendix 1 – Contract Costs contains financial information relating to the contract extension which is commercially sensitive and if disclosed in the public domain would breach confidentiality during the procurement process for the new contract and enable competitive advantage as well as pose a significant risk of legal challenge.</p>
Wards affected	All

<p>Executive Summary</p> <p>During the Competitive Dialogue with Bidders as part of the retendering of the Mid Kent Waste Contract, it has been identified that the planned mobilisation period is insufficient for current vehicle manufacturer lead-times.</p> <p>This report outlines the options for addressing this issue prior to the Invitation to Submit Final Tender to ensure the procurement process can be completed successfully.</p>
<p>Purpose of Report</p> <p>Recommendation</p>

<p>This report makes the following recommendation to the Lead Member for Environmental Services:</p> <ol style="list-style-type: none"> 1. An extension of the existing Mid Kent Waste Collection Contract until 23 March 2024, as set out in Section 4.1, is agreed.

Mid Kent Waste Contract Extension

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Embracing Growth and Enabling Infrastructure • Safe, Clean and Green • Homes and Communities • A Thriving Place <p>Delivering waste and recycling services contributes to the objective of a Safe, Clean and Green environment. The recommendation in this report enables this statutory service to be maintained despite the current industry challenges particularly on the supply and delivery of collection vehicles.</p>	Head of Environment and Public Realm
Cross Cutting Objectives	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected <p>The proposal to extend the current contract will have no impact on the cross-cutting objectives, however environmental sustainability forms part of the new contract procurement and evaluation</p>	Head of Environment and Public Realm
Risk Management	The risks associated with the recommendation of this report are detailed in section 5.	Head of Environment and Public Realm
Financial	<p>Accepting the recommendations will demand new spending as set out in Exempt [Part II] Appendix 1.</p> <p>Funding was identified within the MTFS to cover the projected increase in contract costs, however this is insufficient to cover the additional extension costs.</p>	Section 151 Officer

	Provision was made when setting the budget in 2021/22 for the impact of increased inflation, which covers situations like the one outlined in this report. Accordingly, this provision will be used to fund the additional costs.	
Staffing	We will deliver the recommendations with our current staffing.	Head of Environment and Public Realm
Legal	<p>Section 45 of The Environmental Protection Act 1990 places a duty on local authorities to collect household waste. The Public Contract Regulations 2015 provide exemptions for local authorities to modify contracts without a new procurement and Regulation 72 (1) (c) should provide a successful defence if a challenge were to be received to the contract extension;</p> <p>72.—(1) Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Part in any of the following cases:—</p> <p>(c)where all of the following conditions are fulfilled:—</p> <p>(i)the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;</p> <p>(ii)the modification does not alter the overall nature of the contract;</p> <p>(iii)any increase in price does not exceed 50% of the value of the original contract or framework agreement.</p> <p>A Notice must be published, detailing the modification and the exemption, in accordance with Regulation 51.</p>	Contracts and Commissioning Team Leader, MKLS
Information Governance	The recommendations do not impact personal information (as defined in UK GDPR and Data Protection Act 2018) the Council Processes.	Information Governance Team
Equalities	The recommendations do not propose a change in service therefore will not require an equalities impact assessment	Equalities & Communities Officer

Public Health	We recognise that the recommendations will not negatively impact on population health or that of individuals.	Public Health Officer
Crime and Disorder	No implications identified	Head of Environment and Public Realm
Procurement	The Mid Waste Contract is due to expire on 21 October 2023 and is currently being reprocured through Ashford Borough Council. A full competitive dialogue process is being carried out in line with EU procurement rules.	Head of Environment and Public Realm
Biodiversity and Climate Change	The implications of this report on biodiversity and climate change have been considered and are; <ul style="list-style-type: none"> • There are no implications on biodiversity and climate change. 	Biodiversity and Climate Change Officer

2. INTRODUCTION AND BACKGROUND

- 2.1 The Mid Kent Waste Contract commenced in April 2013 for the collection of waste and recycling in Ashford, Maidstone and Swale. The contract was awarded to Biffa Municipal Limited for a term of 10 years at a total value of approximately £100m. The contract is due to expire on 21 October 2023.
- 2.2 Maidstone Borough Council’s Communities, Housing and Environment Committee previously decided to continue in partnership with Ashford and Swale Borough Councils and retendering of the contract started in September 2021.
- 2.3 The procurement of the contract is being led by Ashford Borough Council with Legal support provided by Mid Kent Legal Services.
- 2.4 The OJUE Notice was issued in December 2021 and a three-stage competitive dialogue process commenced.
- 2.5 During the second stage (*Invitation to Submit Refined Solutions*), bidders highlighted the growing risk of vehicle supply as manufacturer lead-times have significantly increased in the past 12 months predominately due to COVID and supply chain issues. Current lead-times suggested are between 32 and 40 weeks for refuse collection vehicles, dependent on specification.
- 2.6 It has now become apparent that the standard 10-month mobilisation period within the procurement timetable is no longer sufficient to ensure that a full fleet can be provided from October 2023. Whilst the incumbent has the benefit of its existing fleet, this would not offer a fair and equitable

process for competition and would not be compliant with the current requirement for bidders to have a new fleet from contract commencement.

- 2.7 To maintain a fair and transparent process, the bidders have suggested an extension to the existing contract to enable a 14-month mobilisation period. This would enable all bidders to meet the specification requirements and deliver a compliant bid at Final Tender.
- 2.8 The incumbent has agreed to extend the existing contract for a period of 5 months and 2 days to take the contract to 23 March 2024. However, this is at a significant increase in contract value as set out in Exempt Appendix 1.
- 2.9 Other options have been explored including whether the incumbent would consider making its fleet available to the Partners or other bidders, however they have declined this option as the fleet is their asset.

3. AVAILABLE OPTIONS

- 3.1 *Option One*: The Council could decide to extend the existing contract until 23 March 2024 to enable the mobilisation period for the new contract to be increased to 14 months enabling sufficient lead-time for the purchase and delivery of new collection vehicles.

The Lead Member for Environmental Services is asked to note that depending on the service's requirements, the Partners may be asked to extend the contract by further 3-month periods if required. However, there is a risk that the Council could open itself up to challenge if it exceeds 10% of the Contract Value. This would follow the standard governance process.

- 3.2 *Option Two*: The Council could decide not to extend the existing contract and continue with the current timetable. However, it is likely that this option will favour the incumbent and open the Partnership up to future challenge as other bidders would be disadvantaged and unable to bid. Without competition, this is likely to drive up contract costs. There would also be a risk that should all bidders withdraw from the process, there would be insufficient time for the Partners to deliver the service themselves.
- 3.3 *Option Three*: The Council could decide to extend the contract by more than 5 months; however, this may take the cost beyond 10% of the contract value which could pose a risk of legal challenge. A longer extension may also be excessive as current lead-times are around 32 to 40 weeks.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 It is recommended that the Council agrees Option One to extend the existing waste collection contract until 23 March 2024, with the potential for further 3-month extensions at the Partners' request noted, to ensure that the successful contractor can deliver a new fleet from contract commencement.

- 4.2 This option ensures that the procurement process can continue, and all bidders have a fair and equitable opportunity to tender for the contract. The cost for the extension is also likely to be lower than the new contract costs due to use of existing vehicles. Although all costs are estimated to be substantially higher than the existing contract value.
 - 4.3 This option provides the greatest mitigation of risk to the Partners, reducing the likelihood of not being able to provide the statutory waste and recycling services from October 2023.
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5. RISK

- 5.1 The procurement of the Mid Kent Waste Contract is listed on the Council's corporate risk register. It poses a significant risk to the Council both in terms of escalating costs and therefore affordability of the contract, and for deliverability with shortage of drivers and supplies.
 - 5.2 The key risks associated with this report are outlined in Appendix 2.
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6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 The Communities, Housing and Environment Committee was previously consulted on the retendering of the Mid Kent Waste Contract and Member Briefings were held to shape the specification including consideration of changes to the waste and recycling services. The Committee agreed to remain within the Mid Kent Partnership and to continue with the current service provision.
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7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 7.1 If the decision is taken to extend the existing contract, a Variation Order will be issued to the Contractor. This will then be implemented from October 2023 until 23 March 2024. The final stage of the new contract will then commence, and bidders will be invited to submit their Final Tender.
 - 7.2 The decision to award the new contract will be brought to the Communities, Housing and Environment Policy Advisory Committee in December for consideration before being taken to the Executive for approval.
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8. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- EXEMPT [Part II] Appendix 1: Contract Extension Costs
- Appendix 2: Risk Register

9. BACKGROUND PAPERS

None

Appendix 2 – Risk Register

Risk	Description	Controls	Rating	Further controls required
Volatility of Vehicle Market	Vehicle lead-times increase further, inability to secure sufficient vehicles to provide part / whole statutory waste service	<ul style="list-style-type: none"> - Contract extension until March 2024 to give 14 month lead-time - Incumbent available to use existing fleet - Additional 3-month extensions - Hire vehicles 	High	<ul style="list-style-type: none"> - Monthly monitoring of vehicle lead-times - Agreements in place for hire vehicles - Update Business Continuity Plans
Contract Value	Final Tender is not affordable due to significant increase in Contract Value	<ul style="list-style-type: none"> - Increase included in MTFS - Competitive dialogue process to identify risk pricing and avoidable costs 	High	<ul style="list-style-type: none"> - Review before Invitation to Submit Final Tender
Incumbent withdraws from process	Due to the current market conditions, several large contractors have withdrawn from contract negotiations. The incumbent could decide the risk within the new contract exceeds their risk appetite and therefore withdraw from the process prior to the extension being agreed.	<ul style="list-style-type: none"> - Agree extension prior to Final Tender - Reviewing specification following feedback from bidders during dialogue - Issuing documents prior to Final Tender to get feedback - Red line issues discussed in detail 	Medium	<ul style="list-style-type: none"> - Agree extension urgently
Lack of Competition	Withdrawal of bidders from process due to inability to submit compliant bid or due to unacceptable risk results in	<ul style="list-style-type: none"> - Identifying and reviewing red-line issues throughout the dialogue process 	Medium	<ul style="list-style-type: none"> - LATCo option being explored as alternative

	lack of competition for Final Tender and increase price or result in red-line issues being non-negotiable	<ul style="list-style-type: none"> - Extension to create fair playing field for all bidders - Competitive dialogue process 		
Extension with unsuccessful bidder	If incumbent is unsuccessful / withdraw from the new contract there is a risk that the prolonged mobilisation period could lead to poor performance, withdrawal of resources, higher complaints, disengaged staff for longer period of time	<ul style="list-style-type: none"> - Performance mechanism will remain in place - Recovery of previous losses - Not significantly longer mobilisation period - Partnership Board 	Low	<ul style="list-style-type: none"> - Monthly monitoring of performance
Extension exceeds 10% contract value	If the extension is extended further there is a risk, it will exceed 10% of the Contract Value and could be challenged	<ul style="list-style-type: none"> - Requirement to provide statutory service - Delay to procurement process and not replacement - Those likely to challenge have had opportunity to bid 	Low	<ul style="list-style-type: none"> - Agreement from Ashford and Swale to this approach

Agenda Item 3

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

Document is Restricted