

Award of contract to HW Martin Waste Ltd for the Management and Operation of Dogsthorpe Household Recycling Centre

Councillor Gavin Eley, Cabinet Member for Street Scene, Waste Management and Communications

April 2015

Deadline date: N/A

Cabinet portfolio holder:	Councillor Gavin Eley, Cabinet Member for Street Scene, Waste Management and Communications.
Responsible Director:	John Harrison, Corporate Director Resources.
Is this a Key Decision?	YES If yes has it been included on the Forward Plan: Yes Unique Key decision Reference from Forward Plan: KEY/18APR14/03
Is this decision eligible for call-in?	YES
Does this Public report have any annex that contains exempt information?	YES The attached Exempt Annexe is NOT FOR PUBLICATION in accordance with paragraph 3 of Schedule 12A of Part 1 of the Local Government Act 1972 in that it contains information relating to financial and business affairs namely, financial analysis of offers received for the operation of the contract by participating companies. The public interest test has been applied to the information that is contained in the Exempt Annex to this Decision Notice and it is considered that the need to retain the information as exempt outweighs the public interest in disclosing it because to disclose it could compromise the Council's position in any future procurement for these works.

R E C O M M E N D A T I O N S

The Cabinet Member is recommended to:

1. Approve the award of contract for the Management and Operation of Dogsthorpe Household Recycling Centre (HRC) to HW Martin Waste Ltd for a period of two years from 01 May 2015 with an option to extend for up to 6 months. The total value, including the maximum extension and an estimation of variable spend related to waste arising, is £750,000.

1. SUMMARY OF MAIN ISSUES

- 1.1 This report seeks approval to award a contract for the management and operation of the Dogsthorpe HRC to HW Martin Waste Ltd.

- 1.2 The HRC at Dogsthorpe is currently operated by HW Martin Waste Ltd. The service contract was for a 2 year period and was awarded following the conclusion of an OJEU procurement in 2012. HW Martin have, to date, operated the service successfully with consistently high recycling performance and good customer satisfaction. The contract term was set so as to coincide with the completion of the long term replacement site at Dodson House in the Fengate area of the City, the intention in 2012 being to procure a service provider for the management and operation of the new facility once it was up and running.
- 1.3 The existing Contract has been extended for 6 months and is therefore due to expire on 30 April 2015. In preparation for this, a soft market test was carried out in December 2014, to ascertain how best we might approach a procurement exercise and make arrangements for the short and long term service needs. A market test was necessary because the development of the new facility has been on hold due to capital budgetary constraints and it was important to get input from the market to help shape the Council's plans. As the revised opening date is now October 2017, an interim award of contract is required to cover the period between the expiry of the current contract and the completion of the new facility, a term of two and a half years. This is a much shorter period than a contract of this nature would ordinarily be let and it was considered important to get the market's view.
- 1.4 The feedback from the market test was as follows:
- HW Martin as the incumbent supplier were happy with the proposal to provide the service over a relatively short period.
 - HW Martin have invested in the infrastructure at the Dogsthorpe site and own the access steps and large waste containers/skips, which are a necessary and integral part of the service provision.
 - All of the other respondents expressed a desire for a significantly longer contract period, circa 5 or more years and/or indicated it would be difficult to submit a competitive bid in circumstances where the contract period was likely to be significantly shorter.
 - The provision of access steps and large waste containers/skips requires significant financial investment and therefore any bidder competing against the incumbent would be at a disadvantage, particularly as the incumbent will not offer said containers and steps to a competitor in the event they are not awarded a new contract following a procurement exercise.
- 1.5 Provision of this facility and the service it offers residents is part of the Council's statutory duty pursuant to its Waste Disposal Authority function and it is not permissible to fail to make adequate provision for such facilities.
- 1.6 The findings of the soft market test reinforce the results of the procurement exercise undertaken in 2012. That exercise showed how difficult it is for non-incumbent bidders to submit a competitive bid to provide the service over a short period of time, (2 years). The exempt Annex shows the financial differences between the bids that were submitted at that time.
- 1.7 The value of the contract means that it should be the subject of an EU procurement. The risk of challenge that could result from not carrying out a procurement has been considered but is believed to have been reduced for the reasons set out in the body of the report.

2. PURPOSE OF THIS REPORT

- 2.1 This purpose of the report is to request Councillor Elsey, Cabinet Member for Street Scene, Waste Management and Communications to exercise his delegated authority under paragraph 3.4.8 of Part 3 of the constitution in accordance with the terms of his portfolio at paragraph (a), to approve the recommendations set out above.

3. **TIMESCALE**

Is this a Major Policy Item/Statutory Plan?	NO	If Yes, date for relevant Cabinet Meeting	N/A
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4. **DETAILS OF DECISION REQUIRED**

- 4.1 To approve the recommendation to make a direct award of contract for the Management and Operation of Dogsthorpe Household Recycling Centre (HRC) to HW Martin Waste Ltd for a period of 2 years, with the option to extend for up to a further 6 months.

5. **CONSULTATION**

- 5.1 Consultation has been undertaken with a number of market suppliers for this service. Three waste management companies responded to the Council's request to participate, the results of which have shaped this decision notice.

6. **ANTICIPATED OUTCOMES**

- 6.1 In the event the recommendation is approved, there would be a number of outcomes, including: (i) the continued delivery of this very important service to Peterborough residents, (ii) compliance with the statutory duty to provide a recycling service and (iii) a continuation of the working relationship with the incumbent supplier in the exceptional circumstances that have arisen following changes to the Council's capital programme due to significant budgetary constraints.

7. **REASONS FOR RECOMMENDATIONS & ANY RELEVANT BACKGROUND INFORMATION**

- 7.1 The Council finds itself in need of a short term arrangement to bridge the gap between the end of the current management arrangement for Dogsthorpe and the completion of the development of the new facility in Dodson House. The short term nature of this requirement and the results from the soft market testing and previous procurement indicated little prospect of delivering any competitive tension in the marketplace with the incumbent supplier likely to win again.

8. **ALTERNATIVE OPTIONS CONSIDERED**

- 8.1 The following options were considered.

Option	Description	Reason for Rejection
1	Extend existing contract	The existing contract was let for a period of 2 years with an option to extend for an additional 6 months. That option was exercised and the contract will expire on 30 April 2015. There is no scope to extend the Contract for a further period.
2	EU procurement	For the reasons outlined above, it is highly unlikely that a procurement exercise would result in a position that is any different from the existing one.
3	Include the interim and new management and operation under one contract	The Council has yet to let a contract to construct the new facility planned for Dodson House in Fengate and due to the capital assets already in place at Dogsthorpe with the incumbent operator it would be unwise to combine the two requirements. The development and construction of a new facility and its long term operation offer a different set of risks and rewards to those of maintaining the relatively simple operation at the Dogsthorpe site and as such linking the two procurements is likely to limit the

		value of bringing them together.
4	Do nothing	This is not an option as the Council is obligated to provide a Household Recycling Centre under the Environmental Protection Act 1990. As the Council is a Waste Disposal Authority, it is required by statute to provide a recycling facility.
5	Award a short term contract whilst undertaking a parallel procurement exercise to identify a service provider for the longer term	An option might be to award a short term contract to the incumbent supplier, (say for 5 months), and carry out a procurement exercise. This might reduce the risk of challenge however it remains that this option would be unlikely to deliver an alternative short term service provider.

9. IMPLICATIONS

- 9.1 The risk of a direct award of this value is one of challenge from the market. A successful challenge could result in the contract being set aside, or an award of damages – court proceedings would however have to be instigated. The risk of challenge is mitigated because of the reasons stated in the report, including the results of the soft market test, the lack of appeal of a relatively short term contract, the plan to carry out a procurement of which the market is aware which will be for a longer term and likely to engage an increased number of suppliers.
- 9.2 Although a procurement exercise would remove the risk of challenge: (i) it is clear from the outcome of the previous, (2012), procurement as well as the recent market test, that the incumbent would probably be the successful bidder; (ii) HW Martin have the capital advantage of owning the equipment currently installed at Dogsthorpe; they therefore also have a financial advantage; (iii) aside from HW Martin, there would be limited to nil market interest in a short term contract; (iv) albeit a direct award would result in a risk of challenge, that risk has been significantly mitigated by the market having been engaged in the soft market test whereby they have been informed of the Council's proposals; (v) the market has, in effect, given notice that it would not be interested in a contract of less than a 5 year term; (vi) the market is aware of the Council's intention to carry out a procurement exercise in the relatively near future, once the new facility is up and running. In view of that opportunity, a challenge is less likely to be forthcoming.
- 9.3 Participants who took part in the soft market test are aware that the Council is developing a long term solution and that there is the prospect of a much longer contract on the horizon, circa 10-15 years. A procurement exercise that is carried out once the new facility is completed is likely to offer a better chance of competition for both the Council and potential service providers.

10. DECLARATIONS / CONFLICTS OF INTEREST & DISPENSATIONS GRANTED

None.

11. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985) and The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

None.