From: **David Wimble, Cabinet Member for (the Kent) Environment**

Simon Jones, Corporate Director of Growth, Environment & Transport

To: Environment & Transport Cabinet Committee

Subject: **HWRC and Waste Transfer Station Operation, Management and Haulage Contracts in Mid, East and West Kent (SC18031 and SC18031 WK)**

Decision Number**:** 25/00053

Decision Title: Update and options regarding the procurement of the operational, management and haulage services at HWRCs and Waste Transfer Stations in Mid, East and West Kent (SC18031 and SC18031/WK).

Classification: **Classification: Part Unrestricted – Appendix C is Confidential - Paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972**

Past Pathway of report:

- ETCC May 2024
- ETCC (Urgent Decision) October 2024.

Future Pathway of report: **For Cabinet Member decision**

Electoral Division: Ashford, Canterbury, Dartford, Dover, Swale, Folkestone & Hythe, Maidstone, Sevenoaks, Swale, Tonbridge & Malling & Tunbridge Wells.

Summary: To carry out our statutory waste disposal obligations, KCC contracts out the operation, management and haulage services of Household Waste Recycling Centres (HWRCs) and Waste Transfer Stations (WTS) in East, Mid and West Kent. In May 2024, a Key Decision was made to procure this contract (following its expiry in 31st October 2025), this decision was superseded via an urgent Key Decision in October 2024 to extend the contract for 18 months.

The risk profile of this procurement has increased since this time and this paper explores the risks that must be considered, to determine if continuing with the procurement is the best approach for the Council.

Recommendation(s):
The Cabinet Committee is asked to consider and endorse or make recommendations to the Cabinet Member for (the Kent) environment to:

(i) APPROVE the continuation of the current Household Waste Recycling Centre and Waste Transfer Station operation, management, and haulage contracts in Mid, East, and West Kent (SC18031 and SC18031/WK), by extending the existing arrangements from 18 months to a total of five years, as permitted under the contract terms. The revised contract period will now expire on 31st October 2030;

(ii) DELEGATE authority to the Director of Environment and Circular Economy in consultation with the Cabinet Member for (the Kent) Environment to award extensions of the contract in accordance with the relevant clauses within the contract as shown at Appendix A.

1. Introduction

1.1 Kent County Council currently contracts out the management and haulage service of 19 Household Waste Recycling Centres (HWRCs) and Waste Transfer Station (WTS) sites across the Kent.

1.2 This report provides information concerning the procurement of two contractual arrangements for the management and haulage services required at HWRCs and WTS across sites in Mid, East and West Kent which covers 17 of the 19 sites, with the remaining two contracts in place until 2035 and 2047 respectively and therefore, out of scope.

2. Relevant history

2.1 The service is currently delivered via two contracts. Both contracts perform well in terms of customer satisfaction (97%), and against contractual KPIs.

2.2 The first contract, with FCC Environmental Ltd, was commissioned in November 2020 for an initial five-year period with the potential for a further five-year extension based on performance.

2.3 The second contract, with Commercial Services Kent Ltd (CSKL), was commissioned in February 2021, for a four-year and eight-month contract, to align to the FCC arrangement. This arrangement also has a five-year extension option.

2.4 CSKL operates as a Local Authority Trading Company owned by KCC with any profits on this/other contracts then being recycled back into KCC by means of a dividend.

2.5 Both contracts included a costed a five-year extension option, as part of the original contract which evidenced best value at that time.

2.6 In May 2024, following a report to the Environment and Transport Cabinet Committee, it was recommended that this extension option was not executed and that the contract was re-tendered.

2.7 In October 2024, following the initial market testing, permission was granted via an Urgent Decision for an 18-month extension to allow sufficient time for the mobilisation of the contract in the most cost-effective way for the Council.

2.8 The Council commenced the first stage of the tender process in November 2024; by publishing the selection questionnaire and the published value of the contract was £227m.

2.9 The contract has been published in two separate lots, split geographically across the county, and is for a 10-year period with a possible six-year extension.

2.10 Six organisations responded to this preliminary stage of the tender, and after evaluation, four of those were acceptable to be taken forward to the next stage which is an invitation to submit an initial tender (ISIT). The ISIT has not yet been issued.

3. Issues options and analysis of options

3.1 **Issues**

3.1.1 The decision to procure the contract rather than extend was made in May 2024 and was based on seeking best value for the Council. By tendering out the contract, the Council would be ensuring the costs were competitive with the current market.

3.1.2 Through this process, the tender would be evaluated considering both cost and quality of the bids received.

3.1.3 This evaluation, however, would be unable to directly compare these tenders, to the current costs and arrangements within the incumbent's contract(s).

3.1.4 The current contracts are currently operating within a known budget envelope. A continuation of the extension to 2030, provides the Council the opportunity for certainty of cost. The continuation of the procurement will allow the Council to test the market to get current best value, but there is unknown impact to the budget.

3.1.5 Since the procurement of the current contract, a number of key factors caused by geopolitical issues (such as the Ukraine conflict/global disruption of shipping routes), government fiscal changes, proposals to amend the structure of local government, and legislative changes to reform waste management in England, mean that the risk profile of this procurement has increased. Achieving best value in comparison to the current arrangements may not be possible and in line with 'Framing Kent's Future', options to 'find better ways to deliver services for Kent' are explored in this paper.

3.1.6 Inflation - The current contract began in 2020. Since this time, through inflation, costs have increased by 22%, this is accounted for through the current contract via annual indexation increases.

3.1.7 Geopolitical issues - Since the procurement of the current contract, raw materials have also increased substantially, and market testing (in Aug 2024) suggest that the cost of the required fleet and plant for a contract of this nature, have increased by 35%. This increase is not reflected in the current contract as vehicles were purchased before these increases. It is therefore anticipated that KCC will need to account for higher vehicle costs within the next contract, should procurement continue.

3.1.8 Fiscal changes - There have been, over the last five years, increases to employers' national insurance contribution, and the national and minimum wage. These increases are not represented in the current contract, as they do not represent a change in law, and therefore the contractors must absorb these costs within the current price. KCC will therefore need to account for higher staffing costs within the next contract should procurement continue.

3.1.9 Local Government Reform (LGR) - In 2024, the Government published its White Paper on Devolution and Local Government Reform. Whilst KCC has not been accepted onto the Devolution Priority Programme, all authorities in two tier areas have been asked to come forward with proposals to create unitary authorities in their areas by March and November this year, with the government's timescale for a change to the unitary model set to be 2028.

3.1.10 The lack of clarity around the future administrative boundaries of the county, may cause uncertainty within the context of this procurement. The very nature of this contract is to comply with our statutory obligation to provide waste infrastructure for both public and local authority waste disposal and therefore encompasses the whole geography of the county.

3.1.11 The Council may receive tenders that price in risk around this area of uncertainty, particularly in regard to costs reflecting increasing management overheads, as KCC will be unable (during the tender process) to provide clarity on what will happen to the contract post local government reorganisation.

3.1.12 Waste Reforms - Recent legislative changes regarding Simpler Recycling, Deposit Return Schemes (DRS) and the Emissions Trading Scheme (ETS) have left contractors in the waste industry with increased market uncertainty, as the impetus is on local authorities to further reduce residual waste as part of essential cost savings, and in preparation for ETS and DRS will take valuable commodities out of the local authority waste stream, thus potentially reducing revenue from materials and haulage.

3.1.13 The Council has not yet issued the Invitation to Submit Initial Tenders and due to the change in the risk profile, the following options have been drawn up for consideration.

3.2 Options and analysis

3.2.1 **Option 1 –** Do nothing and continue with the procurement without any break/novation clauses. (Not Recommended).

3.2.2 Secures best value (on that day) as re-tendering the contract, but a volatile market with uncertainty following Local Government Reform and other facts including national minimum wage and national insurance increases that would be part of a new contract.

3.1.1 The Invitation to Submit Initial Tenders (ISIT) was scheduled for release at the end of June. However, should the tenders received be deemed to be unacceptable, and the Council subsequently seeks to change its procurement approach, the risk of a successful legal challenge would increase.

3.1.2 The following issues have been considered:

- Suppliers are likely to price in uncertainty surrounding local government reorganisation, increasing overall contract costs. This could negatively impact the Council's financial position.
- If tenders are not competitive or do not compare with current costs, the Council may be locked into a suboptimal contract when a legally compliant extension, meeting best value considerations, is available.
- The Council will incur exit fees relating to the fleet, even if the incumbent wins the new contract.
- Demobilisation Costs are estimated at £750k, these costs would be incurred sooner rather than being able to have them deferred for 4-5 years.
- It is anticipated that increased vehicle and staffing costs (following increases to National Insurance contributions and increases to National Living Wage and National Minimum Wage), could make the new contract significantly more expensive than anticipated.
- Legal risk to the contract if novation clauses are not considered due to LGR

3.2.3 **Option 2 - Continue Procurement with added flexibilities (Break/Novation Clauses)**

3.2.4 This option involves proceeding with the procurement while incorporating break clauses and/or novation provisions to allow for future contract adjustments.

3.2.5 Secures best value (on that day) as re-tendering the contract but a volatile market with uncertainty following Local Government Reform and other facts including national minimum wage and national insurance increases that would be part of a new contract.

3.2.6 Until the structure of any local government reorganisation is confirmed, defining how the contract might be subdivided remains complex. This uncertainty is likely to lead suppliers to include significant financial risk provisions.

3.2.7 While some risks could potentially be deferred, they would still materialise later either for KCC or a successor authority.

3.2.8 Legally it is possible to draft an acceleration type clause so there may be an additional cost burden, but it only crystallizes in the event of the break being exercised but otherwise continues as usual with the usual mitigation provisions. In addition, legal advice has stipulated that KCC should make it clear to government this would be an additional cost to the extent novation and variation do not solve the problem.

3.2.9 The following issues have been considered:

- Suppliers may inflate prices to cover perceived risks. Some may front-load costs or seek pre-award renegotiations.
- While break clauses may negate long term commitments for the new unitarities, KCC will face high costs if vehicle depreciation is not covered over the term of the contract.
- There is currently no clear estimate of how much risk pricing will add to the contract value
- The Council will still incur exit fees even if the incumbent wins the new contract.
- Demobilisation Costs are estimated at £750k, these costs would be incurred sooner rather than being able to have them deferred.
- Suppliers may withdraw, reducing competition

3.2.10 Option 3 - Secure mutual agreement to extend existing contracts by an additional 3.5 Years (Total of 5 Years)

3.2.11 This option builds on the previously approved 18-month extension, bringing the total extension to five years.

3.2.12 This allows greater clarity on local government reorganisation

3.2.13 Contract costs are known and budgeted for, which allows KCC to obtain price certainty in a volatile market.

3.2.14 The preliminary stage of the tender process has begun, indicating to the market that the contract is ready to be tendered. Withdrawal of the process could leave the Council open to legal challenge.

3.2.15 The Council has already extended for 18 months, and further extension may not be permissible (FCC Contract only).

3.2.16 This risk is low as there is no restrictive language that states multiple extensions are not permitted, the only reference is that the total period of a contract extension does not exceed five years, and the Council has advertised an agreement with an up to 10-year arrangement.

3.2.17 As long as there is mutual agreement between the Council and the contractor, multiple extensions may be permitted (provided they do not exceed a cumulative total of five years beyond the original contract period).

3.2.18 The CSKL contract extension is legally permissible as they are a Local Authority Trading Company.

3.2.19 The following issues have been considered:

- Avoided costs on fleet exit costs. By being able to continue to use the prevailing fleet, rather than also having a new fleet under a new contract.
- £500k avoidable budgeted costs on site demobilisation costs

- £250k unbudgeted avoidable pressure avoided by deferring mobilisation costs until 2030
- There is a risk of legal challenge from suppliers or stakeholders due to abandoning the current procurement (this risk is considered to be low-medium).
- There is a reputational risk due to the perception of indecision or lack of strategic direction which could affect market confidence.
- The current contract (and extension) remain in line with best value considerations at the time of award, plus benchmarking conducted on fleet as well as vehicle, plant and equipment (VPE) indicates an uplift in price of at least a third. This compounded with increases to National Insurance contributions, the National Living Wage and National Minimum Wage means that these pressures would only likely see a future contract increase in price significantly as staffing, fleet and plant/equipment are the main components of the contract.
- Part of mobilisation would also be ensuring the site is improved/upgraded ready for any new contractor to take on the operation and maintenance responsibilities, so this 5 year extension also defers that liability, as well as encourages the incumbent to expand their current services in the knowledge they have 5 years of payback to recover any investment.
- Attempted renegotiation of existing terms and conditions could add cost to the contract and mitigate some of the benefit associated with this option. To mitigate this, it is proposed that the incumbent contractors are given a short window to extend on current terms

3.2.20 **Option 4 –** Withdraw the procurement and re-issue the tender with one lot rather than two, to ensure that there is one provider and reduce the contract length. This option has been discounted, due to the timescales required for tender and mobilisation as the contract would not be awarded in time to mobilise the contract in a cost-effective way. This option would also not provide value for money, as the contract needs to be of sufficient length to account for vehicle depreciation.

4 Financial implications (Appendix C – Exempt Report)

4.1 Total annual budget for the delivery of this service is £14.6m

4.2 These contracts are inflated annually using CPI, which for 25/26 is included within the figures above as provisions are made within the Medium Term Financial Plan (MTFP) which is agreed annually at the February County Council meetings.

4.3 Both Commercial Services and FCC generate royalties for KCC and growth in returns through their work at the Transfer Stations with regard to accepting commercial waste which would continue if the extension is triggered

4.4 Estimated income generation from the sale of commodities and commercial waste royalties is expected to be in region of £4,373,600 per annum, which would again be secured under the extension. Potential for this to be included in any re-tender also but would be subject to negotiation. This has the potential to increase as more commercial opportunities are realised during the term of the extension as the contractor will be more open to investing in new services with the certainty of payback over a 5 year, as opposed to an 18 month, extension.

4.5 If the extension option is considered, KCC will avoid the following costs:

- £500,000 mobilisation/demobilisation pressure in 25-26. This will be reported as an in-year underspend.
- £250,000 unbudgeted mobilisation/demobilisation pressure in 25-26. Cost avoidance.

4.6 Unfunded pressure in 27-28 in relation to the exit fees payable to the incumbent contractor will be avoided. This was due as the fleet costs were amortised over the full life of the contract but would be avoided if the full extension permitted is exercised This future liability was included within the MTFP as due for payment in 27-28 but this currently unfunded pressure can be removed and hence helps balance the books for later years.

4.7 Whilst a re-tender exercise meets best value considerations, it only gives the best price/terms available at that point in time and in such a volatile market it is likely to see an increased cost than the legally compliant extension. This could of course see a reduction in cost, but given the £1m exit fee being guaranteed, the new contract value would need to be at least £1m less than current prices to even be comparable. Exacerbating the potential re-tender price uplift are changes to the national minimum and living wage, as well as national insurance employer contributions which a new contractor would factor into their price. The extension ensures the current contract values are only uplifted by CPI inflation.

4.8 A new contract would also likely see the need for significant, as yet unidentified, capital upgrade/improvements to the sites before a new contractor would consider taking on the ongoing maintenance responsibilities, so a further cost avoided.

4.9 The original contract met best value considerations at the time of award as this was subject to full re-tender at the time and the extension is part of that due diligence. Since that point, benchmarking was also conducted on both fleet costs and vehicle, plant and equipment ("VPE") and this indicated an uplift in excess of a third than what the current contract contains, so given the large proportion of the contract cost is staffing, fleet and plant/equipment, extending on current terms mitigates this future uncertain and unfunded cost uplifts in what is a volatile market given LGR is just a few years away. This extension will allow any new authorities to establish contracts in their region/collaboration as the current two lots do not fit any of the considered options for how Kent may be configured.

5 Legal implications

5.1 With regards to the FCC contract, Regulation 72(1)(a) of the PCR allows for extension where it is stipulated within the current contract. Clause 2.2 provides that the Council may request an extension if such an option is stipulated in the contract particulars, and any extension is subject to mutual agreement in writing. The legal risk of extending the existing HWRC agreement with FCC is considered to be low.

5.2 Whilst the risk is low, there is still a risk, this can be mitigated through the publishing of a VEAT (Voluntary Ex Anti Transparency Notice) to flush out any potential challenges in the market. This notice would clearly set out KCC’s reasons for extending.

5.3 The time limits set out for potential challenge are prescribed, after which, KCC can take a position as to whether to proceed with the extension or if it is challenged launch a separate procurement.

5.4 The Council contract with Commercial Services Kent Ltd can be extended legally, as they are a local authority owned trading company, and this is permissible by law.

6 Equalities implications

6.1 As this service can affect those with protected characteristics, mitigations are recorded within the original EQIA covering the current contract term and any extensions.

7 Governance

7.1 The Service Director will inherit the main delegations via the Officer Scheme of Delegation due to the potential financial value of this contract

8. Recommendations;

8.1 The Cabinet Committee is asked to consider and endorse or make recommendations to the Cabinet Member for (the Kent) environment to:

(i) APPROVE the continuation of the current Household Waste Recycling Centre and Waste Transfer Station operation, management, and haulage contracts in Mid, East, and West Kent (SC18031 and SC18031/WK), by extending the existing arrangements from 18 months to a total of five years and

(ii) DELEGATE authority to the Director of Environment and Circular Economy in consultation with the Cabinet Member for (the Kent) Environment to award extensions of the contract in accordance with the relevant clauses within the contract as shown at Appendix A., as permitted under the contract terms. The revised contract period will now expire on 31st October 2030 as shown at Appendix A.

9. Appendices:

Appendix A: Proposed Record of Decision
Appendix B:Equality Impact Assessment
Exempt Appendix C - Confidential commercially sensitive information

10. Contact details

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