From: Rob Thomas , Cabinet Member for Environment

Simon Jones, Corporate Director of Growth, Environment and Transport

To: Environment and Transport Cabinet Committee – 21st May 2024

Subject: **Delivery of household waste recycling centre and waste transfer station operation, management and haulage contracts in Mid, East and West Kent (SC18031 and SC18031 WK)**

Decision Number**:** TBA

Decision Title: Approval to reprocure contractual arrangements for the operation, management and haulage services at household waste recycling centres (HWRCs) and co-located waste transfer stations (WTS) in Mid, East and West Kent (SC18031 and SC18031WK).

Classification: **Part 1: Report -Unrestricted**
**Part 2: Confidential Appendix - Appendix A is Confidential - Paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972**

Past Pathway of report: N/A

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**: KCC has contracts for the operation, management and haulage services of household waste recycling centres (HWRCs) and co-located waste transfer stations (WTS) in East, Mid and West Kent, which are due to expire on 31 October 2025. An options appraisal has been carried out and the Cabinet Member for Environment's preferred option is to reprocure new contractual arrangements for the management of the sites from November 2025.

**Recommendation(s)**: Cabinet Committee is asked to consider and endorse or make recommendations to the Cabinet Member for Environment on his recommendation to:

(i) REPROCURE contracts for the operation of 17 HWRCs and co-located WTS;

And subsequently,

(ii) DELEGATE authority to the Director for Environment and Circular Economy, to take relevant actions to facilitate the required procurement activity; and

(iii) DELEGATE authority to the Director for Environment and Circular Economy in consultation with the Cabinet Member for Environment, to take relevant actions, including but not limited to, awarding, finalising the terms of and entering into the relevant contracts or other legal agreements, as necessary, to implement the decision as shown at Appendix A.

## 1. Introduction

1.1. As the Waste Disposal Authority, KCC has a statutory responsibility to arrange for the disposal of the controlled waste collected in its area by the waste collection authorities, and to provide places at which persons resident in its area may deposit their household waste and for the disposal of waste so deposited.

1.2. KCC currently contracts out the management and haulage service of 19 household waste recycling centres (HWRCs) and co-located waste transfer station (WTS) sites across the county.

1.3. This report provides information concerning the future of contractual arrangements for the management and haulage services required at HWRCs and co-located WTS across sites in Mid, East and West Kent, which includes 17 of the 19 KCC sites. The remaining two contracts are in place until 2035 and 2047 and are therefore out of scope.

1.4. Of these 17 sites, 12 are in Mid and East Kent and are currently contracted to FCC Environment Ltd (FCC), and 5 are in West Kent and are currently contracted to Commercial Services Kent Limited (CSKL).

1.5. The expiry date for the Mid and East Kent contracts is 1 November 2025, with May 2024 being the contractual notice period for a decision on whether to extend the contracts. FCC agreed to extend this date to 30 June 2024 to assist KCC with our decision-making process.

1.6. There is no contractual notification period for the CSKL sites, however for good working relationships, it is assumed that notifications would be made at the same time.

1.7. Both contracts have a 5-year extension option, which was costed as part of the original contract.

## 2. Relevant history

2.1. KCC contracted with FCC in November 2020 to operate and manage 12 sites in Mid and East Kent for an initial 5- year period, with the potential for a further 5-year extension based on performance.

2.2. When tendering, FCC depreciated the cost of the fleet required to deliver the service over the full potential 10-year period of the contract to make the annual service cost more affordable to KCC. This means that if the Council does not trigger the contract extension, then KCC is contractually liable to pay an exit fee as noted in Part 2 Confidential Appendix. If the contract is extended, this cost is nullified.

2.3. KCC contracted with CSKL in February 2021, for a 4 year and 8-month contract, to align with the FCC arrangement. This arrangement also has a 5-year extension option.

2.4. CSKL operates as a Teckal company for the Authority, where financial benefit is paid as a dividend to KCC.

2.5. Recycling levels at HWRCs average 47% across the CSKL operated sites and 44% across the FCC sites. Further improvements to these will be sought over the next period in line with Government targets.

## 3. Options

3.1. An options appraisal has been carried out to identify the legal and procurement implications, financial implications and other considerations associated with each option.

3.2. The options identified are:

**1.** Do nothing

**2.** Extend with FCC and CSKL for 5 years, as per the current contractual terms

**3.** Offer received from with incumbent to extend further 2 years beyond 5-year option

**4.** CSKL to operate all sites

**5.** FCC to operate all sites

**6.** Allow the current contracts to expire and reprocure for the management of all sites

3.3. The options appraisal is provided below:

| Option | Legal and procurement implications | Financial implications | Other considerations |
|---|---|---|---|
| 1. Do nothing<br><br>**Discounted due to failure to meet statutory duties.** | Failure of statutory duties | Not applicable | Reputational damage as unable to dispose of waste |
| 2. Extend with FCC and CSKL for 5 years | Allowed under current contract<br><br>Contract length and contract size fixed.<br><br>No opportunity for associated economies of scale or synergies arising from extending contract length.<br><br>Option has not been market tested via competitive process<br><br>Due to formal notice milestone becoming due in June 2024 not possible to undertake market analysis to assess rates provided under this option against prevailing market position. | No exit fees arising.<br><br>Potential to increase recycling across FCC run sites which could save KCC c£80k pa. if fully delivered.<br><br>Provides continuity of activities contained within £408k MTFP target over the period of the extension. This includes :<br>• commercial recycling at HWRCs<br>• provision/operation of reuse facilities and,<br>• increase black bag splitting.<br><br>No procurement, demobilisation or remobilisation costs.<br><br>KCC would continue to receive dividend from CSKL but CSKL currently more expensive than FCC. | Allow for service continuity<br><br>Known budget position<br><br>Mandatory COTC (certificate of technical competence) requirements are already met<br><br>Avoids potential need to TUPE staff<br><br>Opportunity to explore whether shorter term extension (subject to incumbent supplier approval) which could allow market analysis to be undertaken. |
| 3. Offer received from incumbent to further extend for 2 years beyond 5-year option<br><br>**Discounted due to legal and procurement risk** | Significant legal procurement risk arising under Public Contracts Regulations 2015 if this offer taken up. | | |
| 4. Direct award to CSKL of all sites<br><br>**Discounted due to technical and operational risk and unable to demonstrate best value** | Regulation 12 in the Public Contract Regulations 2015, the Teckal exemption, enables the Direct award to a Teckal company.<br><br>Not market tested through competitive process | Exit fees payable but may be able to explore whether potential to offset these fleet costs in new contract.<br><br>Potential delay in realising benefits of increased recycling – £80k pa if delivered.<br><br>Some risk to timing and delivery of the FCC element of £408k MTFP target in regard:<br>• commercial recycling at HWRCs | Additional Mandatory COTC (certificate of technical competence) requirements must be met<br><br>TUPE potentially required for 120-140 staff<br><br>Potential overall operational efficiencies in management overheads<br><br>Consistency of approach with regards to site and contract |

| | | | |
|---|---|---|---|
| | | • provision/operation of reuse facilities and,<br>• increase black bag splitting.<br><br>Demobilisation and remobilisation cost.<br><br>KCC could increase dividend from CSKL but CSKL currently more expensive than FCC. | management<br><br>Does not market test so cannot be assured that KCC is paying market rate for the service |
| 5. Direct award to FCC of all sites<br><br>**Discounted due to legal risk.** | Under both the PCR Regulations 2015 and the forthcoming Procurement Act 2023, we are unable to direct award due to the size and value of this contract. | No exit fees<br><br>Commitment to increase recycling across FCC sites will save KCC c£80k pa if delivered<br><br>Some risk to timing and delivery of the CSKL element of £408k MTFP target in regard:<br>• commercial recycling at HWRCs<br>• provision/operation of reuse facilities and,<br>• increase black bag splitting.<br><br>CKSL related demobilisation and remobilisation costs<br><br>CSKL costs currently higher than FCC, potential for further savings.<br><br>KCC would lose dividend from CSKL | Mandatory COTC (certificate of technical competence) requirements are already met<br><br>TUPE risk 75-85 members of staff<br><br>Potential overall efficiencies in management overheads<br><br>Consistency of approach with regards to overall site and contract management<br><br>Does not market test so cannot be assured that KCC is paying market rate for the service |
| 6 Allow the current contracts to expire and reprocure the management of all 17 sites. | Fully compliant procurement route under current regulations. | Exit fees payable but may be able to explore whether potential to offset these fleet costs in new contract.<br><br>Possible delay in realising benefits of increased recycling but could be embedded in new specification<br><br>Risk to timing and delivery of the £408k MTFP target but could be embedded within new contract specification which would allow options to be market tested in open competition:<br>• commercial recycling at HWRCs<br>• provision/operation of reuse facilities and,<br>• increase black bag splitting.<br><br>Some sites likely to require modernisation. This work will be inevitable but this option may potentially bring forward these | Mandatory COTC (certificate of technical competence) requirements must be met.<br><br>Potential TUPE required for successful tendered to address circa 255+ staff<br><br>Opportunity exists to rescale the size and length of the contract to gain synergies and other associated commercial economies.<br><br>Tender process ensures that KCC has secured market tested rates and prices for the service through open competition.<br><br>No guarantee that the tender returned will be more attractive than the current |

| | | | |
|---|---|---|---|
| | | works (circa £450k). Opportunity exists to negotiate provision with new provider through competitive process.<br><br>Procurement costs in region of £250k potentially arising to undertake full re-procurement. Such costs would be inevitable in future but this would advance the timing of the expenditure.<br><br>Future tender specification will incorporate service improvements which can be priced in open competitive tender rather than through local negotiation under the current contracts.<br><br>Demobilisation and remobilisation costs . These could be explored during tender negotiation stage. | |

3.4. Option 1 (do nothing) was discounted on the grounds that KCC is the waste disposal authority for Kent and as such has a statutory duty to provide these services. **DISCOUNTED**

3.5. Option 3 (7-year extension) would provide additional financial benefit to KCC as FCC is able to reduce the annual cost of delivering the service for a longer contract extension period. However, this option was discounted as it presents a high procurement risk to the authority arising from the 2015 Public Contracts Regulations. **DISCOUNTED**

3.6. Option 4 (direct award to CSKL) is technically possible as CSKL is a Teckal company owned by KCC, however it would be a significant increase in the scale and operational complexity and would require further mandatory certification to demonstrate service delivery competence. It would mean exit fees and costs associated with demobilisation and remobilisation would arise and it would be outside of an open competitive procurement process. It would not ensure that KCC was paying rates equivalent to those currently available in the prevailing market. **DISCOUNTED**

3.7. Option 5 (direct award to FCC) is not possible to directly award a service of this size and value to a contractor. **DISCOUNTED**

3.8. Of the remaining two options, each have their own pros and cons, namely:

3.8.1. Option 2 (5-year extension)

- Provides service continuity and a known budget. It would encourage the incumbent contractor to invest in improvements to the recycling rates which would provide mutual benefit to both the supplier and the authority. This will also support the extended delivery of the activities within the £408k MTFP target.

- It would avoid exit fees and costs associated with undertaking a full procurement, demobilisation and remobilisation.
- It does not allow the service to be market tested to compare contracted rates and prices to that which could be secured at this time.
- It also does not allow the length of contract nor the size/scale of service to be modified which could provide additional operational value and commercial benefit.

3.8.2. Option 6 (re-procure)

- It would provide KCC with an opportunity to rescale the service and to increase the length of the contract to provide greater investment longevity which could amongst other benefits could allow operational fleet costs to be efficiently amortised.
- Opportunity exists for reduced overheads when compared to the current two contracts as synergies may be possible from one overhead across a larger number (17) of sites.
- It will allow the service specification to be updated to include known service improvements and if possible consider impending legislative changes. By undertaking an open competitive tender KCC can be assured that it is securing market tested rates and prices available at the time of tender.
- This option will, however, lead to exit fees and costs associated with procurement, demobilisation and remobilisation
- There are risks associated with a full tender because the market response is unknown, and while there could be a more cost-effective offer, the waste market remains challenging and increased costs could be returned. That said, there are ways for the authority to potentially mitigate/defer such risks.
- For example, the exit costs for fleet depreciation could be dealt with as part of the tender negotiation and similarly the mobilisation process may allow discussions to determine the timing of and extent to which certain costs and liabilities could be considered. Any such established costs incurred could be shared/deferred across the life of any new contract which could reduce the initial impact.

3.9. In conclusion there remain two compliant and viable options, namely Option 2, (5-year extension) and Option 6 (full re-procurement of whole network).

## 4. Recommended option

4.1 The Cabinet Member for Environment's recommendation is to proceed with Option 6 and undertake a full re-procurement of all 17 sites.

4.2 This seeks to exploit the economies of scale by retendering all 17 locations and secure the most economically advantageous contract duration. This approach will ensure the future contract has been fully market tested through an open and competitively tender process, mindful that there are one-off exit and mobilisation costs that would be considered as part of a financial evaluation.

**5. Financial implications**

5.1. The current budget for 2024/25 is £13,344,800 which covers operational 17 sites.

5.2. Payable Exit fees (refer to Part 2 Confidential Appendix) and costs associated with procurement (£250k), demobilisation and remobilisation (£450k) are unbudgeted pressures. This will bring several sites up to an ongoing serviceable standard which may be required before they are handed over to a new provider to maintain. The cost of this will be dependent on a condition surveys. This work will be required no matter which option is chosen; however the service re-procurement will accelerate the timing of when the work is done, but this could a matter for negotiation during the tender and mobilisation process.

5.3. To mitigate these financial risks, including the exit costs for fleet (which, if unmitigated, could be a one-off cost), will be explored during the re-procurement tender/negotiation process.

5.4. Future fleet use and deployment (especially those potentially arising from any Exit Fees) along with other added value initiatives/improvements arising from the current arrangements will be reviewed and where necessary, built into any new contract specification. This approach will seek to mitigate the financial impact and will secure market tested competitive rates and prices for these services..

5.5. It is also important to note that new contract procurement and demobilisation/mobilisation costs will be incurred eventually (irrespective of which option is chosen but this could be delayed by 5 years under option 2).

5.6. There is a risk to the delivery of MTFP savings during the procurement process, which will need to be managed with the incumbent contractors but it may be in both parties mutual interest to continue to deliver these improvements through to the end of the current contracts.

5.7. The extent and effectiveness of these actions may be somewhat limited as the payback period will only be over a period of 17 months to the close of the current contract. This presents a potential risk to the associated circa £408k saving target included in the current MTFP and will need to be managed accordingly.

5.8. Going forward these improvements may be included in the new contract specification and therefore can be priced and secured in open competition.

5.9. The continuation of this service is funded from existing revenue budgets.

.

## 6. Legal implications

6.1. Under Section 51 of the Environmental Protection Act 1990, KCC has a duty as the county's waste disposal authority to arrange for:

a) the disposal of the controlled waste collected in its area by the waste collection authorities;

b) places to be provided at which persons resident in its area may deposit their household waste and for the disposal of waste so deposited.

6.2. Legal support was provided for the original procurement and if re-procurement is agreed then external legal support may need to be procured.

## 7. Equalities implications

7.1. As this service can affect those with protected characteristics, mitigations are recorded within the Equalities impact assessment that accompanies this decision.

## 8. Governance

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

**9. Recommendation(s):**

Cabinet Committee is asked to consider and endorse or make recommendations to the Cabinet Member for Environment on his recommendation to:

(i) REPROCURE contracts for the operation of 17 HWRCs and co-located WTS;

And subsequently,

(ii) DELEGATE authority to the Director for Environment and Circular Economy, to take relevant actions to facilitate the required procurement activity; and

(iii) DELEGATE authority to the Director for Environment and Circular Economy in consultation with the Cabinet Member for Environment, to take relevant actions, including but not limited to, awarding, finalising the terms of and entering into the relevant contracts or other legal agreements, as necessary, to implement the decision as shown at Appendix A.

## 10. Appendices

Appendix A – Proposed Record of Decision
Appendix B - Procurement timetable

## 11. Contact details

**Report Author:**
Matt Smyth,
Director for Environment and Circular Economy

03000 416676
matthew.smyth@kent.gov.uk

**Relevant Director**:
Simon Jones
Corporate Director
Growth, Environment and Transport

**Appendix B – Procurement timetable**

| Activity | Indicative Dates |
|---|---|
| **Commercial and Procurement Oversight Board (CPOB):** | **TBC** |
| **Preparation of documentation:** | **13 May – 28 June 2024** |
| **Notify FCC and CSKL** | **By 24 May 2024** |
| **Market Engagement** | **27 May – 14 June 2024** |
| **Incorporate Market Engagement feedback** | **17 – 28 June 2024** |
| **Publication of Call for Competition:** | **1 July 2024** |
| **Deadline for Selection Questionnaires:** | **30 July 2024** |
| **Evaluation of Selection Questionnaires:** | **31 July – 7 August 2024** |
| **QA Report and Panel, and Letters:** | **8 – 9 August 2024** |
| **Publication of Invitation to Tender (ITT):** | **12 August 2024** |
| **Deadline to submit Initial Tenders:** | **1 November 2024** |
| **Evaluation of Initial Tenders:** | **4 November – 15 November 2024** |
| **Clarification/Negotiation Sessions:** | **18 November – 6 December 2024** |
| **Publication of Invitation to Submit Final Tender (ISFT):** | **6 December 2024** |
| **Deadline to submit Final Tenders:** | **20 December 2024** |
| **Evaluation of Final Tenders:** | **2 – 10 January 2025** |
| **Governance to Award / Contract Award Decision / Standstill Period:** | **13 – 31 January 2025** |
| ***Mobilisation Period:*** | ***1 February 2025 – 31 October 2025*** |
| **Service Commencement:** | **1 November 2025** |