

Report for Discussion

Report to Sustainable Development Panel
28 September 2011

Report of Head of Citywide Services

Subject Materials Recycling Facility Contract

Item
4

Purpose

The report provides an update on the Materials Recycling Facility Contract and of the need to procure a new contract.

Recommendations

That the panel endorsed the following recommendations to cabinet:

- (1) That Norwich City Council continues with its membership of the MRF Consortium in Norfolk on the basis that all costs associated with the new procurement and future processing of income share will be equally shared amongst Consortium members.
- (2) That through the MRF Consortium Norwich City Council enters into an EU approved procurement process for dry recyclables, sorting and processing etc. This contract to commence 1 April 2014 (or, subject to the outcome of further legal advice 1 April 2016)

Financial Consequences

Costs of the procurement exercise are estimated to be £175,000 shared equally between the 7 district councils.

Risk Assessment

Contained within the report

Strategic Priority and Outcome/Service Priorities

The report helps to meet the strategic priority "Safe and healthy neighbourhoods – working in partnership with residents to create neighbourhoods where people feel secure, where the streets are clean and well maintained, where there is good quality housing and local amenities and where there are active local communities". Within the Integrated Waste Strategy for Norwich 2007-2012, the Council has a clear strategic objective *"To be amongst the best recycling authorities in the Country by March 2012 and longer term to be one of the top ten recycling authorities in the Country"*.

Cabinet Member: Cllr Westmacott

Ward: All

Contact Officers

Adrian Akester

01603 212331

Background Documents

Report

BACKGROUND

1. The seven Waste Collection Authorities in Norfolk formed a consortium to contract for a materials recycling facility for the sorting of collected dry recyclate from domestic households. The original contract commenced on the 1st April 2003 with Norwich City Council joining the consortium in Sept 2007.
2. The current contract is with Norfolk Environmental Waste Services Limited (NEWS) which is part of the NORSE group of companies, wholly owned by the County Council. The existing contract provides significant revenue for the consortium members and it is expected that this should continue as raw material prices continue to rise, albeit that this will always be at risk from market conditions.
3. NEWS runs the Materials Recycling Facility (MRF) at Costessey which, seven years ago, was seen as state of the art. The arrangement with NEWS has been successful overall. The company has generally been able to secure local (UK) markets for recyclate with good prices in the market place. The contract allows for an income share for the Consortium which is divided between the Councils according to the tonnage of recyclate delivered to NEWS.
4. The initial contract with (NEWS) ran to 31 March this year and was extended (using an existing clause in the contract) by a further three years, to 31 March 2014, to allow us to consider the extension of the contract further or for the possible procurement of a new contract.
5. Since the introduction of food waste collections into Norwich, NEWS also provides an outlet for glass and food waste for Norwich City Council. In effect the facility acts as a “one stop shop” for our vehicles delivering material for recycling. Operationally this does provide an efficient and cost effective service for the city minimising disruption on the collection rounds. Approximately 14,000 tonnes of our waste are delivered to news for sorting, bulking and forwarding to end markets.

THE CONSORTIUM

6. As previously stated, the Consortium consists of the seven Waste Collection Authorities in Norfolk i.e. the District, City and Borough Councils. This gives the advantage of securing significant economies of scale in terms of total dry recyclable tonnage. Through our chosen contractor, NEWS, we are able to command very good prices for the end product from the processing and sorting operation. In addition, there are similar economies of scale in terms of having to go through only one procurement exercise and in managing the contract. Costs and risk are shared and the arrangement gives all members access to the expertise of their partner Councils. The Consortium agreement, however, does rely on all the authorities agreeing to collect the same range of dry recyclables from their customers.

PROCUREMENT OR EXTENSION

7. As part of the decision making process as to whether the Consortium further extend the contract or go to the market and procure a new contract, legal advice at QC level was sought from Brick Court Chambers who are considered to be amongst the top Public Sector Procurement specialists available. The main question asked of Counsel was whether or not it would be lawful to further extend the contract with NEWS and/or what the most appropriate alternative would be. The opinion, dated 17 June 2011, clearly states that the least risk option for the Consortium is to re-tender the agreement when the current term comes to an end in March 2014.
8. In practical terms, this will require a procurement exercise to be commenced almost immediately, as it is likely that any successful bidder other than NEWS would themselves need to procure, build and commission a new dry recyclables processing facility.
9. The Consortium is seeking further legal advice around its wish to exercise an option to extend the contract for a further incremental period of two years from 1st April 2014 to 31st March 2016. This will take up the full initial five years extension allowed for under the contract. Advice is sought to confirm if this is legally possible and that a legal challenge to the decision can be defended. If the response is favourable, this will provide additional time for the Consortium to develop and implement the procurement of the service.

PROCUREMENT OPTIONS

10. The current situation with regard to procurement options is detailed below

Consortium buy-out of existing facility

11. Whilst this is a possible option, there is no indication at this time that the NORSE group would wish to sell or lease the plant to the Consortium, which would then have to undertake all the operational decisions around its future use.
12. This would require capital commitments from each authority and a joint agreement on funding for future investment. The plant is now over 7 years old and will require investment in replacement plant. In addition any replacement plant will require upgrading taking into account new technology and the ability to sort other materials.

Individual contracts

13. Again, it may be possible for individual Councils, especially at certain times depending on market conditions, to achieve better value by entering into individual contracts. However, it is considered best value in terms of recycling price achieved etc will come from a Consortium based approach. By being part

of a Consortium this does give a degree of certainty to end suppliers about the quality and tonnage that will be recovered through the life of the contract and therefore paying higher prices for material received.

Consortium procurement for new contractual arrangements

14. This would genuinely test the appetite of the market and would enable us to consider the exact mix of materials for recycling we wish to collect in the future. Given the legal advice towards re-tendering, it seems that a fresh procurement process via tender and probably a competitive dialogue process is the only realistic option for the Consortium. The form of procurement has yet to be decided.

Partnership Working with NEWS

15. The current legal advice suggests partnership working with NEWS would not satisfy exemption from formal procurement as defined in the “Teckal” case (which clarified public to public contracts and the applicability of the EU procurement rules):
- The District Councils do not exercise similar control over the Norse group (and NEWS insofar as it is relevant to look at its position individually) to that which they exercise over their own departments. The first limb of the Teckal exception is not satisfied.
 - The Norse group and NEWS do not carry out the essential part of their tasks with the District Councils, so that the second limb of the test for applying the Teckal exception is not met either.
 - However, members will be aware that Norse has entered into such agreements between other local authorities and their wholly owned but separate subsidiary companies. The Consortium has not yet had the opportunity to explore or discuss with Norse the viability of this as a potential procurement option.

RESOURCES

16. The Consortium will need to provide the resources required to support the procurement in terms of legal, waste, technical and procurement/project management expertise.
17. At present North Norfolk will lead on legal services, to date on a non-charged basis but likely with cost recovery in the future. Similarly, Kings Lynn and West Norfolk are leading on financial support and are also able to provide some procurement support.

18. Two Directors (Nick Baker North Norfolk and Andy Jarvis South Norfolk) are acting as project sponsors and currently Barry Brandford (Kings Lynn and West Norfolk) and Bob Wade (Broadland) are leading the actual project management supported by all other authorities. Norwich City Council are acting as secretariat for the Consortium
19. Technical expertise will mean appointing external consultants to assist in the process. Again it is proposed that these costs will be shared amongst the Consortium.

FINANCIAL ISSUES

20. Cost of procurement is as yet unknown. As stated above, we are of the view that it must be better to have a procurement process shared by seven authorities, thereby minimising the cost to each party.
21. At this stage we have not obtained quotes for external consultants as the work is still being scoped. However, officers do not believe that the total costs (including internal support) will exceed £175,000, this to be divided equally across each member of the Consortium (£25,000 per Consortium Council Member).
22. At current recycling levels the existing arrangement is set to yield £340,000 of income to Norwich City Council. This does vary according to the value achieved by NEWS in selling the sorted recyclate to end markets. . Future arrangements need to ensure this level of income is maintained and improved upon.
23. Recycling credits claimed from Norfolk County Council yield £750,000 per annum for the material delivered to NEWS. Any future arrangements must ensure this continues as support funding for our waste management services.

RISKS

24. As well as the risks outlined above, other risks need to be considered as follows:

Financial

25. In terms of the procurement process itself, this risk is very low. We will produce accurate costings for the process in question and the budget when shared between seven local authorities is in itself relatively small.
26. The main financial risk, however, is the future market price for raw materials and recyclate which means that future income streams will always be subject to market conditions. Whilst over time the overall trend will always be upwards because of the finite nature of the resources concerned, there is always the

potential for downward fluctuations which makes budget planning for Consortium members much more difficult.

27. The mitigation here will be around ensuring that any future contractor is working with those in the markets to ensure optimum price for recycle is received.

Legal

28. The main legal risks come from ensuring that the procurement process is lawful and that the risk of any challenge is minimised. This risk will be mitigated by ensuring legal advice is taken at all necessary stages and is followed and that where necessary higher level legal opinion is taken on key aspects of the process.

Reputation

29. As well as the statutory obligations in terms of collecting a certain level of dry recyclable waste from households, the waste collection and recycling service is seen by most Councils' as being of key reputational importance. It is therefore essential that Councils maintain high quality waste and recycling services and that in the context of dry recyclables, we seek to build on the range of materials already collected successfully across Norfolk. A procurement exercise at this stage would give us the chance to consider adding in additional dry recyclable materials depending on the value that they will add in terms of the overall financial cost to the waste collection authorities. In addition, any changes to the range of dry recyclables being collected will need to be communicated very clearly to residents in order to ensure that they "buy in" to any future schemes.

Project Management

30. It is important that any incoming contractor is able to deliver recycle processing arrangements from day 1 of the new contract. Officers recognise that there is a risk in terms of procuring and commissioning both land and a building for a MRF in the timescale available. However, this risk is mitigated by alternative arrangements which potential contractors can put forward in terms of using other facilities as an interim measure etc.
31. There are a number of other project management issues also to be considered and these issues and risks can be mitigated by the use of appropriate project management expertise during the procurement process. During the early stages of the project, informal arrangements have been maintained for project management from within local authority resources but this will need to be supplemented by a formal project management regime, probably using the external consultants who will provide the technical expertise to us.

Local Authority Differences

32. Whilst the Consortium is no doubt a very cost effective solution to procuring a MRF at the same time this does mean that seven Councils' legal and finance rules have to be satisfied and that Cabinet and Council meeting arrangements for seven Councils' may also cause timetabling problems. Whilst at this stage, officers believe that this should not cause a significant problem; there is a need for all seven authorities to very positively commit to the procurement process once it has started.

Other risks

33. There are questions that need to be resolved around the procurement exercise as follows
34. Will Norfolk County Council (the Waste Disposal Authority) pay recycling credits for waste going to any MRF or only to one operated by NEWS? - The principle is already set, that if a re-processor is registered with the County as such, then credits will be paid. It seems doubtful that this would be a concern. Through procurement, we must be very clear that re-processors must use licensed and appropriate third parties for material recycling to enable recycling credits to be claimed..
35. Will Norfolk County Council direct us to one point for sorting/processing of dry recyclables?
36. Will Norfolk County continue to pay for disposal of contamination material arising from the current, or any future, MRF?
37. Can a new MRF (if required) be procured in the time available i.e. by 31/3/14
38. If not, is it acceptable to enter into an option agreement for a further contract extension with NEWS or would it simply fall to any incoming contractor to provide a solution?
39. Should the latest request for legal advice result in a decision against the additional two year extension, any interim measures should be arranged by any successful bidder should their facility not be available? This does potentially impact on the appetite for a "local" solution, certainly in the short term if construction is not complete.

OTHER ISSUES

40. It may be that the County Council comes into the consortium as a customer for dry recyclables arising from Household Waste Recycling Centres. It should be noted however, that much of material collected from the Household Waste and Recycling Centres is separated, therefore any involvement of NCC would only likely be in terms of getting material sales value, rather than use of the MRF per se.

CONCLUSIONS

41. It is clear that the Consortium based approach offers us all the best in terms of overall value for money and based on the success of the Consortium to date, officers believe that the Consortium arrangements should continue.
42. The decision as to whether to continue with Consortium is one for individual Councils to take and such a decision needs to be taken as soon as possible to enable the formal procurement process to proceed. Officers are unanimous in their support for the Consortium in its present format and we would all give our recommendation to the Consortium continuing for our respective Councils.
43. The legal advice indicates that the Consortium should move forward with a procurement exercise for a new contract for the sorting and processing of dry recyclables..
44. Any such procurement exercise, because of its values, will need to comply with EU procurement rules.
45. External consultants will be required in order to assist the Consortium in moving this project forward and this will be in addition to the internal support provided by Consortium members.
46. It is recommended that Norwich City Council continues with its membership of the MRF Consortium in Norfolk on the basis that all costs associated with the new procurement and future processing of profit margins will be equally shared amongst Consortium members.
47. That through the MRF Consortium Norwich City Council enters into an EU approved procurement process for dry recyclables, sorting and processing etc. This contract to commence 1 April 2014 (or, subject to the outcome of further legal advice 1 April 2016).