
WASTE CONTRACT

**Responsible Cabinet Member - Councillor Nick Wallis,
Leisure and Local Environment Portfolio**

**Responsible Director - Paul Wildsmith,
Director of Neighbourhood Services and Resources**

SUMMARY REPORT

Purpose of the Report

1. To seek approval from Council to extend the existing waste management contract with Stonegrave Aggregates Limited.

Summary

2. The Council currently has a medium term (11-year) contract with Stonegrave Aggregates Limited with 3 x 12 months optional extensions exercisable by the Council for waste management which includes treatment, recycle, disposal and management of the Household Waste Recycling Centre.
3. The contract was intentionally let to end in March 2020 to be co-terminus with the other four Tees Valley authorities whose contract with Sita UK Limited also ends in March 2020.
4. Collectively, the five Tees Valley authorities have considered an options appraisal on joint working within waste management services. To date however, this is inconclusive and the other four Tees Valley authorities continue to consider their options either individually or collectively.
5. Darlington must consider its position for the future of this service. Within this report is a proposal to extend the existing contract, which in turn presents the opportunity to deliver significant financial savings for the Council of approximately £280,000 per annum totalling £2.8m, over the remaining life of the contract.

Recommendation

6. It is recommended that :-

- (a) Council approve a variation to the current contract to:
 - (i) vary the optional 3 x 12 month extensions to incorporate them into the guaranteed term; and
 - (ii) further extend the contract by two years, giving a total guaranteed term of 16 years from the original commencement date; and
- (b) Delegate authority to the Director of Neighbourhood Services and Resources in consultation with Portfolio Holder for Leisure and Local Environment in continued discussions with Tees Valley authorities to ensure Darlington is part of any future waste management.

Reasons

7. The recommendations are supported by the following reasons :-

- (a) To ensure continuity of service for the waste management contract in the medium to long term.
- (b) To deliver significant financial savings starting in this financial year.

Paul Wildsmith
Director of Neighbourhood Services and Resources

Background Papers

No background papers were used in the preparation of this report.

Ian Thompson : Extension 6628
CD

S17 Crime and Disorder	There is no impact on crime and disorder as a result of this report.
Health and Well Being	There is no impact on health and well being as a result of this report.
Carbon Impact	There is no impact on carbon impact as a result of this report.
Diversity	There is no impact on protected characteristics as a result of this report.
Wards Affected	Refuse and recycling collection is carried out across all Wards in the Borough. The Household Waste Recycling Centre is in Whessoe and Sadberge Ward with the main treatment and disposal facility outside the Borough boundaries.
Groups Affected	There is no particular impact on any group as a result of this report.
Budget and Policy Framework	There is an annual estimated saving of £280,000 which if approved will be built into the Council's MTFP. There is no change to the Council's policy framework as a result of this report.
Key Decision	This is not a key decision.
Urgent Decision	This is not an urgent decision.
One Darlington: Perfectly Placed	Since the implementation of the waste contract the amount of waste reused, recycled and composted has increased, and these have been as significant reductions in overall household waste landfilled. Extending the contract will continue to see these benefits improve.
Efficiency	There is an estimated £280,000 efficiency per annum if Members approve the recommendation.

MAIN REPORT

Information and Analysis

Background

8. The Council went through a formal OJEU procurement process, starting in January 2007, for the procurement of a medium term (11 years with 3 x 12 months optional extensions exercisable by the Council) waste management contract to commence in April 2009 and to expire in March 2020. Nine initial responses were received and through the competitive dialogue process these were reduced to three final bidders, Stonegrave Aggregates Limited were the successful contractor. Cabinet approved their appointment at their meeting on 13 November 2007.

9. The other four Tees Valley authorities are currently part of a joint waste management contract with Sita UK Limited. It is understood that this expires in 2020. It was as a result of this contractual commitment by the other Tees Valley Authorities that Darlington entered into a medium term waste management contract for 11 years, to be co-terminus with the other four authorities from 2020. The intention was at that stage to collectively procure a joint treatment and disposal contact, and hopefully achieve any economies of scale as a result of that procurement.
10. Over the last 18 months, the five Councils across the Tees Valley have carried out an options appraisal for the delivery of a joint waste management service including treatment, disposal and collection. The conclusion of the options appraisal was considered by both the Directors of Place and Chief Executives, and although there were significant savings to be achieved, not all authorities were in a position to be able to commit to a joint service for the term required to see the savings. A number of authorities are considering their options for future treatment, disposal and collection, which also includes procurement exercises for their own individual contracts.
11. For large scale waste treatment/disposal contracts, the timetable to deliver from the start of procurement to completion can be significant, with the more complex projects taking up to seven years to deliver. As there is now under six years left on both the Tees Valley contract and Darlington Borough Council's contracts, decisions sensibly need to be taken in the next 12 months as to the collective and agreed way forward. At this moment in time, it seems unlikely that the other four authorities will be in a position to make a commitment to a way forward, in the timescale Darlington would like.

Proposal

12. As a result of the level of uncertainty within the other four Tees Valley authorities, Darlington must consider its position and what options are available post 2020.
13. Within the existing contract there is the option to extend for three individual 12 month periods which if exercised by the Council, would see contract expire in March 2023.
14. In early discussions with the current contractor, it was suggested by the contractor that if the Council gave a guaranteed five year extension to the original term now, the contractor would reduce the composite gate fee for treatment and disposal from £77.57 per tonne to £70 per tonne from April 2014 through to the completion of the extension in March 2025. This gate fee would continue to rise by the average earning index from April 2015 in line with the existing contract.
15. Currently, approximately 40,000 tonnes of waste is charged at £77.57 per tonne per annum, however this would need to be reduced by approximately 3,000 tonnes as a result of the introduction of alternate weekly collection, which would therefore mean there would be a saving of £7.57 on 37,000 tonnes.

16. To put this into context, the national organisation Waste and Resources Action Programme (WRAP) funded by the English, Welsh, Scottish and Northern Ireland Governments produce an annual report comparing gate fees for various types of waste treatment and disposal. The most recent survey was carried out for 2013/14 gate fees. The survey is based on information from local authorities' operators in the waste management sector as well as other market intelligence. The fees are indicative and need to be viewed with caution as there will be regional and national variances as well as a range of different types of facilities under similar headings. The waste treatment process used by Darlington is mechanical biological treatment (MBT). The gate fees for MBT range from £25 per tonne to £105 per tonne with the median being £84 per tonne. Darlington at £77.57 per tonne is currently below the median and sits within the range.
17. The renegotiated gate fee of £70 per tonne, which will be fixed until April 2015 will therefore be extremely favourable and deliver financial savings immediately.
18. It is therefore proposed to extend the existing waste management contract for five years taking advantage of a reduced composite gate fee, which deliver significant financial savings immediately.
19. This decision will not automatically preclude Darlington from being involved in any future procurement with the other four Tees Valley authorities, post 2025. If these other authorities decide to go to the market for a contract to commence in 2020, it could be negotiated for Darlington to join in 2025 when the proposed extension would expire.

Financial Implications

20. Based on the renegotiated composite gate fee of £70 per tonne resulting in a saving of £7.57 per tonne on current estimates when applied to the annual 37,000 tonnes, an annual saving of £280,000 will be delivered from April 2014. Therefore, for the remaining 10 years of the contract a total saving of £2,800,000 will be achieved.
21. Should Members agree to extend the existing contract then those savings will be built into the existing MTFP.

Legal and Procurement Implications

22. The Council has the option to extend the current term of 11 years from 2020 for three optional 12 month extensions, until 2023. To achieve the aim set out in this report, the Council then intends to extend the contract for a further two years, for the contract to end in 2025.
23. The Contract was procured in accordance with the Public Contracts Regulations 2006. The contract may only be varied without a further call for competition, if the variation to the contract does not amount to a material change. This has been confirmed by case law. The proposed changes therefore have to be considered alongside the following criteria to ensure it is not a material change:

- (a) The proposed variation should not introduce conditions which, had they been part of the original tender exercise, would have allowed or encouraged other tenderers to participate.
 - (b) The proposed variation should not extend the scope of the contract considerably.
 - (c) The proposed variation should not alter the economic balance in favour of contractor.
24. The proposed variation involves two changes:
- (a) Absorbing the optional 3 x 12 month extensions into the guaranteed term; and
 - (b) Extending this guaranteed term by a further two years which collectively would result in a guaranteed 16 year term, from the original commencement date.
25. There are a number of risks associated with the proposal. The first is a challenge from other bidders or organisations that did not bid in the original tender, but who may have done had the proposed variation been part of the original tender. Given the length of the original contract, and the comparatively short length of the proposed extension, it is seen as unlikely by the client department that the extension would have made the original unattractive procurement, so much more attractive, as to attract bidders that would not have necessarily taken part.
26. The proposed additional two years extension does increase the value of the contract, but this is off-set to a degree by the contractor's proposed reduction in the gate fee; which reduces the value of the contract for the remainder of the term.
27. In order to minimise the risk it is proposed to insert an ineffectiveness clause within the variation that if a successful or potentially successful challenge were to be brought, the Council could terminate the variation and the contract would continue and expire as original procured. The risk of this is that the contractor will wish to recoup any savings which have been honoured as a result of the variation if in fact the extension element of the variation does not take place. The value of this and how much might have to be paid back to the contractor will very much depend upon at what point the challenge was brought and when the contract became ineffective.
28. This risk of challenge can be balanced to some degree against the estimated £2.8 million saving over the duration of the contract. With the option to terminate the variation should a challenge be received, this is seen as an acceptable risk.
29. In order to mitigate the risk of a challenge the Council has issued a Voluntary Ex-Ante Transparency Notice (VEAT Notice) in the Official Journal of the European Union. This provides notification to potential challengers of the variation, and the legal grounds relied upon for making the variation. Under the Public Contracts Regulations 2006 any potential challenger has a period of 10 days from publication of the VEAT notice to make the Council aware that they will make a challenge. If no such notifications are received, provided the VEAT Notice is valid, there are no grounds to challenge the variation on ineffectiveness grounds, although the option

of damages is still available.

30. At the date of this meeting the period of 10 days has passed and the Council has received no requests for further information nor any indication of any potential challenges.
31. Under the Public Contracts Regulations 2006, if a variation to a contract is made which amounts to a direct award in breach of the Regulations, a challenger has 30 days to bring a challenge from receipt of 'actual notice' of that change or direct award. A period of 30 days from the publication of the VEAT Notice was allowed to ensure that if a challenger had grounds to believe the VEAT Notice was invalid, they had the opportunity to make that claim known to the Council. At the date of this meeting, no challenges have been made and 30 days have passed since the publication of the VEAT Notice.
32. The publication of the VEAT notice ensures that those who may be interested in the extension of the contract, including any unsuccessful bidders from the initial tender exercise, and those who, on the facts presented to them at the time of the initial tender, decided not to bid, are aware of the decision the Council has made to extend the contract.

HR Implications

33. There are no HR implications as a result of this report.

Procurement Advice

34. Legal and Procurement advice on the options to extend the contract has been included in the report.

Equalities Considerations

35. It is not considered that there are any equalities considerations as a result of the report.

Consultation

36. No consultation has taken place in the production of this report.