

Record of Urgent Executive Decision

Local Government Act 2000 and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

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| Decision made by | Rob Bridge, Chief Executive and Head of Paid Service |
| Decision Title | Dry Recycling Disposal Services Contract (Wellingborough) |
| Date of decision (same as date form signed) | 23 rd November 2021 |
| Key Decision | Yes |
| Decision | <p>To approve the extension of the Dry Recycling Disposal Services Contract (Wellingborough) for 12 months until 30th November 2022.</p> <p>To agree that delegated authority be given to the Executive Member for Highways, Travel and Assets in consultation with the Executive Director for Place to agree the extension with Suez Recycling and Recovery UK Ltd (Suez) for the collection and recycling of dry mixed recycling (DMR).</p> |
| Reason for Decision | <p>NNC has a contract with SUEZ Recycling and Recovery UK Ltd (Suez) for the collection and recycling of dry mixed recycling (DMR) generated within the boundary of the former Borough Council of Wellingborough (BCW) (“the Contract”).</p> <p>The Contract, which commenced on 1st December 2018 between BCW and SUEZ, provided for an initial term of 3 years ending on 30th November 2021, unless extended in accordance with the Contract. The Contract made between the BCW and SUEZ Recycling and Recovery UK Ltd transferred to North Northamptonshire Council on 1st April 2021.</p> <p>The value of the Contract is over the procurement threshold and was procured in accordance with the Public Contract Regulations 2015.</p> <p>The Contract enables the Council (by agreement with SUEZ) to extend the Term for a further period of up to 2 years (consisting of two periods of up to 12 months each).</p> <p>The Council has been in discussion with SUEZ in relation to the potential for extending the contract. They were</p> |

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| | <p>prepared to extend on all existing terms save for price and only for a minimum period of 12 months. Had the contract been extended with prices similar to the current contract, the matter would have been addressed by the exercise of delegated authority. The revised prices which have been negotiated result in an annual cost increase to the Council.</p> <p>The increased contract price reflects the substantial changes to the market conditions for recycling since the Contract commenced. The Council is not able to secure alternative provision in the time remaining prior to the termination of the contract if not extended, and in any event, preliminary enquiries indicate that the price offered is comparable to other contracts NNC holds for the processing of waste of this nature, when market conditions are considered alongside existing gate fees.</p> <p>The extension will secure recycling arrangements for the waste collected in the Wellingborough area for the next 12 months. During the extension period, the intention is to reprocure a separate contract for the collection and recycling of DMR across the Council. The Executive decided on 18th November 2021 to commence with this procurement exercise.</p> <p>In the event that no contract is in place from 1 December 2021, the Council will not be able to recycle waste collected from the North Northamptonshire area.</p> |
| <p>Alternative options rejected</p> | <ul style="list-style-type: none"> - To enter into new, alternative arrangements to collect and recycle DMR: There is insufficient time to carry out a compliant procurement before the Contract expires. Note: the Executive agreed on the 18th November 2021 to commence a procurement process for a DMR contract for the whole of the new North Northamptonshire area. This exercise is expected to be completed by April 2022. - To use existing DMR recycling arrangements in other parts of NNC: It has not been possible to secure long-term arrangements to use the contracts for other areas within NNC. Owing to capacity or haulage constraints, the contractors in these areas cannot guarantee that they can take the additional tonnage for the next 12 months. - To cease sending DMR for recycling and instead process it through the residual contract for treatment and disposal of waste: The Environmental Protection Act 1990 requires local authorities to provide waste collections to households and the Waste |

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| | <p>(England and Wales) Regulations 2011 requires those collections to encompass arrangements to separately collect paper, metal, plastic and glass as a minimum. As the collection of this waste is a statutory duty, not collecting segregated recycling is not a lawful option open to the Council.</p> <p>- To call a special meeting of Executive: Given the need to agree commercial terms with SUEZ, there was not sufficient time for a special meeting of Executive to be convened.</p> |
| <p>Legal implications</p> | <p>The Council's Executive Procedure Rule 17 provides that, where any matter is urgent and cannot wait until the next meeting of the Executive, the Head of Paid Service (i.e. the Chief Executive) may take the necessary action, provided that he first consults the Leader and reports the decision to the next public meeting of the Executive.</p> <p>The Leader was consulted on 22nd November 2021 and indicated that he did not object to the Chief Executive making the decision in accordance with the urgency provisions to ensure that the Council did not miss out on opportunity to secure DMR capacity in the Wellingborough locality for the next 12 months. However, the Leader expressed his concerns at the late decision making and process and has sought assurance that are lessons are learnt.</p> <p>The Contract does not provide for an increase in price. Accepting these terms does carry the risk of a procurement challenge under the Public Contract Regulations 2015. However, this risk has been mitigated as far as possible:</p> <ul style="list-style-type: none"> • The variation will not exceed the Contract Value as the Council will not be extending the arrangement for the whole Contract Term; • The variation represents less than a 10% increase in the value of the contract in line with the provisions of the Public Contract Regulations 2015 and the Contract Procedure Rules; and • The Council has a procurement timetable in place and potential bidders will have the opportunity to bid for these services within the next 6/9 months. <p>The extension of the Contract with the variation to the prices is a key decision. In accordance with Rule 15 of the Council's Access to Information Rules, the Chief Executive consulted with the chairs of both Scrutiny Committees. Each Scrutiny Chair has confirmed that they agree that the decision cannot reasonably be deferred until the next meeting of the Executive, and that they do not object to the Chief Executive exercising urgency powers to ensure that</p> |

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| | <p>the Council's is able to recycle DMR collected from the Wellingborough area for the next 12 months.</p> <p>Under the Environmental Protection Act 1990, the Council has a statutory duty to collect recyclable material and provide auditable systems for its onward processing.</p> |
| Financial implications | <p>The variation in the prices results in an annual increase to the Council.</p> <p>Owing to the nature of the recycling market and the terms of existing contracts, the total service budget for the four sovereign councils of circa £3m contains headroom to deal with some fluctuations in recycling gates fees. The service will utilise this headroom to pay for the increased costs of the Contract in Wellingborough.</p> |
| Other implications | There are reputational and environmental implications if the Council are not able to collect and process recycling. |
| Background papers considered | None |
| Declarations/conflict of interest? | None |
| Consultation | <p>The Leader has been consulted and understands why we need to make this decision and is content that it is made. However, the Leader has expressed his concerns at the late decision making and process and has sought assurance that lessons are learnt.</p> <p>The Chairs of Scrutiny have been consulted due to the matter being a Key Decision and have not objected to the decision proposed to be taken by the Chief Executive under urgency powers.</p> |
| Confidential Decision? | <p>Yes</p> <p>On the basis that the report contains commercially sensitive information relating to a contract between Suez and NNC in respect of waste tonnage and total value of the previous contract as well as the enhanced rate negotiated to secure the contract. This exemption falls under Local Government Act 1972 Schedule 12A is Part 1, para 3 – "Information relating to the financial or business affairs of any particular person (including the authority holding that information)."</p> |
| Officer | Date: 23 rd November 2021 |