

# **Committee: Overview and Scrutiny Commission**

**Date: 2 August 2016**

Wards: All

## **Subject: South London Waste Partnership – Procurement of Waste Collection and Related Environmental Services**

Lead officer: Chris Lee, Director of Environment & Regeneration

Lead members: Councillor Ross Garrod, Cabinet Member for Environmental Cleanliness and Parking

Councillor Nick Draper, Cabinet Member for Community and Culture

Contact officer: Cormac Stokes, Head of Street Scene and Waste

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### **Recommendations:**

- A. That the Overview and Scrutiny Commission consider the information provided in response to the call-in request and decide whether to:
- Refer the decision back to cabinet for reconsideration;
  - Determine that the matter is contrary to the policy and/or budget framework and refer the matter to Full Council; or
  - Decide not to refer the matter back to Cabinet, in which case the decision shall take effect immediately.
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## **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1. This report sets out the response to the issues raised in two separate call-in request forms (see Appendix 1). The Commission is asked to consider the call-in requests together with officer comments contained within this report and all papers attached as appendices.

## **2 DETAILS**

- 2.1. Cabinet resolved at its meeting of 10 November 2014 to approve the recommendations to jointly procure through the London Borough of Croydon a range of environmental services as part of the South London Waste Partnership. Cabinet also resolved:
- To delegate authority to the Chair of Management Group in consultation with the Management Group, Strategic Steering Group, the SLWP Legal Lead and members of the Joint Waste Committee to deselect bidders and agree the specification at each stage up to and including the invitation to submit final tender and
  - To receive a report in Spring 2016 recommending Preferred Bidder and subject to approval, recommend that the London Borough of Croydon as lead procuring authority award the contract.
- 2.2. Following two separate call-ins of the above decision a special meeting of the Sustainable Communities Overview and Scrutiny Panel was held on 4

December 2014 to consider the matters raised in the call-in papers. Following detailed discussions and considerations the Panel voted in favour of upholding the original Cabinet decision. The Panel did not refer the decision back to Cabinet and as such the decision took immediate effect.

2.3. Following the completion of the Competitive Dialogue process and evaluation of Final Tenders a report was presented to the Sustainable Communities Overview and Scrutiny Panel on 9 June 2016 setting out the conclusions and recommendations arising out of this process. Following considered discussion the Panel resolved to note the draft report and agreed to forward a reference to Cabinet that as part of its final decision-making process, it should use the period of 'Preferred Bidder Fine Tuning' to determine how many households would experience significant difficulty in storage and/or presentation of wheeled bins for regular emptying.

2.4. On 4 July 2016 Cabinet received a further report setting out in full detail the outcome of the procurement project and the results of the evaluation process. Cabinet also received and considered the above reference from the Sustainable Communities Overview and Scrutiny Panel. Cabinet resolved that it:

- recognises the Administration's desire, in the context of Merton's continually decreasing funding from Central Government, to maintain and enhance the borough's public realm, open spaces and parks; noting the results of the wheeled bin pilot in Lavender Fields ward and the Administration's desire to introduce wheeled bins to ensure cleaner streets and the need for any solution to be affordable;
- having noted the endorsement from the Joint Waste Committee (7 June 2016) approves the appointment of Veolia ES (UK) Ltd as Preferred Bidder for LOT 1 services including waste collection, street cleaning, commercial waste collection, winter maintenance and vehicle procurement and fleet maintenance in relation to the procurement exercise undertaken by the South London Waste Partnership (SLWP) for Waste Collection and Related Services. This is for a period of 8 years with the option to extend for two further periods of 8 years, a maximum total of 24 years;
- approves the appointment of The Landscape Group Ltd as Preferred Bidder for LOT 2 services (including Parks, Grounds maintenance, Cemeteries, Verges and Tree maintenance) . This is for a period of 8 years with the option to extend for two further periods of 8 years, a maximum total of 24 years;
- approves the appointment of Amey LG Ltd. as Reserve Bidder for LOT 1 services and Veolia ES (UK) Ltd as Reserve Bidder for LOT 2 services;
- agrees to, following fine tuning discussions with the Preferred Bidders and there being no material changes to the proposed solution beyond the scope of the proposed solution set out in this report, delegate authority to the Director of Environment and Regeneration in consultation with Cabinet Members to authorise the London Borough of Croydon to award the contract for both Lots, on behalf of the four boroughs of Sutton, Merton, Kingston and Croydon (the SLWP);

- agrees to, based on the principles of the Inter Authority Agreement (IAA), delegate authority to the Director of Environment and Regeneration in consultation with appropriate Cabinet Members to agree the IAA and the arrangements relating to the management of the contracts;
  - notes the statutory requirement under section 123 of the Local Government Act 1972 requiring the Council to advertise its intention to grant leases of areas of Public Open Space for those depots and staff facilities within parks and open spaces required to facilitate the operation of the contract(s);
  - notes the work in hand to establish fit for purpose Contract Management and Clienting functions and delegates this to the Director of Environment and Regeneration to finalise.
- 2.5. The Cabinet decision has been called in for reasons set out in Part 4 of the call in request forms. The Council's procedure for dealing with call in requests is set out in paragraph 16 of Part 4E of the Constitution. One call-in request relates specifically to the Lot 1 aspect of the procurement decision and the other relates specifically to the Lot 2 decision.
- 2.6. The Monitoring Officer has accepted the two call-ins as valid and since the matter has already been considered through pre-decision scrutiny by the Sustainable Communities Overview and Scrutiny Panel, the Commission is required to consider the reasons for the call-ins and decide which of the options set out in the recommendation of this report to apply.
- 2.7. For ease of reference this report will deal with each of the Call-ins separately and refer to them as the Lot 1 Call-in and Lot 2 Call-in. Please refer to Appendix A (call-in request form for Lot 1) and Appendix B (call-in request form for Lot 2) to understand the rationale behind the call-in requests and to contextualise the responses set out below.

### **3 LOT 1 CALL-IN**

#### **3.1. Proportionality (i.e. that the action must be proportionate to the desired outcome)**

- 3.1.1 There is no clearly defined government policy on how domestic waste should be collected. This approach complies with all legislation, particularly the Environmental Protection Act 1990 and all subsequent amendments.
- 3.1.2 The proposed service changes will continue to collect all materials currently collected and residents will be provided with more effective storage containers for these various waste streams. The proposed approach is likely to drive up participation in recycling and food waste services and improve the quality of the recyclable materials collected delivering both financial and environmental benefits. In all respects the proposed changes constitute a significant improvement on the current service.
- 3.1.3 At present the council provides a minimum of two recycling boxes (although there is no limit at present on how many boxes a household can obtain), one food waste caddy; a wheelie bin for garden waste (for subscribing households). The council does not provide containers for residual waste. However, these must be provided by householders currently and should be in the form of black sacks. There are currently no restrictions on the number

of black sacks that can be set out each week. In effect the current proposal is not adding any additional container types for waste and may be reducing the number of containers for many households.

- 3.1.4 All households in the borough (save for those using communal recycling facilities) have received at least two recycling boxes as one box has always been insufficient to store mixed recyclables. This is a legacy of the previous green and purple box system. In this respect there has not been a huge increase in the number of containers residents are being obliged to use.
- 3.1.5 There should be no impact on residents' kitchens as there are no changes planned to the current food waste service. All paper and card materials can be stored in the wheeled bin provided throughout the week and will reduce storage requirements within the property. This also applies to residual waste as the wheelie bin will provide protection from pests throughout the week. In effect residents' will have more effective and clean storage Bins will be presented and returned to the edge of the property and there will be, minimal impact on street fronts.
- 3.1.6 The increase in residual waste during the Lavender Fields pilot has been attributed primarily to the improved waste containment practices, reducing wind-blown litter and torn black sack waste. In effect, a proportion of the additional waste collected through the waste collection regime is not "new" or "additional" as it had previously been picked up as street cleaning litter. This will be further mitigated by the introduction of a fortnightly collection service which encourages an increase in recycling and food waste.
- 3.1.7 It also reflects the findings of the latest research on recycling performance carried out by the Waste and Resources Action Programme, "Analysis of recycling performance and waste arisings in the UK 2012/13" (WRAP, 2015). This research shows that effective container capacity (either through size or frequency of collection or a combination of both) is the most significant driver in recycling and food waste capture.
- 3.1.8 Research carried out by the Tidy Britain Group on behalf of the council in 2010 indicated that as much as 50% of all street waste arisings in residential roads can be attributed to the black sack and box collection schemes operated within Merton.
- 3.1.9 In April 2014 the service commissioned MEL Research Ltd to undertake a waste composition analysis of our kerb side collections. Significantly the findings suggest that 60% of Merton's residual waste is of a type that could have been recycled. This compares to only 23% in Sutton which operates a wheelie bin system.
- 3.1.10 In 2013 the authority commissioned Waste Watch (part of Keep Britain tidy) to monitor the Household participation of the kerbside recycling service. The aim of this survey was to establish the participation rate for the kerbside recycling and food collection service.
- 3.1.11 In total 26,301 households were monitored for the food waste collection and 27,486 properties monitored for dry recycling over three collection opportunities. The results showed that approximately 52.8% of households were engaged in setting out their food waste at least once over the three-week period and 79.6% of households set out dry recycling for collection.

- 3.1.12 Key conclusions that can be drawn from this research is that take up of the food waste service is very low. A high proportion of food waste continues to be put out for collection with other general waste in black sacks. As a result the food waste service is not providing a robust mitigation against vermin ripping open black sacks in search of food. Secondly, despite relatively high participation in the dry recycling service, a significant amount of targeted recyclable materials remain with black sacks, suggesting that whilst residents are willing to recycle the current receptacles used are not fit for purpose.
- 3.1.13 The issue of some people having little regard for their environment and continually littering and fly tipping will remain a concern. The council has commissioned an external enforcement organisation (Kingdom) to enforce against littering. This together with the council's well organised and continuous communications campaign will help to reduce the litter, debris and other obstructions through both education and awareness of the council's zero tolerance approach to littering.
- 3.2. Due consultation and the taking of professional advice from officers
- 3.2.1 There is no statutory duty to consult on changes to these services. The decisions have been made by Cabinet under the authority delegated to them. It is not usual to consult on this type of service before the specification is formed as there are often so many different opinions from a wide variety of stakeholders that it makes it very difficult to put a specification that satisfies everyone.
- 3.2.2 When comparing the Lavender Fields pilot to the proposed it is important to note that whilst the frequency of collection is different, the space required for the two bins is the same. The only additional container required compared to the pilot at Lavender Fields is the recycling box. The recycling boxes were not removed from houses in the pilot area.
- 3.2.3 The Lavender Fields ward was identified as part of the pilot primarily as this area consists of a range of different types of dwellings including terraced housing, flats and maisonettes and where there are minimal properties which would have a storage issue for wheeled bins. The area also reflects the need to consider levels of heavy footfall, outside of town centres and shopping areas which impacts on the level of street litter. Furthermore, in terms of recyclables captured, residual waste landfilled and participation levels in various collection schemes, Lavender Fields tended to reflect borough averages.
- 3.2.4 It is recognised that the approach to waste collection cannot necessarily be a "one size fits all" approach and that different container types and sizes will need to be appropriate for the property type. However, in order for collection processes to be as lean and efficient as possible standardisation will be required to a large extent and any variation from the standard process would require justifiable reasons. Acceptable criteria to vary from the "norm" should be agreed in advance of any service being rolled out.
- 3.2.5 Within the preferred bidders bid they acknowledge that not all households will be suitable for the use of wheelie bins. These not only include multi-occupancy dwellings or flats above shops but will also include households

with no frontage, steep access or stairs. As a Waste Collection Authority, the Council has the power to direct households on how and when to present waste, thereby determining the collection method to be adopted.

3.2.6 As part of the mobilisation process and the roll out of the new service a clear criteria will need to be agreed supported by an updated waste policy to account for different property types. This will take into account areas where there are steep slopes between the property and the kerb, or there are several steps between the property and the kerb, or areas where households have no front garden. Where this is the case, the Council will make alternative arrangements for appropriate containers.

### 3.3. Respect for Human rights and equalities

3.3.1 It is advised that any service rolled out utilising wheeled bins would maintain the current curtilage collection approach rather than introduce a kerbside collection system in order to address this issue. The former requires householders to set out waste bins within the confines of their property as close to the edge as possible. The latter requires bins to be set out on the pavement by the kerb. A key issue with the former approach will be to monitor and maintain high collection standards from waste crews with respect to returning waste containers back to the curtilage of properties in good order.

3.3.2 The council has a policy to provide assisted collections to residents with identified needs in this respect. This would help to prevent access problems when entering or exiting properties through the front gate. It is not envisaged that any potential service change would impact significantly on existing policies. However, the Council will take every opportunity to work with and consult various representative groups, including the Merton Centre for Independent Living to review and develop our policies for assisted collections as deemed appropriate.

3.3.3 With the proposed introduction of wheelie bins, Waste Services will work closely with the preferred bidder during fine tuning to recommend and update existing our 'Assisted Collection Policy'.

3.3.4 The recommended preferred bidder (Veolia) acknowledges that given the extra weight / size of the bin that there will be a need to review the assisted collection policy and ensure that all residents who meet the new criteria are provided with an assisted collection. Please note that those residents currently on the scheme will remain eligible for the assisted collection service.

3.3.5 Veolia would be required to undertake a waste capacity audit for all communal properties during the mobilisation period in which container provision will be reviewed and amended to allow an equivalent capacity for each household utilising the communal storage area to that of curtilage collection properties

3.3.6 They will be required to ensure that sufficient capacity is provided and a collection schedule is established to meet the requirements of delivering this capacity. Communal collections will be undertaken weekly as a minimum with additional collection frequency determined as part of the audit process. They will also consult with the crews that currently undertake these services

to ensure their local knowledge is incorporated as part of the scheduling process.

3.3.7 Until the list of staff affected (TUPE Transfer list) is finalised it is difficult to provide a breakdown of the demographic profile of staff affected and indeed how they will be affected.

3.3.8 What is understood for staff is that the provision of wheelie bins will reduce manual handling of black sacks and reduce levels of sickness absence due to musco-skeletal issues.

#### 3.4. A presumption in favour of openness

3.4.1 The Lavender Fields ward wheelie bin trial commenced in April 2015. The Cabinet decision to approve the implementation of the pilot was taken following the consideration of a call-in request by the Sustainable Communities Overview and Scrutiny Panel on 3 February 2015. In terms of the development of detailed proposals for wheelie bins these were not fully apparent until Competitive Dialogue discussions commenced with bidders during the "Detailed Solutions" stage of the dialogue which did not commence until September 2015. The original Cabinet report (November 2014) recognised the complexity of the requirement and the need to explore various options and service developments with bidders was a key reason for using the Competitive Dialogue procurement route. It is important to note that competitive dialogue involves commercially sensitive discussions on bidder solutions and the associated financial implication. Such sensitivities mean that the dialogue sessions must remain confidential, otherwise the whole procurement could be jeopardised.

3.4.2 Households will continue to receive weekly collections, with two collections (food and recycling) one week and three collections (food, recycling and residual) on alternate weeks.

3.4.3 If residents wish to subscribe to the garden waste service they will continue to use their garden waste wheeled bin or bag. Such households will receive three collections every week, with food, recycling and garden one week and food, recycling and residual on alternate weeks.

#### 3.5. Clarity of aims and desired outcomes

3.5.1 The objectives of the project have always been very clear and they are not contradictory but supporting objectives:

- to target optimum savings on the costs of service provision through lower service costs and increasing recycle income;
- to deliver residents a high performing service, achieving high levels of customer satisfaction;
- to provide improved environmental and carbon outcomes in the way we deliver environmental services; and
- to ensure the community remain engaged and involved in the management, maintenance and oversight of parks, cemeteries and open spaces in Merton and Sutton.

3.5.2 The report highlights in section 3.5.8 that the risk transfers to the contractor who is required to maintain a high level outcome based specification in

regards to street cleaning. The contractor will be required to ensure that on the completion of any cleaning activity i.e. manual sweeping , litter picking and mechanical sweeping the relevant area of land has been cleaned to a Grade 'A' standard as reported in line with the guidelines set as part of Ni 195 , the National Indicators for local Authorities. In addition to this the frequency of cleaning needs to ensure that town and district centres and residential roads meet a Grade 'B' standard as a minimum. This is in line within the measures used in NI 195.

- 3.5.3 Furthermore the Cabinet report of 4 July 2016 states that preliminary work undertaken by Waste Services indicates that the award of the contract to the Preferred Bidder for Lot 1 could potentially result in revenue savings of up to £1.3m in year 1. In year 2 following the implementation of the new harmonised service the revenue savings could potentially increase to up to £2.2m per annum. It should be noted that that these savings currently excludes the cost of capital for new vehicles or containers. The savings figures provided should be treated with a degree of caution as they are subject to fine tuning in advance of Contract award.
- 3.5.4 It was explained at the Sustainable Communities panel meeting that new refuse collection vehicles would have to be purchased whether or not the council moved to the new system as the current vehicles are now overdue for replacement. However, the service re-design requires fewer vehicles than currently on the fleet.
- 3.5.5 There is currently no provision within the Council's Capital Programme. Given the size of Capital required a separate report will be presented to Full Council seeking approval for the use of Capital.
- 3.5.6 Councillor Judge's comments were based on the affordability of rolling out a service similar to the Lavender Fields pilot across the whole borough. The SLWP Procurement has demonstrated that through the economies of scale established through working in partnership with local boroughs; through effective dialogue; through service re-design and the shifting of key risks to the contractor that a wheeled bin service can not only be affordable but can deliver significant savings.
- 3.5.7 The WCSS fund was awarded to Merton to incentivise and promote recycling along with a commitment to maintain a weekly collection. The implementation of the optimum solution including the provision of a wheelie bin collection supports this objective.
- 3.5.8 Households will continue to receive weekly collections, with two collections (food and recycling) one week and three collections (food, recycling and residual) on alternate weeks.
- 3.5.9 If residents wish to subscribe to the garden waste service they will continue to use their garden waste wheeled bin or bag. Such households will receive three collections every week, with food, recycling and garden one week and food, recycling and residual on alternate weeks.
- 3.5.10 It is clear that the government failed in its attempt to retain weekly collections and encourage boroughs with alternate weekly collections to revert. This approach and the funding that came with it has subsequently been dropped by the DCLG. The Government has not questioned local authorities that

have now moved to three weekly collections or are planning four weekly collections.

### 3.6. Consideration and evaluation of the alternatives

3.6.1 The Competitive Dialogue process has enabled five separate waste management companies to propose separate outline solutions. Of the four solutions submitted, they were compared to the council's own "as is" service. Each solution demonstrated improved value for money. As part of the competitive process, as set out in the Cabinet report, the proposed bidder's solution represents their optimal solution and has not been designed by the council. This has been determined by the market and waste management experts.

3.6.1 The provision of lids has been investigated by officers previously but based on the continued provision of a wholly commingled solution. Lids have been shown to restrict the capacity of the boxes, requiring additional boxes and can cause some minor operational difficulties. There can also be high replacement needs. However, as part of a twin stream approach there may be opportunities to explore further with respect to containing dry mixed recyclables. This can be discussed further with the Preferred Bidder during fine Tuning. Other alternatives such as the provision of non-returnable sacks for recycling have continuously shown that this option is significantly more expensive than the provision of wheeled bins. The ongoing annual cost of sacks and their distribution would only be financially more viable than wheeled bins if wheeled bins were replaced every four years. Furthermore, it is important for the council to promote re reusable rather than disposable waste containers. Officers will be exploring alternatives during the "Fine Tuning" process including the possible use of hard-wearing, reusable sacks designed specifically to contained dry mixed recyclables.

3.6.2 Evidence from other boroughs suggests that wheeled bins have an average life of 10 years and in some areas up to 18 years. The proposal suggests that the provision of suitable containers with sufficient capacity will drive up levels of recycling as experienced in many boroughs introducing wheeled bins over the past five years.

3.6.3 Primarily the council's financial position has changed and there is an ongoing and continuous need to reduce spend in all service areas. The council is now working in partnership with neighbouring boroughs having previously demonstrated the benefits of such collaborative working through the South London Waste Partnership. There have also been technical changes that have increased the drivers for the proposed approach.

3.6.4 In total there were 22 recommendations arising from the Scrutiny Review of Efficient Household Waste management and the Environment. Although Recommendation 21 requested that the Council continues to collect landfill waste from plastic sacks and provides boxes for the collection of dry recyclables, the report included other recommendations that are reflected in outcome form the competitive dialogue process and the recommendation to award preferred bidder status to Veolia. These include:

- The Council should keep the recycling collection methods under review in order to identify the point at which the separate collection of individual

components becomes financially advantageous. The council should then change the service accordingly and should provide clear communication to residents, setting out the reasons for the change as well as the new collection requirements (Recommendation 9)

- Cabinet should ensure that future contracts relating to the collection, management or disposal of waste are sufficiently flexible to enable market conditions in relation to the value of raw materials (Recommendation 11)
- Cabinet should work towards establishing a common approach to the range of materials which can be recycled among the authorities within the South London Waste Partnership (Recommendation 13)
- The Director of E&R keeps abreast of technological developments in order to identify opportunities for changing waste collection and disposal methods so that greater value for money may be achieved, as well as meeting environmental and waste minimisation objectives (Recommendation 15);

3.6.5 All of these recommendations have been followed and developed through and as a result of the competitive dialogue process, working with the SLWP. Unfortunately, at this time it is not possible to follow recommendation 21, which is to maintain the status quo, as well as all of the above.

3.6.6 Consultation with key Cabinet members was timetabled for all key stages in the competitive dialogue process, including post-submission of outline solutions, detailed solutions and final tenders. This has ensured that officers making up the Partnership bid team are assured that the direction of the competitive dialogue discussions is appropriate and aimed at securing favourable outcomes as far as practicable.

3.6.7 The report to Cabinet on 10 November 2014 set out the rationale for the joint procurement of these services. The anticipated benefits of procuring jointly through the SLWP as set out in the Business Case far outweigh the potential benefits of an in house bid. These include:

- (i) Joint procurement would allow for aggregation of valuable materials, producing a high volume tonnage into recycle markets.
- (ii) Procurement efficiencies derived from procuring a range of services across four boroughs
- (iii) SLWP commissioned commercial expertise, derived from significant previous commercial negotiation with the providers within these markets
- (iv) A single contract across a range of services allows the partnership to benefit from the economies of scale
- (v) Contractors are able to achieve savings across staff, depot, vehicles, routing and new software.
- (vi) The attendees at the soft market testing event indicated that a sub-regional approach to waste collection and associated services in London would be extremely attractive and they would make this their top priority.

- 3.6.8 No single borough within the SLWP acting alone is likely to be able to generate the economies of scale and associated savings that derive from this joint procurement.
- 3.6.9 Feedback from soft market testing tended to demonstrate that the broader the scope of services, the greater opportunity there is of driving added value and finding management and operational efficiencies. This could conceivably lead to very lean margins on discrete services procured for the first time in a large integrated contract, and the Partnership would seek to drive greater savings from bidders during commercial negotiations.
- 3.6.10 The decision to commence this procurement is not irreversible. Should the outcome of the procurement provide the council with a robust reason for not awarding the contract, there is no obligation to award the contract. However, this could lead to a requirement to compensate partner boroughs in accordance with the provisions in the current Inter-Authority Agreement (IAA). It could also lead to a challenge from the preferred bidder and possibly the reserve bidder for the costs they have incurred in relation to their bid for Lot 1. Competitive dialogue is a long process with bidders incurring substantial costs. A decision to withdraw from Lot 1 may also have reputational issues for Merton.
- 3.6.11 Furthermore, if Merton withdraws at this late stage and the other boroughs enter into an agreement with the preferred bidder, the change to the original specification is potentially such that it is substantially different to what was advertised in the OJEU notice. This could lead to a legal challenge from the reserved bidder, failed bidder and other companies within the sector. If this happened Merton would be placed in a position under the current IAA to indemnify the other boroughs for legal costs and any damages awarded by the courts.
- 3.6.12 With respect to the four key issues for consideration raised by Scrutiny following its meeting in November 2015, these have all been outlined throughout the body of this response.
- 3.6.13 It is anticipated that the procurement will save at least 10% across all services and across all boroughs. The quantum of potential savings is relative to spend in each area. The Cabinet report sets out the current estimated savings but these will be subject to fine tuning.
- 3.6.14 With respect to the EU referendum result, whilst the proposed solution has been deemed TEEP compliant in terms of the European Union Directive 2008/98/EC on waste, it is important to note that the solution is based on optimum environmental and financial benefits. Furthermore, it is difficult at this stage to estimate the timescales for the UK exit from the EU as well as the time required to review UK legislation brought in to enact the EU Directives.

#### **4 LOT 2 CALL-IN**

- 4.1. Proportionality (i.e. that the action must be proportionate to the desired outcome)
- 4.1.1 The base assumption of the procurement exercise is that the current service standards will be maintained (with improvements implemented wherever possible) but at less cost overall.

4.1.2 The assertion that the funding available for parks in Merton is comparatively low is not borne out by the reality as the table below indicates.

<b>Borough</b>	<b>Landholdings managed (ha)</b>	<b>Staff numbers (FTE)</b>	<b>Annual expenditure (£)</b>	<b>Annual Income (£)</b>	<b>Net expenditure (£)</b>
Merton	391	56.85	5,621,380	2,754,200	2,867,180
Sutton	430	51.00	4,016,800	1,289,200	2,727,600

4.1.3 The Merton Greenspaces service is relatively stronger than others in the local area, Sutton for example, because Merton has retained much sport within the borough; it supports and delivers sports directly and has consequently preserved the income streams to support that provision.

4.1.4 Council officers are aware that the procurement process has generated some unease amongst the parks Friends groups, but this anxiety is by no means shared by all. All parties, the Council, the friends and the contractor, will be fully committed to delivering the very highest quality parks and to work together on, for example funding bids to secure investment in our open spaces. The recommended preferred bidder already works extensively with parks friends groups in the London Borough of Bromley, for example, and with similar groups within other local authority areas whose parks contracts they manage. The passion for open spaces and the experience of the Preferred Bidder in terms of open space management was evident throughout the procurement dialogue. There is some reassurance to be gained from the fact that the existing and locally experienced Greenspaces grounds team will transfer under TUPE to the new contractor, and thereby ensure that there is a substantial degree of continuity and retained knowledge.

4.1.5 There has been a focus on engaging with those stakeholders, most especially the parks friends groups, whose constituency already encompasses several hundreds of local people who have already expressed an interest in and, in many cases, have invested directly in either time and/or personal labour into the management of our parks.

4.2. Due consultation and the taking of professional advice from officers

4.2.1 The current procurement process was formally announced in November 2014 and there is already widespread awareness, most particularly amongst local open space stakeholder groups and amongst the wider community via the local press and Members since that time.

4.2.2 There have been two consultation meetings with parks friends groups to date (in March 2015 and January 2016) and two newsletters so far during 2016 to update the wider stakeholder community on progress.

4.2.3 The cornerstone of the procurement is to provide and maintain the current levels of service at a reduced cost and so the expectation is that the borough's residents should not notice any substantial changes post contract commencement and certainly nothing so substantial as to warrant the

commissioning of an expensive and time-consuming borough-wide community consultation which might prove inconclusive, regardless.

- 4.2.4 Following a decision by Cabinet in November 2014, there have been bi monthly meetings with greenspaces staff with trade union representatives. Alternate bi-monthly staff newsletters were also distributed to all staff affected. Newsletters contained a regularly updated frequently asked questions section that was informed by the questions raised at the staff meetings and in written submissions from staff.
- 4.3. Respect for Human rights and equalities
- 4.3.1 The basis of the procurement is to maintain the current service standards and so in advance of the Equality Impact Assessments (EIA) – to be developed during fine tuning – the council does not currently anticipate any substantial changes to occur.
- 4.3.2 The residents' experiences of the borough's open spaces will not change substantially; the current service standards will be preserved and enhanced wherever possible. The council team has looked for improvement as part of the procurement process wherever possible and anticipates that through the substantially greater experience and capacity of the preferred bidder improvements will be achieved.
- 4.4. A presumption in favour of openness
- 4.4.1 The SLWP is the procurement vehicle; the contract will be with the London Borough of Croydon on behalf of the partnership but the ongoing day to day client-side management will remain the responsibility of the London Borough of Merton.
- 4.4.2 The recommended preferred bidder has already committed to fully engage with all stakeholders and friends groups and is already familiar with the benefits and values that local stakeholders bring from the local authority contracts it already operates elsewhere in the country, and where there is already a strong friend's network.
- 4.4.3 The recommended preferred bidder is already looking to engage directly with and involve friends groups in assessing its performance through an established online performance management system linked to contract payments as part of Lot 2.
- 4.4.4 Friends and other stakeholders will clearly also be able to raise any specific concerns with members, senior management, and officers within the retained Greenspaces client team, who will oversee contract performance.
- 4.5. Clarity of aims and desired outcomes
- 4.5.1 Savings are a key driver, and our initial impressions are that these savings will be achieved by a variety of efficiency improvements, including the introduction of more flexible working patterns and new technology already employed by the contractor on a number of other contracts.
- 4.5.2 The annual savings target anticipated at the outset of the procurement process in the autumn of 2014, some £160k (or up to £3.84m over the course of the contract) is likely to be exceeded by the contractor.

- 4.5.3 Members of the Greenspaces team will either TUPE transfer to the contractor in Feb 2017 or form part of the borough's client-side team.. The contractor will be recruiting to any vacant positions at the beginning of the contract from February 2017.
- 4.5.4 The basis of the procurement process was to re-provide the current service, with improvements in areas at less cost overall.
- 4.5.5 The recommended preferred bidder has already shown a willingness to invest in the service where there is a reasonable prospect of a return on its investment either achieved through reduced operational costs or increased income. The operational efficiencies that can be achieved through the adoption of the preferred bidders' introduction of new technologies are likely to be significant.

#### 4.6. Consideration and evaluation of the alternatives

- 4.6.1 The procurement for Lot 2 being part of the Phase C project was led by Croydon on behalf of Merton and Sutton. The contract will be held with Croydon for Lot 2 Services with the successful bidder.
- 4.6.2 Alternative options have been explored. However, the proposed approach to procure jointly and to seek integrated contracts is viewed as the optimum one, both in terms of delivering the financial savings required whilst protecting current services. The scale of the savings required means that this option has to be considered. Whilst alternative approaches may deliver some savings this would likely be at the expense of current service standards and resilience. In the current financial climate and the pressures being placed on existing budgets the proposed approach is clearly provides the best opportunity to secure a sustainable future for our parks and open spaces.
- 4.6.3 The procurement has been conducted on the basis of competitive dialogue which is fully compliant with the Public Contract Regulations 2015. Six separate bidders were shortlisted for this exercise and have been directly involved in that process. The contract and specification details have been refined through-out a period of 10 months with all parties contributing to shape the service proposals and documentation. During that process one bidder has emerged from that having been assessed as providing the best bid based on the cost and quality criteria. Only two boroughs are seeking to appointment the preferred bidder at this stage. There is an opportunity for a further two to do so at some point in the future but this is by no means certain.
- 4.6.4 If Merton Council was to withdraw at such a late stage then the following scenarios could arise:
  - i. Sutton Council decides that Merton's decision not to go ahead impacts on them to such an extent they have to withdraw from Lot 2 .

The preferred bidder and the reserve bidder could claim from the Councils the costs they have incurred with regards Lot 2 during the competitive dialogue. Competitive dialogue is a long, costly and time intensive process. Notwithstanding the tender documents will include wording stating that the council reserves the right not to award a contract, because the competitive dialogue has been fully conducted, a court could be sympathetic to a bidder

trying to recover their costs, if the Councils were unable to provide a very good reason for not awarding the contract.

Under the existing Inter Authority Agreement (IAA) of Phase C covering the procurement stage and which was entered into by the four councils, Merton will be liable for Sutton and the other Council for costs they have incurred as a consequence of Merton's withdrawal from this Lot and the costs of a re-procurement if Sutton decide they need to go out to the market again.

- ii. Sutton decides not to withdraw from Lot 2 but the preferred bidder and/or the reserve decides it is not financially viable for them to enter into the agreement.

Once again Sutton and the other Councils under the IAA mentioned above will be able to recover their costs incurred by them as a consequence of this and Sutton may also want to claim the costs for re-procurement. The preferred bidder and reserved bidder may also claim their costs and the comments made above will apply in this scenario.

- iii. Sutton decides not to withdraw from Lot 2 and the preferred bidder agrees to provide services to Sutton.

In this scenario as the specification has been changed in that it is now only one council who requires the services, this may be construed by the reserve company, the unsuccessful bidders and other companies in the market as a substantial change and this could lead to legal challenge.

If this results in a legal challenge then under the IAA both Sutton and the other Councils may seek to recover from Merton their legal costs and any damages that have been awarded against them.

- 4.6.5 The contract is an 8 year contract with provision for two further extensions of 8 years meaning that overall the arrangements could last for up to 24 years. There is scope within the contract to break the agreement at any time should the contracting authorities agreed to do so based on poor performance.
- 4.6.6 The procurement costs have been funded through a grant of £1.5million the Government's Transformation Challenge Award. The decision to include grounds maintenance within the Phase C project was driven by the need to secure substantial savings within this service area. The wealth of experience offered by the SLWP in procuring major public service contracts offered an excellent opportunity both efficiently and effectively. The SLWP's experience and expertise was supplemented by technical experts from the parks and grounds maintenance industries provided by the two authorities. These parks professionals were integral to the procurement dialogue and the production of the specification and data production for each borough. Each borough provided its own technical leads to ensure data and information was robust and comprehensive.
- 4.6.7 Officers were aware at the start of 2015 that there was interest amongst the Greenspaces staff for an in-house bid. The staff team was at liberty to submit a PQQ from the outset of the process, and indeed we understand they were initially mobilising to do so, but ultimately failed to provide a satisfactory submission.

- 4.6.8 Officers have grave doubts that an in house service would have sufficient capacity and flexibility secure a contract across two, possibly four boroughs, and with access to sufficient investment, field tested technology, and pre-existing purchasing powers to realise the savings required. The preferred bidder currently manages a number of substantial grounds maintenance contracts across the south east of England and beyond, including several other London boroughs, as part of a larger consortium of landscape companies that collectively makes them the second largest grounds maintenance contractor in the World and the biggest in Europe.

## **5 CONSULTATION UNDERTAKEN OR PROPOSED**

- 5.1. Contained within the body of the report

## **6 TIMETABLE**

- 6.1. The timetable for the procurement is set out within the body of the original report.

## **7 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

- 7.1. None specific to this report

## **8 LEGAL AND STATUTORY IMPLICATIONS**

- 8.1. The legal implications of Merton withdrawing from each Lot individually have been addressed in the main body of the report.
- 8.2. If Merton were to withdraw from both Lots then the same implications would apply but the costs incurred as a consequence of withdrawing from the entire procurement could be substantially greater.
- 8.3. Furthermore, there may be reputational implications for Merton if it decides to withdraw from either of the Lots or both of them.

## **9 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

- 9.1. None

## **10 CRIME AND DISORDER IMPLICATIONS**

- 10.1. None

## **11 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

- 11.1. None

## **12 APPENDICES**

- 12.1. None

## **13 BACKGROUND PAPERS**

- 13.1. Held by Cormac Stokes, Head of Street Scene and Waste