

Committee: Sustainable Communities Overview and Scrutiny Panel (call in)

Date: 4 December 2014

Wards: All

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

Lead officer: Chris Lee, Director of Environment & Regeneration

Lead member: Councillor Judy Saunders, Cabinet Member for Street Cleanliness and Parking

Councillor Andrew Judge, Cabinet Member for Environmental Sustainability and Regeneration

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

Recommendations:

- A. That the Sustainable Communities Overview and Scrutiny Panel consider the information provided in response to the call-in request and decide whether to:
- refer the decision back to Cabinet for reconsideration; or
 - 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 responses to the issues raised in two separate call in request forms. The Panel is asked to consider the call in request together with officer comments contained within this report and the papers attached.

2 DETAILS

- 2.1. Cabinet resolved at its meeting of 10 November 2014 to agree the proposal to jointly procure through the London Borough of Croydon a range of services (set out below) as part of the South London Waste Partnership, using the competitive dialogue procurement route.
- 2.1.1 An integrated contract for waste collection, street cleaning, winter maintenance, commercial waste and vehicle maintenance (Lot 1)
- 2.1.2 Grounds Maintenance (including parks, arboriculture and grass verges), for Sutton and Merton only (Lot 2).
- 2.2. Cabinet also resolved to delegate authority to the Chair of the 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.

- 2.3. Cabinet also resolved to receive a report in Spring 2016 recommending Preferred Bidder and subject to approval, recommend that the London Borough of Corydon, as lead procuring authority, to award the contract.
- 2.4. 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.
- 2.5. The Monitoring Officer has accepted the call-in as valid and the Sustainable Communities Overview and Scrutiny Panel is required to consider the reason for the call-in and decide if it wishes to refer the decision back for reconsideration or to agree that the decision taken was fair and should be implemented as agreed with immediate effect.
- 2.6. Set out below in italics are the concerns raised in the Scrutiny call in forms, followed by detailed officer responses to each in turn:
- 2.7. Proportionality
- 2.7.1 *The benefits to be derived from joint Procurement (eg. economies of scale) appear to apply almost exclusively to LOT 1 (waste collection etc.) and not to LOT 2. The risks attaching a move to joint procurement for LOT 2 may well exceed the potential rewards.*
- 2.7.2 *Reading the report, there is no way of knowing whether or not what is being proposed for parks and green spaces is proportionate to the desired outcome. The SLWP only has a legal remit for waste collection and processing. No information is provided as to how this external partnership body, which currently has no experience of parks maintenance, could successfully take on the maintenance of Merton's open spaces.*
- 2.8. **Response**
- 2.8.1 The Council has a savings target of £32 m as set out in the MTFs . The savings to be found by Environment and Regeneration amount to £11.7 m. These savings will only be found from income growth or reduction in costs. Hitherto most services have remained in-house and savings identified through efficiencies and cost reduction. To deliver further savings of the order required will demand a more radical approach. The bulk of the Departments staff costs are within 2 areas – Street scene / waste and parks / open spaces . These are both areas where there is a mature market and many London boroughs have benefitted from this by delivering savings acting alone and procuring stand alone discrete contracts. The approach put forward by Merton is to act in partnership for procurement purposes and to seek integrated contracts both of which should deliver savings beyond the scope of the Council acting alone. The scale of the savings required means that this option has to be considered. The alternative would be to take the savings within the existing structure thus certainly affecting service standards and resilience.
- 2.8.2 The report sets out that the Partnership expects to achieve at least 10% savings across the four boroughs based on current budgets. It is assumed that this target will apply to all services including the maintenance of parks and open spaces. It is expected that not all savings will be equally shared across all services and all boroughs as this will depend on the baseline starting position for each. However, it is envisaged that for all services the

economies of scale deriving from shared management of operational delivery, fleet management and maintenance and the potential for depot optimisation amongst other areas will deliver these savings. It is also envisaged that enhanced resilience across the partner boroughs will assist in delivering service improvements or, as a minimum sustain current service levels.

- 2.8.3 The inclusion of parks and open spaces' maintenance will have a negligible impact on the overall cost of the procurement but should benefit significantly in terms of financial outcomes. It is envisaged that ignoring this option would be a lost opportunity and any future option to outsource this service in isolation would incur greater costs with a reduced return.

The South London Waste Partnership was initially formed in 2003 between the London Boroughs of Croydon, Merton and Sutton and the Royal Borough of Kingston in pursuance of arrangements made under sections 101 (5) and 101 (5B) and 102 Local Government Act 1972, section 20 Local Government Act 2000 as amended by Local Authorities (Arrangements for the Discharge of Functions) (England) (Amendment) Regulations 2001, the Local Authorities (Goods and Services) Act 1970, section 2 Local Government Act 2000 and all other relevant enabling powers.

The Partnership was initially formed to provide improved waste transport, transfer and disposal services and meet the Landfill Allowance Trading Scheme (LATS) targets of the Authorities. At present the functions delegated to the Joint Waste Committee cover waste disposal matters as set out in the Environmental Protection Act 1990.

In 2011 a Strategic Steering Group was established for the Partnership. The Group is chaired by one of the partner authority's Chief Executives (on an annual rotating basis) and comprises of Environment Directors and specialist officers from a range of environmental services and functions.

Based on the skills and experience gained from previous successful procurement exercises and the positive relationships established as a result, it was agreed to explore additional opportunities to deliver benefits across a wider range of environmental services, including waste collection, street cleaning and the maintenance of parks and open spaces.

The overall objectives of the project are set out in the Procurement Strategy approved by the Strategic Steering Group on 17 September 2014 and contained within the attached papers requested by Scrutiny.

- To target at least 10% savings on the costs of service provisions through lower service costs and recycle revenues;
- 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.

The proposed vehicle for the procurement is a well-established, award winning partnership that has the skills, knowledge and experience to deliver successful outcomes. Contract management arrangements will be developed in parallel to the procurement exercise to ensure sufficient

management expertise is in place to manage effectively all outsourced arrangements. Furthermore, it is anticipated that specialists from Greenspaces will be engaged as members of the Procurement Project team.

The South London Waste Partnership will be using its expertise to manage the procurement aspects of the project, using its negotiation experience to secure a commercially beneficial solution. It will not directly be maintaining or managing the ongoing arrangements with respect to parks and open spaces post-contract award.

2.9. *Due consultation and the taking of professional advice from officers*

2.9.1 *None of the key stakeholders have been consulted at this stage – Sustainable Merton, Friends of Parks groups, the Greenspaces team, as well as the many residents of Merton and visitors to the borough who use our parks and open spaces, Specifically the Sustainable Communities Overview and Scrutiny Panel was not invited to undertake pre-decision scrutiny (PDS) of this far reaching decision.*

2.9.2 *It is clear that there has been a complete lack of consultation with residents, Greenspaces staff, trade unions and Friends of Parks groups on the Cabinet's plans. The report considered by Cabinet on 10 November is the first and only information on these proposals so far made public. Furthermore, section 4 of the report provides no evidence of any consultation which has taken place thus far on this specific decision; the only references are to future consultation.*

Nor has there been any pre-decision scrutiny by Members of this decision. The report recognises there should be a role of the Sustainable Communities panel and yet that same Panel has not been consulted on the major decision taken on 10 November despite there being appropriately timed meetings which would have allowed the opportunity to do so.

2.10. **Response**

2.10.1 Work on this area has developed momentum during the summer of 2014 and consideration of services, in addition to the core waste and cleansing service, was covered during the Soft Market testing in Summer 2014. As the current Joint Waste Committee has no current remit for functions related to waste collection, street cleaning or other services being considered as part of this project, the Strategic Steering Group has undertaken general oversight. The results of which were incorporated in the finalised Procurement Strategy considered by the Strategic Steering Group at its meeting on 17 September. It was also agreed to take the proposals and recommendations forward for Executive consideration and approval through each of the partner boroughs in accordance with the corporate calendars of each Council: Sutton (6 November), Merton (10 November), Kingston (19 November) and Croydon, as the lead procuring authority (19 January 2015). There was no scheduled meeting of the Sustainable Communities Overview and Scrutiny Panel between the Strategic Steering Group's consideration on 17 September and the Cabinet meeting of 10 November. The decision to jointly procure the range of environmental services has been made as this appears to be the least risk option in terms of delivering savings whilst maintaining or improving service outcomes.

- 2.10.2 The proposed timetable is extremely challenging for the council to achieve the level of savings required through their MTFS.
- 2.10.3 With respect to the maintenance of parks and open spaces, it is not envisaged that there will be any changes to current service standards and outcomes. From the user perspective there will be no discernible change.
- 2.10.4 It is envisaged that key stakeholders will be able to contribute to the process to finalise the scope of the procurement and the anticipated outcomes. This will ensure that synergies between the council, future supplier and key groups will be maintained.
- 2.10.5 The Director of Environment & Regeneration held a series of staff roadshows in June 2014 at which the emerging departmental transformation plans and proposals to explore alternative delivery models across a range of services was addressed. These roadshows were followed up with further staff engagement sessions in early November, setting out the specific details of the proposals that Cabinet were being asked to consider on 10 November. The proposals were also raised and discussed with unions at the Departmental Consultative Committee meetings on 2 October and 6 November 2014.
- 2.11. *Respect for human rights and equalities*
- 2.11.1 *No equalities impact assessment (EIA) has been published for this decision, making it difficult to estimate its impact. However, mothers with young children and the retired are heavy users of parks for play and recreation and they include more vulnerable segments of the population.*
- 2.11.2 *The report also demonstrates a lack of respect for human rights and equalities. It refers to a "preliminary integrated impact assessment" having been completed and yet this is not provided with the report. The lack of consultation shows disdain for all those staff and Friends groups who work so hard to maintain the borough's precious open spaces. Residents across the borough deserve to have easy access to green space which is safe, secure and well maintained yet there is nothing contained in the report to ensure this duty is fulfilled by the council in the future.*
- 2.12. **Response**
- 2.12.1 Since the proposal is to procure existing services there is no impact on equalities envisaged at this stage but this will be kept under review as we progress. As no change to service or policy was being considered, an Equalities Impact Assessment should not be required at this stage. Equalities with respect to service users will be a key aspect of the criteria to be used as part of the evaluation process. Bidders will be expected to provide detailed equalities statements both in respect to the on-going management of staff and their approach to service users for evaluation. Any proposals for service changes will be subject to an equalities impact assessment, covering a broader range than suggested above and this will be evaluated accordingly.
- 2.13. *A presumption in favour of openness*
- 2.13.1 *The proposed competitive dialogue process is opaque and decision making authority will be delegated to joint committees, making oversight by elected*

members difficult. Although consultation is offered at later stages the key decision to proceed to joint procurement has been made without adequate scrutiny; once underway, it appears irreversible

2.13.2 *There has been no presumption in favour of openness and transparency in the decision making process. The report is extremely thin on the details of what is being proposed for the maintenance of Merton's green spaces and the potential consequences. There are only two references to parks in the whole main report and the appendices do not enlighten the reader any further on what is proposed in terms of LOT 2. The vast majority of the report focuses on waste collection and processing which raises the question as to whether this was an attempt to slip through major changes relating to parks as part of a wider package. There is for example no reference to parks in the title of the report.*

2.14. **Response**

2.14.1 Consultation with key Cabinet members has been timetabled for all key stages in the competitive dialogue process, including post-submission of outline solutions, detailed solutions and final tenders. This will ensure 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.

2.14.2 Lot 2 of the proposed procurement will cover the maintenance of parks and open spaces, highways verges and trees and cemeteries. The detailed scope is currently being refined as part of the specification process. The ongoing strategic development and management of these services, the management of the contractor and the management of relationships with users and Friends Groups will remain the responsibility of the council.

2.14.3 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.

2.15. *Clarity of aims and desired outcomes*

2.15.1 *Competitive dialogue defines the aims through an iterative process as the bidding progresses. As the aims are not defined at the outset, in either quantitative or qualitative terms, the desired outcomes cannot be specified or subsequently verified.*

2.15.2 *It is not clear from the report what amount of financial savings the authority could expect to make as a result of this decision. Nor is there any detailed breakdown in the report of the impact on future staffing levels within the Greenspaces team.*

2.16. **Response**

2.16.1 The aims and desired outcomes should be specified at the outset of the competitive dialogue process. These will be developed with input from relevant key stakeholders. The solution in terms of how services are delivered (the inputs) and the commercial approach with respect to risk share and transfer, payment mechanisms and any income sharing arrangements will be determined through the dialogue. However these will

be developed without compromising the overall aims, objectives and desired outcomes set out at the beginning of the process.

- 2.17. *Consideration and evaluation of alternatives*
- 2.17.1 *The report sets out the alternatives of keeping services in house or moving to solus procurement but fails to distinguish between LOT 1 and LOT 2 in these choices. The benefits of joint procurement appear to accrue principally to LOT 1; therefore the alternatives for LOT 2 have not been properly considered*
- 2.17.2 *There is no clear explanation as to why grounds maintenance is being included in this joint procurement exercise. Trade Union sources indicate that Merton's green spaces are the most efficiently managed in London with spend per acre at the lowest anywhere in the capital and spending of just 0.5% of Merton's revenue. Yet the Cabinet doesn't appear to have considered this and instead has decided to have an external provider in place within months. Nor has there been any published information provided to the Cabinet on previous unsuccessful attempts to outsource the parks maintenance service which we understand has been tried twice before.*

2.18. **Response**

- 2.18.1 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.
- 2.18.2 It is anticipated that the procurement will save at least 10% across all services and across all boroughs. The quantum of potential savings are relative to the spend in each area.
- 2.18.3 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 ALTERNATIVE OPTIONS

- 3.1. The Cabinet report of 10 November set out the key alternative options with respect to the proposed overall procurement strategy of both Lots 1 and Lot 2. A further alternative was considered for Lot 2 which included maintaining services in-house but through a shared service arrangement between the council and the London Borough of Sutton.
- 3.2. This option however was viewed as high risk in terms of delivering sufficient savings in terms of the overall demands for savings as set out above and

would limit opportunities derived from an integrated contract procured jointly across all services.

- 3.3. This option may also limit the options for the other partner boroughs to join the contract(s) at a later stage.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. There are none for the purposes of this report. The Cabinet report sets out details of proposed consultation

5 TIMETABLE

- 5.1. Should the Panel wish to refer the decision back to cabinet, the next scheduled meeting of the Cabinet at which to consider this matter will be 8 December.
- 5.2. In terms of partner borough decision making both Sutton (6 November) and Kingston (20 November) have confirmed their intention to progress with the procurement. Croydon, as the proposed lead procuring authority will be considering a similar report on 19 January 2015.
- 5.3. Subject to all boroughs confirmation their agreement to participate and contribute to the joint procurement the OJEU Notice will be issued in accordance with the timetable set out in the Cabinet report.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. There are none specific to this report. The financial implications for the proposed project are set out in the Cabinet report.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. None for the purpose of this report. All legal and statutory implications are set out in the Cabinet report.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. Contained within the body of the report.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. None for the purpose of this report.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. Contained within the body of the report.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Appendix 1 – call in forms (2)
- Further appendices are expected to follow in a supplementary agenda