

Report Title: **Recycling Service**

Forward Plan reference number (if applicable): **n/a**

Report of: **Stephen McDonnell, Assistant Director Streetscene**

Wards(s) affected: **All**

Report for: **Key Decision**

### **1. Purpose**

- 1.1 To provide an update of the negotiations with Recycling Works Services (RWS) regarding the Recycling Contract, for which an extension from 1<sup>st</sup> April 2006 to 30<sup>th</sup> September 2006 was planned, and to make recommendations for the future of the service.

### **2. Introduction by Executive Member**

- 2.1 The recycling collection service is one of the most high-profile and strategically important services provided by the Council. The introduction of statutory recycling targets has made it necessary for the Council to standardise the range of recycling services and materials collected, and to increase the number of households with doorstep collections or easy access to shared facilities. The Council has been able to meet targets by rolling out new services with significant levels of funding provided by successful bids to various funding bodies and mainstream funding. There is a need to review the arrangements for providing recycling services in future so that waste collection and recycling services are more integrated thereby enabling the Council to realise efficiency savings.
- 2.2 This report sets out the following:
- the strategic importance of the council's recycling collection service;
  - the inappropriateness of the current recycling contract;
  - options for the future of the service; and
  - the risks if the service is brought back in-house.

### **3. Recommendations**

- 3.1 That the position concerning the progress of negotiations with RWS be noted.
- 3.2 That the recycling contract with RWS is terminated and that the service be brought back in-house.

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#### **4. Director of Finance Comments**

Paragraphs 4.1, 4.2 and 4.3 of these comments are set out in the “exempt appendix” to this report.

4.4 If RWS cease to provide the service, the Council has two realistic options to ensure continuation of service as follows:

- negotiate with Haringey Accord Ltd to provide the service,
- run the service in-house.

4.5 The report recommends that the service is brought back in-house. This would require putting in place a number of measures relatively quickly to ensure uninterrupted service. These are outlined in the action plan attached.

4.6 However, the recommended course of action would have a significant financial implication for the Council in terms of increased pension costs. This has been estimated at £201k assuming all employees transferring to the Council join the Pension Scheme. The cost would be pro rata if only a proportion of employees decide to join. There is currently no budget provision for any net increased cost and the recommended course of action can only be approved if additional resources are identified to meet the unbudgeted cost.

4.7 Furthermore, bringing the service back in-house will void the CRED funding approved for RWS for door to door estates recycling. However, the service is looking at the possibility of bringing in an alternative estates scheme using the CRED match funding and other NRF/NDC resources.

#### **5. Head of Legal Services Comments**

5.1 The contract between the Council and RWS dated 22 April 2005 allows either party to terminate the contract by giving the other one month’s written notice.

5.2 The decision to terminate a contract, is not specifically covered by Contract Standing Orders but the award would normally be dealt with by the Procurement Committee, there is no reason why the decision to terminate cannot be taken by the Executive.

5.3 Environmental Services Directorate wishes to pursue Option 4 that is to bring the service back in-house prior to possible re-tendering as required under the Public

Contracts Regulations 2006. The EU rules are not applicable where the service is brought back in house, however the EU regulations will apply to any future outsourcing of the service where the service exceeds the threshold (currently £144,459).

- 5.4 As stated in paragraph 7.3.3 and 7.3.4 of the report, adoption of Option 2, would result in a breach of the EU regulations and Option 3, would have to be explored fully whether the Council could utilise the EU negotiated procedure without advertisement. This EU procedure permits the Council to award to an existing contractor ( Accord ) additional work without advertising the contract, however under the EU regulations, the grounds for this procedure is very restricted.
- 5.5 The decision to take a contract back in-house is not specifically covered by Contract Standing Orders but would normally be referred to Members for decision. Since there are wider service provision aspects to this decision, going beyond procurement issues, it is appropriate that this report comes to the full Executive Meeting rather than the Executive's Procurement Committee.
- 5.6 A related but separate matter had been listed in the Forward Plan as a key decision to be taken by the Procurement Committee on 18 July. In order to permit this report coming to a later meeting of The Executive, a General Exception Notice has been issued under paragraph 11.01 in Part D.2 of the Council's Constitution. This is justified since a rapid decision on the future of the service is necessary and it would be impracticable to delay the decision further.
- 5.7 To bring the service back in-house requires that TUPE be considered in respect of staff issues. This includes a consultation with current external and Council staff who may be effected by decision to bring the service in-house. The Council must also receive from RWS "employee liability information" relating to staff.
- 5.8 The Head of Legal Services confirms that there is no legal reason preventing approval of the recommendations in this report.

6. Local Government (Access to Information) Act 1985

Integrated Waste Management and Transport Contract with Haringey Accord Ltd  
Recycling Contract with Recycling Works Services  
Contract Standing Orders  
Procurement Procedures  
Delegated powers report entitled Extension of Recycling Contract, 20<sup>th</sup> February 06

This report contains exempt and non-exempt information. The exempt information is set out in the exempt appendix and is not for publication. The exempt information is under the following category (no.3) in Schedule 12A Local Government Act 1972 as amended:

Information relating to the financial or business affairs of any particular person (including the authority holding that information) where the public interest in maintaining the exemption outweighs the public interest in disclosure.

## **7. Strategic Implications**

### **7.1 Recycling Strategy**

7.1.1 During the time since the original contract commenced in March 2000, the profile and importance of recycling has changed dramatically. Government policy on waste is now much more sharply focussed. The introduction of statutory recycling targets is an example of this and new, higher targets are likely to be set in the future. In providing recycling collection services Haringey must work in a wider context towards achieving the requirements of the Mayor's Waste Strategy for London and the Joint North London Waste Strategy (2005-2020). In addition, residents are now much more in tune with environmental issues and want to recycle the full range of materials at their doorstep or at user-friendly shared facilities.

7.1.2 The Council needs to bring together all of these different elements to produce a Recycling Plan that will meet current and anticipated future recycling targets until 2020. This will need to include recycling collection services that are integrated with traditional waste collection services. As more recycling collection services are rolled out, the percentage of waste recycled increases and this should lead to a fall in the amount of waste to be disposed of. As less waste is disposed of through traditional waste collection services, there should be savings recognised that can be invested back into recycling services.

### **7.2 Current RWS Contract**

7.2.1 Since the contract commenced in March 2000, the range of recycling collection services has widened to include new and different types of collection services. At the same time there has been a significant increase in the number of households and on-street bank sites serviced by the Council. The Recycling Contract with RWS is a rigid, input-based, labour only contract without any performance targets or default/remedial procedures. The Council owns and maintains the vehicles, depot and plant used to provide the service.

7.2.2 The recycling collection service is a key component of the Council's waste management strategy in terms of the requirement to meet statutory recycling targets. It is also strategically important in the Council's relationship with residents as the service is increasingly perceived as one of the most high profile front-line services provided by the Council.

7.2.3 In view of the substantial changes to the recycling service, the need to integrate recycling with waste collection, and the greater strategic importance of the service, the current contract with RWS is no longer appropriate to meet the Council's future requirements.

### **7.3 Recycling Contract Options**

7.3.1 The options available to the Council for future provision of recycling services are as follows:

- Option 1: continue with the current contract with RWS until October 2006 or as soon as possible thereafter when a new Recycling Contract could commence.

- Option 2: continue with the current contract with RWS until October 2009 when a new fully integrated waste management contract could commence.
- Option 3: terminate the current recycling contract with RWS and negotiate with Haringey Accord, to provide the service.
- Option 4: terminate the current recycling contract with RWS and bring the service back in house.

7.3.2 Option 1. This option is not acceptable because the only way the Council would be able to meet RWS Terms of Business would be to cut other front line services significantly or provide for an increase in the cash limit in the recycling budget. Neither of these alternatives are considered to be acceptable. In addition, the current contract is inappropriate for the Council's requirements as set out above and would, in any event, only provide a service until October 2006.

7.3.3 Option 2. This option is not acceptable because to extend the current contract any further would potentially be in breach of EU procurement regulations and outside the Council's Contract Standing Orders.

7.3.4 Option 3. HAL already runs a limited part of the recycling collection service for the Council. HAL were asked to provide estimates for running the whole of the service in April 2005. The estimates provided were not competitive at that time and for this reason HAL may not prove to be good value for money if asked to provide estimates again. Furthermore, it will take some time to negotiate with HAL, or any other private sector company, to determine a price for providing on going recycling collection services. It is not certain that the termination notice period of one month would be sufficient to determine a price in time to guarantee continuity of service should RWS cease to provide the service. Also, the Council would need to explore the requirements of EU procurement regulations to confirm that recycling services could be varied into the Haringey Accord contract.

7.3.5 Option 4. The contract with RWS can be terminated with one month's notice by either party. If the contract was terminated the service could be brought back in house. The advantages of bringing the service back in house are that it provides the opportunity to:

- understand more fully the cost of providing the service and identify potential savings;
- review the current service delivery arrangements to determine whether efficiencies can be made;
- exercise more control over service delivery;
- exercise a greater degree of flexibility in making changes to improve services;
- conduct trials and pilot schemes more easily;
- inform the process of constructing a new, fully integrated waste management contract from December 2009; and
- consider various alternatives for the service until December 2009. These could include;
  - keeping and developing the service in-house along broadly similar lines as the existing service provision;

- keeping the service in-house but begin working towards integration with the waste collection service in partnership with Haringey Accord;
- vary the existing service into the Haringey Accord contract; or
- re-tender the existing service as a short term contract (subject to EU procurement regulations).

7.3.6 This option provides the Council with the greatest degree of flexibility to deliver the recycling services that will meet strategic aims, government targets and residents' requirements. Therefore, it is recommended that the contract with RWS is terminated and that the service be brought back in-house. In order to ensure a smooth transition to an in house service an action plan has been developed and is attached as appendix 1 (Recycling Service Continuity Plan).

## **8. Financial Implications**

8.1 There are three main areas of risk associated with terminating the contract with RWS and bringing the service back in-house, these are:

- understanding the full costs associated with providing the service in-house;
- higher cost of providing services due to pension provision; and
- loss of estates doorstep recycling collection funding from CRED grant secured by RWS.

Paragraphs 8.2.1 and 8.2.2 are in the exempt appendix

### 8.2 8.3 Pension Costs

8.3.1 The main area of risk for potential increased cost in providing the service in-house, is pensions. RWS allows for a 5% employer's contribution towards its pension scheme but transferring employees will be entitled to join the Local Government Pension Scheme for which the employer's contribution rate is currently 21.2%. If all transferring employees did not decide to opt out of the LGPS this would result in an additional cost to the Council of £200,000 per annum (for details refer to appendix 2a). This potential cost could be mitigated in a number of ways, for instance:-

- not all transferring staff would necessarily want to join the LGPS;
- a review of staffing levels and overtime payments after transfer; and
- some non-wage costs currently paid to RWS could be absorbed into the Council's existing overhead costs for example:-
  - Professional, legal, accounting fees, £13,000
  - Staff recruitment costs, £10,000
  - Payroll costs £20,000

8.3.2 Whilst it may be possible to contain or absorb some of the additional cost arising from pension entitlement, it should be recognised that if the Council tenders the recycling service in future, the pension entitlement would transfer to any new service provider so this would be a cost in the longer term. This is of particular relevance given that the Council should be working towards a fully integrated waste and recycling contract from December 2009 when the Accord contract is due to expire.

### 8.4 CRED Funding

- 8.4.1 The other area of risk is the potential loss of a door to door estates recycling collection scheme. RWS made a successful bid to CRED to start up a two year scheme from this spring aimed at providing this service to 7,800 households. The overall value of the bid was £520,000 (over two years), with the Council and the Seven Sisters NDC providing approximately half of this sum as match funding through capital, revenue and in kind contributions. The scheme has not started yet because it would be impractical to run if RWS does not continue to be the Council's main recycling collection service provider. The CRED scheme was not taken into account when setting recycling targets. It is expected that if the contract with RWS is terminated the CRED funding will be withdrawn as the funding is only available to community organisations.
- 8.4.2 The Waste Management Service is working on alternative proposals for estates recycling, which it will present to Members in due course. Where appropriate these proposals will be devised to take advantage of any funding that may still be available through the NDC. The scheme will be aimed not only at increasing recycling on estates, but will also help the Council improve its BV 91 performance for providing doorstep or the equivalent of kerbside collections for blocks of flats.

## **9. Legal implications**

- 9.1 The adoption of Option 2, would result in a breach of the EU regulations and Option 3, would have to be explored fully whether the Council could utilise the EU negotiated procedure without advertisement. This EU procedure permits the Council to award to an existing contractor additional work without advertising the contract, however under the EU regulations, the grounds for this procedure are very restricted.
- 9.2 To bring the service back in-house requires that TUPE be considered in respect of staff issues. This includes a consultation with current external and Council staff who may be affected by the decision to bring the service in-house. The Council must also receive from RWS "employee liability information" relating to staff.

## **10. Equalities**

- 10.1 The Council seeks to provide comprehensive recycling collection services that give all residents and sections of the community the opportunity to recycle as many different materials as possible. The recommendations in this report are designed to consolidate and expand upon the range of materials recycled and increase the number of households with doorstep or near entry collection services.

## **11. Consultation**

- 11.1 There has been no public consultation regarding the recommendations in this report. Executive Members for the directorates affected by this decision have been consulted in drawing up this report.

## **12. Background**

- 12.1 The recycling contract commenced in March 2000 and was a tri-party arrangement between the Council, Finsbury Park Community Trust (FPCT) and Recycling Works Haringey Ltd (RWH). The service providers were not for profit community sector organisations. This contract expired on 31<sup>st</sup> March 2003 but continued to operate after this date under the existing terms and conditions.

- 12.2 FPCT and RWH went into receivership in April 2005 and the Council agreed to novate the existing contract to Recycling Works Services Ltd utilising the existing workforce. The contract with RWS was due to expire on 31<sup>st</sup> March 2006. However, in February 2006 it was decided the contract with RWS should be extended under delegated powers for six months to allow time for a new contract to be written and a tendering process to be undertaken.
- 12.3 Under the previous arrangements with FPCT/RWH there was no fixed budget for the service. Every expenditure decision, including very low level expenditure, had to be cleared through the Council. In order to introduce budgetary controls, within an expanding service, the Waste Management Service set a budget with the new provider, RWS, for 2005/06. The agreed budget was introduced to give responsibility to RWS to financially manage their operations and to provide a level of certainty that the costs of the service would be contained within the Council's cash limit.

Paragraphs 12.4 to 12.8 are in the Exempt Appendix

### **13. Conclusion**

- 13.1 RWS Terms of Business for the extended contract are not acceptable to the Council on the grounds that the level of margin required cannot be sustained within the budget available. In addition, the contract with RWS is labour only, does not contain any recycling targets or remedial powers, and does not meet the long term strategic requirements for recycling or allow for integration of services. By bringing the service in-house the Council will be in a better position to consider a wide range of options for the future to address these issues.

### **14. Use of appendices**

Exempt Appendix

- |             |   |   |
|-------------|---|---|
| Appendix 1  | - | Recycling Service Continuity Action Plan  |
| Appendix 2a | - | Calculation of cost of RWS service  |
| Appendix 2b | - | Deployment of RWS staff   |
| Appendix 3  | - | Letter dated 21 <sup>st</sup> June 2006 from Chair of RWS to the Leader (exempt appendix) |