

Report Title: **Waste Management Report on the Call in of a Decision taken by The Executive on 25th July 2006 recorded at minute TEX 61**

Forward plan reference number (if applicable): N/A

Report of: **Michael McNicholas, Acting Head of Waste Management**

Wards(s) affected: **All**

Report for: **Consideration by Overview and Scrutiny Committee**

1. Purpose

- 1.1 To respond to matters raised in the call in of the report titled 'Recycling Service', other than those that relate to Council policy or budget framework, that was presented to The Executive on 25th July 2006.

2. Recommendation

- 2.1 That Members note the responses to the matters raised in the call in.

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3. Local Government (Access to Information) Act 1985

- 3.1 The following background papers were used in the preparation of this report:

The report on the Recycling Service to The Executive meeting on 25 July 2006

4. Matters Raised in the Call-in

- 4.1 The Call-in states that the report is deficient. It also states that the situation is disputed by the contractor and the Terms of Business cited are the subject of a proposal for Arbitration under the contractor's contract with the Council.
- 4.2 The Call-in states that Council officers failed to mention the dispute and Arbitration, other than as part of the response to representations from the contractor and that no explanation of the significance of the contractor's call for arbitration was reported.
- 4.3 The Call-in states that the Council appears to be in breach of its contractual obligations presenting further risk.
- 4.4 The Call-in states that the decision has exposed the Council to unacceptable and as yet unquantified risks of service disruption and additional costs.
- 4.5 The Call-in suggests a changed recommendation 2 that negotiations with RWS be completed and full consideration is given to extend the contract with RWS to the end of 2009.
- 4.5 Finally, the Call-in suggests a new recommendation that an analysis for all the options for the provision of the service be carried out so that an option may be recommended which maximises environmental outcomes, maximises grants and other financial support and minimises service delivery and financial risks.

5. Waste Management Response - Contractor's Call for Arbitration

- 5.1 The details of RWS Terms of Business for extending the contract are laid down in the Recycling Service report to Executive of 25th July 2006 under paragraph 4.1. The Council's offer for extending the contract is laid down in the report under paragraph 4.3. Therefore, the relative positions of RWS and the Council over the issue of costs for extending the contract, and the scale of the difference between the parties, has been clearly identified in the report.
- 5.2 RWS did wish to raise a dispute over the issue of the level of margin and did make a proposal to refer the issue for arbitration. Under the terms of the contract, any referral of a dispute to arbitration is meant to be a joint referral. The Council was unwilling to enter into arbitration for a number of reasons. These are as follows:
- the scale of the difference between RWS and the Council meant that it would have been unlikely that any level of margin set by this process would have been satisfactory to both parties;
 - the offer made by the Council was the maximum the Council could sustain within existing budgets;
 - in percentage terms the value of the offer made by the Council for the extended contract was close to the level of margin within the agreed budget for 2005/06 and it was considered that this should have been acceptable to RWS, especially since the agreed base budget for the extended contract accounted for all known areas of financial risk including sickness, annual holiday and Bank Holiday costs;

- RWS did not provide a satisfactory explanation for requiring such a substantial increase in level of margin for the extended contract; and
- it would be a costly process to embark upon arbitration, particularly bearing in mind that the contract was due to expire on 30th September 2006.

5.3 The proposal by RWS to refer this issue to arbitration was not mentioned in the report. For the reasons outlined in paragraph 5.2 above Officers did not believe that arbitration was an appropriate process to settle the issue of the level of margin. Furthermore, the main recommendation of the report was for the contract to be terminated and brought in house and there would have been little prospect for matters referred to arbitration to have been resolved before the contract ended.

6. Waste Management Response – Alleged Breach of Contractual Obligations

6.1 The Call-in has alleged that the Council appears to be in breach of its contractual obligations, presenting further risk, but it does not explain how this is so or what the further risks may be. The Council has acted reasonably in its dealings with RWS despite the unexpected and significant increase in the level of margin requested in their Terms of Business. The Council has continued to pay RWS at a level comparable with that agreed in the previous financial year. In these circumstances it is unlikely the Council would be deemed to be in breach of its contractual obligations.

6.2 Regarding the decision to terminate the contract, the contract contains a clause allowing either party to take this decision. The termination clause allows the parties to terminate the contract with one month's notice on a no fault basis. Therefore, there is no breach of contractual obligations in relation to this decision.

7. Waste Management Response – Unacceptable and unquantified risks of service disruption and additional costs

7.1 The Council has a very clear understanding of the costs and management requirements associated with running recycling services. The services are provided not only by RWS but also by Haringey Accord Ltd. The sums relating to these services providers relate in the main only to the cost of labour. There is a significant level of expenditure and operational management relating to the provision of recycling services which the Council already controls directly, for instance provision of depot, vehicles and plant and the arrangements for recyclables after collection. The additional costs relating to running the service in-house are well understood and have been quantified in the original report. There is only a very small risk that previously unknown or unrecognised costs will become apparent after the service comes in house and this would only happen if such costs had not been made clear to the Council by RWS during budget negotiations.

7.2 Officers have a very good working relationship with the RWS management team and staff. The same team and staff would continue to provide services post-termination and there is no reason to believe that they will perform any less well as part of an in-house service provided that transfer arrangements are

handled with care and sensitivity. RWS staff transferring to the Council will benefit from being able to join the Local Government Pension Scheme which is an improvement in their terms and conditions compared to the RWS pension scheme. The Council has already established regular meetings between key internal teams and RWS management so that the transfer is as smooth as possible.

8. Waste Management Response – Changed Recommendation 2, Settle Terms of Business for 2005/06 and consider extension to end of 2009 with RWS

8.1 The Council has already paid RWS at the agreed budget level for the financial year 2005/06. The level of margin in the sums paid to RWS since April 2006 is in keeping with 2005/06 although, in real terms, this provides better value to RWS as it includes additional sickness and annual cover and built in Bank Holiday cover.

8.2 The Council has received legal advice stating that the contract cannot be extended any further than it has already been without breaching EU Procurement Regulations.

9. Waste Management Response – New Recommendation 3, Analysis of all the options for the provision of the service.

9.1 There is insufficient time to re-tender the recycling contract prior to the expiry of the extended contract with RWS on 30th September 2006. Therefore, given that the contract with RWS cannot be extended further, in practical terms the only option available to the Council is to bring the service in-house.

9.2 As the changed recommendation 2 cannot be implemented due to legal advice regarding procurement, it follows that recommendation 3 is not available. Notwithstanding, once the service is being provided in-house the Council will be able to consider all of the different options for future service provision to achieve the optimum outcomes for the Council and its residents and to meet targets laid down by Government. These options are described more fully in the original report to The Executive.

10. Comments of the Head of Legal Services

10.1 The Head of Legal Services advises that the contract for collection of recycling materials is a Part A service under the Public Contracts Regulations 2006 (the Regulations). As such, if the value of any contract (including a proposed contract extension) is over the threshold set by the Regulations (currently £144,459.00 for services) there is a requirement for the contract to be tendered in Europe using one of the procedures prescribed under the Regulations. This would also apply to any new contract for collection of recycling which the Council wished to enter into after the end of September 2006, although it does not apply to bringing the service back in-house.

10.2 Although there are some very limited exceptions to the Regulations, where tendering of services is not required, these do not apply to the current contract or to any future re-tender of the service.

11. Comments of Director of Finance

11.1 The Director of Finance has been involved in the drafting of this report and has no further comments to add.

12. Recommendation

12.1 That Members note the responses to the matters raised in the call in.

13. Use of appendices

13.1 Not applicable.