HOUSEHOLD WASTE RECYCLING CENTRE CONTRACT UPDATE

Report of the Director of Environment & Infrastructure

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1. Purpose of report

1.1 To provide an update on the Household Waste Recycling Centre (HWRC) service contract further to the 10 September 2018 meeting of this Panel.

2 Background

2.1 HWRCs are provided by Hertfordshire County Council as the Waste Disposal Authority (WDA) under Section 51 of the Environmental Protection Act 1990. It is a statutory requirement to provide places within the county for use by its residents to dispose of their own household waste.

2.2 The County Council currently provides a network of 17 HWRCs geographically spread across the county. The service is run and operated on behalf of the authority by Amey who were awarded an eight and a half year contract that runs until 6 March 2023.

2.3 At the Panel on the 10 September 2018 Members were made aware that Amey had expressed continuing concerns about the financial viability of the contract. They confirmed a desire to continue with the contract and work with the council to explore ways that would reduce their financial losses.

2.4 Members noted that, despite the financial stress in the contract, there had been no contract failure from Amey and the contractor continued to provide a good level of service across the county and notably, continued to meet the agreed minimum (baseline) target level of 65% performance, for the diversion of all waste from the residual, ‘general rubbish’, stream.

2.5 The September 2018 Panel report also highlighted that the costs of operating the HWRCs in Hertfordshire compared very favourably with the average costs
of other waste disposal authorities. At circa £6m per annum the Hertfordshire service is approximately £1.7m cheaper than the overall average of all surveyed WDAs (National Association of Waste Disposal Officers survey results 2017/18) and approximately £2.4m cheaper than comparable services elsewhere when wider integrated services e.g. Private Finance Initiative arrangements that include disposal and transfer facilities, are excluded from the survey results. This is largely due to the service changes in January 2015 and the negotiated risk transfer to Amey for the management of materials other than residual waste.

2.6 It was recognised by Members that this contract continues to provide excellent value for money for the council and has insulated the authority against significant risks in market volatility. Members provided officers with clear direction that there should be no new money paid to the contractor and instructed officers to investigate, alongside Amey, how the council may be able to assist the contractor whilst working within the existing budgets for waste management services.

2.7 This report provides an interim update for Members on matters that have been investigated since the September meeting of this Panel and further areas that will be explored after discussions with Amey. All of these options will then be subject to legal opinion on their acceptability or not with the aim to bring appropriate recommendations to the November meeting of this Panel.

2.8 This report also sets out an update on the County Council’s contingency planning for the event that either negotiations with Amey do not reach a mutually agreeable position and/or that any agreement on proposed changes are found to be outside the ‘safe harbours’ of the Public Contract Regulations 2015 with respect to a lawful contract variation.

3 Recommendations

3.1 That the Panel notes the progress to date.

3.2 That the Panel endorses the parallel work to explore alternative options should negotiations with Amey not reach a mutually agreeable position and/or that any agreement on proposed changes are found to be unlawful.

4 Progress update

4.1 Officers have met regularly with representatives from Amey since the 10 September 2018 Panel and with senior Amey management on 22 May 2019. Amey continue to assert that this contract is making losses in the order of £1.4 million per annum but have continued to stress that they remain committed to delivering the contract but require serious consideration and implementation of options to reduce their loses.
4.1.1 The options investigated to date are as outlined below and an update will be reported to the November meeting of this Panel alongside a financial and legal assessment:

4.2 Payment by Results (PBR) Key Performance Indicator mechanism

4.2.1 10% of the total annual management fee is retained by the County Council and paid to the contractor on evidence that they have achieved a certain performance level managed through a PBR mechanism. Amey currently achieve in the order of three quarters of the available PBR budget. Consideration has been given to how amending this mechanism could improve performance and better reward Amey.

4.2.2 The challenges for Amey under this PBR mechanism are associated with the amount of material recycled (a defined term meaning that recovery e.g. wood waste to biomass energy plants does not count towards this target) and the amount diverted from residual waste.

4.2.3 In this respect, under the PBR mechanism Amey must meet a 55% minimum level of recycling and a 65% minimum level of diversion from residual wastes. There are stretch targets, relating to higher PBR payments, for a 65% minimum level of recycling and a 75% minimum level of diversion from residual wastes. However, Amey bear the full cost of managing the material and currently, the disposal costs of achieving the target far out way the level of reward set by the PBR (an additional payment of circa £4k per month for achieving target diversion / recycling rates).

4.2.4 Amending the mechanism would not have any impact on the overall budgeted contract cost to the County Council as the payments are prudently accounted for.

4.2.5 It is possible to seek to review the contractual aspects relating to PBR such that they are realistic, achievable and set a new combined minimum level for diversion of materials from the residual waste stream at 70%, thereby improving performance but assisting in mitigating some of Amey’s costs in the management of material.

4.3 Residual Waste Mechanism

4.3.1 A separate incentive mechanism within the contract provides shared savings for continued improvement in the reduction of residual waste through the centres (the cost of disposal for this material rests with the county council under the contract).

4.3.2 The current mechanism shares savings in residual waste disposal costs between HCC (60%), and a fund designed to provide investment into the service (30%) and Amey (10%). The investment fund is solely to be used at the county council’s discretion. Therefore, the reality of the negotiated position at the time of the procurement is that the County Council receives and/or has control of 90% of any savings arising from the efforts of the contractor in this
regard whilst the contractor must fund the activity of diverting waste from the residual and meet all of the costs.

4.3.3 The reality of this mechanism is that residual waste volumes have not declined and no payments have been made since 2015/16. It is possible a more appropriate approach could be designed that would better incentivise Amey and share savings in a more proportionate manner. Ensuring that any payments made to the contractor under this mechanism were a proportion of the savings in the county council’s residual waste disposal costs, this option could incentivise the contractor, reduce residual waste volumes and increase performance whilst not adding pressure to the budget as costs are currently accounted for in the wider waste management budget. Careful consideration would need to be given to any proposed changes to ensure the mechanisms worked together and/or had necessary ‘safeguards’ on budgeted amounts paid to the contractor.

4.4 National Living Wage (NLW)

4.4.1 Amey has applied for a contract change to the indexation for this element of the payment mechanism. They are of the view that the increase in wages introduced as part of the NLW was unknown at the time of tendering (having been formally announced by the Chancellor in July 2015) and therefore it is considered reasonable to consider a review of the indexation provisions to reflect the increased costs that the contractor has incurred since implementation of the NLW.

4.5 Diversion of wood waste to biomass

4.5.1 Moving wood from a recycling solution (board manufacture) to biomass (thermal treatment) would reduce Amey’s costs for managing this material significantly but would impact on the recycling rate for the county council at the HWRCs and the Hertfordshire Waste Partnership. It would have no impact on the overall diversion rate. Currently all wood waste material is sent to a reprocessing facility where it is sorted and either sent for recycling (circa 84% of all wood collected) or to biomass (circa 16% of all wood collected) where it is burnt for energy recovery. Under this proposal all wood would be sent directly to biomass significantly reducing Amey’s disposal costs as the cost for recovery is less than the cost of recycling the material. This would have no financial impact on the county council but would reduce the recycling rate and would be dependent on amendments to the PBR and Key Performance Indicators to prevent default termination for failing the existing baseline target levels.

4.6 Compaction equipment

4.6.1 Introducing compaction equipment at HWRCs to increase payloads for materials and reduce haulage costs is being developed as a feasible option. Stacking materials and maximising the amount of waste in containers without available plant is significantly resource intensive and requires additional
staffing from the contractor. Trials of increasing manpower resource have been undertaken by the contractor but these have failed to deliver the required improvements in payload weights to meet the costs of increased staffing provision so were therefore discontinued. As part of planned capital improvements to the service, the county council purchased a materials handler for the Rickmansworth HWRC to investigate the impact of the compaction of wastes on haulage costs. Initial indications suggest that such equipment could reduce the number of haulage movements by up to 40% at some sites therefore reducing haulage costs. If successful, this could be rolled out to additional sites with high haulage costs and where space is available and certainly be incorporated into any future ‘super-sites’ as they are delivered. Options include the county council purchasing compaction equipment outright or for Amey to purchase with the asset transferring to the council at the end of the contract. Contractually Amey is liable for all haulage costs (including residual wastes) and therefore any savings would go back to them, however, this would reduce the environmental impact of the service and would also ensure that savings are realised for any future service provision.

4.7 Charges for certain materials

4.7.1 As previously reported to this Panel, the County Council (or on its behalf, the contracted operator) is able to charge residents for accepting material that is not defined as ‘household’ waste. Amey is required to fund the costs of managing all materials including those which could potentially be charged for such as soils, hardcore, plasterboard and tyres as examples. Due to the transfer of disposal risk within the contract any savings resulting from Members agreeing to charge for specified materials would impact directly on Amey, primarily in the form of meeting their costs for these materials and potentially a reduction in material entering the site. There would be little or no financial advantage for the County Council.

4.8 Online Van Permit system

4.8.1 This option has now been implemented and is operating successfully. Due to the ongoing uncertainty of the contracts viability, the online system was developed and paid for by the county council to maintain ownership and this has reduced Amey’s burden in administrating their paper based system whilst being well received by residents. A further possibility that is being explored is the impact of a resident only application for the online permit scheme to restrict Amey’s exposure to the costs of materials for which they are liable coming into Hertfordshire’s HWRCs.

4.9 Resident only permits

4.9.1 Introduction of resident only permits could also benefit Amey if Members were to restrict any non-residents from accessing the Hertfordshire HWRC network as Amey fund the cost of all non-residual wastes entering the network and the cost of haulage for all materials received.
5 Alternative service options

5.1 As noted in 2.5 above this contract provides significant value for money, and whilst it continues to perform to a reasonable level, it is a contract that Members have confirmed they are keen to continue with, hence the efforts in identifying potential options to assist Amey in mitigating their losses. However, it should be acknowledged that it may not be possible to successfully conclude negotiations with Amey.

5.2 Therefore, it is prudent to continue to explore all alternative options available for service provision in parallel with seeking mitigation measures for the contractor. A cross-departmental project team is being established to bring together subject matter experts in a number of fields (finance, legal, procurement etc.) to build on work already completed that will refine options and identify costs. It is anticipated that the initial findings of this project group will be reported to this Panel in November.

5.3 The options available to a local authority in respect of service provision include providing the service directly or making arrangements for services to be provided by an external organisation through the establishment of one of the following vehicles:

5.3.1 Private Company - This is the current delivery model for the HWRC service, where a contractor is appointed to operate the service. The benefit of this is that the contractor takes on the risk of marketing materials and all associated costs. However, their profit margins and bid price will reflect this potential liability.

5.3.2 Charity - This approach has been trialled in other areas of the country and whilst the charity sector works well with the provision of limited services such as re-use activities, they do not generally have the expertise to deal with the complex legislative requirements for the operation of the entire services and this would represent a significant risk for the provision of a statutory public facing service.

5.3.3 Local Authority Trading Company (LATCo) - The authority can create a LATCo to trade in anything that it is authorised to do under its ordinary functions. It is a common commercial form of trading and is widespread in the areas of commercial services, service provision i.e. leisure services, development and property or waste services.

5.3.4 Social Enterprise - This has been explored through trials elsewhere in the country, but these often rely on volunteers and other authorities have quickly reverted back to contracted operations or LATCos, where these were not working.

5.3.5 Shared services - These are common and usually fall into two categories: public-public or public-private. Public-public models involve one local
authority sharing a service or staff with another. Public-private shared services involve a local authority sharing a service with a private company often though a joint venture company. Surrounding authorities currently contract out services to private contractors and Central Bedfordshire and Cambridgeshire already use Amey. At the time of tendering, it was felt that this had potential to bring geographical economies of scale to the current contract, but these benefits have never materialised as contractual approaches vary from county to county. Nonetheless, it is prudent to maintain awareness of any opportunities across borders that may have potential.

5.3.6 **In-House** - This option would give the County Council full control of the services, but the requirement to enrol all staff within the LGPS would likely be more expensive than, for example, a LATCo approach.

5.4 Following the September 2018 report, officers concluded work with independent consultants on the viability and financial impact of alternative methods of service provision. This verified the initial officer view that alternate service provision would be in the order of £500k p/a more expensive than current arrangements with limited variance between the options. The assessment did not consider that the options above for charities, social enterprises or shared services were viable at this stage either due to the inherently uncertain nature of the service model or as unachievable in the short term due to existing contractual provision (in the case of neighbouring authorities).

6 **Financial implications**

6.1 The financial implications for both easement measures and potential service delivery options will be explored by the cross-departmental project team and reported to Panel in November 2019.

6.2 As noted in 5.4 above independent consultants were commissioned to provide an indicative view on the cost implications of alternative service options. The findings of the report support initial officer investigations which suggest that any change to service provision will be a pressure in the region of £500k per annum. Further work is required to understand why this figure differs from the £1.4 million losses asserted by Amey.

7 **Legal Implications**

7.1 There are no legal implications arising from this report but advice will be sought from the council’s legal services department on any proposed amendments to the contract with Amey as part of the project team work.

8 **Equalities Implications**
8.1 When considering proposals placed before Members it is important that they are fully aware of, and have themselves rigorously considered, the equality implications of the decision that they are making.

8.2 Rigorous consideration will ensure that proper appreciation of any potential impact of that decision on the County Council’s statutory obligations under the Public Sector Equality Duty. As a minimum this requires decision makers to read and carefully consider the content of any Equalities Impact Assessment (EQiA) produced by officers.

8.3 The Equality Act 2010 requires the County Council when exercising its functions to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and other conduct prohibited under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The protected characteristics under the Equality Act 2010 are age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief, sex and sexual orientation.

8.4 No equality implications have been identified in relation to this report. However, these will need to be carefully considered as part of any future services changes.