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This report will also be submitted to the Environment Committee.

WASTE MANAGEMENT SERVICES TENDERS

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1. Purpose

- 1.1 To update the Sub-Committee on the tender evaluation and seek its approval to the recommended courses of action.

2. Summary

- 2.1 The Council invited tenders for all of its Waste Management Services, excepting the Materials Recycling Facility, with the new contract to commence on 1 April 2000.
- 2.2 The tender documents allow for tenders for 4 service areas, or combinations thereof, and each section has been evaluated separately.
- 2.3 With the exception of the “cleansing services” area, the tenders evaluated allow for the contracts to be awarded. However due to the limited competition for the cleansing services it appears prudent for this to be re-tendered.

3. Recommendations

- 3.1 That the Environment Committee be requested to approve the following recommendations:
- (a) That the “Group 2” services (Disposal of Waste, Management and Transport of Waste for the Household Waste and Recycling Centres and Removal of Abandoned Vehicles) be awarded to the most economically advantageous bid from Shanks.Waste Solutions

- (b) That the “Group 1” services (Cleansing Services) be re-tendered by the open procedure
- (c) That the Head of Infrastructure be authorised to commence discussions with the existing and other waste management contractors, including Synergy, to establish interim contract arrangements for the period 1 April until the commencement of the re-tendered Group 1 contract.

4. **Background**

- 4.1 This report, although lengthy, has been condensed as far as possible for the ease of the Committee and therefore it may be necessary for Members to refer to some of the background documents, as listed. This is especially the case for the consultant's Evaluation report. As particularly the latter report contains commercially confidential and sensitive information, these documents are not being reproduced as Annexes to this report. However, they are available for inspection, should Members of this Committee require further background information.
- 4.2 The Council, in advance of the legislation for Compulsory Competitive Tendering (CCT), tendered its Cleansing Services (primarily refuse collection and street cleansing) in 1982. The 5 year contract that resulted ended in 1988 when an extensive update of the contract documents occurred prior to re-tendering. As a result of the subsequent tendering exercise, the present contractor for the major services, Municipal Cleansing Services was appointed.
- 4.3 This contract was extended by 2 years in 1992 and a further 5 years in 1994, taking the contract period to a total of 12 years, ending 31 March 2000.
- 4.4 In addition to this contract, a number of smaller contracts of a similar nature have now been amalgamated into the new contract document. These include the cleansing and inspection of play areas and the cleansing of sports & recreation grounds and playing fields.
- 4.5 In 1997, the Borough Council became a unitary authority and inherited a number of contracts in respect of landfill (now termed the "Disposal of Waste"), the management of the Household Waste and Recycling Centres (HWRC's) and the haulage of waste from the HWRC's to landfill.
- 4.6 Coincidentally, the landfill contract co-terminated with the cleansing services contract and the other incidental contracts have subsequently been re-tendered or extended to similarly co-terminate. This has allowed the Council to tender its Waste Management Services all together inviting more integrated waste management approaches.
- 4.7 A number of meetings of both the Environment Contracts Sub-Committee and the Environment Committee first agreed the Council's Waste Strategy that lays down the framework for waste management for the next 10 years and therefore guides the tendering process. Secondly, the committees received a number of reports and presentations to provide guidance on how best to tender these services. This included the commissioning of a "Benchmarking" report, where costs, services (including quality issues) and procedures were compared between 3 other "new town" unitary authorities; Telford, Peterborough and Swindon.
- 4.8 The benchmarking report confirmed that in general the Cleansing Services costs were "out of touch" with the market but also confirmed that for abandoned vehicles, landfill and the HWRC's the Council had obtained competitive arrangements. The national Performance Indicators for Refuse Collection and Landfill, which showed for the former that the Council had the second highest cost

and for the latter the third lowest cost, confirmed the views from the benchmarking report.

4.9 The services involved are:

Group 1 - Cleansing Services

- Refuse collection from approx. 85,000 households on a weekly basis. Tenderers were required to submit alternative prices for Back Door and Boundary collection.
- Separate collection of bulky items of waste, e.g. settees, chairs, beds and “white goods”, i.e. refrigerators, freezers, washing machines, cookers, etc. There are currently in the region of 20,000 collections per annum.
- Collection of Special (Clinical Wastes) on a weekly basis from approximately 350 (varying according to demand) properties.
- Recycling collections from potentially 85,000 households on a weekly basis. This is a voluntary scheme with currently some 76% or 66,000 households participating. The present method provides a two box system collected by specialised collection Vehicles carrying stillages to contain various types of recyclable material. Tenderers were required to price for this method, although alternatives, which preserve the existing ‘peer pressure’ of the two box method, could be offered and will be considered.
- Cleansing and litter picking of streets and the Environment of the Borough of Milton Keynes. The area concerned is approximately 3,200 hectares.
- Sweeping /cleansing of Highways. The total length of Highway involved is approximately 1,035 km.
- Provision of bulk skip services. (Provisional item)
- Play Area Inspection & Cleansing (Approx. 560 Locations)
- Cleansing of Parks, Recreation and Sports Ground
- Commercial Waste collection activities (yet to be defined)
- Collection and disposal of “Special” waste (e.g. Asbestos, syringes etc.)

Group 2 - Other Waste Management Services

- The Management of Household Wastes and Recycling Centres and Transportation of approx. 20,000 tonnes per annum of waste from Household Waste and Recycling Centres
- The Disposal of approx. 85,000 tonnes per annum of waste, currently by Landfill
- Collection, storage and disposal of approx. 250 Abandoned Vehicles per annum.

5. **The Tender Process**

Pre-tender

- 5.1 The Sub Committee agreed that the “Restricted Procedure” under the European Public Procurement guidance be adopted. This process, similar to the staff recruitment process, seeks “expressions of interest” (or applications) from interested competent contractors. The “applicants” are then vetted, checking upon issues such as financial stability, technical competence and health & safety issues.
- 5.2 Under this procedure, an advertisement has to be placed in the European Journal setting out key details of the tender process, including key dates, details of services, length of contract and numbers to be invited to tender. In order to make the post tender evaluation process more manageable the numbers to be invited to tender were limited to a maximum of ten. Under the Councils regulations a minimum of 5 tenders are required.
- 5.3 Following the vetting process, only the selected waste management contractors were invited to tender. This meant that a number of competent contractors were left “in reserve”, whereas a number of contractors were not considered suitable.
- 5.4 A further benefit of the restricted procedure is to allow the tender documentation to be finalised during the selection process.
- 5.5 As Synergy, the Council’s Direct Services Organisation were not tendering for any of the “defined activities” (services defined under the CCT legislation) the tender process did not fall into the CCT rules for tendering.
- 5.6 Following a number of formal and more informal meetings of the Sub Committee, the final format for the tender process and contract documents was presented to the Environment Committee at its special meeting on 2 September 1999. The Committee agreed to the proposed tender arrangements and subsequently the tender documents were finalised, printed and distributed to tenderers on 23 September 1999.
- 5.7 The date for return of the tender documents was set as Monday 8 November 1999. This allowed for more than the 40 days minimum period required under the regulations for the standard restricted procedure.
- 5.8 As the tenderers had already been selected, a separate notification had already been sent giving some key data about the services to be included and a background into the demography of the borough.
- 5.9 Following on from the benchmarking report, the Committee agreed to evaluate all tender prices against a benchmark price, which would be incorporated into the tender documents. This was independently calculated by the Benchmarking Consultant using the data obtained from this Council and the other authorities compared. Whilst this gave an indication of the most likely market rate, the consultant confirmed that this gave no guarantee of tenders being received at the calculated costs.

Tender Period

- 5.10 During the tender period tenderers were invited to inspect the borough and a number accepted the Council's invitation to a conducted tour. Also, the instructions for tendering allowed the tenderers to request further information in writing only.
- 5.11 Whilst it is common to receive a number of queries to clarify the documents or the Councils intentions, the number received during this process was much higher than usual with around 200 enquiries received. Whilst the tender documents cover a wide range of services and there is an element of a "groundbreaking" approach by incorporating a number of best value requirements, this does not explain the volume indicated.
- 5.12 Surprisingly, the largest number of enquires, approximately three quarters, came from the existing Cleansing Services contractor. In addition to their direct enquiries, the Council also received a number of questions or challenges from the contractor's solicitor.
- 5.13 One of the legal challenges was to confirm that the Group 1 services could not be further split (for example, into refuse collection or street cleansing) but that the contract must be awarded as a whole. The services are grouped together for operational purposes. A second legal challenge was to establish that the Council would not be able to accept any tender that offered a service below the minimum specification. This was also confirmed by the Council's Legal Service.
- 5.14 As a result of the unprecedented number of enquires, the Council had to concentrate a considerable amount of its limited resource to providing what was sometimes detailed responses. This information also had to be read and understood by the other tenderers.
- 5.15 Approximately 4 weeks into the tender period, the Council began to receive requests to extend the tender period. These requests included issues around a perceived delay in gaining meaningful data from some or all of the existing contractors in relation to the Transfer of Undertaking (Protection of Employment) regulations, more commonly known as "TUPE". As a result, a letter was sent to all existing contractors reminding them of the importance of the data relating to their staff, whom would be transferred should another contractor win the tender.
- 5.16 Also, it was noted that many tenderers were still absorbing the information that the Council had sent out and were awaiting the revised bills of quantities, which they had to price and return with their other tender documents.
- 5.17 Consideration was given to these requests, and whilst it was considered advantageous from the Councils perspective to extend the period by 2 weeks to ensure full and open competition, legal advice was sought bearing in mind the letters from the existing contractors solicitor. Queens Counsel's opinion was that the tender period could only be extended if all tenderers agreed, as the date of return for tenders was final.
- 5.18 Whilst this advice surprised officers, as many Councils frequently amend timetables to fit practicalities whilst being fair and reasonable, the tenderers opinions to an extension were sought. This was carried out by send a facsimile to

each contractor asking for a return FAX. Whilst the letters were still being faxed, one of the existing contractors objected to an extended period. Also, one further tenderer objected to a 2 week extension as they considered 4 weeks was necessary. Therefore the tender period was not extended.

- 5.19 It was considered that this would restrict the number of tenderers able to submit competitive bids.
- 5.20 Following the Counsel's opinion, it was established that many of the dates that had been included within the European Journal notice had not been met. Until receiving this detailed legal view, this had not been seen as an area of any difficulty. However, the Counsel had only recently been in court, during the summer, where it had been established that the dates contained in the notice are final and cannot be amended. This has wide reaching implications for the Councils future tendering procedures and will have a wider impact into other local authorities.
- 5.21 It could be argued that as a result of this legal opinion, the process is flawed and that upon challenge from any disaffected tenderer, the Council would have to restart the process. This would be less likely in the case of the Group 2 services where there is a limited market for landfill and related services. (Para 5.23 refers).

Post Tender

- 5.22 A total of 5 tenders documents were returned, with two tenders for the Group 1 (Cleansing Services) area and the remainder for the Group 2 services (Waste Disposal, HWRC's and Abandoned Vehicles).
- 5.23 As the tender period was unable to be extended, fewer bids appear to have been received that would have been expected. However, for the Disposal of Waste, which is predominately landfill, there is only one contractor regionally with sufficient and appropriate resources so the Council was not expecting to receive much competition for this service area.
- 5.24 **Annex A** provides a summary of the tenders received in relation to the service groups.
- 5.25 Having received the tender documents, a meeting of the officers tender evaluation team was held to distribute the documentation for evaluation, assessment and scoring under the Council's Most Economically Advantageous Tender (MEAT) method. Also, an initial evaluation was commissioned from the Councils Benchmarking Consultant so as to eliminate any unrealistic bids.
- 5.26 The consultant was also asked to carry out an independent Technical evaluation. The consultant's technical evaluation is one of the background papers listed at the foot of this report, but has not been reproduced due to the commercial confidentiality of this information. The conclusion was that all bids evaluated were technically sound. In terms of the Cleansing Services area, the distinction between the two bids is that one is based upon the traditional manually intensive method whereas the other bid is centred on a higher degree of mechanisation, which is more progressive or modern.

Evaluation

Group 2 Services – Disposal of Waste, Management/Haulage of Waste at HWRC's and Abandoned Vehicles

- 5.27 Following the initial evaluation, it became clear that for the Group 2 service area the tender from Shanks.Waste Solutions would be the most economically advantageous bid. In terms of non-financial issues, their tender was at least equal to the other bids and was the most attractive financially, especially when considering the offered discount of some £40,000 per annum if all the Group 2 services were awarded. The tender also gives the Council the option to consider different payment options for landfill as set out below:
- (a) Fixed price (subject to inflation clause) for the duration of the contract
 - (b) Fixed price (less discount if all group 2 services awarded) for the duration of the contract
 - (c) “Staged” prices, with a lower figure for the first 2 and ½ years, followed by the tendered price for the next 2 and ½ years finally increasing in the final 2 and ½ of the 7 ½ year contract period
- 5.28 The tender from Shanks.Waste Solutions was also the lowest in terms of the management and haulage for the HWRC's, and whilst their tender was around £5,000 per annum higher than the lowest bid, the offered discount of at least £40,000 per annum more than compensates. This equates to some £300,000 over the contract period.

Group 1 Services – Cleansing Services (Refuse and waste collection, Recycling and Street and Environment Cleansing

- 5.29 The situation for the Group 1 services was also quite clear from the initial evaluation, especially as there were effectively only 2 tenders to consider. A third tenderer had only part priced the tender documents and therefore was eliminated, as this is contrary to the instructions for tenderers.
- 5.30 The most financially attractive bid was from Norwich City Works, the Direct Services Organisation of Norwich City Council. The evaluation had confirmed that this was a good bid all round, with one of the best ever Health and Safety scores under the MEAT process. However, when compared to the other bid, from Municipal Cleansing Services, there is little to separate them in terms of the non-financial aspects of the MEAT scoring.
- 5.31 The Norwich bid is much closer to the benchmark costs incorporated into the tender documents and would meet the Councils financial strategy for next financial year. However, during the evaluation process it became clear that Norwich City Council was in the process of “externalising” or “privatising” the City Works department so officers sought clarification from Norwich City Works. This issue had not been previously notified to the Council, but was noted via the media.
- 5.32 Norwich confirmed that they were in the process of concluding negotiations with a joint venture of ServiceTeam and Morrisons, who were to create a new company in

January 2000 to take-over the existing business concerns of Norwich City Works. It became apparent that this process had been underway for over a year and their current negotiations were with the reserve tenderer. Norwich City Works have a good reputation for their service delivery, with a turnover of some £35 million per annum. Also, it was established that the process had been implemented following advice from their District Auditor.

- 5.33 It was also indicated that they would wish to assign any contract that this authority may award them. The Contract documentation only permits assignment with the permission of the Council. As the new company, yet to be formed, had not been through the selection process it was considered upon legal advice that it would not be possible to award any contract to the new company. Norwich were asked if they would possibly retain this service “in house” and although as yet Norwich have not confirmed their intentions in writing it seems that they would wish to assign any services to the new company.
- 5.34 During discussions it also came to light that in addition to working for other local authorities, which is permitted under the legislation, that Norwich City Works had contracts with the commercial sector both in the United Kingdom and elsewhere.
- 5.35 Since the bid meets the budget strategy, Queens Counsel opinion was sought upon the internal legal view that it would not be possible to award the any of the services to Norwich or their successors. This not only confirmed that this was not possible but further concluded that Norwich City Works were *ultra viries* due to their contracts with non governmental organisations, so any direct arrangement with Norwich was also discounted. Presumably, Norwich’s District Auditor had reached a similar conclusion.
- 5.36 The remaining tender from Municipal Cleansing Services, although technically sound, is well in excess of the, now discounted, other tender and further away from the benchmark costs. Also, this bid would not meet the Councils financial strategy. The possibility of “Post Tender Negotiations” exists under the Councils regulations but the Councils Internal Auditor strongly advised against this option. Whilst it may have been possible, if unlikely, to negotiate the remaining tender price to that of the lowest bid, this did not appear to be in line with the European Procurement regulations which require a “fair and open” procedure with the principle that all tenderers are treated equally. Again, Counsels opinion was sought who confirmed that post tender negotiations would not be lawful.
- 5.37 As a result of the evaluation of the Group 1 Services, it appeared that the options had narrowed down to re-tendering or accepting the tender from Municipal Cleansing Services (MCS), albeit that the latter cannot be considered a demonstrably competitive bid in the circumstances. At the request of the Chair, a meeting was held with the District Auditor to obtain his views on the process to date and upon the options available.
- 5.38 Whilst the District Auditor considered that we had considered all the options both carefully and correctly, the only option open in his view was to re-tender. This view was held because of the Councils benchmark costs and that one tender, although no longer being considered, had come close to these costs. It was also pointed out that the Council has a duty under the Best Value regime to demonstrate

competition (indeed the Council will need a Competition Policy) and that the Council has a fiduciary duty towards its Taxpayers.

5.39 In addition to the District Auditors advice to re-tender, the Counsel also came to the same conclusion and the consultants report recommends re-tendering.

6. **Issues and Choices**

6.1 The Committee has the option of accepting the tender for the Group 2 services, which are necessary to ensure the ongoing services elsewhere, as the other services cannot operate without landfill availability.

6.2 In looking at the Group 1 services, there are two options available, as noted in 5.37. The option of awarding the contract to MCS may first be considered. Whilst the bid is technically acceptable, and there is some limited scope to reduce costs if a longer contract period is accepted, the costs of this bid over the contract period are some £10 million greater than the Norwich bid. In addition, the tender asked for alternative prices for moving to a “boundary” refuse collection, a service supported by the public through the Waste Strategy. MCS offered a potential £25,000 (net) per annum reduction (at best) whereas the Norwich proposal offered a net reduction of £500,000. This would extend the gap to some £13 to £14 million over the 7 and a half year contract period. The MCS bid is also a similar sum away from the benchmark costs. However, this option would provide continuity of service, particularly as the present contract has been performed overall to at least an acceptable standard operationally, if not financially.

6.3 In considering the second option, that of re-tendering, there is a strong possibility that by encouraging more competition that acceptable tenders will be received close to the benchmark. However, there is a chance that bids may not be as competitive as the Norwich bid, but it may be that the new joint venture company will tender along similar lines. One of the major issues is that whatever tendering procedure is adopted, this will take sometime to conclude and there would be an interim period of between 3 and 6 months where short term arrangements will need to be made. This period needs to be kept to a minimum because of the adverse budget implications. Officers have been researching this issue, as far as is possible without the Committee’s decision on this matter, and an oral update can be given at the meeting. In looking at the various options available, it is understood that no reduction from the present standards and performance would be acceptable.

6.4 Broadly there are 3 options for the interim period. The first is to approach the existing contractors, which includes MCS, and seek an “extension” of the existing arrangements, which will need to be a short term new contract. However, there is a potential of the contractor not being co-operative so alternative arrangements need to be in place before negotiations can begin. The second option, which will also assist the negotiation procedure, is to approach neighbouring and nearby authorities and also the waste management industry to establish what spare capacity might be available either for one organisation, a consortium or several organisations to provide the service.

6.5 The latter options would need to have clear management lead. The third option is to secure the service delivery through Synergy. This could take the form of Synergy acting as the operational management lead, as noted in the second option, or for

Synergy to obtain the resources themselves and provide the service. In view of the information gained from the tender process, it is considered that the costs of any such arrangement would not be greater than the present contract costs.

- 6.6 The Consultant has suggested the Council encourage all participants to consider “joint venture” approaches as part of the re-tender process. However, the Open Procedure is more likely to encourage innovative arrangements.
- 6.7 If re-tendering were to be adopted, there are two procedures available under the European Procurement regulations. The first, and seemingly most appropriate, option is the “Open” procedure where following a notice in the European Journal and in the local and trade press, tender documents would be sent to all requesting them. Subsequently all tenders received would be evaluated. As with the existing procedure, the initial evaluation would quickly establish any bids that were inadequately resourced or far too expensive. As this is still expected to leave a considerable number of bids the Council would need to engage some specialist assistance, possibly via ReTrac Services, to ensure that the evaluation process could be handled efficiently within the time constraints. This procedure would allow for a decision to be made by the end of March, allowing a reasonable lead in period for a 1 July 2000 commencement. If a bid close to the benchmark is received the graph shown at **Annex B** indicates that if the Open procedure is adopted, the budget strategy can just about be achieved.
- 6.8 The second option is that of the “Restricted” procedure, as for the existing tender. This adds approximately 2 to 3 months to the tender period. One of the benefits of this option is that the contract documents can be prepared whilst “shortlisting” but in this case the documents are already complete. Also, the restricted procedure makes the evaluation process more straightforward by limiting the number of contractors selected. Unlike the open procedure, it is unlikely that this process would achieve the budget strategy for next year. This is also shown on the graph at **Annex B**.
- 6.9 **Annexes C and D** show an indicative timetable for both the Open and Restricted procedures.
- 6.10 Also, given that one of the stated reasons for the restricted number of tenders was that of the difficulty in obtaining the TUPE data, it is suggested that the Council compiles a list of what data is required and this would be sent to all existing contractors prior to any re-tender exercise. It may be possible to then ask the existing contractors to forward their TUPE information to an independent person from whom the tenderers would obtain the data when required. However, the Council’s Head of Legal and Property Services advises that the Council could not insist upon this procedure and that the existing contractors could want to provide only directly to other tenderers.

7. **Implications**

7.1 Environmental

There are no direct environmental implications arising from this report. However, whatever course of action is adopted it is imperative that the quality of service is maintained to ensure that the environment does not suffer.

7.2 Equalities

There are no equalities issues arising from this report.

7.3 Financial

Group 1 service [Cleansing] - there are around £14m of potential savings that are available to the Council, over the life of the contract [see para 6.2], if the option to retender, by the Open Procedure, is agreed. In the short term, this option is also the only one that has the potential of meeting the Council's budget strategy for the next financial year. The Restricted Procedure would adversely affect next year's budget position but would probably recover in the remaining contract period. The option to award the contract to the one remaining tender would not only have implications for next financial year but for the duration of the contract and would be contrary to the advice from the Council's Internal Auditor [para 5.36] the District Auditor [para 5.38] and Counsel [para 5.39].

Group 2 service [Disposal of waste etc] - the award of the contract to Shanks Waste Solutions would be the economically advantageous, as para 5.29 makes clear.

7.4 Legal

The tendering process adopted to date is governed by the European Public Procurement regulations. The advice of a QC has been sought and can be summarised as follows:

It would not be lawful to award the contract for refuse collection and street cleansing to Norwich City Works or the successor joint venture company which has not been evaluated by this Council.

It would not be lawful to carry out post-tender negotiations by using the European regulations' Negotiated Procedure to ask MCS to reduce their bid.

In addition to this advice the Head of Legal and Property Services is of the view that the MCS bid cannot be accepted. Councillors owe a general fiduciary duty to their ratepayers which obliges them to act with proper financial skill and care. The MCS bid is £13-14m more expensive than officer research suggests the Council should be paying for the services over the contract period. Given this information, and the Council's difficult budgetary position next year it is difficult to see how councillors could legitimately justify not carrying out a re-tendering exercise.

7.5 Staff and Accommodation

If the re-tendering option is considered, the benchmarking consultant will need to be retained to initially prepare the arrangements and plans for the interim period. If the open procedure is chosen, additional external resources will be needed for the

evaluation process. In both the open and restricted procedures, additional management of the interim arrangements will be needed to ensure the quality of service provision. However, this would be required for a longer period in the restricted procedure. It is considered that the benchmarking consultant's assistance would again be helpful in this area.

8. Conclusions

- 8.1 The Group 2 services have been evaluated and are suitable to award to the most economically advantageous tenderer.
- 8.2 That the Group 1 services should be re-tendered in line with all the advice, including that from external sources.

Background Papers: Contract/Tender Documents
Benchmarking Report
Queens Counsel opinions and advice
Consultants Technical Evaluation Report
Consultants Tender Evaluation Reports
District Auditors advice