

## **Joint Waste Contract - Award of Contract and second Inter Authority Agreement**

### **Summary**

The report seeks approval to award a joint collection contract to bidder A who submitted the Most Economically Advantageous Tender and to enter into the successor of the Inter Authority Agreement Elmbridge Borough Council, Mole Valley District Council and Woking Borough Council.

### **Portfolio - Community**

**Date Portfolio Holder signed off report 26 October 2016**

### **Wards Affected All**

### **Recommendation**

The Executive is advised to resolve that:

- (i) Bidder A be awarded the Joint Waste Collection and Street Cleansing Contract (Joint Contract) with service delivery in Surrey Heath commencing on 5th February 2018 up to and including 5 June 2027, with the option for the participating authorities and the contractor to agree to extend the Joint Contract by one or more successive consecutive periods until 2 June 2041;
- (ii) The Council enters into the Joint Contract with each of the partner authorities and Bidder A;
- (iii) The Council enters into the successor Inter Authority Agreement (Second IAA) with each of the other partner authorities, Elmbridge Borough Council, Mole Valley Borough Council and Woking Borough Council and Surrey County Council (in its capacity as the waste disposal authority (WDA)), which will regulate the relationship between the participating authorities (as necessitated by entry into the Joint Contract), establishes the shared contract management office (CMO) and the required governance arrangements, including the revised terms of reference for the Joint Waste Collection Services Committee (JWCSC Committee);
- (iv) The Council grants a lease of part of Doman Road Depot to Bidder A commencing on 5th February 2018 and co-terminus with Surrey Heath's participation in the Joint Contract and the Second IAA at a peppercorn rent;
- (v) responsibility for finalising the detail of the Second IAA and other related issues be delegated to the Executive Head for Community Services in consultation with the Portfolio Holder for Community Services; and
- (vi) responsibility to implement any actions necessary to implement the recommendations of this report, including any changes to the Council's constitution, be delegated to the Executive Head of Community Services.

The Executive is advised to RECOMMEND to Council that

- (i) funding of £3.2m to be included in the capital programme for 2017/18 and 2018/19 to provide capital funding for vehicle purchase funded by borrowing;
- (ii) the Executive Head of Corporate be authorised to update the Constitution with any required changes in light of agreeing the Second IAA; and
- (iii) the Community Portfolio Holder (and an appropriate named deputy) be appointed as the Council's representative on the Joint Waste Collection Services Committee.

## 1. Key Issues

- 1.1 At the meeting of the Executive on 3rd December 2013 it was resolved that the Council agrees to jointly procure a new waste collection and street cleansing contract with a number of other local authorities. The Joint Waste Collection Contract (Joint Contract) has now been procured to provide a range of waste collection, recycling, street cleaning and associated services for the four partner authorities, Elmbridge Borough Council, Mole Valley District Council, Surrey Heath Borough Council and Woking Borough Council (Partner Authorities).
- 1.2 The Partner Authorities currently operate successful and cost-effective recycling services, all of which are operated under individual contracts. The Partner Authorities are already within the top five authorities with the highest recycling rates in Surrey. The aim is to put a contract in place that will build on existing success by encouraging further innovation and yield significant savings and service benefits for local tax payers.
- 1.3 The Partner Authorities and Surrey County Council (as the Waste Disposal Authority (WDA)) signed an Inter-Authority Agreement (First IAA) during 2013/14 to regulate the terms and nature of the procurement and each of the Partner Authorities designated Member representatives to a Joint Waste Collection Services Committee (JWCSC) and officer representatives to a Project Team as well as authorising an initial budget of £460,000 over three years to fund the project.
- 1.4 The Partner Authorities have been working together to procure the joint contract supported by a Project Manager and specialist technical and legal advisers, both internal and external.
- 1.5 The proposed start dates for delivery of services in each area under the Joint Contract are:
  - Elmbridge (June 2017);
  - Woking (September 2017);
  - Surrey Heath (February 2018);
  - Mole Valley (waste collection August 2018, street cleansing April 2019).
- 1.6 Whilst the Joint Contract has been designed to provide each of the Partner Authorities with the same specification, the specification makes some allowance for local choice and flexibility. For instance, the services within the contract have been packaged in such a way to enable each of the partner authorities to buy some but not all of the potential services included within the specification to suit its own requirements and circumstances. Furthermore, the specification for the street cleaning services enables each authority to tailor the quality of the street cleaning in its area to reflect its needs and constraints.
- 1.7 The services consist of:
  - Municipal waste and recycling collection service, including mixed dry recycling, food waste, garden waste, electrical items, textiles and commercial waste;
  - Bulky waste collection service;
  - Clinical waste collection service;

- Street-cleaning service;
- Service Users' Contact Management, including the administration of the garden waste service.

1.8 The table below indicates which services each authority is procuring by way of this Joint Contract.

**Table 1**

	Municipal waste and recycling collection	Street-cleaning	Bulky waste collection	Clinical waste	Service Users' Contact Management
Elmbridge Borough Council	✓	✓	✓	✓	
Mole Valley District Council	✓	✓	✓	✓	
Surrey Heath Borough Council	✓	✓	✓	✓	✓
Woking Borough Council	✓		✓	✓	✓

### **The Pre-procurement Phase**

1.9 The First IAA delegated approval of a Procurement Strategy and the Contract Tender Evaluation Model to the JWCS.

1.10 Procurement Strategy: The JWCS made the decision to procure the contract using the Competitive Dialogue procedure. This is a four stage approach which included:

- The Pre-Qualification Stage;
- Invitation to Participate in Dialogue;
- Invitation to Submit Detailed Solutions;
- Invitation to Submit Final Tenders.

1.11 The benefit of competitive dialogue is that it allows potential contractors to provide their expertise and innovative ideas which contribute to the final service package/specification as well as an opportunity for the Authorities to test and to explore differing commercial and financial terms with a view to obtaining best value. This is considered to be a particularly effective approach where there are a number of alternative ways of delivering the service and it promotes the adoption of best practice.

1.12 **Contract Tender Evaluation Model:** In line with the long term partnership style of the contract and the need to secure a quality service, the JWCS decided to design the Evaluation Model to ensure that there is an equal balance between cost and quality. This signalled to the market that the authorities intended to procure a high quality service driven by high customer expectations equally balanced with the need to ensure value for money. Therefore, during evaluation 50% of the marks were given for quality and 50%

for price. A detailed Contract Tender Evaluation Model was approved by the JWCS in December 2014.

- 1.13 The following elements of the project were also agreed by the JWCS and Project Team under the terms of the First IAA.
- 1.14 Contract style: The Joint Contract aims to work in a co-operative, partnership style with the contractor as is necessary for a contract of this breadth and potential duration and with flexibility to allow the contract to evolve over time but still complying with the constraints of the procurement legislation.
- 1.15 The agreed approach was to specify what services are to be delivered and the standards to be achieved rather than instructing the contractor how to deliver the services. The bidders had the opportunity through the dialogue process to share their ideas and experiences from other contracts and from within their industry to help the Project Team shape the final detailed Specification and commercial and financial terms of the Joint Contract. The bidders were also encouraged to use their expertise to develop best practice solutions to providing high quality cost effective services and state these in method statements, which, once agreed, will form part of the Joint Contract. Where necessary, the method statements were tested during dialogue with each bidder to ensure they reflected and met the needs of the specification.
- 1.16 Contract Term: The initial term of the Joint Contract is 10 years expiring on 3 June 2027 with 'staggered' service commencement dates over a circa two year period to dovetail with the expiry date of each of the Partner Authorities' existing waste and street cleaning contracts. The length of term is common in waste and street cleaning contracts and reflects the significant investment in vehicles, which tend to have a lifetime of approximately 10 years. After the initial term, the Joint Contract may be extended with flexible extensions of up to a further 14 years, giving a total maximum 24 year term.
- 1.17 Additional Partners: The Joint Contract has been procured so as to enable all other Surrey waste collection authorities to have the opportunity to join during the life of the contract should they so wish. The arrangement does however ensure that the four Partner Authorities as the first cohort of authorities joining the JWCC will not be adversely affected by those joining at a later stage. The Second IAA includes the principles on which the joining partner will sign up to the Joint Contract and enter the IAA.
- 1.18 Contract Conditions: The Joint Contract comprises the contract conditions, the specification and the successful contractor's pricing schedule and method statements.
- 1.19 The contract conditions set out amongst other matters, the performance monitoring, payment mechanisms, and contract governance arrangements between the Partner Authorities on the one hand and the contractor on the other.
- 1.20 As it is a Joint Contract, the Partner Authorities are jointly and severally liable to the Service Provider. Before resolving to procure a joint contract, alternative approaches were considered. These included:
  - a. A Lead Authority contracting with the contractor and then enabling other Surrey waste collection authorities (WCAs) to buy services via the Lead Authority; or

- b. each Authority entering into a direct contract between it and the contractor; or
  - c. a framework agreement with the contractor, with each individual Authority having its own direct contract with the contractor; or
  - d. a joint contract for the four partner authorities with a framework agreement established alongside to enable other Surrey waste collection authorities to benefit from the procurement.
- 1.21 These differing approaches were rejected as the benefit of a joint contract is that it enables cross-boundary working which results in a more efficient use of resources and capital assets and reduced contract overheads through enabling a more streamlined contract management structure on the part of the contractor. This was made possible through having a consistent approach to the service specification as a result of the alignment of the four Partner Authorities' policies. This would have also been possible through a lead authority structure; however the authorities buying services through the lead authority would not have had the benefit of a direct relationship with the contractor which was considered to be important given the value and importance of the services being delivered to each Authority's residents. Framework agreements do not sufficiently permit the length of contract that the Partner Authorities wished to award, particularly in light of the potential capital commitments required to deliver the services.
- 1.22 In entering into the Joint Contract, all four Authorities will be bound to remain a party to the Joint Contract for the duration of the Initial Term. Whilst the Joint Contract itself does give the four Partner Authorities the right to terminate for convenience or in the event of breach of contract by the Contractor, an individual Authority will not have the right to unilaterally exit the Joint Contract until expiry of the Initial Term and the Price Schedule has been calculated and bid back on this basis. As part of the decision making process as to whether or not to agree to an extension of the Joint Contract post June 2027, each individual Authority could elect to exit the Joint Contract at that point, and to make its own arrangements for a replacement service provider at that point. Exiting the Joint Contract would necessitate the Authority being released from the Second IAA. Once an Authority has elected to continue with the Joint Contract during any extension period, again the Authority would not have an opportunity to exit until the expiry of that extension period.

### **The Service Specification**

- 1.23 The draft Service Specification provided to the bidders as part of the procurement process was approved by each individual authority by their Executive/ Cabinet prior to issuing the OJEU Notice, Pre-Qualification Questionnaire and other procurement documents. In Surrey Heath the specification was approved on 17<sup>th</sup> March 2015.
- 1.24 The draft Service Specification was based on the service requirements described in Schedule 1 of the First IAA, signed by all authorities in 2013/2014. Over the years, the core waste and recycling collection services in all the authorities have become increasingly aligned around an alternate weekly collection regime, with co-mingled recycling and weekly food waste collections. This method has proven successful in delivering value for money, convenience for residents and high recycling rates. Therefore, the draft specification for the Joint Contract did not significantly differ (albeit that

Clinical Waste and Bulky Waste services have been added in to the scope of the Joint Contract) from what is currently operational in each of the four Partner Authorities.

- 1.25 In order to maximise the opportunities for economies of scale, the services under the new contract will be further aligned, wherever possible, to a uniform service specification and service offer to the resident. This will make cross-boundary working more efficient and cost effective. It will also facilitate communication of the services across the area making it easier for residents to understand and use the services on offer.
- 1.26 The Service Specification also reflects the aims and objectives contained in Surrey's Revised Joint Municipal Waste Management Strategy (2015-2020). The Service Specification has been developed taking into account customer consultation including a customer focus group held on 23 September 2014. This informed the Project Team during the Competitive Dialogue stages of procurement, and informed the final Service Specification. It also provides a benchmark of customer satisfaction against which the Joint Contract, if approved, can be measured.

### **Price Schedule and Financial Model**

- 1.27 Given the need to enable other WCAs to benefit from the joint procurement and to participate in the Joint Contract as well as the need to allow for a degree of flexibility as to which of the full range of possible Services are to be purchased by each of the Partner Authorities (current and future), the Joint Contract has been constructed on the basis of a set of unit prices on a granular service by service basis (Price Schedule). The unit prices in the Price Schedule are uniform across all four authorities. The populated Price Schedule will be incorporated into the Contract. The total cost of the Services to be delivered under the Joint Contract each year will be calculated by multiplying the relevant unit prices by the predicted volume of activity for the applicable activity (households or street distances for example) and this will form the basis of the Core Charges payable to the contractor each year. The Price Schedule also provides a menu of prices for ad-hoc or instructed services. In addition to the Core Charges, the Contractor will receive an Annual Management Payment which will cover those costs which are not volume sensitive. This has been profiled so as not to disadvantage the first authorities mobilising the Joint Contract, as otherwise those authorities would bear the bulk of the upfront costs incurred by the contractor, such as IT, HR, Property and Project Management costs.

### **Contract Price Indexation**

- 1.28 As the Pricing Schedule is based on units per individual activity undertaken, if an activity increases, say due to the building of new houses, then the overall costs will increase. This is in line with current arrangements under existing contracts. In addition, the Joint Contract provides for unit prices to rise in line with an inflationary index comprising of a basket of indicators appropriate to the nature of the operations in the contract, namely wages, fuel and other operational costs.

### **Partnership Share**

- 1.29 The Second IAA is designed to allocate a proportion of the Core Charges, total rental value of all Partner Authorities' depots used by the contractor and

the Annual Contract Management Payment (net of any performance deductions) to each of the Partner Authorities in accordance with their Partnership Share of the contract. The Partnership Share is based on the value of the core contract for each authority as a percentage of total value of the contract for all four Councils. The Partnership Share is approximately as follows:

**Table 2**

Partner Authority	Partnership Share
Elmbridge Borough Council	32%
Mole Valley District Council	18%
Surrey Heath Borough Council	26%
Woking Borough Council	24%

- 1.30 Given the scale, potential value and duration of the Joint Contract, the Joint Contract will operate on an open book basis, underpinned by a Financial Model which will enable the Partner Authorities to have financial oversight and transparency in relation to the Joint Contract Charges and to take informed decisions as to the options for either efficiency savings or service improvements. The Financial Model incorporated into the Joint Contract has been certified as to its validity to the Authorities by independent auditors on behalf of the contractor and then validated against the Price Schedule and the contractor's approach to resourcing (people and assets) the Joint Contract to ensure robustness and traceability.

#### **Allocating of Costs**

- 1.31 Beyond the unit costs listed in the Price Schedule, there are a number of other costs that will be divided between the four authorities as follows:

**Table 3**

Category	Treatment
Annual Contract Management Payment	Divided: On the basis of Partnership Share
Garden Waste and Contact Centre Management Fee	Equally between the two authorities using and buying these services
Vehicles including finance charge	On the basis of proportion of usage by each authority in terms of complete months
Depot costs	On the basis of Partnership Share
Contract Management Office (CMO) costs	Equally between the four authorities

#### **The Partnership Guarantee**

- 1.32 The original IAA guaranteed that every Council who signed the IAA and entered into the Joint Contract would benefit from a saving of either 5% of the current contract costs or £100,000, whichever was the greater (Partnership Guarantee). This was to encourage each authority to sign up and commit to the procurement project so as to maximise the potential economies of scale and increase the size of the collective savings of all authorities joining the Joint Contract. The IAA provided that where a guarantee is payable it will be shared in proportion to the savings made by the other individual authorities.

- 1.33 The guarantee is payable for the first 10 years of the contract only and is indexed in line with the contract indexation.

### **Contract Governance**

- 1.34 In order to enable the Contractor to cost the Joint Contract on the basis of a streamlined contract management structure on its part, it was necessary for the Partner Authorities to commit to having one Authorised Officer or representative to act on their combined behalf to deal with the day to day operation and management of the Joint Contract. This is supplemented by the Contract Partnering Board which will comprise at least two members of senior management from the Contractor and at least two members across the Partner Authorities and at least one representative of Surrey County Council as the waste disposal authority (WDA) to deal with the more strategic management matters arising under the Joint Contract. This will be underpinned by the data provided by the Contractor's ICT solution. The Second IAA establishes the necessary authorisations and delegations of the Authorised Officer and the Contract Partnering Board on behalf of the Partner Authorities.

### **The Procurement Process**

- 1.35 There were four main stages of the procurement process outlined below

**Stage one: Pre-Qualification:** In May 2015, a contract notice was issued in the Official Journal of the European Union (OJEU) inviting expressions of interest in the contract opportunities from waste collection operators across the EU. These operators were issued a Pre-Qualification Questionnaire (PQQ). The purpose of the PQQ was to ascertain their ability to deliver contracts of this nature and shortlist those suppliers that would be invited to tender. The financial standing and the technical and professional ability and capacity of the bidders to provide the required services were evaluated based on their responses to the PQQ.

**Stage two: Invitation to Participate in Dialogue (ITPD):** Following evaluation of the PQQ returns, in July 2015, five companies were invited to participate in dialogue. One bidder chose to withdraw at this stage leaving four bidders who entered into structured dialogue sessions with the project team.

**Stage three: Invitation to Submit Detailed Solutions (ISDS):** After dialogue, the four bidders were invited to submit detailed solutions in response to draft specification and method statement templates provided by the authorities. Detailed solutions, including unit costs, were submitted by all four bidders and were evaluated against a strict framework of financial and quality criteria. Following evaluation by an evaluation team made up of representatives from each authority as well as specialists in legal, finance, ICT and Health and Safety, the three bidders with the highest combined scores were taken through to the next stage.

**Stage four: Invitation to Submit Final Tenders (ISFT):** In May 2016, invitations to submit final tenders were issued to the remaining three bidders together with a suite of revised documents including: specifications; method statement templates; evaluation framework; and pricing schedule. These revised documents had been informed by the initial dialogue stages to ensure they reflected best practice in the industry and the requirements of the authorities. Further dialogue sessions with each of the bidders sought to clarify queries that



arose during the ISDS stage and further inform the development of the bidders' method statements. The final tenders were again evaluated against criteria relating to financial value and quality of service (based on the 50:50 evaluation model) by representatives from each authority supported by specialists. The results of the evaluation were presented to the JWCSC on 21st August 2016.

## **2. Key Features of the Contract**

- 2.1 The following sections outline the key features of the contract, which were developed during the dialogue stages of the procurement process.

### **Performance Management**

- 2.2 Given the high profile nature of these services and that they are valued highly by our residents, the reliable performance of the contractor is of great importance to residents and the authorities. Therefore, the Joint Contract includes a comprehensive performance management framework to make it financially advantageous to the contractor to maintain high levels of performance and allows the authorities to instruct the contractor to improve and penalise them when they do not perform to the required standard.
- 2.3 The contractor will be required to perform against a set of key performance indicators (KPIs) as set out in the contract. The contractor will be required to monitor their own performance and provide regular Performance Reports to the Authorised Officer. The Authorised Officer can also carry out spot checks on the performance levels either in addition to the contractor's checks or to satisfy themselves that the contractor's checks are accurate.
- 2.4 The full list of KPIs, with associated targets and financial penalties, is included in Schedule 3 of the Joint Contract. The KPIs relate to the following failures:
- Missed Collection
- Missed Assisted Collection
  - Missed Collection not Rectified
  - Repeat Missed Collection
  - Repeat Missed Assisted Collection
  - Reported Spillage
  - Reported Waste Separation Failure
  - Failure to Carry out Collection as specified (Assisted Collection)
  - Failure to Carry out Collection as specified (Non-Assisted Collection)
  - Missed Bulky Collection
  - Street Cleaning Performance Failure Not Rectified
  - Fly tipping, Flyposting or Graffiti Non Removal
  - Customer Contact Services Response Times Not Met
  - Garden Waste Cancellation (Missed Collections)
- 2.5 Where a KPI is not met, deductions will be applied to the monthly invoice. In extreme circumstances, the Joint Contract can be terminated if the level of missed bins or the standard of street cleaning reaches an intolerable level, as defined in the contract.
- 2.6 The street cleaning element of the Joint Contract is based on a performance regime. This is a departure from the street cleaning contract in Surrey Heath which is based on a frequency regime. The benefit to a performance regime is that the contractor is required to maintain an area to the standard specified in the contract regardless of how often the area needs cleaned. If the area falls

below that standard, they are required to return the area to the required standard within a specified time period. The performance regime focuses the contractor on the outcomes sought by the authority rather than by the frequency outlined in a contract. We have trialled a performance regime in Surrey Heath over the past 18-months with no deterioration in standards.

- 2.7 Under this regime, the burden of managing the service to meet the desired outcomes is substantially shifted from the client to the contractor, who in turn is given substantially more flexibility as to how they achieve this end result.
- 2.8 To ensure the contractor is delivering levels of cleanliness required by the Joint Contract, the Partner Authorities will carry out quarterly Litter and Detritus Surveys (LADs). These surveys will assess a small proportion of roads against a set standard of cleanliness. Financial penalties will be incurred by the contractor where the percentage of surveyed roads falling below the standard reaches an unacceptable level, as defined by the contract.
- 2.9 During the roll-out period of the Joint Contract in each authority, the KPIs will be adjusted to enable the contractor to overcome any unexpected issues relating to mobilisation and settling into the Joint Contract without being unduly financially penalised. Under this arrangement the KPI targets will be relaxed for the first three months of the Joint Contract in each authority but the right to issue rectification notices and issue penalties will remain with the Partner Authorities to ensure the contract performs to a specified level.

### **Communicating and engaging with residents**

- 2.10 The success of the Joint Contract relies not only on the collection of waste and recycling but also on effective communication with residents. The contractor is required to work with the Partner Authorities to ensure reliable information is provided to residents to keep them informed of the services they can expect and when they can expect them. Part of this requirement is for the contractor to provide and maintain an information technology (IT) system that is capable of providing the necessary data and information to manage performance, measure trends in waste and recycling rates and keep residents informed.
- 2.11 Residents will be able to access information and report problems with their collections through an on-line portal, including a 'report-it' function and by telephone. The contractor is also required to work with the authorities to inform residents of any expected disruptions or changes to services.

### **Service Users' Contact Management**

- 2.12 In the case of Surrey Heath and Woking Borough Councils, the contractor is required to provide a contact management service for service users. This will involve responding to customers who contact the contractor through the on-line 'report-it' functions and by telephone. The services will also include the administration of the garden waste collection service. The service specification and performance framework ensures this is carried out to the standards expected by the relevant Partner Authorities.
- 2.13 In Elmbridge Borough Council and Mole Valley District Council, the contractor will not interact directly with service users. Any reports made on-line or by telephone will be handled directly by the authorities and the administration of the garden waste collection service will also remain with the authorities.

- 2.14 These individual choices in contact management approach reflect the preference of each Partner Authority and the procurement approach was set up to allow this flexibility.

### **Innovation and on-going efficiencies**

- 2.15 Given the waste industry is constantly evolving in order to reduce costs and improve environmental standards, it is important that the Joint Contract is flexible enough to keep pace with these changes. Therefore, although the current services reflect best practice and are orientated around reducing waste, increasing recycling and delivering value for money, the Joint Contract requires the contractor to continually seek for ways to reduce costs and innovate.
- 2.16 The competitive dialogue approach chosen for this procurement exercise lends itself to designing services which reflect best practice and deliver value for money. All bidders were requested to submit initiatives which would deliver significant impact on performance, customer experience or cost reductions above and beyond the specified service. It is at the Partner Authorities' discretion whether they choose to implement these initiatives during the lifetime of the Joint Contract but they set a firm foundation for future innovation. The bidders were also required to explain how they would keep services under review throughout the term of the Joint Contract for the purpose of identifying potential savings and efficiencies. A change mechanism forms part of the Joint Contract to approve and formalise any changes during the term of the contract. In addition, there is provision for an independent benchmarking of part or whole of the services provided by the Joint Contract to assess whether it represents value for money.
- 2.17 One specific innovation desired by the Partner Authorities is a collection service for nappies and absorbent hygiene products. Therefore, all bidders were requested to submit a method statement and price for carrying out this service. Under the Joint Contract, the Partner Authorities have the right to require this service to be delivered in accordance with the bidder's pre-priced solution on no less than three months' notice.
- 2.18 The Partner Authorities also explored the possibility of providing a commercial waste collection service through the Joint Contract. The expectation is that this service will be popular with local businesses and has the potential to bring further financial benefits to the Partner Authorities during the life of the contract. During Stage 2 and 3 of the procurement process, the bidders all proposed different ways of structuring the financial mechanisms of this service and different ways to share the income and client book in the future. Therefore, it became clear that it was not going to be possible to evaluate in a consistent way the financial impact of any commercial waste collection service. Rather than miss the opportunity to develop such a service in a competitive environment, the bidders were requested as part of their final bid to outline how they would provide this service. This enabled the evaluation team to evaluate and score the quality elements of each proposal. This approach will now enable the Partner Authorities to work with the preferred bidder to optimise and refine their offer for this service with confidence that the quality elements have been evaluated and approved. Any commercial model will be developed by the IAA CPB and the JWCSC before being recommended to each individual authority (Tier 1) to agree.

- 2.19 In addition, the Joint Contract requires the contractor to allocate one third of all profits beyond a defined threshold to a ring-fenced Innovation Fund. The Fund can be used by the contractor, only with the Partner Authorities' permission, either to invest to reduce the overall and on-going costs of the Joint Contract for the Partner Authorities' benefit or to improve the service in the interests of residents.

### **Existing Planning Constraints and Environmental Permitting**

- 2.20 The bidders were required to submit two solutions for operating the waste collection service based on two options outlined in the tender documents. By obtaining two pre-priced solutions in a competitive environment, this effectively establishes a cap on the prices set out in the Pricing Schedule.
- 2.21 Option A assumed the services were carried out in accordance with the current planning restrictions and current environmental permitting. Planning conditions particularly relate to Elmbridge where conditions require the contractor to use an access road to the depot which goes under a low bridge. The environmental permits at the Doman Road depot in Surrey Heath particularly restrict the contractor from tipping food waste onto the ground within a bay and require the contractor to tip the food waste into a container. The restrictions at both of these depots require the contractor to consider the type of vehicle they use, which may be different if these restrictions did not apply.
- 2.22 Option B is based on a hypothetical scenario where the planning constraints have been removed and enable access by way of a different road without a low bridge to the Elmbridge depot, and allow food waste to be tipped on the ground at Surrey Heath.
- 2.23 The expectation of the Project Team was that Option B would be less expensive for the contractors to deliver than Option A. The evaluated bids have confirmed that position with all bidders offering a reduced cost for Option B compared to Option A. Therefore, Elmbridge and Surrey Heath have been asked to consider amending the planning conditions and permitting issues respectively.

### **3. Final Tender Evaluation**

- 3.1 Tenders were evaluated in accordance with the process set out in the Invitation to Tender and the published evaluation methodology, and using the price: quality criteria agreed by the JWCS in December 2014 which was 50% Price and 50% Quality. The results of this evaluation in terms of points awarded are shown in the table below.

**Table 4 – Tender Evaluation Results**

	<b>Bidder A</b>	<b>Bidder B</b>	<b>Bidder C</b>	<b>Total Points available</b>
Normalised Quality	500	433	437	500
Final Evaluation Price	417	450	438	450
Legal and Risk	10	15	10	25
Robustness of the Bidder Financial Model	25	25	5	25
<b>Total</b>	<b>952</b>	<b>923</b>	<b>889</b>	<b>1000</b>

Ranking	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	-
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- 3.2 On the basis of the tender evaluation, Bidder A submitted the Most Economically Advantageous Tender.

### **Property Implications**

- 3.3 In order to deliver the Services, the successful contractor will require depots from which to operate. Each of the Partner Authorities has offered its existing depot for the benefit of the contractor. The depots will be leased by the individual Authority to the contractor at a nominal rent of £1, as otherwise the Contractor, if required to pay the market rent, re-charges this to the contract costs plus a mark-up. To ensure the individual landlord Authority obtains best consideration for its depot, the market rent for that depot will be recharged by the individual landlord Authority to the Joint Contract service budget, with the market rent being independently valued on the basis of the terms of the lease offered to the contractor.
- 3.4 The bidders were required to indicate in their bids which of the four depots provided by the Partner Authority they would utilise in order to deliver their operational solution. Partner Authorities will contribute to the collective rental value of the depots based on the Partnership Share of each Partner Authority.

### **Capital Finance Implications**

- 3.5 During dialogue, it became clear that if the Authorities were to purchase the vehicles required to deliver the Services; this would enable a further saving on the contract costs charged by the Contractor. Accordingly, the Authorities agreed that the Contractor would procure and buy the vehicles, taking full responsibility for their specification and fitness for purpose, and then the Authorities would buy the vehicles from the Contractor, funding the capital expenditure either from reserves or from Prudential Borrowing. The authority or authorities who made available the capital for the benefit of all the Partner Authorities would receive a mark-up of 2.5% over their borrowing rate and the funding costs would be apportioned in accordance with the Partnership Share.
- 3.6 Accordingly, bidders were required to submit a schedule of the vehicles that they proposed to use and their estimated useful life that would be purchased by them and in turn purchased by the Authorities, and this forms part of the evaluation of the notional contract cost.
- 3.7 In addition, bidders were asked to set out which vehicles would be used in which authority area and this has formed the basis of the investment required from each Partner Authority. Vehicles will be owned by individual authorities but leased back to the contractor. The contractor has guaranteed the life of each vehicle and would be required to cover the remaining term of the lease should a vehicle require replacement before its book life is complete. Should the contract be terminated, any residual value would pass back to the individual authority together with any unamortised debt.

### **Milestones**

- 3.8 If the Executive agrees the recommendations in the report, the table below summarises some of the key dates leading up to the commencement of the contract:

**Table 5 - Milestones**

[after date after latest call-In period expired]]	Issue Alcatel letters debriefing suppliers and enter OJEU ten day
[Expiry of Standstill Period]	Contract award (assuming no challenge received)
	Optimise and clarify with the Preferred Bidder
Target December 2016	Formal contract executed by all four Partner Authorities and the Contractor
December 2016	Commence PR jointly with the Contractor around new contract award
December 2016	Contract mobilisation begins in Elmbridge Borough Council
3 June 2017	Contract operational in Elmbridge Borough Council
March 2017	Contract mobilisation begins in Woking Borough Council
11 September 2017	Contract operational in Woking Borough Council
August 2017	Contract mobilisation begins in Surrey Heath Borough Council
5 February 2018	Contract operational in Surrey Heath Borough Council
February 2018	Contract mobilisation begins in Mole Valley District Council
6 August 2018	Contract operational in Mole Valley District Council (waste and recycling)
1 April 2019	Contract operational in Mole Valley District Council (street cleaning)

### **Mobilisation**

- 3.9 To ensure a smooth transition from existing contractors to the new contractor, the mobilisation period of the contract is crucial. An element of the quality evaluation considered each bidder's proposals on how they would mobilise the contract. Mobilisation typically takes six months and will include: purchase and receipt of the necessary vehicles and equipment; transfer of staff from the existing contractor to the new contractor; recruitment of any additional staff; route design; communication to residents; training of crews; transfer of data, designing and implementing customer service processes among other things. A successful mobilisation will require the contractor and the Partner Authorities to work effectively together and will require a great deal of time and commitment from both parties. The existing contractor will also be required to co-operate in the provision of data and information relating to existing services. A significant piece of work will be the design and implementation of the necessary IT processes to enable customers to log complaints by telephone and on-line and for those records to be retained and shared with the necessary parties in order to ensure quick resolutions to problems and accurate reporting of performance.
- 3.10 In reviewing the mobilisation of the Contract, each Partner Authority will need to take into account any costs in transitioning its existing service and client arrangements into the new CMO. In particular, there is likely to be an associated cost in ensuring that each Partner Authorities' ICT systems are compatible with the Contractor's and CMO's requirements as well as potentially other Human Resource issues.

## **4. The Second Inter Authority Agreement (Second IAA)**

- 4.1 In order to ensure the contract is administered appropriately a revised IAA (Second IAA) is required. The Second IAA sets out how liabilities, rights, duties, undertakings and responsibilities arising from or out of the Joint

Contract will be shared and managed between the authorities and also provides the terms governing the Partner Authorities' joint working arrangements throughout the term (including any extension) of the Joint Contract.

- 4.2 The Second IAA also outlines how decisions in relation to the Joint Contract and the services delivered by the contractor will be made by elected Members and officers. It establishes new Terms of Reference for the JWCS to oversee the implementation and evolution of the contract over its lifetime. The IAA also establishes a Contract Partnering Board (CPB) and outlines the role of the Authorising Officer and the Contract Management Office (CMO). This Contract Partnering Board is different to the Contract Partnering Board established in the Joint Contract itself. It does not have the same membership or functions as the Contract Partnering Board under the Joint Contract. The IAA CPB is made up of a representative of each of the Partner Authorities who is party to the Joint Contract, whereas the Joint Contract CPB membership is as outlined above under Contract Governance and includes representatives from the senior management of the contractor.
- 4.3 The IAA aims to set a culture of mutual co-operation and honest partnership working among the four waste collection authorities. This co-operative culture will be the foundation for delivering higher performing, better value waste services for the Surrey tax payer and protect the individual interests of each individual authority.
- 4.4 The Second IAA reflects the Principles of Apportionment of the Charges as outlined in the First IAA supplemented by the concept of a Partnership Share which deals with those costs which cannot be apportioned in accordance with the Principles of Apportionment, such as the Annual Management Payment.

### **Decision Making and JWCC Management**

- 4.5 The governance framework for the Joint Contract are outlined in Paragraph 22.1 of the Revised IAA and presented in diagram 1 below. The framework consists of three tiers of decision-making with certain decisions reserved for specific tiers. This aims to balance the need for practical decision-making enabling the contract to operate effectively and efficiently with sufficient governance to ensure elected Members are involved in making strategic decisions about the future direction of the contract and waste management in their authorities.

#### **Tier 1: Individual Authorities**

- 4.6 Tier 1 decisions are reserved for the Cabinets, Executives, Councils or Lead Officers of individual Partner Authorities as determined by their individual constitutions. All matters that are not delegated to the JWCS or CPB or to officers under the Schemes of Delegation are reserved for individual Partner Authorities. This would include, but not be limited to, setting the Annual Budget for the Joint Contract and associated functions and setting fees and charges related to waste management.

#### **Tier 2: The Joint Waste Collection Services Committee (JWCS)**

- 4.7 The Terms of Reference of the JWCS as approved by individual authorities in 2013/14 related to the procurement phases of the Joint Contract. The role of the JWCS under those Terms of Reference comes to an end when the

Joint Contract is awarded. Therefore, revised Terms of Reference are required for the JWCSC to manage the implementation and evolution of the contract over its lifetime. The membership of the JWCSC will remain the same with one elected Member from each of the four waste collection authorities making up the JWCSC.

- 4.8 The Second IAA provides for the JWCSC to oversee the management of the contract including scrutinising the performance of the contractor and the expenditure of the Annual Budget. The JWCSC will fulfil this role by receiving reports from and instructing the IAA CPB.

### **Tier 3: The IAA Contract Partnering Board (CPB)**

- 4.9 The IAA CPB will consist of lead officers from the four waste collection authorities, typically officers at Head of Service or Executive Head/Director-level. The IAA CPB will be responsible for holding the contractor to account, making operational variations depending on need and demand within the agreed Annual Budget and recommending any further variations to the JWCSC. The IAA CPB will receive updates and reports from the Authorising Officer relating to the performance of the contractor and continual improvement of the contract as well as the performance and development of the CMO.

### **Authorised Officer and the Contract Management Office (CMO)**

- 4.10 In order to achieve economies of scale and ensure the contractor provides equitable services to each authority, it is necessary to appoint a single Authorised Officer to oversee the delivery of the contract. This individual will be the lead officer within the CMO. The Authorised Officer will be responsible for managing the relationship with the contractor, including performance management, and representing the views and requirements of the Partner Authorities. This ensures there is a single line of communication between the contractor to the Authorised Officer, rather than having four lines of communication from contractor to each individual authority, which could lead to confusion, additional overhead costs for both the contractor and the authorities and operational difficulties leading to potential service failures.
- 4.11 The Authorised Officer will be supported by a team who will manage and administer the contract and related functions including data management, communications and projects to improve recycling performance. In effect, where a Partner Authority is purchasing a service or discharging a function through the Joint Contract, the CMO will provide the interface between the contractor and that Partner Authority for that service. Activities such as exercising of a Partner Authority's enforcement powers under the Environmental Protection Act 1990 are however retained by the Partner Authority. Given that the Authorities have joint and several liability under the Joint Contract, and there will be the need to interrogate and verify the financial data and charges from the Contractor to operate the financial provisions of the Second IAA, the CMO will need to have access to finance resource.
- 4.12 The CMO comprising of, at the minimum, an Authorised Officer will be contractually required under the terms of the Joint Contract, and therefore will need to be a named individual in place from the date on which the Joint Contract is concluded with the Contractor, even if the CMO is not otherwise established at the date of contract signature.



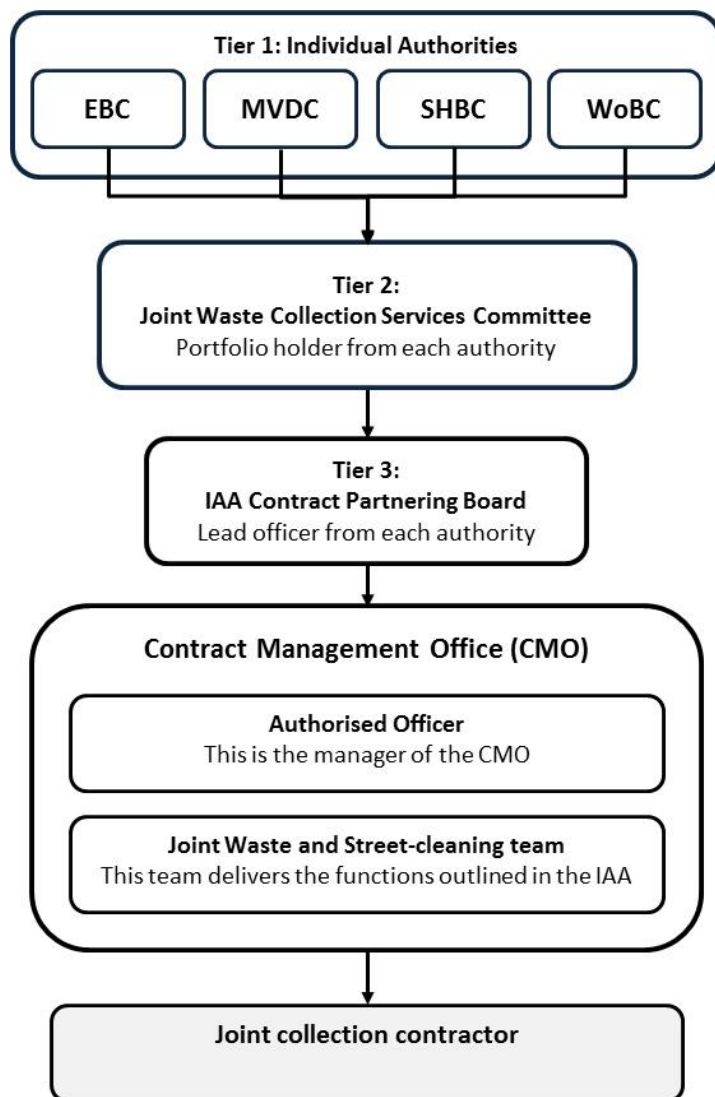


Diagram 1: IAA Governance and Management Framework

### **Service Level Agreements (SLA)**

- 4.13 To manage the relationship between the CMO and individual authorities, SLAs will be agreed for each of the Partner Authorities. The SLA will outline what will be provided by the CMO to each authority and what the CMO can expect in return. The content of the SLAs will be agreed by the IAA CPB.

### **Budget setting**

- 4.14 The required Annual Budget for the forthcoming year will be calculated for each individual Partner Authority based on: the Price Schedule for the forthcoming year; the required services from the contractor for each Partner Authority; the Annual Management Payment; and, the costs of running the CMO, funding the vehicles and the cost of the depot rent foregone where a depot has been provided at a nominal rent by a Partner Authority (the latter four being allocated by Partnership Share.) These projections will be presented to the IAA CPB and JWCS to agree before recommending them to individual authorities' Councils to approve through their annual budget setting process. If approved, the CMO will then manage the contract and the CMO within the agreed annual budget. If not approved, the Partner

Authorities will have to agree an alternative budget with the CMO which may require an adjustment in services purchased from the contractor or received from the CMO.

### **Administering Authority**

- 4.15 In order to manage and administer the contract, an administering authority is required unless the CMO function is provided by a registered company wholly owned and operated by all four authorities (a Teckal company). The IAA appoints Surrey Heath Borough Council as the Administering Authority. As Administering Authority, we will provide the infrastructure, such as payroll, insurance, ICT and other corporate support services for the Authorised Officer together with any other officers staffing the CMO, which will report to the IAA CPB and the JWCS. The Second IAA provides for the possibility of the authorities incorporating the CMO as a limited company thus removing the need for an Administering Authority, but it does not compel it.

### **A Limited Company**

- 4.16 Establishing the CMO as a limited company is not necessary for the purposes of undertaking the functions allocated to the CMO. There is no requirement in law to establish a limited company to host the CMO and the CMO could be hosted by an administering authority for the duration of the Joint Contract, as the functions it is performing are not commercial in nature.
- 4.17 The Project Team felt that forming a separate legal entity, wholly owned by the four Partner Authorities, had a number of advantages:
- a distinct entity which supported the partnership nature and working of the Joint Contract;
  - it could enable the company to recruit on private as opposed to local authority terms and conditions;
  - it supports a future direction of travel enabling the Authorities to explore commercial opportunities in partnership with the appointed contractor, such as providing environmental services to the private sector leveraging the contractor's resources and expertise, and the authorities' presence and assets, which is accommodated through allowing the limited company to set up a trading subsidiary for this purpose, and for profits to be extracted from the subsidiary into the parent company which could then be used to cross-subsidise the core Joint Contract costs;
  - it enables jointly owned assets such as the Vehicles and jointly incurred liabilities such as the Funding for those Vehicles to be assumed by a separate legal entity, which achieves a clean separation, supported by contractually binding recharge arrangements to each of the Partner Authorities;
  - it could simplify the branding of jointly owned assets and communications.
- 4.18 However, whilst the Project Team wishes to keep the option of incorporating the CMO as a limited company open, the intention is to retain the Administering Authority model for the duration of the mobilisation period.
- 4.19 It should be noted that setting up of a separate legal entity would incur costs on a one-off basis, plus there would be on-going costs to comply with the statutory reporting and accounting obligations under the Companies Act 2006.

It would also require registration with HMRC for VAT and would be liable for corporation tax, should the legal entity make any profits. If any commercial activity is to be undertaken by way of the Joint Contract however, this must be through a company.

## **5. Resource Implications**

- 5.1 The resource implications are covered in Part 2 of the report due to their commercially sensitive nature.

## **6. Options**

### **Option 1: Award the contract to Bidder A – Recommended**

- 6.1 The Council proceeds with the procurement process, appoint Bidder A, having submitted the Most Economically Advantageous Tender, to provide the Joint Contract. Once all four authorities have decided to award the contract and any call-in period has expired, the Project Team will issue the Alcatel letters (notifying the bidders of the outcome of the procurement) and this will trigger the start of the mandatory ten day standstill period.
- 6.2 Subject to there being no challenge, the four authorities will conclude the Joint Contract with Bidder A, for the Initial Term, with options to extend by one or more periods of up to a total maximum term of 24 years, with the agreement of all parties and the contractor.
- 6.3 At the same time, the four authorities will enter into the Second IAA which is required to give effect to the joint nature of the Joint Contract.
- 6.4 On entry into the Joint Contract and the Second IAA, the four authorities will be in a position to begin mobilisation of the Joint Contract according to the timetable set out in Table 5 and in accordance with the phased mobilisation process, will enter into the contract exit process in relation to their current individual contracts.

### **Option 2: Abandon the process and re-run the procurement process**

- 6.5 The Council could rerun the procurement process in conjunction with the other three authorities. There is no reason to believe that re-running the process will produce a more favourable outcome. Given the costs incurred and effort involved in a supplier participating in a public procurement, it is likely to prejudice the Council's ability to successfully re-run both this procurement and others in the future. It is possible that suppliers would choose not to participate in any future procurement given the risk that it may not result in an award once more. There would also be a risk that tenderers could pursue the Council involved in the first procurement exercise for wasted costs.
- 6.6 The timescales involved in re-running the procurement exercise would mean that the contract could not be awarded before the current contract in Elmbridge Borough Council expires. It is likely therefore that they would not participate in procuring a revised joint contract and would seek alternative ways to procure a contract alone, which would likely be quicker. This would leave the three remaining authorities to consider whether they would re-run the procurement exercise as a smaller joint contract covering just three authorities. It would be expected that re-procuring with fewer authorities would

result in a contract price that was not so economically advantageous to Surrey Heath Borough Council.

- 6.7 In the event that any one of the other Partner Authorities decided not to award the Joint Contract, the remaining Partner Authorities would need to go back a stage in the procurement process and re-run Invitation to Submit a Final Tender (ISFT). In principle, there is still sufficient time before the first Service Commencement Date (being Elmbridge in June 2017) for a rerun of the ISFT stage to be undertaken without prejudicing a successful mobilisation.
- 6.8 Surrey Heath could decide to procure a contract unilaterally without the involvement of any other authority. There would be time before the end of the contract in Surrey Heath to complete this exercise, but it is highly likely that the contract price would be significantly less favourable.

### **Adopting the IAA**

- 6.9 Option 1: Adopt the Second IAA - Recommended  
Entry into the Second IAA is required in order to ensure the contract can be awarded to the bidder as it gives the Authorised Officer under the Joint Contract the authority to act on behalf of all four Partner Authorities as well as appropriately re-allocating the liabilities and obligations under the Joint Contract to the individual responsible Authority. In addition it secures the future delivery of waste and recycling collection and street cleaning services in Surrey Heath, with the associated benefits in quality and price. The IAA establishes clear governance arrangements between the authorities to ensure each authority's interests are respected and considered within the partnership arrangement.
- 6.10 Option 2: Request the partner authority to consider some amendments to the Second IAA

Any changes to the Second IAA would have to be agreed by each of the partner authorities. Renegotiating the Second IAA at this stage, which is after the JWCSC has recommended it to the authorities, is highly likely to result in a delay in awarding the contract. If any of the proposed amendments are not consistent with the Joint Contract, this would then necessitate further amendment to the Joint Contract, which may not be permissible under the procurement legislation or which would have pricing implications for the Joint Contract, which would need to be agreed with the Contractor (as well as permissible under the procurement legislation) This is likely to be a particularly concern for those authorities who are mobilising the contract in 2017 as mobilisation cannot begin in the absence of an appropriately jointly authorised Authorised Officer. If negotiations are protracted, some authorities may feel it necessary to withdraw from the contract thus losing the benefits to residents of working together.

- 6.11 Option 3: Decline to adopt the Second IAA  
Given the parties to the Joint Contract are jointly and severally liable to the Service Provider it is necessary to have an IAA in place to govern the relationship between the partner authorities. Without an agreed IAA, it is not possible to award the Joint Contract.

## **7. Proposals**

- 7.1 That Bidder A who submitted the Most Economically Advantageous Tender be awarded the Joint Waste Collection Contract (Joint Contract).
- 7.2 The Council enters into the Joint Contract with each of the partner authorities and Bidder A.
- 7.3 The Council enters into the successor Inter Authority Agreement (Second IAA) with each of the other partner authorities, Elmbridge Borough Council, Mole Valley District and Woking Borough Council and Surrey County Council (in its capacity as the waste disposal authority (WDA)), which will regulate the relationship between the participating authorities (as necessitated by entry into the Joint Contract), establishes the shared contract management office (CMO) and the required governance arrangements, including the revised terms of reference for the Joint Waste Collection Services Committee (JWCSC Committee).

## **8. Supporting Information**

- 8.1 None

## **9. Corporate Objectives And Key Priorities**

- 9.1 The Council's five year strategy is set out under 4 themes:
  - Place – continued focus on our vision to make Surrey Heath an even better place to live. Clean, green and safe. Where people enjoy and contribute to a high quality of life and a sustainable future.
  - Prosperity – to sustain and promote our local economy so people can work and do business across Surrey Heath, promoting an open for business approach that attracts investment and complements our place.
  - Performance – to deliver effective and efficient services better and faster
  - People – to build and encourage communities where people can live happily and healthily in an environment that the Community is proud to be part of.
- 9.2 One of our priorities under the Place theme is to Manage our waste efficiently cost effectively and sustainably. The Joint Waste Contract will help achieve this priority.

## **10. Legal Issues**

- 10.1 Many of the key features of the Joint Contract have been identified above. It was drafted to be flexible to cater for up to eleven authorities receiving services in their areas, and to take account of the need to change the way in which the services are delivered over the potential 24 year maximum term as a result of legislative and technological change as well as the changing needs of the Authorities and their residents. In addition to the change control mechanism, the Joint Contract provides for periodic benchmarking and requires the Service Provider to proactively and regularly identify opportunities to secure continuous improvement.
- 10.2 The successful bidder will provide the Authorities with a parent company guarantee to guarantee its performance of the contract. In addition, the successful bidder will be required to have suitable levels of insurance to protect it in the event of claims, not least for claims for damage to property by collection vehicles. Caps on the successful bidder's liability were agreed to

avoid risk pricing, and the principal cap in respect of negligence or breach of contract by the bidder which are uninsured losses is set at £20,000,000 in each Contract Year.

- 10.3 In addition to the usual termination rights, the right to terminate at any time for the Authorities' convenience has been included in the Joint Contract. Exercising this right will require the Authorities to pay the Service Provider breakage costs, however these have to a large extent been pre-determined as at the contract commencement date.
- 10.4 The payment mechanism under the Joint Contract was dialogued at some length with the bidders, and an indexation basket was agreed so as to mirror as closely as possible the key components and their proportions of the bidder's cost base. Use of RPI or CPI was explored but discounted ultimately – whilst it would have given more predictability over the costs of the Joint Contract, this predictability would have resulted in risk-pricing by the bidders.
- 10.5 As the Joint Contract is based on a list of prices for various services, rather than a contract sum, a cap on the service provider profit margin was included in the payment mechanism, which seeks to provide some protection for the Authorities against the Service Provider over-recovering as a result of greater than anticipated increases in volume/activity under the Joint Contract.
- 10.6 All the bidders confirmed that they would seek admittance to the Surrey LGPS. As the four authorities have had outsourced contracts for some time, this is more relevant to those new authorities who might wish to join the Joint Contract; however should there be a TUPE transfer of any current council employees, their continued participation in the LGPS is protected. The Admission Agreement will need to be agreed with Surrey County Council as the LGPS administering authority. In order to avoid bidders risk pricing to take account of the unpredictability of the employer's contribution rate, a pass-through arrangement was offered to each of the bidders, should they wish to offer the LGPS, which fixes the employer's contribution rate. This is a feature which will need to be properly understood and assessed by those Authorities wishing to join the Joint Contract who have predominantly in-house services.
- 10.7 The other feature of the Joint Contract which was required to take account of the elapse of time between the pricing of the Joint Contract and the final transfer of staff from the incumbent contractors to the successful bidder was a mechanism to allow for a final reconciliation between the workforce data underpinning the bid pricing and the final workforce data.

### **Procurement Challenge**

- 10.8 In any procurement, there is a risk that an unsuccessful bidder could bring a challenge against the Council's decision to award the contract. Any challenge under the Public Contract Regulations 2015 or by way of judicial review must be brought within 30 days of the date on which the unsuccessful bidder knew or ought to have known of any breach of the Regulations or the date of the decision (in the case of judicial review). Whilst conducting the procurement in line with the Regulations and with the ISFT should minimise the risk of a challenge being successful, it cannot rule out the risk of a challenge being initiated.

- 10.9 If there is a challenge to the decision to appoint the bidder and legal proceedings are issued and served on the Council, this has the effect of automatically suspending the tender process including the execution of the contract unless the Council is successful in applying to the High Court for a lifting of the automatic suspension. Once the contract has been formally executed by the Council and the successful bidder, the remedy available to an unsuccessful bidder is to apply for a declaration of ineffectiveness or to claim damages. As the Council published an OJEU notice, provided it observes the standstill period, the grounds for an application for a declaration of ineffectiveness would not be made out by a disappointed bidder and its recourse would be to claim damages for the loss of opportunity.

### **Creation of a Legal Entity**

- 10.10 Should the CMO be incorporated, this will necessitate further legal work by the Authorities to both establish the company but there will be ongoing statutory reporting and accounting obligations.

## **11. Governance Issues**

- 11.1 The Revised IAA outlined the governance arrangements to oversee the Joint Contract. This involves retaining some decisions for Executive or Council as outlined in the Council's constitution as well as delegating some decisions formerly exercised by the Executive to the Joint Waste Collection Services Committee (JWCSC) which has in turn the consequential effect of amending the Officer's scheme of delegation so that the authority of the Authorised Officer under the Joint Contract is now derived from the JWCSC via a Contract Partnering Board and exercised on behalf of all four Partner Authorities. To implement these changes, the Council will be asked to agree changes to the Constitution.
- 11.2 The award of the Joint Contract is dependent on each of the Partner Authorities agreeing to award the contract to the bidder who submitted the Most Economically Advantageous Tender and agreeing the Revised IAA. These decisions are being made at the individual Cabinet and Councils of the Partner Authorities during October and November. It is possible that during this process one or more authorities request some further minor changes to the Revised IAA, which may require changes to Surrey Heath's constitution beyond those outlined in the report to Council. In order to ensure these changes do not delay the award of the contract and the commencement of mobilisation in Elmbridge Borough Council, the Council are requested to delegate responsibility to the Chief Executive and Leader of the Council to make any further minor changes to the constitution should they be required.

## **12. Sustainability**

- 12.1 The Partner Authorities are among the highest performing authorities for recycling in Surrey. By working together, the Partner Authorities expect to further their efforts to increase recycling and reduce waste to landfill. By working across boundaries, the service provider is expected to make better use of their assets and reduce the distances travelled by the waste collection and street cleaning vehicles, with associated improvements to air quality and greenhouse gas emissions.

## **13. Risk Management**

- 13.1 If the Joint Contract is not approved by any one of the Partner Authorities, it will be necessary to ask the bidders to re-work their submissions based on the remaining Partner Authorities and resubmit them at Stage 4 (Invitation to Submit Final Tenders) of the procurement process. The timescales involved would mean that the contract could not be awarded before the current contract in Elmbridge Borough Council expires. This would leave the three remaining authorities to consider whether they would re-run the procurement exercise as a smaller joint contract covering just three authorities. It would be expected that re-procuring with fewer authorities would result in a contract price that was less economically advantageous to the remaining authorities. There is also the possibility that the bidders would not be willing to invest more time in developing a revised bid and choose to withdraw from the process.
- 13.2 The contract includes a performance framework to monitor and penalise the contractor should they fail to deliver the specified service. The ultimate sanction is to terminate the contract on the grounds of non-performance. This decision would have to be agreed by all the Partner Authorities and would terminate the entire Joint Contract; a single authority cannot opt to terminate the contract in their area alone.

#### **14. Equalities Impact**

- 14.1 An Equalities Impact Assessment (EQiA) has been carried out on the existing waste collection and street cleaning services to ensure they have been designed and implemented to fit with the principles and requirements of the Equalities Act 2010. The service specification for the Joint Contract is based on the existing services and therefore follows the same quality principles. It includes assisted collections for those with limited physical abilities and clinical waste collections for those with medical needs. A further EQiA will be carried out during the mobilisation of the Joint Contract to ensure the service does not disadvantage those groups identified within the Equalities Act 2010.

#### **15. Consultation**

- 15.1 The Service Specification has been developed taking into account customer consultation including a customer focus group held on 23 September 2014. A resident survey was also conducted in Mole Valley throughout February 2015. The results of this survey informed the Project Team during the Competitive Dialogue stages of procurement, and informed the final Service Specification.
- 15.2 The JWCSC have overseen the procurement of the contract and been consulted throughout the process. The Executive and council have been involved at appropriate stages of the procurement process including approving the service specification (17<sup>th</sup> March 2015).

#### **16. PR And Marketing**

- 16.1 The outcome of the procurement exercise will be publicised through the next edition of the project newsletter, which have previously been provided to Members and key stakeholders. This publication will be after all Partner Authorities have made a decision and any stand-still and call-in periods have elapsed.
- 16.2 Future communications relating to the provision of the service will be developed and implemented as part of a joint communications plan.



## **17. Reputational Issues**

- 17.1 Given the importance to residents of the services provided by the Joint Contract, it is essential to avoid any disruptions to the service during change over. The timescales for procuring and implementing the Joint Contract aim to ensure a smooth handover from the existing service provider to the new one. A mobilisation plan will also be developed by the Partner Authorities and the preferred bidder to ensure a smooth transition. A new service provider is always likely to make changes to collection rounds and therefore changes to collection days are inevitable. However, to minimise disruption to residents, the new service provider is permitted to make only one day change. Any further day changes need to be approved by the JWCS. To assist residents, a communications plan to inform residents of any changes to their service will be developed and implemented.
- 17.2 The Joint Contract includes a comprehensive performance management framework to make it financially advantageous to the contractor to maintain high levels of performance and allows the authorities to instruct the contractor to improve and penalise them when they do not perform to the required standard. A set of Key Performance Indicators, as well as a mechanism to apply financial penalties for failures, will be used to monitor and manage the contract.

## **18. Employment Issues**

- 18.1 The creation of the CMO will affect existing teams and individuals in each of the Partner Authorities to different degrees and in different ways. The impact of these changes is being scoped and evaluated by the HR team in each of the authorities and co-ordinated by an HR lead within the project team. Once the proposed structure and model of the CMO has been finalised, it will be subject to formal consultation with those members of staff likely to be affected.

## **19. S151 Officer Comments**

- 19.1 This contract is one of the largest single contracts for service that the Council has entered in to in recent years. A fully comprehensive procurement process has been followed through competitive dialogue and as can be seen from the information in Part B the new contract give is expected to generate an annual saving of 13% against current contract costs. Given the varied start dates and the fact that savings will be based on the 2016/17 outturn the figures quoted are only notional however they are still expected to be substantial.
- 19.2 The decision around the financing of vehicles was purely based on the result of discussions with contractors who made it clear that not only was their cost of capital higher but also they would recharge additional costs on to the cost of vehicles. Hence it makes commercial sense for Councils to fund the vehicles themselves.
- 19.3 The opportunity for other Council's to join the contract should realise additional savings due to greater economies of scale in areas such as contract management and monitoring. Further efficiencies should be realised from closer working with the county and this contract should be able to provide a blueprint for joint working in other areas in the future.

## 20. Officer Comments

- 20.1 This has been a highly complex procurement exercise which has been conducted over a period of three years. This time has enabled the project team to have robust discussions with bidders through competitive dialogue. It has been emphasised to bidders throughout the process that the partnership is looking for a contractor which can provide a high quality service with good customer care at a reduced cost. The bids have been thoroughly evaluated at each stage of the process. The result is that the JWCC is able to recommend to each of the partner authorities a preferred bidder who demonstrated the highest quality during the evaluation process at a 13% reduction in costs across the partnership.
- 20.2 The exercise has been one of the most successful partnerships which the Council has taken part in. It has the potential to expand to other authorities to bring more efficiencies and savings in the way the waste is handled and managed within the County.

<b>Annexes</b>	<b>Annex A - Second IAA Annex B - Quality Criteria</b>
<b>Background Papers</b>	<b>None</b>
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<b>Head Of Service</b>	<b>Tim Pashen – Executive Head of Community</b>

### Consultations, Implications and Issues Addressed

<b>Resources</b>	<b>Required</b>	<b>Consulted</b>
Revenue	✓	
Capital		
Human Resources		
Asset Management		
IT		
<b>Other Issues</b>	<b>Required</b>	<b>Consulted</b>
Corporate Objectives & Key Priorities	✓	
Policy Framework		
Legal		
Governance		
Sustainability		
Risk Management		
Equalities Impact Assessment		
Community Safety		
Human Rights		
Consultation		
P R & Marketing		

**Review Date:**

**Version:** TP/1