

	<h2>Policy and Resources Committee</h2> <h3>21 July 2014</h3>
<p style="text-align: right;">Title</p>	<p>Recycling Services Contract extension</p>
<p style="text-align: right;">Report of</p>	<p>Lynn Bishop, Street Scene Director</p>
<p style="text-align: right;">Wards</p>	<p>All</p>
<p style="text-align: right;">Status</p>	<p>Public</p>
<p style="text-align: right;">Enclosures</p>	<p>None</p>
<p style="text-align: right;">Officer Contact Details</p>	<p>Nicola Cross, Waste Strategy Manager, Nicola.cross@barnet.gov.uk, 020 8359 7404</p>

<h2>Summary</h2>
<p>This report seeks to extend and vary the Recycling Services Contract, which is held by May Gurney Recycling CIC now Kier May Gurney Plc (formerly ECT Recycling CIC). This extension is to continue to facilitate the removal and disposal of materials collected at the Household Waste and Recycling Centre. The variation is to allow Kier May Gurney Plc to continue to remove and dispose of materials collected at the Household Waste and Recycling Centre only and to; pass on the cost of providing this service to the council where a cost is incurred, and to share the material income 50/50 with the council where an income is received.</p>
<p>As the Recycling Services Contract has already been extended this report seeks a waiver of the council’s Contract Procedure Rules to allow a further and final extension of the contract. This final extension will be within the timeframe of the original Recycling Services Contract which was let in October 2008 on a five year term with a possible two year extension.</p>

Recommendations

- 1. That the Committee authorise a waiver of the Contract Procedure Rules and agree to the extension and variation of the Recycling Services Contract, which is held by May Gurney Recycling CIC now Kier May Gurney Plc (formerly ECT Recycling CIC) to facilitate the removal and disposal of materials collected at the Household Waste and Recycling Centre until 3 October 2015. The variation is to allow Kier May Gurney Plc to continue to remove and dispose of materials collected at the Household Waste and Recycling Centre only and to; pass on the cost of providing this service to the council where a cost is incurred, and to share the material income 50/50 with the council where an income is received.**

1. WHY THIS REPORT IS NEEDED

- 1.1** The Household Waste and Recycling Centre (HWRC) is operated by the council and is open 362 days of the year. The council has operated this site since 9 October 2013. As part of the operation of the site, materials need to be removed from the site and disposed of. The purpose of this report is to enable continuous provision in the arrangements for the removal and disposal of materials from the site, until a longer term solution has been procured.
- 1.2** The removal and disposal of the materials from the HWRC is currently being undertaken by May Gurney CIC now Kier May Gurney Plc (formerly ECT Recycling CIC) as part of the Recycling Services Contract, as a result of an agreed Delegated Powers Report, until September 2014.
- 1.3** This report sets out that the Recycling Services Contract with May Gurney CIC now Kier May Gurney Plc (formerly ECT Recycling CIC) should be extended one further time, to 3 October 2015, which is the maximum time extension that can be made to the Recycling Services Contract.
- 1.4** As the Recycling Services Contract has already been extended this report seeks a waiver of the council's Contract Procedure Rules to allow a further and final extension of the contract. This final extension will be within the timeframe of the original Recycling Services Contract which was let in October 2008 on a five year term with a possible two year extension.

2. REASONS FOR RECOMMENDATIONS

- 2.1** The further extension of the Recycling Services Contract is recommended as the best approach in the short term. It will enable the Household Waste and Recycling Centre (HWRC) to remain open to residents whilst alternative arrangements are investigated, and if relevant, procured. The original extension was for a period of one year to overcome the immediate issue that there had been no bidders for the work. At the time it was thought that this

would allow sufficient time for long term options to be considered but this has not been the case, therefore a further extension is sought.

- 2.2** The removal and disposal of materials collected at the HWRC involves sourcing and procuring outlets for over 20 different types of materials, such as wood and metal. It is felt at this time that this wide range of service provision is most effectively undertaken by Kier May Gurney Plc, who is the existing provider of this service.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1** A procurement exercise was undertaken for the provision of a reprocessing outlet for household waste and recycling materials to commence 9 October 2013. No bids were received. It was felt that it would be unproductive to repeat this work for a one year contract, and it is not recommended to pursue this course of action for this one year extension.

- 3.2** Long term options such as the provision by an alternative contractor of site operations or transfer to another service provider are currently being collated and evaluated. It is planned that a decision on the long term future of the site will be made within the next year, once the full financial information is available for each of the options. A decision cannot be made nor recommended currently as there is insufficient financial and business information on which to base such a decision. Further, lead-in time required for such a procurement could not be carried out before the existing contract extension ends in September 2014.

4. POST DECISION IMPLEMENTATION

- 4.1** Following approval of these two recommendations May Gurney CIC now Kier May Gurney Plc (formerly ECT Recycling CIC) will be advised of the outcome, so that continuous service can take place.

- 4.2** The Street Scene Delivery Unit will investigate options for service delivery post October 2015 or earlier and make appropriate arrangements to procure this work if necessary. The procurement of a contract for the removal and disposal of materials from the Household Waste and Recycling Centre has been included on the Street Scene Procurement Forward Plan. The Recycling Services Contract does include the provision of giving three months' notice to cancel the contract, which could be used if required to fit with the future provision of the service.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1** The council's Corporate Plan 2013-2016 and 2014 Addendum includes the following aims:

- Increase the percentage of household waste sent for reuse, recycling and composting to 41 per cent in 2014/15.

- Maintain overall satisfaction levels for the recycling and refuse service (80 percent).

5.1.2 The provision of the Household Waste and Recycling Centre (HWRC) at Summers Lane, North Finchley has been operated by the in-house Street Scene service since October 2013. A key component of providing this service is an outlet for the collected materials.

5.1.3 There are no implications relating to the Health and Wellbeing Strategy and its stated priorities.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 Finance - The cost of the extension of the Recycling Services Contract is contingent on the materials that the residents of Barnet decide to take to the HWRC. This therefore could provide an income to the council, or a cost dependant on the materials and the market prices at the time. From November 2013 to April 2014 inclusive the council has received an income of £45,455.20 and paid £146,501.31 for this service, giving a net cost of £101,046.11. It is therefore estimated that this contract extension should be assessed at a cost of £200,000 per annum, which is provided for within the Street Scene Delivery Unit service budget. As this work relates to the provision of material outlets and the prices for these outlets fluctuate, as well as being dependent on what materials are brought into the site by residents, the value of this contract extension is therefore the best estimate that can be given at this time.

5.2.2 Value for Money - The commercial arrangement which has been agreed with Kier May Gurney Plc, and which will be continued is as follows:

- For those materials traded and an income received the value received for these materials will be split equally between Kier May Gurney Plc and the London Borough of Barnet.
- For those materials traded at a cost the costs for these materials will be met by the London Borough of Barnet. To ensure costs are minimised any negotiated savings achieved against an agreed baseline price at the start of the arrangement will be shared equally between Kier May Gurney Plc and the London Borough of Barnet.

This arrangement is assessed to provide the London Borough of Barnet with value for money, due to the incentives to Kier May Gurney Plc, which provide safeguards to the council.

5.2.3 Procurement – The Recycling Services Contract was procured using the Official Journal of the European Union (OJEU) route. The Contract Notice included in ‘Quantity or Scope of the Contract’ that ‘The Council may, at its

discretion, exercise an option to extend the term of the Contract for a period which shall not exceed 2 years from the contract expiry date, with one possible extension. The Duration of the Contract starting 04/10/2008, completing 03/10/2013'. The value of this contract was indicated at £19 million.

A procurement process was conducted in the summer of 2013 to secure a contractor for the removal of materials from the HWRC; however no compliant bids were received; hence it was necessary to extend the contract with Kier May Gurney Plc to ensure there was a contract and contractor in place. It is now necessary to extend this arrangement to provide a continual service to residents.

5.2.4 The Contract Procedure Rules, Section 14.3 state that:

Contracts may only be extended or varied if all of the following conditions have been met:

- the initial contract was based on a Contract Procedure Rules compliant competitive tender or quotation process;
- the value of the extension or variation added to the value of the original contract does not exceed the original Authorisation threshold as defined in Appendix 1, Table A;
- the extension or variation has an approved budget allocation;
- the extension or variation is in accordance with the terms and conditions of the existing contract;
- if the initial contract was subject to EU tender procedure, that the extension option was declared within the OJEU notice and the original Acceptance (Delegated Powers Report/relevant Committee Report); and
- the contract has not been extended before.

5.2.5 All of the conditions are met for the variation and extension proposed here, except for the final condition as the contract has been extended before. Section 15.1 of the Contract Procedure Rules states that:

- In the event that the application of these rules prevents or inhibits the delivery or continuity of service, Directors or Assistant Directors, Lead Commissioners and Heads of Service may apply for a waiver. All applications for a waiver of these Contract Procedure Rules must be submitted to Policy and Resources Committee specifically identifying the reason for which a waiver is sought, including justification and risk.

A waiver of the Contract Procedure Rules to allow this extension is included in the recommendation of this report.

5.2.6 Contract Procedure Rules, paragraph 14.2 confirms the value referred to in Appendix 1 Table A headed 'Variation or Acceptance' is the total value of the original contract value plus the addition of the value of any extensions and/or variations i.e. the total value of the contract. Contract Procedure Rules, Section 17 (Table A) sets out acceptance thresholds for contract extensions

and variations. As the total value of the contract exceeds £172,514 and within Budget, approval is sought from the Policy and Resources Committee, and this is included in the recommendation on this report.

5.3 Legal and Constitutional References

- 5.3.1 The award of the Recycling Services contract complied with European and domestic procurement legislation and a contract notice was advertised in the Official Journal of the European Union (OJEU). The proposed extension period was expressly referred to in the OJEU Contract Notice and is permitted within the parameters of the existing contractual terms. Accordingly the extension contemplated by this report does not materially alter the contract and therefore complies with the Public Contracts Regulations 2006 (as amended).
- 5.3.2 Constitution, Contract Procedure Rules, section 15 sets out the framework for applications for a waiver of the Contract Procedure Rules, including that all applications for a waiver must be submitted to Policy and Resources Committee. The extension and variation of the contract will need to be documented and the relevant document executed on behalf of each of Kier May Gurney Plc and the council with advice from HB Public Law.
- 5.3.3 Constitution, Responsibility for Functions, Annex A, sets out the terms of reference of the Policy and Resources Committee, including 'Procurement (including agreement of the Procurement Forward Plan and agreeing exceptions to CPRs)'.

5.4 Risk Management

- 5.4.1 It is not considered that the issues involved are likely to raise significant levels of public concern or give rise to policy considerations as this decision relates to the extension of an existing contract, within the contractual terms, following an earlier procurement process which received no compliant bids.
- 5.4.2 Failure to put in place a contract for removal of materials collected at the HWRC would introduce a significant risk to the council as it would not be able to continue to operate this fundamental and well respected service and the HWRC would need to close.

5.5 Equalities and Diversity

- 5.5.1 It is not envisaged that the extension of the Recycling Services Contract will result in a detrimental effect on any resident(s) with 'protected characteristics', over and above the effect on those without 'protected characteristics', due to the universal nature of the service being provided. The council understands its obligation to meet its public sector equalities duty under the Equality Act 2010 and will do everything necessary to ensure that there is continuing compliance

with this duty. The council remains committed to providing an efficient, user friendly and cost-effective service for the benefit of all residents.

5.6 Consultation and Engagement

- 5.6.1 Consultation has taken place with Kier May Gurney Plc to assess their interest in the Recycling Services Contract extension proposed in this report. When the outcome of this report is known, this will be communicated to Kier May Gurney Plc.

6. BACKGROUND PAPERS

6.1 Relevant previous decisions

- 6.1.1 Outline Business Case and Options Appraisal for Waste and Street Scene Services, Cabinet Resources Committee 7 November 2012, (decision item 5), agreed the Outline Business Case for the future delivery of the Waste and Street Scene Services through in-house development of services.
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CIId=151&MIId=6756>
- 6.1.1 Waste Collection options for the future, Cabinet 4 April 2012, (decision item 12), agreed to provide 240 litre wheeled bins to households for the collection of mixed dry recycling on a weekly basis, to replace the current black and blue boxes, with the changes to take place from the end of the May Gurney now Kier May Gurney Plc Recycling Contract on or after 4 October 2013.
<http://barnet.moderngov.co.uk/CeListDocuments.aspx?CommitteId=120&MeetingId=6792&DF=04%2f04%2f2012&Ver=2>
- 6.1.2 Procurement of Recycling Services Contract, Cabinet Resources Committee 16 April 2008 (decision item 4), agreed that the Recycling Services Contract be awarded to ECT Recycling CIC.
<http://barnet.moderngov.co.uk/CeListDocuments.aspx?CommitteId=151&MeetingId=421&DF=16%2f04%2f2008&Ver=2>
- 6.1.3 Recycling Services Contract Extension, Delegated Powers Report 1965, 28 March 2013, agreed a minor extension of the Recycling Services Contract with May Gurney to facilitate and effective handover of the recycling service to the in-house team.
<http://barnet.moderngov.co.uk/ieDecisionDetails.aspx?ID=4630>
- 6.1.4 Recycling reprocessing arrangements at NLWA, Cabinet Resources Committee 24 September 2013 (decision item 11), authorised the waiver of the council's contract procedure rules and delegated the authorisation to extend the council's contract with May Gurney CIC for a period of up to one year for the service associated with removal and disposal of materials from

the Household Waste and Recycling Centre to the Cabinet Member for Environment.

<http://barnet.moderngov.co.uk/ieDecisionDetails.aspx?AllId=4803>

- 6.1.5 Recycling Services Contract extension, Delegated Powers Report, 27 November 2013, agreed an extension and variation to the Recycling Services Contract to facilitate the removal and disposal of materials collected at the Household Waste and Recycling Centre until September 2014.
- <http://barnet.moderngov.co.uk/ieDecisionDetails.aspx?ID=5269>

6.2 Recycling Services Contract with ECT Recycling CIC

- 6.2.1 The contract was awarded to ECT Recycling CIC on 16 April 2008. The contract period is from 12.01am on 4 October 2008 and expires five years from this date, which is 11.59pm on 3 October 2013. The Authority may extend the Expiry Date for a period of no more than two years by giving not less than three months' written notice to the Contractor prior to the scheduled Expiry Date.
- 6.2.2 The contract has two distinct elements; (1) the kerbside collection of dry recyclables from houses, flats, schools and servicing of bring banks, and (2) the operation of the civic amenity and recycling centre (alternatively known as the Household Waste and Recycling Centre) at Summers Lane.
- 6.2.3 The proposed extension and contract variation relates to element (2) only, which continues the service provided by Kier May Gurney Plc, to remove and dispose of materials collected at the Household Waste and Recycling Centre and allows Kier May Gurney Plc to; pass on the cost of providing this service to the council where a cost is incurred, and to share the material income 50/50 with the council where an income is received.