

Key Decision Required:	No	In the Forward Plan:	No
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CORPORATE DIRECTOR (OPERATIONS AND DELIVERY)

REPORT OF THE ASSISTANT DIRECTOR (HOUSING AND ENVIRONMENT)

6th March 2024

A.1 MARKET ENGAGEMENT IN RESPECT OF POTENTIAL FUTURE WASTE AND RECYCLING AND STREET CLEANING ARRANGEMENTS

(Report prepared by Tim Clarke)

PART 1 – KEY INFORMATION

1.1 PURPOSE OF THE REPORT

To recommend that the Leader of the Council (in the absence of the portfolio Holder for Environment) agrees to undertake a market engagement exercise to gauge interest from potential service providers in provide waste and recycling and street cleaning services for the Council.

1.2 EXECUTIVE SUMMARY

- The Council is currently considering options for service provision for 2026 and beyond when the current contracts for waste and recycling collection and street cleaning come to an end.
- Due to the size of the future contract, the Council is legally required to go out to market via a tender exercise to find an external contractor to provide the services.
- Undertaking “soft” market engagement via the issue of a Prior Information Notice (PIN) helps to inform to the Council as to interested service providers and their basic preferences for example around procurement route, contract length and methods for coping with seasonal demand. .
- The PIN is intended as an awareness, communication, and information gathering exercise. An expression of interest is no indication of a commitment to participate in any future tendering process nor does it infer any preferential or special status on those individuals and organisations who participate.
- Any decision to commence a market engagement exercise is not part of the policy setting for the future options but the information gathered will assist with informing future decisions to be made at Cabinet level.

1.3 RECOMMENDATION(S)

That the Leader of the Council agrees to:

1. Commence market engagement in respect of potential future waste and recycling and street cleaning contractual arrangements;

2. specifically, to issue a Prior Information Notice (PIN) in order to gauge interest from prospective service providers; and,
3. being clear that the above is undertaken prior to any formal decision having been taken to commence a tender process.

PART 2 – IMPLICATIONS OF THE DECISION

2.1 DELIVERING PRIORITIES

The decision contributes to the following priorities in the Council's Corporate Plan for 2024 – 28:

- Pride in our area and services to residents
- Raising Aspirations and creating opportunities
- Championing our local environment
- Working with partners to improve quality of life
- Financial sustainability and openness

2.2 FINANCE, OTHER RESOURCES AND RISK

The soft market engagement exercise is being supported by the Procurement Service at Essex County Council. The cost of this work is in addition to the Service level Agreement between the two Councils for general procurement functions, as this is a dedicated and resource intensive. ECC have quoted £8,000 and this will be funded from £100,000 that has already been budgeted for consultancy services in support of the development of future waste service options.

There are minimal risks associated with this decision and undertaking the market engagement exercise. Overall the work will inform future decision making on options and policy and serve to make any future procurement exercise more effective.

2.3 LEGAL

The Public Sector Procurement Directive (2014/24/EU) which provides rules for the procurement of goods, services and works above certain thresholds by public authorities, was implemented in England, Wales and Northern Ireland by the Public Contracts Regulations 2015 (SI 2015/102) (PCR 2015).

Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (SI 2020/1319) (PPAR 2020) amend the procurement regulations and other retained EU law and existing UK primary legislation.

The PCR 2015 apply when a contracting authority seeks offers in relation to a proposed "public contract" defined to mean:

"contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services" (Regulation 2, PCR 2015).

The public procurement rules establish a legal framework governing the procedures and principles for the award of public contracts, which fall within the scope of the rules and exceed specified financial values. This legal framework is intended to ensure that contracts are awarded fairly, transparently and without discrimination and that all potential bidders are treated equally. In particular, in most cases, the public body awarding the contract is required to advertise the contract through the UK e-notification service and follow specified procedures for selecting candidates and assessing tenders.

With the introduction of the PCR 2015, early market engagement is now specifically permitted in the legislation when using PINs. **This means buyers can talk openly to suppliers about the procurement before the tender is released.**

Regulation 48 of PCR 2015, SUB-SECTION 6 under Publication and Transparency permits the use of Prior Information Notices (PIN):

- (1) Contracting authorities may make known their intentions of planned procurements through the publication of a prior information notice.
- (2) Such notices shall contain the information set out in regulation 53(3) and (4) of the PCR 2015; and is submitted to the UK e-notification service for the purposes of the Regulations.
- (3) A contracting authority wishing to publish a prior information notice shall:
 - (a) submit it for publication in accordance with PCR 2015 regulation 51; or
 - (b) publish it on the contracting authority's buyer profile in accordance with PCR 2015 regulation 52.
- (4) Where the prior information notice is published by the contracting authority on its buyer profile, the contracting authority shall submit for publication, in accordance with regulation 51, a notice containing the information set out in Part A of Annex V to the Public Contracts Directive
- (7) The period covered by the prior information notice shall be a maximum of 12 months from the date on which the notice is transmitted for publication.

The benefits of PINs for buyers are numerous. They include:

- Ensuring suppliers are suitably prepared for a procurement process.
- Providing a formal route for getting input from the supply market about the best way of meeting the organisation's requirements.
- Discovering new, and innovative solutions, to achieve better outcomes for citizens.

Using a PIN also provides some technical benefits to the buyer, such as reduced timeframes for the tender process. The use of PINs are repealed in the Procurement Act 2023, and replaced with planned procurement notices and preliminary market engagement notices, with a view to increasing transparency, however this legislation is not yet in force.

A formal decision to set the policy direction for the future specification has not been taken by the Council. This work is therefore undertaken in the full knowledge that a formal Cabinet decision is required to agree the policy requirements and undertake a full procurement exercise.

2.4 OTHER IMPLICATIONS

Crime and Disorder / Equality and Diversity / Consultation

No significant issues have been identified.

Ward

Whilst all wards will be impacted once the policy direction is set for the future specification requirements, this decision does not, and therefore is not a key Decision.

PART 3 – SUPPORTING INFORMATION

3.1 BACKGROUND

The Council is undertaking work to identify the nature of its future Waste and Recycling and Street Cleaning arrangements from 2026 onwards.

As part of that process it is working with the East of England Local Government Association who are acting as advisors and Essex County Council as procurement partner. It has been recommended that a “soft” market engagement exercise be undertaken and a PIN notice issued to gauge the level of interest from potential service providers.

To provide oversight and governance to the project the Council has formed a Waste Contract Project Board that meets monthly and is attended by the organisations mentioned above along with the Portfolio Holders for Environment and Assets. Undertaking a soft market engagement exercise has been discussed with and agreed by the Board, including the Portfolio Holder for Assets who is responsible for procurement.

The feedback from this exercise will be fed into a formal Cabinet decision on the next steps to be taken.

3.2 BACKGROUND PAPERS FOR DECISION

None

3.3 APPENDICES

None

