



<b>Report to:</b>	Council	<b>Date:</b>	1 August 2016
<b>Report title:</b>	Requisition Report		
<b>Report from:</b>	Jessica Crowe, Monitoring Officer		
<b>Ward/Areas affected:</b>	Borough wide		
<b>Chair of Committee/Lead Member:</b>	The Mayor, Cllr Richard Clifton		
<b>Author(s)/Contact Number(s):</b>	Alexa Coates, Head of Committee and Management Support 020 8770 5094		
<b>Corporate Plan Priorities:</b>	<ul style="list-style-type: none"> <li>• An Open Council</li> <li>• A Fair Council</li> </ul>		
<b>Open/Exempt:</b>	Open		
<b>Signed:</b>		<b>Date:</b>	22 July 2016

## 1. Summary

- 1.1 In accordance with committee procedure rule 23.4 Requisitions, Full Council is asked to consider a requisition relating to decisions made by the Environment and Neighbourhood Committee on 27 June 2016.

## 2. Recommendations

Council is recommended to:

- 2.1 consider the requisition relating to item 8, Award of Preferred Bidder status for Waste Collection and related Environment Services, recommendations 2.1, 2.3 and 2.5 considered by the Environment and Neighbourhood Committee on 27 June 2016.

## 3. Background

- 3.1 The text of the requisition is set out below:  
 "Recommendation 2.5 fundamentally changes a key front line council service, yet is described merely as 'noting' the change. There has been no consultation with residents. On such a key service, the consultation should feed into the decision making process, it shouldn't be a bolt-on to sell a pre-made decision to the public. Recommendations 2.1 and 2.3 enable this change.



We are also concerned that with the United Kingdom due to leave the European Union and EU regulations being so prominent in the refuse and recycling industry, is it wise to enter an 8 year contract when regulatory environment may be substantially different in 2 or 3 years?

Outcome sought: postpone the decision in order to consult properly with residents, take their feedback fully into account in the decision-making process, and for the waste industry to begin to understand its future regulatory environment.”

#### **4. Issues**

- 4.1 The process for considering requisitions is for the relevant chair to move the adoption of the minute of the decisions that have been requisitioned, which all members thus have an opportunity to debate and vote upon. The resolutions members are considering are: item 8 resolutions 2.1, 2.3 and 2.5 as set out at Appendix A of this report.

#### **5. Options Considered**

- 5.1 Full Council can agree the resolutions made by the Environment and Neighbourhood Committee or take the action requested by the Councillors requisitioning the decision.

#### **Comments – Environment, Neighbourhood and Regeneration Directorate**

- 5.2 The South London Waste Partnership (SLWP) has a proven record of providing cost-effective waste management services through the procurement of waste disposal, recycling and Household Reuse and Recycling Centre contracts over the past 13 years.
- 5.3 Following these successes the partners (Sutton, Kingston, Croydon and Merton) explored opportunities for the future delivery of a range of high quality environmental services. This assessed the merits of procuring services in partnership, as opposed to procuring alone, or retaining existing arrangements. This suggested savings in the region of 10% from procuring jointly, with the potential to achieve additional savings if the partner boroughs harmonised services. It was not considered that these savings could be achieved by procuring alone.
- 5.4 On this basis, a business case for a joint procurement exercise using the Competitive Dialogue Procedure was agreed by the Environment and Neighbourhood committee in November 2014 for the following services:

LOT 1 - Waste Collection, Street Cleaning, Winter Maintenance, Commercial waste and Fleet Management

LOT 2 - Parks, Grounds Maintenance, Tree maintenance, Verges and Cemeteries

- 5.5 One of the key benefits of competitive dialogue is that it allows both the Authorities and bidders to enhance and adapt the scope of the requirements throughout the procurement process. For example, this enabled the SLWP to identify the benefits of incorporating, within the scope of the contract, the administration functions for Waste and Cemeteries services and potentially the



sports bookings function for Parks, and to negotiate contract start dates that take into account service peaks and troughs.

The objectives of the procurement were to:

- reduce spend
- increase income opportunities
- maintain high quality services and customer satisfaction
- deliver environmentally sustainable, carbon efficient, innovative solutions.

- 5.6 The decisions made by E&N Committee on 27<sup>th</sup> June to award preferred bidder status to Veolia and reserve bidder to Amey (as per recommendations 2.1, 2.3 and 2.5 of item 8 of the E&N committee meeting) were requisitioned.
- 5.7 The outcome sought by the requisition is to postpone the decision in order to consult properly with residents, take their feedback fully into account in the decision making process and for the waste industry to begin to understand its future regulatory environment.
- 5.8 Legal advice on the suggestion to consult with residents and incorporate their feedback into the decision making process, confirms that there is no statutory duty to consult with regard to the service changes. The procurement process is strictly regulated. To ensure transparency in procurement, specific consultation on the proposed solutions was not possible, and it was not undertaken by any of the four boroughs, as this would have exposed the partners to a risk of procurement challenge by the bidders.
- 5.9 The decision to award preferred bidder status to Veolia and reserve bidder status to Amey was recommended based on clear and transparent evaluation criteria, and in compliance with the Public Contract Regulations 2015. The evaluation criteria were agreed by all members of the SLWP and published in advance of procurement commencing, in compliance with the procurement regulations for competitive dialogue. The tenders submitted by all bidders were based on these criteria. If the SLWP were to use anything other than the published evaluation criteria to inform decisions at this stage, Boroughs would be at risk of legal challenge.
- 5.10 It is therefore not feasible to consult with residents at this late stage on the outcome of the procurement, in that a compliant procurement process has been carried out with the authority of the E&N committee under the Constitution of the Council, and to do so would lead to the consequences described below.
- 5.11 Postponing the decision leads to potential logistical, financial and reputational implications. Sutton Council is unable to change the specification at this late stage of the process, without incurring considerable additional cost and time delays and therefore impacting on the delivery of savings that the four Councils in the partnership have to make. Changes to the specification at this late stage also could result in legal challenge from the preferred bidder, the reserve bidder and also any failed bidders.
- 5.12 Sutton has been able to utilise the results from a previous consultation carried out in 2012, which gauged residents' views (although this was not taken into account in the procurement decision making process) on the principle of introducing a separate food waste collection



service at that time. As reported at E&N in June, when asked residents showed net support of 72% for introducing a separate food waste collection service, however this reduced to 14% support if this was to be brought in at the expense of other services, and a net against of 33% in the event that Council tax was increased as a result.

5.13 With regard to concerns regarding entering into an 8 year contract in a period where regulations may change as a result of the decision to exit the EU, it is not clear at this very early stage as to which EU-derived UK legislation will be repealed in the future (if at all). All current EU-derived UK legislation continues to stand at this time, and will do at the very least until the UK officially leaves the EU. In the event of any changes in law, there is provision in the contract relating to change of law to protect the Partnership.

5.14 Much of the UK legislation on waste and recycling was developed to reflect EU Directives, and is embedded in the following:

- Environmental Protection Act (EPA) 1990 (Part II)
- Environment Act 1995
- Household Recycling Act 2003
- Waste Regulations 2011
- Controlled Waste Regulations 2012

## 6. Impacts and Implications

### Financial

6.1 The financial implications of this decision are set out in the original reports which are attached at appendix B.

6.2 Delays to the award of this contract - to allow consultation or to assess the impact (if any) of the recent referendum outcome on UK waste law - would result in the following benefits not being realised for Sutton and potentially a legal challenge (from bidders and possibly other partners).

1. Significant increase in recycling capacity
2. Predicted increase in recycling performance from 37% to 42% following service changes
3. Saving £1.5m across both Lots from year 2 onwards.

In addition, there would be the cost of the public consultation and administrative cost to manage the resulting delay in letting the contract and in ensuring in-house services and contracts were able to continue past 3rd April 2017. There could also be a request from the DCLG to review the allocation of the £1.3m funding that was allocated to the SLWP to support this procurement.

### Legal

6.3 The legal implications of a delay in awarding the contract or changes at this late stage to the specification are addressed in the main body of this report.



- 6.4 The legal implications of the decision to choose Veolia as the preferred bidder are set out in the original reports which are attached at appendix B.

## 7. Appendices and Background Documents

Appendix letter	Title
A	Draft resolution item 8, award of Preferred Bidder status for Waste Collection and related Environment Services
B	Award of Preferred Bidder status for Waste Collection and related Environment Services report and appendices considered by the Environment and Neighbourhood Committee on 27 June 2016

Background documents
Signed Requisition Request

Audit Trail		
Version	Final	Date: 22 July 2016
Consultation with other officers		
Finance	Yes	Sue Hogg
Legal	Yes	Fabiola Hickson, SLLP
Environment Housing and Regeneration	Yes	Debbie Whitton
Integrated Impact Assessment required?	Included with report attached at Appendix B	N/A

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