

WIRRAL COUNCIL

CABINET

21 JUNE 2012

SUBJECT:	ENVIRONMENTAL STREETSCENE SERVICES CONTRACT 'BREAK CLAUSE' REVIEW
WARD/S AFFECTED:	ALL
REPORT OF:	DIRECTOR OF TECHNICAL SERVICES
RESPONSIBLE PORTFOLIO HOLDER:	COUNCILLOR HARRY SMITH, STREETSCENE AND TRANSPORT SERVICES COUNCILLOR BRIAN KENNY, ENVIRONMENT
KEY DECISION?	YES

1.0 EXECUTIVE SUMMARY

- 1.1 The Environmental Streetscene Services Contract is the delivery mechanism for executing Wirral Council's statutory obligations to collect household waste and maintain the cleanliness of the borough's highways and associated open spaces.
- 1.2 The current contract with Biffa commenced in August 2006 and is worth approx £12.5M p.a. It is a 14-year contract currently running in its sixth year and has a 'break clause' at 7 years (August 2013).
- 1.3 This report considers the opportunities available to the Council at this time around the execution of the 'break clause' to maximise the cost effectiveness of the delivery of these important services whilst retaining the flexibility to respond to the strategic requirements of the National Waste Framework Directive and the recently approved joint waste strategy for Merseyside. The recommendations within this report support the delivery of the Council's Corporate Priority "To Create a Clean, Safe, Pleasant and Safe Environment" by securing a 'break clause' buy out offer from Biffa that does not impact on the current high standards of service delivery currently enjoyed by the residents of Wirral.
- 1.4 A number of documents appended to this report contain sensitive commercial information related to the management accounts of Biffa PLC. In order to protect the commercial competitiveness of Biffa's position in the waste management market and to ensure the Council and Biffa are not disadvantaged in future procurement opportunities, this information has been classified as Exempt Information from public scrutiny, as set out the relevant paragraph/s of Schedule 12A of the Local Government Act 1972.

2.0 BACKGROUND AND KEY ISSUES

2.1 Contract Background

Biffa is the Council's chosen contractor for the delivery of waste collection and street cleansing services. Since the contract was awarded in June 2006, Technical Services and Biffa have worked in close partnership to transform Environmental Streetscene Services in Wirral. It is a 14-year contract (2020) with a 7-year break clause option (2013) and an opportunity to extend the contract by a further 7 years (2027).

Key service delivery areas INCLUDE:

- Household residual waste collection
- Household kerbside dry recycling collections
- Fortnightly household garden waste collections
- Bulky household waste collections
- Waste container supply / deliveries
- Street Cleansing (public highways/ open spaces and both adopted/un-adopted alleyways)
- Fly tip removal (public highways/ open spaces and both adopted/un-adopted alleyways)
- Litterbin emptying (public highways)

The Environmental Streetscene Contract EXCLUDES:

- Waste treatment / disposal
- Graffiti removal
- Cleansing/ litterbin emptying in parks/ beaches
- Gully cleansing

During the past five years, the Contract has achieved significant successes including the following:

- The borough wide rollout of the grey and green bin waste collection service to over 145,000 properties, including collections on Bank Holidays;
- The restructuring and expansion of the garden waste service to over 112,000 properties;
- The significant improvement in local environmental quality through better street cleansing and related activities has meant we have achieved the challenging Public Service Agreement (PSA) standard.;
- Moved from a 2 star to a 3 star rating of the Environment block of the Corporate Performance Assessment in 2007 ;
- Second most improved council (UK & Wales) with regard to recycling performance in 2007/8;
- Current sustained "missed bin" performance of under 20 missed bins per 100,000.

The current annual value of the core contract with Biffa is £12.594m, consisting of £7.805m for waste collection and £4.789m for street cleansing. The contract is subject to annual Retail Price Indexation and as such, the compounding effect on the core contract payments currently exceeds £2.3M per annum. A summary of variations to the baseline contract costs is presented in Table 1. A full breakdown of financial

variations was reported to Cabinet within the Environmental Streetscene Services Financial Review on 12 April 2012.

Table 1: Additional annual costs to the Environmental Streetscene Services Contract applied since the Contract start date of August 2006

Area	Additional costs as of 2011/12
Net Service enhancement costs (exc RPI)	383,635
Property Uplift	127,068
RPI*	2,339,819*
Total	2,850,522

*Includes RPI for core contract costs only plus service enhancements detailed in Table 2. Excludes RPI for variable provisional items such as rapid responses, "match day" cleansing, bin deliveries and bulky waste collections.

2.2 Timescales

The 'Break Clause' is effective from August 2013. The Council must notify Biffa by no later than 30 August 2012 if our intentions are to terminate the Contract. A decision is therefore sought at this meeting of the Cabinet to ensure this timescale is met and allow for further scrutiny if required.

2.3 Value for Money

The Council has scrutinised the quality of the Biffa contract through annual performance reviews. The fifth annual review was presented to the Sustainable Communities Overview and Scrutiny Committee on the 30th January 2012. This latest report summarises the excellent performance of the contract and acknowledged the continuous improvement Biffa and the Council have achieved over time, especially with regards to service reliability. It is important to note that the recommendations within this report acknowledge the ongoing desire of the Council to retain and continuously improve these standards in response to the priority that the residents of Wirral place on the environmental quality of where they live and work. Officers have therefore sought specialist and independent advice to ascertain the current state of the waste management market in order to assess the risks to service quality that the council would be exposed to through a re-tendering exercise, and provide officers with a realistic expectation of how much the current costs could be reduced without impacting on service quality.

2.4 Consultancy Support

Officers have commissioned two pieces of work in order to ensure robust evaluation of all available options:

2.4.1 Technical evaluation: Eunomia Research

The purpose of this commission was as follows:

- To provide WMBC with a professional and evidenced view as to the “competiveness” of the Biffa break clause offer(s), when compared with the current market position, in particular the profit margin that Biffa expect to yield throughout the extended contract term.
- To work with the Council in order to fully appraise the strengths, weaknesses, opportunities and threats of a 3.5-year extended contract term and 7-year term and recommend the preferred option. This should include a consideration of the constraints of the current contract when operating over a longer contract term.
- To provide WMBC with an “expert view” on the risks and benefits of executing the break clause and going out to the market, with the aim of securing a new contract by August 2013.
- To review the “weaknesses” that exist within the current contractual clauses around service delivery that have been identified through the Price Waterhouse Cooper Contract Review and assist the Council in Clarifying their position in order to reduce future governance / service delivery risks and ensure the Council receives the services that Biffa are contracted to provide.

The report arising from this commission is detailed in **Appendix 3**.

2.4.2 *‘Open book’ review of the Biffa Environmental Streetscene Services Contract: Price Waterhouse Cooper (PWC)*

The purpose of this commission was to ascertain the legitimacy of the buy out offers proposed by Biffa through clarifying the accuracy of their reported profit margins (as detailed in **Appendix 1**). Their investigation includes scrutiny of the following information in order to understand the basis of the overall contract pricing and the planned and actual returns achieved by Biffa in order to test the value of the preferred ‘break clause’ offer:

- Current profit and loss account for the Wirral Waste Recycling and Street Cleansing Services Contract 2011/12
- Supporting documentation (e.g. ledger extracts, purchase invoices and/or payroll information) to support the costs in the 2011/12 P&L Account
- Calculations used by Biffa to support the revised "break clause offer" to the Council
- A ‘bridge’ analysis between the 2011/12 costs and the proposed costs for the revised offer
- Explanation of any key assumptions (e.g. inflation and overhead absorption rates) used to determine the above for both the 2011/12 Contract and revised offer
- Planned profit return for the 2011/12 Contract and revised offer, split where necessary across different elements of the contract
- Explanation of the basis of the planned profit returns
- Actual profit return for the 2011/12 Contract, together with an explanation of any variance in profit returns between planned and actual

At the time of writing, this investigation is underway and is due to be completed in early July. Therefore it is important to note that should Cabinet support the officer

recommendations within this report that they are subject to a satisfactory audit of Biffa's management accounts and verification of the validity of their claimed profit margins. In the unlikely event that PWC's investigation is unable to reconcile the figures presented by Biffa then the further report will be brought to this Cabinet in July 2012 would either present a revised offer from Biffa or an officer recommendation to go out to the market (option 5 below).

3.0 OPTIONS APPRAISAL

Four options available to the Council have been evaluated; three 'break clause' buy out offers from Biffa (option 1,3, and 4) (please note that Biffa declined to make a buy-out offer for Option 2 so this has not been evaluated) and the option to reject all offers in favour of going back out to the market (option 5). Financial details around the three Biffa offers are detailed in **Appendix 1**.

3.1 Option 1: Further seven-year term with new vehicle fleet

This is a continuation of the contract in its existing form. Biffa claim that any discount is purely derived from profit margin. The contract would run for a further seven years and the entire fleet would be replaced in August 2013. This option offers the Council with the lowest savings of all options. Its value to the Council is at 70% of the value of Option 3 and 65% of the value of Option 4.

3.2 Option 2: Delay of the break clause decision for 3.5 years with new vehicle fleet

No offer made.

3.3 Option 3: Delay of the break clause decision for 3.5 years and removal of the age restriction on the fleet);

This option requires a variation of the contract in order to move the Council's decision over the break clause to April 2016 (with a view to determining the future of the contract from April 2017). This option would enable the Council to retain the flexibility to see out the full 14 year primary term and extend to 21 years should both parties wish to do so, but also enable the Council to consider the procurement opportunities at that time. This offer realises additional fleet depreciation savings. Biffa are prepared to pass on 100% of these savings to the Council whilst retaining 100% of the risks associated with using an older fleet. This will include an enhanced maintenance programme and replacement of vehicles where necessary, as well as adequate resourcing for spare vehicles. This option is worth only 92% of the value of the best financial buy-out offer (option 4) to the Council. Biffa would operate on a higher profit margin due to the shorter guaranteed contract term. However, this offer provides the Council with the most flexibility going forward when considering how to "package" its Environmental Streetscene Services in the near future.

3.4 Option 4: Further seven-year term with removal of the age restriction of the fleet.

This is the same as Option 1, but with the vehicle age restriction lifted as in option 3. Biffa's intention would be to replace vehicles at 10 years old, meaning those vehicles will be 4 years old at the end of the contract term. Biffa would take the risk on loss on asset disposal if they were unsuccessful in retaining the contract through the tender process at that time. This option realizes the greatest reduction in Biffa's profit margin

of all three offers and the greatest annual saving to the Council. However, the additional saving gained when compared with Option 3 is only £62K pa. There is an opportunity within the contract to extend the term in 2020 for a further 7 years until 2027. Therefore depreciation discounts could continue to be passed to Wirral on the basis of utilising the fleet at that time. This option effectively enables the use of 2 “sets” of fleet over 21 years instead of 3 “sets” of fleet, releasing considerable savings around fleet profiling that was specified within the original contract. However, a re-tendering opportunity after the initial 10.5 years (April 2017) would also realise similar benefits, and allow for flexibility to alter fleet design to respond to changes to waste collection strategy and associated modernisation process.

3.5 Further negotiation: Application of Eunomia's recommendations

In response to Eunomia’s recommendations (**Appendix 3**) officers have successfully negotiated additional savings to those proposed in the original buy-out offers. On the basis that the Council’s preferred buy-out option would be the 3.5 year proposal (option 3), Biffa have responded by offering a further £498k revenue saving on a proposal to increase the efficiency of existing resources and reducing the size of their fleet. Biffa claim they have already offered the Council the efficiencies generated to date in the “buy out” offers so this additional revenue saving will be sought through further efficiencies to be delivered by August 2013. These significant savings can be achieved with minimal impact to service provision but will require the rationalisation of two services, including Bring Site service and the “Exclusion Round” that provides an additional residual waste collection service (so as to remain on a weekly residual pick up service) to 101 multi-occupancy properties than specified in the base contract. The Council currently pays Biffa an additional £96k pa for this service, meaning that these 2200 properties cost twice that of the normal alternated weekly waste collection service. Since the roll out of the 5-stream comingled recycling service, bring site usage has also fallen dramatically and many sites have been removed. This service has always been a high cost service to the Council (£142k pa) but the significant reductions for demand for this service means these costs can no longer be justified, given the financial challenge the Council faces. Officers propose to work with Biffa to maximise the savings potential of both these services, subject to carrying out the necessary consultation with affected residents with a view to implementing associated changes by August 2013. Officers will provide an impact assessment (including an emerging EIA) over the potential service changes at cabinet in July 2012 so that the option of approving work to attain these additional savings can be consider by Members.

3.6 Option 5: Re-tender the Environmental Streetscene Services Contract

This option has the potential to result in the greatest amount of savings but also carries with it the most risk. In order to retain the quality of existing services, it would be necessary to carefully consider the price/quality specification of any new tender and subsequent evaluation criteria to ensure the Council continued to maximise value for money and minimise the risk of bidders under-resourcing their tenders to provide a competitive edge. Through a procurement market review, Eunomia have indicated that the Council could expect a re-tender process to yield savings between £1.25m and £1.77m depending on the Biffa buy-out option chosen. The savings proposed in Option 3 presented above are therefore broadly in-line with these expectations (£1.2m) with the added advantage that the Council retains complete flexibility around medium term procurement and waste strategy decisions.

A full procurement market review, based on an examination of similar recently awarded contracts has been carried out by Eunomia to support this view (**Appendix 3**). Importantly, this report highlights the compounding impact of RPI applied to the current contract. Re-tendering could examine alternative ways of reducing the burden of inflation when compared to the current position; RPI applied to all items (currently running at 3.5%). This is one key driver for recommending a 3.5 year extension as opposed to a 7-year extension. It is important to note that should RPI average around 3.5% for the preferred 3.5 year term, the Council will have paid an additional £3.5m-£3.9m in inflation over this time period.

Additional associated risks to re-tendering include:

- Timescales for the end date of the existing contract (August 2013) leaving only 13 months to plan, procure and mobilise a new contract;
- Re-tendering would require a minimum 7-year term to gain adequate market interest. To secure a competitive bid, longer-term contracts are preferred by the market leaders. A commitment to the way we deliver our services over a longer period could limit our ability to respond to future needs and requirements.
- Re-tendering would enable the Council to investigate joint procurement opportunities with neighboring councils. However, this would be unachievable in the restricted time available at this time. A 3.5-year break clause extension provides a realistic timeframe for thoroughly examining our options and consulting other local authorities.
- The upfront costs of re-tendering (consultancy fees and staffing resource) are likely to be between 150k and 200k. These costs have not been factored into the savings proposed within this report.

4.0 RELEVANT RISKS

4.1 Detailed analysis of the risks and benefits of all options are detailed in the Eunomia Report – See **Appendix 3**. An officer summary of risks and benefits can be viewed in **Appendix 4**.

5.0 OTHER OPTIONS CONSIDERED

5.1 Section 3 and supporting appendices detail a full options appraisal of all scenarios available to the Council.

6.0 CONSULTATION

6.1 Specialist waste consultancy and management accountancy services have been commissioned in order to ensure independent scrutiny and that due regard is taken for securing the most advantageous outcome for this review in terms of achieving value for money.

7.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

7.1 There are no implications arising from this report.

7.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

7.1 There are no staffing or financial costs arising from the report, should Cabinet accept the officer recommendations. However, should Cabinet reject this recommendation in preference of embarking on a re-tendering exercise costs of up to £200K are likely to be incurred.

- 7.2 The costs of external consultancy support commissioned for this review have been contained within existing budget provisions within Technical Services. The costs for all associated consultancy work will not exceed £46k.
- 7.3 The Council is faced with identifying savings over the next two years to address the current projected budget shortfall of £28m in 2013/14 and a further £40m in 2014/15. This would require a 20% reduction in total budget. Therefore a large strategic contract such as the Environmental Streetscene Services contract is expected to be able to contribute significantly to these savings. The total savings package offered for the “preferred option” is £1.2m. These savings will have a part year effect of £0.7m in 2013/14 and a full year-effect in 2014/15.
- 7.4 This contract is subject to annual inflationary increases based upon RPI (Retail Price Index) applied in August each year. RPI is currently at 3.5%.
- 7.5 This savings package is proposed as a direct result of negotiations around the ‘break clause’. Technical Services intend to propose further opportunities to reduce the overall cost of Waste and Environmental Streetscene services. However future proposals are likely to impact on the range and standard of service provision and therefore would be subject to public consultation and Elected Member scrutiny.

8.0 LEGAL IMPLICATIONS

- 8.1 Legal and procurement officers have been consulted around the legalities of the officer recommendations. There is no provision in the original OJEU notice for an extension period of less than 7 years and option 3 is therefore not compliant with the notice and would be opened to challenge. However it is the view of officers that the ability to vary the existing contract in order to delay the break clause decision is not disadvantageous to the ‘market’ and therefore highly unlikely to result in any outside challenge. Biffa, who are technically disadvantaged by the break clause variation have agreed to support this variation.

9.0 EQUALITIES IMPLICATIONS

- 9.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

No because there is no relevance to equality as no decision around changes to services or service standards are proposed within this report. EIAs will be carried out on the Bring Site service and Exclusion round before a final decision can be made over the future of these two services. In response to changes to subsequent equality legislation, Biffa will be asked to confirm they are compliant with the requirements of the Equalities Act 2010 and provide supporting evidence if required. Biffa's response will be reported within the final report to be presented to Cabinet in July.

10.0 CARBON REDUCTION IMPLICATIONS

- 10.1 The officer recommendations within this report seek to maximise the flexibility the Council to respond to strategic waste management changes in order to meet the statutory recycling target of 50% by 2020 with due regard for maximising value for money of any service changes or new initiatives.

11.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

11.1 There are no planning or community safety implications arising from this report.

12.0 RECOMMENDATION/S

12.1 Cabinet is requested to:-

- (1) Endorse option 3: To delay the 'break clause' decision until April 2016 and remove the age restriction of the fleet used to service the current Environmental Streetscene Services Contract, thereby continuing the contract with Biffa until at least March 2017.
- (2) Instruct the Director of Technical Services to present a further report to Cabinet in July 2012 outlining the findings of the Price Waterhouse Cooper "open book" review and analysis of emerging risks around the financial solvency of Biffa and any potential impacts this could have on their ability to carry out an extended contract term.
- (3) Note the £1.2m revenue savings that have been identified from implementing the preferred option (option 3) of £0.7m in 2013/14 and a further £0.5m in 2014/15.
- (4) Instruct the Director of Technical Services to present a further report to this Cabinet no later than October 2015, outlining further recommendations for the future procurement and service 'packaging' options of waste collection and street cleansing services, to include appraising any opportunities of joint procurement with neighbouring authorities and/or in-sourcing some or all of these services.
- (5) Instruct the Director of Technical Services to provide an impact assessment (including an emerging equality impact assessment) of the proposed service changes arising from the rationalisation of Bring Site provision and Exclusion rounds as detailed in section 3.5 and **Appendix 2**, related to the additional savings package proposed by Biffa of £498k.

13.0 REASON FOR RECOMMENDATIONS

13.1 Implementation of these recommendations will ensure the efficient delivery of the Council's waste management and cleansing services and contribute significantly to the revenue savings required across the Council. In addition, the preferred option (option3) will maximise the Council's flexibility to achieve future long-term financial benefits in its goal to meet its statutory obligations and targets around waste management. Failure of the Cabinet to make a decision around the 'break clause' before August 2012 will result in the Biffa contract continuing in its existing form, at its current cost and all negotiation opportunities will be lost.

REPORT AUTHOR: *Tara Dumas*
Waste and Environmental Services Manager
telephone: 0151 606 2453
email: taradumas@wirral.gov.uk

APPENDICES (COMMERCIALLY SENSITIVE - EXEMPT)

- Appendix 1: Biffa buy out options letter (exempt)
- Appendix 2: Biffa additional "offer" letter (exempt)
- Appendix 3: Eunomia report (exempt)
- Appendix 4: Risks and benefits officer summary (exempt)

REFERENCE MATERIAL

None.

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Sustainable Communities Overview and Scrutiny Environmental Streetscene Services 5 th Annual Performance Review	30 January 2012
Cabinet Environmental Streetscene Services Financial Review	12 April 2012