

Slough Borough Council

Report To:	Cabinet
Date:	15th July 2024
Subject:	Waste Disposal Contract
Lead Member:	Cllr Gurcharan Singh Manku, Lead Member for Environment, Environmental Services and Open Spaces
Chief Officer:	Pat Hayes - Executive Director Regeneration, Housing and Environment
Contact Officer:	Matthew Hooper – Director of Environment & Highways
Ward(s):	All
Key Decision:	YES
Exempt:	NO, except Appendix A contains information relating to financial or business affairs, which is exempt by virtue of Paragraph 3 of Schedule 12A of the Local Government Act 1972 and Appendix B, which is exempt by virtue of Paragraph 5 of Schedule 12A of that Act
Decision Subject To Call In:	YES
Appendices:	Appendix A – Waste disposal contract draft heads of terms (Exempt) Appendix B – Legal Advice – Kings Counsel Opinion (Exempt)

1. Summary and Recommendations

- 1.1. This report sets out the approach the council will be taking on the waste disposal contract to ensure continuity of service and future revenue savings. The recommendations detailed in this report ensure that the council obtains the very best value for money, guaranteeing continuity of provider, efficiencies and reduced exposure to escalating inflationary increases.
- 1.2. Between 2003 and 2017 the council outsourced its environmental services including its waste collection service via the Environmental Services contract and following the insourcing of the service to the Council has continued broadly with the same operation of collection and disposal of waste.
- 1.3. The disposal contract was re-tendered by the Council in 2016 /17 and Grundon secured this contract having previously been the incumbent provider. The contract was estimated at £48m (excluding RPI increases) for 7 years plus options for a further 3-year extension and this commenced on 1st December 2017. The contract is due to

end on 30th November 2024, although there is an option to extend for a further 3 years.

- 1.4. The Council is proposing to make a direct award to Grundon relying on an exemption on the requirement to conduct a competitive procurement. This is for technical reasons as set out in this report. During the contract term, it is proposed to collaborate with other local authorities to identify a longer-term arrangement for waste disposal services across the region.

Recommendations:

Cabinet is recommended to:

- a). Approve the direct award of a contract to Grundon Waste Management Limited for a period of up to 10 years based on the draft terms set out in Appendix A;
- b). Approve the issuing of a voluntary ex ante transparency notice outlining the Council's intention to enter into the contract;
- c). Delegate authority to the Executive Director of Regeneration, Housing & Environment, in consultation with the Lead Member for Environment, Environmental Services and Open Spaces and the Executive Director of Finance and Commercial, to complete negotiation for the new contract and enter into the new contract in accordance with the heads of terms at Appendix A following the period of 10 days after publication of the VEAT notice.

Reason:

- The council is in contract with Grundon for waste disposal. The current contract ends on 30 November 2024 but has provisions for a 3-year extension.
- Despite officer discussions with other local authorities and soft market testing, the Council has been unable to identify a reasonably viable alternative to the current arrangement of direct delivery of waste to a site within or in close proximity to Slough. Running a procurement exercise will not provide any alternative bidders as evidenced by previous procurements, with Grundon's being the sole bidder on both occasions that the council has tendered this service.
- The Council relies on a direct delivery service to Grundon's; this is due to the Environment Agency Permit for the Chalvey Depot (i.e. waste material must be covered and not exposed to weather conditions); the fleet size being the maximum that can be accommodated within the depot and the workforce (drivers and loaders) capacity. Without a direct delivery provision, the council would have to invest in infrastructure, plant and staff at a point where there are no capital or revenue funds available.
- In the longer-term the Council needs to work collaboratively with its neighbouring authorities to identify alternative longer-term options for waste disposal in the region, however these options are unlikely to be viable until at least 2033/34 when existing contracts of the neighbouring authorities expire.

- Officers are currently working up proposals for a feasibility study for a wider waste disposal contract covering Berkshire, Hampshire and Surrey. This will then form part of a future report to Cabinet to approve a strategic approach to future waste disposal across the region.
- In the meantime in order to comply with the Council's waste disposal duties, it is necessary to directly award a contract to Grundon, the existing contractor, which operates a site within Slough
- The proposed arrangement delivers best value and meets the MTFs savings targets.

Commissioner Review

The Council needs to ensure that it is confident in its analysis and evidence on the legal tests; in that competition is absent for financial, technical and logistical reasons, a reasonable and justifiable conclusion has been reached for a direct award relying on the exemption under Regulation 32 of the Public Contracts Regulations 2015, and that the best interest of the Council is being secured.

2 Report

2.1 Slough Borough Council has a statutory duty to dispose of waste which is collected by an in-house service. Waste disposal, with the exception of garden waste, is currently contracted to Grundon, who operate a facility within the Borough.

2.2 Options considered:

OPTION	DESCRIPTION
A	<p>Extend current contract for a further 3 years with the existing supplier – Grundon has offered a small price reduction for extending the current contract, but this will not lead to any material savings or budget certainty. The extension will also not include any change to the annual contract inflation calculation i.e. RPI will be the method used.</p> <p style="text-align: right;">Not Recommended</p>
B	<p>Extend current contract for 12 months and facilitate a re-procurement of the waste disposal contract. It is not considered financially viable to look at a short-term extension with an expectation that a new contract will be let within the necessary timescales. The Council requires a waste disposal facility within an approximate 5-to-6-mile radius to minimise any impact on the direct delivery collection service. Therefore, a new tender process will not yield multiple bidders based on previous procurement exercises in 2003 and 2017, where Grundon's were the sole bidder. Waste disposal costs are also rising due to higher energy charges and based on benchmarking the council is likely to see a higher cost for disposal.</p> <p style="text-align: right;">Not recommended</p>
C	<p>Proceed with a direct award to Grundon based on new disposal charges – This route provides long-term budget certainty and enables the Council to achieve its MTFs savings. The contract negotiations have also provided for limiting the future exposure of CPI by a method of Capping the higher end at 7% and a Collar/Floor price for the lower end at 2%. This protects the Council from risk of inflationary increases over 7%, but does</p>

	mean the Council will be obligated to pay at least 2% increase each year even if inflation is lower than this.
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Recommended option

2.3 The council's Corporate Plan identifies three priorities:

- **A borough for children and young people to thrive** – having clean and safe environments for children and young people to live, play and exercise in is a key requirement for a child's development.
- **A town where residents can live healthier, safer, more independent lives** – feeling safe in a well maintained and clean environment encourages people to live healthier and more independent lives.
- **A cleaner, healthier and more prosperous Slough.** Well kempt environments bring pride to communities and are attractive to visitors.

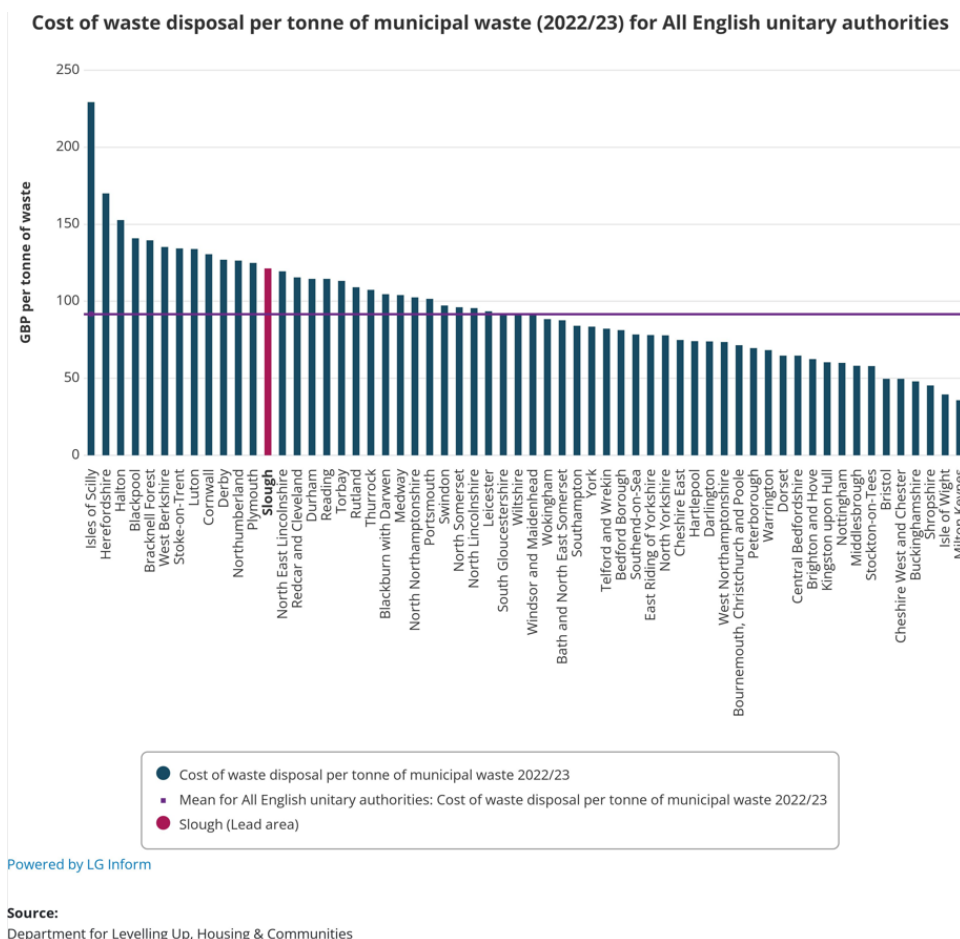
3. Background

- 3.1 Between 2002 and 2017 the council outsourced the waste collection and disposal services via the Environmental Services contract to Accord who were then bought out by Amey. The contract for waste disposal was secured by Grundon as part of the outsourced work. At the end of the 15-year contract term, the service was brought back in-house, the contract was reviewed and updated by Ricardo Plc and a tender process initiated to coincide with the insourcing of the service. The council received only one bid and that was from Grundon, this again was based on the criteria of direct delivery.
- 3.2 The current contract was let for seven years with an option for a further three years and was valued at an estimate of £48m (excluding RPI). In total the cost using RPI actuals and forecasted figures would be in the region of £75m.
- 3.3 The contract is due for extension at the end of November 2024. This report sets out the recommended approach the council is proposing to take on the waste disposal contract to ensure continuity of service and future revenue efficiencies and savings.
- 3.4 The borough produces approximately 34,000 tonnes of waste plus around a further 14,000 tonnes of recycling waste that is sent to Grundon and other recycling companies. This tonnage is not capped but is an annual tonnage that has been recorded since the start of the contract with variations both positive and negative subject to the cost of living. The cost for this service to Grundon stands at approximately £5.9m/annum and was increased by around £900k following the significant RPI of 14.17% increase in 2022/23.
- 3.5 The Council has a number of other contracts approximately 20, for the recycling of materials from cardboard and textiles to scrap metals and tyres. These contracts do provide some reimbursement to the council based on the commodity market but some materials such as plastics are a cost burden. The proposal from Grundon is to use the commodity prices to help reduce the price per ton on recycling streams that are taken to Grundon from the general fortnightly recycling collections.

- 3.6 There is a risk with this approach in that if the market for a particular commodity such as glass drops the price per ton will increase. However, the current pricing mechanism in the contract attracts a continuous increase in the price per ton regardless of market conditions.
- 3.7 The council due to its location and amount of waste generated has limited options for waste disposal in that West London, Buckinghamshire and Berkshire are the closest options however, there are caps on the volume of waste these authorities generate, this is governed through a permit system overseen by DEFRA/Environment Agency. These authorities have also been supporting the council with options for savings and efficiencies which have included how to better manage the public civic amenity site to generate income from small appliances and metals etc. West London Waste Authority have been in discussion with Slough but cannot extend the opportunity to join their waste contract due to primary legislation.
- 3.8 The RE3 contract for Reading, Wokingham and Bracknell has a cap on the tonnage and the Buckinghamshire facilities are based in the northern part of the county and hence would be difficult to transport waste to without significant capital and revenue support. The Council has an Environment Agency Permit for Waste for its own facility at Chalvey but this does not cover the re-batching of general waste for exporting to other locations for disposal. To comply and have a revised EA permit to allow the handling of general waste, the Council will need to build a new larger Transfer Station/Shed (TS) that covers the waste being brought back daily.
- 3.9 A new TS would require the council to procure firstly a specialist to survey and remodel the depot for all its operations and to then design and estimate the capital and revenue costs for the new TS. The initial survey and design would take approximately six to nine months following a procurement exercise. The capital estimate following the design process then would be subject to a capital borrowing or transformation funds as there are no existing grants. The design and implementation could take a further 12-18 months to then deliver subject to the availability of space for the build contractor to work due to on-going operations at the depot. Realistically a new TS would take around 3 years to deliver as the site is constrained. The operational costs thereafter would need to include additional vehicles, workforce and transportation costs to a new provider. These are estimated at around £25/ton which would equate to approximately £850k of costs based on 34,000 tonnes of general waste.
- 3.10 There are no facilities within a reasonable distance of Slough with the capacity to receive the general waste tonnage collected by the Council. If the council was in a position to use neighbouring facilities further afield, the Council would need to move all material into containers and transport them to High Wycombe or Ruislip. Any saving on the price per ton would be offset by the cost of the batching process and would not provide any financial benefit to the council.
- 3.11 The alternatives to incineration are landfill which incurs significant tax penalties. For environmental reasons as well as financial, disposing of waste through landfill will not help the council to meet its environmental targets or provide financial savings on its road to recovery. As set out in SBC's Municipal Waste Strategy 2015 – 2030 our objective is to: "use landfill as a very last option in waste disposal where both 'Energy from Waste' plants are unavailable or...for 'inert' materials or certain hazardous wastes only".

3.12 The Council therefore considers with regard to the service requirements that there is only one provider in the market that can currently meet its needs.

3.13 The table below indicates the cost per tonne for waste disposal across the country. It is important to note that though there are significantly cheaper prices in the market, a number of the authorities own their own facility or are part of a wider group that have secured longer contracts to drive value for money. This is the approach Slough is adopting from 2023.



3.14 Due to the above limitations, Grundon have indicated that they are prepared to offer new rates for a longer-term contract of up to 10 years. This offer includes a food waste trial but does not provide exclusivity for food waste and other recyclable materials. The draft heads of terms are set out in Appendix A.

3.15 Due to the proposal not to conduct a competitive procurement, officers sought legal advice from HB Public Law and Kings Counsel (KC). Kings Counsel advice is appended at Appendix B.

3.16 The limited radius specified in the previous two tenders has not been considered to be an “artificial narrowing down”.

3.17 The recommendation is to make a direct award relying on the exemption under Regulation 32 of the Public Contracts Regulations 2015. This will mean drafting new contract documents to include any new specifications and legislation requirements.

3.18 Once authority has been given, the Council will confirm its commitment in a letter of intent. Whilst this will not bind the Council to the future contract, Grundon has agreed

to honour the new rates with immediate effect pending the new contract being negotiated.

- 3.19 It is recognised that being so heavily dependent on a single supplier is not ideal as it presents a degree of risk to the council's services. For this reason, officers will be commencing discussions with Local Authorities in Berkshire, Hampshire and Surrey with the objective of undertaking a strategic feasibility study relating to future waste disposal options. By starting the process now it is envisaged that Slough, along with other authorities, will have increased levels of resilience and lower cost options for waste disposal by the end of the 10 year contract we are currently seeking to award. A paper will be brought to a future Cabinet meeting setting out progress on this initiative.
- 3.20 The council acknowledges the need to significantly improve levels of recycling in the borough. The introduction of the food waste pilot from 1st July will pave the way for improved recycling rates but more needs to be done to work with our residents to increase awareness about the importance of recycling and reducing waste. Aside from the compelling financial case, this is in line with the Council's responsibilities to reduce, re-use and recycle and its various environmental commitments

4. Implications of the Recommendation

4.1. Financial implications

- 4.1.1 Counsel opinion is that the Council is able to make a direct award of the Waste Disposal Contract to Grundons. The characteristics of the Council's situation that allows for a direct award also provide a degree of assurance that the contract offer also provides value. As such it is worth restating those characteristics:

There is currently no alternative waste facility in or within a short radius from the Council's area, if landfill facilities are excluded;

The Council currently has a small fleet of waste collection vehicles reflecting its modest size by unitary authority standards and the level of residual waste is of a scale to be accommodated within the existing facility. Put simply, there is not the opportunity to consider economies of scale that other options may present. Nor is it possible to countenance significant capital investment that would bring in to play other options involving longer, more costly transportation.

The plausibility of the factual proposition that Grundon would be the only possible bidder in a new procurement is enhanced by the fact that they were the only bidder when the current Contract was procured.

- 4.1.2 In summary, the proposed offer from Grundons is likely to offer more advantageous terms than the Council could reasonably expect to obtain if it was to conclude an alternative procurement. The offer also provides a reduction in current rates contributing to the Council's MTFs.

Waste Type	Annual Saving	Estimated Cost on Proposed Prices	Estimated Cost on Current Prices
Residual Waste	£ 544,461	£ 3,585,873	£ 4,130,334
Recycling	£ 47,370	£ 596,772	£ 644,141
Bulky Waste	£ 132,797	£ 1,149,358	£ 1,282,155
Total	£ 724,627	£ 5,332,003	£ 6,056,630

- 4.1.3 In total, annual savings of £0.725m can be expected as part of the new contract.
- 4.1.4 The total estimated expenditure of these waste streams under current prices, is expected to be £6.057m. There are other waste streams included within the contract relating to Food and Clinical Waste but there are no adjustments to these waste streams as part of this contract offer. Within the overall spend pressure of £6.3m there are other smaller specialist contracts with different suppliers. The 24/25 Budget had been reduced by £1.3m in expectation of revised contract terms and there are other initiatives that will help contribute to the savings shortfall.
- 4.1.5 Further savings could be achieved through a rebate proposal on the sale of Recycling waste material, but it is not possible to quantify this at this stage. The current expenditure is dependent on the tonnage of waste and recycling disposed of by our residents. The higher the recycling figure the less the impact will be on the budget. The recycling charge is 30% cheaper to dispose of.
- 4.1.6 Slough is in the bottom quartile for recycling and this contributes to increasing costs to the council as more waste is sent to the incinerator in Colnbrook. The move to fortnightly collections has reduced the waste disposal cost.
- 4.1.7 Similarly, pending review of the Food Waste trial, the Council could benefit from more economical rates. The food waste trial and future boroughwide rollout is expected to reduce the tonnage of waste sent to the incinerator and will be sent instead to an Anaerobic Digestive system for processing. This ultimately will reduce the expenditure as the price per ton is more than half the cost of incineration. The impact of these changes will be quantified when decisions are to be taken as to the long-term future of the Food Waste Service.
- 4.1.8 As stated above, Slough has one of the lowest recycling rates in the country and increasing this percentage is the surest way to reduce the cost of residual waste disposal.
- 4.1.9 The new contract needs to insulate the Council as much as possible from future Government policy on waste which has been a changing landscape for a number of years.

4.1.10 Looking forward, the Bank of England forecast for CPI is for it to increase slightly in the second half of this year, to around 2½%, as declines in energy prices in the previous year fall out of the annual comparison. CPI inflation is projected to be 1.9% in two years' time and 1.6% in three years. As such assumptions that contract inflation will be around the collar rate of 2% is not an unreasonable assumption.

4.1.11 It is proposed that although new rates have not yet been applied, the inflation index will be applied from December 2024. This would add £0.05m of cost for 2024/25 and £0.21m to be included in the MTFs for 2025/26, unless this can be deferred to April 25, or later.

4.2 Legal implications

4.2.1 The Council has waste collection and disposal duties under the Environmental Protection Act 1990 and associated legislation. In relation to disposal of waste, the Council has a duty to arrange for the disposal of controlled waste collected as part of its waste collection duties, provide places for residents to directly deposit waste free of charge and dispose of such waste. Recent legislation sets out additional requirements to simplify recycling across England, although there are transitional arrangements in place until 2026 for household collections. These requirements include separate collections for food waste, garden waste, dry recyclables and residual waste.

The Council needs to ensure it procures a waste disposal service which meets the current and future legislative requirements, represents best value and is in compliance with procurement legislation.

The Council entered into a contract with Grundon Waste Management Limited (Grundon) in 2017. This provides for an expiry date of 30 November 2024, but also for mutually agreed extensions for a period or periods up to 3 years in total. To re-procure the services the Council is governed by the Public Contracts Regulations 2015. The Council is permitted to exercise the contract extension of up to 3 years, however officers consider that this does not provide a medium-term solution to waste disposal services currently delivered by Grundon. Regulation 32(2)(b) permits a direct award to an operator where it can be demonstrated that the services can only be supplied by that particular economic operator for one of a number of specified reasons. The relevant reasons are where there is an absence of competition for technical reasons or the protection of exclusive rights and where it can be shown that no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement. The Council has taken legal advice, including from a leading KC and this advice is appended at Appendix B.

4.3 Risk management implications

Risk	Assessment of risk	Mitigation	Residual Risk
Loss of continuity if direct delivery is not possible	High Current market is volatile and energy costs for incineration are still high leading to higher disposal fees.	Explore hiring/purchase more vehicles and staff to allow collections to continue daily.	Medium
The current preferred supplier withdraws current offer in whole or part.	Medium Unlikely in current due to the cap on waste tonnage permitted at the site.	Negotiate with incumbent provider for continued service	Low
Procurement Challenge	Medium Current market is volatile however alternate options for other providers to offer the same or better services within the direct delivery radius of Slough are remote.	Publish a VEAT notice advising on the contract award.	Medium

4.4 Environmental implications

4.4.1 The energy from waste incinerator (EfW) provides a cleaner and more sustainable approach to waste disposal for Slough and the wider environment. The location of the Lakeside Incinerator also results in less fuel costs to alternate locations in Buckinghamshire and West London.

4.4.2 The council as part of the current contract send Zero waste to Landfill and hence does not incur landfill taxes or environmental disbenefits.

4.5 Equality implications

4.5.1 There are no direct equality impact implications arising from this report.

4.6 Procurement implications

4.6.1 Slough Contract Procedure Rules (section 14) allow for an exemption from tendering, where “it can be demonstrated that it is in the Council’s best interest and this is clearly demonstrated in the Exemption report.” Note that there was only the incumbent bidder when this service was last tendered. To ensure that the exemption is in

compliance with the law (PCR 2015) the Council has sought KC advice and this is in contained in Appendix B. The Head of Commercial will issue a Voluntary Ex-ante Transparency Notice (VEAT) in advance of the award after this decision has been approved, in order to alert the market.

4.7 Workforce implications

4.7.1 None

4.8 Property implications

4.8.1 No property implications.

5 Background Papers

None