

INTERIM RESIDUAL WASTE DISPOSAL ARRANGEMENTS

Cabinet Date	27 September 2017
Fire, planning and infrastructure.	Cllr Nigel Moor
Key Decision	Yes
Background Documents	<ol style="list-style-type: none"> 1. Cabinet decision 19th July 2006 to award the County Council's Waste Management Services Contract to Cory Environmental (Gloucestershire) Ltd. 2. Cabinet Decision 14 September 2011 to extend the County Council's Waste Management Services Contract with Cory Environmental Ltd.
Location/Contact for inspection of Background Documents	<ol style="list-style-type: none"> 1. http://glostext.gloucestershire.gov.uk/Data/Cabinet/20060719/Agenda/To%20approve%20award%20of%20a%20contract%20for%20bulking,%20transfer,%20landfill%20and%20organic%20waste%20treatment%20of%20household%20waste%20LOT%203.pdf 2. http://glostext.gloucestershire.gov.uk/documents/s5382/AG%205%20CABINET%20REPORT%20-%20Cory%20Contract.pdf
Main Consultees	<ul style="list-style-type: none"> • Cory Environmental Ltd • Joint Waste Committee – Comments of the JWC will be reported to Cabinet verbally
Planned Dates	Proposed Variation to apply from 07 August 2018 to 10th January 2020
Divisional Councillor	All
Officers	<p>Nigel Riglar - Commissioning Director: Communities and Infrastructure, nigel.riglar@gloucestershire.gov.uk</p> <p>Judith Harper – Interim Contracts Manager Judith.harper@gloucestershire.gov.uk</p>

Purpose of Report	This report seeks approval for a short term interim arrangement for residual waste disposal - and associated services bundled with the current landfill contract with Cory Environmental (Gloucestershire) Limited (“Cory”) - to cover the period between expiry of the said contract on 6 th August 2018 and date on which the provision of services under the Gloucestershire Residual Waste Project at the Javelin Park Energy from Waste (EfW) facility shall commence (the “Services Commencement Date”) (expected summer 2019).
Recommendations	It is recommended that: 1. The County Council extends the term of its current Waste Management Services Contract with Cory by 1 year and 6 months (with the effect that it will expire on 10th January 2020) by entering into a variation agreement with Cory for this purpose; and 2. Completion and execution of the proposed variation agreement is delegated to the Commissioning Director, Communities and Infrastructure.
Reasons for recommendations	As set out in paragraph 4.1 of this report
Resource Implications	The contract extension will be funded from within the existing budget for residual waste disposal..The estimated value of the proposed extension is £16m based on the Planned Services Commencement Date of 29th July 2019.

1. Background

- 1.1 Following a competitive procurement process, in 2006 the County Council awarded the Waste Management Services Contract to Cory Environmental (Gloucestershire) Ltd for the period 7 August 2006 until 6 August 2013.
- 1.2 The contract contained a right for the County Council to extend the arrangement for up to a further five years to 6 August 2018. The option to extend the contract by the full extent was exercised by decision of the Cabinet in September 2011 and a variation agreement was entered into between the parties on 27th February 2012 to give effect to the extension (the “2012 Variation”). The contract expiry date is therefore 6th August 2018.
- 1.3 The services provided under the contract are: landfill of residual waste; composting of garden waste; the bulking and haulage of garden waste, mixed food and garden waste, and residual waste; and the monitoring of three closed landfill sites.
- 1.4 At the time of entering into the 2012 Variation it was envisaged that the new Javelin Park energy from waste facility (the “Javelin Park Facility”) would come on line in 2015/16. The 2012 Variation specified a minimum tonnage to be delivered to Cory for each financial year up to 2014/15 but with no minimum tonnage guarantee from 2015/16 onwards to allow flexibility in transition to the Javelin Park Facility during its commissioning period.
- 1.5 Due to unforeseen delays in the delivery programme for the Javelin Park Facility (which were not, of course, envisaged at the time of the 2012 Variation), there will be a gap in contracted provision for residual waste treatment between 7th August 2018 and the Services Commencement Date at the Javelin Park Facility, currently scheduled for July 2019. The Services Commencement Date is the point at which all works shall be completed and the plant has passed all acceptance tests following commissioning. UBB (who holds the contract for the Gloucestershire Residual Waste Project) are obliged to treat and dispose of all residual household waste from Gloucestershire from this date.
- 1.6 The County Council also has an obligation to supply waste to the Javelin Park Facility prior to the Services Commencement Date for the purpose of carrying out hot commissioning (i.e. the testing and proving of the operation of the plant by combusting waste) prior to full operation, from March 2019. It is envisaged that the amount of waste required for hot commissioning from March 2019 until the anticipated Services Commencement Date in July 2019 (the “Hot Commissioning Period”) may vary from week to week as demand fluctuates.
- 1.7 The County Council must therefore make arrangements to cover the interim period between 7th August 2018 and the Planned Services Commencement Date of 29th July 2019 plus some contingency time. It is recognised that both the start and end dates of the Hot Commissioning Period are subject to the construction of the Javelin Park Facility proceeding in accordance with the scheduled programme. Accordingly, the council’s interim arrangements will need to be sufficiently flexible to accommodate any variations in the start of hot commissioning and week by week variations in waste delivery requirements leading up to the Services Commencement Date.

Separately, the County Council must make new arrangements for future long term contracts from January 2020 for all the waste services identified in 1.3 above (with the exception of landfill of residual waste) including the provision of transfer and haulage. The strategy for these will be addressed in a separate Cabinet report in due course.

- 1.8 It should be stressed that there are no delays expected to the Javelin Park Facility programme at the time of preparing this report. The key issue is therefore to balance the following three considerations against risks:
- (a) Taking reasonable steps to ensure that if there is any slippage in the Planned Services Commencement Date at the Javelin Park Facility, the Council does not find itself with no contract in place for residual waste disposal and the associated services, thereby exposing the council to further costs and service continuity risks while it seeks to procure the services of a replacement interim service provider.
 - (b) taking a reasonable and pragmatic view about the appropriate length of the proposed contract extension with Cory. In view of the Planned Services Commencement Date in July 2019, it is proposed that a backstop date of 10th January 2020 (around six months) is a comfortable, but not excessive, contingency period for any delays that may arise.
 - (c) Ensuring that whoever provides the interim services described in this report understands that in all probability there will be little or no waste delivered to them after July 2019 and that the interim contractual arrangements put in place subsequent to this report will reflect this without penalty to the County Council.
- 1.9 Currently waste collection authorities deliver their waste directly to the nearest/most appropriate transfer station site or landfill site as directed by the County Council. At the transfer stations waste is then combined and packed (bulked) then transported (haulage) to a final disposal facility or landfill site as appropriate. HRC waste is delivered direct to landfill.
- 1.10 Following the commencement of hot commissioning at the Javelin Park Facility, waste collection authorities and the HRCs will either continue to deliver residual waste to the existing contracted waste transfer stations or, alternatively, deliver direct to the Javelin Park Facility. Such deliveries shall continue to be required during the 'gap' period (ie, between 7th August 2018 and the Services Commencement Date). Use of waste transfer stations will continue to be required due to the distance of collection areas and depots from the Javelin Park facility as it is neither practical nor time- and cost-efficient for waste collection vehicles (RCVs) to travel long distances (e.g. five miles from district boundary) to tip their waste when full (and return empty).

2. Options

- 2.1 With waste disposal a vital core statutory requirement, the County Council has essentially three options to cover the period between 7th August 2018 and the Planned Services Commencement Date in July 2019, plus the reasonable contingency period of 6 months (until January 2020) described in para 1.7 above.
- (a) **Option A** – hold a competition to procure a short term (ie, a 1 year 6 months) contract commencing 7th August 2018 for the services described in paragraph 1.3

of this Report; or

- (b) **Option B** - Negotiate a variation with Cory to vary the expiry date of the current Waste Management Services Contract with Cory to cover the period between 7th August 2018 and the Planned Services Commencement Date of 29 July 2019 plus a prudent contingency period of 6 months (until January 2020) for the reasons outlined in para 1.8 above, or
- (c) **Option C** - Disaggregate elements provided under the current Waste Management Services Contract with Cory (i.e. landfill of residual waste; composting of garden waste; the bulking and haulage of garden waste, mixed food and garden waste, and residual waste; and the monitoring of three closed landfill sites); and seek to extend the term of such contract, but only in respect of the landfill, bulking and haulage of residual waste, until 10th January 2020. The Council would then procure new contracts for the remaining elements, i.e. transfer and haulage of garden waste, mixed food and garden waste and residual waste; composting of garden waste and landfill monitoring with effect from 7th August 2018.

2.2 The pros, cons, risks and opportunities of these options are explored below

3. Options Appraisal

3.1 **OPTION A:**

Competitive procurement via the open market for a short term contract on the basis described in paragraph 2.1(a) of this report presents a number of issues and risks. These can be summarised as follows:

- It is unlikely that there will be a large number of service providers who could offer an *economically viable*, short term solution given alternative treatment/disposal facilities are located some distance away, generally beyond the County boundary, *and* would require suitably consented transfer facilities in the right locations:
 - Current contracted transfer facilities are located in Lydney and Cirencester; therefore alternative facilities would be required in the Forest of Dean, and the South Cotswold areas plus Cheltenham/Tewkesbury area (which currently has a landfill site).
 - There are no other known existing available transfer stations in these areas with consents for household waste that are of a suitable size and configuration.
 - With less than a year until August 2018 it is unlikely that any new facility could gain the necessary consents (planning, permitting and property) and be delivered in the time available. (A realistic timescale is at least 12 months or more, particularly where construction works are required).
 - Investment in new facilities for a period of between 9 to 18 months is unlikely to be economically viable.
 - a more realistic timeframe for conducting a competition to provide new transfer facilities (which would allow potential new entrants to the market to participate in addition to the existing contractor), would be to carry out such a competition during 2018 for a contract which would commence in January 2020.

- Out of county treatment/disposal destinations would increase haulage costs in proportion to distance.
- The expected progressive reduction in waste inputs after March 2019, just seven months after the start date, would also make investment in any new facilities an unattractive proposition to new market entrants.
- There is a significant risk that a contract awarded pursuant to a competitive procurement process would result in a higher contract price compared to varying the Cory contract due to changing market conditions since the current contract with Cory was secured in 2006.
- A procurement process is itself estimated to cost in the region of £50k (as identified by Office of Government Commerce).
- There is a risk of disruption to the County's current waste services due to change in location of delivery points, and consequent costs. This is because the current delivery points for residual waste (transfer stations and landfill sites) are all operated by Cory and are unlikely to be available to competitors; alternative delivery locations could increase travel distances for the collection service provider as well as affecting the designated collection round patterns, thus resulting in potential for increased staff and vehicle costs (numbers and/or working hours and operating costs). This would increase costs to the Waste Partnership. Furthermore the County may be liable for 'tipping away payments' for any delivery locations that are beyond the collection authority boundary.
- Individual waste collection partners could have to change delivery points twice within a year (ie, once at the start of the proposed interim contract and again on the Services Commencement Date). These associated costs would have to be factored into the procurement evaluation process.

3.2 **OPTION B:**

Continuation of the existing contracted arrangements with Cory on the basis described in paragraph 2.1(b) by way of a contract variation raises the following risks and issues.

The Public Contracts Regulations 2015 provide that a contract may be varied on the basis proposed above provided that (a) the need for the extension could not have been foreseen; (b) the extension will not alter the overall nature of the contract; and (c) the increase in price resulting from the extension will not exceed 50% of the value of the original advertised contract. Failure to justify the proposed variation in accordance with these requirements could result in a legal challenge.

The provisions (a) - (c) are addressed as follows:

- The extent of the delays in providing a sustainable long term solution to divert waste to landfill (which has now emerged as the Javelin Park Facility project) could not reasonably have been foreseen in 2006 when the term of the current contract with Cory was originally specified.
- The short-term nature of the proposed contract extension could not be regarded as affecting the overall nature of the contract or to be anti-competitive, particularly as a full competition for new contracts would be entered into for the services still required during the extended contract period under the proposed variation.
- The proposed maximum extension/variation at £24m for 17 months represents about 20% of the original 7 year contract value (£122m) or 11% of the whole contract value including a 7 year extension (£210m); the more likely scenario based on Services

Commencement at the Javelin Park facility on time is that the value of the proposed contract extension would be c.**£16m** (ie, 13.1% of the original 7 year contract value).

The Council would publish both a Voluntary Transparency Notice in the Official Journal of the European Union (in which it will set out its justification for the proposed extension) and also a Modification Notice (in which it would confirm that the variation has taken place). These measures, in addition to this public report, would ensure that the Council's intentions, and its justification for its proposed approach, are transparent.

3.3 **OPTION C:**

Disaggregating the current Waste Management Services Contract with Cory into separate elements on the basis described in paragraph 2.1(c) of this report) and extending the term of the council's current contract with Cory until 10th January 2020 but only in respect of the residual waste transfer, haulage and landfill provided thereunder appears an attractive option, but has the following risks:

- Procurement of new contracts for the remaining elements (composting of garden waste; the bulking and haulage of garden waste, mixed food and garden waste; and landfill monitoring) would take place with commencement from 7th August 2018. . However any variation to the current contract with Cory on the basis described in paragraph 2.1(c) of this report would almost certainly be regarded as a significant change to the nature of the contract, hence it would be deemed unlawful under procurement law.
- Furthermore, disaggregating the elements provided under the current contract and described above would add a disproportionate degree of complexity for such a short period, such that it would be unlikely to be attractive to contractors given the level of investment that would be necessary to deal with a small amount of waste for a period which could be as little as 9 months (and no more than 18 months).

3.4 **Financial Implications**

The total value of the current Waste Management Services Contract with Cory is in the region of £18.4m per annum. A large proportion of this is landfill tax (c£11.5m pa) which is passed through to HMRC by the contractor.

The contract price was fixed with effect from August 2013 in accordance with the terms of a contract variation agreed between the parties in February 2012.

The actual amount paid to Cory will depend on the price agreed (fixed rate) and the total tonnage sent for disposal (variable – demand led).

The variation to the contract terms proposed in this report will not result in any changes to the schedule of rates for residual waste contained therein and therefore the residual waste contract price (excluding increases in landfill tax) would remain frozen at the August 2013 level..

Landfill tax will rise from £86.10 per tonne in 2017/18 to £88.95 in 2018/19. HMRC have not confirmed rates beyond this but an increase of the order 2.5% per annum would be in line with recent rises.

The estimated maximum value of the proposed contract variation is **£24m** (based on a

18 month extension), which represents about 11% of the whole contract value of (£210m) including the 7 year extension in 2012. If Service Commencement at the Javelin Park facility is delivered on time the value of the extension would be of the order **£16m** and we believe this is the most likely outcome.

The above resource is already included within the existing waste revenue budget therefore the contract extension will be funded from within existing budget.

Risk Assessment

- 3.5 The key risk is that the current Waste Management Services Contract with Cory expires in August 2018 and there are no alternative arrangements in place for residual waste disposal or haulage and transfer until the Javelin Park Facility becomes operational. In this event there would be a need for emergency arrangements to be provided for which the probability is the council would have no control over costs. Moreover, service continuity would be seriously affected.
- 3.6 There is a risk that any form of short term re-procurement will result in additional costs.
- 3.7 There is a risk that no new market entrants would bid for a tendered interim contract, in which case the council would need to seek a single tender submission by Cory. It is expected that any such single tender would be at a higher cost than that payable under the current contract with Cory. In such circumstances, the council would have incurred abortive procurement costs in respect the failed procurement process. Moreover, any delays caused by running any such failed procurement process could result in the council no longer being in a position to ensure that composting of garden waste; the bulking and haulage of garden waste, mixed food and garden waste, and the landfill monitoring services are provided during the interim gap period (ie, between 7th August 2018 and the anticipated Full Services Commencement Date).
- 3.8 There is a risk that the Javelin Park Facility project could be delayed. However, given that construction work at the site is currently on schedule, this risk is currently considered low. The proposed variation to the current Waste Management Services Contract with Cory would provide for an expiry date of 10th January 2020, hence allowing for the Javelin Park Facility project to slip by a period of up to 6 months. If it becomes apparent that Javelin Park Facility will not be fully operational by January 2020 the situation will need to be reassessed at the time. Cory have, however, indicated they would be willing to offer continued emergency arrangements on a month by month basis. While it is not proposed that the terms of emergency arrangements form part of this formal variation, the Joint Waste Team will seek in advance to determine the commercial principles under which such emergency provisions would apply.
- 3.9 As is the case with any contract variation, there is a residual risk that the council may receive a legal challenge to the proposed contract extension from rival operators if they dispute the justification (set out in Paragraph 3.2 of this report) relied upon by the Council for making it.

4. Officer Advice

- 4.1 Discussions have taken place with Cory who would be willing to vary the end date of

the current Waste Management Services Contract to expire on 10th January 2020 under the current terms and conditions.

- 4.2 The approach described in Option B would also assist the council in mitigating risk of increased costs arising from the impending winding down and closure of the current Hempsted site for landfill. Under this option, Cory have indicated they would bear the risk of additional costs of transfer of material elsewhere arising from the consequent reduction in capacity at Hempsted, albeit with help from the Joint Waste Team who have arranged for some district council deliveries to be diverted elsewhere with minimal overall disruption
- 4.3 Option B would also allow the council to avoid the need for temporary transfer station facilities in the Gloucester area pending the availability of the Javelin Park Facility as collection vehicles currently deliver direct to Hempsted Landfill and would change to direct delivery to Javelin Park. Any alternative contract arrangements for interim disposal of residual waste would require a waste transfer station in or around Gloucester/Stroud.

Officer Conclusions

- 5.1 Varying the current contract in accordance with Option B offers the council the most compelling option. The effect of the variation would be to:
- Remove the most significant risks faced by the County that there could be no economic outlet for disposal of residual waste and / or no contracted arrangements for such disposal after August 2018. The proposed solution would ensure a continued and seamless outlet for residual waste with associated transfer facilities. This will mean that little or no disruption will occur in relation to delivery points for the District Council partners before the full Services Commencement Date at the Javelin Park Facility.
 - Remove the likely risk of an overall increase in the cost for the provision of the services described in paragraph 3.1. of this report during the period 7th August 2018 to 10th January 2020.
- 5.2 It is therefore recommended that the contract is varied to end on 10th January 2020 on the basis described in paragraph 2(b) of this report (Option B).
- 5.3 If the recommendation is approved, the Joint Waste Team would, on behalf of the County Council, undertake the procurement of the associated services such as garden waste composting and provision of transfer stations with a new start date of 11th January 2020. These requirements will be the subject of one or more separate procurement processes, which the Joint Waste Team proposes to commence later this year. Recommendations to The Joint Waste Committee and County Council Cabinet on the approach and award will be made in due course.

5. Equalities considerations

- 5.1 There are no equalities considerations associated with the recommendation

Report Title	Proposed Variation to Waste Management Services Contract with Cory Environmental (Gloucestershire) Ltd
Statutory Authority	Waste Disposal Authority
Relevant County Council policy	Joint Municipal Waste Management Strategy 2007-2020
Resource Implications	The contract extension will be funded from within the existing budget for residual waste disposal. The estimated value of the proposed extension is £16m based on the Planned Services Commencement Date of 29th July 2019.
Sustainability checklist:	
Partnerships	Gloucestershire Joint Waste Team
Decision Making and Involvement	
Economy and Employment	
Caring for people	
Social Value	<i>Social value seeks to maximise the additional social, economic and environmental benefits to the local area by procuring goods and services above and beyond the benefits of merely the goods and services themselves.</i>
Built Environment	
Natural Environment' including Ecology (Biodiversity)	
Education and Information	
Tackling Climate Change	Carbon Emissions Implications? Positive/ Neutral/ Negative Vulnerable to climate change? Yes/ No/ Maybe
Due Regard Statement	Has a Due Regard Statement been completed? Yes/No Yes - considerations included in main body of report A copy of the full Due Regard Statement can be accessed on GLOSTEXT via

	<p>http://glostext.gloucestershire.gov.uk/uuCoverPage.aspx?bcr=1</p> <p>Alternatively a hard copy is available for inspection from Jo Moore, Democratic Services Unit, e-mail: jo.moore@gloucestershire.gov.uk.</p>
Human rights Implications	
Consultation Arrangements	