

Decision Report - Executive Decision

Forward Plan Reference: FP/24/04/07

Decision Date – 8th May 2024

Key Decision – yes



Update on Waste Collection Contract

Executive Member(s): Cllr Dixie Darch - Lead Member for Environment and Climate Change

Local Member(s) and Division: Applicable to all members/divisions

Lead Officer: Mickey Green - Executive Director Climate and Place

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Summary / Background

1. Somerset Council have a contract for waste collection services with SUEZ with a value of c£24M per year. The Contract commenced during April 2020 and runs for 10 years, with the option to extend for a further 10 years. Waste collection is a highly visible universal and statutory service to our residents, one of the Council's largest contracts, and crucial to realisation of the Council Plan priority to deliver a 'greener, more sustainable Somerset'. The contract requires that Suez provide:
 - a. Refuse Collections
 - b. Recycling & Food Waste Collection
 - c. Garden Waste Collections
 - d. Ancillary Services: Clinical Waste Collections, Bulky Waste Collections, Container Delivery Services, Assisted Collections
 - e. Operation of Waste Transfer stations to bulk and consign recyclable material.
2. SUEZ have disclosed significant losses on this Contract to the extent it has become unviable. If we are unable to agree a settlement figure SUEZ have advised they may terminate the contract, effectively withdrawing services and accepting the contractual consequences of paying the Council damages that arise (subject to contractual caps) and potentially only giving three months' notice of their exit.

3. The purpose of this report is to seek a mandate to enter into negotiations with SUEZ in order to establish their “best offer” to continue the Contract i.e. the lowest increase they can tolerate to continue.
4. There have been several commercial challenges since the start of the contract including Covid, and the national driver shortage. Suez have worked in partnership with us to successfully roll out Recycle More and trialled the collection of flexible plastics. These changes have helped raise the County’s recycling rate from 52% to 56% (Kerbside Recycling Rates have increased from 47.5% to 54.5%).
5. Over the last year SUEZ have issued a number of dispute claims which the Council has strenuously disputed on legal advice and have progressed through the formal dispute resolution process as set out in the contract. But SUEZ have stated that even if their claims were to be successful the Contract would remain unviable without general increase in payments. These issues are discussed in more detail in of the confidential section of the report as it amounts to “exempt information.” (Section 5 and table 3).
6. SUEZ indicate that they are prepared to reach the end of the first term of the Contract with an overall loss but not to the extent currently forecast. Specific details are discussed in the confidential (sections 1 and 2) of the report as it amounts to “exempt information.”
7. Officers believe there may be an opportunity to reach a settlement with Suez – which would essentially amount to a per annum increase in payments. Once this is established the Council can consider the offer against alternative options.
8. The size and significance of this issue demands an Executive Decision and it is important to place as much information in the public domain as possible. However, the sensitive commercial and financial details are set out in a confidential appendix to this report to avoid disclosure of what is currently “exempt information” which if revealed could give commercial advantage to SUEZ in forthcoming negotiations and may reveal information that has legal privilege. Also, some of the information is exempt because it is SUEZ’s private financial and commercial information.
9. Subject to executive decisions on this report and conclusion of the negotiations with SUEZ, a further report will be brought back for a decision on the best solution for the Council to pursue. It is only at this point that Members will take a final decision.

Recommendations

1. The Executive agrees: -
 - a) The case for applying exemption information provision as set out in the Local Government Act 1972, Schedule 12A and therefore treat the attached confidential Appendix A in confidence, as it contains commercially sensitive and legal privilege information, and as the case for the public interest in maintaining the exemption outweighs the public interest in disclosing that information.
 - b) To exclude the press and public from the meeting where there is any discussion regarding confidential Appendices (to be treated as exempt information).
 - c) To approve the negotiation mandate with SUEZ and instruct the Chief Executive to establish their final negotiated position as an alternative to renunciation of the Contract as set out in confidential Appendix A.
 - d) To direct that following conclusion of the negotiations with SUEZ by the Chief Executive a further report shall be brought back for a final decision setting out the SUEZ final offer and other alternative options.

Reasons for recommendations

2. These are set out in the report. To ensure brevity these are not repeated here.
3. The commercial and financial details discussed in the confidential appendix of the report are exempt information by virtue of them being:
 - a. By nature, inherently sensitive financial and business affairs of the Council (and SUEZ) for which it is reasonable that these remain private so not to give commercial advantage to Suez in any forthcoming negotiations or reveal SUEZ commercial information, and
 - b. Including information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Other options considered.

4. Following SUEZ sharing open book information on the contract in February 2024, the Council commissioned independent consultants. They have reviewed the costs

submitted by Suez and assessed alternative delivery models for the service, these include: -

- a. Local Authority Trading Company (LATCo)- bodies that are free to operate as commercial companies but remain wholly owned and controlled by the parent council.
 - b. Direct Labour Organisation (DLO)- a business unit of the local authority, where the authority directly employs workers.
 - c. Re-procurement of the contract
5. There are pros and cons to each of the options including re-negotiating with Suez. The pros and cons of alternative options are discussed in the confidential appendix (section 4) and will be reconsidered again once officers have established SUEZ “best offer” to continue with the Contract. The modelling conducted by the independent consultants shows that there are cost implications with all options the details of which is currently “exempt information” as explained.
6. We also consider doing nothing which SUEZ indicates may result in them exiting the contract with three months’ notice. Whilst in this event contractual compensation would be payable to the Council, these would be the subject to contractual caps and perhaps legal dispute.
7. We have also considered changes to waste collection services to make savings. Currently there appear to be no “service change only” solution to SUEZ’s viability concerns. It should be noted that the ongoing re-routing is expected to deliver efficiencies for SUEZ and hence reduces the ongoing scale of losses they expect to make.

Links to Council Plan and Medium-Term Financial Plan

8. The proposed decision links to the Council Priority to create ‘a greener, more sustainable Somerset.’ The scale of any solution will impact on the Council’s Medium-Term Financial Plan (MTFP_ and hence potentially on all services across the Council and all the Council Plan priorities. The confidential appendix to this paper quantifies the risk – something which has only been possible recently given the release of financial information from SUEZ, analysis of it by the Council and

Specialist sector Consultants in this sector), and a revised view of the risk of SUEZ walking away from the contract.

Financial and Risk Implications

9. The scale of the financial losses SUEZ claim they have incurred to date and forecast to the end of the contract in 2030 are set out in the confidential appendix. Ricardo have independently analysed and benchmarked the figures.
10. With a contract value of c.£144m between 2024 and 2030, an increase in service delivery costs would impact on the Council's finances, causing an overspend in this financial year albeit there is no tolerance for this in the budget. The scale of the impact will depend both on the total cost and timing of a solution.
11. Any cost increase will increase the forecast budget gap for 2025/26 onwards and will need to be found from identifying further savings from across the Council. It may also directly impact on the risk of the Council declaring a S114.

Key risks

12. The risks set out below are the current risks faced by the council, with the scores reflective of the inherent position, without mitigation. The outcome of this report will determine what risks are subsequently carried forward from which mitigation will be applied. Further risks are set out in the confidential appendix.

Risk	Inherent Likelihood	Inherent Impact	Risk Score
Failure to agree a negotiated settlement with Suez within the parameters set by the Council could lead to more expensive service provision	5	5	25
Failure to agree a negotiated settlement with Suez could lead to SUEZ walking away from the contract resulting in a gap in service provision and higher costs from putting in place alternative service delivery arrangements at incredibly short notice (mitigated to some extent by compensation payable by SUEZ for exiting the Contract early)	5	5	25

Failure to agree a negotiated settlement with Suez could lead to protracted legal proceedings	4	4	20
Agreement of a negotiated settlement with Suez would lead to increased revenue costs for the Council, further savings would be required across the Council to achieve a balanced budget	5	4	20
Renegotiation of contract terms with Suez could lead to Market Challenge undermining the contract position (the approach to mitigating this risk is set out under legal implications)	2	5	10
Negotiating a settlement with SUEZ could lead to other contractors with the Council seeking similar settlements	4	4	16

Legal Implications

13. There are various legal complexities arising from the issues discussed in this report however these are being managed effectively by Legal Services. These include Contract, procurement, corporate governance/probity and dispute resolution including appraisal and response to SUEZ claims.

14. In relation to the issues discussed in this report and decision to be made by the Council, Legal Services opinions on the issues are contained in the confidential part of the report since they are by nature “exempt information.” However, it is important for the public record to explain that if the ultimate decision of the Council is to opt to increase payments to SUEZ as opposed to the other options available to it, then any such increases would effectively amount to an additional payment variation of the Contract and therefore subject to PCR procurement rules and restrictions which may include the requirement to publicise the proposed contract variation by notice before final completion to find out if any competitor challenges the proposal.

15. Consultant advice indicates that the current market may not have the appetite to challenge with a view to forcing a re-procurement. However, the Council will need to react to events as they arise and case sensitive commentary on this is provided in the confidential part of the report.

HR Implications

16. There are no HR Implications directly associated with this decision. SUEZ employs all waste collection staff. Working with Suez we will ensure staff working on our contract clearly understand this does not put their jobs at risk. HR implications may arise for consideration in the follow up report since TUPE implications need to be considered in relation to options other than SUEZ continuing with the Contract.

Other Implications:

Equalities Implications

17. There are no equalities implications associated with this decision.

Community Safety Implications

18. There are no community safety implications associated with this decision.

Climate Change and Sustainability Implications

19. Somerset Council have declared both a Climate and Ecological Emergency. Through that, the Council has committed to working towards making the whole county, including our own estate and operations, 'Carbon Neutral' by 2030 and to take positive action to reverse the damage on our natural habitats by man-made activity. We have also pledged to ensure that Somerset is resilient to, and prepared for, the effects of Climate Change. There are no climate change and sustainability implications directly arising from this decision.

Health and Safety Implications

20. There are no direct health and safety implications from this decision

Health and Wellbeing Implications

21. There are no direct health and wellbeing implications arising from the decision, though any interruption to waste collection services (should we not find a way forward) would create significant environmental, health and reputational impacts, as well serious disruption to residents.

Social Value

22. There are no social value implications directly arising from this decision.

Scrutiny comments / recommendations:

23. Whilst the report has not been formally discussed with the Climate and Place Scrutiny the Chair and Vice Chair have received a copy of the report before publishing. It is intended to attend a session of the scrutiny committee following executive but before any decision is finalised.

24. Background – for reasons set out above in the Report this section has not be populated by commentary as it would amount to mere duplication.

Background Papers

None

Appendices

- **Confidential Appendix A:**

Report Sign-Off

	Officer Name	Date Completed
Legal & Governance Implications	1. David Clark 2. Stephen Tonge, Solicitor Commercial Team (interim) solicitor with day to day conduct of this matter.	Sign-off confirmed
Communications	Peter Elliott	Sign-off confirmed
Finance & Procurement	Nicola Hix	Sign-off confirmed
Workforce	Dawn Betteridge	n/a
Asset Management	Oliver Woodhams	n/a
Executive Director / Senior Manager	Mickey Green	
Strategy & Performance	Alyn Jones	Sign-off confirmed
Executive Lead Member		
Consulted:	Councillor Name	
Local Division Members	n/a - County Wide	
Opposition Spokesperson	Suria Aujla	
Scrutiny Chair	Cllr Martin Dimery for Scrutiny Climate & Place Committee	29/4/24