

Decision Report

Committee: Executive

Meeting or Proposed Decision Date – 15th
July 2024]

Key Decision – yes



Update on Waste Services

Chair of Committee: n/a

Executive Member(s): Councillor Dixie Darch Lead Member for Environment and Climate Change.

Local Member(s) and Division(s) affected: ALL

Executive Director: Mickey Green- Climate and Place

Executive Summary

The purpose of the report is to seek agreement for additional payments to SUEZ for the remainder of the existing contract. This outcome will ensure best value for money for the residents of Somerset and continuity of service compared to alternative methods of service provision.

Following the decision made at Executive Committee on the 8th May 2024 officers have negotiated with SUEZ to achieve a final settlement offer. The report sets out the final offer and the alternative options that have been considered.

There have been a several commercial challenges since the start of the contract (April 2020) including Covid, and national driver shortages. SUEZ have also disclosed significant losses on the contract, to the extent it has become unviable. SUEZ have advised that without a formal variation to the contract to increase payments, they will consider renouncing the contract. This would mean walking away from the contract, withdrawing all services and accepting the contractual consequences of paying the Council damages that arise (subject to contractual caps).

Recommendations

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 legally privileged information, as the case for the public interest in maintaining and exemption outweighs the public interest in disclosing the information.
- b) To exclude the press and public from the meeting where there is any discussion regarding the confidential appendices.

c) To agree the Council pays SUEZ an additional £3M this financial year, and further payments until the end of the contract as set out in the confidential annex.

d) To delegate authority to Head of Legal Services to draw up and complete the legal documents to bring effect to this decision.

e) To make changes within the contract to deal with unforeseen circumstances in the Clinical Waste Collection Service

f) To obtain protection by increasing the liability cap within the contract.

g) To delegate authority to the Chief Executive to sign off the final contract variation.

Reasons for Proposals

The proposals seek to find a way forward ensuring best value to Somerset residents, and continuity in this vital front-line service. Without reaching a decision, services provided by SUEZ maybe withdrawn with a little as three months' notice, meaning residents could be left without a functioning kerbside collection service.

Alternative methods of service delivery have been reviewed and indicate long lead in times and are more expensive compared to the settlement brokered with Suez.

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Background and purpose of report

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. The procurement of the Contract was undertaken in full compliance with procurement law involving a competitive tendering process by Somerset Waste Partnership. This was deemed to be the most appropriate procedure due to the need to engage with bidders to help identify and solve issues throughout the process.
3. An effective and strong governance process was applied to procuring the contract, composing of a Director Level project board, a project team and a Special Interest Group comprised of Specialist Officers. Furthermore, the procurement was supported by a Quality Assurance Process and third party technical and financial advice. During the procurement process final bids were benchmarked against an independent cost model to assess whether the final tenders came in within appropriate cost parameters.
4. Final negotiations were held between two bidders. The final contract award was based on both quality and value (40/60 split). The contract for waste collection services was awarded to SUEZ based on both quality and value.
5. SUEZ have since disclosed significant losses on this Contract to the extent it has become unviable. SUEZ have advised that unless the Council agrees to a formal variation of the Contract to increase payments for the rest of the Contract duration, they will have to consider renouncing the Contract. Effectively withdraw all services and walk away accepting the contractual consequences

of paying the Council damages that arise (subject to contractual caps). This potentially only provides three months' notice of their exit.

6. 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 trialed 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%).
7. Over the last year SUEZ have issued several dispute claims which the Council disputed on legal advice and have progressed through the formal resolution process as set out in the contract. SUEZ have stated that even if their claims were to be successful the Contract would remain unviable.
8. SUEZ have incurred significant financial losses over the first four years of the Contract but indicate that they are prepared to continue to perform the services at a loss to the end of the first term of the Contract but not to the significant extent currently forecast. Specific details are discussed in the 2.1 of the confidential annexe as it amounts to "exempt information."
9. Since February 2024 work has continued with SUEZ to negotiate a final position, so we are able to compare the costs, and risks of all options available to the Council. Our Legal Team has also worked to minimise future risks of claims against the contract, and renunciation. The outcome of the negotiation with Suez is predicated on them withdrawing all existing claims at no cost for the council other than agreed retrospective payments for an omission in charging of Clinical Waste collections.
10. The focus throughout the work is to ensure best value for money for Somerset residents and minimise any potential disruption to service.

Links to Council Plan and Medium-Term Financial Plan

11. 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.

Other options considered

12. Somerset Council commissioned a third-party Consultant to review and verify the costs submitted by Suez and assess alternative delivery models for the service, these include: -

- a. Local Authority Trading Company (LATCo)- a body that is free to operate as a commercial company but remains 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
13. The lead in times for all alternative options is considerable. Whilst the Council holds ownership over most of the infrastructure and fleet as well as holding leases to depots, the lead in time to transition to a LATCo or DLO would be more than a year. Transitional arrangements would have to be made with SUEZ until such time as the new arrangements are delivered. SUEZ have been clear that in this situation they will cooperate in transition, however the Council would be liable for all losses and capital spend throughout this period.
14. There are pros and cons to each of the options including settlement with SUEZ, and these are set out in Section 4 of the confidential appendix. The modelling conducted by the independent consultants shows that there are cost implications with all options. The analysis of different options suggests how that the relative cost of re-tendering and LATCo options are similar to the operational costs presented by Suez. However, they are likely to be more costly given the proposed settlement with SUEZ is based on SUEZ continuing to suffer considerable and lasting contract losses until contract expiry. There would be considerable costs for the Council including funding transitional arrangements and funding capital spend required through this fiscal year, making the settlement with Suez the most favourable financial outcome.
15. We considered doing nothing, but this was too risky, in this scenario SUEZ indicates they may exit the contract with three months' notice. Whilst in this event contractual compensation would be payable to the Council, this would be the subject to contractual caps and legal dispute.
16. We have also considered changes to waste collection services to make savings. Currently there appears 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. SUEZ's forecast loss making position incorporates savings of £0.5M pa (indexed) as consequence of improved vehicle routing and overtime management. It is noteworthy that practical implementation of these schemes is ongoing, and the value not fully realised.

Key considerations for the Council

Scrutiny comments / recommendations:

17. Whilst the report has not been formally discussed with the Climate and Place Scrutiny committee, the Chair and Vice Chair have been briefed and received a copy of the report before publishing.
18. Due to the timing required for the decision and the timings of the Scrutiny Committee it has not been possible to bring this forward for scrutiny before the final decision.

Consultation and feedback

19. No consultation has taken place because we are not proposing any changes to the way waste is collected or disposed of. We have significant capital invested in vehicles and supporting waste transfer and treatment infrastructure, making a movement away from how we currently deliver collection services prohibitively expensive.

Financial and Risk Implications

20. 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 was commissioned to undertake an independent assessment of SUEZ's current operating position by building a comprehensive baseline service model of the current system and associated costs. To in effect provide an assessment of the likely cost of proving the existing service if the Council were to go to market and re-procure at current market rates.
21. 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 for this financial year is £3M, the extra costs will need to be met from savings, corporate contingencies, or reserves. Members will be updated on this through the usual budget monitoring reports. Additional contract payments above existing spend will increase to £7M in financial year 2025/26 and to £9.25M per year for the remainder of the contract from financial year 26/27.
22. 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 impact on the risk of the Council declaring a S114.
23. A modification will need to be made to the Contract that Somerset Council hold with Suez. The modification of the Contract will only relate to the provision of additional sums as well as providing some further additional controls:
 - a. Tapering the payment of additional monies over the remainder of the contract term to minimise the financial impact as much as possible in Year 1 (24/25) and Year 2 (25/26).

- b. Increasing the Liability Cap in the contract to reduce the likelihood of future walkaway events.
- c. Amending the Performance Deductions Framework within the contract to encourage an improvement in service quality.

24. The contract modification requires us to submit/publish the modification to the 'Find a Tender' service to ensure transparency and compliance with procurement regulations. Somerset Council will allow 30 days to expire before completing any deed of variation of the Contract to allow industry challenge in compliance with PCR Regs 2015. It is possible within that period that the Authority may receive legal challenge surrounding the scope and extent of the settlement.

Key risks

25. 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 | Likelihood | Impact | Risk Score | Mitigation |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|--------|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Risks of Failure to Achieve Settlement | | | | |
| 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 | Evaluate all mechanisms of service delivery (LATCo, re-procurement, DLO) and provide the most financial advantageous and deliverable option |
| Failure to agree a negotiated settlement 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 | Agree with SUEZ transitional arrangement to enable mobilisation of alternate service delivery options. This may incur significant transitional costs ensuring that Suez to do not incur further contract losses |
| Failure to agree a negotiated settlement with SUEZ could lead to protracted legal proceedings | 4 | 4 | 20 | Ensure that sufficient legal, technical and officers are resourced to ensure sufficient capacity to manage proceedings |
| Risks of Achieving Settlement | | | | |
| 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 | Ensure financial impact of settlement is accounted in the MTFP and budget setting process |

| | | | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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 | Invite the market to submit a tender on the basis of their challenge. This would delay or invalidate the settlement process and lead to a complex contractual outcome, likely involving additional payments to Suez for transitional arrangements whilst the challenge is |
| Negotiating a settlement with SUEZ could lead to other contractors with the Council seeking similar settlements | 4 | 4 | 16 | Ensure that Procurement Rules are followed. |

Current Risk Score:

Projected risk score if recommended actions are agreed and delivered:

Legal and Procurement Implications

26. 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.
27. If the Executive agrees to the recommendations set out in this report the increased payments to SUEZ effectively amount to an additional payment variation of the Contract. They are therefore subject to Public Contract Regulations (PCR) procurement rules and restrictions which will include the requirement to publicise the proposed contract variation by notice before final completion to find out if any competitor challenges the proposal.
28. Legal Services advocate an open and transparent Contract Variation for increased contractual payments incorporating the requirements of PCR and publication of any contract changes via a notice. Subject of course to the Council weighing this option against all other competing options discussed in the confidential section of this report.
29. 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.
30. The procurement of the Contract was undertaken in full compliance to Procurement Law and the successful bid was subject to stringent evaluation in addition to external technical and financial appraisal. The deviation between the modelled bid costs and the actual operating costs of Suez, given the due

diligence and scrutiny by the awarding body, were not foreseeable by the Authority.

HR / Workforce Implications

31. There are no HR or workforce implications associated with this decision. The outcome of the negotiation is not anticipated to affect the Suez workforce.

Equalities Implications

32. There are no equalities implications related to this decision.

Community Safety Implications

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

Climate Change and Sustainability Implications

34. Somerset Council has 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

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

Health and Wellbeing Implications

36. 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

37. There are no social value implications related directly to this report.

Background Papers

38. Review of Waste Services, Executive May 2024

Appendices

24-07-15 Confidential Appendix-Update on Waste Collection

Report assurance checklist ahead of report publication (for Audit, Executive, Full Council and Scrutiny Committees)

| | Officer Name | Date Completed |
|---------------------------------|----------------------------------|----------------|
| Legal & Governance Implications | David Clark/Jill Byron | 04/07/24 |
| Finance & Procurement | Jason Vaughan/Nicola Hix | 04/07/24 |
| Workforce (*) | Dawn Bettridge | n/a |
| Asset Management (*) | Oliver Woodhams | n/a |
| Executive Director | Mickey Green | 01/07/24 |
| Executive Lead Member | Dixie Darch | 01/07/24 |
| Consulted: | Councillor Name | |
| Local Division Members | List local members | n/a |
| Opposition Spokesperson(s) | Relevant Opposition Spokesperson | 05/07/24 |
| Relevant Scrutiny Chair(s) | Martin Dimmery | |

Note:




Directors may nominate additional officers to act on their behalf

(*) – these areas only need to be consulted on proposals if the proposals have workforce or asset management implications

Reports will not be published if assurance checklist has not been adequately completed – report author to liaise with Democratic Services well ahead of publication deadlines

Somerset Equality Impact Assessment

Before completing this EIA please ensure you have read the EIA guidance notes – available from your Equality Officer or www.somerset.gov.uk/impactassessment

| | | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| Organisation prepared for (mark as appropriate) |  Somerset Council |  NHS Somerset |  NHS Somerset NHS Foundation Trust |
| Version | 1 | Date Completed | 18/06/2024 |
| Description of what is being impact assessed | | | |
| <p>Additional payments to SUEZ for the remainder of the existing contract, to ensure best value for money for the residents of Somerset, and continuity of service.</p> <p>Suez provide waste collection services to Somerset residents on behalf of Somerset County Council, the range of services include:</p> <ol style="list-style-type: none"> 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. <p>The proposed contractual modification aims to ensure best value for money and continuity of service. It focuses on financial, legal, and contractual aspects without affecting service delivery or protected groups.</p> | | | |

The Performance Deductions Framework within the agreement with SUEZ will be adjusted to further incentivize them in resolving service quality issues. This change aims to enhance overall service quality for the benefit of Somerset residents.

Evidence

What data/information have you used to assess how this policy/service might impact on protected groups? Sources such as the [Office of National Statistics](#), [Somerset Intelligence Partnership](#), [Somerset's Joint Strategic Needs Analysis \(JSNA\)](#), Staff and/ or [area profiles](#), should be detailed here

None

Who have you consulted with to assess possible impact on protected groups and what have they told you? If you have not consulted other people, please explain why?

No consultation has taken place because we are not proposing any changes to the way waste is collected or disposed of. We have significant capital invested in vehicles and supporting waste transfer and treatment infrastructure, making a movement away from how we currently deliver collection services prohibitively expensive.

Analysis of impact on protected groups

The Public Sector Equality Duty requires us to eliminate discrimination, advance equality of opportunity and foster good relations with protected groups. Consider how this policy/service will achieve these aims. In the table below, using the evidence outlined above and your own understanding, detail what considerations and potential impacts against each of the three aims of the Public Sector Equality Duty. Based on this information, make an assessment of the likely outcome, before you have implemented any mitigation.

| Protected group | Summary of impact | Negative outcome | Neutral outcome | Positive outcome |
|-----------------|-------------------|------------------|-----------------|------------------|
|-----------------|-------------------|------------------|-----------------|------------------|

| | | | | |
|---------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|
| Age | <ul style="list-style-type: none"> We do not envisage any material change to levels of service provision. Amendments to the Performance Deductions Framework is proposed to focus on improved reliability with those groups who are unable to present their waste at the Kerbside for collection. | □ | □ | ☒ |
| Disability | <ul style="list-style-type: none"> We do not envisage any material change to levels of service provision. Amendments to the Performance Deductions Framework is proposed to focus on improved reliability with those groups who are unable to present their waste at the Kerbside for collection. | □ | □ | ☒ |
| Gender reassignment | <ul style="list-style-type: none"> We do not envisage any material change to levels of service provision. | □ | ☒ | □ |
| Marriage and civil partnership | <ul style="list-style-type: none"> We do not envisage any material change to levels of service provision. | □ | ☒ | □ |
| Pregnancy and maternity | <ul style="list-style-type: none"> We do not envisage any material change to levels of service provision. Amendments to the Performance Deductions Framework is proposed to focus on improved reliability with those groups who are unable to present their waste at the Kerbside for collection. | □ | □ | ☒ |
| Race and ethnicity | <ul style="list-style-type: none"> We do not envisage any material change to levels of service provision. | □ | ☒ | □ |

| | | | | |
|------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|---|---|---|
| Religion or belief | <ul style="list-style-type: none"> We do not envisage any material change to levels of service provision. | □ | ⊗ | □ |
| Sex | <ul style="list-style-type: none"> We do not envisage any material change to levels of service provision. | □ | ⊗ | □ |
| Sexual orientation | <ul style="list-style-type: none"> We do not envisage any material change to levels of service provision. | □ | ⊗ | □ |
| Armed Forces (including serving personnel, families and veterans) | <ul style="list-style-type: none"> We do not envisage any material change to levels of service provision. | □ | ⊗ | □ |
| Other, e.g. carers, low income, rurality/isolation, etc. | <ul style="list-style-type: none"> We do not envisage any material change to levels of service provision. | □ | ⊗ | □ |

Negative outcomes action plan

Where you have ascertained that there will potentially be negative outcomes, you are required to mitigate the impact of these. Please detail below the actions that you intend to take.

| Action taken/to be taken | Date | Person responsible | How will it be monitored? | Action complete |
|--------------------------|-------------|--------------------|---------------------------|-----------------|
| None | Select date | Text | Text | □ |

| | | | | |
|------|-------------|------|------|--------------------------|
| Text | Select date | Text | Text | <input type="checkbox"/> |
| Text | Select date | Text | Text | <input type="checkbox"/> |
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| Text | Select date | Text | Text | <input type="checkbox"/> |
| Text | Select date | Text | Text | <input type="checkbox"/> |
| Text | Select date | Text | Text | <input type="checkbox"/> |

If negative impacts remain, please provide an explanation below.

No negative impacts to protected groups have been identified

| | |
|------------------------------------------|-----------------------------------|
| Completed by: | Mike Cowdell (Head of Waste) |
| Date | 18/06/2024 |
| Signed off by: | Kirsty Larkins (Service Director) |
| Date | 18/06/2024 |
| Equality Lead sign off name: | Text |
| Equality Lead sign off date: | Text |
| To be reviewed by: (officer name) | Text |

Review date:

Text