

NORTH SOMERSET COUNCIL

DECISION OF: CLLR BRYANT EXECUTIVE MEMBER FOR WASTE AND RECYCLING.

WITH ADVICE FROM: DIRECTOR OF DEVELOPMENT AND ENVIRONMENT AND HEAD OF STRATEGIC PROCUREMENT



DECISION NO: 18/19 DE 145

SUBJECT: PROCUREMENT PLAN FOR THE COMMISSIONING OF RESIDUAL WASTE TREATMENT FOR THE WEST OF ENGLAND WASTE PARTNERSHIP

KEY DECISION: NO

BACKGROUND:

Council at its meeting of 20 February 2018 approved the use of a joint procurement process with the West of England Waste Partnership to secure Residual Waste Treatment provision from April 2020.

This decision sets out the proposed procurement plan to secure the necessary contracts.

DECISION:

That the procurement plan as presented be approved.

REASONS:

Introduction

In 2010 the four Councils of the West of England Waste Partnership (Bath and North East Somerset, Bristol City, North Somerset and South Gloucestershire) entered into contract with New Earth Solutions (West) Limited now the Panda Group, for the provision of a Residual Municipal Waste Treatment contract. This contract expires in 2020 with no remaining provision for a further extension.

Under the contract the Councils currently delivers the following tonnages to the Panda Group.

Council	Tonnage
Bath and North East Somerset	9,100
Bristol City Council	53,600
North Somerset Council	18,100
South Gloucestershire Council	40,000

New arrangements for the recycling, treatment or disposal of this waste post 2020 now needs to be secured.

At its meeting of 20 February 2018 Council approved the use of a joint procurement process with the West of England Waste Partnership.

Scope of contract

The core contract requirement is for the provision of a waste processing/ treatment option for the receipting of "black bag" waste. Opportunity will also be taken for the inclusion of an option for the inclusion of bulky waste.

Initial tonnage requirements are as set out in the table below. Provision will be included within the contract for tonnages to be increased or decreased to accommodate changes that may occur from variations in available tonnages or the availability of additional tonnages when other contract arrangements expire.

Tonnages			
Lot 1 Residual Municipal Waste			
Bath and North East Somerset	Bristol	North Somerset	South Gloucestershire
40,000	82,500	27,000	35,000 to 55,000
Lot 2 Bulky Waste			
Bath and North East Somerset	Bristol	North Somerset	South Gloucestershire
5,000	15,300	15,000	(Currently included with residual waste tonnages)

The requirement for the Councils is for the provision of a waste processing/ treatment solution(s) achieving diversion of waste away from Landfill. The partnership councils have agreed on the stipulation of high, but considered achievable, diversion targets of a minimum requirement of diversion of waste away from landfill of 90% for black bag waste and 85% for bulky waste.

The use of incineration is considered within scope unless dedicated new build facilities are being proposed.

Duration

It is proposed that the contract will have an initial term of ten years with options for the contract to be extended for up to a further ten years through one or more extensions.

Ten years is considered a sufficient period to allow bidders to recover any capital investment they may need to make into their facilities and to provide the Councils with a level of contract certainty.

Over the next ten years it is considered that whilst additional treatment capacity may come to the market they are likely to be based on existing treatment processes and their processing costs (contract prices) are unlikely to see any significant reductions.

The composition of domestic waste and resultant tonnages is expected to change over the next ten years due to a range of factors including legislative, consumer habits and housing growth. To accommodate tonnage variations flexibility over tonnages will be incorporated into the contract.

Contract packaging

The stated preference for the Councils is for tonnages to be packaged into one or more contracts amongst the Councils. By packaging in this manner there would be opportunity for the Councils to re-allocate tonnages amongst themselves to best match contractual requirements. This approach has been successfully used during the current West of England contract and has brought benefits to individual Councils. Provision will be included within the inter authority agreement to protect each Councils' access to tonnage availability.

The total tonnages could be incorporated into one contract which could potentially generate economies of scale and reduce overall future contract management requirements.

The division of tonnages into a number of smaller contracts could increase overall levels of competition and open up opportunities for bidders with smaller capacity, which could result in reduced contract prices. A series of contracts could also provide contingency arrangements in case of failure of one contract. However, with several contracts economies of scale could be lost and additional client-side resourcing may be required to manage more than one contract.

The table below provide further analysis of division of tonnages;

Consideration of division of tonnages into contract packages		
Packaging	Advantages	Disadvantages
One contract for the same waste stream	<p>Potential savings through economies of scale</p> <p>Reduced contract administration</p>	<p>Potential limitation of market which could increase tender price</p> <p>In case of contract failure, no immediate contingency arrangements</p>
Two or more contracts for the same waste stream	<p>Public Contract Regulations requires consideration of splitting contract into smaller contract packages</p> <p>Increase opportunity for competition and more opportunity for smaller providers to bid</p> <p>In case of contract failure other contracts could potentially provide contingency arrangements.</p>	<p>May loose economies of scale</p> <p>Potential increased client-side contract management and administration</p>

To capture the benefits of splitting into one or several contracts for an individual waste stream it is proposed that the available tonnage will be let through a series of lots. Each lot will be covered by the same contract conditions and will be for 10,000 tonnes (residual waste) and 2,500 tonnes (bulky waste). Bidders will be able to bid for as many more lots as they are able to handle and to offer discounts if they are awarded more than one lot. If awarded more than one lot the tonnages will be combined into a single contract.

To reduce potential overall contact administration and logistics considerations a maximum of five contracts will be issued for each waste stream. The councils will also reserve the right to not award contracts if the price is too high. If all tonnages are not awarded alternate arrangements will need to be sought for these tonnages.

For contract award purposes contracts would be awarded in order of most economical advantage to the Councils. The table below provides an example of how this could work.

Bids received against a total tonnage requirement of 100k tonnes			
Tonnes capacity and bid price			
Bidder A	Bidder B	Bidder C	Bidder D
Up to 5 lots of 10k tonnes (50k total) Price £70/t	One lot of 10k tonnes Price £60/t	Up to 5 lots of 10k tonnes (50k total) Price £80/t	Up to 10 lots of 10k tonnes (100k total) Price £75/t
Order of contract awards and tonnages awarded			
2	1	4	3
1 contract covering 50k tonnes Price £70/t	1 contract covering 10k tonnes Price £60/t	No awards	1 contract covering 40k tonnes Price £75/t
Total of 3 separate contracts issued to cover the 100k tonne requirement			

Inclusion of Different waste streams

In addition to the core requirement for the processing of “black bag” waste opportunity will be taken to include the processing of bulky waste.

Bulky Waste is likely to require a different processing / treatment process for that of black bag waste and consequently the inclusion of Bulky Waste could affect the overall “marketability” of the core contract requirement and could exclude certain providers. To overcome this the inclusion of Bulky Waste will be included as a separate Lot.

Bidders will be able to bid for one or both waste streams, with provision for the inclusion of discounts if they were awarded tonnages from both.

Tonnage commitments

Volumes of tonnages could fluctuate over the duration of the contract through factors such as housing growth, changes in consumer habits, increase in recycling, and political/environmental legislation.

Fluctuations in tonnages presents an operational risk to contractors, as they could be faced with under or over commitment of facilities.

There are several approaches that could be taken in respect of tonnage commitments

Approach to tonnage commitments		
Approach	Advantage	Disadvantage
Set tonnages	Security for both bidders and Councils over tonnage levels	No ability to adjust tonnages. May need to pay for tonnages even if not delivered. May need to procure new arrangements if tonnages increased.
Exclusivity	Bidder gets all of waste within a category	Could prevent Councils seeking ability to seek new providers, if tonnages increase. Variations in tonnages (+ve/-ve) could provide operational risk to contractor.
Tonnage bands	Provides flexibility within a range of bandings.	Could cause problems at extremes of bandings as tonnages vary over time.
Guaranteed minimum tonnage – Tonnages guaranteed at a minimum level over a period, say 12 months, with ability to flex tonnages for next period	Provides ability to adjust tonnages over time and provide a level of security for contractor and Councils	Could provide longer term operational risk to contractor.

For this contract it is considered that a guaranteed minimum tonnage over a twelve month' period would provide the best solution. The Councils would give notice to the contractor(s) six months in advance of the tonnage capacity that would be required during the next 12 months' tonnage level. This approach provides security to the Councils over tonnage fluctuations and provides advanced notice to the contractor of variations, allowing them time in which to seek alternate arrangements for any spare capacity that may result from the changes.

Where it will be necessary to alter tonnage levels and there is more than one contract in a Lot tonnage increases would be offered to the lowest cost contractors in ascending order of costs and tonnage decreases applied to the highest cost contractors in descending order of cost.

Contract commencement and mobilisation

The main provision of the contract will commence from 1 April 2020. Provision will be included within the tender documents for the earlier inclusion of tonnages where councils are able to redirect tonnages to the successful contractor(s). In the case of North Somerset this could include around 9,000 tonnes per year of black bag waste that is currently being sent to landfill.

TUPE

Legal advice has been obtained in respect of TUPE and it is considered that TUPE doesn't apply to this contract.

Specification and contract management

Specification

The Councils have been working together in developing the specification for the contract. The main requirements are

- The specification will be technology neutral in respect of treatment or processing methods providing the other requirements of the specification will be met.
- The receipting of waste for treatment or processing in compliance with all applicable legislation
- A maximum percentage of waste following treatment that can be sent to landfill
- Receipting of waste within specified operational hours and a maximum stipulated waiting time
- Contractor to provide alternate treatment / disposal arrangements in case of facility closure and a maximum duration that these alternate facilities can be used for.
- Statements on tonnages received, tonnage reductions achieved through treatment/processing, any recycling rates and the final disposal point of any remaining residual waste.

Final approval of the specification requirements will be sought through the Waste Directors Board on behalf of the West of England Waste Authorities.

Contract Management

The contract(s) will be let and entered into as a joint contract with each Council being a signatory. There will continue to be an Inter Authority Agreement (IAA) between the Councils covering contract governance, Councils responsibilities and the continuation of cooperative working arrangements. South Gloucestershire has stated that it is prepared to act as the lead council for the contract management and monitoring roles which include the employment of a contract monitoring officer (currently part time). Costs incurred will be recharged back to individual councils through the IAA

Route to market

Market / Suppliers

Initial market analysis indicates that a landfill diversion solution could be provided through one or more of the following processes, all of which can be provided through existing and emerging facilities within the West of England area;

- **Mechanical Biological Treatment (MBT)** - Involves both the mechanical and biological treatment of waste. This can remove some items from the waste (such as metals for recycling) and produces a compost like output, from organic matter, which can be used for restoration of landfills or quarries. The remaining waste is treated and sent to an energy from waste facility.
- **Energy from Waste (EFW)** - The waste is used for fuel to generate electricity and potentially heating.
- **Refuse Derived Fuel (RDF)** - Involves some initial pre-treatment or sorting of waste, before the waste is shredded and bailed prior to transporting to an EFW plant, primarily through export to another European country.

A series of initial market engagement meetings have been held, and together with additional market analysis and research work, it has been established that there is a potential capacity within the market to accommodate the tonnage requirements of the Councils and ensure a competitive procurement process.

It is considered that the available tonnages are at a level which would be attractive to the market, whilst not being too large to limit overall competition.

The location of the contractor's final facility is likely to be within a limited drive distance to the local area due to the influence of transport costs on overall service price, see evaluation section below.

Procurement process

The most appropriate routes to market are considered to be.

Competitive Procedure with Negotiation (CPN)

Due to the desire to explore options for the acceptance of different waste streams and mechanisms around fluctuations and variations in underlying waste tonnages a Competitive Procedure with Negotiation (CPN) may be appropriate. CPN allows for the award of contract following receipt of initial tenders or the option to enter a negotiation stage with bidders to refine overall service delivery requirements against which bidders would submit a revised tender offer.

Dynamic Purchasing System (DPS)

Under a DPS bidders initially apply to go onto a pre-approved supplier list. A DPS remains open for a set period of time and suppliers can apply to be added to the pre-approved list at any time during the life of the DPS. When Councils want to let a new contract an invitation to tender is issued to each supplier on the DPS pre-approved list.

The main advantages of a DPS is that suppliers can apply to join the list at any time, and contracting Councils can let any number of contracts of various durations and volumes at any time during the life of the DPS. This would provide flexibility to issue any number of contracts during the duration of the DPS.

Unlike the CPN there is not the possibility to negotiate with bidders.

Overall it is considered that for the initial award process a Competitive Procedure with Negotiation is the most appropriate solution as it will allow the councils the opportunity to negotiate with bidders over the final specification and lot packaging decisions of the contract. The councils' will reserve the following matters for potential negotiation with the bidders,

- Combining of residual waste and bulky waste into single contracts
- Tonnage commitments
- Future increases or reductions in tonnage profiles
- Operational requirements

If not, all tonnages are awarded as part of the initial procurement process a DPS solution will be looked at to procure contracts for remaining tonnages.

Outline timetable

Stage	Date
Issue PIN – Providing advanced notice to bidders of outline intentions	This was published February 18
Finalisation of contract documents	June 18
Publish contract notice (advertise opportunity)	June 18
Receive and evaluate expressions of interest	July 18
Issue tender docs	Aug 18
Evaluate tenders	Sept 18
Award contract(s) or open negotiation stage	Oct 18
Negotiation meetings and revision of documents	Nov 18
Receipt and evaluation of final tenders	Dec 18
Contract awards	Jan 19
Service Delivery	April 2020

Evaluation

The prime purpose of the contract is the treatment and processing of waste. The processes carried out by the provider will be covered by a range of operational and legislative requirements. Compliance with these requirements will need to be demonstrated/evidenced as part of the bidder's prequalification in the tender process.

Day to day service provision requirements will form part of the specification and appropriate mechanisms will be included in the contract for non-compliance with the specification requirements.

Financial constraints are acute amongst all the Councils and all are seeking to ensure service delivery at the lowest sustainable costs.

As the contractors' processes are regulated and cost considerations paramount it is being recommended that prime consideration is given to price (95%), with a low weighting for quality (5%). The proposed areas for quality evaluation are

- Additional diversion of waste from landfill
- Separation of materials for recycling
- Social value

The partnership representatives will agree final quality assessment areas prior to issue of tender documents.

Contract price will be based on the gate fee and discounts offered.

In addition to the gate fee price Councils will incur their own additional costs for the haulage of waste to the contractor. For tender evaluation purposes indicative haulage rates will be added onto each bidder's gate fee price to provide an overall service costing. Mechanisms within the Joint Authority agreement will deal with the re-apportionment of each Council's transport costs to ensure that no Council is unduly disadvantaged/advantaged by the location of the contractor's facility.

Provision will be included within the contract for the contractor to provide a transport rate that Councils could use to complement their own transport arrangements and for potential contingency purposes.

Social Value, Sustainability & VCSE

The Councils will provide a requirement within the specification for the contractor(s) to make a commitment to delivering Social Value throughout the contract. This provision is likely to be focused on providing routes into employment for the local workforce, provision of employee training schemes and the provision of educational/promotional activity to support waste reduction and recycling initiatives.

Procurement Governance

North Somerset's Strategic Procurement Service is providing the procurement lead for the project. South Gloucestershire will provide Legal support and Bath and North East Somerset will provide financial support. Additional specialist support will be sourced from one or more of the Councils as required.

The project is being governed by the Waste Partnership Board through the operational Directors.

OPTIONS CONSIDERED:

As set out in the information above.

FINANCIAL IMPLICATIONS:

Contract payments will be based on tonnages received by the contractor. Initial market indications suggest a contract price of between £70-£100/tonne. Using an initial annual tonnage of £100 tonnes and an overall tonnage level of around 200,000 tonnes this would result in an indicative annual contract value of £20m. Over the potential 20 year term of the contract the overall contract value will be around £400 million.

For North Somerset initial tonnage levels will be up to 45k tonnes a year for black bag waste and bulky waste, providing for an indicative annual contract value of £4.5m, or £90m over the available 20 years' contract period.

Each Council will be responsible for their own costs based on the contracted price per tonne.

Funding

Funding will be provided from the existing West of England budget, which all partner councils finance on a pro-rata basis. This funding is currently being used for the New Earth Solutions / Panda contract but will transfer to the contract arrangements on their commencement.

LEGAL POWERS AND IMPLICATIONS

The Council has a duty under the Environmental Protection Act 1990 to arrange for the disposal of the waste which it collects in North Somerset. In doing so it must follow the waste hierarchy laid down by the revised EU Waste Framework Directive.

This Procurement will be subject to The Public Contracts Regulations 2015.

CONSULTATION

The Executive Member for Environment has been kept informed of progress.

Public consultation was undertaken as part of the Joint Residual Municipal Waste Management Strategy in 2008. This report is seeking approval to progress phase four of that strategy. (Securing long term residual waste treatment post 2020)

The partnership undertook soft market testing in December 2015, with 23 potential suppliers attending. The aim was to explore market options and open pre-procurement dialogue. The soft market testing was followed up by a survey in 2016. The results indicated a range of options exist in the market but that locally the main options are MBT, EFW or RDF.

RISK MANAGEMENT

The following are considered to be the key risks associated with this procurement.

Maintaining full co-operation and collaboration between Councils.

The Councils have a strong track record of working together during the appointment of the current contract and throughout the duration of the contract. Roles and responsibilities are set out in the Inter-authority agreement and it is considered that this past performance bodes well for the future joint working of the Councils.

If the Councils were to move away from a joint procurement process North Somerset would need to undertake its own procurement process. Most of the tender documents would be the same or very similar and it should be possible to meet the current proposed timescales. Tonnage requirements for North Somerset are sufficient to ensure that they should be attractive to the market whilst not presenting too large of a capacity risk to suppliers.

Market engagement

Initial pre-procurement engagement has indicated that there is likely to be strong interest in this opportunity. However there remains a risk that suppliers may not engage in the tender process and this could affect the competitiveness and number of bids received. A PIN was issued in February 2018 to alert suppliers to the upcoming opportunity, reasonable time periods will be given to bidders to express their interest/submit their tender.

Market price

Initial market indications suggest a gate fee in the region of £70 - £100/tonne. Increases in prices above this level would have significant implications on the Councils budgetary position. Care will be taken that the specification does not contain provisions that could have an adverse effect on contract price. Opportunity will also be taken through the negotiation stage to ensure that the specification does not include additional items or risks that could result in adverse prices.

Contract failure

There is a risk that the contractor could fail to continue delivering the contract during its term. Appropriate conditions will be incorporated into the contract to provide reasonable levels of assurance and financial protection to the Councils given a contract failure, but pending the nature of the non-provision these clauses may only have limited benefit.

As part of the initial qualification process potential bidders' financial strength and stability will be assessed to provide reasonable assurance to the Councils. Where considered appropriate a parent company guarantee may be requested from bidders.

EQUALITY IMPLICATIONS

Have you undertaken an Equality Impact Assessment? Yes

There are no direct Equality Implications arising from this decision.

CORPORATE IMPLICATIONS

The resultant contracts will sit within the operational area of the Recycling and Waste Service Team. There are no specific Corporate Implications with this decision.

BACKGROUND PAPERS

Report to Council 20 February 2018 – West of England Waste Partnership Commissioning of Residual Waste Treatment.

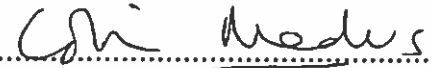
SIGNATORIES:

DECISION MAKER:

Signed:  Executive Member for Waste and Streets and Open Spaces

Date: 18 June 2018

WITH ADVICE FROM:

Signed:  Head of Highways and Transport Development and Environment in accordance with Minute No: COU11 Council Meeting 8 May 2018

Date: 4/6/2018

 HEAD OF PROCUREMENT -
11/6/18

