

**Forward Plan reference number:** (FP/327/01/19)

<b>Report title:</b> Bio-waste Framework 0554 - Award of Services Orders for Lots 2, 3 and 4	
<b>Report to:</b> Councillor Simon Walsh, Cabinet Member for Environment and Waste	
<b>Report author:</b> Ian Doyle, Director of Waste and Environment	
<b>Date:</b> 8 March 2019	<b>For:</b> Decision
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<b>County Divisions affected:</b> All Essex	

### **Confidential Appendix**

This report has a confidential appendix which is **not for publication** as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

## **1. Purpose of Report**

- 1.1 This report seeks approval to award a number of service orders to various bio-waste treatment service providers and waste transfer station operators following a mini-competition conducted pursuant to the Cabinet decision on 23rd January 2018 (ref FP/944/09/17) to set up the Bio-waste Framework Agreement 0554 (the **Framework Agreement**).

## **2. Recommendations**

- 2.1 Agree to award 10 service orders to the relevant providers for the period 1<sup>st</sup> April 2019 to 31<sup>st</sup> March 2021, totalling £5.445m with the breakdown of the individual order values as set out in the confidential appendix.
- 2.2 Note that the actual spend under each service order will be determined by officers using delegated powers to deliver optimum value for money. Total expenditure over the term of the service orders will be dependent on actual waste arisings and the need to make adjustments to meet operational contingencies.
- 2.3 To delegate authorisation to the Director of Waste and Environment to resolve, in line with clause 4.4 of the Framework Agreement and within the resources of the Waste Budget, any situations in which the service orders are rejected by a Framework Provider.

## **3. Summary of issue**

- 3.1 In accordance with the Cabinet decision on 23<sup>rd</sup> January 2018 a four-year Framework Agreement has been procured and is now in place for use by Essex County Council (ECC) for:

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- a. The treatment and disposal of green (garden) waste, food waste and mixed food and green waste separately collected by the district, borough and city councils of Essex and green waste collected at the county's Recycling Centres for Household Waste sites; and
  - b. The transfer and transport of bio-wastes at commercial waste transfer stations and haulage providers where it is desirable to supplement the existing ECC waste transfer station network.
- 3.2 Southend-on-Sea Borough Council is a party to the Framework Agreement with the intention of using it for the treatment and disposal of food waste collected in the borough.
- 3.3 Following a competitive procurement for places on the Framework Agreement, the Director of Waste and Environment, in consultation with the Cabinet member for Environment and Waste, approved the appointment of eleven contractors as framework providers and agreed to run mini-competitions for lot 2 - Food Waste Only, lot 3 - Mixed Food and Green Waste and lot 4 - Transfer and Transport. Appointment of companies as framework providers does not guarantee them any work, merely the right to bid in mini-competitions to provide services to ECC within the lots they have been appointed to. Mini-competitions may result in service orders with either zero or guaranteed minimum tonnages, these are awarded to the most economically advantageous bid assessed in accordance with the rules set out in the Framework Agreement.
- 3.4 Mini-competitions for lots 2, 3 and 4 were necessary at this time because the contracts under which existing services are being provided, expire at the end of March 2019. The contracts for Lot 1, green (garden) waste do not expire until March 2020, a mini-competition will need to be conducted later in 2019 to ensure continuity of treatment for this lot.
- 3.5 The mini-competitions for lots 2, 3 and 4 were run between 22<sup>nd</sup> January 2019 and 5<sup>th</sup> February 2019, for two service order periods, which were chosen to allow for operational flexibility:
- Service Order Period A: 1st April 2019 to 31st March 2020  
Service Order Period B: 1st April 2019 to 31st March 2021
- 3.6 Due diligence on framework provider facilities was carried out during the procurement of the Framework Agreement. The mini-competition was conducted in accordance with clause 4 of the Framework Agreement and evaluation of bids followed the award criteria set out in the Framework Agreement, Schedule 5, Part 2 and was 100% financial taking into account whole system costs including haulage and tipping away payments to waste collection authorities.
- 3.7 Following evaluation it is recommended that the framework providers shown below are offered services orders for the lots indicated. Guaranteed minimum

tonnages (where offered), the facilities to be used and estimated costs per bidder are shown in the confidential appendix.

<b>Lot</b>	<b>Bidders to be offered Service Orders</b>
<b>Lot 2 – Food Waste Only</b>	Agrivert Group Ltd Biogen (UK) Ltd East London Biogas Ltd Refood UK Ltd
<b>Lot 3 – Mixed Green and Food Waste</b>	Biogen (UK) Ltd Envar Composting Ltd
<b>Lot 4 – Transfer and Transport</b>	Hadleigh Salvage and Recycling Ltd James Waste Management

- 3.8 It is recommended that the service orders are offered over a two-year term, from 1<sup>st</sup> April 2019 to 31<sup>st</sup> March 2021. There is a small cost advantage in awarding service orders over a two-year term and provides price certainty for ECC.
- 3.9 Awarding these service orders will enable ECC to continue to fulfil its statutory obligations as the waste disposal authority and continue to provide this service to the waste collection authorities. It will also support delivery of ECC's strategic priority to help to secure sustainable development and protect the environment.

#### **4. Options**

##### **Option 1 – Do Nothing**

- 4.1 ECC is the waste disposal authority for its area and has a statutory responsibility to arrange for the treatment of bio-wastes collected by the Essex waste collection authorities which are the 12 Borough, City and District Councils in Essex ('WCAs'). WCAs are not required to hand over their separately collected bio-waste streams but all WCAs do this, except Maldon District Council which currently has its own arrangements in place for the treatment of green garden waste. If ECC does not place service orders it will mean that when the current contracts expire, ECC will fail to meet its statutory obligation as a waste disposal authority by having an inadequate disposal and transfer and transport solution for the waste streams in question. This option is therefore not recommended.

##### **Option 2 – Approval of the services orders**

- 4.2 By placing the service orders ECC will be able to retain access to the geographically best placed transfer and treatment facilities optimised for the treatment of the bio-waste streams in question, ensuring that as much of this waste as possible is diverted from higher cost disposal routes such as landfill. This benefits the environment and enables ECC to continue to deliver its statutory duty as a waste disposal authority and is therefore recommended.

## **5. Issues for consideration**

### **5.1 Financial implications**

- 5.1.1 The financial evaluation of treatment options for bio-waste cannot be based solely on the disposal price per tonne of Lots 2 and 3. The consideration encompasses Lot 4, alongside existing contractual arrangements from the Integrated Waste Handling Contract and haulage payments to the Waste Collection Authorities where tipping points are greater than 5 miles from the relevant district boundary. This is known as the whole system cost, to which the financial appraisal is based.
- 5.1.2 In order to try and secure the best price from off-takers, guaranteed minimum tonnage has been offered by ECC, where possible. Both disposal service order periods were fully evaluated. The Service Order Period B (two-year contract option) provided the optimal financial solution due to the marginally better gate and handling fees offered by a variety of off-takers for the 24 month period.
- 5.1.3 The cost of the award for each service order is set out in the confidential Appendix. Whole system costs as defined in 5.1.1, total £2.72m per year which includes the costs of service orders arising from this contract award. Contingent orders are issued with a “no tonnage” commitment from ECC. These orders are issued to enable business continuity in the event of the unavailability of the preferred locations.

### **5.2 Legal implications**

- 5.2.1 The Framework Agreement has been established in accordance with the Cabinet decision taken in January 2018 and the published tender documents.
- 5.2.2 The mini-competition has been conducted in accordance with the published procedures for awarding service orders under the Framework Agreement and draft service orders will be issued to successful bidders pending approval of the recommendations in this report.
- 5.2.3 Under the Public Contracts Regulations 2015, a standstill period is not required for awards under a framework agreement.

## **6. Equality and Diversity implications**

- 6.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- a. Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
  - b. Advance equality of opportunity between people who share a protected characteristic and those who do not.

- c. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 6.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 6.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic. The reasons for this are:
- a. The waste is collected by the district, borough and city councils of Essex in their role as waste collection authorities and the decision on how to do this is locally determined.
  - b. ECC has run a transparent and impartial procurement process as required by the Public Contract Regulations 2015 and successful companies will be bound by the Framework Agreement to comply with the Human Rights Act 1998 and all legislation, official guidance and codes of practice relating to equal opportunities.
- 6.4 An Equality Impact Assessment is attached as an appendix.

## 7. List of appendices

- Appendix 1: Confidential details of service orders
- Appendix 2: Equality Impact Assessment

## 8. List of Background papers

- a. Cabinet Report – procurement of bio-waste services (ref FP/944/09/17).
- b. Bio-waste Framework Agreement 0554 – tender evaluation outcome and appointment of Framework Providers.

<b>I approve the above recommendations set out above for the reasons set out in the report.</b>	<b>Date</b>
<b>Councillor Simon Walsh, Cabinet Member for Environment and Waste</b>	13/03/19

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**In consultation with:**

<b>Role</b>	<b>Date</b>
<b>Executive Director for Waste and Environment</b>  <b>Ian Doyle</b>	13/03/19
<b>Executive Director for Corporate and Customer Services (S151 Officer)</b>  <b>Nicole Wood on behalf of Margaret Lee</b>	12/03/19
<b>Director, Legal and Assurance (Monitoring Officer)</b>  <b>Kim Cole on behalf of Paul Turner</b>	08/03/19