

Forward Plan reference number: FP/230/11/21

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| Report title: Procurement of contract(s) for bio-waste treatment, transfer and transport services | |
| Report to: Cabinet | |
| Report author: Malcolm Buckley, Cabinet Member for Waste Reduction and Recycling | |
| Date: 19 April 2022 | For: Decision |
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| County Divisions affected: All Essex | |

1. Everyone's Essex

- 1.1 Everyone's Essex sets out the Council's strategic purpose, including the strategic aim of a high-quality environment. This strategic aim includes a specific commitment to minimising the impact on the environment by supporting residents and businesses to reduce waste and increase the amounts recycled.
- 1.2 The purpose of this report is to seek approval to commence the procurement for waste treatment, transfer and transport services for separately collected bio-waste streams in Essex. Bio-waste is organic material such as food, green or mixed food and green waste.
- 1.3 This contract will help to deliver the aspirations of the Inter Authority Agreement (IAA) between Essex County Council ("ECC") and the District, City and Borough Councils to increase the recycling of food and green waste across Essex by creating a more circular economy to protect our natural resources through the efficient reuse of materials, maximising energy generation and contributing to our Net Zero ambition.
- 1.4 The new contractual arrangements replace existing contracts which expire on 31 March 2023 and will ensure the continuation of recycling services to residents at the kerbside and at household recycling centres. The new contracts will aim to provide an economical and sustainable disposal option for segregated municipal food and green waste as well as transfer and haulage. The intention is to provide long-term capacity in the new contract by locking in processing capacity with supplier(s) for a minimum of 5 years to provide them with longer-term security over tonnage inputs.

2 Recommendations

- 2.1 Agree to launch a competitive procurement using the open procedure to procure contractors to provide treatment, transfer and transport of separately collected food and green waste at an estimated value of £6m per annum.

- 2.2 Agree to the contract length of 5 years with options to extend in any number of periods not exceeding an extension period of five years in total.
- 2.3 Agree that the following award criteria is applied in the procurement: 70% price: 30% quality (of which 5% of the quality score will be allocated to social value).
- 2.4 Agree that the Director, Environment and Climate Action is authorised to agree the division of lots for the procurement and the detailed evaluation criteria.
- 2.5 Agree that the Cabinet Member for Waste Reduction and Recycling, in consultation with the Cabinet Member for Finance, Resources and Corporate Affairs, is authorised to award contract(s) to the successful bidders following completion of the procurement process, subject to the outcome being within budget.
- 2.6 Agree to run a mini-competition, using the procedure set out in ECC's Biowaste Framework Agreement, for a two year service order for the treatment, transfer and transport of mixed food and green waste at an estimated value of £1.1m per annum.
- 2.7 Agree that the Cabinet Member for Waste Reduction and Recycling is authorised to award a service order to the successful bidder following completion of the mini-competition process, subject to the outcome being within budget.

3 Background and Proposal

- 3.1 ECC is the Waste Disposal Authority ("WDA") 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"). There is also a Joint Waste Agreement ("JWA") in place with the unitary authority of Southend-on-Sea City Council ("SCC"), which requires ECC to procure these services on their behalf.
- 3.2 Bio-waste is organic material such as food, green or mixed food and green waste collected by the WCAs and from the RCHWs. ECC currently make arrangements for the processing of 166,000 tonnes of bio-waste per annum (including bio-waste from Southend) via an existing framework agreement that was procured in December 2018 and expires in January 2023.
- 3.3 Bio-waste treatment technologies are controlled by a range of national regulations that specify the feedstocks that can be used and the quality of outputs. Green waste is therefore composted at open windrow sites, food waste is treated in Anaerobic Digestion (AD) tanks and mixed food and green waste is handled by In-Vessel Composting (IVC) technology. Open windrow treatment and IVC produce compost or soil improver that can be used in agriculture or horticulture and AD produces a digestate that is typically spread on farmland and biogas that is either fed into the national grid or used to produce renewable electricity. This approach ensures that bio-waste material is diverted away from

landfill and also accords with the Essex Waste Strategy (2007 – 2032) that follows the principles of the Waste Hierarchy and seeks to “channel resources into reducing, re-using and recycling, so that the maximum amount of waste is put to beneficial use”.

- 3.4 It is proposed that ECC go out to the market to procure contracts to replace the current Biowaste Framework Agreement which expires on 1 January 2023 (the “Biowaste Framework”). There are current service orders that have been called off from the Biowaste Framework and these make provision for biowaste disposal until 31 March 2023. It is proposed that the new 5 year contract(s) will commence on 1 April 2023.
- 3.5 A new two year service order from the Biowaste Framework is however needed for the treatment, transfer and transport of mixed food and green waste for a two year period at an estimated value of £1.1m per annum. Mixed food and green waste is currently collected by Epping Forest District Council (“EFDC”) and Rochford District Council (“RDC”). The Biowaste Framework includes a lot for this mixed waste. It is therefore proposed that a mini competition is run, and a new service order awarded, to deal with this waste for a two year period during which time both RDC and EFDC will look to implement separate collections of food and green waste. Once EFDC and RDC move to separately collected food and green waste, this tonnage will be picked up under the new contract(s) that will be in place.
- 3.6 The proposed new five year contract(s) will aim to provide an economical and sustainable disposal option for segregated municipal food and green waste as well as transfer and haulage. The existing Biowaste Framework does not provide adequate long-term capacity and financial security for this material. The new contract(s) will aim to overcome this by locking in processing capacity with supplier(s) for a minimum term of 5 years to provide suppliers with longer term security over tonnage inputs.
- 3.7 This procurement will enable ECC to retain access to facilities optimised for the treatment of separately collected bio-waste streams, ensuring that as much of this waste as possible is diverted from higher cost disposal routes such as landfill – benefitting the environment and reducing the cost to the taxpayer.
- 3.8 It is proposed that the contract is split into at least four lots being (1) Green Waste (ECC); (2) Green Waste (SCC); (3) Food Waste; and (4) Transfer and Transport with the Director, Environment and Climate Action agreeing the final lots that will form part of the procurement.
- 3.9 The indicative tonnage for each material under the new contract(s) and the new service order(s) are as follows:

| Source | Food | Green | Mixed Food & Green |
|---|----------|----------|--------------------|
| ECC Kerbside collections by WCAs | 40,000 | 75,000 | N/A |
| ECC Recycling Centres for Household Waste | N/A | 21,000 | N/A |
| Southend on Sea Borough Council | 5,000* | 12,000 | N/A |
| RDC & EFDC | 10,000** | 21,000** | 31,000 |

* SCC estimate that food waste could increase to 8,000t over the contract term.

** Estimated tonnage, once RDC and EFDC have segregated material.

- 3.10 The open procurement procedure will allow an unlimited number of bidders per Lot. The bio-waste market is limited to a small number of key suppliers, so it is envisaged that a maximum of 5 bidders for each lot will be received.
- 3.11 The proposed award criteria (70% price: 30% quality (of which 5% of the quality score will assess social value)) is considered to provide the optimum outcome for ECC for this requirement by balancing the evaluation in favour of price with a meaningful quality weighting to impact overall scores. The quality aspects of the evaluation will assess the robustness of bidder's responses against a number of areas including (but not limited to): service delivery method, mobilisation, business continuity planning; environmental benefit, health and safety management, and social value. In addition to the 5% social value weighting which broadly covers the Council's levelling up agenda, there will be weighted standalone quality question(s) on supplier initiatives to support education and encourage diversion rates thus giving these core requirements further focus within tender submissions. Minimum standards will be applied to core requirements across the evaluation where appropriate to ensure that bids are of sufficient quality.
- 3.12 Each lot will be evaluated against the pre-determined evaluation criteria and contracts awarded based on the most economically advantageous bid. Each bidder will be allocated guaranteed minimum tonnage at 70% of their awarded tonnage under each lot.
- 3.13 ECC currently dispose of food waste on behalf of SCC. Under the JWA with SCC, a range of 4,000 – 8,000 tonnes per annum of food waste will be collected by SCC and included in this procurement. SCC will pay the costs for the reprocessing of their material and they already contribute to a central cost for managing these arrangements under the JWA.
- 3.14 SCC have requested that ECC include a standalone lot for their green waste tonnage. No guarantee of award or minimum tonnage will be offered under this

Lot, as SCC are unable to commit to any tonnages. However, this approach enables SCC to use the successful supplier if the rates are more beneficial than their existing arrangements. If they wish to use this lot, the JWA will need to be updated and the costs will be managed in the same way as in paragraph 3.13.

- 3.15 The new contract(s) will include a mechanism where known/foreseen risks related to change in law are shared equally between the parties. ECC will take any unforeseen change in law risks, contributing to the cost to contractors associated with implementing any changes required to plant or operational practices as a result of the change in law, based on the proportion of ECC's waste volume against the total waste capacity a plant is able to take. ECC believe the likelihood of any unforeseen changes in law occurring during the contract term to be low. If a change did occur, the contractor would be required to demonstrate how the cost of the new requirements were being mitigated, but any additional costs would be passed through to ECC. For both foreseen and unforeseen changes in law, change in law provisions will be included within the contract to transparently set out a process to be followed when a change in law occurs to achieve best value through this procurement.
- 3.16 The Regulations to implement the Environment Act 2021 are still being consulted on, but this requires all WCAs to put in place mandatory food waste collections by 2024. This legislation will influence supply and demand within the market, resulting in likely price increases. Our current framework value is approximately £6m per annum and this procurement seeks to maintain this good value for ECC by going to market before other authorities and the previously stated changes in market take effect.
- 3.17 RDC and EFDC currently mix food and green waste for their organic kerbside collections and are waiting for the outcome of further consultation on the intentions of the Environment Act 2021. Once these statutory requirements are clear, these District Councils will look at how separately collected food and green waste services can be implemented.
- 3.18 As a result of this uncertainty, ECC are unable to include the mixed food and green waste stream within the new 5 year procurement, as tonnages over the term would not be guaranteed, which is likely to result in bidders not submitting tenders or pricing this risk. However, the anticipated separately collected food and green waste tonnages will be included to ensure that the material from these District Councils can be added to the contract once they implement changes for separate collections.
- 3.19 In order to give these District Councils time to investigate their new service options, a further competition under the existing Biowaste Framework will be conducted to procure an interim arrangement for 2 years from April 2023. This approach ensures that ECC do not take on any risk from including the mixed food and green waste in the proposed new contract and will provide flexibility to the District Councils, so that they can exit when they are ready to implement any changes.

- 3.20 Carrying out a mini competition under the existing Biowaste Framework for mixed food and green waste enables ECC to offer guaranteed tonnage over a shorter timeframe, which will help to achieve better value and is more likely to attract a greater number of bids.
- 3.21 The award criteria for the mini competition shall be 100% price, as quality was evaluated under the Bio-Waste Framework procurement.
- 3.22 Awarding a new contract(s) and service order(s) will enable ECC to continue to fulfil its statutory obligations as the WDA and continue to provide this service to the WCAs. It will also support delivery of ECC's strategic priority to help to secure sustainable development and protect the environment.

4 Links to our Strategic Ambitions

- 4.1 This report links to the following aims in the Essex Vision:
 - Develop our County sustainably
- 4.2 Approving the recommendations in this report will have the following impact on the Council's ambition to be net carbon neutral by 2030:
 - Diversion of waste from landfill through the continuation of separately collected food and green waste will help to maintain lower emissions from ECC's contracted landfill sites.
- 4.3 This report links to the following strategic priorities in the emerging Organisational Strategy 'Everyone's Essex':
 - A high-quality environment
- 4.4 This decision links to Everyone's Essex Strategy to deliver a high-quality environment, minimise waste, and contribute towards ECC's net zero carbon ambition. This links in with ECC's climate change aspirations by maximising energy recovered from the waste disposal process and ensuring less waste goes to landfill. ECC will also evaluate innovation opportunities through tender submissions which may include potential gain share opportunities and/or energy agreements with suppliers to further support circular economy.

5 Options

Option 1 – Do nothing (Not Recommended)

- 5.1 This would mean that when the current service orders expire, ECC will fail to meet its statutory obligation as a waste disposal authority by having an inadequate disposal solution for this waste stream. This option is not recommended.

Option 2 – Run additional mini-competitions for all materials under the existing framework agreement with short-term service orders in each Lot (Not Recommended)

- 5.2 This option is not recommended as it would only provide a short-term procurement solution (circa 24 months from when the existing service orders expire) and as such would not provide ECC with the ability to secure capacity and financial security over the upcoming period of uncertainty with the legislative changes related to the implementation of the new Environment Act 2021 on the horizon, as detailed in paragraph 3.6.
- 5.3 The current framework does not offer suppliers long-term commitments on total tonnages or the rates of input, which has resulted in certain suppliers pricing in this risk within mini competitions, as they need a continual feedstock for their facilities.
- 5.4 Furthermore, there is a risk that the market may decline to participate in another mini competition under the terms of the current Framework Agreement with the upcoming market changes posed by The Environment Act 2021.
- 5.5 The impact of the new legislation on supply and demand in the market, means other authorities will be forced to take up capacity in 2024. Market research highlights that if ECC delay going to market for a new contract after 2024 competition for capacity will be limited and this is likely to attract higher prices. This approach is therefore likely not to achieve best value for money for ECC over the medium-term and risks ECC securing capacity in the market to process ECC's required tonnages.

Option 3 – Replace the current framework agreement with another framework agreement (Not Recommended):

- 5.6 A replacement framework agreement would enable the re-use of current procurement and contract documentation with minimal changes. The structure of the Framework Agreement and associated processes would be familiar with the market and contract managers and the re-procurement would open the opportunity back up to the market.
- 5.7 However, this option is not recommended as a replacement framework would be limited to four-years in duration and would entail running mini-competitions throughout the framework term, which is resource intensive for both ECC to run and contractors to participate in.
- 5.8 Similar to Option 2, short-term call-off contracts (service orders), which on the existing Biowaste Framework have to date been for 24 months in duration, would not provide the market with any long-term tonnage security and would be unlikely to secure best value for ECC over the upcoming period of uncertainty/changes in the market. This approach would not enable ECC to secure longer-term capacity and financial security.

Option 4 – Procure a new five year lotted contract for separately collected food and green waste utilising an Open Procedure with separate service orders under the existing Bio-Waste Framework for mixed food and green waste (Recommended):

- 5.9 This option would involve undertaking a single stage procurement process using the Open Procedure to appoint a contractors to each Lot to provide the required bio-waste treatment, transfer, and transport services.
- 5.10 The Open Procedure is recommended as the market is well established and there are only a small number of suppliers that would be likely to bid, so shortlisting through pre-selection (a Restricted Procedure) is unnecessary.
- 5.11 ECC's requirements can be met without adaption of readily available solutions or design or innovative solutions, and the technical specification can be established by ECC with sufficient precision, therefore there is no requirement for negotiation/dialogue with bidders prior to contract award.
- 5.12 The Open Procedure provides a quick route to market, providing a competitive and compliant procurement route which will drive value for money, whilst ensuring that the procurement timescales are minimised.
- 5.13 Going to market in 2022 for a new lotted five year contract (with an option to extend the contract in any number of periods not exceeding a total of five years) rather than a maximum four year Framework Agreement with shorter-term service orders, will enable ECC to lock in prices and capacity before neighbouring authorities go to market. This will allow ECC to mitigate risks of rising costs which will likely to be brought about by an increase in competition for limited processing capacity at facilities as food waste collections are mandated under The Environment Act 2021(as detailed in paragraph 3.6).
- 5.14 This approach will allow ECC to concentrate on contract management, mitigate risk by securing 5 year capacity, provide greater continuity in ECC supply chain for a longer period and is likely to achieve best value for money for ECC over the medium-term.
- 5.15 A further competition will be run through the existing framework for mixed food and green waste for RDC and EFDC to award service orders for a maximum of two years. However, the segregated food and green waste tonnages from these authorities will be included in the permitted tonnage for the 5 year contract with the option to be added at any time, subject to capacity and on the basis of the contract award criteria.
- 5.16 Option 4 is recommended, since it offers the best commercial opportunity to ECC, and mitigates risks associated with impending market change.
- 5.17 Assessment of risks associated with option 4:

| Risk Description | Mitigation |
|---|--|
| <p>Procurement over-run If the procurement is not completed on time there could be no means of ECC fulfilling its duties as the waste disposal authority regarding bio-wastes.</p> | <p>A robust timetable with adequate resources to complete the procurement process on schedule. Extend the existing framework service orders for a limited period in compliance with the terms of the current framework agreement and the Procurement Regulations. Dispose of the bio-waste to landfill assuming the relevant contracts have capacity for the additional tonnage.</p> |
| <p>Essex Waste Strategy in development and not yet confirmed, this is likely to impact future strategy of Bio-Waste</p> | <p>As a Portfolio we regularly feed into the new Waste Strategy project team to ensure any dependencies for bio-waste are mapped and managed. ECC will also build in provisions to extend the contract for up to five years to align with any delays or infrastructure building that may come out of the confirmed strategy.</p> |
| <p>Environment Act 2021 - Mandatory food waste and free green waste collections</p> | <p>The risk of mandatory food waste collections is mitigated by carrying out the mini competition for the mixed food and green waste, whilst retaining the ability for the RDC and EFDC material to be added to the 5 year contract.</p> <p>Six of the WCAs charge for green garden waste collections, therefore the guaranteed minimum tonnage percentage for green waste shall be based on the current tonnage levels. Any introduction of free green garden waste services by the WCAs that currently charge will only increase tonnages.</p> |
| <p>Increase in fuel costs</p> | <p>Worldwide and National events can lead to fuel price increases, which could potentially impact on services.</p> <p>To mitigate this risk indexation will be applied annually to ensure that contract rates reflect current market condition.</p> |

6 Issues for consideration

6.1 Financial implications

6.1.1 The financial evaluation of the treatment options for bio-waste must consider the whole system costs of any solution proposed via the procurement exercise. While the gate fee price per tonne offered by suppliers is one element of the cost of the solution, the cost to transfer and transport the material to the proposed facilities must also be considered. The transfer and transport costs will be derived from the new in-house integrated waste handling service, the costs under the proposed transfer and transport lot of this procurement as well as any 'tipping away' costs, where WCAs are asked to deliver material more than 5 miles from the WCA's border.

6.1.2 The whole system cost for bio-waste currently runs at circa £6m per annum. This is split approximately £4.8m per annum on gate fees and £1.2m per annum on haulage. The bio-waste budget within the current Medium Term Resource Strategy for 2023/24 is £5.96m.

6.1.3 The new contract will aim to provide an economical and sustainable disposal option for segregated municipal bio-wastes as well as transfer and haulage. The existing framework does not provide adequate long-term capacity nor financial security.

6.1.4 The main financial risks of the procurement are:

- obtaining pricing within budget and subsequent inflation
- the volume of tonnage
- change in law risk

6.1.5 While disposal prices for organic waste have remained relatively constant in recent years and ECC would hope to leverage the best prices from the market, there is a risk that the procurement will lead to an increase in whole system costs. The payment mechanism will include annual inflation as it is seen as the best way to reduce risk pricing and will reflect the inflation impacts on the activities carried out under each lot. The likely impact of indexation will form part of the price assessment in the final award.

6.1.6 Volumes of bio-waste have remained reasonably constant over recent years, apart from during the pandemic. A guaranteed minimum tonnage of 70% of the historical average is being offered to the market. This will encourage competitive pricing. It is felt this is a reasonable offer and the risk of falling below that level is low, especially if green waste collections are obliged to become free again over the contract term.

6.1.7 There is a risk of cost increase due to changes in law over the term from the regulations developed to implement the Environment Act 2021. The financial impact of any foreseen changes, that is currently unknown, will be shared equally with the contractor. This is felt to be the best way to avoid risk pricing at the

tender stage for changes that may only happen later in the term, if at all. The sharing will also invest the contractor in the mitigations to such changes to minimise the overall cost impact. The financial impact of unforeseen changes in law will be ECC's responsibility although the risk of such changes over the term is considered very low. In all cases, any cost increase will only be ECC's proportion of the contractor's overall increase.

6.1.8 The tender will ask for gainsharing proposals from the market to establish the potential for cost reduction from performance or operational impacts that are better than those forecast at the time of the tender. For bio-waste this may be most likely focussed on the solutions which include energy production but it may not be limited to these.

6.1.9 The opportunity cost of running this procurement will be met from existing service budgets, including support services.

6.2 Legal implications

6.2.1 The call-off from the Biowaste Framework must be carried out in accordance with the criteria set out in that framework.

6.2.2 ECC is a contracting authority for the purposes of The Public Contract Regulations 2015. The estimated value of the contract exceeds the EU threshold for Services. The procurement of the contract will be advertised via the Find a Tender service and undertaken in accordance with the open procedure set out in the Public Contracts Regulations 2015.

6.2.3 It is proposed that the new contract will initially be five years in duration, with the option to extend up to a further five years. The procurement will be split into lots in order to allow the market to provide the most cost-effective disposal approach for the waste types that must be disposed of.

6.2.4 Two Prior Information Notices (PIN) have been published accompanied by market engagement questionnaires to inform the procurement and will support in maximising publicity of the requirements and competitive bids.

6.2.5 Contracts should be awarded on the basis of the most economically advantageous tender and qualitative, environmental and/or social aspects should be linked to the subject matter of the contract.

7 Equality and Diversity Considerations

7.1 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.

- 7.2 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).
- 7.3 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.

8 List of Appendices

Appendix 1 - Equality Impact Assessment

9 List of Background papers

None declared