

## Joint Waste & Recycling Committee

Agenda Item: **10.1**

Date - 27 July 2018  
From - Lead Director, Dr Anthony Leonard  
Subject - Invitation to Participate in Negotiation

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**CONFIDENTIAL**

**Recommendation:** It be **RESOLVED:** That:

- 1) the three bidders are invited to participate in negotiation; and
  - 2) following negotiation concerning and final clarification of the Contract terms and requirements, the three bidders are invited to submit Final Tenders for the East Sussex Waste Collection, Recycling, Street & Beach Cleansing and Associated Services Contract.
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**Report Author: Madeleine Gorman, Partnership Manager**

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**In accordance with Executive Decision Procedure Rules 6(b) and 7(c)(ii), the Scrutiny Chairmen of each partnership authority have already agreed that, subject to the approval of the Joint Waste and Recycling Committee, this decision can be taken as a special urgent decision to allow the Partnership to invite bidders to participate in negotiation meetings of the new Waste Contract in line with the procurement timetable.**

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### Introduction

1. Procurement of the East Sussex Waste Collection, Recycling, Street & Beach Cleansing and Associated Services Contract using a Competitive Procedure with Negotiation gives the Councils an opportunity to negotiate with bidders and refine their tenders.
2. Four companies were invited to tender for the Contract and three bids have been received. It has not been possible to fully evaluate the bids received because the bidders have each made different proposals (and some assumptions concerning the requirements) which affect both the basis of the prices received and delivery of the services required.
3. Members are advised that many companies that are tendering for public sector business are apparently now far more risk adverse and not prepared to accept contracts on the terms being offered. The Partnership must therefore be prepared to review the requirements and create final contract terms that are mutually acceptable for all the parties to the Contract.
4. To ensure diligence in terms of the procurement process, it is vital that officers establish an equal basis for final tenders and their evaluation. To achieve this, each bidder will be invited to a negotiation session that aims to clarify the

service requirements and confirm the Partnership's position on various legal and commercial matters. This report offers further information concerning these matters and seeks approval to proceed.

## **The Initial Invitation to Tender**

5. The Invitation to Tender was sent on Monday 9 April 2018. Contractor C withdrew from the procurement on Friday 13 April 2018, citing the number of municipal collection procurements they are currently engaging with. It is disappointing that this procurement was not sufficiently attractive for Contractor C to participate in.
6. On Tuesday 17 April 2018 a Bidder's Day was held at the Town Hall in Bexhill. The purpose of the day was to ensure bidders understood the Partnerships' requirements, had the opportunity to view the available depot sites and ask questions. This was a very successful day, with Contractors A, B and D all in attendance.
7. During the tender period, further clarification was sought regarding service (technical) and legal requirements, which were clarified in consultation with Waste Officers, Ricardo AEA (technical consultants) and Bevan Brittan LLP (legal consultants).
8. During the tender period, bidders requested further information to understand the position of Kier employees currently included in the Local Government Pension Scheme (LGPS) [ex-Wealden employees] and the employer contribution rates that would apply if an Admitted Body Status (ABS) agreement was to enable these employees to remain in the LGPS. This required an actuarial valuation of the scheme but delays in receiving the required employment information resulted in bidders being given an extension to the deadline for tender return from Friday 15 June 2018 to Tuesday 19 June 2018. The actuarial evaluation also incurred an additional cost of £2,500.

## **Evaluation**

9. Tenders were received from Contractors A, B and D. The documentation was sectioned so that compliance, financial and quality evaluation work could all be undertaken in parallel by different groups of officers. The East Sussex Procurement Hub conducted the compliance checks. The financial evaluation was undertaken by Ricardo AEA and the Partnership's financial evaluation team (as identified in the evaluation model). The quality related aspects of the submissions were evaluated by the Partnership's Waste Officers and Ricardo AEA (as identified in the evaluation model).
10. Unfortunately the tenders were received on an unequal basis, with different assumptions that make comparative evaluation of the pricing document and strict application of the tender evaluation model impossible.
11. However, all of the required resourcing and quality information was submitted in sufficient detail to allow evaluation by both Council Waste Officers and Ricardo AEA. The quality aspects of each tender have therefore been

scrutinised and scored as per the evaluation model resulting in the following ranking (based only on the quality evaluation scores):

- i. Contractor A
  - ii. Contractor B
  - iii. Contractor D
12. Advice has subsequently been taken from the Ricardo AEA and Bevan Brittan LLP and all three bidders are to be invited to participate in negotiation meetings which will take place on Monday 30 July, Tuesday 31 July and Wednesday 1 August 2018. These meetings aim to clarify the pricing requirements, service requirements, deal with the assumptions that have been made and re-examine the provisions that might allow the cost of the Contract to be reduced.
13. The tenders all included reference to the opportunity for discussion regarding the final requirements and terms for the Contract. Both Ricardo AEA and Bevan Brittan LLP have negotiation experience but advise that much like the Councils, each contractor has its own financial position and attitude to contractual risks. While the opportunity for negotiation is a valuable way to engage with contractors, the procurement must ensure that tenders are evaluated on an equal basis.
14. The following items have been proposed as having potential to shift elements of commercial risk from the Contractor, offering opportunity for a lower Contract Price but with the consequence of higher risk for the Councils:
- Indexation (mechanism to deal with annual inflation)
15. Tenders were invited with an indexation mechanism that uses a single Consumer Price Index (CPIH) to inflate the Contract Price. The CPIH (including Housing costs) is a general index commonly used to measure the cost of living. However, the primary cost elements for waste collections and street cleansing arise from labour (salaries and wages costs) and fuel. Thus the single index approach could mean that tender bid prices are high, in an attempt to ensure unanticipated rises in wages and/or fuel during the Contract Term can be absorbed.
16. A basket of two or more indices could more clearly reflect the actual costs being incurred on the Contract. This could lead to a lower Contract Price but offers less financial security for the Councils as they will have to bear the costs of actual inflationary increases each year.
17. Now is a particularly difficult time to predict the future with regards to the impact of BREXIT on future waste legislation and the expectations of society (e.g. with regard to marine litter). There are a number of uncertainties as to the direction of the waste sector and how the organisations responsible for and providing collections engage and operate with each other.
- Pension Liability (employer contributions for pensions)
18. Tenders were invited on the basis that the Contractor could either provide a scheme with comparable pension rights or enable employees to continue enjoying the benefits of the LGPS via an ABS agreement. Directly

comparable (final salary) schemes can be difficult to establish so ABS arrangements are commonly accepted but the Contractor has no influence over the fund investments, contribution rates, participation numbers etc.

19. With relatively high contribution rates and no control or influence over those rates in future, Contractors prefer that the full cost of providing an ABS pension is funded by the Council. This mechanism is known as pass-through because the costs are simply passed through to the council(s).
20. The current Contract has a cap and collar arrangement in place, where the initial contribution rate at the start of the Contract has a 3% margin of tolerance before any financial change is made to the Contract Price. The Contractor bears the cost of any increase in the contribution rate up to 3% above the initial rate (the cap) then the Contract Price is increased. The Councils bear the cost of the Contract Price (based on the initial contribution rate) until the contribution rate drops to more than 3% below the initial rate at which point the Contract Price is reduced accordingly.

#### Performance Management Framework

21. The Performance Management Framework (PMF) is the contractual tool used to motivate Contractor behaviour. The PMF makes provision for both financial deductions and a point mechanism that ultimately leads to termination of the Contract.
22. The approach taken in the current contract documentation has been influenced by the relatively poor experiences in managing the current contract with Kier. While a suitable framework for managing performance is absolutely essential; if the mechanism is too penal and sets unrealistic expectations as to the level of performance that can be achieved, the bidders will seek to cover their potential costs within a higher Contract Price. However, the Councils must ensure a suitable mechanism is established to protect the interests of customers who are paying for some collection services (e.g. bulky waste collections and garden waste collections).

#### Change in Law

23. The Contractor is currently responsible for all revenue costs that might arise from any change in law. With new Government environmental, litter and economic strategies potentially being developed into new legislation within the term of the Contract, the Contractors face the risk of additional costs being incurred and would therefore propose a mechanism that increases the Contract Price if additional costs are the consequence of new legislation.

#### Other Matters

24. The deadline for publication of this report means the final agenda for negotiation meetings has not been finalised and other topics will be discussed.
25. Each Council will need to determine its position with regard to each matter and ensure the Partnership position on each point is clear. Successful negotiation will result in common understanding of the services to be provided on mutually acceptable terms. The risk remains that at least one bidder could withdraw because they consider the terms too onerous or puts them at

significant financial risk in future. It is positive that all three bids are from experienced waste contractors capable of adequately meeting the specified service requirements.

## **Negotiation**

26. The negotiation meetings will be led by Steve Brown CIWM IOG, Principal Consultant and Knowledge Leader at Ricardo AEA. He will support the Partnership in achieving their aims for the Contract and has recently led negotiations for other councils. Bevan Brittan LLP will also be present to advise on any negotiated amendments to the Main Body Contract. Two officers from each council, the Lead Director, Partnership Manager and Deputy Project Manager will also participate.
27. Items for negotiation are being planned in advance so that officers and consultants can be fully briefed on the position of each Council and the Partnership. It is likely that separate “break-out” sessions will be conducted for specialist inputs such as the ICT system integrations with each Council. The number of personnel participating could mean that the Councils do not present a unified approach but it is essential that all three Councils “speak with one voice” so those participating in the meeting need to hold the authority required to confidently take decisions on each matter. The procurement project team are considering whether a further clarification meeting with each bidder will be required to ensure that each Contractor has properly understood what has changed as a result of the negotiations and can fully complete the pricing document at the Final Tender stage.

## **Final Invitation to Tender**

28. The tender documents will be revised in-line with the negotiations and the three bidders will then be invited to submit their Final Tenders. The original deadline for the return of Final Tenders will need to be revised to give time for the intended clarification meetings.
29. Officers responsible for quality evaluation will be under pressure to once again thoroughly read and evaluate the quality (resourcing and service) elements of each tender. The financial evaluation team has prepared the evaluation modelling tools they need to analyse the financial implications of each Final Tender. Together these teams expect to make a Contract Award recommendation to Joint Waste and Recycling Committee on 2 November 2018.
30. The Joint Waste and Recycling Committee will then make a recommendation to each Cabinet to approve the Contract Award and execute the final Contract so that mobilisation can begin in January 2019. The level of investment required to secure vehicles and depot accommodations typically requires the security of a completed final Contract.

Dr Anthony Leonard  
Lead Director

**Risk Assessment Statement**

While there are no direct risks associated with this report, failure to discuss and agree mutually acceptable terms increases the risk that re-procurement becomes necessary.

(Not for publication by virtue of Paragraphs 3 and 5 of Schedule 12A to the Local Government Act 1972, as amended).