

Report to the Cabinet

Report reference: C-019-2013/14

Date of meeting: 22 July 2013



**Epping Forest
District Council**

Portfolio: Environment

**Subject: Procurement of the Waste Management Contract – Pre-
Qualification Questionnaires and Initial Documents**

Responsible Officer: John Gilbert (01992 564062)

Democratic Services Officer: Gary Woodhall (01992 564470)

Recommendations/Decisions Required:

(1) That following the assessment of pre-qualification questionnaires, the following eight companies be accepted into the next stage of the contract procurement, namely:

- (i) Biffa;**
- (ii) Enterprise/Amey**
- (iii) FCC;**
- (iv) Kier;**
- (v) Serco;**
- (vi) Sita;**
- (vii) Urbaser; and**
- (viii) Veolia;**

(2) That, following the assessment of pre-qualification questionnaires, the following two companies be rejected, namely:

- (i) Acumen; and**
- (ii) Bywaters;**

(3) That the Descriptive Document, Conditions of Contract and draft specifications for Lot 1 and Lot 2 services be approved for the purposes of the Invitation to Submit Outline Solutions (ISOS) stage of the procurement process;

(4) That as part of the documents referred to in recommendation (3) above, the contractor be required to provide all vehicles, plant and equipment subject to the Council taking ownership of those assets in the event of the contract coming to an unplanned cessation, for whatever reason; and

(5) To note that the Chairman of Council has given her approval to the above decisions not being subject to call-in provisions.

Executive Summary:

As part of the procurement of the waste etc. contract, Pre-Qualification Questionnaires (PQQs) were issued to all contractors who responded to the notice placed in the Journal of the European Union. The PQQs were assessed by the officer and consultant project team against strict assessment criteria which included financial stability and the ability to deliver all the services being procured. This report sets out the outcome of that PQQ assessment process.

The next element of the procurement process is the first stage of Competitive Dialogue. This requires the issue of an initial suite of documents, the Descriptive Document, Conditions of Contract and draft specifications. This report attaches those documents for consideration by Cabinet. It should be noted that these might, and indeed probably will, change through the Competitive Dialogue process.

Reasons for Proposed Decision:

To enable the commencement of the next phase of procurement through approving the qualified contractors and the initial suite of associated documents.

Other Options for Action:

The only options are:

- (1) to amend the recommended list of accepted and rejected contractors, but this could result in a challenge due to the Council not following the rules for the assessment of the PQQs as set out in the original notice in the European Journal; and/or
- (2) to not approve the initial documents, or to amend them prior to issue.

Report:

Pre-Qualification Questionnaires

1. The procurement of the waste etc. contract commenced at the beginning of June with the issue of Pre-Qualification Questionnaires (PQQs). Contractors interested in providing services were required to complete a complex questionnaire which sought details of, amongst other things:

- company structures
- company finances and insurances
- ability to deliver the services being tendered
- health & safety
- equalities
- business continuity

2. With regards to the services being procured, these are divided in to 3 Lots:

- Lot 1: waste, recycling, street cleansing and abandoned vehicles;
- Lot 2: grounds maintenance; and
- Lot 3: fleet operations.

Prospective service providers were only able to offer to provide services within Lots 2 and 3, if they were offering to deliver Lot 1 services. The Council also reserved the right to withdraw the services in Lots 2 and 3 at any time during the procurement exercise.

3. The deadline for the receipt of PQQs was noon on 5 July 2013. By the deadline 10 PQQs had been received. The issues referred to in paragraph 1 above were scored by the project team (consisting of officers from the Office of the Deputy Chief Executive, Environment & Street Scene, Finance & ICT, Corporate Support Services, Essex County Council and the Council's consultants, WYG). The assessment methodology was either assessing a factor as Pass or Fail (e.g. in relation to finances and insurances) or applying a score of 0 to 5, where a score of 3 and above was required to constitute a pass (e.g. service experience and business continuity). The project team met on 11 July to moderate the scores awarded, to ensure that there was consistency in approach and that 'unusual' scores were explained and considered.

4. The overall outcome of the PQQ assessment process is set out in Appendix 1. It is not possible in the public part of the agenda to set out all of the assessment scores and reasons for failure, since to do so would put commercially sensitive information into the public domain. However, the primary reason for rejecting Acumen and Bywaters related to the fact that neither company was able to demonstrate that it had a track record in delivering the key Lot 1 services. It is worth noting that additional financial checks will be carried out during the later stages of the procurement process to ensure that financial circumstances have not significantly changed during the intervening period. All of the assessment documentation is available as a confidential background paper. **(Recommendations (1) and (2))**

Initial Suite of Documents

5. The next stage of the procurement process is the first stage of Competitive Dialogue. Competitive Dialogue is a process whereby the Council can enter into discussions with prospective service providers regarding the delivery of the tendered services. This will enable consideration to be given to issues such as depot provision, management of vehicles and changes to existing service arrangements. It is for this reason that there will be changes to the attached documents as the process moves forward.

6. However, at this stage, Cabinet is requested to approve the initial suite of documents, comprising the Descriptive Document, Conditions of Contract and the draft specifications for Lot 1 and Lot 2 services. These are attached as Appendix 2 **(Recommendation (3))**

7. Following the demise of the contract with South Herts Waste Management, the Council, as part of its risk management overview, took the view that it preferred to retain ownership of the key waste service fleet, this being primarily the refuse freighters. However, time has moved on, and WYG advise that it is common practice now to require the contractor to provide all vehicles, plant and equipment. This is therefore the approach being recommended, using the Contract to protect the Council's interest through ownership of these assets transferring to the Council in the event of the contract coming to an unplanned end. **(Recommendation (4))**

Next Stages

8. A Bidders' day is to be held on 31 July at North Weald Airfield. This will provide an opportunity for the contractors who have had their PQQs approved to have initial discussions with the Council regarding the procurement exercise. The day will also include a tour of the District so that the contractors can view the existing depot accommodations as well as getting a general 'feel' for the area.

9. The next stage is then the first tranche of Competitive Dialogue, which will take place over the first two weeks in August. Following this, the prospective contractors will be required to work up their first 'tender' for the delivery of services. During the consideration of these bids, a decision will be required on whether the Grounds Maintenance service is to be further tested or whether it should be withdrawn from the process and remain in house. That decision will form part of the report will be considered by Cabinet in October 2013.

Waiver of Call-In

10. As can be seen from the timeline referred to above, the Bidders' Day and first tranche of Competitive Dialogue interviews are scheduled to immediately follow this Cabinet meeting. This is necessary to be able to meet the very tight procurement deadlines. Therefore, permission has been sought from the Chairman of Council to waive the call-in arrangements for these decisions as the outcome of the PQQ assessment is an objective exercise based on agreed criteria and the initial suite of documents are subject to review as part of the Competitive Dialogue process. The Chairman of Council has agreed, on the grounds of urgency, to this request. **(Recommendation (5))**

Portfolio Holder's Advisory Group

11. The Environment Portfolio Holder's Advisory Group met on 15 July 2013 and considered the contents of this report. The Group went through the detail of the Descriptive Document and took an overview of the Conditions of Contract and the initial specifications for the waste and grounds services. The Group recognised that these documents could change over time through the Competitive Dialogue process.

12. The Advisory Group was content to agree the documents for consideration by this Cabinet.

Resource Implications:

DDF budget provision of £100,000. WYG appointed in the sum of £65,000, therefore adequate budget remains at this point in time.

Legal and Governance Implications:

Procurement process in accordance with EU procurement regime, following the Competitive Dialogue route. Only those PQQs received by the deadline of 5 July were assessed, and only those 8 which passed all the required assessment parameters have been recommended for approval.

The consent of the Chairman to waive call-in has been sought and approved in accordance with the Council's Constitution.

Safer, Cleaner and Greener Implications:

None at this stage, but the services being procured have a critical impact on the environment of the District, and all relevant Safer, Cleaner and Greener will be incorporated during the Competitive Dialogue phases and through the final contract documentation.

Consultation Undertaken:

None at this stage.

Background Papers:

Outcome of the PQQ assessment process (Commercially sensitive information).

Impact Assessments:

Risk Management

The only significant risk at this time arises from a Cabinet decision to not approve the recommendations as set out. This would have a number of potential consequences:

- (1) a challenge under EU procurement legislation in respect of a decision to exclude a contractor who passed the PQQ assessment criteria;
- (2) a challenge under EU procurement legislation in respect of a decision to include a contractor who had not passed the PQQ assessment criteria;
- (3) very significant impact on the procurement timeline if the initial documents are not approved at this time

Members are asked to note that the Competitive Dialogue process does enable detailed discussions with prospective contractors and that sufficient time has been factored into the procurement programme at the later critical stages to ensure that, for example, a waiving of call-in will not be required.

Recommendation (4) amends the Council's current approach to the management of the risk associated with an early termination of the contract through ensuring that even though all vehicles, plant and equipment are provided through and owned by the contractor, in the event of an early cessation the Contract provides for the Council to take possession of all such assets

Equality and Diversity:

There are clearly equality issues which may arise during the procurement process in respect of ensuring that the service specifications take fully into account the needs of a diverse population. This will be pursued through the Competitive Dialogue process to ensure that equalities issues are fully explored and services provided which comply with equalities principles.

In assessing the PQQs, contractors were required to include within their documentation their equalities policies, and these were assessed by the Council's Equalities officer. All the 8 recommended contractors passed that element of the PQQ assessment.

Appendix 2 – Initial procurement documentation