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Award

**Proposed contract modification (under Regulation 72(1)(c) of the Public Contracts Regulations 2015) to the Councils Servicing, Treatment and Disposal of separate materials collected from the City's three Household Waste Recycling Centres contract, between the Council of the City of Newcastle upon Tyne ("the Council") and Biffa Waste Services Ltd ("the Contractor").**

Newcastle City Council

F15: Voluntary ex ante transparency notice

Notice identifier: 2023/S 000-001909

Procurement identifier (OCID): ocids-h6vhtk-039977

Published 20 January 2023, 4:27pm

## **Section I: Contracting authority/entity**

### **I.1) Name and addresses**

Newcastle City Council

Newcastle Civic Centre

NEWCASTLE-UPON-TYNE

NE18QH

#### **Contact**

Heather Rothwell

#### **Email**

[heather.rothwell@newcastle.gov.uk](mailto:heather.rothwell@newcastle.gov.uk)

**Telephone**

+44 1912115869

**Country**

United Kingdom

**Region code**

UKC22 - Tyneside

**Justification for not providing organisation identifier**

Not on any register

**Internet address(es)**

Main address

[www.nepo.org](http://www.nepo.org)

Buyer's address

[www.nepo.org](http://www.nepo.org)

**I.4) Type of the contracting authority**

Regional or local authority

**I.5) Main activity**

Environment

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**Section II: Object**

**II.1) Scope of the procurement**

**II.1.1) Title**

Proposed contract modification (under Regulation 72(1)(c) of the Public Contracts

Regulations 2015) to the Councils Servicing, Treatment and Disposal of separate materials collected from the City's three Household Waste Recycling Centres contract, between the Council of the City of Newcastle upon Tyne ("the Council") and Biffa Waste Services Ltd ("the Contractor").

Reference number

C-011365 - 006635

### **II.1.2) Main CPV code**

- 90500000 - Refuse and waste related services

### **II.1.3) Type of contract**

Services

### **II.1.4) Short description**

In 2019 Newcastle City Council "the Council" awarded a contract to Biffa Waste Services Ltd "the Contractor" for the provision of servicing, treatment and disposal of separate materials collected from the City's three Household Waste Recycling Centres ("the Contract"). The Contract start date was 8 July 2019 with an initial term of 2 years and 2 x 12-month extension options. The Council has exercised both of those options, thereby giving a current contract expiry date of 7 July 2023. Due to circumstances which it could not have foreseen (as explained more fully in section VI.3) Additional information below, the Council proposes to make a contract modification to extend the term of the Contract by a further 23 months and 24 days. This modification will result in a revised contract expiry date of 30 June 2025.

### **II.1.6) Information about lots**

This contract is divided into lots: No

### **II.1.7) Total value of the procurement (excluding VAT)**

Value excluding VAT: £6,214,521.01

## **II.2) Description**

### **II.2.3) Place of performance**

NUTS codes

- UKC - North East (England)

## **II.2.4) Description of the procurement**

The Council's current contract for the provision servicing, treatment and disposal of separate materials collected from the City's three Household Waste Recycling Centres is due to expire on 7th July 2023. The Council has a statutory duty to provide this service and therefore needs to make arrangements for the provision of the services beyond this date. The Covid pandemic, war in Ukraine and unprecedented increases in fuel prices have resulted in global volatility in the waste industry and recycle markets at the present time. These factors could not have been foreseen by the Council when the contract was awarded in 2019. Together with revisions to the timetable to deliver the National Resources and Waste Strategy, the above factors mean that a competitive procurement at this time is unlikely to deliver better value than that already achieved by the current contract. As such, in light of the unforeseeable circumstances above, the Council proposes to extend the Contract by a further twenty three months and twenty four days.

### **II.2.11) Information about options**

Options: No

### **II.2.14) Additional information**

The Council's total spend over the period from 8th July 2019 to 31st December 2022 has been £3,650,616.26 (excluding VAT). The Council estimates that the spend over the remaining 6 months of the contract from 1st January 2023 to 7th July 2023

will be £522,133.02 (excluding VAT). Combined, these two figures give a projected spend for the full contract term (8th July 2019 to 7th July 2023) of £4,172,749.28 (excluding VAT).

The remaining contract projected spend of £522,133.02 (excluding VAT) was calculated as follows:

- Over the three and a half years of the contract to date, the only annual Consumer Prices Index (CPI) uplift requested, and authorized, was applied in July 2022 and operates from 1st July 2022 to 30th June 2023. The impact of this uplift on monthly charges is known for the period July 2022 to December

2022. To project the spend for the remaining period of this contract (1st January 2023 to 7th July 2023), the charge for each month in the previous year (January 2022 to June 2022) was adjusted by a factor of 1.05071 and each adjusted monthly charge was summed to provide the projected charge for January 2023 to June 2023 of £522,133.02 (excluding VAT). The factor of

1.05071 was derived by dividing the total charges for the period July 2022 to December

2022 by the total charges for the same period in the previous year (July 2021 to December 2021). The average uplift in monthly charges from July 2022 to December 2022 of 5.071%, compared to the same months in the

previous year, is considered to accurately represent the impact of the July 2022 CPI uplift as the throughput tonnages for these six months in both years, 2021 and 2022, were almost identical, at 7974 tonnes and 7970 tonnes respectively.

The Council estimates that the contract spend for the extension period being sought (7th July 2023 to 30th June 2025) will be £2,041,771.73 (excluding VAT). Therefore, the overall total contract value, to account for the modification proposed in this

notice, is estimated to be £6,214,521.01 (excluding VAT).

The projected spend for the extension period (8th July 2023 to 30th June 2025) of £2,041,771.73 (excluding VAT) was calculated as follows:

- The known charges for the period July 2022 to December 2022 (£498,752.84 excluding VAT) and the predicted charges for the period January 2023 to June 2023 (£522,133.02 excluding VAT) were used as a baseline to which no annual uplift was applied and the same charges for each of these twelve months were replicated in each corresponding month over the 24-month

extension period being sought. This gives a sum for the 12 months July 2023 to June 2024 of £1,020,885.86 (excluding VAT) and for the 12 months July 2024 to June 2025 of £1,020,885.86 (excluding VAT). Combining the two years' predicted charges, gives the total of £2,041,771.73 (excluding VAT).

These projections assume:

- The annual tonnage of waste and recyclable materials collected at Newcastle HWRCs has stabilised at 34% less than in pre-covid years. This is a result of the introduction of strict residency and household-waste-only checks on incoming vehicles introduced during the covid period. These checks are now permanent features which will continue in the future. The projected impact is

that HWRCs will continue to operate at two thirds of their pre-covid capacity over the term of the extension being sought (July 2023 to June 2025).

- Although there is the possibility of a potentially recessionary economic environment in 2023 and 2024, these projections assume this will have minimal impact on HWRC tonnages and associated charges over these years.

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## **Section IV. Procedure**

### **IV.1) Description**

#### **IV.1.1) Type of procedure**

Award of a contract without prior publication of a call for competition in the cases listed below

- The procurement falls outside the scope of application of the regulations

Explanation:

Variation to contract compliant with regulation 72.

#### **IV.1.8) Information about the Government Procurement Agreement (GPA)**

The procurement is covered by the Government Procurement Agreement: Yes

### **IV.2) Administrative information**

#### **IV.2.1) Previous publication concerning this procedure**

Notice number: [2019/S 048-110404](#)

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## **Section V. Award of contract/concession**

### **Contract No**

006635

A contract/lot is awarded: Yes

### **V.2) Award of contract/concession**

#### **V.2.1) Date of conclusion of the contract**

8 July 2019

#### **V.2.2) Information about tenders**

The contract has been awarded to a group of economic operators: No

#### **V.2.3) Name and address of the contractor/concessionaire**

BIFFA WASTE SERVICES LTD

coronation Road

Wycombe

HP12 3TZ

Country

United Kingdom

NUTS code

- UKC - North East (England)

Companies House

946107

The contractor/concessionaire is an SME

No

#### **V.2.4) Information on value of contract/lot/concession (excluding VAT)**

Total value of the contract/lot/concession: £6,214,521.01

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## **Section VI. Complementary information**

### **VI.3) Additional information**

This notice is to advise of a proposed contract modification.

The Council has made the decision to extend its current household recycling waste contract for a further twenty three months and twenty four days. Regulation 72 of the Public Contracts Regulations 2015 permits, in certain circumstances, for such contracts to be modified during their term. In particular, Regulation 72(1)(c) allows a modification without a new procurement procedure where all of the following conditions are fulfilled:

- the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;

- the modification does not alter the overall nature of the contract;
- any increase in price does not exceed 50% of the value of the original contract or framework agreement

With regards to the first limb of this test, the Council is under a statutory duty to provide this service as Section 51 of the Environmental Protection Act 1990 requires waste disposal authorities to provide places at which persons resident in its area may deposit their household waste without charge. In light of this, and the forthcoming expiry of the existing contract, the modification is needed in order to ensure ongoing service delivery. The Covid pandemic, war in Ukraine and the unprecedented increase in fuel prices could not have been foreseen when the contract was originally awarded in 2019. As such, this element of the test is also satisfied.

In respect of the second limb of this test, the object and purpose of the contract remains the same under the proposed extension. The same services will be delivered under the same contract terms. As such, there is no alteration to the overall nature of the contract.

Finally, the extension will not exceed 50% of the value of the original contract. The initial contract had a total term of four years (inclusive of the extension options). The proposed extension is for a further twenty three months and twenty four days. This represents a 49.18% increase in terms of duration. In terms of an increase in price, current forecasts based on existing price controls and volumes indicate that this will also fall within the limit (50% or less) permitted by Regulation 72. Thus, this element of the test is also satisfied.

## **VI.4) Procedures for review**

### **VI.4.1) Review body**

High Court of Justice Technology and Construction Court

7 Rolls Buildings, Fetter Lane

London

EC4A 1NL

Country

United Kingdom