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Award

Proposed contract modification (under Regulation 72(1)(c) of the Public Contracts Regulations 2015) to the Processing of Recyclable Materials including through a Materials Recycling Facility contract between the Council of the Borough of North Tyneside ("the Council") and J&B Recycling Limited ("the Contractor")

THE COUNCIL OF THE BOROUGH OF NORTH TYNESIDE

F15: Voluntary ex ante transparency notice

Notice identifier: 2023/S 000-002308

Procurement identifier (OCID): ocds-h6vhtk-039a8c

Published 25 January 2023, 2:30pm

Section I: Contracting authority/entity

I.1) Name and addresses

THE COUNCIL OF THE BOROUGH OF NORTH TYNESIDE

Quadrant, The Silverlink North Cobalt Business Park

NEWCASTLE-UPON-TYNE

NE270BY

Contact

Mark Perry

Email

mark.perry@northtyneside.gov.uk

Telephone

+44 1916435656

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

Buyer's address

www.nepo.org

I.4) Type of the contracting authority

Regional or local authority

I.5) Main activity

General public services

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 Processing of Recyclable Materials including through a Materials Recycling Facility contract between the Council of the Borough of North Tyneside ("the Council") and J&B Recycling Limited ("the Contractor")

Reference number

006639 - C-011446

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 the Council awarded a contract to the J&B Recycling Limited "the Contractor" for the processing of recyclable materials including through a materials recycling facility ("the Contract"). The Contract start date was 1st October 2019 with an initial term of two years and two x 12-month extension options. The Council has exercised both of those options, thereby giving a current contract expiry date of 30th September 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 two years. This modification will result in a revised contract expiry date of 30th September 2025.

The agreement was previously varied by a variation letter dated 10th November 2022.

The Contract is subject to increased payment for diesel fuel because of reforms introduced in the Finance Bill 2021. Via the above variation of 10th November 2022 the Council has agreed to make a concessionary £1 per tonne to cover 'red diesel' costs from 1 April 2022 until the expiry of the Contract.

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: £4,277,875

II.2) Description

II.2.3) Place of performance

NUTS codes

- UKC2 - Northumberland and Tyne and Wear

II.2.4) Description of the procurement

In 2019 the Council awarded a contract to the Contractor for the processing of recyclable materials ("the Contract"). The Contract start date was 1st October 2019 with an initial term of two years and two x 12 month extension options. The Council has exercised both of those options, thereby giving a current contract expiry date of 30th September 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 two years. This modification will result in a revised contract expiry date of 30th September 2025.

II.2.11) Information about options

Options: No

II.2.14) Additional information

The Council's current processing of recyclable materials contract is due to expire on 30th September 2023. The Council has a statutory duty to provide this service and therefore needs to arrange 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 two years.

The Council's total spend over the period from 1st October 2019 to 31st December 2022 has been £2,603,061 (excluding VAT). The Council estimates that the spend over the remaining nine months of the Contract from 1st January 2023 to 30th September 2023 will be £272,582 (excluding VAT). Combined, these two figures give a projected spend for the full contract term (1st October 2019 to 30th September 2023) of £2,875,644 (excluding VAT).

The remaining contract projected spend of £272,582 (excluding VAT) was calculated by summing the results of the following calculation for each of the remaining nine months of the current contract term:

The predicted monthly collected tonnage for each month multiplied by the known (January 2023 - March 2023) or predicted (April 2023 - September 2023) contract pay mechanism charge for that month.

The contract pay mechanism charge per tonne is expected to vary between April 2023 and September 2023 in accordance with the payment mechanism in the Contract. The predicted tonnage for each month was calculated from analysis of the historical tonnages collected in each of these months over the previous three years of the contract to allow for pre-covid, covid and post-covid impacts.

The Council estimates that the contract spend for the extension period being sought (1st October 2023 to 30th September 2025) will be £1,402,231 (excluding VAT). Therefore, the overall total contract value, to account for the modification proposed in this notice, is estimated to be £4,277,875 (excluding VAT).

The projected spend for the extension period (1st October 2023 to 30th September 2025) of £1,402,231 (excluding VAT) was calculated by summing the results of the following calculation for each of the 24 months of the extension term:

The predicted monthly collected tonnage for each month multiplied by the predicted (October 2023 - September 2025) contract pay mechanism charge for that month.

The highest charge/tonne in the current contract payment mechanism charge range was assumed as no reliable method exists to accurately forecast contract pay-mechanism charge variation. The predicted tonnage for each month was calculated from analysis of the historical tonnages collected in each of these months over the previous three years of the contract to allow for pre-covid, covid and post-covid impacts.

These projections assume that annual tonnages of collected recycling materials have returned to pre-covid levels (15,000 to 17,000 tonnes per year) and will be minimally impacted by a potentially recessionary economic environment in 2023 and 2024. The lowest pay mechanism price index banding in the Contract (which delivers the highest charge/tonne) has been assumed for the 24 months extension period being sought. The expectation, based on the operational experience of this Contract from 1st October 2019 to the present, is that the pay mechanism price index banding will not remain permanently in the lowest band over the 24 months extension period and, consequently, the spend over the extension period being sought may, in fact, be less than the £1,402,231 (excluding VAT) estimate above.

Section IV. Procedure

IV.1) Description

IV.1.1) Type of procedure

Negotiated without a prior call for competition

- New works/services, constituting a repetition of existing works/services

Explanation:

This notice is to advise of a proposed contract modification.

The Council has made the decision to extend its current processing of recyclable materials contract for a further two year term. 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

1 With regards to the first limb of this test, the Council is under a statutory duty to provide this service. Regulation 13 of The Waste (England and Wales) Regulations 2011 requires that every waste collection authority must, when making arrangements for the collection of waste paper, metal, plastic or glass, ensure that those arrangements are by way of separate collection.

2 In light of this, and the forthcoming expiry of the existing contract, the modification is needed 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 two year period. This represents a 50% 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.

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 086-206822](#)

Section V. Award of contract/concession

A contract/lot is awarded: Yes

V.2) Award of contract/concession

V.2.1) Date of conclusion of the contract

1 October 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

J&B Recycling Limited

Windermere Mrf, Thomlinson Road, Hartlepool

Hartlepool

TS25 1NS

Country

United Kingdom

NUTS code

- UKC1 - Tees Valley and Durham

Companies House

2905505

The contractor/concessionaire is an SME

No

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

Initial estimated total value of the contract/lot/concession: £7,000,000

Total value of the contract/lot/concession: £4,277,875

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 processing of recyclable materials contract for a further two year term. 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

1 With regards to the first limb of this test, the Council is under a statutory duty to provide this service. Regulation 13 of The Waste (England and Wales) Regulations 2011 requires that every waste collection authority must, when making arrangements for the collection of waste paper, metal, plastic or glass, ensure that those arrangements are by way of separate collection.

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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 two year period. This represents a 50% 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

High Court of Justice Technology and Construction Court 7 Rolls Buildings

London

EC4A 1NL

Country

United Kingdom