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Contract

Waste Disposal Project Agreement

Surrey County Council

F20: Modification notice

Notice identifier: 2024/S 000-002378

Procurement identifier (OCID): ocds-h6vhtk-043410

Published 24 January 2024, 10:51am

Section I: Contracting authority/entity

I.1) Name and addresses

Surrey County Council

Woodhatch Place, 11 Cockshot Hill, Woodhatch

REIGATE

RH2 8EF

Email

contactcentre@surreycc.gov.uk

Country

United Kingdom

Region code

UKJ2 - Surrey, East and West Sussex

Justification for not providing organisation identifier

Partnership

Internet address(es)

Main address

<https://www.surreycc.gov.uk/>

Section II: Object

II.1) Scope of the procurement

II.1.1) Title

Waste Disposal Project Agreement

II.1.2) Main CPV code

- 90500000 - Refuse and waste related services

II.1.3) Type of contract

Services

II.2) Description

II.2.3) Place of performance

NUTS codes

- UKJ2 - Surrey, East and West Sussex

II.2.4) Description of the procurement at the time of conclusion of the contract:

The Contract had a term of 25 years, expiring on 19 September 2024 and included the provision of waste treatment facilities and a right to extend the contract term in certain circumstances. The last facility to complete is works relating to an EcoPark at Charlton Lane, Shepperton, Surrey (the "EcoPark"). The EcoPark includes an Anaerobic Digester Facility (the "AD Facility") and an Energy from Waste Facility using gasification technologies (the "Gasifier") (the AD Facility and Gasifier together, the "Facilities").

II.2.7) Duration of the contract, framework agreement, dynamic purchasing system or concession

Duration in months

302

Section IV. Procedure

IV.2) Administrative information

IV.2.1) Contract award notice concerning this contract

Notice number: [2014/S 013-019065](#)

Section V. Award of contract/concession

Contract No

03184332P01v001

V.2) Award of contract/concession

V.2.1) Date of conclusion of the contract/concession award decision:

22 June 1999

V.2.2) Information about tenders

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

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

Suez Recycling and Recovery Surrey Limited

Surrey

SL6 1ES

Country

United Kingdom

NUTS code

- UKJ2 - Surrey, East and West Sussex

Companies House

03814332

The contractor/concessionaire is an SME

No

V.2.4) Information on value of the contract/lot/concession (at the time of conclusion of the contract;excluding VAT)

Total value of the procurement: £993,300,000

Section VI. Complementary information

VI.3) Additional information

The notice number listed in Section IV (Procedure) refers to a contract modification, published on 18 January 2014, with a reference of 2014/S 013-019065.

The original contract notice was published on 21 July 1997. The contract number from the awarding contract in June 1999 is 03184332P01v001.

Please also refer to Voluntary ex ante transparency notice published on 13 February 2023, reference 2023/S 000-004337.

VI.4) Procedures for review

VI.4.1) Review body

High Court of England and Wales

London

Country

United Kingdom

Section VII: Modifications to the contract/concession

VII.1) Description of the procurement after the modifications

VII.1.1) Main CPV code

- 90500000 - Refuse and waste related services

VII.1.2) Additional CPV code(s)

- 90510000 - Refuse disposal and treatment

VII.1.3) Place of performance

NUTS code

- UKJ2 - Surrey, East and West Sussex

VII.1.4) Description of the procurement:

The Contract is for a term of 25 years expiring on 19 September 2024 and includes the provision of waste treatment facilities and a right to extend the contract term in certain circumstances. The last facility to complete is works relating to an EcoPark at Charlton Lane, Shepperton, Surrey (the "EcoPark"). The EcoPark includes an Anaerobic Digester Facility (the "AD Facility") and an Energy from Waste Facility using gasification technologies (the "Gasifier") (the AD Facility and Gasifier together, the "Facilities").

VII.1.5) Duration of the contract, framework agreement, dynamic purchasing system or concession

Duration in months

60

VII.1.6) Information on value of the contract/lot/concession (excluding VAT)

Total value of the contract/lot/concession:

£200,000,000

VII.1.7) Name and address of the contractor/concessionaire

Suez Recycling and Recovery Surrey Limited

Surrey

SL6 1ES

Country

United Kingdom

NUTS code

- UKJ2 - Surrey, East and West Sussex

Companies House

03814332

The contractor/concessionaire is an SME

No

VII.2) Information about modifications

VII.2.1) Description of the modifications

Nature and extent of the modifications (with indication of possible earlier changes to the contract):

The purpose of this Modification Notice is to inform the market of the additional services to be performed by SUEZ Recycling and Recovery Surrey Ltd ("Contractor") following the amendment of its waste disposal project agreement with the Authority ("Contract").

The services were required to be continued by the Contractor due to the delay in commencing the waste treatment service at the Facilities. Arbitration proceedings with the Contractor had been commenced in relation to certain matters relating to the Gasifier and these proceedings have now been settled on terms that include the implementation of the variation of the Contract upon the basis set out in this Modification Notice. The Authority has varied the terms of the Contract to (among other things) extend the provision of the current services. The variation to the Contract gives the Authority the right to phase out certain services from the Contract over the extended term of the Contract, except for the services that are necessary to operate the AD Facility and the Gasifier and the other services at the EcoPark ("the Other EcoPark Facilities") and the co-located Community Recycling Centres and Waste Transfer Stations located in Surrey at Earlswood, Epsom, Leatherhead and Slyfield ("the Co-located Facilities"). The Contract now has a term expiring on 1 October 2029, with the option for the Authority to break on 1 October 2027. The variation to the Contract has extended the current provision of the services and operation of the Facilities and, provides the Council with the right to phase out certain services over the remaining term. This enables the Authority to achieve its waste strategy whilst preserving continuity of service.

The Gasifier is closely integrated with the operation of the AD Facility. The Authority could not have engaged with multiple contractors to operate the Facilities practically and efficiently. The Contractor which operates the Gasifier must as a matter of operational efficiency operate the AD Facility. A shared infrastructure and physical connection to the AD Facility means that it is technically unviable for more than one Contractor to operate the Gasifier separately from the AD Facility, including that the Facilities are on the same permit. Therefore, it is not possible to separate the Gasifier and the AD Facility from each other on technical/interoperability grounds. Market engagement conducted in 2022 disclosed no other operator expressing interest at that time in operating gasification technology at the EcoPark on a commercial basis acceptable to the Authority although interest was expressed in the Other EcoPark Facilities. In relation to the non-Gasifier and AD Facility services, the Authority will engage with the market on such services through the mechanism in the modified Contract which enables the Authority to phase out services throughout the remaining term (other than the Other EcoPark Facilities and the Co-located Facilities).

The Authority also notes the regulatory uncertainty in the waste sector, which is principally borne by the potential introduction of several amendments to the legal framework governing waste disposal which are due to take effect and/or be implemented in the next five years. Accordingly, the variation to the Contract was necessary to provide the Authority with greater legislative/regulatory certainty of the impact of such changes. The variation ensures that the Authority is in a better position to go out to procure revised longer-term waste disposal arrangements, whilst maintaining a right to disaggregate certain services during the period of the Contract extension on a phased basis as the Authority judges on a value for money basis.

VII.2.2) Reasons for modification

Need for additional works, services or supplies by the original contractor/concessionaire.

Description of the economic or technical reasons and the inconvenience or duplication of cost preventing a change of contractor:

The Authority has varied the Contract and extended it for a period of five years, with a right for the Authority to break on 1 October 2027 to be exercised at the Authority's sole discretion.

The variation and extension of the Contract was completed on the following grounds:

- The delay to the completion of the Gasifier reduced the operational phase of the Gasifier under the Contract. The Gasifier became fully operational in 2022 and the Authority has therefore been unable to assess the operational performance of the Gasifier over a significant period of time. Accordingly, the Authority requires additional time in order to determine the Gasifier's long-term commercial viability to enable it to determine its long-

term waste disposal options. These are matters which the Authority believes that a diligent contracting authority could not have foreseen.

- The operation of the Gasifier and the AD Facility cannot be practically and efficiently separated on the technical grounds, including the interchangeability and interoperability with existing services. Therefore, it is not practical for the Gasifier to be operated by a different contractor than the contractor operating the AD Facility. The soft market engagement carried out by the Authority in 2022 indicated no commercial interest in operating gasification technology at the EcoPark. Additionally, a change of contractor would have caused significant inconvenience and a substantial duplication of cost.
- The variation to the Contract was necessary to provide the Authority with greater regulatory/legislative certainty regarding the legal framework governing the waste sector. The variation ensures that the Authority is in a better position to go out to tender with regulatory/legislative certainty as services are disaggregated on a phased basis.

In light of the above, the Authority has relied on the following limbs of Regulation 72:

- Regulation 72(1)(b); and
- Regulation 72(1)(c).

VII.2.3) Increase in price

Updated total contract value before the modifications (taking into account possible earlier contract modifications, price adaptations and average inflation)

Value excluding VAT: £993,300,000

Total contract value after the modifications

Value excluding VAT: £1,193,300,000