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Award

## **Waste Disposal Project Agreement**

Surrey County Council

F15: Voluntary ex ante transparency notice

Notice identifier: 2023/S 000-004337

Procurement identifier (OCID): ocds-h6vhtk-03a51b

Published 13 February 2023, 12:02pm

### **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](mailto:contactcentre@surreycc.gov.uk)

#### **Country**

United Kingdom

#### **Region code**

UKJ2 - Surrey, East and West Sussex

#### **Justification for not providing organisation identifier**

Not on any register

**Internet address(es)**

Main address

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

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

Regional or local authority

**I.5) Main activity**

General public services

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**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.1.4) Short description**

The purpose of this Voluntary Ex-ante Transparency 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 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").

There is a requirement for continuity of service with the Contractor due to the Facilities having incurred delay in commencing waste treatment service. 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 Voluntary Ex-ante Transparency Notice.

This Voluntary Ex-ante Transparency Notice gives notice that the Authority proposes to vary the terms of the Contract to among other things, extend the provision of current services but on the basis that certain services can be phased out of the Contract over the extended term of the Contract. The Contract will have a term expiring on 1 October 2029, with the option for the Authority to break on 1 October 2027.

Accordingly, the proposed variation to the Contract will extend the current provision of the services and operation of the Facilities and, provide the Council with the right to phase out certain services over the remaining term enabling the Authority to achieve its waste strategy whilst preserving continuity of service.

#### **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: £200,000,000

### **II.2) Description**

#### **II.2.2) Additional CPV code(s)**

- 90510000 - Refuse disposal and treatment

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

NUTS codes

- UKJ2 - Surrey, East and West Sussex

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

The Contract was awarded on 22 June 1999 to the Contractor following completion of a full tender process. The Contract was subsequently amended including Deeds of Variation dated 13 August 2010 and 30 October 2013, each relating to the development of the EcoPark.

The modified Contract will have a term expiring in 2029 (with an option for the Authority to break on 1 October 2027 to be exercised in the Authority's sole discretion). The variation to the Contract will also give the Authority the right to phase out certain services from 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 Gasifier is closely integrated with the operation of the AD Facility, and therefore, the Authority believes it cannot practically and efficiently engage multiple contractors to operate the Facilities. 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 be engaging 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 is necessary in order to provide the Authority with greater legislative/regulatory certainty of the impact of such changes and ensure it 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.

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

Options: No

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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:

The Authority is seeking to vary and extend the Contract with the Contractor 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 to the Contract is required 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.
- 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 cause significant inconvenience and a substantial duplication of cost.
- The variation to the Contract is necessary in order to provide the Authority with greater regulatory/legislative certainty regarding the legal framework governing the waste sector which will ensure it 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 is relying on the following limbs of Regulation 72:

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

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

The procurement is covered by the Government Procurement Agreement: Yes

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## **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**

22 June 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**

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 contract/lot/concession (excluding VAT)**

Initial estimated total value of the contract/lot/concession: £200,000,000

Total value of the contract/lot/concession: £200,000,000

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## **Section VI. Complementary information**

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

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

high Court of England and Wales

London

Country

United Kingdom