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Award

VEAT Notice intention to modify a contract for waste disposal services

Devon County Council

F15: Voluntary ex ante transparency notice

Notice identifier: 2023/S 000-023964

Procurement identifier (OCID): ocids-h6vhtk-03f026

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Section I: Contracting authority/entity

I.1) Name and addresses

Devon County Council

County Hall, Topsham Road

Exeter

EX24QD

Contact

Wendy Barratt

Email

wendy.barratt@devon.gov.uk

Telephone

+44 1392383000

Country

United Kingdom

Region code

UKK43 - Devon CC

Devon County Council

Local Government

Internet address(es)

Main address

<http://www.devon.gov.uk>

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

VEAT Notice intention to modify a contract for waste disposal services

II.1.2) Main CPV code

- 90513000 - Non-hazardous refuse and waste treatment and disposal services

II.1.3) Type of contract

Services

II.1.4) Short description

On 31 July 1998, Devon Waste Management Limited entered into eight contracts with Devon County Council (DCC) for the disposal and processing of waste in eight district council areas. The waste disposal agreements in respect of the Exeter City Council area, East Devon District Council area, Teignbridge District Council area and Mid Devon District Council remain in force (together, the 1998 Agreements). The rights and obligations of Devon Waste Management Limited under the 1998 Agreements were subsequently transferred to Viridor Waste Management Limited (now renamed Valencia Waste Management Limited) (VWML). On 3 October 2011, the 1998 Agreements were varied by deed (the Modification Order) so that waste previously sent to landfill under the 1998 Agreements could be thermally treated. Pursuant to a deed of variation dated 13 January 2020, the Modification Order was updated to include a fourth waste disposal contract in respect of the Mid Devon District Council area. The 1998 Agreements and the Modification Order are together referred to as the "DCC Contract".

Viridor Limited has recently undertaken an internal restructure of its divisional business functions with the creation of three businesses - an Energy business, a Polymers Recovery business and a separate Waste business. As part of this internal reorganisation of the Viridor group of companies, it is intended that the DCC Contract will sit within Viridor Limited's Energy business and so Viridor Limited, VWML and DCC agreed that (pursuant to the terms of the DCC Contract) VWML will novate its rights under the DCC Contract to Viridor Exeter Waste Services Limited ("VEWSL") by way of a deed of novation (the "Deed").

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: £195,000,000

II.2) Description

II.2.2) Additional CPV code(s)

- 34928480 - Waste and rubbish containers and bins
- 42320000 - Waste incinerators
- 45232470 - Waste transfer station
- 90500000 - Refuse and waste related services

II.2.3) Place of performance

NUTS codes

- UKK4 - Devon

II.2.4) Description of the procurement

This notice is in relation to a novation of contract for waste disposal services.

II.2.11) Information about options

Options: No

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:

Modification of a contract without a new competition as permitted under Regulation 72 of the Public Contracts Regulations 2015.

Explanation:

The DCC Contract contain clear, precise and unequivocal review mechanisms allowing VWML to transfer the benefit of the relevant contract with the prior written consent of DCC,

namely:

Clause 79.2 of the Modification Order provides that:

"...the Contractor shall not sub-contract, assign, underlet, charge, sell, bargain or otherwise deal in any way with the benefit of this Modification Order in whole or in part except with the prior written consent of the Authority, such consent not to be unreasonably withheld."

Condition 13 of the 1998 Agreements provides that:

"The Authority shall be entitled to assign the benefit of the Contract or any part thereof and shall give written notice of any assignment to the Contractor.

The Contractor shall not without the previous written consent of the Authority, which consent shall be in the discretion of the Authority and if given, shall not relieve the Contractor from any liability or obligation under the Contract and the Contractor shall be responsible for the acts, defaults or neglect of any sub-contractor, or assignee, its employees or agents in all respects as if they were the acts, defaults or neglects of the Contractor, its employees or agents:-

(a) assign the Contract or any part thereof or the benefit or advantage of the Contract or

any part thereof; nor

(b) sub-contract the provisions of the Service or any part thereof to any person".

Clause 79.2 of the Modification Order and Condition 13 of the 1998 Agreements allow for modification (and therefore novation) of the DCC Contract without a new procurement as:

(a) they clearly state (in accordance with Regulation 72(1)(a)(i) of the Public Contracts Regulations 2015) that: (i) the scope of the permitted modification is a transfer of the benefit of the DCC Contract and (ii) that the conditions to such modifications are clearly expressed as being the prior written consent of DCC.

(b) they only permit a transfer of the DCC Contract to another entity, they do not provide for modifications that would alter the overall nature of the DCC Contract within the meaning of Regulation 72(1)(a)(ii) of the Public Contracts Regulations 2015.

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

The procurement is covered by the Government Procurement Agreement: No

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

3 October 2011

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

Viridor Exeter Waste Services Limited

Viridor House, Priory Bridge Road

Taunton

TA1 1AP

Country

United Kingdom

NUTS code

- UKK43 - Devon CC

Companies House

12876946

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: £195,000,000

Total value of the contract/lot/concession: £195,000,000

Section VI. Complementary information

VI.4) Procedures for review

VI.4.1) Review body

The High Court

The Royal Courts of Justice, The Strand

London

WC2A 2LL

Country

United Kingdom