



Mayor and Cabinet

Food and Garden Waste Disposal and Treatment: Award of contract

Date: 12th January 2022

Key decision: Yes

Class: Part 1

Ward(s) affected: All

Contributors: Waste Initiatives and Contracts Manager, Senior Contracts Lawyer, Principal Accountant

Outline and recommendations

Following a one stage open procurement process, Mayor and Cabinet are recommended to award the contract for the disposal and treatment of food and garden waste to East London Biogas Limited for a period of three years, with an option to extend for two years upon M&C approval. In addition, the recommendation is to extend the existing contract by a further 2 months.

Timeline of engagement and decision-making

M&C Approval to procure: April 2021

Tender issued 15th October 2021

Tender return deadline: 22nd November 2021

Earliest award decision: 12th January 2022

Current contract expires: 1st February 2022

Summary

- 1.1. The Council currently has a contract with Veolia UK for the disposal and treatment of food and garden waste, which expires 1st February 2022 and thus a full tender process was required.
- 1.2. Following a one stage open procurement process two tenders were submitted. After evaluation of the tenders East London Biogas Limited is now recommended for acceptance.

Recommendations

- 1.3. Mayor and Cabinet are recommended to:
 - 2.1.1 Award the contract to East London Biogas Limited for the provision of the disposal and treatment of the food waste and garden waste based on their tender, for a period of three years with a extension for another two years upon M&C agreement at an estimated annual cost of £240,498.
 - 2.1.2 Extend the current contract for a further two months until 31st March 2022 at an estimated cost of £140,000.

Policy Context

- 3.1 The Waste Strategy for England “Our Waste, Our Resources: A Strategy for England” was published in December 2018. This strategy states that by 2035 65% of municipal waste should be recycled.
- 3.2 In May 2018, the Mayor of London published his London Environment Strategy. The Strategy sets out objectives, targets, and policies for the effective management of London’s municipal waste and accelerate the transition to a circular economy. The Strategy’s waste objectives, targets and minimum service levels for London are:
 - a) Objective 7.1 – drive resource efficiency to significantly reduce waste focussing on food waste and single use packaging.
 - b) Objective 7.2 – maximise recycling rates
 - c) Objective 7.3 – reduce the environmental impact of waste activities (greenhouse gas emissions and air pollutants)
 - d) Objective 7.4 – maximise local waste sites and ensure London has sufficient infrastructure to manage all the waste it produces
- 3.3 London-wide targets:
 - a) To cut food waste and associated packaging waste by 50 per cent per person by 2030
 - b) To achieve a 65 per cent municipal waste recycling rate by 2030, including a 50% recycling rate for local authority collected waste (LACW) by 2025
 - c) To send zero biodegradable or recyclable waste to landfill by 2026
 - d) London to manage net 100 per cent of all the waste it produces by 2026
 - e) Minimum level of household waste recycling service:
- 3.4 Strategy proposal 7.2.1. a sets a minimum level of service for household waste recycling that waste authorities should deliver by 2020, being that all properties with kerbside recycling collections should receive a separate food waste collection service and that all properties should receive a collection of, at a minimum, the six primary dry materials; glass, cans, paper, card, plastic bottles, and mixed rigid plastics (pots, tubs, and trays).

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- 3.5 In addition, the GLA Act 2007 provided the Mayor of London and the GLA with new powers and roles, which meant that London's waste authorities will be required to be in "great conformity" with the Mayor's municipal waste management strategy, backed up by the Mayor's power of direction.
- 3.5 In our corporate strategy, the Council made a commitment to making Lewisham greener. Successfully making Lewisham greener involves taking better care of our local environment and the planet and dealing with recyclable waste more efficiently will help the Council to deliver this outcome.
- 3.6 The context for the above is the EU Waste Framework Directive introduced in 2009 and revised in 2010, which provides the legislative framework for the collection, transport, recovery, and disposal of waste. The Waste (England and Wales) Regulations 2011 were introduced to deliver on the 2008 Directive, and the Waste (England and Wales) (Amendment) Regulations 2012 replaced the earlier version to address the 2010 revision of the Directive. The regulations require member states to take appropriate measures to encourage the prevention or reduction of waste production and to adhere to the waste hierarchy when disposing of waste.
- 3.7 Increasing the participation and effectiveness of the recycling collection services is considered an essential element of the Council's approach to managing waste and recycling. Through this contract, the Council expects the successful provider to fully support the Council's education and awareness-raising initiatives and help the Council explore opportunities to improve recycling services.
- 3.8 Lewisham, along with all other Local Authorities, have engaged with and recently provided input into the 4 recent Government consultations around recycling. They responded to the consultations around the Deposit Return Scheme, Consistency across boroughs, Extended Producer Responsibility and Plastic Tax. As these proposals have a wide-ranging impact for local authorities, it was important that local authorities took the opportunity to help the Government implement a set of policy measures that are ambitious, transformative, and will deliver in practice.
- 3.9 In line with these consultations, and the UK's increasing concern for disposal, specifically plastics, it is important that the end destinations of all materials are fully auditable and compliant with the Environment Agency regulations.
- 3.10 The proposals set out in this report will assist the Council to deliver against this policy context by separately collecting food and garden waste as part of the Consistency Consultation measures.

4. Background

- 4.1 This contract is for the disposal and treatment of food and garden waste. This is in line with the Mayor of London's minimum level of service for household recycling. The Council are looking for a contractor that can accept and process both the food waste and the garden waste. These however will be delivered to the contractors site in separate vehicles.
- 4.2 Lewisham's current arrangement is a contract with Veolia UK that has been in place from January 2019. Officers have been satisfied with the level of service provided during the contract. The contract is valued at an estimated annual cost of £930,000. During this contract, the Council delivered the food and garden waste in the same collection vehicles.
- 4.3 Following measures outlined in the recent Consistency Consultation by DEFRA, the Government are now looking to local authorities to collect food and garden waste separately in a bid to reduce the amount of food waste going to landfill, where it releases harmful greenhouse gases. Separate deliveries also offers more options with regard to treatments of the waste streams. Being mixed, the waste was treated by in vessel composting (IVC). With the waste streams being separated, there are options

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for the food to go onto anaerobic digestion (AD) treatment. This generates biogas for the energy market. The garden waste can go on for composting. With the current contract ending, it provided an opportunity for the Council to implement the separate collections of it is food and garden waste services.

- 4.4 The procurement for the disposal and treatment of Lewisham's food and garden waste requested bidders to provide information in the following areas:
- a) Service Delivery
 - b) Quality and Operational Competence
 - c) Service Development
 - d) Health and Safety & Covid-19
 - e) Social Value
 - f) Environment & Sustainability
 - g) Equality, Diversity & Inclusion
 - h) GDPR (General Data Protection Regulation) and Data Handling
 - i) Climate Change
- 4.5 The successful provider will be required to work in partnership with the Council to ensure maximum recycling performance is achieved through this contract. They will also be required to monitor contamination levels particularly in relation to the amount of plastic bags that are used by residents for the containment of the food waste prior to it going in the food caddies. The Council shall be notified, with photographic evidence of the nature and quantity of contamination within a specified timeframe so that measures can be taken to identify rounds and streets. This will enable the Council to conduct a more targeted approach with communications to reduce the problem.
- 4.6 It is expected that the successful provider will begin provision of the service in March 2022. The contract is for an initial period of 3 years, with the possibility of an extension of an additional 2 years, at the Council's discretion.

5. Procurement Arrangements

- 5.1 The placement of an advertisement in the Find a Tender Service was on 19th October 2021.
- 5.2 Prior to the procurement process, a soft market testing exercise was undertaken to better understand the market and gain feedback to make the contract more attractive. 9 organisations participated in the soft market testing exercise.
- 5.3 Two organisations returned a tender bid on 22nd November 2021. A synopsis of the bids is set out in the Part 2 report.
- 5.4 The following criteria were assessed during the evaluation process:
- | | |
|------------------------------------|-----|
| - Financial | 50% |
| - Service Delivery | 13% |
| - Quality & Operational competence | 11% |
| - Service Development | 9% |
| - Health & Safety | 3% |
| - Social Value | 10% |
| - Environment & Sustainability | 3% |
| - Equalities | 1% |

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- 5.5 The criteria have been weighted 50% for financial and 50% quality, to reflect the need to secure services with equitable provision towards value for money and providing overall service quality standards by setting a competency threshold in critical areas.
- 5.6 The bidders were asked to complete a Standard Selection Questionnaire.
- 5.7 In accordance with 'Best Value', the specification produced for the contract was 'output based'. Tenderers were asked to submit a description of their proposals in the form of Method Statements, to test tenderers' understanding of service requirements. These included proposals for assisting the Council in delivering continuous improvements.
- 5.8 The Method Statements were assessed under the non-financial criteria and those provided by the successful tenderer will form part of the contract documentation against which their performance will be monitored.
- 5.9 In terms of the financial aspects of the bids, those tendering were asked to provide a gate fee for each of the waste streams (food and garden waste). The expectation was that this would result in a charge per tonne to the Council for both food and garden waste.

6. Conclusion

- 6.1 Lewisham's new Waste Management Strategy is committed to making reductions through innovation and new ways of managing its waste. Working in partnership with ELBL offers a more innovative approach from how the Council previously managed its food waste collections.
- 6.2 The Council is taking a lead amongst its peers in taking the initiative, based on the future consistency measures, to take advantage of low prices currently being offered by anaerobic digestion (AD) companies.
- 6.3 The ELBL contract will enable the Council to move forward with its Priority 1 of the new Waste Management Strategy measures to broaden food waste collections to estates, Council facilities and businesses.
- 6.4 Priority 5 measures are in line with the carbon reducing initiatives of ELBL. As well as zero landfilling, the new contract will be key in diverting food waste from incineration to generate green electricity to play its part in helping Lewisham to achieve its ambition to be carbon neutral by 2030.
- 6.5 The credit safe report for East London Biogas identifies the company as a 'moderate risk', covered with a parent company guarantee. COVID would have impacted the company due to the closures of food and hospitality businesses during lock down and this is reflected in the company accounts. The company report shows a moderate risk and there has been a notable improvement.
- 6.6 As part of the contracting process and to provide assurance, the Council will robustly monitor the contract, monitor credit safe reports, and ensure that the Parent Company guarantee is provided before contract commencement as a tier one contract. Whilst there is a moderate risk with the company, it is still recommended that the Council appoint ELBL as this aligns with the direction of travel with the new Waste Management Strategy.
- 6.7 Future consistency measures will see more local authorities separating food and garden waste which will lead to greater demand for AD and result in increased gates fees. London has limited AD facilities and capacity, so a SME like ELBL in securing a local authority contract guarantees tonnages and a sizable, consistent feedstock of food waste.

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- 6.8 The reasons for preferring the bid of East London Biogas are set out with the synopsis of the bids in the Part 2 report.
- 6.9 A two-month extension to the current contract has been requested to ensure the Council are given enough time to make the transitional arrangements from Veolia to ELBL. The operations team need to review the collection rounds now that food and garden waste will be collected separately. All this during Covid restrictions and driver shortages.

7. Financial implications

- 7.1 This report is seeking the approval of Mayor and Cabinet to award the contract for the disposal and treatment of the food waste and garden waste to East London Biogas Limited (ELB), for a period of three years with a possible extension for another two years at an estimated annual cost of £240,498, with estimated operational costs of £180k. This will be funded by the Waste Services budget within the Public Realm service area.
- 7.2 The report is also seeking approval to extend the current contract with Veolia UK by two months, to the end of March 2022, at an estimated cost of £140k. This will be contained within the services budget. This can be funded within the current service budget and within the reported outturn position for the year.
- 7.3 The current contract for Food and Garden Waste disposal is with Veolia UK and is at an annual cost of £930k, with operational costs of approximately £90k. The proposal to award the new contract to ELB presents the opportunity to generate savings in line with the 2022/23 environmental services review, which has a savings target of £897k.
- 7.4 East London Biogas Limited, a private limited company, has a current credit risk score of 48, which is considered to be a moderate risk (any company with a score under 40 would be considered by the Council to be a high risk). It is worth noting that the company's score has improved as it was as low as 20 this time last year and would have been considered as a high risk.
- 7.5 The company's financial statements for 2020 show that at the balance sheet date the company had significant net liabilities and a deficit profit and loss reserve. These financial results are not a single year occurrence, a similar pattern can be seen in previous financial years. The company's Going Concern statement says that it did not cease trading during lockdown but operating activities and turnover continued at a reduced level during the pandemic. The parent company is injecting additional funding to support the business this year.
- 7.6 Due to the financial position of EBL, it is prudent to ask the company to provide a parent company guarantee to provide further security to the Council in awarding this company the contract. ELB is prepared to provide such a guarantee from its parent company Whitchurch AD Ltd on contract sign off. This should address the business going concern risk during the term of the contract as outlined in paragraph 6.6 above.

8 Legal implications

- 8.1 The Council's Constitution contains requirements about how to procure and manage contracts. These are in the Contract Procedure Rules (Constitution Part IV). Further, as the value of the contract exceeds the financial threshold for procuring (formerly under OJEU now under Find a Tender) , the Public Contracts Regulations 2015 (the Regulations) applied to this procurement. As such, the Council had to carry out a full procurement process in accordance with the Regulations.
- 8.2 The report proposes the award of a contract to East London Biogas Limited for a period of three years with an option to extend for a further two years. The potential value of the new contract, including the 2 year extension option, exceeds £500,000,

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which means that this is a Category A contract for the purposes of the Council's Contract Procedure Rules and one which is to be awarded by Mayor and Cabinet.

- 8.3 This contract has been externally and openly advertised as required by the Regulations and the Council's Constitution. If the proposal to award the contract is approved, an award notice must be published in the prescribed form.
- 8.4 The report explains the evaluation approach and process applied to the bid and the reasons for recommending the successful bid for approval. Two bids were received, officers have set out in the report that the recommended bidder demonstrated and evidenced that they meet the Council's requirements.
- 8.5 This decision is a Key Decision under Article 16.2 (c) (xxiii) of the Constitution as it has a value of more than £200,000. It is therefore required to be contained in the current Key Decision Plan.
- 8.6 In terms of the proposed extension of the current contract, under the Council's Contract Procurement Rules extensions can be made under rule 17. This includes where there are necessary changes to purchase new works, services or supplies from the contractor and not included in the original procurement. This can only be relied on where a change of contractor would cause significant inconvenience (or substantial duplication of cost) or, a change of contractor cannot be made for economic or technical reasons. In addition, the change must not result in an increase in price of more than 50%. This price limit applies to each separate change however, it must not be used as a means of circumventing the procurement rules. The proposed decision to extend the existing contract is not a key decision.
- 8.6 The Equality Act 2012 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - Foster good relations between people who share a protected characteristic and those who do not.
- 8.7 The duty continues to be a "have regard duty," and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 8.8 The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled Practice." The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

<http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-actcodes-ofpractice-and-technical-guidance/>

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- 8.9 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

The essential guide to the public sector equality duty

- Meeting the equality duty in policy and decision-making
- Engagement and the equality duty
- Equality objectives and the equality duty
- Equality information and the equality duty

- 8.10 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at

<http://www.equalityhumanrights.com/advice-and-guidance/public-sectorequalityduty/guidance-on-the-equality-duty/>

9. Equalities implications

The Council's equalities objectives were addressed in the contract documentation and formed part of the criteria used at tender evaluation which included information around Equal Opportunities and the Gender Pay Gap.

10. Climate change and environmental implications

Tenderers were asked to provide evidence on their own sustainability objectives, and update on their current performance around carbon emissions. Tenderers were also evaluated on their environmental impacts, such as minimising the impact on local air quality, minimising noise, minimising water and energy usage and utilising transport methods.

Moving waste up the waste hierarchy to ensure that the production of waste is minimised, reused, or recycled before energy recovery contributes to the Council's efforts to mitigate the impact of climate change, and to reducing the carbon footprint of the Council's, and Lewisham's, emissions from waste management.

Tackling food waste is a key part of the UK's Resources and Waste Strategy, published in 2018. This opportunity ensures Lewisham has the supply chain in place to play its role in ensuring food can be separately collected and processed.

The recommended tender will contribute to these objectives by working with the Council in collaboration to promote the benefits of food waste collection, reducing single use plastics and linking the Council with generating renewable energy from the food it collects at the kerbside, and later from schools and businesses. The Council will be working in partnership with a company that is 100% green in its consumption of utilities. The anaerobic digestion and organic waste treatment processes that will be in place are excellent examples of recycling processes for food and garden wastes that generate renewable energy, replace fossil fuel electricity, and to return carbon to land.

The recommended provider has complimentary operations that produce biomethane for transport and depending on the amount of biogas produced, could be used for vehicle fuel.

The services that will be delivered within the contract are environmental in nature.

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11. **Crime and disorder implications**

There are no direct crime and disorder implications as a result of this report.

12. **Health and wellbeing implications**

There are no direct health and wellbeing implications as a result of this report.

13. **Social Value implications**

Tenderers were asked to complete the employment, skills, and business target schedule, indicating the added value in terms of Social Value they will deliver. Weight is given at the tender evaluation stage to points covered by the contractor on a number of issues including fair employment clauses (including the London Living Wage) and local employment opportunities.

14. **Background papers**

Mayor and Cabinet approval to procure in April 2021

<http://councilmeetings.lewisham.gov.uk/ieListDocuments.aspx?CId=139&MId=5642&Ver=4>

Glossary

Term	Definition
London Environment Strategy	The Mayor's London Environment Strategy was published on 31 May 2018. The strategy includes revisions based on feedback from its public consultation.
Circular economy	Is an economic system of closed loops in which raw materials, components and products retain as much of their value as possible.
Greenhouse gas emissions	Greenhouse gas emissions that stem from human activities and strengthen the greenhouse effect, causing climate change. Most is from carbon dioxide from burning fossil fuels.
Food waste	In this instance, the food collected from kerbside properties in the London Borough of Lewisham using the collection caddies.
Garden waste	In this instance, this is the material collected from the brown 240 litre bins that have subscribed to the garden waste service.

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For and on behalf of the Director of Law, Governance and HR

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Appendix

Procurement timetable

Event	Date
Tender issued	15th October 2021
Clarification deadline	8 th November
Clarification response deadline	11 th November
Tender return deadline	15 th November 2021
Tender Evaluation period	w/c 29 th November 2021
Moderation Date	6 th December 2021
Mayor & Cabinet	12 th January 2022
Earliest award decision	
Standstill period	January 2022
Mobilisation period	January 2022
Earliest contract commencement	March 2022

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Tender evaluation and sub-criteria

Main Criteria (and Weighting)	Sub-criteria Weighting	Sub-criteria	Method Statement	Evidence Required
Service Delivery (13%)	13%	Please explain and provide detailed proposals on how you will provide the service as outlined in the specification. Please also provide a staff structure chart for the Processing Site with CVs or Person Specifications for the posts detailing relevant experience.	MS1*	Yes
Quality and Operational Competence (11%)	11%	Please give further details on the type and quality of the materials you expect at your processing facility and the acceptable levels of contamination/tolerance. (6%) Please provide details on contingency measures to ensure that Lewisham Council's vehicles will always be able to tip their loads. (5%)	MS2*	No
Service Development (9%)	9%	Outline measures you will take to help the Council hit and exceed their recycling rates for the duration of the contract period and provide information on any available funding / sponsorships that may assist the Council's recycling and waste reduction initiatives, for example, help with recycling education in schools.	MS3	No
Health & Safety & Covid- 19 (3%)	3%	Please describe what measures you will undertake to ensure the safety of clients, drivers and staff providing the service at your Contractor's Site and include PPE and the arrangements concerning tipping procedures and movements of staff on the Contractor's Site considering The Health Protection (Coronavirus) Regulations 2020 and published government advice.	MS4	Yes
Social Value (10%)	10%	Please detail how you propose to deliver Social Value as part of this project and how you will meet the proposed Social Value targets over the life of the contract. For your reference, please see Section 10.3 of the Specification for a template version of a London Borough of Lewisham Social Value Monitoring Report which provides an example of how the Council structures the tracking of Social Value commitments. A) Employment, Skills and Economy (6%) B) Greener Lewisham (2%) C) Healthier Lewisham (1%)	MS5	No

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		D) Training Lewisham's Future (1%)		
Environment and Sustainability (3%)	3%	Describe the measures your organisation is taking to minimise its environmental impacts of operations and the measures being taken to reduce emissions from vehicles and energy consumption from buildings? Do you have carbon reduction policies in place and plans for vehicles to go electric at some point in the future?	MS6	No
Equality, Diversity & Inclusion 1%	1%	Please describe how you would implement equal opportunities within the context of the specification clearly setting out how you will promote and safeguard equality, diversity and inclusion throughout the length of the contract.	MS7	No
GDPR and Data Handling	Information Only	Please provide a clear description of how you will store and manage data in relation to the proposed services, and how you will comply with GDPR regulations.	MS8	No
Climate Change	Information Only	Tenderers are required to report on their corporate carbon emissions as an organisation using an accredited method; To disclose what those emissions are To identify what actions or modifications they have included (if any) in relation to the goods or services tenderers are proposing that will reduce carbon intensity.	MS9	

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KEY DECISION

Pricing schedule

The Pricing element was calculated using the following formula:

Price = **The total gate fee per tonne for all three years for both garden waste and food waste**
 [price score = (lowest total price/tendered price) x price weighting 50%]

Worked Example:

Tenderer	Price Submitted	Score
Company A	£135	46.3
Company B	£130	48.1
Company C	£125	50

Company A submitted a total bid of £135 as follows:

Gate fee for the food and garden waste disposal contract for 3 years				
Gate Fee Only (per tonne)				
Yearly charges	Year 1	Year 2	Year 3	Total
Food waste	£ 5	£ 10	£ 15	£30
Garden waste	£ 30	£ 35	£ 40	£105
Total Price				£135

Their score is calculated as follows: $(125/135) \times 50 = 46.3$