



## **Scotland Excel**

**To: Executive Sub Committee**

**On: 01 June 2018**

**Report  
by  
Director Scotland Excel**

**Tender: Treatment and Disposal of Recyclable and Residual Waste**

**Schedule: 27/17**

**Period: From August 2018**

### **1. Introduction**

The purpose of this report is to notify the Executive Sub-Committee that the Scotland Excel Environment Category Team (within the Transport, Roads and Environment) intends to introduce a Dynamic Purchasing System (DPS) for the Treatment and Disposal of Recyclable and Residual Waste, that will replace the current Recyclable and Residual Waste Framework (14/13) on its expiry. This will involve following a route to market that is new to Scotland Excel and will secure the provision of assorted services for the treatment and disposal of various waste related materials collected by councils.

This route to market has been chosen for a number of reasons that will be outlined within this report. The following will detail the definition of a DPS and its key difference to a framework agreement. It will also indicate the desired outcomes that the team and the User Intelligence Group (UIG) hopes to achieve with its creation and explain how it will operate, as well as detailing next steps going forward.

### **2. Definition of a Dynamic Purchasing System**

A DPS is a procedure available for contracts for services commonly available on the market. It has similarities to a framework agreement, but unlike a framework agreement, allows new service providers to join at any time. It has to be run as a completely electronic process, and is set up using the restricted procedure and some other conditions. Public bodies are permitted to set up a DPS which may be divided into categories of service (Lots).

Although available for some time, traditionally, DPS's were largely considered non-user friendly due to the perceived cumbersome nature of award procedures. In recent years however, the process has been reviewed and

changes implemented at an European Union (EU) level that has seen its use and popularity increase.

### **3. Market Background**

The waste material sector and associated issues have been well documented recently, even out-with the industry itself. Increasingly public awareness via media outlets and documentaries for example, has pushed public and political demand for innovative solutions to the treatment of waste materials, linked to recycling and reuse. Stringent targets have been set by the EU and the Scottish Government has set itself even more ambitious targets of its own, as detailed via its strategy “Making Things Last – A Circular Economy Strategy for Scotland”, aimed at generating remanufacturing and creating opportunities linked to the strive for a circular economy.

Contrary to these positive interventions, the market for waste materials has been seriously negatively impacted by recent policy changes implemented by China, whom on a global level, had been the main outlet for much of the worlds waste material (based upon the logic of volume of products produced to the world market, and needs linked to the industrialisation of their economy). So far during 2018, China has implemented ever increasingly strict criteria on what they are willing to allow to be exported to their country by businesses from across the world, including the UK. This has raised serious concern about the longer-term sustainability of available outlets for material, and therefore demand within the UK for the types of material collected by councils. The message from Government and Industry, appears to be that the UK should look inwardly for investment in outlets such as remanufacture and energy from waste.

At a more localised level, Scotland’s ban on biodegradable municipal waste (virtually all material found in household waste collection services), going to landfill comes into effect from 1<sup>st</sup> January 2021. Much discussion between industry, councils, the regulator Scottish Environment Protection Agency (SEPA) and the Scottish Government are ongoing, but again, early indications appear to favour the encouragement of innovative solutions. In addition, more than two-thirds of councils have signed up to the “Household Recycling Charter” and associated Code of Practice, developed jointly by the Scottish Government and COSLA that aims to bring more consistency to recycling collections, which signals service change for individual councils. The Scottish Government has also recently announced its intention to introduce a deposit return scheme for plastic bottles, as well as proposing a ban on cotton buds and plastic straws. This and any future interventions that may follow, will have an impact on the content and volume of material collected by councils in Scotland, which in turn could influence the type of treatment(s) the material requires.

The overall focus upon innovation at both a global and more local level, strongly suggests new technologies and/or new entrants offering alternative solutions for market outlets (and potentially value) for the materials found within council waste streams. This factor is the key driver for the introduction of a DPS, as a framework by design, tends to be limited only to those service

providers and offers submitted at point of tender, extending for the entire lifetime of the arrangement. A DPS however, provides a much more fluid and flexible approach, with new entrants, new offers, new facilities and new technologies, all able to be accepted and made available to councils at any point during its lifetime, (subject to meeting necessary qualification criteria and offering service as defined within the Contract Notice).

#### **4. Desired Outcomes**

A matrix of desired outcomes and the likelihood of achieving each under the framework model versus the DPS can be found at the end of this report. These can be summarised as follows:

- To allow new entrants to offer services throughout the lifetime of the arrangement, on a lot by lot basis, and thereby not “lock-out” new service providers who can meet the regulatory requirements and potentially offer best value to councils.
- To maximise treatment capacity throughout the lifetime of the arrangement.
- To award a longer-term solution, as opposed to being limited by the four-year maximum term that a framework model must operate under.
- To encourage offers that are representative of a council’s quality of material, reflective of market conditions of the day, safeguarding service and reducing risk of contract frustration.

#### **5. Procurement Guidance**

The Scottish Governments Procurement Journey provides guidance in which circumstances a DPS would be appropriate and what should be considered when opting to introduce. The needs related to this service area meets the defined criteria, which is summarised as follows:

- Difficult to bulk buy/achieve economies of scale
- Local bespoke offering/local SMEs
- Opportunity to automate elements
- Price sensitive market
- Large volume of service providers
- Large volume of transactions
- Capacity issues/market shaping opportunity
- Low barriers of entry for supply market
- Many internal procurement officers

#### **6. User Intelligence Group (UIG) Engagement**

An Environment Category UIG took place in January 2018 where the group was asked to consider the feasibility of implementing the DPS model as opposed to retendering a framework. Following internal approval to pursue, the group were formally asked to consider during March 2018. Feedback identified two key concerns, one was the loss of the direct award option available under a

framework model and the second related to the increased level of input from individual councils compared with the framework direct award/mini-competition process. These concerns will be mitigated with the provision of template documents that can be amended as required as well as ongoing mobilisation support, ensuring users are comfortable with the process involved.

In relation to participation and uptake of the DPS, the proposed scope and breadth of choice of treatment options and available technologies on an ongoing basis, should the DPS attract the expected level of interest from service providers, would ensure a relatively straight forward route to securing service and it is hoped, significantly reduce the risk of councils seeking alternative contracts out-with Scotland Excel.

## **7. Operating the DPS in Practice**

Under the DPS model, councils will be presented with a list of service providers, on a per Lot basis that have successfully passed the minimum qualification criteria, (capability to service, licencing, convictions, insurances and so on), confirming that they are capable of providing a service as defined within the Contract Notice. Councils will simply invite service providers from the relevant Lot to make an offer based upon the council's own specification/requirement, similar to the mini-competition route available under a framework agreement. Submitted offers will then be evaluated by the council on both technical and commercial viability and the overall best value offer awarded.

Councils will have the option to draft their own terms and conditions and design their own evaluation methodology. This will allow focus upon the areas that matter most to them, both in an operational sense, but also for "softer" elements linked to service, such as community benefits and added value options. It should be noted though, that in some instances, depending on the particular material stream, specific service required, contract length and overall contract value, for speed and ease, councils may prefer to award using template documents provided by Scotland Excel, (which can be amended as desired subject to requirements falling within the original Contract Notice definitions).

Awarding contracts under the DPS will ensure councils achieve bespoke pricing based upon their own material content and quality as well as individual operational requirements. Decisions relating to price variations, changes to terms and conditions and service delivery would be made directly by councils, allowing much greater control. Licencing, insurances and other associated documentation will be held, monitored and updated by Scotland Excel centrally and made available for councils.

In relation to new entrants, approval will be the responsibility of Scotland Excel. Potential new entrants will notify their intent and following completion of the Qualification document, will be notified by Scotland Excel of their success or failure within a ten-day period, after which, subject to success, they will become available for councils to utilise.

## **8. Next Steps**

Following strategy approval at Contract Steering Group, a tender will be opened to market late June 2018, closing late July 2018, inviting interested service providers to complete a qualification process, that if successful in passing, will allow them to be named as approved providers on the relevant Lot(s) that they have bid. Following notification to successful bidders, the DPS will be made available for councils to conduct an award process and put in place compliant contracts relevant to their needs. The Executive Sub Committee will be notified of the outcome and progress via a report that will be submitted/delivered at the Executive Sub Committee date scheduled for 24<sup>th</sup> August 2018 (subject to no major delays or divergence from project delivery plan).

## **9. Summary**

The introduction of a Dynamic Purchasing System is a first for Scotland Excel as an organisation and provides an alternative to a framework model that, in relation to this particular service area, offers a number of key benefits that will help councils meet their operational service needs within a landscape of policy change and market uncertainty that would otherwise be inaccessible. The team request that the Executive Sub-Committee acknowledge this report and offer its endorsement and support of the introduction of this procurement tool.



## Desired Outcome Matrix

| Desired Outcome  | Achievable under current framework model  | Achievable with changes to the framework model  | Achievable under Dynamnic Purchasing System  |
|--|---|---|--|
| <b>Ability to allow new entrants to offer services throughout the lifetime of the arrangement, thereby not disclosing providers who can meet the regulatory requirements and potentially offer best value to councils.</b> | <i>No. Only those bidders successfully awarded at time of tender can service the framework throughtout its lifetime.</i>  | <i>No. Only those bidders successfully awarded at time of tender can service the framework throughtout its lifetime.</i>  | Yes. Under a DPS new entrants are permissible subject to passing the necessary qualification requirements.   |
| <b>Ability to allow new/addtional offers (eg: new facilities).</b>   | <i>No. Although potentially possible, additonal offers have proven difficult to accept/award.</i>   | Yes. If structured appropriately, the ability to accept additional offers may become more feasible. <i>However, new offers would be limited to awarded providers.</i>   | Yes. Under a DPS new offers, for new facilities or otherwise could be accepted at point of award subject to passing necessary qualifications requirements.   |
| <b>Ability to allow awarded providers to submit new offers across Lots.</b>  | <i>No. Bidders are only allowed to offer on Lot(s) to which they were awarded for the duration of the framework lifetime.</i>   | <i>No. Bidders are only allowed to offer on Lot(s) to which they were awarded for the duration of the framework lifetime.</i>   | Yes. Under a DPS, bidders would be able to submit offers under whichever Lot they wished (subject to approval/passing required qualification.  |
| <b>Ability to award a longer term solution.</b>  | <i>No. Framework is restricted to a maximum 4 years.</i>  | <i>No. Framework is restricted to a maximum 4 years.</i>  | Yes. A DPS has no minium time limit. An indication should be given to market regarding intention of arrangement duration, but this can be shortened or extended relatively easily.   |
| <b>Maximise capacity.</b>  | <i>Unlikely, unless a significant number of bidders were successfully awarded. Risk would be that either they choose not to bid or are deemed uncompetitive at this time and fail to be awarded. New entrants would not be permitted.</i>   | <i>Unlikely, unless a significant number of bidders were successfully awarded. Risk would be that either they choose not to bid or are deemed uncompetitive at this time and fail to be awarded. New entrants would not be permitted.</i>   | Yes. As new entrants/new offers would be able to be submitted as an option to councils at any point.   |
| <b>Safeguard Council Participation.</b>  | <i>Unlikely. Unless the majority of the market bids and are successfully awarded, choice will be limited and options will remain outwith the framework itself.</i>  | <i>Unlikely. Unless the majority of the market bids and are successfully awarded, choice will be limited and options will remain outwith the framework itself.</i>  | Likely. The scope of providers available/ability for new entrants etc should reduce options outwith Scotland Excel, except in cases where providers opt not to make themselves available via the DPS.  |
| <b>Safeguard Against Risk of Challenge.</b>  | Yes, risk of Challenge relatively low from non-successful/part successful bidders based upon organisation experience in tendering framework agreements. Challenge likely to be on evaluation outcome as opposed to chosen route to market. Results of mini competition awards also at risk of challenge at a council level. | Yes, risk of Challenge relatively low from non-successful/part successful bidders based upon organisation experience in tendering framework agreements. Challenge likely to be on evaluation outcome as opposed to chosen route to market. Results of mini competition awards also at risk of challenge at a council level. | Yes, risk of Challenge relatively low from non-successful bidders, although organisation is inexperienced at tendering dynamic purchasing systems. Challenge likely to be results of mini competition evaluation/awards at a council level as opposed to chosen route to market. |
| <b>Ability to allow bespoke pricing per individual council/group of councils based upon quality of material.</b>   | <i>Yes, however, mini competition pricing cannot be greater than available via direct award for particular bands of quality .</i>   | <i>Yes, however, mini competition pricing cannot be greater than available via direct award for particular bands of quality .</i>   | Yes, the requirement of a mini-comp for commercial bids would mean every contract awarded would be priced individually.  |