



Scotland Excel

To: Executive Sub Committee

On: 24 August 2018

**Report
by
Director Scotland Excel**

Tender: Treatment and Disposal of Recyclable and Residual Waste

Schedule: 27/17

Period: From September 2018

1. Introduction

The purpose of this report is to notify the Executive Sub-Committee that the Scotland Excel Environment Category Team (within Transport, Roads and Environment) intends to introduce a Dynamic Purchasing System (DPS) for the Treatment and Disposal of Recyclable and Residual Waste. This DPS will replace the recently expired Recyclable and Residual Waste Framework (14/13). This will involve following a route to market that is new to Scotland Excel and is intended to 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 differences to a framework agreement. It will also outline the desired outcomes that the team and the User Intelligence Group (UIG) hopes to achieve with its creation, how it aligns with guidance/legal tests in terms of its validity as an option and explain how it will operate, as well as detailing next steps going forward.

2. Definition of a Dynamic Purchasing System

As defined under Regulation 35 of the Public Contracts (Scotland) Regulations, a DPS is a route to market that a “contracting authority may use for commonly used purchases the characteristics of which, as generally available on the market, meet their requirements”. It has similarities to a framework agreement, but unlike a framework, allows new service providers to join at any point throughout its lifetime. It has to be run as a completely electronic process, and is set up using the restricted procedure and other associated 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, as part of the EU's review of procurement rules taken forward into Scottish Government's Regulations of 2015, the associated processes have been reviewed and changes implemented at a European Union (EU) level that has seen its use and popularity increase.

Traditionally the DPS route to market has generally lent itself well to service areas such as the provision of taxis and/or school buses for example. However, the breadth and scope of services it has been used to deliver has evolved, as evidenced by the DPSs issued by organisations including local authorities, the Scottish Government, Crown Commercial Services, HM Revenue and Customs and the NHS National Services Scotland, covering services ranging from recruitment, health specialists and trade contractors to fleet purchase, maintenance and repair. Importantly there are also a number of examples of the DPS route to market being utilised at the level of a council or small group of councils for waste treatment services, including examples of material types that are likely to be included as part of scope within this solution.

This DPS will be seeking legally compliant service providers, capable of delivering the treatment of material(s), whilst allowing for a small level of tailoring for operational requirements at an individual council level.

3. Market Background

The waste material sector and associated issues have been well documented recently, even out-with the industry itself. Stringent targets have been set by the EU and the Scottish Government has set itself 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.

It should also be noted that the market for waste materials has been negatively impacted by recent policy changes implemented by China, which on a global level, had been the main outlet for much of the world's waste material. 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.

At a more localised level, Scotland's ban on biodegradable municipal waste going to landfill comes into effect from 1st January 2021. 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. These 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.

Considering these factors and the market overall, councils require a simple method to contract award for treatment (and disposal) services from appropriately qualified contractors, assured of regulatory compliance and ideally, with as much choice as possible in terms of capacity to contract. It is our view that a DPS is more likely to satisfy this need than the traditional framework model.

4. Desired Outcomes

A matrix of desired outcomes and the likelihood of achieving each under the framework model versus the DPS can be found in Appendix 1, 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 better value to councils.
- To allow additional offers to be included throughout the lifetime of the arrangement, such as new treatment facilities that come on line as well as on Lots to which they may not have originally offered.
- To maximise treatment capacity throughout the lifetime of the arrangement.
- 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.
- To safeguard and encourage a high level of council participation in terms of looking to Scotland Excel for its service solutions.

5. Procurement Guidance

The Scottish Governments Procurement Journey provides guidance which details when a DPS could be an appropriate route to market. Whilst much of the guidance is subject to interpretation, based upon knowledge of this market area, Scotland Excel believes that the needs related to this service area meet the majority of the defined criteria. For information, Appendix 2, at the end of this report lists the key criteria presented by the guidance, (as well as a number of “checklist points” not already covered under key criteria), and a summary of Scotland Excel’s interpretation of how it aligns:

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 straight forward route to securing services and it is hoped, further compliment Scotland Excels suite of options that assist councils in delivering their waste related responsibilities.

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, licensing, convictions, insurances and so on), confirming that they are capable of providing a service as defined within the Contract Notice. Councils will be able to tailor their own specifications, within clearly defined parameters as outlined within the Contract Notice. Submitted offers will then be evaluated by the council on both technical and commercial viability and the overall best value offer awarded.

Scotland Excel will provide template terms and conditions and a template evaluation methodology, that councils can opt to use, or tailor to their own operational need, allowing focus upon the areas that matter most to them, both in an operational sense, as well as areas such as community benefits and added value.

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. Licensing, insurances and other associated documentation it is anticipated will be held, monitored and updated by Scotland Excel centrally and made available for councils.

In relation to new entrants during the lifetime of the DPS, 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, after which, if successful, will become available for councils to utilise, further stimulating competition among providers.

8. Next Steps

Following strategy approval at Contract Steering Group, the dynamic purchasing system will be advertised by formal notice to the market by late August 2018, closing late September 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 award processes and put in place compliant contracts relevant to their needs.

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. Scotland Excel notes that whilst we believe this route to be compliant and appropriate to implement, it is new to Scotland Excel and as such, attention to detail in order to ensure the process is followed correctly is essential in order to mitigate any risk associated with the introduction of a new process/route to market. As Scotland's leading procurement organisation for local authorities, we firmly believe that this particular contract area provides an opportunity to be at the forefront in terms of introducing a procurement tool that could offer benefits across the organisation's contract portfolio as a whole, whilst securing a service delivery option for councils that will be relatively easy to use and will cover need at a national level.

10. Recommendation

The Executive Sub-Committee are requested to:

- a) Approve the use of the Dynamic Purchasing System procurement tool for the Treatment and Disposal of Recyclable and Residual Waste
- b) Note that a report will be submitted to a future meeting of the executive Sub-Committee on progress with the tender to set up the Dynamic Purchasing System

Appendix 1 - Desired Outcome Matrix

Desired Outcome	Achievable under current framework model	Achievable with changes to the framework model	Achievable under Dynamic Purchasing System
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.	<i>No. Only those bidders successfully awarded at time of tender can service the framework throughout its lifetime.</i>	<i>No. Only those bidders successfully awarded at time of tender can service the framework throughout its lifetime.</i>	Yes. Under a DPS new entrants are permissible, subject to passing the necessary qualification requirements.
Ability to allow new/additional offers (eg: new facilities).	<i>No. Although potentially possible, additional 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.
Ability to allow providers to submit new offers across Lots, (as opposed to being tied to the original Lot(s) bid on).	<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).
Maximise capacity.	<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.
Safeguard Council Participation.	<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.

Appendix 2 – Procurement Guidance

Guidance Consideration	Scotland Excel Interpretation
Difficult to bulk buy/achieve economies of scale	It is challenging to bulk buy service/achieve economies of scale under this service area. The prime reasons are that at the moment each council's collection method can vary, the methods used to collect materials varies, as does the quality of material presented for treatment and consequently its value due to the effects of operational decisions and the level of well-informed public participation.
Local bespoke offering/local SMEs	Individual council requirements vary, for example the requirements of a council that is largely urban may vary from a more rural council. Geographic location can be a factor, for example those councils located within the central belt may have more options in terms of locally available treatment capacity than those in the north of Scotland. SMEs have a significant role in the waste industry. As an example, 61% of framework providers were SMEs.
Opportunity to automate elements	Achievable under the DPS route.
Price sensitive market	Market conditions, quality of material, collection method, demand for recycled material versus virgin material, global manufacturing output, legislative policy developments (at national, EU level and beyond) and ultimately end market uncertainty can all influence price, as can other issues such as cost of shipping, storage and insurance. Particular materials streams will of course be more susceptible to fluctuation than others at any given time, but generally this market is prone to price sensitivity and many market materials are indexed on a fortnightly or monthly basis.
Large volume of service providers	The Procurement Journey Guidance suggests 20+ suppliers/service providers should be deemed as large. Although no guarantee can be given regarding number of bids or likely number of bids on individual mini-competitions, 35 service providers were awarded to the framework and 72 expressed an interest in a PIN issued during January 2018. Should the DPS include the level of expected scope in terms of number of material streams catered for, it is expected this number will rise even further.
Large volume of transactions	The proposed DPS Lot structure could include treatment options for an array of materials, possibly between 25-30 different streams. Procurement Journey Guidance gives no definitive figure on what should be deemed large volume of transactions beyond that it should be in at least the hundreds. When considering the potential number of contract awards, or indeed number of contracts currently awarded across councils for multiple material streams, it is likely there could be a high level of transactional activity.
Capacity issues/market shaping opportunity	Capacity for treatment is a major concern across the market, particularly in light of policy in China, introduced earlier this year that imposes far more stringent conditions on imported material than previously. Until this policy introduction, China imported in excess of 50% of the world's waste material, primarily for reprocessing. Similar export markets are being sought, however the long-term durability of these are being questioned. Government is seeking inward investment for infrastructure and investment that could give rise to new internal markets or alternative treatment options. Should during the lifetime of the framework additional service providers enter the market, subject to being suitably qualified and capable of delivering a service as defined under the original Contract Notice, such providers could be made available as options to councils under the DPS. This ability, plus the ability to cater for councils as they diversify their own internal operations should assist in ensuring that councils have continuity of service as the market changes
Low barriers of entry for supply market	The supply market is very well established. New entrants wishing to offer a waste treatment service would require an appropriate licence to handle, store, treat and potentially move such material, as well as associated equipment and infrastructure to carry out the service, such as adequately trained staff. This is not dissimilar to other contract areas where the DPS route has been more common, such as provision of school buses for example, where a service provider would require appropriate licencing, disclosure of its record on legal and regulatory matters, compliant infrastructure and equipment (such as vehicles and maintenance) as well as suitably trained staff. As stated earlier in this report, it is not uncommon for SMEs to enter this market place.
Many internal Procurement Officers	Guidance does not indicate a figure that should be considered "many". From an individual council perspective, the number of procurement officers involved in the tender and award process on individual contracts are likely to be relatively low for this particular service area.
Are there regular new entrants/suppliers exiting the market	Although difficult to predict, legislative change and market conditions suggests a number of current providers may exit the market in the short to medium term. Conversely, policy interventions and the impact of market conditions could stimulate activity and see new entrants enter the market. By way of comparison, under the framework model (and arguably more stable market conditions), during its lifetime, three providers exited the market, one significantly changes its service delivery model in order to sustain service capability and others diversified their overall offering.
Is overall annual spend significant enough to warrant setting up specific arrangements for this spend	Guidance suggests spend should be in excess of £1million per annum, the framework achieved a valued at £80million over its lifetime, and when considering potential scope of material streams requiring treatment, this value may increase.
Are there lots of low average unit price per transaction orders being raised	Guidance does not provide an interpretation of transaction in terms of actual contract awards, (likely to be high unit price) or per delivery (likely to be low unit price). Regardless of interpretation, the guidance does caveat that higher individual unit price may occur due to the nature of the service being provided.
Would the type of services benefit from ongoing competition around price/delivery due to on-going volatility in the market	Even should the market settle in terms of stability, councils could only benefit from increased competition via a fully transparent, fair and open to all (subject to qualification criteria), maximising treatment capacity and encouraging healthy competition between providers.