

Exemption from Tender and Contract Variations – Alternate Resource Recovery Processing Agreement and Cleansing Waste (Putrescible) Receipt, Processing and Disposal Services Agreement

File No: X085362.004

Summary

This report seeks approval for an exemption from tender and contract variations to extend the Alternative Resource Recovery Processing Agreement for the processing of domestic waste (from red lid bins); and Cleansing Waste (Putrescible) Receipt, Processing and Disposal Services Agreement (from public and parks litter bins) contracts until 31 December 2022. This is to allow enough time to conclude current contract negotiations with Cleanaway Pty Ltd (Cleanaway) and implement the new contract upon Council approval.

The City's residents generate over 49,000 tonnes of domestic (red lid bins), public place (street litter bins) and park waste (parks litter bins) each year. Currently this waste is processed in an Advanced Waste Technology (AWT) facility under two existing contracts, being:

- the Alternative Resource Recovery Processing Agreement for the processing of domestic waste (the ARR Contract); and
- the Cleansing Waste (Putrescible) Receipt, Processing and Disposal Services Agreement for the processing of public place and parks waste (the CWR Contract).

Both contracts are currently held with Cleanaway. The ARR Contract is due to expire on 30 June 2022 with no available contract extensions; and the CWR Contract is due to expire on 30 June 2022 with three extensions of 12 months available to be exercised at the City's discretion.

Advanced Waste Technology facilities recover any recyclables and process the remaining waste into a compost product known in the waste industry as a Mixed Waste Organic Output (MWOO). Currently, there are only two service providers that offer this type of waste processing, being Veolia and Cleanaway. The Veolia facility at Woodlawn is at capacity under its licence and cannot accept additional volumes of waste, whereas Cleanaway have the capacity to continue the processing the City's waste.

Considering the limited availability of waste processing options at this time and to accommodate emerging new technologies, the City has entered into an 'in principle' negotiation process with Cleanaway, which aims to reset the contract terms to:

- (a) integrate both waste processing agreements into one contract;
- (b) reset and align the terms of both contracts; and
- (c) achieve value for money, and deliver the best possible environmental outcomes.

Subject to the outcome of these negotiations, and Council approval following conclusion of negotiations, a further report will be brought back to Council on the proposed way forward as soon as possible. Given that both contracts will expire on 30 June 2022, an extension is required to ensure service continuity whilst the process is completed.

This report recommends that Council approve an exemption from tender and contract variations to extend the Alternative Resource Recovery Processing Agreement contract and the Cleansing Waste (Putrescible) Receipt, Processing and Disposal Services Agreement contract until 31 December 2022.

Recommendation

It is resolved that:

- (A) Council approve an exemption from tender in accordance with section 55(3)(i) of the Local Government Act 1993 to extend the duration of the:
- (i) Alternative Resource Recovery Processing Agreement for the processing of domestic waste; and
 - (ii) Cleansing Waste (Putrescible) Receipt, Processing and Disposal Services Agreement contract for the processing of public place and parks waste;
- to 31 December 2022, on the terms set out in Confidential Attachments A and B to the subject report by reason of extenuating circumstances, noting that a satisfactory result for the City would not be achieved by inviting tenders at this time;
- (B) Council note that a satisfactory result would not be achieved by inviting tenders because:
- (i) the market of suitable suppliers is extremely limited, with only two suppliers, one of which is at capacity and the other which is the current City supplier
- (C) Council approve a variation to the contracts for the processing of domestic waste; and Cleansing Waste (Putrescible) Receipt and Processing to 31 December 2022; as detailed in Confidential Attachments A and B to the subject report; and
- (D) authority be delegated to the Chief Executive Officer to finalise negotiations and enter into any necessary documentation to give effect to the resolutions above.

Attachments

Attachment A. Financial Implications (Confidential)

Attachment B. Schedule of Rates (Confidential)

Background

1. The City's residents generate over 49,000 tonnes of domestic (red lid bins), public place (street litter bins) and park waste (parks litter bins) each year. Currently this waste is processed in an Advanced Waste Technology (AWT) facility that produces Mixed Organic Waste Output (MWOO) originally used for soil application.
2. Waste processing services are currently provided by Cleanaway through two separate contracts, being:
 - (a) Alternative Resource Recovery Processing Agreement for domestic waste processing which is due to expire on 30 June 2022 with no available contract extensions (ARR Contract); and
 - (b) Cleansing Waste (Putrescible) Receipt, Processing and Disposal Services Agreement contract expires on 30 June 2022 with three (3) available extension for twelve (12) months duration of each extension (CWR Contract).
3. In October 2018, the Environmental Protection Authority (EPA) revoked the exemptions for Mixed Waste Organic Outputs (MWOO) to be applied to land rehabilitation due to the presence of contaminants. This decision decreased waste from landfill diversion rates from 60 per cent to 30 per cent.
4. The Environmental Protection Authority implemented a two-stage transitioning program to assist all affected councils to transition to a new processing technology and manage affected contracts. This includes waiving of the waste levy for the Mixed Waste Organic Outputs material delivered to landfill, and the awarding of financial support to the waste industry and councils to stimulate development of new technologies and contractual agreements.
5. As part of the Environmental Protection Authority's program, the City received a grant to assist the transition process. Part of the grant was utilised to conduct an assessment of the state of the current waste processing industry, landfill capacity and the trends for emerging waste processing technologies. It revealed that current waste processing technologies will be transitioned to organics treatment only; existing landfill will expire within the next 15 to 20 years and that new waste processing technology will be available within three to six years. The second transition stage expires on 31 May 2022.
6. In June 2021, the Environmental Protection Authority released the new NSW Waste and Sustainable Materials Strategy 2041 and it states that "We want to support energy recovery where it makes sense to do so and where it is used to manage residual waste, not as an alternative to recycling". Additionally, the strategy states that the Environmental Protection Authority will support: additional putrescible landfill capacity to accept >500,000 tpa by 2030; at least one large-scale regional energy recovery facility and medium scale 'dirty MRF' by 2030; additional putrescible landfill capacity to accept >1.1 million tpa by 2040; at least three large-scale regional recovery facilities and medium scale 'dirty MRF' by 2040.
7. Currently, there are only two service providers that offer this type of waste processing to Mixed Waste Organic Outputs, being Veolia and Cleanaway. The Veolia facility at Woodlawn is at capacity under its licence and cannot accept additional volumes of waste. Cleanaway can continue the processing of City's waste volumes.

8. Considering the limited availability of waste processing options and to accommodate the period of time needed for a new technology to emerge, the City has commenced a non-binding negotiation process with Cleanaway.
9. Following completion of negotiations, a further report to Council will be prepared. Considering that the current contracts expire on 30 June 2022, an extension of the current contracts is needed to ensure service continuity.
10. This report recommends that Council grant an exemption from tender and extend both contracts until 31 December 2022.

Performance Measurement

11. The ARR Contract has waste from landfill diversion rate as a major performance measurement criteria. The CWR Contract contains the General Six Key Performance Indicators and twelve Key Performance Indicators with Reoccurring Activities.

Financial Implications

12. There are sufficient funds allocated for this project within the current year's operating budget and the draft 2022/23 operating budget.

Relevant Legislation

13. The exemption from tender process has been conducted in accordance with the Local Government Act 1993, the Local Government (General) Regulation 2021 and the City's Procurement and Contract Management Policy.
14. Local Government Act 1993 - Section 10A provides that a council may close to the public so much of its meeting as comprises the discussion of information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.
15. Attachments A and B contain confidential commercial information which, if disclosed, would:
 - (a) confer a commercial advantage on a person with whom Council is conducting (or proposes to conduct) business; and
 - (b) prejudice the commercial position of the person who supplied it.
16. Discussion of the matter in an open meeting would, on balance, be contrary to the public interest because it would compromise Council's ability to negotiate fairly and commercially to achieve the best outcome for its ratepayers.

Critical Dates / Time Frames

17. The ARR Contract expires on 30 June 2022, with no extensions currently approved. If approved, the existing contract will be varied to add a final six month term, commencing on 1 July 2022.

Options

18. An alternative option is to go out to tender. This option is not recommended because there are only two suppliers. One is at capacity and the second is the City's current supplier.

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