

Exemption from Tender and Contract Negotiation Outcome - Domestic, Cleansing and Parks (Putrescible) Waste Receipt, Processing and Disposal Services

File No: X085362.008

Summary

This report seeks approval for an exemption from tender and approval to enter into the negotiated Domestic, Cleansing and Parks (Putrescible) Waste Receipt, Processing and Disposal Services contract with Cleanaway Pty Ltd (Cleanaway) for an initial term of three years (1 January 2023 to 31 December 2025) with three optional one-year contract extensions, which can be ended early if Cleanaway implements new technology or changes the use of the processing facilities, and the parties cannot agree to subsequent variations required to the contract.

The City of Sydney had the following waste processing agreements with SUEZ Recycling and Recovery Pty Ltd (SUEZ):

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

Due to Cleanaway's acquisition of Suez, the two contracts were novated to Cleanaway effective from 17 December 2021. The ARR contract was due to expire on 30 June 2022 with no further extension options and the CWR contract was due to expire on 30 June 2022 with further 3 x 1 year extension options.

In May 2022, Council approved an exemption from tender to extend the duration of these processing contracts to 31 December 2022. This approval was required for the City and Cleanaway to negotiate the integration of the two waste processing agreements (ARR and CWR) into a single contract with updated terms.

Cleanaway is currently the only available supplier that can process these types of putrescible waste streams using advanced waste technology that enables a portion of the waste stream to be recovered and diverted from landfill.

The negotiated contract allows time for the City to research and procure a longer-term solution that will capitalise on emerging innovative processing technologies, in line with the NSW Environmental Protection Authority's (EPA) 'Waste and Sustainable Materials Strategy 2041' and continue to divert waste from landfill at a minimum of 23 per cent.

To ensure a high level of probity, the contract negotiation process has been monitored and guided by an external probity officer.

Recommendation

It is resolved that:

- (A) Council note the outcome of the City's contract negotiation process with Cleanaway Pty Ltd (Cleanaway) to reset the contract terms and integrate the following two processing agreements into one contract:
 - (i) Alternative Resource Recovery Processing Agreement for the processing of domestic waste; and
 - (ii) Cleansing Waste (Putrescible) Receipt and Processing Services Agreement contract for the processing of public place and parks waste;
- (B) Council approve an exemption from tender for Domestic, Cleansing and Parks (Putrescible) Waste Receipt, Processing and Disposal Services in accordance with section 55(3)(i) of the Local Government Act 1993;
- (C) Council note that a satisfactory result would not be achieved by inviting tenders because 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;
- (D) Council approve the contract with Cleanaway for the receipt, processing and disposal of domestic, cleansing and parks (putrescible) waste for:
 - (i) the price, schedule of rates and contingency outlined in Confidential Attachment B to the subject report; and
 - (ii) an initial term of three years (1 January 2023 to 31 December 2025) with three optional one-year contract extensions which can be ended early if Cleanaway implements new technology or changes the use of the processing facilities, and the parties cannot agree to subsequent variations required to the contract; and
- (E) authority be delegated to the Chief Executive Officer to finalise, execute and administer the contract and to exercise the options referred to in clause (D)(ii), if appropriate.

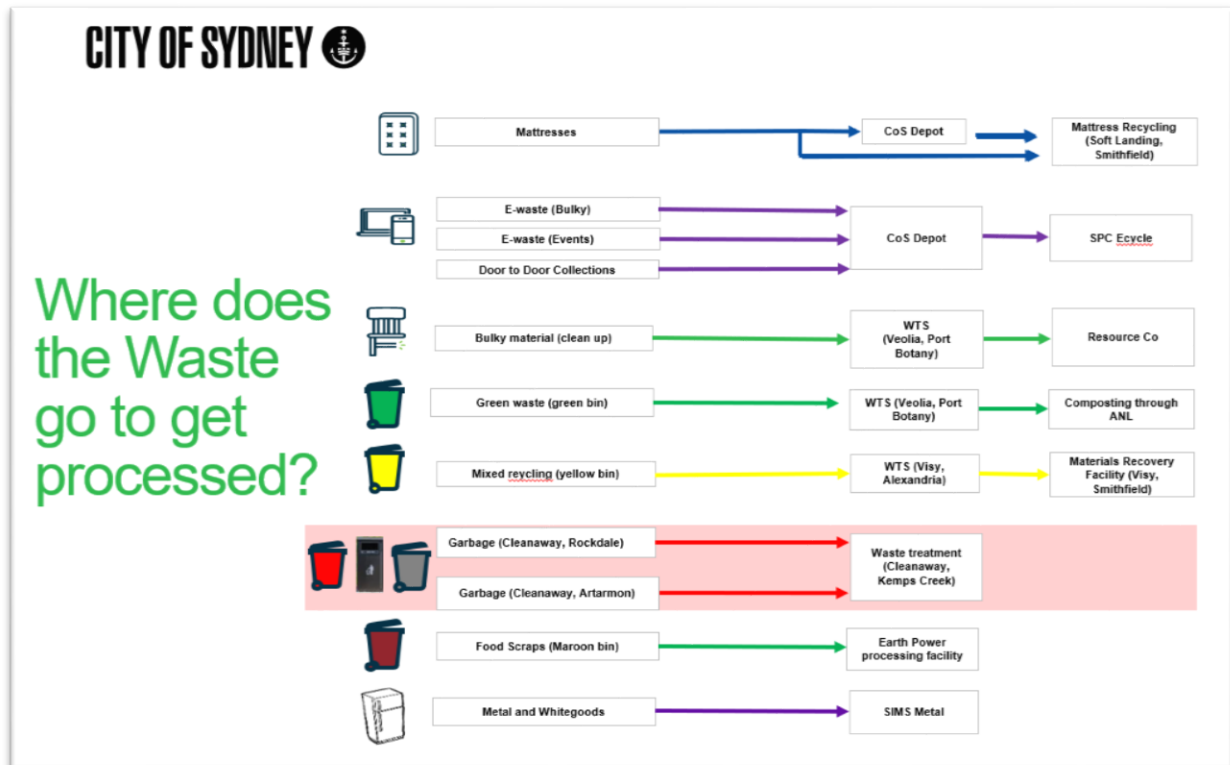
Attachments

- Attachment A.** 16 May 2022 Resolution of Council - Exemption from Tender and Contract Variations – Alternate Resource Recovery Processing Agreement and Cleansing Waste (Putrescible) Receipt, Processing and Disposal Services Agreement
- Attachment B.** Financial Implications and Contract Terms and Benefits (Confidential)

Background

- The City's residents generate approximately 45,000 tonnes of domestic waste (red lid bins), 2,500 tonnes of public place (street litter bins) and 1,500 tonnes of 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. This report deals with the waste streams highlighted in red in Figure 1.

Figure 1. Waste processing destinations



- These waste streams are currently processed by Cleanaway through two separate contracts, being:
 - Alternative Resource Recovery Processing Agreement for domestic waste processing which is due to expire on 31 December 2022 with no options to extend the contract (ARR Contract); and
 - Cleansing Waste (Putrescible) Receipt and Processing Services Agreement contract expires 31 December 2022 with no available contract extensions (CWR Contract).
- On 16 May 2022, Council approved an exemption from tender to extend the duration of these processing contracts to 31 December 2022 to allow time for staff to complete a negotiation process with Cleanaway that will integrate the two processing agreements into one contract with new terms.

4. The exemption was granted on the basis that there are only two suppliers available to process these type of putrescible waste streams (or 'mixed waste organic outputs' otherwise known as MWOO). One of the suppliers is Veolia, however, their mechanical biological treatment (MBT) facility at Woodlawn is at capacity under its licence and cannot accept any additional volumes of waste. The other supplier is Cleanaway which is the City's current supplier and has the capacity to continue processing City's waste volumes and deliver a minimum of 23 per cent waste from landfill diversion rates.
5. Conditions in the waste processing market have not changed since May 2022, and these remain the only two options for the processing of the City's waste.
6. Considering the limited availability of waste processing options, and to accommodate the time needed for new technology to emerge, the City undertook a non-binding negotiation process with Cleanaway.
7. The negotiation process resulted in a proposed agreement with Cleanaway for the processing of three waste streams (domestic waste, public place waste and park waste) for a fixed term through Cleanaway's Advanced Waste Treatment facility at Kemps Creek and Global Renewables' Alternate Waste Treatment facility at Eastern Creek facility.
8. These facilities will provide a minimum diversion from landfill rate of 23 per cent, which is consistent with current industry diversion rates for these types of putrescible waste streams.
9. This contract allows the City to continue to divert waste from landfill and the contract term allows the City time to research and procure a longer-term solution that will capitalise on emerging innovative processing technologies, in line with the NSW Environmental Protection Authority's (EPA) 'Waste and Sustainable Materials Strategy 2041'.

The new contract will provide a cost benefit to the City as the CPI adjustment is not being applied until 1 July 2023 and the Section 88 Levy (also known as the 'waste levy') will now be adjusted quarterly based on the diversion from landfill rates.

Performance Measurement

10. The new contract has six general key performance indicators and 12 key performance indicators with repeating activities being key deliverables, quality of work, delivery of minimum of 23 per cent waste from landfill diversion rate, reporting, communication and WH&S compliance.

Financial Implications

11. The contract will not require additional funding for 2022/23 as outlined in Confidential Attachment B. From 2023/24 the contract costs will be allocated within the draft budget.

Relevant Legislation

12. The exemption from tender and contract negotiation process has been conducted in accordance with the Local Government Act 1993 and the Local Government (General) Regulation 2021.
13. Section 55(3)(i) of the Local Government Act 1993 sets out the circumstances in which Council may grant an exemption from the requirement to follow the legislated tender processes.
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. Attachment B contains 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 current domestic, public place and parks' waste processing contracts both expire 31 December 2022.
18. The new negotiated contract for 'Domestic, Cleansing and Parks Waste (Putrescible) Receipt, Processing and Disposal Services' is planned to commence 1 January 2023.

Options

19. 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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