

IDAA - Draft Heads of Terms

Introduction- Purpose of the IDAA

Chiltern District Council, South Bucks District Council and Wycombe District Council (“the Councils”) are co-operating on a joint procurement of their waste collection, recycling collection and street cleansing services. There is a need to put in place obligations to cover such issues as:-

- Each Council’s share of the costs of procurement
- Each Council’s share of the benefits
- Controls on entering and leaving the partnership, both during the procurement phases and during the term of the contract
- Mechanisms to prevent the actions of one Council damaging the interests of another

These obligations are described in these draft IDAA Heads of Terms, which are similar to the document entered into by Chiltern and Wycombe in respect of the previous procurement. Chiltern and Wycombe are committed to remain in their current partnership for the duration of the Serco contract, but a new procurement would need a new IDAA.

The IDAA will address each stage of the procurement, with appropriate obligations on the parties, dependent upon the implications of each stage.

There will be an overarching obligation to collaborate and work together with the intention of successfully delivering the procurement to achieve a set of Project Objectives and to comply with a set of Procurement Objectives and Joint Working Principles.

The project governance is different for this procurement as the Joint Waste Collection Committee (JWCC) is already established and all three authorities are members.

Phase 1- Pre Official Journal of the European Union (OJEU) contract notice

The three Councils will contribute to the costs of getting to the point of publishing the OJEU notice on the basis of a suitable funding formula, suggested to be based on the current cost sharing arrangements for the joint waste team.

In order to protect the interests of the individual Councils it is necessary to have the IDAA in place as soon as possible, particularly before the issue of any Prior Information Notice (PIN), a precursor to taking market soundings from suppliers.

These are the proposed Heads of Terms for the remainder of this first phase:-

Contribution to costs

In this phase all Councils commit to pay their share of the net costs in the Resource Plan relating to this Phase. These costs would be those necessary to engage external resources for project activity. For the avoidance of doubt this may include personnel, procurement, finance, technical, legal and project management activities.

Costs will have been committed and contributions are therefore not refundable if a partner Council withdraws.

Withdrawal and Confidentiality

An individual Council may withdraw at any time during this phase but must keep all procurement related information strictly confidential. Confidentiality on all aspects is a binding condition of participation.

Mutual Indemnification

The Councils agree that, in the event that any costs or damages are awarded against one or more of the Councils as a result of the Programme, the agreed proportions of those costs or damages shall be paid by each of the Councils which are involved in the Programme at the commencement of the Phase during which the causative event occurred. The Councils acknowledge that they and the Project Team will work in good faith on the Project and agree that no Council will at any time seek to recover from any of the other Councils direct, indirect or consequential costs or damages.

Phase 2- live and active procurement phase

The OJEU notice will not be issued until the detailed IDAA has been signed by all of the participating Councils.

It is intended that each individual Council would commit to award the work to a bidder and enter into a binding joint contract if specified value for money and quality criteria are satisfied.

Governance

The IDAA will identify the Lead Authority for the procurement phase, whose role will include holding and managing the joint procurement budget, invoicing the other Councils and producing regular financial reports to the JWCC on spend.

During the procurement phase, the role of the JWCC will be to consider the following matters and either make decisions under its delegated powers or advise the respective Cabinets as to:

- The nature and scope of the procurement
- The work required to progress the procurement
- The resourcing requirements of the procurement, including technical/specialist support
- Arrangements for evaluation of tenders from bidders
- Governance and risk sharing
- Apportionment of contract costs
- Consultation and communication plans

Contribution to costs and participation in dialogue

Each of the Councils would be obliged to do the following:-

- Assist in development of a full set of up to date documents describing the desired service and targets
- Play a full part in any competitive dialogue meetings
- Meet the full cost of the live procurement stage of the programme, in the agreed proportions

No “market testing”

The Councils agree not to use any phase of the procurement process for market testing activity purposes only (i.e. obtaining a price for the work with no intention of awarding it to suppliers).

Withdrawal and Confidentiality

An individual Council may withdraw at any time during this phase but must keep all procurement related information strictly confidential. Confidentiality on all aspects is a binding condition of participation.

If a Council withdraws it will forfeit its share of the contribution for the costs of Phases 1 and 2. Should a Council withdraw during this Phase it will also be responsible for 100% of any costs due to such withdrawal e.g. contract re-drafting, abortive work and additional communications activity. These costs are likely to be considerable. In addition, a withdrawal has considerable potential to damage the interests of other authorities. Councils should note that this may include considerable costs necessary to extend existing contracts at less than ideal prices should the viability of the joint procurement be significantly damaged.

Mutual Indemnification

The Councils agree that, in the event that any costs or damages are awarded against one or more of the Councils as a result of the Programme, the agreed proportions of those costs or damages shall be paid by each of the Councils which are involved in the Programme at the commencement of the Phase during which the causative event occurred. The Councils acknowledge that they and the Project Team will work in good faith on the Project and agree that no Council will at any time seek to recover from any of the other Councils direct, indirect or consequential costs or damages.

Phase 3 commissioning, operational commencement and the term of the Joint Contract i.e. the post contract award phase

Governance

Following contract award and during the operational phase of the contract, the JWCC shall exercise the functions as set out in its constitution and delegated authority.

The JWCC shall not have authority to take any of the following decisions, which are executive decisions reserved to the Cabinets of the respective Councils:

- Making the final award decision following the procurement
- Decisions to authorise expenditure in excess of budget
- Changes to recycling policy
- A decision to extend or terminate the contract

Cost partition

In this phase the breakdown of costs would be as follows:-

- The Councils agree to continue to pay a share of the costs of the joint client side based upon the current cost sharing arrangements.
- Any project costs (e.g. advisers) would continue to be divided on the agreed basis 1

- In respect of the Joint Contract, the Councils will receive a global bill from the contractor. The bill will be apportioned amongst the Councils on the basis of an agreement to be reached between the Section 151 officers before the issue of the OJEU notice

Withdrawal and Confidentiality

After the award of the joint contract, no Council may withdraw from the IDAA or the contract until it is terminated or expires.

Mutual Indemnification

The Councils agree that, in the event that any costs or damages are awarded against one or more of the Councils as a result of the Programme, the agreed proportions of those costs or damages shall be paid by each of the Councils which are involved in the Programme at the commencement of the Phase during which the causative event occurred. The Councils acknowledge that they and the Project Team will work in good faith on the Project and agree that no Council will at any time seek to recover from any of the other Councils direct, indirect or consequential costs or damages.

Appendices

Project Objectives, Procurement Objectives and Joint Working Principles to be updated from previous IDAA