

Berry BPI

Heanor Gate Industrial Estate,

Heanor, Heanor,

Derbyshire, DE75 7RG,

Company Registration No: 00350729

attn: Mr Ian Griffiths

By ProContract

Date: 17 May 2021

Our ref: **DN599987**

Dear Sirs,

**BT1371 Refuse & Clinical Waste Sacks re EPH Framework RE EPHF21-002**

Award of contract for the supply of [Refuse & Clinical Waste sacks]

Following your tender for the supply of [***insert short description of services***] to Luton Borough Council, we are pleased to award this contract to you.

This letter (Award Letter) and its Annexes set out the terms of the contract between Luton Borough Council (the Council) and [***insert Supplier’s name***] as the Supplier for the provision of the Services.

Unless the context otherwise requires, capitalised expressions used in this Award Letter have the same meanings as in the terms and conditions of contract set out in Annex 1 to this Award Letter (the “**Conditions**”). In the event of any conflict between this Award Letter and the Conditions, this Award Letter shall prevail. Please do not attach any Supplier terms and conditions to this Award Letter as they will not be accepted by the Council and may delay the conclusion of the Agreement.

For the purposes of the Agreement, the Council and the Supplier agree as follows:

1. The charges for the Services shall be as set out in Annex 2.
2. The specification of the Services to be supplied is as set out in Annex 3.
3. The Term shall commence on [31 May 2022 ] and the Expiry Date shall be [30th May 2025]less extended or subject to early termination.
4. The address for notices of the Parties are:

|  |  |
| --- | --- |
| **Luton Borough Council**  **Town Hall**  **Upper George Street**  **Luton**  **LU1 2RD**  Attention: Mr james Lucas / William Green  Email: [james.lucas@luton.gov.uk](mailto:james.lucas@luton.gov.uk)  [William.greene@luton.gov.uk](mailto:William.greene@luton.gov.uk) | **Supplier Berry BPI**  [Mr Ian Griffiths  Heanor Gate Industrial Estate,  Heanor, Heanor,  Derbyshire, DE75 7RG,  Attention: MR Ian Griffiths  Email:IanGriffiths@berryglobal.com |

1. The following persons are Key Personnel for the purposes of the Agreement:

Name Title

*This section must be completed (if applicable) with the names of key personnel within the suppliers organisation that will be delivering the service.*

1. For the purposes of the Agreement the Health and Safety Policy; Safeguarding/Protection of Children and Vulnerable Adults Policy and the Whistleblowing Policy can be accessed via the guidance notes and templates on the e-tendering portal (ProContract). These policies may also be accessed via the Procurement page on the Council’s website
2. The Council may require the Supplier to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. For the purpose of any Children’s Services or Vulnerable Persons Services these shall be Enhanced Checks. The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Services, or is of a type otherwise advised by the Council (each such conviction a “**Relevant Conviction**”), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

**Payment**

All invoices must be sent, quoting a valid purchase order number (PO Number), to: Luton Borough Council, Accounts Payable, Town Hall, Luton LU1 2BQ. Or emailed to [AccountsPayableInvoices@luton.gov.uk](mailto:AccountsPayableInvoices@luton.gov.uk) in one of the following formats:- .DOC .PDF .TIF .XLS .HTM .RTF or .JPEG

Within 10 working days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.

To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Council contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment. If you have a query regarding an outstanding payment please contact our Accounts Payable Section either by email to [AccountsPayableInvoices@luton.gov.uk](mailto:AccountsPayableInvoices@luton.gov.uk) or by telephone between 09:00-17:00 Monday to Friday.

**Insurance**

When you return the signed letter as detailed below will you also please provide documentary evidence that you have the required insurance cover as set out in the quotation documents.

**Liaison**

For general liaison your contact will continue to be [***insert Contract Manager name and contact details***] or, in their absence, [***insert secondary name and contact details***].

We thank you for your co-operation to date, and look forward to forging a successful working relationship resulting in a smooth and successful delivery of the Services. Please confirm your acceptance of the award of this contract by signing and returning the enclosed copy of this letter through our e-tendering portal ProContract **within 7** days from the date of this letter. No other form of acknowledgement will be accepted. Please remember to quote the reference number above in any future communications relating to this contract.

Yours faithfully,

Signature:

Signed for and on behalf of Luton Borough Council

Name: [insert name]

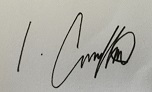
[Insert job title]

We accept the terms set out in this letter and its Annexes, including the Conditions.

Signed for and on behalf of **[Berry Global BPI Refuse]**

Name: Ian Griffiths

Position: Sales Manager

Signature: 

Date: 10/6/2022

**DATED 10th June 2022**

**THE COUNCIL OF THE**

**BOROUGH OF LUTON**

**- and -**

**Berry BPI**

**CONTRACT**

in respect of the provision of certain Services in connection with

The council is looking to procure a various range of sacks as detailed in the specification. The quality of the sacks will need to be fit for purpose and measure up to the standard as specified.the sacks will be used for a number of statutory services within a refuse environment.ie

Refuse sacks (black sacks with our desired logo)

Recycling sacks (clear sacks with our desired logo)

Trade sacks (grey with our desired logo)

Tiger sacks (black sacks with our desired logo)

Terracotta sacks (sacks with our desired logo)

11& 5 Litre sharps boxes (

Clinical sacks (Sacks with our desired logo)

There may also be a time through this contract, and as services change, where colours and logos will need to change this will need to form part of this agreement.

**Luton Borough Council**

**Town Hall**

**Luton**

**LU1 2BQ**

**Annex 1**

**Terms and Conditions of Contract for Services**

1. Interpretation
   1. In these terms and conditions:

|  |  |
| --- | --- |
| “Agreement” | means the contract between (i) the Council and (ii) the Supplier constituted by the Supplier’s countersignature of the Award Letter; |
| “Award Letter” | means the letter from the Council to the Supplier printed above these terms and conditions; |
| “Charges” | means the charges for the Services as specified in the Award Letter; |
| “Confidential Information” | means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential; |
| “Data Subject” | as defined in the GDPR |
| “Expiry Date” | means the date for expiry of the Agreement as set out in the Award Letter; |
| “FOIA”  “GDPR” | means the Freedom of Information Act 2000;  means the General Data Protection Regulation 2018 and any subordinate legislation made under such Regulation from time to time as may be amended, replaced or re-enacted by any subsequent directive, statute, regulation, order, instrument, code or guidelines together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation; the GDPR forms part of the data protection regime in the UK, together with the new Data Protection Act 2018 (DPA 2018). The main provisions of this apply, like the GDPR, from 25 May 2018. |
| “Information” | has the meaning given under section 84 of the FOIA; |
| “Key Personnel” | means any persons specified as such in the Award Letter or otherwise notified as such by the Council to the Supplier in writing; |
| “Living Wage” | means the figure set annually for areas outside of London by the Centre for Research and Social Policy currently at Loughborough University or its successor or anybody which subsequently takes up the responsibility for setting the figure; |
| “Living Wage Criteria”  “Modern Slavery Act 2015” | means circumstances where an individual works at any of the Council’s premises, and/or property owned or occupied by the Council, and/or land on which the Council is responsible for maintaining or on which it is required to work, for at least 2 hours per day over a period of 8 consecutive weeks.  means The Modern Slavery Act 2015 (MSA 15) came into force on 26 March 2015. The Act consolidates slavery and trafficking offences and introduces preventive measures, support systems and a regulatory body. The MSA 15 should be embedded into contracting authority’s Procurement Strategy (or part of their Sustainable Strategy), and should be considered at each stage of the procurement process, where relevant and appropriate. |
| “Party” | means the Supplier or the Council (as appropriate) and “Parties” shall mean both of them; |
| “Personal Data” | means personal data (as defined in the GDPR ) which is processed by the Supplier or any Staff on behalf of the Council pursuant to or in connection with this Agreement; |
| “Personal Data Breach” | as defined by the GDPR |
| “Process” or “Processing” | shall have the same meanings as set out in the GDPR but for the purposes of this Agreement shall include both manual and automatic processing; |
| “Purchase Order Number” | means the Council’s unique number relating to the supply of the Services; |
| “Request for Information” | has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply); |
| “Services” | means the services to be supplied by the Supplier to the Council under the Agreement; |
| “Specification” | means the specification for the Services (including as to quantity, description and quality) as specified in the Award Letter; |
| “Staff” | means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement; |
| “Staff Vetting Procedures” | means vetting procedures that accord with good industry practice or, where requested by the Council, the Council’s procedures for the vetting of personnel as provided to the Supplier from time to time; |
| “Supplier” | means the person named as Supplier in the Award Letter; |
| “Term” | means the period from the start date of the Agreement set out in the Award Letter to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement; |
| “VAT” | means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and |
| “Working Day” | means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London. |

* 1. In these terms and conditions, unless the context otherwise requires:
     1. references to numbered clauses are references to the relevant clause in these terms and conditions;
     2. any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
     3. the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
     4. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
     5. the word ‘including’ shall be understood as meaning ‘including without limitation’.

1. Basis of Agreement
   1. The Award Letter constitutes an offer by the Council to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
   2. The offer comprised in the Award Letter shall be deemed to be accepted by the Supplier on receipt by the Council of a copy of the Award Letter countersigned by the Supplier.
2. Supply of Services
   1. In consideration of the Council’s agreement to pay the Charges, the Supplier shall supply the Services to the Council for the Term subject to and in accordance with the terms and conditions of the Agreement.
   2. In supplying the Services, the Supplier shall:
      1. co-operate with the Council in all matters relating to the Services and comply with all the Council’s instructions;
      2. perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier’s industry, profession or trade;
      3. use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier’s obligations are fulfilled in accordance with the Agreement;
      4. ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
      5. comply with all applicable laws; and
      6. provide all equipment, tools and vehicles and other items as are required to provide the Services.
   3. The Council may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Council and the Supplier.
3. Term
   1. The Agreement shall take effect on the date specified in Award Letter and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clauses  4.2 and 4.3 or terminated in accordance with the terms and conditions of the Agreement.
   2. The Agreement is not subject to any extensions.
4. Charges, Payment and Recovery of Sums Due
   1. The Charges for the Services shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Council, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
   2. The Supplier shall invoice the Council as specified in the Agreement. Each invoice shall include such supporting information required by the Council to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
   3. In consideration of the supply of the Services by the Supplier, the Council shall pay the Supplier the invoiced amounts no later than 30 days after receipt of a valid invoice which includes a valid Purchase Order Number. The Council may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
   4. All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Council shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
   5. If there is a dispute between the Parties as to the amount invoiced, the Council shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 17.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 20.
   6. If a payment of an undisputed amount is not made by the Council by the due date, then the Council shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
   7. If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Council in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Council from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Council. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Council in order to justify withholding payment of any such amount in whole or in part.
5. Premises and equipment
   1. If necessary, the Council shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Council’s premises by the Supplier or the Staff shall be at the Supplier’s risk.
   2. If the Supplier supplies all or any of the Services at or from the Council’s premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Council’s premises, remove the Supplier’s plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Council’s premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Council’s premises or any objects contained on the Council’s premises which is caused by the Supplier or any Staff, other than fair wear and tear.
   3. If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Council may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
   4. The Council shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Council’s premises the Supplier shall, and shall procure that all Staff shall, comply with all the Council’s security requirements.
   5. Where all or any of the Services are supplied from the Supplier’s premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Council in writing.
   6. Without prejudice to clause 3.2.6, any equipment provided by the Council for the purposes of the Agreement shall remain the property of the Council and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Council on expiry or termination of the Agreement.
   7. The Supplier shall reimburse the Council for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Council shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Council is notified otherwise in writing within 5 Working Days.
6. Staff and Key Personnel
   1. If the Council reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
      1. refuse admission to the relevant person(s) to the Council’s premises;
      2. direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
      3. require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Council to the person removed is surrendered,

and the Supplier shall comply with any such notice.

* 1. The Supplier shall:
     1. ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
     2. if requested, provide the Council with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Council’s premises in connection with the Agreement; and
     3. procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Council.
  2. Any Key Personnel shall not be released from supplying the Services without the agreement of the Council, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
  3. Any replacements to the Key Personnel shall be subject to the prior written agreement of the Council (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
  4. The Supplier shall pay at least the Living Wage to all its employees who are employed in connection with the Services and who meet the Living Wage Criteria.

1. Assignment and sub-contracting
   1. The Supplier shall not without the written consent of the Council assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Council may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
   2. Where the Supplier enters into a sub-contract for the purpose of performing its obligations under the Agreement, it shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
   3. Where the Council has consented to the placing of sub-contracts, the Supplier shall, at the request of the Council, send copies of each sub-contract, to the Council as soon as is reasonably practicable.
   4. The Council may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier’s obligations under the Agreement.
2. Intellectual Property Rights
   1. All intellectual property rights in any materials provided by the Council to the Supplier for the purposes of this Agreement shall remain the property of the Council but the Council hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.
   2. All intellectual property rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Supplier. If, and to the extent, that any intellectual property rights in such materials vest in the Council by operation of law, the Council hereby assigns to the Supplier by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
   3. The Supplier hereby grants the Council:
      1. a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services; and
      2. a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use any intellectual property rights vested in or licensed to the Supplier on the date of the Agreement which the Council reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided,

including any modifications to or derivative versions of any such intellectual property rights.

* 1. The Supplier shall indemnify, and keep indemnified, the Council in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Council as a result of or in connection with any claim made against the Council for actual or alleged infringement of a third party’s intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

1. Governance and Records
   1. The Supplier shall:
      1. attend progress meetings with the Council at the frequency and times specified by the Council and shall ensure that its representatives are suitably qualified to attend such meetings; and
      2. submit progress reports to the Council at the times and in the format specified by the Council.
   2. The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Council. The Supplier shall on request afford the Council or the Council’s representatives such access to those records as may be reasonably requested by the Council in connection with the Agreement.
2. Confidentiality, Transparency and Publicity
   1. Subject to clause 11.2, each Party shall:
      1. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
      2. not use or exploit the disclosing Party’s Confidential Information in any way except for the purposes anticipated under the Agreement.
   2. Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:
      1. where disclosure is required by applicable law or by a court of competent jurisdiction;
      2. to its auditors or for the purposes of regulatory requirements;
      3. on a confidential basis, to its professional advisers;
      4. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
      5. where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier’s obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier’s confidentiality obligations under the Agreement; and
      6. where the receiving Party is the Council:
         * 1. on a confidential basis to the employees, agents, consultants and contractors of the Council;
           2. on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Council transfers or proposes to transfer all or any part of its business;
           3. to the extent that the Council (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
           4. in accordance with clause 12.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Council under this clause 11.

* 1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for the Council to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Council may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
  2. The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Council.

1. Freedom of Information
   1. The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
      1. provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
      2. transfer to the Council all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
      3. provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
      4. not respond directly to a Request for Information unless authorised in writing to do so by the Council.
   2. The Supplier acknowledges that the Council may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Council shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier’s attention after any such disclosure.
   3. Notwithstanding any other provision in the Agreement, the Council shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.
2. Protection of Personal Data, Security of Data and Audit
   1. The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under the GDPR 2018 and both Parties shall duly observe all their obligations under the GDPR 2018 which arise in connection with the Agreement.
   2. Notwithstanding the general obligation in clause 13.1, where the Supplier is processing Personal Data for the Council as a data processor (as defined by the GDPR) the Supplier shall:
      1. process such data and information only in accordance with the Council’s instructions and shall not transmit such data and information to a country or territory outside the European Economic Area without the Council’s prior express written consent, unless required to do so by union or member state law to which the Supplier is subject. In such a case, the Supplier shall inform the Council of that legal requirement before processing, unless union or member state law prohibits such information on important grounds of public interest;
      2. provide the Council with a written description of the technical and organisational measures it shall take against unauthorised or unlawful processing of the Personal Data (and against accidental loss or destruction of, or damage to, the Personal Data) and for the secure destruction and permanent deletion of Personal Data as requested by the Council;
      3. demonstrate that employees, servants, or other agents associated with the performance of this Agreement are aware of their personal responsibilities under the GDPR and under the Agreement to maintain security of Personal Data controlled by the Council;
      4. ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the confidentiality obligations in respect of the Personal Data as imposed on the Supplier under the terms of this Agreement;
      5. ensure that none of the staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council;
      6. shall obtain prior written consent from the Council in order to transfer the Personal Data to any sub-contractor for the provision of the Services and should such consent be given ensure that in relation to Personal Data, such sub-contractors or agents are under contractual obligations which are no less protective than the data protection requirements set out in this Agreement. Where the sub-contractor fails to fulfil the data obligations under this Agreement, the Supplier shall remain fully liable to the Council for the performance of the sub-contractor’s data obligations;
      7. permit the Council or the Council's representative (subject to reasonable and appropriate confidentiality requirements), to inspect and audit, in accordance with clause 13.2.8, the Supplier’s data processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by the Council to enable the Council to verify and/or procure that the Supplier is in full compliance with its obligations under this Agreement;
      8. keep and maintain full and accurate records of the Agreement including but not limited to the Services supplied under it, and all payments made by the Council. The Supplier shall on request afford the Council or the Council’s representatives such access to those records as may be requested by the Council in connection with the Agreement;
      9. notify the Council of any suspected Personal Data Breach (as defined by the GDPR) within 24 hours of becoming aware of such breach. The notifications shall:
         * 1. describe the nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
           2. communicate the name and contact details of the data protection officer or other contact point where more information can be obtained;
           3. describe the likely consequences of the Personal Data Breach; and
           4. describe the measures taken or proposed to be taken by the Council to address the Personal Data Breach, including, where appropriate, measures to mitigate its possible adverse effects.
      10. notify the Council (within two (2) working days) if it receives:

(a) a request from a Data Subject concerning any aspect of the processing or handling of that person's Personal Data; or

(b) a complaint or request relating to the Council's obligations under the GDPR;

(c) any contact from another organisation concerning Council data; and ensure that it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council’s obligations under the GDPR.

* + 1. provide the Council with full co-operation and assistance in relation to any complaint or request made, including by:

(a) providing the Council with full details of the complaint or request;

(b) complying with a data access request within the relevant timescales set out in the GDPR and in accordance with the Council's instructions;

(c) providing the Council with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Council); and

(d) providing the Council with any information requested by the Council;

* + 1. assist the Council in complying with the obligations under Articles 32 to 36 of the GDPR (including without limitation relating to security, breach notification, data privacy impact assessments and consulting with supervisory authorities).
    2. make available to the Council all information necessary to demonstrate compliance with the GDPR
  1. When handling Council data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Council as notified to the Supplier from time to time.

13.4 The Supplier shall indemnify the Council against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Council arising out of or in connection with any breach of the warranties contained in clause 13 and with the provisions of the GDPR.

1. Liability
   1. The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Council if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Agreement.
   2. Subject always to clauses 13.4, 14.3 and 14.4:
      1. the aggregate liability of the parties to each other in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortuous or statutory), tort (including negligence), breach of statutory duty or otherwise shall be the levels of insurance cover specified in clause 15 where a claim falls within the insurances that the Supplier is required under this Agreement to have. Where a claim does not fall under any insurance that the Supplier is required to have under this Agreement, the parties liability shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and
      2. except in the case of claims arising under clauses 9.4, in no event shall the Supplier be liable to the Council for any:
         * 1. loss of profits;
           2. loss of business;
           3. loss of revenue;
           4. loss of or damage to goodwill;
           5. loss of savings (whether anticipated or otherwise); and/or
           6. any indirect, special or consequential loss or damage.
   3. Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
      1. death or personal injury caused by its negligence or that of its Staff;
      2. fraud or fraudulent misrepresentation by it or that of its Staff; or
      3. any other matter which, by law, may not be excluded or limited.
   4. The Supplier’s liability under the indemnity in clause 9.4 shall be unlimited.
2. Insurance
   1. The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
      * + 1. public liability insurance with a limit of indemnity of not less than £5,000,000.00 in relation to any one claim or series of claims;
          2. employer's liability insurance with a limit of indemnity of not less than £5,000,000.00;
          3. [professional indemnity insurance with a limit of indemnity of not less than £1,000,000.00]

(the Required Insurances) in respect of all risks which may be incurred by the Supplier, arising out of the Supplier’s performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

* 1. The Supplier shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
  2. If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
  3. The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the agreement.

1. Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

1. Termination
   1. The Council may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.
   2. Without prejudice to any other right or remedy it might have, the Council may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:
      1. (without prejudice to clause 17.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
      2. repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
      3. is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
      4. undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
      5. breaches any of the provisions of clauses 7.2, 11, 12, 13 and 18; or
      6. becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier’s assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 17.2.6) in consequence of debt in any jurisdiction.
   3. The Supplier shall notify the Council as soon as practicable of any change of control as referred to in clause 17.2.4 or any potential such change of control.
   4. The Supplier may terminate the Agreement by written notice to the Council if the Council has not paid any undisputed amounts within 90 days of them falling due.
   5. Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 14, 17.6, 18.5, 19.4, 20 and 21.8 or any other provision of the Agreement that either expressly or by implication has effect after termination.
   6. Upon termination or expiry of the Agreement, the Supplier shall:
      1. give all reasonable assistance to the Council and any incoming supplier of the Services; and
      2. return all requested documents, information and data to the Council as soon as reasonably practicable.
2. Compliance
   1. The Supplier shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Council shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Council’s premises and which may affect the Supplier in the performance of its obligations under the Agreement.
   2. The Supplier shall:
      1. comply with all the Council’s health and safety measures while on the Council’s premises; and
      2. notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Council’s premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
   3. The Supplier shall:
      1. perform its obligations under the Agreement in accordance with all applicable equality Law and the Council’s equality and diversity policy as provided to the Supplier from time to time; and
      2. take all reasonable steps to secure the observance of clause 18.3.1 by all Staff.
   4. The Supplier shall supply the Services in accordance with the Council’s environmental policy as provided to the Supplier from time to time.
   5. The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:
      1. the Official Secrets Acts 1911 to 1989; and
      2. section 182 of the Finance Act 1989.
      3. The Modern Slavery Act 2015.
3. Prevention of Fraud and Corruption
   1. The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
   2. The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
   3. If the Supplier or the Staff engages in conduct prohibited by clause 19.2 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Council) the Council may:
      1. terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Agreement; or
      2. recover in full from the Supplier any other loss sustained by the Council in consequence of any breach of this clause.
4. Dispute Resolution
   1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
   2. If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 20.2, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the “Mediator”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
   3. If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.
5. General
   1. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
   2. A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
   3. The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
   4. The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
   5. Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
   6. The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party’s behalf.
   7. Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
   8. If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.
6. Notices
   1. Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 22.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
   2. Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
   3. Notices under clauses 16 (Force Majeure) and 17 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 22.2.
7. Governing Law and Jurisdiction

The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

**[Annex 2 - Charges]**

£150000.00 £50000.00 a year for 3 years

**[Annex 3 - Specification]**



**SPECIFICATION FOR BT1416 Refuse & Clinical Waste Sacks**

|  |  |
| --- | --- |
| **Is this specification for goods, works or services?** | **Goods** |
| **Is this a technical conformance specification OR outcome and performance?** | **No** |

**Introduction**

Luton is a large and growing town around 30 miles to the north of London. Luton Council is a unitary Council covering an area of approximately 16.74 square miles (43.35 km2) and the current population of Luton is estimated at 216,000.

The Council employs approximately 3,000 people based in a variety of locations such as offices, schools, nurseries, crematorium, parks pavilions, community centres, sports centres, day care, residential, police station, hospital, etc. These locations are located across the Borough.

The council is looking to procure a various range of sacks as detailed in the specification. The quality of the sacks will need to be fit for purpose and measure up to the standard as specified.the sacks will be used for a number of statutory services within a refuse environment.ie

Refuse sacks (black sacks with our desired logo)

Recycling sacks (clear sacks with our desired logo)

Trade sacks (grey with our desired logo)

Tiger sacks (black sacks with our desired logo)

Terracotta sacks (sacks with our desired logo)

11& 5 Litre sharps boxes (

Clinical sacks (Sacks with our desired logo)

There may also be a time through this contract, and as services change, where colours and logos will need to change this will need to form part of this agreement.

**Section1: Background & Context**

This contract will fall in line with our statuary requirements to provide a Refuse and Recycling sack collection services throughout the borough of Luton. This is not a standalone service but it has a duty of care and necessity to provide households in Luton that require a sack collection service. This is a critical part Luton council’s our waste management strategy and our service standard.

**Section 2: Service Requirement**

Luton council require the goods once ordered to be delivered in time agreed, they will need to be delivered to our desired location namely Luton council, Kingsway depot, Kingsway, LU4 8AU. However this location may change on occasion.

Upon delivery we will require a tail lift vehicle and a pump truck to move the goods to the desired location.

Monthly liaison meeting may be required to discuss the contract.



Alex Greene

Service Manager

Operational Street Scene & Bereavements services

[Alexander.greene@luton.gov.uk](mailto:Alexander.greene@luton.gov.uk)

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