

FLINTSHIRE COUNTY COUNCIL

REPORT TO: ENVIRONMENT OVERVIEW & SCRUTINY
COMMITTEE

DATE: WEDNESDAY, 10 APRIL 2013

REPORT BY: DIRECTOR OF ENVIRONMENT

SUBJECT: UPDATE ON NORTH WALES RESIDUAL WASTE
TREATMENT PROJECT AND THE SUB-REGIONAL
FOOD WASTE PROJECT

1.00 PURPOSE OF REPORT

- 1.01** To update Members on progress of the North Wales Residual Waste Treatment Project's (NWRWTP) procurement process.
- 1.02** Also, to update Members on progress of the sub-regional food waste project.

2.00 BACKGROUND

- 2.01** The North Wales Residual Waste Treatment Partnership was formed in 2008 (made up of the Isle of Anglesey County Council, Gwynedd County Council, Conwy County Borough Council, Denbighshire County Council with Flintshire County Council as Lead Authority) to seek a solution to managing residual waste on behalf of the five Partner Authorities over a 25 year period. A North Wales Residual Waste Treatment Joint Committee has been set up to oversee and govern the procurement process. At the Joint Committee meetings, all five Partner Authorities have equal voting rights. However, as Lead Authority, the Council is responsible for project planning and management, giving Leadership to the Project Team and undertaking governance issues like producing management accounts and ensuring financial probity.
- 2.02** The three Council's forming the Sub-Regional Food Waste Partnership are Conwy County Borough Council, Denbighshire County Council and Flintshire County Council, with Denbighshire acting as the Lead Authority on the project.
- 2.03** One of the key issues for the Projects is the range of waste related targets that now challenge Welsh Authorities; these are set out below:-

Table – Authority Municipal Waste Targets

TARGET	YEAR				
	09/10	12/13	15/16	19/20	24/25
Levels of recycling / composting (or Anaerobic Digestion (AD))	40%	52%	58%	64%	70%
Levels of composting (or AD) of source separated food waste (included in the above)		12%	14%	16%	16%
Maximum level of energy from waste			42%	36%	30%
Maximum level of landfill				10%	5%

Welsh Government (WG) has made it clear via its strategy document – ‘Towards Zero Waste’ – that the future strategic direction and resources will be directed towards Local Authority policies which are based on very high levels of recycling and composting (i.e. 70% recycling/composting by 2024/25) and very low levels of landfilling (i.e. a maximum of 5% to landfill by 2024/25). Nevertheless, and even with these challenging targets achieved, there will remain significant levels of residual waste which must be disposed of through sustainable technologies offering the best balance of environment and economic benefits.

2.04 If the Council fails to meet these targets, the Authority will face two sets of fines, which will be cumulatively levied:-

- (i) Failure to meet recycling targets (£200/t)
- (ii) Exceeding Landfill Allowances (£200/t)

Both projects will play a key role in helping Flintshire County Council (FCC) to meet the Municipal Waste targets show and hence help the Council to avoid the substantial fines outlined above.

2.05 The North Wales Residual Waste Treatment Project

2.5.1 At around £600m value and 25 years duration, this is an extremely complex procurement process, where property consideration needs to be given to all matters by both the Partnership and by the bidders.

2.5.2 In March 2010, a Special Flintshire County Council considered a report and Outline Business Case on the NWRWTP. The report was based on an Options Appraisal undertaken by Entec (now Amec), which concluded that the NWRWTP Regional Partnership was the scenario most likely to deliver best value for the Council due to cost minimisation, meeting Welsh Government (WG) funding guidelines,

resilience to legislative change and service need, as well as being the most attractive Option for the market. As a result of the Outline Business Case, WG confirmed their commitment to providing £142m funding towards the Project; Flintshire County Council's share of this is £38m over the 25 years of the project.

2.5.3 On 15th July 2010, the procurement process was formally started with the publication of the OJEC (Official Journal of the European Union) notice. This was followed by a formal Pre Qualification Questionnaire Stage (PQQ) where companies that formally put forward an expression of interest were assessed on their financial and technical capabilities.

2.5.4 The PQQ process involved a rigorous assessment of the companies that had formally expressed an interest in the procurement process. They were assessed on their financial standing and record, and also on their technical ability and record in delivering residual waste treatment contracts. This assessment process was carried out by the Project's legal, technical and financial advisors (Pinsent Masons, Entec (now Amec) and Grant Thornton respectively), and was scrutinised by the relevant technical officer group from the Partnership. 10 participants applied for pre-qualification and eight were recommended to go through to the next stage (see 2.5.5 below).

2.5.5 On 29 October 2010, the North Wales Residual Waste Joint Committee approved the next stage of the procurement process. The next stage of the procurement process was the Invitation to Submit Outline Solutions (ISOS) stage. Eight bidders were invited to submit their outline solution(s). These bidders were:-

- Biffa Waste Services/E.ON
- Complete Circle (a consortium of John Laing Investments Ltd., Shanks Waste Management Ltd., Keppel Seghers and Grays Waste Management Ltd)
- Covanta Energy Ltd
- Sita UK Ltd
- Veolia ES Aurora Ltd
- Viridor Waste Management Ltd
- Waste Recycling Group/Balfour Beatty Capital, and
- Wheelabrator Technologies

2.5.6 ISOS submissions were received on 4 February 2011 and the Joint Committee met on 25 March 2011. Following an exhaustive evaluation by a range of technical, legal and financial officers and advisors, Members on the Joint Committee accepted Officer recommendations and decided to take three bidders through to the next stage of the procurement process, the Invitation to Submit Detailed Solutions (ISDA):-

- Sita UK Ltd

- Veolia ES Aurora Ltd
- Wheelabrator

2.5.7 The Project Team pursued the possibility of rail being used as part of the solution to transport the waste to the main facility. To this end, discussions were held with Network Rail and the bidders, who showed a positive stance towards the use of rail.

2.5.8 In order to ensure that rail was considered thoroughly, an additional stage was included in the procurement process. The participants were all instructed to submit a road and rail based solution for the Project. Participants submitted these proposals on 27th January 2012. The Project Team then looked at the relevant parts to assess the viability, cost, deliverability and risks of both transport options.

The Joint Committee considered these proposals at its meeting on 16th March 2012. The participants were then informed that the Partnership's requirement was for a rail based solution and given a limited number of weeks to refine their proposal in the light of that decision. They submitted full detailed proposals on 5th April 2012.

2.5.9 On 1st August 2012, the Joint Committee decided to deselect one of the bidders, leaving the following two companies:-

- Sita
- Wheelabrator

2.5.10 Both bidders were proposing to use Energy from Waste technology at a site in the Council's ownership on Deeside Industrial Park.

2.06 Sub-Regional Food Waste Project

2.06.1 The OBC(Outline Business Case for the project was approved by Executive on 27th October 2009. The OBC demonstrated that the proposed procurement would provide a long term solution for the treatment of our food waste and would be cheaper over the term of the contract than continuing to landfill food waste, or than continuing with short term treatment arrangements where the gate fees for treatment could not be guaranteed over time.

2.06.2 Flintshire County Council approval on project affordability was presented and agreed at the Executive meeting on 20th April 2010.

2.06.3 The Partnership has purchased the former abattoir site at Rhualt using WG funding, for the development of the proposed treatment facilities.

2.06.4 Following an extensive evaluation process, on 5th July 2011, the Council's Executive approved TEG Environmental as the Preferred Bidder, leaving BiogenGreenfinch as Reserve Bidder. Following this

award, TEG Environmental continued to work towards Financial Closure and finalising contract documentation.

2.06.5 During the period leading up to the Financial Close, TEG Environmental experienced several funding issues, causing delays to the project timetable. The Partnerships Board granted additional time to secure funding on several occasions. As the process could not be allowed to run on indefinitely, the Board (consisting of Lead Members from Conwy, Denbighshire and Flintshire) voted unanimously during a meeting held on 21st February 2012 to impose an absolute deadline of 30th March 2013 for TEG Environmental to secure the required funding.

2.06.6 Accordingly, on 27th March 2012, the Council's Executive approved the removal of TEG Environmental as Preferred Bidder on the NE Hub Food Waste project, should they fail to secure funding by the deadline date of 30th March 2012. The Executive also approved the selection of Reserve Bidder, BiogenGreenfinch, to be awarded Preferred Bidder status, should TEG Environmental fail to secure funding by the deadline date, which they failed to do. Accordingly, BiogenGreenfinch were awarded preferred bidder status.

3.00 CONSIDERATIONS

North Wales Residual Waste Treatment Project

3.01 Since the last report considered by the Committee on 9th January 2013, the following key points have developed:-

- Withdrawal from the procurement process of Sita UK Ltd
- Partner Authority Member sessions with Welsh Government and the Health Protection Agency
- Drop in sessions at Connah's Quay
- Procurement Programme
- PM2.5 Monitoring
- Community Benefit Scheme

The following text outlines each of the above.

Withdrawal of Sita UK Ltd from the Procurement Process

3.02 In late January 2013, the Partnership was notified by Sita UK Ltd that the company intended to withdraw from the procurement process for commercial reasons. Following notification by Sita UK Ltd of its decision, the Project Team and the Lead Chief Executive for the project agreed a risk assessment and management approach to managing the implications of the withdrawal. The first consideration was a thorough assessment of the procurement process itself. Secondly, the Lead Chief Executive for the project contacted Sita UK at a high level to review the decision to withdraw and to ensure

consistency in any public announcements made. This team approach ensured that the process was managed sensitively, swiftly and that a thorough and co-ordinated response was provided.

3.03 Guidance has been sought from the Partnership's external legal advisors, Pinsent Masons, to identify any relevant procurement guidance that would apply in these circumstances. The key guidance is set out in Appendix 1.

3.04 In summary, UK guidance states that any procuring Authority needs to consider whether it should invite bids at all in a situation where a single bidder remains. The guidance advises that other steps should be taken to secure value for money, but that a procurement process should not automatically be stopped as a result. Some general principles that procuring Authorities in the Partnership's position should consider are:

- reviewing the strength and quality of the remaining single bidder, and
- ensuring that there is transparent competition in the remaining bidder's supply chain

3.05 The Project Board's (which comprises the Lead Chief Executive and Directors from each of the Partner Authorities, supported by the Project Team and advisors) view is that the Partnership is still in a good position to secure the value for money. This is based on the following grounds:-

1. Both bidders that progressed past the Detailed Solutions stage of the procurement were proposing the same waste treatment technology on the same site, indicating that Wheelabrator's bid represents what the waste market have identified as best suiting the needs of North Wales.
2. The procurement process had reached an advanced stage with both remaining bidders prior to Sita's decision to withdraw. This included having the benefit of an extremely competitive process throughout each procurement stage.
3. This competitive process has meant that the Partnership also has the benefit of receiving detailed prices at the Invitation to Submit Detailed Solutions (ISDS) stage. The Partnership therefore has a very clear indication of what a competitive and value for money tender should be.
4. Wheelabrator Technologies Inc (WTI) has already proposed that a significant proportion of sub contracted services would be subject to market testing to ensure value for money obtained for the Partnership

- 3.06** The position the NWRWTP is in with one remaining bidder is not unique, and indeed there are a number of examples in the UK where contracts have been secured with a single bidder at a late stage in the procurement process that demonstrated value for money. Continuation of the procurement process in no way commits the Partnership to an automatic Preferred Bidder award (as would also have been the case if two bidders had remained to submit final tenders). The Partnership would consider a final tender submission from WTI on its own merits and decide at that point if it wished to recommend award of Preferred Bidder status or to recommend termination of the procurement at that stage.
- 3.07** The Partnership has received written confirmation from WTI that it remains committed to the procurement process. The Lead Chief Executive has also met with senior representatives from WTI for both parties to reaffirm their commitment to the procurement process.
- 3.08** The Lead Chief Executive received a letter from Jasper Roberts at WG. A copy is included at Appendix 2. The letter confirms that WG are content for the NWRWTP procurement to continue with a single bidder.
- 3.09** The Council's Section 151 Officer (Chief Financial Officer) and the Monitoring Officer were asked to give an opinion in their statutory roles about proceeding with only one bidder. Both confirmed that they did not think that the best interests of the Partnership would be served by running a fresh process because bidders that have already dropped out or been rejected would be unlikely to submit more competitive bids knowing that this initial process had failed.
- 3.10** They specifically advised that "before proceeding the Board should receive evidence to show the savings and value that had already been generated by the competitive process to date. The Board should also examine the extent to which it would be possible to require elements of the contract to be subcontracted through a competitive process. This would involve assessing the feasibility of competitively procuring every element of the contract that is not currently going to be treated in that way. Needless to say, any element that can be competitively procured without harming the project should be subject to competition in order to increase levels of transparency around value for money".
- 3.11** Based on the advice and assurances given by all advisors and by Welsh Government that the procurement process could and should be continued, the Joint Committee at the meeting of 20th February 2013 agreed to continue with the procurement process as follows :-
- "The Joint Committee, which is made up of the five Councils of Conwy, Denbighshire, Flintshire, Gwynedd and Ynys Mon has agreed to proceed with the final stages of 'competitive

dialogue' with the remaining bidder, Wheelabrator Technologies Incorporated, before making a final decision whether to select Wheelabrator as the preferred bidder to construct and operate a residual waste facility for the region. This final selection decision will be made later in 2013.

- The Joint Committee was satisfied with the advice of its advisors and the advice of Welsh Government officials to proceed. The Joint Committee is satisfied that the project will fully meet Welsh Government policy on waste, that there are no legal risks to completing the procurement process, and that it is fully meeting H M Treasury guidance for major procurement projects. The Committee is satisfied that the remaining bidder is developing a competitive bid which is already well within the cost limit it had set for all seven bidders at the outset. The project team will continue to negotiate the most competitive bid possible to assure the consortium councils, the Welsh Government and the public that value for money is secured.
- The Joint Committee noted that the bids of Wheelabrator and SITA UK were almost identical in technology, proposed location and inward waste transportation and that competitiveness of price had been the only issue to be closed before making a final decision between the two. Given the advanced stage the procurement process has reached and the on-going negotiations with Wheelabrator the Joint Committee was in complete agreement to proceed."

3.12 In accordance with the advice provided by the Council's s.151 Officer and Monitoring Officer, the Project Board would not seek to request agreement to close dialogue or call for final tender until it had full opportunity to consider the report(s) as described. The Project Team intends to continue dialogue with WTI during this period so that the procurement timetable is not delayed.

Partner Authority Member Sessions with Welsh Government and the Health Protection Agency

3.13 Two sessions were held for Members of all Partner Authorities on the 6th and 7th of February 2013 (one "east" session in Mold and one "west" session in Bangor). The purpose of the sessions was for Welsh Government to outline their waste strategy with regards to residual waste to put the NWRWTP in a national context, and for a representative of the Health Protection Agency to present their stance on the risk to health from Energy from Waste Facilities.

3.14 Jasper Roberts from the WG gave a presentation and answered queries from a WG perspective, and Professor David Russell from the Health Protection Agency gave a presentation and answered

questions from Members.

- 3.15** Feedback received from both sessions indicates that Members found them very informative and helpful. Jasper Roberts re-iterated his previous offers to Members of all Partner Authorities to attend future meetings of not only Partner Authorities but also local Town/Community Councils, and Professor Russell also indicated his willingness to attend such future sessions.

Drop-in Sessions at Connah's Quay

- 3.16** The project put on a series of public "drop-in sessions" during March where residents were able to speak directly to a member of the Project Team or one of the Project's experts about any queries they had, such as on emissions and traffic impact. The sessions were held on the 8th, 9th, 15th and 16th of March in Connah's Quay and were widely publicised beforehand. This approach proved effective with the vast majority of people attending the sessions feeling more reassured about the project afterwards. It is intended that similar sessions will be held in the future at appropriate times.

Procurement Programme

- 3.17** WTI has indicated that it is still refining its solution with the aim of reducing costs, and as a result has requested that the Partnership consent to moving the call for Final Tenders from April 2013 to June 2013. The Project Board considered WTI's request and recommended that WTI be given additional time to further value engineer their solution in order to seek to further reduce the costs of the solution and to further improve value for money to the Partnership. The Joint Committee, at its meeting on 20th February 2013, approved this request. An amended programme is show at Appendix 3.

PM2.5 Monitoring

- 3.18** Following feedback provided by Members WTI were requested to provide further information on costs and practicability of potential additional PM2.5 monitoring (additional to the twice yearly monitoring already reported).
- 3.19** WTI have provided this information and the Joint Committee has been advised to progress with the additional PM2.5 monitoring.

Community Benefit Scheme

- 3.20** Further work has been done on the options for funding a Community Benefit Scheme and it is intended to take a report back to the Joint Committee for consideration at it's meeting in the early summer.

Sub-Regional Food Waste Project

- 3.21** Since the last report considered by Committee on 21st November 2012, the following progress has been made:-
- 3.22** The 'Interim Service' has been operating since November 2012. To date, 3,500 tonnes of food waste collected by Conwy, Denbighshire and Flintshire has been processed at the Harper Adams University AD plant and Biogen's Twinwoods site in Bedfordshire. The Interim Service has been running smoothly with no problems reported by the Council's Operations teams.
- 3.23** Planning consent for the treatment facility was granted on 21st November 2012. The final pre-commencement planning conditions are being discharged prior to the construction phase beginning. Biogen have arranged for clearance work to be undertaken in preparation for the construction works.
- 3.24** To mark the commencement of the construction phase of the Anaerobic Digestion plant, Biogen were organising a Term Cutting Event for 18th April 2013 which the then Minister, John Griffiths, was to attend. This is now being reviewed, to ascertain the availability of the new Minister for Natural Resources and Food, Alun Davies, for the date.
- 3.25** A key element of the communications plan during the procurement phase of the project was to ensure there was a high level of engagement with local residents. That level of engagement has been a success and it is intended to carry on with this approach during the operational phase of the project. A new 'Residents' newsletter was sent out on 9th March 2013 (and is received by every household within a 2 mile radius of the site).
- 3.26** Similarly, it is important to keep the local Town and Community Council, as well as Members across all three Councils informed and up to date on project progress / performance. A 'Members' newsletter is attached at Appendix 4. This will be sent to all Council Members after today's meeting.
- 3.27** The Welsh Government are interested in purchasing the western portion of the site for development as a strategic contingency salt store. The exact area of the site that WG require is being discussed with Denbighshire's Property Services.

4.00 RECOMMENDATIONS

- 4.01** That Members note the content of the report.

5.00 FINANCIAL IMPLICATIONS

5.01 The proposals are anticipated to be well within the Affordability Envelope approved by full Council in March 2010.

6.00 **ANTI POVERTY IMPACT**

6.01 None

7.00 **ENVIRONMENTAL IMPACT**

7.01 None

8.00 **EQUALITIES IMPACT**

8.01 None

9.00 **PERSONNEL IMPLICATIONS**

9.01 None

10.00 **CONSULTATION REQUIRED**

10.01 Consultation of relevant communities and bodies will be very important to the future successful delivery of the Project.

11.00 **CONSULTATION UNDERTAKEN**

11.01 Various consultation processes have been undertaken throughout the Project to date. The results of the consultations have been used to inform the Project's progress.

12.00 **APPENDICES**

12.01 Appendix 1 – Legal Guidance.

Appendix 2 – Letter from Welsh Government

Appendix 3 – Project Programme

Appendix 4 – Members' Newsletter

LOCAL GOVERNMENT (ACCESS TO INFORMATION ACT) 1985
BACKGROUND DOCUMENTS

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