

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **ENVIRONMENT OVERVIEW & SCRUTINY
COMMITTEE**

DATE: **WEDNESDAY, 26TH FEBRUARY 2014**

REPORT BY: **CHIEF EXECUTIVE, DIRECTOR OF ENVIRONMENT,
HEAD OF FINANCE AND HEAD OF LEGAL &
DEMOCRATIC SERVICES**

SUBJECT: **NORTH WALES RESIDUAL WASTE TREATMENT
PROJECT – OVERVIEW REPORT**

1.00 PURPOSE OF REPORT

- 1.01 To seek Members' views on the appointment of a Preferred Bidder and to set out the stages leading to Financial Close and the award of a contract.
- 1.02 To seek Members' views on the key principles for the 2nd Inter-Authority Agreement for adoption by all constituent authorities.

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 for 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. Flintshire is the lead authority.
- 2.02 The proposed waste facility is intended to have a treatment capacity of approximately 175,000 tonnes per annum of which 115,000-117,000 tonnes of residual waste will be supplied by the Partner authorities (32,000-34,000 by Flintshire County Council).
- 2.03 One of the key issues for the Project is the range of and levels of waste targets for local authorities in Wales:-

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 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.

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)

At the outset of the Project, it had been established that “do nothing” was not a viable option for the future. The Project will play a key role in Flintshire meeting the Municipal Waste targets to avoid the substantial fines.

2.05 Quarterly reports have been brought to this Committee during the procurement process to update Members on key issues and progress made. The last report was on 16th December 2013.

2.06 Details of the work undertaken to ensure value for money is being provided by WTI’s proposals were reported to the 16th December 2013 Environment Overview & Scrutiny Committee. These fell into three areas :-

- Capital costs
- Revenue costs
- Indexation

2.07 As reported in the 16th December report, all matters that required finalisation before Close of Dialogue had been agreed, WG had given their approval to call for Final Tenders and WTI's proposals were received on 6th December. The Joint Committee met on 29th January and formally agreed to recommend to Partner authorities that Wheelabrator Technologies Incorporated (WTI) should be awarded Preferred Bidder status.

2.08 Members will recall that 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 Joint Committee agreed a risk assessment and management approach to manage the implications of the withdrawal. Sita had been the second of the two bidders who were successful in reaching the final stage of the competitive procurement process.

2.09 Guidance was sought from the Partnership's legal advisors, Pinsent Masons, to identify any relevant procurement guidance that would apply in these circumstances. In summary, UK HM Treasury 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.

2.10 The Joint Committee is assured that the Partnership is still in a good position to secure 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 a competitive

process throughout each procurement stage;

3. This competitive process had meant that the Partnership also had 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; and
4. Wheelabrator Technologies Incorporated (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.

2.11 The position the NWRWTP is in with one remaining bidder is not unique, and indeed there are 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).

2.12 Welsh Government has confirmed its support for the NWRWTP procurement to continue with a single bidder.

2.13 The Project'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.

They felt 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 Joint Committee 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.

2.14 The Joint Committee examined both the issues that were raised by the statutory officers. It was satisfied on the evidence that proceeding with a single bidder would still represent value for money.

3.00 CONSIDERATIONS

3.01 WTI's Final Tender has been analysed in detail by the Project's external advisors :-

- Environmental/Technical – Amec
- Financial – Grant Thornton
- Legal – Pinsent Masons

The advisors' analysis and commentary on the Final Tender is set out in the report "Recommendation of Appointment of Preferred Bidder", which is on the Part 2 Agenda of today's meeting.

3.02 In summary, the advisors' views are :-

Technical/Environmental

WTI are proposing to use technology which is well established across Europe with a well-known contractor. They have taken account of the key planning issues and had extensive discussions with NRW regarding permitting. The overall landfill diversion rate is high and will contribute significantly to WG targets for zero waste.

Financial

The financial robustness of the bid has been tested and is well within the Affordability Envelope approved by Partner authorities.

Legal

Further movement has taken place on risks since clarifying some points in the Final Tender. The overall risk position for the Partner authorities is favourable, compared to similar projects. Also, the level of agreement on legal matters is well advanced at this stage in comparison with other similar projects.

3.03 During previous discussions on the NWRWTP, Members have raised a number of issues and asked that they be addressed :-

- Road -v- Road/Rail transport arrangements
- Emissions and Air Quality
- Community Benefit Scheme

The following paragraphs outline the response to each of these issues in turn.

3.04 Road -v- Road/Rail transport arrangements

The Partnership had previously chosen road and rail as the preferred method of transporting the waste to the facility, however on receipt of draft pricing from WTI and detailed analysis of that pricing, it was evident that the development of a road and rail based transport system involved significantly more capital expenditure than transporting the waste by road only. Crucially, the cost differential between road and road / rail was significantly higher than estimated at the Invitation to Submit Detailed Solutions (ISDS) stage when the decision was made to pursue road and rail. Much of the difference is a result of revised and refined pricing from the rail operators and network.

The Partnership's external technical adviser has confirmed that the capital costs for rail are assessed reasonably and that there is no reason to believe that the operational sub-contracted costs (e.g rail haulage) could have been provided by another party at substantially less cost than that proposed by WTI. When the decision was taken by the Joint Committee that road / rail was the preferred transport option, the decision was reversible, if subsequently there were issues with that option, such as cost. The public consultation previously undertaken by the Partnership supports this switch as two out of three people supported road / rail if it was only slightly more costly than road, whereas only one out of every three people would wish to see road / rail if it was significantly more than road alone.

Should the relative costs of road -v- road / rail change in favour of road / rail during the term of the contract, this matter can be re-assessed, as space for rail provision is being maintained in the design.

Estimates of traffic volumes indicate that traffic movements to the facility will be in the region of 45-55 vehicles per day for the road only solution. It is estimated that the road / rail solution would have had approximately 15 vehicles per day less than the road only solution. These figures are inclusive of Flintshire County Council's fleet.

3.05 Emissions and Air Quality

The Joint Committee has agreed to carry out air quality monitoring of fine particulates (known as 'PM2.5') more frequently than the statutory requirement (which is to monitor for 'PM10' particulates), for as long a period as considered necessary. This enhanced monitoring is aimed at giving reassurance to Members and the local community that the emissions from the treatment facility will be within established guidelines.

3.06 Community Benefit Scheme

A Community Benefit Scheme has been approved by the Joint Committee. This will provide £180k per annum for each of the 25 years of the contract, funded through a contribution within the gate fee paid by each authority. The money can be used for community and educational projects under the themes of environment, climate and energy within the locally defined Deeside Partnership Area. The money could be used either in part or in total, to fund Prudential Borrowing for larger projects falling within the above themes.

3.07 In addition to the three issues raised above, Officers have continued to protect the Council's interests during discussions of the Project Board. Following September 2013, when the Joint Committee decided to remove the Transfer Stations network from the contract, thereby removing it from the Universal Gate Fee, the management costs for running the sites have been examined. The project team has debated how to set up the future funding arrangements and agreed a fair way forward, with no subsidy of other Councils' management costs by Flintshire. Following the Joint Committee decision, all five authorities will be responsible for their own operations and costs. Normally WG only subsidises the contract costs with the operator and no costs outside the contract. However, WG has agreed in principle to fund the subsidy in this case, which means that the Council will now benefit at £50k per annum.

3.08 In March 2010, the Council and each of the other Partner Authorities entered into an Inter Authority Agreement, which sets out how costs and risks are managed throughout the procurement process. This Inter Authority Agreement will cease to apply, should all Partner Authorities approve WTI as Preferred Bidder and a contract is awarded.

3.09 The new, second Inter Authority Agreement is based on the same principles as the original Agreement. The new Agreement is to be adopted by all five constituent Councils and will shape how the Partnership operates throughout the 25 year term of the contract. Whilst most of the information is currently available for the new Agreement, there will inevitably be details that need working up between now and contract closure, hence delegated authority is sought to finalise the documents.

3.10 The next steps for the Project are set out below :-

1	All five Council resolutions secured by April
2.	Joint Committee confirms Preferred Bidder status to WTI
3.	Financial close and Contract Award by June

4.	WTI will be active in planning application development after 1. above and in community relations after 2. above
5.	Planning Application Submission – September 2014
6.	Planning Determination – May 2015
7.	Judicial Review Period – May-August 2015
8.	Planning Consent Achieved – August 2015
9.	Facility Fully Operational – September 2018

4.00 RECOMMENDATIONS

4.01 That Members note and comment on the report.

5.00 FINANCIAL IMPLICATIONS

5.01 As covered by the reports on the Agenda.

6.00 ANTI POVERTY IMPACT

6.01 None.

7.00 ENVIRONMENTAL IMPACT

7.01 The Outline Business Case demonstrates that a residual waste treatment facility will reduce the environmental impact related to the disposal of residual waste in the Partnership area.

8.00 EQUALITIES IMPACT

8.01 None.

9.00 PERSONNEL IMPLICATIONS

9.01 None.

10.00 CONSULTATION REQUIRED

10.01 Further consultation will be undertaken as part of the planning and permitting process.

11.00 CONSULTATION UNDERTAKEN

11.01 Quarterly update reports have been considered by the Committee throughout the procurement process.

- 11.02 The Partnership have been engaging and consulting with local communities, Community Councils and Local Members at key stages in the procurement process. Public engagement and consultation has been in the form of the NWRWTP website, leaflets/information booklets, press releases and meetings. A number of “drop in” sessions have been held in Flintshire (in particular in Connah’s Quay) at various stages throughout the process from March 2010 onwards.
- 11.03 WG and NRW have been kept informed of progress on the Project throughout the procurement process.

12.00 APPENDICES

- 12.01 None.

**LOCAL GOVERNMENT (ACCESS TO INFORMATION ACT) 1985
BACKGROUND DOCUMENTS**

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