

Appendix 4

Queries received from Unite (black text), and responses provided by the Partnership (in blue text) responses provided 8 June 2018)

response in blue).

1. Kindly confirm if the project was tender for under the Public Procure (2015) Regulations;
 - a. The procurement for the project began in 2010 therefore was carried out under the 2006 regulations. Many of your questions are based on the assumption that the 2015 regulations applied and are therefore unfounded. However, we have nevertheless demonstrated where the partnership addressed the substance of your concerns. Also, it is important to note that Welsh Government played an important role through Local Partnerships throughout the procurement process at each stage and during negotiations with all bidders.
2. Could you kindly identify if the Parc Adfer project comes under the “Well-being of Future Generations (Wales) Act 2015”, if so, what are the Sustainable developments the Five Council and the Partnership delivering on with regards to “the economic, social and environmental and cultural well-being for the next generation to those residents within the five communities;
 - a. Note that Colin Everett has already responded to this noting that the Act is very general in its objectives and does not in itself introduce specific legal requirements for procurement.
3. If so, could you please set out what procedures are in place to monitor the Guidance on Social, Ethical and Environmental aspects as per the (PPR 2015, Contract award Criteria 67), when the Five Authorities awarded the project to Wheelabrator Technologies Inc,
 - a. The regulation you have quoted does not apply to this contract because it was not let under the 2015 regulations. There are guaranteed levels of environmental performance for the plant within the contract, and as provided in an email to you on 19/4/18, Schedule 13 of the contract refers to the Authorities Policies. This is attached again for ease. This is a contract management and comprehensive governance structure in place to monitor the contract and its performance. The plant is also subject to and will be required to operate in compliance with environmental consents granted, monitored and enforced by Natural Resources Wales as the appropriate regulator.
4. Would you confirm if the Public Private Partnership contracts includes a Variants Clause of the (PPR 2015 as like clause 45);
 - a. The regulation you have quoted does not apply to this contract because it was not let under the 2015 regulations. This is a long term waste service contract, and whilst the possibility exists to vary aspects of the contract, no material

changes can take place without the formal consent of various stakeholders to the contract. It should also be noted that as a result of being a waste services contract, the responsibility for the construction of the facility rests with the Contractor.

5. Again, does the contract comply with Clause 56 (2) of the (PPR 2015) in its entirety or is it solely designed around the term National Law i.e. Living Wage
 - a. The regulation you have quoted does not apply to this contract because it was not let under the 2015 regulations. As noted above, responsibility for the construction of the facility rests with the Contractor, however there is a general obligation for them to act within the law.

6. What procedures did the Five Authorities take, prior to awarding the contract to Wheelabrator Technologies Inc, ensuring the contract was not an abnormally low bid (PPR 2015 clause 67) –
 - a. The regulation you have quoted does not apply to this contract because it was not let under the 2015 regulations. The Partnership has a robust and proven governance structure within which the procurement process was managed. The procurement began in 2010, and this governance structure detailed how each decision point was to be dealt with. Each stage required rigorous scrutiny before approval to move on to the next stage including detailed work of specialist advisors (legal, technical and financial) as well as a robust scrutiny process from Welsh Government throughout the procurement. Of course, this all relates in direct terms to the cost of the service to be provided (which is, of course a function of man aspects, not just the construction costs).

7. What mechanism does members of the Five Authorities Board have in place to monitor any special conditions relating to the performance of Wheelabrator Technologies Inc as per (PPR 2015 Conditions for Performance of Contract 70 & 67.5).
 - a. The regulation you have quoted does not apply to this contract because it was not let under the 2015 regulations. Within the contract there are a host of performance standards for WTI to adhere to in relation to the safe and efficient operation of the facility.

8. How regular are workplace inspections taking place on the project along with any supporting evidence on actions that need to be addressed.
 - a. The Regional Contract Manager visits the site on at least a weekly basis and there are monthly contractual meetings that cover all aspects of the contract (not just the construction).

9. Kindly clarify and provide copies of the Project Health & Safety Committee minutes and how regular these meeting are held.
 - a. These have been provided previously through Becky Bell.

10. What steps does the Public Private Partnership have in place in providing Equality of opportunity for Employment with the Engineering Construction Contractors (Mostostal Pulawy, Harris Pye & Others) as our members have grave concerns regards the success rate through the Job Fair

- a. All CVs received are acknowledged and recorded through the project website, which is widely advertised, including by local partners, such as Job Centre Plus. Following this, the CV's are scanned and sorted into trades.

As each contractor is appointed through the procurement process, relevant trade CVs are forwarded to the contractor. The contractor is required to consider these CVs as part of any recruitment process for any opportunities that arise. This may vary from contractor to contractor, depending on the function or service being provided and the skills required.

11. More importantly, whilst I note from the last meeting there is a commitment for the authorities to undertake a project Audit, kindly confirm if both Trade Unions will be provided with a copy of the Audit report for transparency.

- a. This process is not quite complete yet, however this will be passed on when it is finalised."

Further to the above, a number of follow up queries were received:-

"Many thanks for Colin and your time, and I really appreciate your response in confirming the Parc Adfer project was procured under the 2006 regulations.

Nevertheless could you kindly confirm was the award of the public contract as per Regulation 30

- 30.-(1) Subject to regulation 18 (27) and to paragraph (6) and (9) of this regulation, a contracting authority shall award a public contract on the basis of the offer which-
 - (a) Is the most economically advantageous from the point of view of the contracting authority; or
 - (b) Offers the lowest price
- 30.(6) If an offer for a public contract is abnormally low the contracting authority may reject that offer but only if it has-
 - (a) Requested in writing an explanation of the offer or those parts it considers to the offer being abnormally low;
 - (b) Taken account of the evidence provided in response to a request in writing; and
 - (c) Subsequently verified the offer or parts of the offer being abnormally low with the economic operator

Kindly clarify what mechanism and processes are in place within the Five Authorities to ensure the Parc Adfer project was not of an abnormally low price prior to accepting Wheelabrator offer to construct and maintain the project throughout the term.

- 30.(7) Where a contacting authority requests an explanation in accordance with paragraph (6) the information requested may, in particular, include-
 - (d) Compliance with the provisions relating to employment protection and working conditions in force at the place where the contract is to be performed;

Kindly provide a copy of the provisions relating to employment protection, relating to which relevant Collective Agreement(s) are the employees of the respective Tier 2 Contractors employed under as the advertisement on the Parc Adfer website makes reference to “Broadly Comparable to NAECI”.

Also could you kindly confirm what “Free Protective Equipment” is provided by the Tier 2 contractors to their employees and also by the Employment Business Service Providers (Agencies).

The following response was provided on the 14 June 2018

“The further questions are again based on the 2015 regulations and not the relevant regulations under which the contract was let. The 2006 regulations don’t contain equivalent requirements.”