

**SCRUTINY COMMISSION – 28 OCTOBER 2009**

**PROCUREMENT OF LONG TERM WASTE TREATMENT FACILITIES -  
PROGRESS AND INVOLVEMENT OF SCRUTINY**

**REPORT OF THE CHIEF EXECUTIVE AND DIRECTOR OF HIGHWAYS,  
TRANSPORTATION AND WASTE MANAGEMENT**

**Purpose of Report**

1. This report sets out a summary of the progress made on the procurement of new waste treatment facilities within Leicestershire.
2. The report also sets out the views of the Scrutiny Commissioners on the role a scrutiny review panel could play in the procurement process prior to a final decision being made by the Cabinet and County Council.

**Background**

3. The provision of new waste treatment facilities is an essential part of implementing the revised Leicestershire Municipal Waste Management Strategy.
4. The process in terms of securing Private Finance Initiative (PFI) funding support involved a two-stage approach.
5. An Expression of Interest document was submitted to Defra at the end of September 2007 and a positive response was received from Defra in December 2007.
6. The interim findings of the Scrutiny Review Panel on the Procurement of Long Term Waste Treatment Facilities were reported to the Cabinet on 3 March 2008. Its work had focussed on the issues facing the Authority in terms of the rising cost of landfill waste disposal in the long term, detailed scrutiny of the decision making processes used to inform the preparation and development of the Expression of Interest documentation submitted to DEFRA and the range of technologies that might be available for the treatment of waste with a view to suggesting broad options.
7. Following approval by the County Council's Cabinet on 8<sup>th</sup> April 2008, an Outline Business Case (OBC) was submitted to Defra and subsequently approved, resulting in the award of £86.6m PFI credits in October 2008.
8. The Scrutiny Review Panel, submitted a further report to the County Council's Cabinet on 1 October 2008 which made recommendations regarding the production of the County Council's project evaluation

criteria and weightings that would be used in the early stages of the process to assess the suitability of companies wishing to bid for the contract.

9. At that same meeting, the Cabinet gave approval for the procurement process to begin and also agreed the evaluation methodology which would be applied to assess proposals.

### **Scope and Objectives of the Procurement Project**

10. The scope and objectives of the project are as follows:
  - The contract is for the provision of residual waste treatment infrastructure only. The contract will provide for treatment of up to approximately 180,000 tonnes per annum (by 2040) of residual municipal waste. The contract duration is anticipated to be 25 operational years with three years allowed for construction and commissioning.
  - The approach to the procurement, consistent with Defra's advice, is to adopt a neutral stance on both technology and sites, in order to encourage competition and ensure that the most environmentally sustainable solution is identified. It is recognised that the eventual choice of technology and site will be in response to market proposals based on an open output specification.
  - In support of its bid for PFI funding support the County Council was required to develop a Reference Project that would act as a benchmark against which proposals from bidders could be assessed. The Reference Project identified, following a detailed options appraisal, an Energy from Waste (EfW) facility with potential for Combined Heat and Power (CHP) and an associated transfer station as the preferred solution. The selection of these technologies as a point of reference does not in any way limit the options available for submission by the bidders through the PFI process.
  - In addition, it was also required to nominate Reference Sites that it controlled and that could be offered for use by prospective bidders. The Reference Sites put forward by the County Council are at Whetstone and Bardon. Initial assessment indicated that the sites would be able to accommodate a variety of Mechanical Biological Treatment (MBT) or EfW configurations.
  - The procurement of new treatment facilities will not prejudice the continued efforts to maximise waste minimisation, overall recycling and composting rates in the County. However, the facilities may include recovery operations that would contribute to Leicestershire's recycling performance.

- The new treatment facilities should be tolerant of long-term changes in waste composition including the result of higher recycling and composting performance.
11. A Statement of Understanding was produced and a formal agreement completed and signed off by all the District Councils and the County Council in April 2008. The Statement of Understanding sets out a number of contractual obligations on the District Councils and the County Council to work in partnership with respect to the long term waste procurement project.

### **Procurement Process**

12. The formal procurement process commenced with the publication of a notice in the Official Journal of the European Union (OJEU) in October 2008. In response to this notice, fourteen companies/consortia came forward and returned a pre-qualification questionnaire (PQQ) by the end of November 2008.
13. Following evaluation of the PQQs, eight companies/consortia were selected to go forward to the next stage and submit outline solutions. The list of companies/ consortia, in alphabetical order, was published in January 2009 as follows:
  - Biffa UK Ltd;
  - Covanta;
  - Lafarge/Interserve;
  - Shanks;
  - Sita UK Ltd;
  - United Utilities/John Laing Investments;
  - Veolia;
  - WRG Ltd.
14. The invitation to submit outline solutions was issued in January and a total of eight proposals were returned in April 2009. Following presentations by the bidders to the Project Team, the proposals have been evaluated in accordance with the criteria and methodology previously approved by the County Council's Cabinet.
15. The outcome of this evaluation resulted in the following bidders being shortlisted (in alphabetical order):-
  - Biffa;
  - United Utilities/John Laing;
  - Veolia.
16. Invitations to submit Detailed Solutions have been sent out to the companies that have been shortlisted. They will be invited to continue the competitive dialogue process with the County Council and to submit their Detailed Solutions in December 2009. The evaluation of the

Detailed Solutions will then be undertaken with a view to reaching the preferred bidder stage by the summer of 2010 with planning consent and construction being completed in time for an operational start in April 2015.

### **Role for Scrutiny**

17. Following a request from the Chairman of the Commission, the issue of scrutiny involvement prior to the final decision on the preferred bidder, was discussed at the meeting of the Scrutiny Commissioners on 5<sup>th</sup> October 2009. The Commissioners were advised that scrutiny involvement would be welcomed but that there needed to be a clear understanding of the role any Scrutiny Panel could play and the restrictions that may apply. The issues drawn to the attention of the Commissioners were:-
- the County Council had already determined the criteria and the evaluation methodology which would be applied to assess all proposals and that it would not be possible to re-open this debate. In this regard it should be noted that a neutral stance on both technology and sites had been adopted in order to encourage competition and ensure that the most environmentally sustainable solution is identified;
  - the role of the Panel would be to advise the Scrutiny Commission as to whether it considered the bids received had been evaluated correctly against the agreed criteria and methodology;
  - there are restrictions on the information the County Council is able to disclose prior to the final decision on the preferred bidder both in terms of respecting commercial confidentiality of bidders as well as safeguarding the Council's negotiating position. In particular the proposed location and treatment methodology would have to be kept confidential in accordance with European Procurement Rules. Accordingly, members of the Panel would be required to give an undertaking not to disclose information obtained at meetings of the Scrutiny Panel and that large parts of the proceedings of the Panel would need to be conducted in private;
  - the issue of location of any facility would be outside the remit of the Panel. It would be a matter for the successful bidder, not the County Council, to identify the appropriate site, seek the necessary licences and obtain planning permission;
  - any members who serve on the Scrutiny Panel would not be eligible to serve on the Development Control and Regulatory Board of the County Council and on District Planning

Committees when the planning application for the new waste treatment facility is considered.

18. The Commissioners noted the advice provided and recommended that the Scrutiny Commission should establish a Panel to scrutinise the process and methodology to assess the potential bids against the agreed criteria. The Commissioners also concluded that there would be merit in the Panel commencing work at least by December so that the members of the Panel could be briefed on the criteria agreed by Council, the rationale behind the criteria and the process of arriving at the criteria. This would enable the Panel to be in a position by late January/early February to undertake its role.
19. The Commissioners also considered the potential membership of the Panel. One view expressed was that it may be useful for all or some of the members who had served during the life of the previous Council on the scrutiny panel which helped develop the criteria to serve on the new Panel. This should however not exclude any new members of the Council who may be interested in serving on the Panel.

### **Recommendation**

20. The Commission is asked to agree to the establishment of a Scrutiny Review Panel to scrutinise the process and methodology to assess the potential bids against the criteria previously agreed by the County Council.

### **Equality Impact Assessments**

#### **Environmental**

The procurement process takes a neutral stance on both technology and sites. Another objective of the procurement of new treatment facilities is that it should not prejudice the continued efforts to maximise waste minimisation, overall recycling and composting rates in the County.

#### **Equal Opportunities**

None.

### **Background papers**

Report to Cabinet – Procurement of Long Term Waste Management Treatment Facilities – 1 October 2008

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