

**SCRUTINY COMMISSION – 9 JUNE 2010****REPORT OF THE SCRUTINY REVIEW PANEL****PROCUREMENT OF WASTE TREATMENT FACILITIES****Purpose of the Report**

1. The purpose of this report is to outline the conclusions and recommendations of the Scrutiny Review Panel arising from the examination of the process and methodology used to assess the proposals received from bidders against the project evaluation criteria previously agreed by the County Council.

**Membership of the Panel**

2. The following members were appointed to serve on the Panel for this stage of the Review:-



Mr. D. C. Bill CC



Mr. G. A. Boulter CC



Dr. R. K. A. Feltham CC



Mr. D. Jennings CC



Mr. W. Liquorish CC



Mr P. A. Roffey DL CC

Dr. R. K. A. Feltham CC was appointed as Chairman of the Panel.

## **Policy Framework and Previous Decisions**

3. The revised Leicestershire Municipal Waste Management Strategy (LMWMS) was adopted by the County and District Councils in July 2006. This Strategy identified the need for procurement of new long term waste treatment facilities to meet the European Landfill Directive targets that require Local Authorities to progressively reduce the amount of biodegradable municipal waste going to landfill. It was recognised that the procurement would need to start as soon as possible because of the estimated timescale for delivery and the potential to incur large fines from failing to meet the requirements of the Waste Emissions Trading Act 2003.
4. The County Council's Cabinet gave approval in July 2007 to pursue the procurement of long term waste treatment facilities and to a "Reference Project" with the technology being Energy from Waste with potential for combined heat and power. The Cabinet report identified the Private Finance Initiative (PFI) as the funding route to be pursued and gave authority to develop and submit an Expression of Interest document to Defra in support of a bid for PFI credits.
5. The Expression of Interest document was submitted at the end of September 2007 and approved by Defra in December 2007. This led to the next and final stage of the bidding process, which was the preparation of an Outline Business Case which involved further detailed evaluation of both the technology and funding choices. On 8 April 2008 the Cabinet approved the submission of an Outline Business Case to Defra which led to the award of PFI credits to support the procurement of new waste treatment facilities.
6. On 1 October 2008, the Cabinet approved the commencement of the procurement process and the project evaluation methodology.

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

7. 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 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, noting this would not preclude bidders from proposing alternative locations or varying the number of sites to be used in their submissions. 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.
8. 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

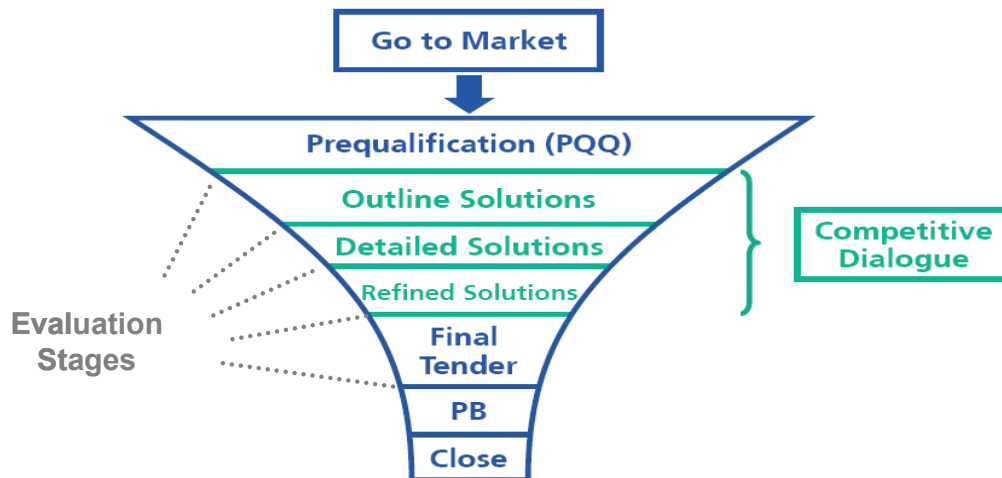


Diagram courtesy of Local Partnerships

9. 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.
10. 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.
11. 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 were evaluated in accordance with the criteria and methodology previously approved by the County Council's Cabinet.
12. The outcome of this evaluation resulted in the following bidders being shortlisted (in alphabetical order):-
  - Biffa;
  - United Utilities/John Laing;
  - Veolia.

13. Invitations to submit Detailed Solutions (ISDS) were sent out in the summer of 2009 to the companies that were shortlisted. They were invited to continue the competitive dialogue process with the County Council and have now submitted their Detailed Solutions, the evaluation of which is being finalised and which will be considered by the County Council's Cabinet on 15 June 2010. It is the intention to call for final tenders by late 2010 with planning consent and construction being completed in time for an operational start in April 2015.

### **Conduct of the Review to Date**

14. The Scrutiny Review Panel, under a previous membership, was established in the autumn of 2007. It met on seven occasions and undertook two site visits between November 2007 and February 2008, prior to submitting its interim findings to the Environment Overview and Scrutiny Committee on 28 February 2008. The focus of the Panel's interim work was on the following:

- The issues facing the Authority in terms of the rising cost of landfill waste disposal in the long term;
- A detailed scrutiny of the decision making processes used to inform the preparation and development of the Expression of Interest documentation submitted to Defra;
- Consideration of the range of technologies that might be available for the treatment of waste with a view to suggesting broad options.

15. The Cabinet, having received the Panel's report on 3 March 2008, welcomed its recommendations, taking them into account prior to submitting its Outline Business Case for the project to Defra.

16. On 29 July 2008 the Scrutiny Review Panel re-convened in a workshop setting to analyse and influence the scoping of draft evaluation criteria and weightings that would be used to assess the suitability of companies that entered the procurement process.

17. The Scrutiny Review Panel submitted its 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, in order to assess the suitability of companies wishing to bid for the contract.

18. 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.

### **Terms of Reference for the Third Stage of the Panel**

19. The Scrutiny Commission at its meeting on 28<sup>th</sup> October 2009 agreed,

inter alia, that the Scrutiny Review Panel be reconvened in order to:

**‘scrutinise the process and methodology used to assess the potential bids against the criteria previously agreed by the County Council.’**

### **Conduct of this Stage of the Review**

20. The Panel subsequently reconvened in February 2010 and met on five occasions through to the end of May 2010.

21. The Panel was supported in its work by the following officers and external advisers:

#### Officers

- Holly Field - Assistant Director - Environment
- David Morgan - Head of Legal Services
- Ben Smith – Committee Officer
- Harold Yates - Waste Infrastructure & Procurement Manager

#### External Advisors

- Alex Green – Chartered Mechanical Engineer, Entec UK Ltd (Technical Advisors)
- Duncan Powell - Waste Infrastructure Delivery Programme Transactor (Local Partnerships/Defra)
- Mike Read – Director and joint manager of the Government and Infrastructure Advisory (GIA) waste business for Grant Thornton UK LLP (Financial Advisors)

22. The initial two meetings focussed on familiarising the Panel with the background and context for the project and the procurement process so far. In addition, Duncan Powell provided a detailed explanation of the procurement evaluation methodology and criteria. The remainder of the meetings were considered in closed session as they involved issues of commercial confidentiality, and focussed on the following areas:

#### Scenario Testing of Evaluation Criteria

23. The Panel received evidence of the scenario testing that was carried out by the Project Team to ensure that the evaluation criteria and weightings resulted in no particular bias to any one technology type. This scenario testing was carried out prior to the procurement process commencing.

24. The Panel also reviewed the theoretical scoring provided for a range of technologies set against the individual sub-criteria and the scoring of the various technologies was found to be within an acceptable tolerance.

**a) In analysing the scenario testing undertaken, the Panel:**

- **recognise that any combination of location, site and technology could be proposed by bidders;**
- **recognise that the application of the evaluation criteria and weightings determines the outcome at each stage in the process;**
- **is broadly satisfied that the evaluation criteria and weightings did not favour any particular technology.**

Pre Qualification Questionnaire (PQQ) Stage and Evaluation Process

25. The Panel reviewed the process undertaken to receive and evaluate PQQs. The PQQ required interested companies to provide information on their technological and professional capabilities, experience, and their economic and financial standing to deliver the project.
26. Thirty companies expressed an interest in the project leading to 14 PQQ's being returned. Evidence was received by the Panel regarding how the PQQs were evaluated and, how following evaluation, 8 companies were selected for approval to go forward to the next stage.
27. Arising from questioning of the external advisors to the project, Members received assurance that these reductions in number were consistent with other similar projects that they were involved with around the country.

Invitation to Submit Outline Solutions (ISOS) Stage and Evaluation Process

28. The Panel then reviewed the process undertaken to evaluate outline solutions, which involved evaluation of bidders' initial proposals against agreed criteria and weightings. Following evaluation 3 companies were recommended for approval to be taken through to the Detailed Solution stage of the project.
29. Discussion by the Panel at this stage centred on the weightings provided for the various criteria being measured for ISOS, a summary of the outline proposals submitted and the reasons for de-selection prior to 3 companies having their submissions approved to move forward to ISDS.

**b) Having reviewed the process undertaken, from analysis of the PQQ evaluation through to the ISOS stage, the Panel is broadly satisfied that this process has been undertaken effectively and appropriately in order to enable a suitable list of bidders to move forward to the ISDS stage.**

## Integrity of the Procurement Process to date and Project Risk Register

30. In undertaking a procurement of such cost and magnitude, it is important that robust mechanisms are in place to ensure probity and compliance with procurement legislation for each stage of the process.

31. From the start of the project, the Government Department of Defra has provided a transactor, Duncan Powell, to oversee the project:

- To ensure each stage of the process is sound, follows best practice and to provide impartial advice to the County Council; and
- To provide progress reports back to Defra to ensure Government is satisfied as to the project's integrity.

The Panel welcomed the fact that the process had also been subject to regular reviews by a team of external experts, independent of the procurement project, undertaken at key decision points in the project lifecycle. These reviews are known as 'Gateway Reviews'. Three such reviews have already been undertaken and further reviews will be forthcoming throughout the remainder of the project.

32. The evaluation process has also been conducted using multidisciplinary teams, including officers and external advisors, with evaluation scores co-ordinated independently to ensure consistency. The Project Sponsor and Chief Officers have been informed regularly of progress providing the opportunity for challenge. Internal Audit has been invited to review the project to ensure Contract Procedure Rules have been followed.

33. The Panel has also noted that the Project Team has followed a structured process of risk management that follows corporate guidelines through the maintenance of a Project risk Register first created in June 2007. This register has been regularly reviewed at Project Team meetings with 40 Risks with mitigating actions identified at the Project's start. The number and type of risks has changed as the project has developed. Where necessary, changes to risks have been escalated to the Corporate Risk Register which is reviewed on a quarterly basis at Member level by the Corporate Governance Committee.

**c) Having reviewed the multi-disciplinary nature of those involved in the project, both internally and externally, together with the mechanisms for identifying and mitigating risk, the Panel is broadly satisfied that the Procurement Process maintains a high level of integrity and that the Project Team are well placed to recognise and mitigate potential risks that may arise.**



### **Resources Implications**

34. Although the proposals put forward by bidders carry significant resource implications for the County Council, the conclusion of the Panel's review into the evaluation process will not lead to any extra resource implications.

### **Timetable for Decisions**

35. This report of the Scrutiny Review Panel, subject to the comments and approval of the Scrutiny Commission, will be considered by the Cabinet on 15 June 2010.

### **Recommendation**

36. **The Scrutiny Commission is recommended to:**

**note the findings (a-c) in the report and note that the Panel is broadly satisfied that the procedures and mechanisms in place throughout this part of the procurement process were robust and adhered strictly to the criteria laid down for assessing the potential bids.**



**Dr. R. K. A. Feltham CC  
Chairman of the Scrutiny Review Panel**

### **Environmental Implications**

37. In providing for an open output specification in the procurement process, the County Council through the competitive dialogue process will be able to achieve environmental benefits from whichever technology solution is chosen as part of an overall value for money package that meets the County Council's Output Specification.

### **Equal Opportunities Implications**

38. None.

### **Background Papers**

Leicestershire Municipal Waste Management Strategy 2006;  
Expression of Interest to Defra;  
Outline Business Case to Defra

Report to Cabinet – Procurement of Long Term Waste Management Treatment Facilities – 24 July 2007;  
Report to the Environment Scrutiny Committee - Procurement of Long Term Waste Management Treatment Facilities – 6 September 2007;  
Report to Cabinet – Scrutiny Review Panel – Procurement of Waste Treatment Facilities – 3 March 2008;  
Report to Cabinet - Procurement of Long Term Waste Treatment Facilities – 8 April 2008;  
Report to the Environment Scrutiny Committee - Procurement of Long Term Waste Management Treatment Facilities – 4 September 2008;  
Report to Cabinet - Procurement of Long Term Waste Treatment Facilities – 1 October 2008  
Report to Scrutiny Commission - Procurement of Long Term Waste Treatment Facilities - Progress and Involvement of Scrutiny – 28 October 2009.

**Circulation under the Local Issues Alert Procedure**

None.

**Appendix**

Glossary of Waste Terms

## Glossary of Terms

CHP	Combined Heat and Power
Defra	Department of Environment Food and Rural Affairs
EfW	Energy from Waste
Eoi	Expression of Interest
ISDS	Invitation to Submit Detailed Solutions
ISOS	Invitation to Submit Outline Solutions
LMWMS	Leicestershire Municipal Waste Management Strategy
MBT	Mechanical Biological Treatment
OBC	Outline Business Case
OJEU	Official Journal of the European Union
PB	Preferred Bidder
PFI	Private Finance Initiative
PQQ	Pre-Qualification Questionnaire
OJEU	Official Journal of the European Union
WRG	Waste Recycling Group Ltd