

Defra FBC approval letter including WIDP Commercial Close Conditions

6E Ergon House
Horseferry Road
London SW1P 2AL



Telephone: 0845 77 77 88
Web: www.defra.gov.uk

Richard Flinton
Chief Executive and Project SRO
North Yorkshire County Council
County Hall
Northallerton
North Yorkshire DL7 8AH

Your ref:
Our ref: North Yorkshire/PFI
Date: 22 June 2010

Dear Richard

North Yorkshire and City of York Waste PFI: Evaluation of Pre-Preferred Bidder Final Business Case (Pre-PB FBC)

Thank you for the recent submission of the Pre-PB FBC for the above project, which was received by WIDP on 22 April 2010.

Having scrutinised your submission I am pleased to confirm that the Executive WIDP Team (EWT) have agreed that the project continues to comply with the relevant PFI criteria and the current award of £65m of PFI credits for the project will continue to apply. We are therefore content for the authorities to proceed in appointing the preferred bidder, as identified within the Pre-PB FBC.

In granting this approval, the EWT note that the Council's have decided not to proceed to financial close until planning permission has been secured for the proposed residual waste treatment infrastructure. WIDP must therefore highlight that the allocation of credits may be at risk and that costs to the Council's may increase due to finalising costs at a later stage than other projects that reach financial close prior to securing planning permission.

All terms and eligibility for grant are set out in the endorsement letter of 11 September 2008. Furthermore, approval is also granted subject to the following specific conditions arising from our evaluation:

- The resolution of the issues listed in Appendix A of this letter prior to Commercial Close.

Also, please note that the ESA95 review, which assessed the project to be off budget for Defra, will be subject to a satisfactory budget assessment and sign-off by Defra Finance prior to financial close.



The credit award is also subject to the submission of a satisfactory Final Business Case (FBC) prior to Financial Close and I understand that the authority is presently working towards financially closing the contract in November 2011. Please keep WIDP informed of any potential significant slippage in this date. Please refer to our guidance on the FBC process for advice on completing the FBC:

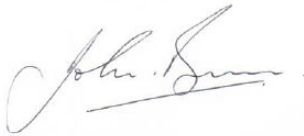
<http://www.defra.gov.uk/environment/waste/localauth/funding/pfi/guidance.htm>

You will require prior approval if, between now and contract signature, different terms are negotiated which affect either the nature of the project or the potential amount of PFI credits, or those terms differ from the relevant PFI standardisation documents. Any departure from these terms could affect the authority's entitlement to PFI credits, and will in any case risk delay to the project if PRG decides to have the proposed departures reviewed. Should we wish to support the revised project we would issue a further letter.

Please note that, in particular and without prejudice to the generality of the foregoing, the PFI credit allocation will be reviewed if, by the original anticipated Planning Longstop Date, a Satisfactory Planning Permission has not been achieved for the reference site as referred to in your FBC. The Authority will be required to submit all documentation, specified at the time by WIDP, in order for WIDP to complete the review. A possible outcome of the review may be that the allocation of credits is withdrawn.

Finally we encourage the publication of the Pre-PB FBC on your website at the earliest opportunity, albeit with any commercially sensitive information redacted.

Yours sincerely



John Burns
Programme Director
WIDP

Direct line: 020 7238 4310

Email: john.f.burns@defra.gsi.gov.uk

Web: www.defra.gov.uk

Cc: Ian Fielding - Project Director
Daryl Hill - WIDP Project Transactor
Amar Qureshi – Head of WIDP Commercial and Team and Contracts
John Enright – Head of WIDP Project Development and Scrutiny

Appendix A: Issues to be resolved prior to Commercial Close

- i. The Council's need to demonstrate to WIDP the appropriateness of potential funders Due Diligence at Commercial Close to provide assurance that new issues will not be raised between Commercial and Financial Close or if new issues are raised that they are managed appropriately so as to ensure Financial Close is achieved on obtaining Satisfactory Planning Permission or as soon as practicable thereafter.
- ii. WIDP will need to see a final version of the back-to-back sub contract between North Yorkshire County Council and City of York Council.
- iii. The Council's will need to demonstrate that the Council's liability, if any, in the scenario of failure to achieve Financial Close as a result of the project being unaffordable when Satisfactory Planning Permission has been achieved is documented appropriately. If the Council's are liable for costs under this scenario the Council's will need to demonstrate that budget has been allocated to pay such costs.
- iv. WIDP will need to understand what the Council's believe constitutes unaffordability for the project at Financial Close and how this will be reflected at Commercial Close and how the Council's, working with the Contractor, will manage the process of ensuring the project remains affordable between Commercial and Financial Close.
- v. The Council's will need to demonstrate that they have established an appropriate mechanism for managing the scenario were the Contractor fails to achieve a Satisfactory Planning Permission that results in Financial Close not being realised.
- vi. The Council's will need to demonstrate that Third Party Income compensation if Contract Waste is below GMT is appropriately set.
- vii. The Council's will need to demonstrate that the Capital Cost increase mechanism and the Longstop dates are appropriately set to ensure that the Council's have established a robust mechanism for ensuring the project remains deliverable in the event of delay on the delivery of a Satisfactory Planning Permission.
- viii. The Council's will need to demonstrate that they have appropriately incentivised the Contractor to complete the construction of the facility in accordance with the build timetable and that the Council's are not adversely affected by any delay.
- ix. The Council's will need to demonstrate that the financial Base Case that will be used for the purposes of the Project Agreement following Financial Close is appropriately set and that the mechanism for changing the model between Commercial Close and Financial Close is clearly documented.
- x. The Council's will need to demonstrate that they have agreed with the Contractor an appropriate level of senior debt funding coverage at Commercial Close that provides satisfaction that the project will be in a position to achieve Financial Close once a Satisfactory Planning Permission has been achieved. The Council's will also need to demonstrate that equity provision is also guaranteed to facilitate a timely Financial Close.
- xi. The Council's will need to demonstrate that the Project Agreement accurately documents the process for managing a split Commercial Close and Financial Close.