

Report of the Director of City Strategy

WASTE PFI UPDATE

Summary

1. This report notes the allocation of PFI credits to support the project, and provides an update on progress, highlighting the evaluation process and requesting approval to be delegated to officers to commit to an Inter-Authority agreement with NYCC.

Purpose of report

2. 1) To advise on progress of the project, setting out the procurement process and timescales.
- 2) To note the allocation of £65m PFI credits towards project costs.
- 3) To request authority to enter into an Inter-Authority agreement under seal with NYCC on the basis of the terms outlined in this report with any matters of detail to be delegated to the Director of City Strategy and Head of Civic, Democratic and Legal Services for determination.

Background

3. The Executive approved the submission of an Outline Business Case (OBC) to DEFRA for joint procurement of residual waste treatment services on 12 September 2006. Updated reports were approved by the Executive on 27 March 2007 and 26 June 2007. These set out updates on the project and particularly on the affordability of the future costs of the project.
4. The OBC concluded that a PFI contract was the preferred option for both Councils, within the requirements of the Joint Municipal Waste Management Strategy (JMWMS) approved by the Executive in June 2006, and CYC's waste strategy, approved in November 2004. The project prioritises recycling and assumes rates will rise to 50%. Hence it is necessary to deliver the improvements in recycling identified in the medium term LATS strategy as set out by the Director of Neighbourhood Services in the report to the last Executive on 9 October 2007.
5. Other options, such as working with, using other local authorities services, and building a CYC facility have also been considered and found to impose highly significant risks to the authority in terms of price, legislation, deliverability, and

planning exposure. It has been concluded that the PFI solution offers the most cost effective deliverable solution for the long term for both local authorities.

6. At the Executive in June 2007 Members approved the progression of the project into the procurement phase using the evaluation criteria identified, and subject to approval of the OBC, by Treasury Project Review Group (PRG). PRG approved the OBC project at its meeting on 23 July 2007. Consequently the OJEU notice for the waste treatment contract was issued on 1 September 2007, confirming that the competitive dialogue (CD) procedure will be followed.

Procurement Issues

7. The latest estimated key dates for the project are as follows:-

• Issue of OJEU	Sept 2007
• Pre-planning application monitoring commences	Sept 2007
• Receipt and review of PQQ's	Oct 2007
• NYCC Executive consider LDF	Oct 2007
• Issue invitation to submit outline solutions (ISOS) (commence CD process)	22 Oct 2007
• Issue invitation to submit detailed solutions (ISDS)	Jan 2008
• Executives ratify shortlist/call for final tenders	Oct 2008
• Approval of preferred bidder	December 2008
• Adoption of NYCC Waste & Minerals DPD	May 2009
• Submission of planning application	June 2009
• Planning consent granted	December 2010
• Contract awarded	December 2010
• Facilities available	June 2012 – Dec 13

In order to provide evidence of the robustness/commitment of the partnership to the bidders, an Inter-Authority agreement is required. As the bidders start to incur significant costs from the point they are selected to submit detailed solutions (scheduled for January 2008) Executives from both Councils are being asked for authority to delegate approval to their respective relevant Chief Officers, at respective meetings in October 2007.

Inter-Authority agreement (IAA)

8. The Councils signed a legal agreement in 2005, agreeing to work in partnership, this was on a high level principle basis. The second IAA is intended to be more comprehensive and to include the key issues which will be:
 - 1) The waste treatment contract will be with NYCC, and there will be a sub-contract between NYCC and CYC, which reflects the main contract, this will be put in place at the same time as the main contract.
 - 2) Should NYCC and CYC not, at any stage wish to continue working in partnership, NYCC will be able to continue with the procurement.
 - 3) The roles of the Executives, Strategic Steering Board, and project boards are clearly set out. Approval by the Executives is required at key stages, as set out above.

- 4) If CYC contribute to the costs of sites and planning, then its interest in the land will be registered.
 - 5) Termination will occur if
 - a) both Councils abandon the project
 - b) planning permission is not granted
 - c) Both Councils agree to terminate the agreement
 - d) Support from Government PFI credits falls
 - 6) Both Councils will act in the interests of the project and must act reasonably through the project, acknowledging the mutual advantages of joint procurement.
 - 7) Should either Council act outside of para's 5 and 6 above they will withdraw from the contract, then the 'wasted' (mainly procurement) costs of the other authority will then be reimbursed by the Council withdrawing from the agreement. Tolerance 'levels' on variance in costs of the project will be built into the clauses on withdrawal.
 - 8) The costs of procurement/sites and planning will continue to be in the ratio NYCC 75% : CYC 25%; unless there is a significant change in the inputs into the project.
 - 9) The cost sharing principles of the contract costs, will be appended to the IAA (referred to as the financial allocations mechanism). The costs will largely be determined on the basis of volume of waste input into the contract. Any compensation terms payable to the contractor will be on the basis of responsibility.
 - 10) A dispute escalation/resolution process is included in the agreement.
9. Members are requested to delegate authority to the Director of City Strategy and the Head of Legal and Democratic Services to sign the IAA, on the basis of the issues set out above.

Evaluation Process

10. Members approved the use of high level evaluation criteria at the 26 June 2007 Executive. These have been included in the OJEU notice and will be the basis of the evaluation throughout the competitive dialogue process. The approved list is attached at appendix A for information.
11. As competitive dialogue is a relatively new procurement process, guidance on its application is still emerging, and there are 4 stages of assessment:-
 - a) Prequalification Questionnaire (PQQ)
 - b) Invitation to submit outline solutions (ISOS)
 - c) Invitation to submit detailed solutions (ISDS)
 - d) Call for final tenders.

At each of these stages an assessment will be made on the basis of the criteria approved (each sub-heading will be used). However as the process is followed to refine the requirements of the solution, certain issues will be more relevant at particular stages. An example is affordability; at the initial stages this will be difficult to determine as the technical aspects of the solution will not have been finalised, but at the latter stages it is more significant.

12. The project is now in procurement, and as such it is vital that the process remains objective. The relative weightings of the sub-criteria are not being

shared with the bidders, but will be lodged with Internal Audit prior to evaluation to ensure evidence of objectivity of the process.

13. The evaluation will be carried out by three assessment teams, technical, sustainability and added value, financial and commercial, and legal and contractual. CYC will be represented on each of these teams. At each stage of assessment there will be a two stage review by all 3 teams comprising a preliminary check and a detailed evaluation against the core criteria:

Core Criteria	Relative weighting
Technical, sustainability and added value	60%
Financial and commercial	40%
Legal and contractual	Pass/Fail

Each assessment team will feedback to the project board, at which the selection and final evaluation of bidders will take place.

14. Updates will be provided to Strategic Steering Board (Chief Executives and Directors from both Authorities) and the Executives will be regularly updated. As set out at paragraph 7, reports on the shortlisted and preferred bidders will be presented to the Executives. It is however, vital that communications in relation to the project are controlled to eliminate the opportunity for unsuccessful bidders to challenge the process. As reported at the Executive meeting in June 2007, a communication strategy is being developed which will cover these issues.

Interim Contract

15. As referred to in the LATS report presented by the Director of Neighbourhood Services at 9th October Executive, NYCC have also issued on OJEU notice for an interim waste treatment contract. This is designed to identify any available spare capacity that may improve diversion in the short to medium term that is less costly than landfill, prior to the PFI contract being operational. It is feasible that several options may be selected in different parts of the County for varying quantities. CYC are included in this OJEU, but will only consider options that benefit the Council.
16. It is intended that bids be evaluated identifying the most economically advantageous tender in three areas with the following weightings applied;

- Financial and Commercial 60%
- Technical 40%
- Legal and Contractual Pass/Fail

These are consistent with industry standards.

Consultation

17. Consultation has taken place previously on the evaluation criteria in 2005 and 2006; as the project is now in procurement no further consultation has taken place and will not take place to ensure the objectivity of the procurement process and acceptance by the market is maintained. It is proposed to ensure stakeholders are aware of the process and have the opportunity to comment.

Options

18. A detailed analysis has taken place in the past on the options available. This report is focused on specific issues being addressed as a result of entering the procurement phase.

Corporate Priorities

19. This project is critical in delivering Improvement Statement 1, to decrease the tonnage of biodegradable waste and recycling products going to landfill, by enabling the diversion of waste from landfill to treatment facilities.
20. The costs identified as part of this project also consider the most efficient way to achieve this diversion, thus significantly contributing to Improvement Statement 13, improving efficiency and reducing waste to free up more resources.

Financial Implications

21. The financial position of the project was reported to the Executive in June 2007. No further update is provided in this report, and consequently there are no additional financial implications of the project at this stage.
22. It should be noted that there is a potential significant financial implication if CYC approves the Inter-Authority agreement and at some future stage withdraws unreasonably.

Implications

23. There are no additional HR, Equalities, Legal, Crime & Disorder, IT, Property or other implications compared to the report approved in June 2007.

Risk Management

24. The waste procurement is identified as a high risk, largely because of the high level of government penalties should the Council fail to divert sufficient waste from landfill and thus potential financial risk. This report does not change the approach to risk as identified in the report to the Executive on 12 September 2006, 27 March 2007 and 26 June 2007. This report highlights the specific risks associated with the IAA and the evaluation process.

Legal and Procurement

25. Ongoing discussions have been held with legal services and the procurement sections. Their involvement has been encouraged to ensure satisfaction with the processes and implications on CYC. There are no additional legal implications beyond those dealt with in the report.

Conclusion

26. The project is now in procurement and following set procedures. The contents of this report are designed to inform and maintain the project in line with project plan timescales. As discussed in previous reports any delay from the project plan has significant financial implications.

Recommendations

27. The Executive is asked:-
- a) That the award of £65m PFI credits towards the costs of this project is noted.
 - b) That an Inter-Authority agreement under seal be entered into with NYCC on the basis of the issues set out above and the Director of City Strategy and Head of Legal and Democratic services be given delegated authority to agree the detail of the agreement in order to give effect to those terms.
 - c) That the Director of City Strategy be authorised to utilise the proposed evaluation methodology.

Reason: to progress the Waste PFI project through the procurement phase.

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Report Approved Date: 10/10/2007

Specialist Implications Officer(s)
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Wards Affected: *List wards or tick box to indicate all*

All

For further information please contact the author of the report

Background Papers: None

Annex A – Evaluation Criteria approved at June 2007, Executive.