

Report To: Cabinet

Date of Meeting: 18 February 2014

Lead Member / Officer: David Smith, Lead Member Public Realm

Report Author: Steve Parker, Head of Environmental Services

Title: Approval of Preferred Bidder, and the second Inter-Authority Agreement - North Wales Residual Waste Project (NWRWTP)

1. What is the report about?

In February 2008 Cabinet gave its approval for DCC to enter into a formal partnership with four other north Wales councils, to jointly procure a 25 year contract for the provision of residual waste disposal facilities. This report seeks support for two important steps in the process.

2. What is the reason for making this report?

In order to facilitate the procurement process, all councils involved in the partnership, subsequently signed-up to a formal Inter Authority Agreement (IAA1). Under this agreement, delegated decision making authority was given to the Project Board and the Project Committee, with a number of key decisions still being reserved for individual councils. This report is about two of those reserved matters, i.e. confirmation of the final preferred bidder, and approval of the second Inter Authority Agreement (IAA2). This report provides information that is designed to allow Cabinet endorse the suggested course(s) of action.

3. What are the Recommendations?

- a) Members are asked to approve the award of Preferred Bidder status to Wheelabrator Technologies Inc (WTI), on the basis that following a rigorous dialogue and negotiation with WTI, the Call for Final Tender (CFT) bid submitted by WTI represents value for money for the partnership; and that following detailed financial, legal and technical evaluation of WTI's CFT bid, the partnership is satisfied with the risk balance proposed with the contract 'Project Agreement')
- b) Members grant authority to the North Wales Residual Waste Joint Committee to take all necessary steps to take the process forward with WTI from Preferred Bidder through to Financial Close, and award a contract.
- c) To commit to the Partnership and the Project by adopting, along with the other 4 councils, the principles in the 2nd Inter-Authority Agreement which reflect the key terms of the Project Agreement to be entered into by the Lead Council with the Preferred Bidder on Contract Award.
- d) To delegate authority to the Lead Chief Executive to finalise the 2nd Inter-Authority Agreement for signing by the constituent authorities, and to circulate the finalised agreement to the Monitoring Officers of all 5 Authorities take into account the views of all constituent Authorities and to refer back to the Joint Committee for approval any material departures from the agreed principles.
- e) To agree to sign the 2nd Inter Authority Agreement once it has been finalised in accordance with the above procedure

4. Report details.

4a) preferred bidder selection.

The procurement has been undertaken via a “competitive dialogue” process. At this stage, two bidders would normally still be in the running, and a decision on de-selection would now be required. However, in the case of the NWRT project, the second bidder withdrew unilaterally in January 2013, effectively leaving the current bidder in a monopoly position.

Since that withdrawal, the project team (and the remaining bidder) have been keen to demonstrate that value for money (VFM) is still being achieved on the project. The drive for VFM resulted in a number of highly significant changes to what was being procured. The overall result from these changes has been an improved position for Denbighshire, i.e. comparing the IAA1 agreement “offer” against the currently anticipated outcome (see 4b for details).

That is significant, because under IAA1, the council accepted the basic position that withdrawal from the project was only permissible if the price became “unaffordable”. Furthermore; it also accepted the position that, if any council were to unilaterally withdraw, it would have to reimburse the remaining council for all consequential costs to date (likely to be several million pounds).

The project is actually well-inside the “affordability envelope” (see Appendix One). Furthermore, the final business case does appear to demonstrate genuine VFM. The company has also satisfied the requirements of the partnership’s legal, technical, and financial experts.

In these circumstances, there appears to be no reason why the remaining bidder should not now be granted “preferred bidder status”.

4b) Inter Authority Agreement No.2

IAA No.1 was an “agreement to procure”, which covered everything up to final contract award. IAA2 covers the operation of the contract itself, i.e. from contract award onwards. The draft IAA2 is included as an Appendix to this report. The agreement is a complex legal document that covers every aspect of how the contract is to be managed. The essential features are as follows:

- i) The main waste disposal facility will be an energy from waste plant, located at Deeside industrial park, operated by Wheelabrator Technologies Ltd (WTI). The plant will be paid for over a 25 year period via “gate fees”. The same charging mechanism will apply to all councils.
- ii) Gate fees vary according to the tonnages that are delivered. The councils have an optional 5 year extension available to them.
- iii) Flintshire CC will enter the main contract with WTI, and will then recharge other councils for the services provided. A small team will be employed to do this work.
- iv) Under IAA1, a principle was agreed that the councils would share transportation costs, i.e. between the various transfer stations in each county and the new plant. In Denbighshire the stations used would be Ruthin, and a (yet to be determined) location; designed to replace the Llandullas landfill site.

- v) Councils will pay their own costs in relation to the operation of the transfer stations. This principle is a variation from the principle set out in IAA1. However, it is not a significant factor in Denbighshire's VFM calculation. It is broadly cost neutral for Denbighshire.
- vi) Under IAA1 the council agreed to provide a guaranteed minimum tonnage of waste, for which it would be charged, even if the council was not able to deliver it for some reason. Under IAA2, this specified tonnage is lower. I.e. that is an improved position for Denbighshire.
- vii) Under IAA1 the liability for shared haulage cost was significantly higher than it is under IAA2. Once again, this is an improved position for Denbighshire.

In summary; IAA2 generally offers the council a better position than IAA1. Technical officers are satisfied with the main features, and the legal clauses have been drafted to the satisfaction of the council's legal officers. Officers therefore recommend that the draft should be supported.

There is one new item proposed in IAA2 (not included in IAA1), i.e. a "community benefit payment". The money would be spent on agreed local community projects. The sum is designed to reflect the fact that Flintshire offered up the use of their land for free. The method of apportioning the charges (i.e. the contributions from individual councils) would be on a "tonnes delivered" basis. This is the optimum method for Denbighshire. Accepting IAA2 would mean accepting the charge.

4c) Approval of remaining procurement budget

The costs of procurement have exceeded those previously authorised, due to time delays and other factors, Approval is therefore sought to allow permit expenditure between April and June 2014 (financial close), as we will exceed the original IAA budget by 5% and need partner authority approval to go more than that.(details are explained in the separate report - Appendix 3). The second recommendation from the report one is to fix a ceiling for future contract management expenditure of £359,000 per annum, Denbighshire's share will be based on tonnages delivered, so is likely to be around 11 to 13% of this sum (approx.£43,000 p.a maximum).

5. How does the decision contribute to the Corporate Priorities?

This contract will assist in the delivery of the sustainability agenda. Energy will be recovered from waste that would otherwise be going to landfill.

6. What will it cost and how will it affect other services?

- a) The scope of this report is limited to the selection of preferred bidder decision, support for the draft IAA2 document, and payment of procurement costs. However, the final business case for the project indicates that the chosen solution is cheaper than "business as usual".
- b) The contract is for bulk disposal of household waste so there is no direct effect on the public in terms of equalities., and there are no relevant biodiversity factors. The Environmental effects of the project are beneficial; energy will be recovered from waste that would otherwise be going to landfill.

7. Equality Impact Assessment (EqIA)

There are no direct consequences for services delivered to the public, or on the working arrangements for council staff (see appendix 9).

8. What consultations have been carried out?

DCC legal officers have been fully involved in the drafting of the agreement. An informal council briefing session was held on 4 February. The matter was considered by Partnerships Scrutiny on 6 February 2014. Members were confident that the Project had been fully evaluated at every stage and was therefore sound. The Committee was also supportive of the request to delegate to the Joint Committee the necessary powers to undertake negotiations and all required arrangements to enable the award of the contract

9. Chief Finance Officer Statement

The changes to the proposals that have been made since the withdrawal of the second bidder have resulted in an improved financial offer for Denbighshire County Council. Although the final decision on the final business case will be the subject of a future report, the current business case shows that the proposed solution is also cheaper than the cost of the current operations. This supports the acceptance of both the recommendations of this report.

10. What risks are there and is there anything we can do to reduce them?

If the council failed to enter the agreement, the other councils would suffer consequential costs, for which Denbighshire would be liable. The whole project might be jeopardised.

11. Power to make the Decision

Under Section 2 of the Local Government Act 2000, i.e. the promotion or improvement of the environment for the well-being of the area.

Appendices

1. IAA2 cover report
2. Summary of IAA2 paper (Pinsent Mason paper)
3. Revised Draft IAA2 itself
4. Data Protection Policy (which accompanies the draft IAA2)
5. Budget Report (will naturally follow the IAA2 papers)
6. Preferred Bidder Report (draft attached) **PART 2 ITEM**
7. Consolidated advisors Evaluation Report (Appendix A to the Preferred Bidder Report) **PART 2 ITEM**
8. Summary of Project Agreement (Appendix C to the Preferred Bidder Report) **PART 2 ITEM**
9. Equalities Impact Assessment