

**Zero Waste: Midlothian and Edinburgh
Residual Waste Treatment Progress Report****Report by John Blair, Director, Resources****1 Purpose of Report**

The procurement of residual waste treatment facilities as part of the Zero Waste Project has now progressed to the point of final stages of dialogue with the bidders.

The overall project objective in the Residual Waste Business Case is to procure a long-term residual waste treatment contract that meets the needs of the partner Councils and is clearly demonstrated to be affordable and deliverable.

This report invites Council to note progress with the Zero Waste Residual Project and to note that there is a high confidence that the final tenders will enable a preferred bidder to be identified which can meet the needs of the Partner Councils and has a solution that represents value for money and is affordable.

2 Background

- 2.1 On 22 September 2009 Midlothian Council approved the Project Initiation Document for the Zero Waste Project, including the governance arrangements, the procurement budget and the joint purchase of the Millerhill site within Midlothian.
- 2.2 The overall aim of Zero Waste: Midlothian and Edinburgh is:
 - To procure a long term waste treatment contract that will enhance household waste recycling levels and will recover value from residual waste that has not otherwise been recovered or recycled;
 - To ensure that the treatment of residual waste, when combined with the source-segregated activities, is sufficient to enable the two Partner Councils to meet their targets for landfill diversion and contribute to their recycling obligations; and
 - To contribute to the Councils' shared vision of a zero waste future.
- 2.3 The Residual Waste Treatment Procurement commenced on 21 December 2011 with four bidders being shortlisted. After initial dialogue with bidders, the Project Board agreed to invite bidders to submit detailed tenders by 1st July 2013.

- 2.4 Bidders were requested to develop proposals to carry out the primary treatment at the Millerhill site. The primary treatment includes reception of residual waste, extraction of recyclable material and production of a solid recovered fuel from the non-recyclable waste.
- 2.5 Bidders have the option of providing the secondary treatment either by building an energy from waste plant on the Millerhill Site or alternatively sending the solid recovered fuel to be used elsewhere via an off-take contract. In either case, electricity will be generated from the consumption of solid recovered fuel arising from the treatment of the Partner Councils' residual waste.
- 2.6 At its meeting of 27 March 2012 Council were advised that an injection of Capital funding could have a positive impact on the gate fee payable. This capital contribution would only be invested when the plant is fully commissioned with a year's record of service delivery. This investment would not exceed 30% of the cost of the asset(s) constructed at the project site, providing the asset(s) revert to Partner Council ownership at the end of the concession. A further report will be brought back to Council, prior to the selection of Preferred Bidder, outlining whether there is a value for money case for a capital contribution by the Councils.
- 2.7 It is further proposed that subject to The City of Edinburgh Council reaching a similar agreement, to offer to jointly purchase electricity produced by the contractor up to a maximum of 90,000MWH per annum at a nominated price for a period of 10 years from the commencement of services. This offer was included in the Invitation to Submit Detailed Tenders.
- 2.8 The Invitation to Submit Detailed Tenders was issued on 3 June 2013 requesting tenders by 1 July 2013.
- 2.9 Project Assurance is being carried out by the Scottish Futures Trust at key stages in the Project on behalf of the Project Board.
- 2.10 The procurement of residual waste treatment facilities is part of the overall Zero Waste: Midlothian and Edinburgh programme which also includes the separate procurement project for the treatment of food waste. A contract for the food waste treatment facilities was signed with Alauna Renewable Energy in February 2013. Council authorised the Director, Resources to enter into the project agreement at its meeting of 8 January 2013.
- 2.11 Following receipt of Detailed Tenders on 1 July 2013 the Procurement Business Case has been reviewed and noted by the Joint Project Board.

- 2.12 The Project Board subsequently agreed to invite the following two Bidders to participate in further dialogue:
- FCC Medio Ambiente SA
 - Viridor Waste Management Limited
- 2.13 To maintain the necessary competitive tension in procurement and to preserve commercially sensitive bidder information, it is not possible to include the full detail of the Business Case in this report at this stage.
- 2.14 The final stages of dialogue are ongoing and expected to be concluded in January 2014 prior to calling for final tenders.
- 2.15 Following this, there will be a period of detailed evaluation with appointment of Preferred Bidder scheduled for May 2014.
- 2.16 Prior to this appointment, a further report will be brought to Council, outlining the recommendation of the Zero Waste Project Team as to which of the two bidders is to progress as Preferred Bidder. This will allow the Council to consider the affordability and value for money of the preferred solution compared with the Council's current outlet for long term residual waste treatment at New Earth Solutions proposed treatment plant at Easter Langlee, Scottish Borders.

The Business Case

- 2.17 The original justification for commencing this Project in 2009 was that, unless the Partner Councils could in coming years guarantee to divert sufficient waste from landfill, they would incur punitive fines and incur high landfill tax charges for sending quantities of Biodegradable Municipal Waste ("BMW") to landfill in excess of the escalating Landfill Allowance Scheme (LAS) and European Union landfill diversion targets.
- 2.18 Since then, the publication of Scotland's Zero Waste Plan in 2010, the Scottish Government's Policy Statement in 2011 and the Waste (Scotland) Regulations 2012, all of which impose more demanding recycling and landfill diversion targets on the Councils, including a complete ban on the disposal of biodegradable waste to landfill from 1 January 2021 has only served to increase the requirement for dedicated residual waste treatment facilities as an alternative to landfill disposal.
- 2.19 The Business Case Review considered by the Joint Project Board in August 2013 concluded that:
- The balance of risk remains well understood and within the Councils' appetite; and
 - The procurement programme is robust.

- 2.20 Two bidders remain in the competition; with a strong expectation from the Zero Waste Project Board that both are believed to be capable of providing in their final tender a solution that meets the Councils' requirements and is affordable.

Governance Arrangements

- 2.21 Following an assurance review in April 2013, the governance arrangements of the Project were considered as part of the existing review procedures of the Zero Waste Project.
- 2.22 The Project Board was generally content with the governance arrangements agreed in 2011 but has recommended that the appointment of preferred bidder should be referred to the Councils for agreement.

Memorandum of Understanding

- 2.23 The Project Board considered that there was a need to seek a more formal commitment to the residual waste procurement from the Partner Councils. Similar recommendations had been made by the Scottish Futures Trust who work in partnership with the project team and board.
- 2.24 The Project Board agreed to progress a Memorandum of Understanding between the Councils setting out the respective roles and responsibilities of the Partner Councils during the procurement stage of the project. This has now been finalised and signed by both Councils Heads of Service.
- 2.25 The Memorandum of Understanding runs from the date of signing ie 8 November 2013 until financial close when a further Inter Authority Agreement, similar to that of the Food Waste Treatment Contract, will be entered into by the Councils to govern the contractual phase.
- 2.26 The Memorandum of Understanding, unlike the Inter Authority Agreement (which will be contractual in nature), reflects the partnership working of the Councils during procurement.
- 2.27 The Memorandum of Understanding addresses the following matters:
- Agreed Objectives of both Councils in regard to completion of the procurement.
 - Appointment of the City of Edinburgh Council as Lead Authority for the procurement as approved by Midlothian Council at its meeting of 6 November 2012.
 - Governance will be in accordance with the previously agreed Procurement Phase Project Management and Governance Arrangements document signed by the Councils in February 2011.
 - The Memorandum of Understanding details matters that are reserved for the decision of each Council and matters that may be decided by the Project Director or the Project Board.

- It provides a framework for managing the project through to contract signature. The Councils will require to approve the appointment of the Preferred Bidder but authority is delegated to the Zero Waste Team to manage the procurement and dialogue with bidders up to this approval stage.
- The Zero Waste Team will inform the Project Board, and be guided by the Project Board, who shall oversee and co-ordinate the achievement of Procurement Milestones.
- Dispute Resolution provisions ensure the interests of both Councils are protected.
- The Memorandum of Understanding does not fetter either Council in the carrying out of their statutory duties.
- All procurement costs, other than Land Acquisition and road/utilities, are split between the Councils on a 70/30 City of Edinburgh Council/Midlothian Council basis as reported to Council on 27 March 2012. Land acquisition and roads/utilities costs are split 80/20 as reported to Council on 6 November 2012.
- A mechanism is provided to deal with the possibility that either or both Councils decide to withdraw from the procurement. Should both Councils decide to withdraw, then provision is made for a sharing of liabilities and costs to the date of termination on the proportions as set out in the Memorandum of Understanding. Should one Council wish to continue with the procurement on its own, then provision is also made for this with an undertaking that sufficient land will be made available at the Millerhill site.
- The Memorandum of Understanding also confirms both Councils' commitment to enter into an Inter-Authority Agreement regulating their respective rights and obligations during the operational phase of the Project.

Affordability

- 2.28 The Zero Waste Team has communicated its expectation that the procurement should deliver a final solution which demonstrates greater value for money when compared to alternative treatment arrangements and is affordable.
- 2.29 On 26 October 2010 Council were advised of a number of procurement and contract options that had been identified as being appropriate for comparison. While a private sector Design Build Finance Operate Contract (DBFO) was identified as the preferred option the procurement has in the main remained flexible such that alternative structures proposed by bidders could have been considered.

- 2.30 Extensive modelling has also been carried out to address the Project Board's expectation, with the conclusion that a solution sourced via a design, build, finance, operate (DBFO) Public-Private Partnership offers the greater potential for value for money than alternative arrangements. Confidence is high that it is within each bidder's capacity to satisfy the Partner Councils requirements. The Project Team continues to work closely with the bidders on their detailed proposals through further dialogue to identify opportunities for greater value for money.
- 2.31 It is important to recognise that value for money encompasses both the price of the contract and the added benefits arising from the adoption of such a solution, including long term security for waste treatment and the appropriate transfer of risk to the private sector partner. As such, the procurement is not solely focussed on deriving the cheapest solution possible.
- 2.32 Call for Final Tenders is expected to occur in early 2014 with detailed evaluation to take place thereafter. At this point, bidders will have submitted a solution that will encompass a final price prior to appointment of Preferred Bidder.
- 2.33 A further report will therefore be brought to Council in Spring 2014, following completion of the evaluation exercise by the Zero Waste Project Team, providing a detailed comparison of the cost to the Council of the Zero Waste Residual Project and the Council's existing waste treatment outlet.
- 2.34 As set out above the Project Team is proactively engaging with the remaining two bidders to ensure that the gate fee arising from the Zero Waste Project offers optimal value for money which will mitigate the impact of any above expected volumes of waste.

Procurement Plan

- 2.35 The Residual Waste procurement plan has the following key target dates:-

Key Stage	Target Date
Call for Final Tenders	January 2014
Appointment of Preferred Bidder	May 2014
Contract Close	from October 2014

This timetable will be kept under review and adjusted if necessary depending on progress with further dialogue and readiness for calling for final tenders.

3 Report Implications

3.1 Resource

Proposals regarding the provision of a capital contribution into the project, and a comparison of the cost of treatment against existing budgets, will be brought to Council in a separate report in Spring 2014 (prior to Appointment of Preferred Bidder), following submission of final tenders by the two remaining bidders and evaluation of these by the Zero Waste Team.

As such, at this stage there are no direct resource implications arising from this report.

3.2 Risk

3.2.1 The Project Team manages an issue log and risk log which accords with good project management practice. Key risks being controlled include ensuring that the new road access and utilities are provided to the contractor by set dates.

3.2.2 The draft Project Agreements (Contracts) are constructed to take account of risk and how it is shared between the Partner Councils and the successful Contractor. In general risk is shared or held by the party best placed to manage the risk.

3.2.3 There are no new risks arising from decisions requested in this report.

3.3 Single Midlothian Plan and Business Transformation

Themes addressed in this report:

- Community safety
- Adult health, care and housing
- Getting it right for every Midlothian child
- Improving opportunities in Midlothian
- Sustainable growth
- Business transformation and Best Value
- None of the above

3.4 Impact on Performance and Outcomes

Construction of these facilities will allow the Council to fulfil its key aims to divert waste from landfill and fulfil the Scottish Governments Zero Waste Plan requirements and associated recycling/landfill diversion targets.

3.5 Adopting a Preventative Approach

These facilities will remove the reliance on landfill requirements, increase the Councils recycling levels and provide the opportunity to establish a sustainable energy source.

3.6 Involving Communities and Other Stakeholders

A Cross-Party Cross-Council Group, set up to receive regular reports on the Zero Waste Project, last met on 26 April 2013 and will have met again on 2 December 2013.

In producing this report the following parties have been consulted:

- The Partner Councils' Zero Waste Project Board;
- Finance and Legal Officers within Resources Directorate;

3.7 Ensuring Equalities

This report proposes no change to current policies or procedures and as such a full equalities impact assessment is not required.

3.8 Supporting Sustainable Development

The residual waste contract will have positive environmental benefits as part of the move towards the more sustainable management of waste including: a significant reduction in the volume of waste disposed of to landfill with associated reductions in greenhouse gases; the recovery of marketable recyclables; and the creation of renewable energy from residual waste.

A number of jobs will also be created at the Project site, both during construction of the facility and throughout the operation of the residual waste treatment contract.

3.9 IT Issues

There are no IT issues arising from this report.

4 Summary

The residual waste procurement is proceeding well and there is a high level of confidence that final tenders will provide a solution that meets the Partner Councils' requirements, is value for money and affordable.

5 Recommendations

It is recommended that the Council:

- a) Note the progress in procuring residual waste treatment facilities;
- b) Note that a Memorandum of Understanding between the City of Edinburgh and Midlothian Council has been concluded;
- c) Note that there is a high level of confidence that final tenders will provide a solution that meets the Partner Council's requirements, is value for money and affordable; and
- d) Note that a further report will be provided to the Council in Spring 2014 providing a comparison of the cost of treatment against

existing budgets, recommending appointment of a preferred bidder if this is deemed value for money and affordable.

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