Division(s): N/A

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ITEM CA4E

CABINET – 7 SEPTEMBER 2009

OXFORDSHIRE RESIDUAL WASTE TREATMENT PROCUREMENT – SELECTION OF PREFERRED BIDDER

Report by Director for Environment & Economy and Assistant Chief Executive & Chief Finance Officer

Introduction

1. Oxfordshire County Council is procuring a residual waste treatment contract to divert waste away from landfill. In March 2007 the contract was advertised in the Official Journal of the European Union (OJEU). The competitive dialogue procurement process has been followed and on 1 May 2009 final tenders were submitted by the two remaining participating companies – Viridor Waste Management Ltd (Viridor) and Waste Recycling Group (WRG), who have both proposed energy from waste (EfW) solutions using incineration with energy recovery.

2. The final tenders have been subject to rigorous evaluation by the project team using technical, financial, and legal criteria, including a value for money assessment undertaken by the internal project team. The purpose of the report is to explain the procurement process and the outcome of the evaluation, and seek authorisation to appoint a preferred bidder. The report and recommendations are presented in a neutral way to enable the Cabinet to take an impartial decision.

Exempt Information

3. This report contains information in Annexes 2 and 3 that relates to a competitive procurement process in progress and is commercially sensitive. The public should therefore be excluded during consideration of Annexes 2 and 3 because their discussion in public would be likely to lead to the disclosure to members of the public present of information in the following categories prescribed by Part 1 of Schedule 12A to the Local Government Act 1972 (as amended): paragraph 3 – Information relating to the financial or business affairs of any particular person (including the authority holding that information) - and since it is considered that, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information, in that disclosure would distort the proper process of the transaction and the Council's standing generally in relation to such transactions in future, to the detriment of the Council's ability properly to discharge its fiduciary and other duties as a public authority.

Background

Procurement context

4. The council as Waste Disposal Authority has a responsibility to dispose of the residual waste collected by the district councils and currently manages about 300,000 tonnes of municipal waste per year, of which about 185,000 tonnes is disposed of to landfill. The council has a number of landfill contracts that expire in the short term as well as a longer term contract expected to end in 2028. The procurement of residual waste treatment facilities is required to meet EU Landfill Directive targets and reduce the amount of waste sent to landfill. The Directive seeks to reduce substantially the amount of biodegradable municipal waste that is sent to landfill in order to reduce emissions of greenhouse gases, and in particular methane. Under the Landfill Allowance Trading Scheme (LATS), failure to meet reduction targets could result in financial penalties of £150 per tonne of biodegradable waste landfilled if the council is unable to purchase allowances from other authorities. In addition the amount of landfill tax payable per tonne of waste landfilled is increasing by £8 each year and by 2013 will be £72 per tonne, which will place a significant financial burden on the council. Further increases in landfill tax beyond 2013 are expected.

5. Therefore the purpose of the procurement is to divert municipal waste away from final disposal in landfill sites to a treatment process that will enable value to be recovered from it in accordance with the waste hierarchy. The waste hierarchy sets out in simple terms how waste should be managed, starting with reduction at the top, then re-use, recycling, recovery and finally disposal as the last resort.

6. Oxfordshire is implementing the waste hierarchy through the Joint Municipal Waste Management Strategy developed by the Oxfordshire Waste Partnership (OWP) and agreed by all the Oxfordshire local authorities in 2006. The strategy sets targets to reduce the rate of waste growth per household to 0% by 2012 and increase recycling and composting to at least 55% by 2020. Oxfordshire is currently achieving a recycling and composting rate of about 47%, and the council has recently facilitated investment in infrastructure to support this by letting a contract for food waste treatment.

7. However, the strategy recognises that waste reduction, reuse and recycling will not be sufficient in themselves to meet landfill diversion targets. Policy 9 of the strategy is to recover value from residual waste to meet LATS targets. The policy does not specify the technology to be used but states that it must be safe and not a substitute for re-use, recycling and composting. The procurement will implement this policy and is entirely consistent with it.

Procurement process

8. The Cabinet considered the outline business case (OBC) on 19 September 2006. Following an options appraisal of alternative technologies the OBC concluded that a business case could be made for treatment technologies involving energy recovery. However, no technologies were ruled out as it was

recognised that their true costs and benefits would not be truly known until bids were made. The Cabinet authorised the start of procurement on technology neutral basis, a Public Private Partnership (PPP) style of contract, and using the competitive dialogue procurement process.

9. The contract was advertised in March 2007. The prequalification stage established which interested companies had sufficient technical and organisational experience and financial standing to be able to deliver the services required. Eight companies qualified and in August 2007 were invited to participate in dialogue and submit outline solutions for how they would propose to treat Oxfordshire's residual waste. The eight companies were – Cory Environmental, Covanta Energy, Global Renewables, Hills Waste Solutions, SITA UK, Veolia Environmental Services, Viridor, and Waste Recycling Group (WRG). Two of these subsequently withdrew from the procurement (Global Renewables and SITA UK). Six outline solutions were submitted in October 2007 and for residual waste treatment all proposed energy from waste technology involving incineration with energy recovery.

10. On 15 January 2008, the Cabinet endorsed the selection of Viridor and WRG to participate in the detailed stage of the procurement with solutions based at Ardley and Sutton Courtenay. Both proposed 300,000 tpa EfW facilities.

11. On 29 February 2008, the invitation to submit detailed solutions was issued to Viridor and WRG. Dialogue meetings were held with both companies to provide them with the opportunity to clarify the council's requirements and to develop how their solutions could deliver these needs.

12. The detailed solutions were submitted on 25 July 2008 and were then evaluated by the project team. The evaluation confirmed that both companies had potentially acceptable solutions and that dialogue should continue with both of them. An intensive period of dialogue was then conducted from October 2008 to March 2009 to resolve outstanding issues relating to the technical solutions and progress commercial and contract negotiations.

13. The dialogue was closed in early April 2009 following agreement with senior managers that all substantive commercial issues had been resolved. On 8 April 2009 both companies were invited to submit final tenders, which were submitted on 1 May 2009. Descriptions of the key characteristics of the tenders are set out in Annex 1.

Nature of the contract

14. The contract utilises similar principles to a Private Finance Initiative (PFI) contract and is based on the Government's standard contract SoPC4. Although the council decided not to pursue PFI credits when the procurement began, an expression of interest was submitted to DEFRA in March 2007. However, it was not accepted as the project did not meet the PFI criteria.

15. Some of the key principles of the contract are set out below;

- Contract term – the contract will cover the works period while the facility is being constructed and commissioned and a 25 year service period from

the date that the treatment service starts. However, the council will not pay the unitary charge until waste begins to be delivered for treatment, which could be approximately three years after the contract has been awarded. The council will repay the significant investment that the contractor will have made to build the facility, which may have been financed by banks, over the life of the contract. A contract term of this length is used for large waste contracts as it allows the council to repay the financing costs over a longer period of time, in much the same way as a mortgage, and therefore helps the council's affordability position.

- Contract structure – the contract will be between the council and a special purpose vehicle (SPV) the contractor will set up specifically to build and operate the facility. The contract will ensure that the SPV will have appropriate support either from the parent company or the bank funders depending on how the investment is financed.
- Service specification and performance management – the contract will set out the council's requirements for treating residual municipal waste and how the contractor's performance will be monitored in a performance measurement framework (PMF). The PMF will include a range of measures for example key operational data, vehicle turn round times, cleanliness of the site, availability of the visitor centre, and service reporting and others. Failure to achieve standards in the PMF will result in deductions from the unitary charge, and therefore incentivises the contractor to achieve good performance.
- Waste acceptance protocol – the facility will be designed to treat residual municipal waste collected at the kerbside and from the waste recycling centres which the facility will be required to accept. However, there are some materials that are not suitable for treatment in an EfW facility and the contract will set out what these are and the protocol for dealing with them should they be delivered.
- Payment mechanism – the basis for payment is a monthly unitary charge which is then adjusted using a formula set out in the payment mechanism. Adjustments include deductions for performance failures, failure to achieve the contracted diversion rates and non acceptance of waste. The payment mechanism will also calculate third party income sharing and excess profit share.
- Waste tonnage requirements – the contract can be based on either exclusivity or a minimum tonnage guarantee. Exclusivity is a contractual term meaning the contractor has exclusive rights to receive all residual municipal waste arising in Oxfordshire remaining after recycling and composting that can be accepted for treatment in the facility. Should the amount of residual municipal waste decrease due to increased recycling and composting the council would not be liable for penalties under the contract. Alternatively providing the contractor with a guaranteed minimum tonnage can provide value for money as the contractor is taking less risk, but would mean the council would pay penalties if it delivered less than the minimum amount of waste.
- Assets and lease arrangements – as in PFI contracts the facility will revert to the council at the end of the contract term. However, in order to protect the council's rights to retain control of and run the facility during the

contract if the contract is terminated for any reason, the council will take an interest in the site by leasing the site from the contractor and granting a lease back to the SPV. This is a legal device to enable the council to retain control of the facility.

- Default and termination – the contract will set out circumstances in which the contractor would be in breach of its obligations under the contract and could be terminated. These include, for example, failure to achieve project milestones within set timescales, failure to process waste and recover energy for longer than specified lengths of time, and persistent breach. The contractor would receive compensation if the contract is terminated. The compensation would reflect the value of the contract and would be paid to the contractor either by the council or a third party depending on whether the contract was successfully re-tendered or not. Similarly, the council could be in breach of the contract through for example failure to pay the unitary charge and the contractor would be entitled to terminate the contract. The council does have the right to break the contract at any time. In this event the contractor would be entitled to be compensated which would entail significant costs to the council but which would allow the council to retain possession of the facility.

Consultation and stakeholder involvement

16. A number of steps have been taken both before and during the procurement process to keep people informed about the project. These are as follows;

- Waste debate – in 2004 the County Council ran a programme of public debates on waste treatment to raise awareness of the need for change. A wide range of views were expressed and both positive and negative aspects of energy from waste were raised. However, no particular technology preference was expressed overall.
- Consultation on the Oxfordshire Joint Municipal Waste Strategy – in June 2006 the OWP launched a countywide public engagement exercise “No time to waste” to raise awareness of and generate debate on the waste management issues facing Oxfordshire. The exercise was publicised through radio and bus advertising, and 17,000 booklets were distributed through libraries, leisure centres, council offices and other public building, and 15 road shows held throughout the county. The OWP received 891 responses which were taken into account in developing the strategy. Most respondents (over 500) were concerned about the need for reductions in packaging and increased recycling. The responses included over 350 pre-printed Friends of the Earth responses which supported the use of Mechanical Biological Treatment (MBT) and in-vessel composting to treat residual waste rather than incineration. Of the other responses 53 were against incineration, 43 were in favour of MBT, and 24 were in favour of incineration.
- Presentations to other authorities – the project team offered all the district councils in Oxfordshire presentations about the procurement, and presentations have been made last year to Cherwell, South Oxfordshire and the Vale of White Horse District Council’s. Sutton Courtenay parish councillors were invited to attend the latter. A presentation was also made

to parish councils in the Ardley area at the request of the local county council member.

- OWP – the partnership has received regular updates about the project at OWP meetings and is represented on the project board and project team. The project team have liaised through the OWP with the district councils as Waste Collection Authorities on technical matters during the competitive dialogue to ensure that, for example, the waste acceptance protocol is acceptable.
- Web site – the "alternatives to landfill" pages on the council's web site have been regularly updated and include a variety of questions and answers about the technology and procurement process and a dedicated email address for enquiries.
- OCC member updates – a series of regular email updates have sent to all council members during the procurement to keep them informed and explain progress. The Cabinet is also represented on the project board by two Cabinet members.
- Visits to facilities – visits to waste facilities have been made before and during the procurement. In 2006 officers and members from the OWP visited an EfW plant, materials recovery facility (MRF) and windrow composting in Hampshire, an MBT plant in east London, and in-vessel composting facilities in north London and Buckinghamshire. As part of the procurement process, key members of the project team visited reference EfW plants given by the two bidding companies as similar to their proposals for Oxfordshire. The visits were also attended by the Deputy Leader of the Council on behalf of the project board. More recently, the Cabinet member for Growth and Infrastructure has visited two EfW plants and a MRF in Hampshire.

17. Public consultation on the planning applications for the facilities proposed at Ardley and Sutton Courtenay has also taken place and the responses to these will be considered by the Planning and Regulation Committee in due course. Both bidders have taken steps to keep local people informed about their proposals, for example by holding public exhibitions and issuing newsletters. The Environment Agency has also undertaken consultation on the applications for environmental permits that have been submitted for both facilities

18. A strategy for future communications particularly with the community where the facility will be located is being developed by the corporate communications team.

Evaluation of final tenders

19. Some of the key characteristics of the final tenders are set out in annex 1. The final tenders have been subject to a thorough evaluation exercise undertaken by the full project team including council officers and specialist advisors from Entec (technical), Ernst & Young (financial), Trowers & Hamlins (legal) and Heath Lambert (insurance). During the evaluation process both tenderers were sent a series of clarification questions in order to clarify any areas of ambiguity in their bids.

20. The evaluation methodology used has been consistent at each stage of the procurement and has used a range of technical, financial and legal criteria. The key factors taken into account were as follows;

- Compliance with the council's bid requirements
- Technical criteria including delivery of the council's service requirements, robustness of the technical solution, environmental performance and deliverability in terms of sites and planning.
- Financial and commercial criteria including robustness of the proposed commercial structure and funding deliverability, the economic cost, and medium term affordability of the solutions.
- Legal criteria including the acceptance of the council's contract provisions which had been developed through the competitive dialogue process, and where not accepted, the value for money implications of the transfer of risk to the council.
- The underpinning warranties and guarantees on which the council can rely for assuring technical, operational, and commercial performance by the contractor and any third parties

21. In addition to the formal evaluation of the economic cost, the internal project team looked at a value for money (VfM) assessment which compared the prices tendered in respect of the project with a "do nothing" base case of the council continuing to dispose of residual waste to landfill. The tender costs and base case were checked to make sure all costs associated with future residual waste treatment were included and the tender costs were adjusted accordingly. This also involved adding the estimated cost of waste haulage and transfer to the facility as these services were not included in the treatment contract requirements and will be procured separately by the council. All costs associated with continuing to landfill waste have been included in the "do nothing" base case, including the cost of landfill, landfill tax and LATS, haulage and transfer.

22. The outcome of the evaluation is described in annex 1. Annex 2 (exempt) sets out details of the financial evaluation and value for money assessment. In brief, the evaluation confirmed that both bidders had submitted tenders that are compliant with the council's tender requirements. However, the results showed that one tender clearly emerged as the leading bid overall. The evaluation has demonstrated that Tender 2 is acceptable in technical, commercial and contractual and value for money terms, while Tender 1 does not provide value for money.

Benefits of entering into a contract

23. Selecting a preferred bidder will enable work to commence on the final stage of the procurement which will lead up to awarding the contract. There are several benefits which entering into contract should achieve:

- Diversion of residual municipal waste from landfill – over 90% of residual waste will be delivered to the facility for treatment and LATS targets will be exceeded from service commencement. This will be significant in

achieving the council's priority to reduce the amount of waste going to landfill for environmental and economic reasons.

- Electricity generation – value will be recovered from residual waste in line with the Oxfordshire Joint Municipal Waste Strategy, and will be sufficient to power thousands of homes.
- Greenhouse gas emissions – diverting waste from landfill will avoid the production of methane which is a greenhouse gas 20 times more powerful than carbon dioxide. The Environment Agency's life cycle assessment tool for waste management (WRATE) has been used to assess the tenders and has shown that both deliver significant environmental benefits over continuing to landfill.
- The facility will have additional capacity to treat some commercial and industrial (C&I) waste. This was not a requirement of the contract but will have environmental benefits by diverting more waste from landfill and provide economies of scale that will benefit the council in terms of cost.
- Value for money – the evaluation has demonstrated that the cost associated with Tender 2 will be less than not treating waste and continuing to landfill. This will contribute towards the council's key aims of low taxes and value for money.
- Income from the sale of electricity and C&I waste gate fee – the contract allows for some potential sharing of third party income by the contractor with the council.
- Security of diversion – the council will have certainty of diversion from landfill and cost for the life of the contract. This means that the council will be much more certain about future costs and will effectively be protected from future increases in landfill tax and the cost of LATS allowances.

Assessment of risk

24. In developing and negotiating the contract the PFI principle that risks should be taken by the party best able to manage them has been adopted. The key risks and how they will be shared between the council and the contractor are set out below.

Table 1 Key risk allocation areas

Risk area	**Allocation**
Foreign exchange	Council until financial close. This is relevant if the contractor's technology supplier is a European/ international company. Depending on how exchange rates change this could be a benefit or cost to the council.
Changes in law	Council. If there are changes in law that are specific to the provision of the service the cost of any changes required to the facility would be borne by the council. The contract has specific provisions that deal with these circumstances as it is likely the changes in law will occur during the life of the contract.
Calorific value (CV) of waste	Contractor. The contractor will design the facility to operate at an optimum CV level

	within a certain range and will use C&I waste to blend with municipal waste to manage the overall CV.
Changes in waste tonnages	Contractor (if the contractor has exclusive rights to all residual municipal waste) or shared (if the council agrees to provide a guaranteed minimum tonnage)
Third party waste/income	Contractor. It will be the contractor's responsibility to source third party waste and any guarantees given on the level of income will be at their risk.
Key sub-contractor cost increases	Contractor. In the event that a sub-contractor is delayed in terms of its delivery and its costs increases, the contractor accepts the risk of this.
Architectural enhancements.	Council. Architectural enhancements could be required by the planning permission e.g. to mitigate landscape or visual impact of the facility.

25. A key risk in delivering the project relates to the planning process and any possibility of delay, for example if the planning decision is called in by the Secretary of State or is refused and is followed by an appeal. A delay to awarding the contract could lead to increased costs as the final tender prices are fixed for a certain period and would then be subject to indexation. The project team has considered these risks and their possible implications in reaching the decision to recommend the selection of a preferred bidder. The position will be kept under close review as the fine tuning of the contract with the preferred bidder progresses and will be a relevant factor in deciding whether to award the contract in due course.

Environmental and health implications of EfW

26. EfW technology is widely and safely used in many European countries and is increasingly being used in the UK. The treatment facility will need to be permitted by the Environment Agency who have responsibility for regulating waste treatment plants. They have strict rules for such facilities as required by European law under the Waste Incineration Directive and will not allow anything that is unsafe. Modern monitoring techniques mean that continuous monitoring of gas emissions is now standard and is made readily available to the public.

27. The health implications of EfW incinerators have been well researched. In particular the Health Protection Agency (HPA) has considered studies examining adverse health effects around incinerators and is not aware of any consistent or convincing evidence of a link with adverse health outcomes. The HPA also stated in a report in 2006 that the current levels of dioxin emissions from incineration are unlikely to increase the human body burden significantly, since incineration accounts for less than 1 per cent of UK dioxin emissions. (HPA Response to the British Society for Ecological Medicine Report). The

HPA have produced a position statement on EfW which is available on their web site.

Other options

28. Should Cabinet decide that a preferred bidder should not be selected there would be a limited range of options for the way forward. Subject to careful consideration of legal and financial risk, it could be possible to return to an earlier stage of the procurement or if the procurement had failed to start the process again. A change of direction at this stage would result in a significant delay to award a contract of about three to five years, with a further delay to when infrastructure might become operational and consequential cost implications of continuing to landfill including landfill gate fee, landfill tax and LATS. New landfill contracts would almost certainly need to be procured and there would be a risk the landfill gate fee cost of these would increase above the current level.

Evaluation conclusion

29. The evaluation has demonstrated that Tender 2 is the best in relation to the evaluation criteria, and that the offer is acceptable in relation to price and risk. Tender 1 does not provide value for money for the council. Therefore the Cabinet is recommended to endorse the selection of Tenderer 2 as preferred bidder. This recommendation is made following some clarification and in the understanding that there are a number of issues that will require further clarification and confirmation of commitments during fine tuning.

Next steps

30. Preferred bidder appointment signals that a formal stage in the competitive dialogue has been reached in that there is a tender that the council wishes to accept provided certain fine tuning matters can be resolved. Following the Cabinet decision there will be a process undertaken to appoint the preferred bidder. This includes agreement with the preferred bidder of a letter that sets out the terms of the appointment and the areas that require fine tuning before a contract can be awarded. The draft preferred bidder letter of appointment is summarised in annex 3 (exempt). From this it can be seen the extent of the work that remains to be done with Tenderer 2 before a recommendation to award contract can be made.

31. Appointing a preferred bidder does not mean the council is committed to awarding the contract. However, it does raise the bidder's expectations that they can expect to be awarded the contract provided the terms of the appointment are met and the fine tuning of the contract is successfully completed. The council can withdraw preferred bidder status if this is not the case, but this should be for good reason or the bidder could try and recover costs from the council.

32. After the preferred bidder letter of appointment has been issued, a period for clarification and confirmation of commitments in relation to the contract commences. Under the competitive dialogue process there can be no negotiation at this stage.

33. Following satisfactory completion of the clarification and confirmation of commitments and consideration of the final value for money assessment, the Cabinet will then be asked to authorise award of contract subject to consideration of the final business case. This is currently anticipated in February 2010.

34. The intention is to formally award the contract as soon as legally possible after the Cabinet decision. A three year period for construction and commissioning is required so depending on when planning permission for the facility is granted a waste treatment service could start in 2013.

35. There are other areas of work related to the contract that will be required. Before the contract is awarded agreements will be need to be developed with the waste collection authorities relating to the delivery of waste to the facility. This will be similar to arrangements reached for the food waste treatment contract and the agreements will be developed through the OWP. In the period until the new facility becomes operational there will need to be interim arrangements made to dispose of a proportion of Oxfordshire's residual waste due to the expiry of some existing landfill contracts. These contracts will be procured separately. Once the residual waste treatment contract has been awarded, the council will need to procure a contract for the transfer of municipal waste to the facility.

36. The residual waste treatment contract will require ongoing resources to ensure its effective implementation and management. Further details of how best this can be achieved will be reported at the next stage.

Local Government (Contract) Act 1997 Certificate

37. In order to award the contract the council will need to certify that it has the power to enter into the contract. This will be signed by Assistant Chief Executive and Chief Finance Officer who will need to be certain that procurement process has been carried out according to regulations. The procurement process has recently been subject to an internal audit review which concluded that the conduct of the procurement process has been acceptable in terms of management of risk and levels of control and that procurement regulations and guidance has been followed.

Financial and Staff Implications

38. The financial implications of the contract have been discussed in report and in more detail in annex 2 (exempt). The final tender evaluation has demonstrated that value for money can be provided through the contract compared to continuing to landfill residual waste. However, provision for the contract will need to be made through the MTFP in the budget setting

process. The resources required to compete the procurement process have been identified.

RECOMMENDATION

39. The Cabinet is RECOMMENDED to;

(a) note the outcome of the evaluation which is that Tender 2 is the leading bid;

(b) endorse the selection of Tenderer 2 as preferred bidder subject to satisfactory agreement of the preferred bidder letter of appointment with Tenderer 2;

(c) authorise the Director for Environment and Economy following consultation with the Cabinet Member for Growth and Infrastructure to agree the preferred bidder draft letter of appointment; and

(d) subject to (b) authorise the Director for Environment and Economy to continue with the clarification and confirmation of commitments required to fine tune the contract with Tenderer 2, develop final documentation, and report back to Cabinet to seek authority for the council to award contract.

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Background papers: Nil

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ANNEX 1

Oxfordshire Residual Waste Treatment Procurement – key characteristics of the final tenders and results of the evaluation

1. The key characteristics of both final tenders and the do nothing base case are set out in the table below.

Table A1.1 Key characteristics of final tenders and do nothing base case

	Tender 2	**Tender 1**	**Do nothing**
Technical solution	Energy from waste incineration technology 95% diversion of residual contract waste from landfill Capacity to treat C&I waste and potential third party income share CHP enabled Best WRATE performance for global warming potential (score 10/10)	Energy from waste incineration technology 92% diversion of residual contract waste from landfill Capacity to treat C&I waste and potential third party income share CHP enabled Second best WRATE performance for global warming potential (score 7/10)	Continue to landfill No diversion of residual waste from landfill No third party income share Worst WRATE performance for global warming potential (score 0/10)
Process residues	IBA recycling proposed APC residues to hazardous waste disposal Metals for recycling	IBA recycling possible APC residues to hazardous waste disposal Metals for recycling	Potential for landfill gas capture
Waste tonnage requirements	Exclusivity	Minimum tonnage guarantee	Unknown – new contracts required
Funding	Corporate – fully funded from company equity	Project finance – fully funded through equity and commercial loans	
Costs payable	Unitary charge Transfer and haulage	Unitary charge Transfer and haulage	Landfill gate fee Transfer and haulage LATS Landfill tax
Potential benefits	Share of third party income LATS income	Share of third party income LATS income	No income share

Notes

- WRATE – Waste and Resources Assessment Tool for the Environment, the Environment Agency's life cycle assessment tool for waste management

- IBA – Incinerator bottom ash
- APC – air pollution control
- Unitary charge – the cost per tonne of waste delivered payable by the council. This is calculated using a complex formula that allows for performance related price adjustments and third party income sharing.
- Third party income – income generated through the gate fee charged by the contractor for commercial and industrial waste and the sale of electricity from the plant.

Evaluation methodology and criteria

2. The final tenders were evaluated on the basis of the most economically advantageous bidder having regard to a range of criteria set out in a detailed evaluation methodology. A range of technical, financial and legal criteria were used and were weighted according to their relative importance. The table below sets out the level 1 criteria and weightings.

Table A1.2 Level 1 CFT criteria and weightings

LEVEL 1 Key Criteria	Key Criteria	Description	Weighting of principal criteria
A	Bid Requirements	Compliance with bid requirements	Pass/Fail
B	Technical and Funding	Delivery of service in accordance with the draft service specification Funding robustness and deliverability and commercial structure	45%
C	Financial and Commercial	Assessment of value for money provided by the Bid, taking into account lowest net present cost to the council including landfill tax and affordability of the solution to the council in the early years of the contract	45%
D	Contractual	Degree of acceptance to the council's proposed contractual position	10%

3. During the evaluation process a number of clarification questions were sent to both tenderers to clarify specific issues and enable the evaluation to be accurately completed. Their responses were taken into account in the evaluation scoring.

Technical and funding evaluation

4. In the evaluation it was found that some of the technical scores had changed since the Invitation to Submit Detailed Solutions Stage (ISDS), in that one bidder through the dialogue process had taken into account the council's

needs and had reflected this in their final tender and thus had improved their score. The other bidder's scoring had reduced, partly because of the mismatch between the bid they had actually submitted and their planning details. This was due to the resizing of the plant at a late stage in the dialogue process. This was not a major factor in assessing the bid as in practice it made little difference to the technical solution being offered. The downward adjustment in this respect was therefore minor in nature.

5. Some key technical risks and issues were noted. For instance both bidders' Engineering Procurement and Construction (EPC) contracts and their project programmes are not as developed as was hoped. Upon clarification the project team are now satisfied that the tenderers understand the risks they are taking on and the fact that the procurement process does not allow an increase of fixed tender prices. Both bidders have included contingencies. Uncertainties about the project programme have also been clarified as these could also have cost implications with prices being fixed to a specific date before they were inflated. Planning risk was considered, noting that there is a landscape and visual impact risk that could result in architectural enhancements being required as a part of any planning permission granted which the council may have to fund.

6. There are a number of technical issues that will require fine tuning at preferred bidders stage, however, none of these are considered major or unusual for this type of procurement. Commercial aspects of the technical evaluation are dealt with below.

7. For the Funding element of the Technical and Funding evaluation the robustness of the commercial structure and funding of the bids was considered. Both bidders had proposed a suitable commercial structure, but both had presented some concerns. These were satisfactorily addressed through clarifications and some remaining minor issues can be dealt with during fine tuning.

8. Technical and funding evaluation conclusion - on a technical basis it is reasonable to accept either tender.

Financial and commercial evaluation

9. The bidders were scored on two levels – economic cost and affordability. The cost of the bids was adjusted to have a common service commencement date for comparison purposes, and it was noted that sensitivities such as the reclassification of incinerator bottom ash (IBA) and planning delay had only made minimal changes to the scores. The project team also considered the adjusted project costs of the bids compared to the reference case, affordability in the first five operational years and the gate fees and how the bids had scored. Changes that bidders had made since ISDS were also noted such as the amount of third party income guaranteed.

10. VfM and affordability were considered in more detail by the internal project team by comparing the bid costs to the council's medium term financial plan (affordability) and the reference case benchmark (value for money).

11. The MTFP (the affordability benchmark) represents the budget build up to 2013/14. This then provides the baseline for projecting the budget over the life of the contract. Therefore the affordability benchmark does not incorporate annual waste tonnage growth over this period.

12. The bid over the life of the contract includes annual waste growth and as such will remain unaffordable for this reason only. The point at which the bid cost exceeds the budget provision is in financial year 2022/23, as such the relevant service and resource planning process would have to incorporate waste growth in order for this gap to be funded.

13. Taking this analysis into consideration the Project Team are of the view that Tender 2 provides a convincing case for moving to the next stage of preferred bidder but the other tender is not either affordable or value for money and for now will be disregarded.

14. Financial evaluation conclusion – in relation to the financial evaluation there is a clear preferred bidder in Tender 2.

Legal evaluation

15. Amendments to the draft project agreements submitted by the two bidders have been assessed. The formal legal clarification process as indicated confirmed that both tenders are acceptable, with some further matters requiring clarification and confirmation of commitments during fine tuning at the preferred bidder stage, but which are not considered to be material or substantive issues that would otherwise distort competition or lead to a lack of transparency in the process.

Overall scores

16. The final overall evaluation scores following the clarification process are as follows;

Table A1.3 Level 1 evaluation scores

Level 1 evaluation criteria	Tender 2	Tender 1
Technical and funding (45%)	23	22.5
Financial and commercial (45%)	44.23	24.37
Contractual (10%)	4.1	4.8
Total	71.33	51.67

Table A1.4 Adjusted Bid VfM results

VfM Results	Tender 2	Tender 1
% Variation from the mean VfM benchmark	-5% (acceptably within the VfM benchmark))	+19% (unaffordably above the VfM threshold)
Does the Adjusted Bid represent VfM	YES	NO