

CABINET

MINUTES of the meeting held on Monday, 7 September 2009 commencing at 2.00 pm and finishing at 5.08 pm

Present:

Voting Members: Councillor Keith R. Mitchell CBE – in the Chair

Councillor David Robertson (Deputy Chairman)
Councillor C.H. Shouler
Councillor Louise Chapman
Councillor Jim Couchman
Councillor Mrs J. Heathcoat
Councillor Ian Hudspeth
Councillor Michael Waine
Councillor Rodney Rose

Other Members in Attendance: Councillor Anne Purse (for Agenda Item 4E)
Councillor Mrs Catherine Fulljames (for Agenda Item 4E)
Councillor Stewart Lilly (for Agenda Item 4E)

Officers:

Whole of meeting: Chief Executive, Director of Environment & Economy,
Assistant Chief Executive & Chief Finance Officer
N. Hyde, A. Pau; F. Upton; R Finlayson (Environment & Economy)
C. Smith, S. Whitehead (Legal & Democratic Services)
External Consultants – O. Cass (Ernst & Young), J. Hawkins (Towers & Hamblins), P. Scott (Entec),

The Committee considered the matters, reports and recommendations contained or referred to in the agenda for the meeting, together with a schedule of addenda tabled at the meeting, and decided as set out below. Except insofar as otherwise specified, the reasons for the decisions are contained in the agenda, reports and schedule, copies of which are attached to the signed Minutes.

80/09 DECLARATIONS OF INTEREST

(Agenda Item. 2)

Councillors Louise Chapman and Ian Hudspeth declared a personal interest in Item 4E as West Oxfordshire District Councillors.

81/09 PETITIONS AND PUBLIC ADDRESS

(Agenda Item. 3)

The following requests to address the meeting under agenda item 4E had been agreed:

Cllr David Hignell, Sutton Courtenay Parish Council
Mr. Brian Steventon, Ardley with Fewcott Parish Council
Mr. Robin Draper, Sutton Courtenay Against the Incinerator
Mr. Paul Gibbs, member of the public

82/09 OXFORDSHIRE RESIDUAL WASTE TREATMENT PROCUREMENT - SELECTION OF PREFERRED BIDDER

(Agenda Item. 4)

Cabinet considered a report (CA4E) the purpose of which was to explain the procurement process and the outcome of the evaluation, and to seek authorisation to appoint a preferred bidder in respect of Oxfordshire residual waste treatment. Cabinet noted the reasons for the annex containing exempt information.

Cabinet noted that the report and recommendations were presented in a neutral way (referring to the two bidders as Tenderer 1 and Tenderer 2) to enable the Cabinet to take an impartial decision. However the Chairman stated that the Cabinet Members having read the papers carefully believed that they could identify the bidders from the information contained in confidential annex 2. Cabinet was clear that the decision to be taken was about procurement and not location.

Councillor Purse, speaking as the Shadow Cabinet Member for Growth & Infrastructure stated that throughout the process the position taken by the Liberal Democrat Group had been that the least environmentally damaging option should be taken. However given the position now reached she welcomed that there was a preference to no minimum requirement for waste. She wished that the additional traffic be taken into account and preferred to see a break clause given the speed of movement in technology. She expressed concerns at the special meeting and queried whether it would have been better for the planning decisions to have been taken first.

Responding to questions she felt it was a shame that the 2 tenders were for the same type.

Councillor Mrs Catherine Fulljames, speaking as a local member, expressed dissatisfaction that she had not been given annex 2. She expressed the view that the meeting had taken people by surprise. She stated that the public did not see it as correct to make this decision before the planning applications had been determined. She noted the decision of Northamptonshire County Council and the position of Buckinghamshire County Council. She also queried why there was no site closer to the centre.

Parish Councillor David Hignell stated that the meeting referred to in the report had not in his view taken place. He expressed concern over one of the bidder's fitness to operate. He felt that the decision to be made was premature and should wait on the planning and permit decisions. Members received a statement on the views expressed.

Mr Steventon detailed the annual cost and emissions relating to transporting waste and queried whether the Cabinet had access to these figures. He queried whether Cabinet was satisfied that the meeting was legally convened. Members received a statement on the views expressed.

Mr Draper stated that the Audit Commission had advised that Councils were overestimating the facilities required for disposal. His group felt that the financial risk from the hasty signing of a long term contract for incineration may be greater than the risk from incoming landfill tax penalties. They also believed that waste companies with poor or imported incineration technology can cause more problems than they solve and he referred to problems experienced elsewhere with one of the bidders.

He expressed concern that the preferred bidder was to be chosen before the planning applications had been considered and referred to the level of local opposition as evidenced in a previous petition that had been submitted. Members received a statement on the views expressed.

Mr Gibbs spoke against making any decision at this point feeling that alternatives should be considered. He believed that a decision today would constitute a decision on the location.

Councillor Lilly, speaking as a local member, detailed the history of one of the bidders working in Britain and referred to technical failures that he was aware of. He referred to difficulties experienced at individual sites and stressed his view that cabinet should not be taking a decision at this time.

The Chairman thanked the speakers for their contributions and that he had noted their questions which he believed would be answered in the course of the presentations and discussions.

Referring to the legality of the meeting the Committee Officer advised that the legal requirement to publish the agenda 5 clear working days had been met. Unfortunately the papers were not available on the web site until Wednesday 2 September and knowing this, a copy of the public papers was emailed to all Councillors and any public enquirers were also sent a copy.

The Cabinet Member for Growth & Infrastructure introduced the contents of the report. He referred to the addenda that contained a letter from the Executive Director, City Regeneration for Oxford City Council.

The Cabinet received a detailed presentation on the background to the need to deal with residual waste, the procurement process and evaluation criteria. The Director of Environment & Economy stressed that the team had been drawn from across the organisation and complemented by external support. He emphasised that the entire process over 3 years had been exhaustive. The evaluation of the bidders covered financial ability, technical competence and contract guarantees. The presentation included detailed explanation of the evaluation criteria and the scores set out in the relevant table.

The Chairman suggested that discussion be based in turn on each of the main areas covered in the presentation.

Technology

A number of Cabinet Member stated that their experience on visiting an energy from waste plant was that sites had been clean with little or no emissions.

In response to questions Cabinet was advised that there were a number of solutions in the market but that energy from waste was an important solution to the issue of residual waste and that it was environmentally satisfactory, cost effective and deliverable. The site issues referred to by Councillor Lilly were for a specific site that had a different solution to that proposed by the bidders. The bids included maintenance and contingency plans in the event of plant failure. Safety concerns had been well responded to by the bidders. The technology was in use across Europe for a number of decades. Contamination was a question for the Environment agency as any bidder would need to apply for and receive the appropriate permits.

Finance

Cabinet received further public detail on the financial models for each bidder. They were advised that a very prudent figure had been taken for the LATs costs and that LATs income had been excluded in the first phase of evaluation. Cabinet welcomed that that one bidder had residual exclusivity rather than a minimum tonnage requirement that would enable the County to pursue and hopefully exceed its recycling targets with no penalty. There was some account taken in the figures for commercial/industrial waste.

Procurement

It was explained that Cabinet was not being asked to make an award of contract. The implications of preferred bidder status was outlined and it was noted that if matters set out in the preferred bidder letter were not resolved satisfactorily then the Council was not obliged to go ahead. There would be

costs involved if the Council withdrew without proper cause in relation to the preferred bidder letter.

Contractual Basis

Responding to comments about the length of the contract and queries over any break clause, Cabinet was advised that there were a number of different termination scenarios including some rights to voluntary termination. These would be subject to compensation. The length of the contract was due to the relationship between the capital cost and ongoing revenue and was linked to affordability.

It was noted that both bidders' contracts were compliant. Responding to a query that one bidder had not submitted a bid for residual exclusivity it was explained that this was a preference set out in the beginning but was not a contractual requirement. The process of negotiation in such complex bids meant that some bidders had to be allowed to make the best bid that they were able to make. The County were fully aware that one of the bids would be for minimum tonnage and that was not a problem in terms of contract compliance.

Referring to questions from speakers about imported waste it was explained that such transport issues were a matter for the Planning & Regulation Committee.

83/09 EXEMPT ITEM

At this point the Chairman proposed that the public be excluded during consideration of annex 2 and 3. He invited the Councillors present to remain stressing that the detail to be discussed was to be treated as confidential due to its commercial sensitivity. He added that members of the public would be invited to return to the meeting before any decision was taken.

RESOLVED: to exclude the public during the consideration of Annexes 2 and 3 since it is likely that if they were present during that discussion there would be a disclosure of "exempt" information as described in Part I of Schedule 12A to the Local Government Act, 1972 and specified below the item in the Agenda.

DISCUSSION FOLLOWING THE EXCLUSION OF THE PRESS AND PUBLIC

Cabinet considered the information contained in annex 2 and 3. Officers responded to queries on the assumptions set out in the annexes. It was noted that the consultants who had worked on the financial aspects had not taken location into account. They had concerned themselves purely with procurement.

DISCUSSION FOLLOWING THE RE-ADMITTANCE OF THE PRESS AND PUBLIC

The Cabinet Member for Finance and Procurement stated that he personally had concerns about taking the planning decision after procurement but that having lost that discussion he was voting on commercial, technical and financial grounds.

The Chairman emphasised that Cabinet was not awarding a contract. Having heard the advice and questioned closely and carefully he was persuaded that it was the right step.

At this point Cabinet voted on the recommendations set out in the report and

RESOLVED 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 & 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 & 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 a contract.

NB. Following the decision the Director for Environment & Economy announced that Tenderer 2 was Viridor Waste Management Limited.

..... in the Chair

Date of signing 2009