

## **NORTH LINCOLNSHIRE COUNCIL**

### **WASTE CONTRACTS PROCUREMENT PROJECT**

#### **1. OBJECT AND KEY POINTS IN THIS REPORT**

- 1.1 The object of this report is to confirm the evaluation methodology and strategic approach to be adopted under the competitive dialogue process for the new waste treatment contract.
- 1.2 The key points in this report are:
- Cabinet approved the contract procurement strategy for the new waste contracts on 22 October 2008.
  - An open day was held on 14 January 2009 to discuss the council's proposals with the waste management industry.
  - It is proposed to initiate the procurement of the treatment and disposal of the residual and organic waste first, then subsequently procure the recycling services once the options for the treatment technology are known.
  - The evaluation criteria for the contracts must be set at the outset and cannot later be changed.
  - It is good practice for the council to decide the strategy it will adopt during the competitive dialogue process to reduce the number of bidders at each stage of the procurement.
  - Approval is required for the evaluation criteria and competitive dialogue strategy to enable the process to commence under EU procurement legislation.

#### **2. BACKGROUND INFORMATION**

- 2.1 Current contracts let to deliver waste management services for the council are scheduled to terminate by 31 March 2011. The council has previously agreed contract packaging options and strategies to procure replacement contracts for these services.
- 2.2 The council decided to procure one contract for its recycling services and another for the treatment and disposal of residual and organic wastes. On 22 October 2008 Cabinet approved procurement of the

recycling services contract under the Restricted Procedure and use of Competitive Dialogue for the residual and organics waste contract.

<b>Contract Scope</b>	<b>Procurement Route</b>	<b>Lots</b>
Recyclables	Restricted Procedure	(1) Kerbside collection and processing of dry recyclables; (2) Management of recycling centres.
Treatment and disposal of residual and organic wastes	Competitive Dialogue	(1) Segregated Biodegradable material (organic waste); (2) Residual waste.

- 2.3 Discussions held with the waste management sector during the industry open day produced widespread support for the council's proposed strategy. The majority of attendees supported our contract packaging, use of the restricted procedure and competitive dialogue, timetable and openness to choice of technological treatment solutions. They supported delaying procurement of the recycling contract until initial technological solutions had been submitted for treating the residual and organics waste, so the council can consider any service implications or interface issues between the two contracts.
- 2.4 The council also asked the attendees about the possibility of a technology that could produce vehicle fuel grade bio methane from the organic waste. A number of firms expressed positive responses and the potential for bio methane to provide fuel for refuse collection vehicles or for injection into the national gas grid has been confirmed.
- 2.5 The council has an ongoing series of regular workshops with council officers and the project's external advisors to consider aspects of the contracts and to produce assessments and options for the Project Board. At the workshop on 10 February 2009 a number of scenarios were worked through with the full Project Board to show the implications of different evaluation criteria models. A subsequent workshop on 19 February added more detail to the proposals.

### **3. OPTIONS FOR CONSIDERATION**

- 3.1 Following the discussions held with the waste management sector during the industry open day and the broad level of support received, the timetable for procuring the residual waste treatment contract shown at Appendix A is recommended.
- 3.2 Taking on board feedback received from attendees at the industry open day, it is proposed that the formal EU process for procuring the recycling services contract is not commenced until outline proposals for technological solutions for the residual and organics waste treatment contract have been submitted. This is so that any interface issues with

potential treatment technologies can be written into the contract documentation for the recycling services contract. Relating this to the timetable at Appendix A would mean that this procurement would commence in October 2009.

- 3.3 Use of the competitive dialogue procedure allows for bidders to pass a pre-qualification stage. Whilst the factors that can be taken into account at pre-qualification are prescribed by EU legislation, the council can determine thresholds for these factors and the maximum number of bidders who will continue to the next stage.
- 3.4 The council has the greatest flexibility regarding the evaluation criteria used to assess bids submitted during the later stages of the process. At each stage it can concentrate on certain elements of the bid or look at elements in finer detail. With the council's stated objectives for the project being to minimise landfill, maximise recycling and seek more environmentally beneficial outputs from its residual waste, the evaluation criteria can reflect these. The council can give more potential marks to certain elements to deliver its objectives.
- 3.5 Having set the thresholds for pre-qualification and framework for the evaluation criteria these cannot be changed once the formal EU procurement process is begun and the relevant notices published.
- 3.6 If the council wants to be able to derive bio methane as a product from a technological process treating the organic waste, this will need to be described in the contract notice.

#### **4. ANALYSIS OF OPTIONS**

- 4.1 The approvals given by Cabinet on 22 October 2008 recognised that the formal procurement process would be likely to start in early 2009. The proposed timetable has a start date of 19 March 2009 and is therefore in line with the previous approval.
- 4.2 By delaying the start of the formal procurement process for the recycling contract, the council minimises potential conflicts between the two contracts. Under competitive dialogue the council can explore with bidders ways to overcome problems and shape solutions that best meet the council's requirements. This is not available under the restricted procedure. If the two contracts were tendered in tandem and any issues came to light, there would be little or no opportunity to make changes to the recycling contract without potential severe disruption and the possibility of not securing alternative provision by the deadline. Starting the recycling procurement later would allow the council the opportunity to see what treatment options were being offered for the residual and organic waste and whether these affected the recycling contract. Any necessary changes could then be made before the recycling contract would be procured.

- 4.3 The pre-qualification stage enables the council to filter expressions of interest to ensure that only financially viable and technically proficient and experienced organisations are taken forward to the dialogue stages. The council can set the number of pre-qualified bidders it wishes to take forward. It is felt that, based on feedback from the industry at the open day, given the level of interest from the market and in order to provide the widest choice of technical solutions for the council to consider, there is no maximum limit set.
- 4.4 The council can use the evaluation criteria for the stages after pre-qualification to focus on matters that are important. The proportion of marks allocated to the various elements will indicate to bidders what the council is looking for. Whilst our strategy is technology neutral the evaluation criteria can be set to reward the most environmentally beneficial outcomes. The Project Board recommend the following framework:
- At Outline Solution (ISOS) stage, when proposals for technologies and locations are first submitted, the evaluation should concentrate on the technologies and their relationship with our existing services rather than financial matters, as detailed cost breakdowns will not be available.
  - At Detailed Solution (ISDS) stage, when more in depth work has been done on the design and cost of facilities and the financial consequences of the chosen technological options, the focus should shift towards the financial impact on the council.
  - At Final Tender (ISFT) stage, the focus on the financial impact on the council should be maintained to ensure the outcome is affordable and we achieve value for money. Quality and service enhancement matters will have been dealt with during the earlier stages.

The Evaluation Framework at Appendix B reflects this strategy.

- 4.5 The treatment of organic waste to produce bio methane for injection into the national gas grid or for use as a vehicle fuel can be considered as innovative at the current time. The technology and its application will develop significantly over the next several years and it may be too early to commit to one solution. It is recommended that the contract notice and subsequent documentation be structured so that the option is retained for consideration.
- 4.6 The council must agree a governance strategy for each Competitive Dialogue process prior to the commencement of the dialogue process. The proposed governance arrangements for this Competitive Dialogue shown at Appendix C are recommended.

## **5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)**

- 5.1 The estimated contract value of all elements of this procurement assuming a 20-30 year arrangement is in the order of £150 million. The treatment facility could cost £30 - £50 million, dependent upon the technology and the increasing cost of borrowing. The option to negotiate different financial funding arrangements is available through the Competitive Dialogue process.
- 5.2 The financial implications to the council are the greatest risk. Whether it is penalties for exceeding our landfill allowance or being unable to successfully complete the procurement process, the sums involved could be significant. The proposed evaluation framework balances risk against cost to achieve an outcome that is most likely to be affordable for the council.

## **6. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)**

- 6.1 A key success factor is to give prospective bidders clarity about what the council is trying to achieve. This avoids them making speculative bids or offering us technologies that do not meet our objectives. The Competitive Dialogue process incurs bidders a lot of time, effort and cost. Bidders appreciate councils being open and honest about their intentions and not keeping them in the process just to maintain a quota when, in reality, their bid is not something the council are interested in. The more convinced the market is that the council knows what is wanted and how to realise it then the greater the chance of success.
- 6.2 A risk register is maintained and reports are presented to the Strategic Risk Management Group as necessary.

## **7. OUTCOMES OF CONSULTATION**

- 7.3 The external advisors and the Waste Project Board have considered these issues and this report reflects their recommendations.

## **8. RECOMMENDATIONS**

- 8.1 Approve the formal commencement of the procurement process by issue of the appropriate notices in accordance with the timetable shown at Appendix A.
- 8.2 Approve delaying the formal commencement of the procurement process for the recycling contract until initial offers have been received for the treatment and disposal contract.

- 8.3 Approve the Evaluation Framework shown at Appendix B.
- 8.4 Approve the governance arrangements for managing the Competitive Dialogue process shown at Appendix C.

## SERVICE DIRECTOR NEIGHBOURHOOD & ENVIRONMENT

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### **Background Papers used in the preparation of this report**

Cabinet reports on same subject 9 July and 22 October 2008  
Pre Qualification Questionnaire

**RESIDUAL AND ORGANIC WASTES TREATMENT CONTRACT  
COMPETITIVE DIALOGUE PROCEDURE TIMETABLE - SUMMARY**

ID	Task Name	Recommended No. of days (* mandatory min. EU timescales)	Indicative Dates	Key Decisions
	Industry Open Day		14-Jan-09	
1	Issue Contract Notice	n/a	19-Mar-09	<b>Cabinet report 11 March</b>
2	Deadline for expressions of interest	<b>37*days from 1</b>	25-Apr-09	
2a	Deadline for return of PQQ		09-May-09	
3	PQQ evaluation completed	60 days recommended from 2	25-Jun-09	
4	<b>Shortlist approved by Project Board</b>	10 days recommended	09-Jul-09	<b>Cabinet report</b>
5	Drafting of descriptive documents (contract, output spec, payment mechanism) and ITPD plus due diligence work plus evaluation framework	Concurrent to stages 1 - 4		
6	Issue Invitation to Submit Outline Solution (ISOS)	n/a	14-Jul-09	
7	ISOS Close Date Clarification and Negotiation on ISOS	<b>30* days from 6 ()</b>	13-Aug-09	
8	<b>ISOS evaluation completed</b>	60 days recommended	13-Oct-09	<b>Cabinet report</b>
9	ISDS approval	30 days recommended	13-Nov-09	
10	Issue Invitation to Submit Detailed Solution (ISDS)			
11	ISDS Close Date	90 days^	13-Feb-10	
12	Close dialogue	90 days	13-May-10	
13	Issue Invitation to Submit Final Tender (ISFT)		20-May-10	
14	ISFT return close		03-Jun-10	
15	Tender Evaluation		02-Jul-10	
16	Confer Preferred Bidder status	60 days	09-Jul-10	
17	<b>Contract Awarded (subject to standstill period)</b>	n/a	09-Sep-10	<b>Cabinet approval</b>
18	"Alcatel" Standstill Period concludes	<b>15* days from 17</b>	27-Sep-10	
19	Contract award confirmed	n/a	30-Sep-10	
20	Contract Close			

			<b>ISOS 5%</b>	<b>ISDS 50%</b>	<b>Final Tender 50%</b>		
1	Financial Impact	1.1	Price and Affordability	3%	30%	30%	
		1.2	Payment Profile	1%	4%	4%	
		1.3	Sensitivity Testing under different Macro-Economic Assumptions		1%	16%	16%
			<b>20%</b>	<b>10%</b>	<b>10%</b>		
2	Financial and Commercial	2.1	Financial robustness	6.6%	2.0%	1.0%	
		2.2	Deliverability of the funding package	6.6%	3.3%	3.3%	
		2.3	Consortium Risk Mitigation Structure	2.8%	1.4%	2.4%	
		2.4	Acceptance of Payment Mechanism	4.0%	3.3%	3.3%	
			<b>65%</b>	<b>30%</b>	<b>30%</b>		
3	Service Delivery & Technical	3.1	Landfill diversion performance	9%	5%	4%	
		3.2	Recycling / outputs performance	9%	5%	4%	
		3.3	Environmental impacts	6%	5%	5%	
		3.4	Flexibility of proposed technological solution	8%	5%	4%	
		3.5	Deliverability of planning, permits and consents	5%	4%	3%	
		3.6	Enhanced service and added value	8%	1%	5%	
		3.7	Overall capacity and resources	5%	1%	1%	
		3.8	Partnership approach and management systems	3%	1%	1%	
		3.9	Integration with collection systems and other waste infrastructure		6%	1%	1%
			Integration with council waste strategy		5%	1%	1%
		3.10	Community benefits		1%	1%	1%
			<b>10%</b>	<b>10%</b>	<b>10%</b>		
4	Legal and Contractual	4.1	Consortium or partnership legal structure	10%	1%	1%	
		4.2	Acceptability of contractual risks		5%	6%	
		4.3	Measure of due diligence		3%	2%	
		4.4	Insurance		1%	1%	

## **Contract Procedure Rules**

### **North Lincolnshire Council Waste Procurement Project**

The following standing orders will apply to the Waste Procurement Project Competitive Dialogue Procedure commencing with the placement of the OJEU notice and terminating on the award of contract.

#### **1. Purpose**

These procedure rules are designed to apply the principles of the council's Contract Procedure Rules that will apply to this Project except in so far as they are not varied by these procedure rules, and comply with the Public Contract Regulations 2006. The procedure rules are designed to cover the key stages of the procedure. However, their application is a matter of interpretation and guidance should be sought from the Project Director as to their application.

#### **2. Main Aim**

The main aim of these procedure rules is to ensure fair and consistency of treatment of bidders as well as provide an audit trail and accountability for the decision-making process.

#### **3. General**

##### **3.1. Contact with Bidders**

3.1.1 During the Competitive Dialogue procedure, contact with actual and potential bidders should be restricted to issues relating to the procedure and the market offer made by the council.

3.1.2 Any such contact should be recorded as to date, parties, issue and resolution in the Waste Contracts Enquiries log currently available on the Waste Contracts server. It is the responsibility of staff to complete these details within a short period of time (i.e. within 24 hours).

3.1.3 Contact about issues other than those specified should be referred to the Project Director. The referral is to be logged as indicated in 3.1.2.

## 3.2. Decision Making

- 3.2.1 Decisions made as authorised by the council's constitution and these procedure rules shall be recorded in writing in the form prescribed by the Project Director and retained by the Project Support Team.
- 3.2.2 All such decisions will be published in accordance with the council's existing governance arrangements.
- 3.2.3 Copies of decisions will be made available upon request by any person with sufficient interest unless the decision is commercially confidential.

## 4. Publication of Documents

- 4.1 Procurement document management and correspondence with applicants and bidders will be managed through the Supplier & Contractor Management System (SCMS), unless applicants/bidders submit hard copy documents, in which case the provisions in Section 6 will apply.

## 5. Decision Making - Key Stages

Decisions will be made at the following key stages shown below.

- 5.1 PQQ (Pre-Qualification Questionnaire) stage – the decision to confirm those bidders to continue on to ISOS by the Project Director on recommendation of the Waste Contracts Project Board.
- 5.2 ISOS (Invitation to Submit Outline Solution) stage - the decision to confirm those bidders to receive the invitation to submit detailed solutions by the Project Director on recommendation of the Waste Contracts Project Board.
- 5.3 ITDS (Invitation to Submit Detailed Solutions) stage - the decision to confirm the bidders to receive the invitation to submit final tenders by the Cabinet Member for Neighbourhood, Communities and Environment on recommendation of the Project Director following approval of the Waste Contracts Project Board.
- 5.4 ISFT (Invitation to Submit Final Tenders) stage - the decision to award Preferred Bidder status by the Cabinet Member for Neighbourhood, Communities and Environment on recommendation of the Project Director following approval of the Waste Contracts Project Board.
- 5.5 The decision to award the contract by Cabinet on recommendation of the Project Director following approval of the Waste Contracts Project Board.

All other decisions as may be required during this procurement phase are to be made by the Project Director.

## **6. Bidder responses**

Where, as a part of any documents a formal written response is required from the bidder, the following will apply:

- 6.1 All responses to be in English, or accompanied by an English translation, to be typed in hard copy in Arial font not smaller than 12 point.
- 6.2 All correspondence to be managed through the Supplier & Contractor Management System (SCMS), unless applicants/bidders submit hard copy documents, in which case the provisions in Section 6.3 will apply
- 6.3 Hard copy documents to be delivered to Pittwood House, Ashby Road, Scunthorpe, North Lincolnshire, DN16 1AB, not later than 12 noon on the date specified in the documents, addressed to the Service Director - Legal and Democratic Services (Waste Contracts) who will retain the response until the date specified for delivery.
- 6.4 Copies of any such documents may be filed electronically on the Supplier & Contractor Management System (SCMS). Such copies will not be accessed by any person until the due date for delivery of the hardcopy.
- 6.5 In any case of conflict of detail between hard and electronic copies, the hardcopy will be definitive.
- 6.6 The receipt of all such hardcopy responses shall be recorded by the representative of the Service Director - Legal and Democratic Services in an appropriate form.
- 6.7 Hard copies of any response other than the Final Tender shall be opened by the Project Director in the presence of a representative of the Service Director - Legal and Democratic Services after the published closing date for the response. The Cabinet Member for Neighbourhood, Communities and Environment shall open the Final Tenders in the presence of the Project Director and a representative of the Service Director - Legal and Democratic Services.
- 6.8 No electronic copy of a document shall be opened until such time as the hardcopy of that document has been opened in accordance with para 6.7 above.
- 6.9 Any response not complying with paras 6.1, 6.2 and 6.3 above shall, subject to the discretion of the Project Director to admit any document for good cause, be deemed to be non-compliant with the Project requirements and may be disregarded.

## **7. Procurement Timetable**

7.1 The Project will adopt and cause to be published a Procurement Timetable setting out indicative dates for the procurement process.

## **8. Declarations of interest**

8.1 Any person employed about the conduct of evaluation of the Project shall declare in written form any interest whether personal or prejudicial (within the meaning of the Local Government Act 2000 and associated regulations) in connection with any person or body corporate who submits a pre-qualification questionnaire in response to the Council OJEU notice.

## **9. General application of Council's Contract Procedure Rules**

9.1 The council's Contract Procedure Rules will otherwise apply to this project mutatis mutandis save as varied above.