

SUSTAINABLE GROWTH AND ENVIRONMENT CAPITAL SCRUTINY COMMITTEE	Agenda Item No. 5
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Report of Executive Director – Strategic Resources

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WASTE 2020 PROGRAMME ENERGY FROM WASTE FACILITY AND OTHER ASSOCIATED WORKS AND SERVICES

1. PURPOSE

- 1.1** This report is submitted to Sustainable Growth and Environment Capital Scrutiny Committee to consider in line with paragraph 8.3 of Part 4, Section 9 (Scrutiny Procedure Rules) of the Council's constitution.
- 1.2** Under paragraph 8.1 of Part 4, Section 9 (Scrutiny Procedure Rules) of the constitution any Member may require that an item be placed on the agenda of a Scrutiny Committee.

2. RECOMMENDATION:

- 2.1** Committee notes and endorses the actions taken, and to be taken, in connection with this procurement, that it will receive a further update report on the procurement process for its meeting on 13 June 2012 and that it will continue to be kept updated as the Waste 2020 Programme and facilities progress.

3. LINKS TO SUSTAINABLE COMMUNITY STRATEGY:

- 3.1** The outcome of this procurement will address the following priorities in the Sustainable Community Strategy:-
- Creating the UK's environmental capital; and
 - Delivering substantial and truly sustainable growth.

4. BACKGROUND

- 4.1** On 28 February 2007 full Council resolved that:-
- (a) there should be an integrated waste management solution for Peterborough as part of the waste management strategy, a commitment to recycle and compost 65% plus and that the infrastructure to deliver this would include an energy from waste facility which was capable of generating heat and power and a new materials recycling facility;
 - (b) the Members' Waste and Recycling Working Party (which became the Members Waste and Recycling Task and Finish Group) would be consulted throughout the implementation of the waste strategy;

- (c) there would be a number of executive decisions to implement delivery of this solution and the infrastructure to deliver this.
- 4.2 On 17 January 2008, the then Leader of the Council re-affirmed the resolution of Council referred to above and decided that the Council would procure the necessary services to enable the waste management infrastructure to be delivered and to implement a suitable delivery vehicle for the integration of waste management in Peterborough.
- 4.3 On 31 December 2009, the Deputy Leader of the Council and then Cabinet Member for Environment Capital and Culture took an executive decision which, inter alia, included that:-
- (a) three bidders would be invited to participate in competitive dialogue for Lot 1 (energy from waste facility) which in alphabetical order were Kier Limited, Shanks PLC and Viridor Waste Management Limited;
 - (b) three bidders would be invited to participate in competitive dialogue for Lot 2 (materials recycling facility) which in alphabetical order were Greenstar Holdings Limited, Shanks Group PLC and Viridor Waste Management Limited;
 - (c) delegations to the then Deputy Chief Executive and/or Executive Director – Strategic Resources in consultation with the Deputy Leader and Cabinet Member for Environment Capital and Culture (and where necessary the Solicitor to the Council) to:-
 - resolve any issues whether of a strategic, operational or other nature (including any that crossed departments) during the remainder of the procurement process to ensure effective and timely progress to be made;
 - to select those bidders to be shortlisted for the detailed solution stage and later stages of the procurement but not the award of contracts which would be referred to the Deputy Leader for a further executive decision.
- 4.4 In June 2010, the Deputy Leader, in consultation with the Executive Director – Strategic Resources decided that Biffa Waste Services Limited, as the fourth ranked bidder, should be invited to participate in competitive dialogue for the Lot 1 procurement to make up the three bidding slots following the withdrawal of Shanks PLC.
- 4.5 In June 2010, the Deputy Leader, in consultation with the Executive Director – Strategic Resources decided that Community Waste Limited, as the fourth ranked bidders, should be invited to participate in competitive dialogue for the Lot 2 procurement to make up the three bidding slots following the withdrawal of Shanks PLC. Community Waste Limited was subsequently invited to participate in the competitive dialogue for Lot 2.
- 4.6 Biffa Waste Services Limited subsequently withdrew from the Lot 1 procurement. Following that withdrawal, the Deputy Leader, in consultation with the Executive Director – Strategic Resources decided that the Lot 1 procurement would proceed with the two remaining bidders – Kier Limited and Viridor Waste Management Limited. These two bidders were invited to submit outline solutions.
- 4.7 Greenstar Holdings PLC subsequently withdrew from the Lot 2 procurement. Following that withdrawal, the Deputy Leader, in consultation with the Executive Director – Strategic Resources decided that the Lot 2 procurement would proceed with the two remaining bidders – Community Waste Limited and Viridor Waste Management Limited.
- 4.8 On 4 January 2011, the Deputy Leader, in consultation with the Executive Director – Strategic Resources considered and decided that the outline solutions for Lot 1, submitted by Kier Limited and Viridor Limited, should be taken through to the next stage of the procurement (detailed solution stage).
- 4.9 On 4 January 2011, the Deputy Leader, in consultation with the Executive Director – Strategic Resources considered and decided that the outline solutions for Lot 2, submitted by Community Waste Limited and Viridor Waste Management Limited, should be taken through to the next stage of the procurement (detailed solution stage).

- 4.10 In March 2011, the Enterprise Peterborough strategic partnership was launched. Part of the services provided by Enterprise Peterborough include collecting refuse and recycling. This forms part of the overall strategy to provide an integrated waste management solution for Peterborough.
- 4.11 On 3 August 2011, following consideration of the detailed solutions for Lot 1 submitted by Kier Limited and Viridor Waste Management Limited, the Deputy Leader, in consultation with the Executive Director – Strategic Resources, decided that the detailed solutions submitted by these two bidders should be taken through to the next stage of the procurement (final tender stage).
- 4.12 On 14 July 2011 the Environment Capital Scrutiny Committee agreed to disband the Members' Waste and Recycling Task and Finish Group and that Scrutiny Committee itself would continue to monitor the Waste 2020 Programme.
- 4.13 On 29 September 2011, following consideration of the detailed solutions for Lot 2 submitted by Community Waste Limited and Viridor Waste Management Limited, the Deputy Leader, in consultation with the Executive Director – Strategic Resources, decided that the detailed solutions submitted by these two bidders should be taken through to the next stage of the procurement (final tender stage).
- 4.14 On 30 November 2011, Viridor Waste Management Limited publicly announced that it had taken over Community Waste Limited.
- 4.15 This take-over raised some issues in relation to competition for Lot 2 but at the same time it opened up other opportunities for the Council to consider the wider impacts for the Waste 2020 Programme. In March 2012, the Deputy Leader, in consultation with the Executive Director – Strategic Resources and the Solicitor to the Council, determined that it would be appropriate, practical and sensible for the Council to consider extending the build scope of Lot 1 to include a waste transfer station as a collection point for the Council's recycling. There would also need to be an interim service solution for the waste transfer station pending a more permanent solution for treating recycling. In this way, the Council would have a solution in place for when the existing materials recycling facility closes in June 2013.
- 4.16 The final tenders for Lot 1 were invited to include this slightly extended scope.
- 4.17 Final tenders have been received for Lot 1 and are in the process of being evaluated. Once those tenders have been evaluation, the next step will be to obtain an executive decision by the Deputy Leader of the Council.
- 4.18 Before that executive decision is taken (scheduled for late June 2012), there will be a further update report submitted to Sustainable Growth and Environment Capital Scrutiny Committee to provide details of the final tender evaluation and outcome.

5. BENEFITS TO THE COUNCIL

- 5.1 The energy from waste facility (and hence the solutions being offered to the Council through the Lot 1 procurement process) will provide a number of benefits, both commercially and environmentally for the Council.
- 5.2 Environmentally, the energy from waste facility will prevent over 1.3 million tonnes of waste being sent to landfill. The waste going into the energy from waste facility will generate energy, thereby recovering energy from waste. This will result in the generation of renewable electricity local to Peterborough. This power generation will enable the Council to avoid the cost impact of rises in electricity costs above inflation and to receive income from electricity that is sold to the grid.
- 5.3 Overall, this will allow the Council to reduce its carbon footprint compared to the sending its waste to landfill sites.

5.4 The energy from waste facility also has to be capable of providing heat along with power (energy). This means that in the future, heat can also be taken from the facility and used to provide heat and hot water to local business and homes, should this prove to be economically viable. This would further improve the efficiency of the energy from waste facility, producing further CO2 savings and displacing additional fossil fuel use.

6. AFFORDABILITY

6.1 The bidders for Lot 1 have been provided with the Council's affordability envelope and have been instructed that their proposals for building, maintaining and operating an energy from waste facility and waste transfer station must be delivered within the affordability envelope.

6.2 The costs of waste treatment using the facilities currently available are expected to rise significantly over the next 30 years. The Landfill Tax and its escalated increase is intended to drive councils towards the development of recycling and other infrastructure by making the landfill disposal route a more expensive and unattractive option. This in turn intended to help the UK meet its goals under the Landfill Directive. The tax was introduced in 1996 at £8 per tonne, is currently £64 per tonne, and is due to reach £80 by 2014/15. Disposal costs including gate fees will exceed £100 per tonne at this point and continue to rise. The affordability envelope referred to in 6.1 above is based on the cost forecast modelled on expected waste volumes and landfill disposal costs.

6.3 The combined impact of landfill tax, disposal costs and waste volumes would see the cost of waste increase continuously in the future, well beyond a level that could be sustained. Doing nothing is not an option in financial terms.

6.4 The Medium Term Financial Plan includes some provision for an increase in revenue costs (these will continue to be seen in the short term as large scale landfill diversion will not be possible until the proposed plant is operational), and for capital expenditure in the plant infrastructure. This investment will see the net costs of disposal increase much less sharply from 2015/16 than would be the case under a "do nothing" option. Over a 30 year period, the total costs of the proposed solution, taking into account the capital financing costs, plant operating costs, and income from energy, must be lower than the affordability envelope to be financially viable. The Medium Term Financial Plan will be updated to reflect the exact split of the capital / revenue costs and income of the final proposal, within the overall affordability parameters already set.

6.5 The October 2010 Comprehensive Spending Review, the impact of this on the Council's Medium Term Financial Plan equating to a £25m net funding loss to the Council by 2014/15 and pressures in other service areas such as adult social care, means that the Council needs to look at alternative ways of providing services. This issue compounds the cost issue that the Council faces in this area reinforcing the need to develop an alternative way forward.

7. PROCUREMENT PROCESS TO NOW

7.1 The Council has used the Competitive Dialogue Procedure under the EU procurement rules to procure a suitable partner. The Competitive Dialogue Procedure is recognised as being appropriate for this type of procurement, where there is a complex range of services which require innovative solutions by the bidders, because the process enables the Council to work with the bidders to assist them in developing their solutions to meet the Council's requirements and aspirations. The Competitive Dialogue Procedure is a rigorous process and involves a number of stages as outlined below.

7.2 In spring 2009, the Council advertised in the Official Journal of the European Union for interest from the market for a suitable partner for the Lot 1 and Lot 2 procurements.

7.3 **Stage 1 – Prequalification:** This involved bidders expressing their interest by submitting a prequalification questionnaire. 3 bidders were selected to be taken forward to the next stage (outline solution stage) for both Lots 1 and 2.

7.4 Stage 2 – Outline Solution Stage: The 3 bidders for each of Lot 1 (and Lot 2 were invited to submit their outline solutions (outline proposals for the facilities and services) to take place after an intensive dialogue on the Council's requirements and the bidders' proposals to meet those requirements.

- Lot 1: bidders initially selected were Kier Limited, Shanks PLC and Viridor Waste Management Limited but following withdrawal by Shanks PLC invites were issued to Biffa Waste Services Limited (as replacement for Shanks PLC), Kier Limited and Viridor Waste Management Limited. Biffa Waste Services subsequently withdrew leaving the 2 remaining bidders.
- Lot 2: bidders selected were Greenstar Holdings PLC, Shanks PLC and Viridor Waste Management Limited but following withdrawal by Greenstar Holdings Limited invites were issued to Community Waste Limited (as replacement for Shanks PLC) and Viridor Waste Management following a decision to proceed with the 2 remaining bidders.

7.5 Biffa Waste Services Limited, Greenstar Holdings PLC and Shanks PLC withdrew from the procurements for their own commercial reasons.

7.6 Following evaluation of the outline proposals submitted by bidders the following bidders' solutions were selected to go forward to the next stage:-

- Lot 1: Kier Limited and Viridor Waste Management Limited.
- Lot 2: Community Waste Limited and Viridor Waste Management Limited.

7.7 Stage 3 – Detailed Solution Stage: The bidders were then invited to submit their detailed solutions (detailed proposals for the facilities and services) and further intensive dialogue followed between the bidders and the Council to assist bidders to develop their detailed proposals for each of Lot 1 and Lot 2. During this stage, there were also presentations by the bidders to Councillors and visits to bidders' chosen locations by Councillors and senior client officers. The visits to the bidders' locations allowed an opportunity for bidders to choose facilities that demonstrated their proposals being offered in Peterborough and gave Councillors and senior client officers the chance to see first hand what the bidders' operations were like elsewhere. The visits were paid for by the bidders (and not the public purse). Following submission and evaluation of bidders detailed solutions, the following bidders' solutions were selected to go forward to the next stage:-

- Lot 1: Kier Limited and Viridor Waste Management Limited.
- Lot 2: Community Waste Limited and Viridor Waste Management Limited.

7.8 Stage 4 – Final Tender Stage: Ahead of calling for final tenders, the Council conducted a final round of dialogue with the bidders to deal with any outstanding commercial points and to assist the bidders in developing and refining their final tenders.

7.9 During this period Viridor Waste Management Limited announced it had taken over Community Waste Limited which impacted on the Lot 2 procurement. This led to consideration of the matters referred to in paragraph 4.14 of this report. Consequently, the Lot 2 procurement was halted.

7.10 However, on Lot 1, dialogue continued and following closure of the final round of dialogue, final tenders were called for (which included the extended build scope for the waste transfer station). Both bidders (Kier Limited and Viridor Waste Management Limited) submitted final tenders which are currently being evaluated and a further update on the evaluation will be reported to Scrutiny Committee on 13 June 2012.

7.11 The Deputy Leader's executive decision to be taken later in June 2012 will be to identify and appoint the preferred bidder to be awarded the contract is on the Forward Plan for June 2012. This Scrutiny Committee will be meeting ahead of that executive decision being taken.

7.12 Stage 5 – Preferred Bidder Stage and Mobilisation – Going Forward: Once the preferred bidder is identified (and the executive decision has been made and the call-in period has expired)

there are a number of actions which need to be taken to mobilise the contract. The key timelines for the preferred bidder stage are set out in the Appendix to this report.

7.13 During the Preferred Bidder and Mobilisation stage, there are a number of actions to be taken including the following:-

- **Alcatel Standstill period:** As soon as the preferred bidder is identified, the Council will inform appropriate parties in line with the EU procurement rules. It is necessary to allow a 10 day standstill period to enable any challenges to be made in respect of the Council's decision. If any challenge were to be made, the Council would need to dispense with that challenge.
- **Mobilisation and Communication Plans:** The Council and the preferred bidder will agree the mobilisation and communications plan during the lead in period and in readiness for day 1 of the contract.
- **Contract Documentation:** It will be necessary to finalise all the documents. The contract will be for a period of 33 years (3 years for construction and 30 years for operating the energy from waste facility). The contract will govern the relationships, rights and obligations of the parties. There will also be bonds, guarantees and collateral warranties to protect the Council.

7.14 **Contract go live:** The contract is scheduled to go live on 1 August 2012 and there will be robust and dedicated client management arrangements in place for day 1 to ensure the partner is meeting the Council's requirements for design, construction, service delivery and that any issues that may arise are resolved speedily.

8. IMPLICATIONS

8.1 The contract will enable to the Council provide a guaranteed treatment facility that will divert all of Peterborough's municipal waste from landfill and provide cost certainty for the next 30 years and beyond. The energy from waste facility will be highly efficient and will recover energy from the waste allowing the Council to benefit from the generation and sale of electricity, protecting the Council from escalating energy costs. The facility is designed as combined heat and power enabled which means that a district heating scheme can be added in future to provide heat energy to local industry and Council facilities. In diverting waste from landfill the energy from waste facility will save significant CO2 greenhouse gas emissions that would otherwise have been released.

9. CONSULTATION:

9.1 The Deputy Leader has held a number of presentations for City Councillors informally and at All Party Policy and Cabinet Forum meetings on the Waste 2020 Programme and he regularly updates all Councillors in written briefings/letters. Presentations were made to All Party Policy on 28 October 2010 and to Cabinet Policy Forum on 14 February 2011. Updates by way of briefings and letters from the Deputy Leader to Councillors were done in July 2010, October 2010, June 2011 and May 2012. In addition, the Deputy Leader has answered a number of queries from individual Councillors on the Waste 2020 Programme.

9.2 The Deputy Leader has also held bidders' presentations in November 2010 to which Councillors were invited during the bidding stage and in February/March 2012 a party of Councillors and senior client officers visited the locations chosen by bidders to flagship their facilities and proposals.

9.3 The Deputy Leader has also consulted with the Cabinet Member for Resources, Executive Director – Strategic Resources, Solicitor to the Council and Head of Strategic Client Services throughout the process.

9.4 The Deputy Leader and/or senior client officers have attended a number of meetings of Environment Capital Scrutiny Committee on 14 January 2010 and 3 November 2011 and the Members Waste and Recycling Task and Finish Group (formerly the Members' Waste and Recycling Working Party) to discuss and update Scrutiny Members on the Waste 2020 Programme and procurements.

- 9.5 Senior client officers have also held regular meetings Peterborough for Responsible Waste Management (PFoRWM) which is a specialist interest group.
- 9.6 Senior client officers also held informal pre-planning and pre-permitting application meetings with neighbours in Fengate to explain the Council's proposals for the Fengate site to ensure they understood the plans, to allay any concerns and to enable discussions on such matters as traffic impact, heat and power generation etc. These informal meetings were, of course, followed by the formal planning/permitting consultation processes.

10. EXPECTED OUTCOMES

- 10.1 The expected outcomes are set out in the report.

11. BACKGROUND DOCUMENTS:

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

The Council's Medium Term Financial Plan

Notice published in Official Journal of the European Union

Prequalification questionnaires issued and submitted by bidders (exempt as commercially sensitive and confidential)

Invitation to participate in competitive dialogue issued during the procurement and bidders' outline, detailed and final tender responses (exempt as commercially sensitive and confidential).

12. APPENDICES:

There is one Appendix to this report on the key timelines for taking the procurement forward.

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