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 Pennaeth Gwasanaethau Cyfreithiol a
 Democraidaidd

To: Councillors: Nancy Matthews, N. Phillips, Michael Priestly,
 Eryl Williams, Julian Thompson-Hill, Arwel Pierce,
 W. G. Roberts, Thomas H. Jones, Hefin Thomas and
 Meirion Hughes

CS/NG

7 January 2011

Nicola Gittins

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Dear Sir / Madam

A meeting of the **NORTH WALES RESIDUAL WASTE JOINT COMMITTEE** will be held in the **DELYN COMMITTEE ROOM, COUNTY HALL, MOLD, CH7 6NA**, on **FRIDAY, 14 JANUARY 2011** at **10.30a.m.** to consider the following items.

Yours faithfully

Democracy & Governance Manager

AGENDA

1. **APOLOGIES**
2. **DECLARATIONS OF INTEREST**
3. **APPROVAL OF PREVIOUS MINUTES**
4. **MATTERS ARISING FROM PREVIOUS MEETING**

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The Council welcomes correspondence in Welsh or English
 Mae'r Cyngor yn croesawau gohebiaeth yn y Cymraeg neu'r Saesneg

5. **PROGRESS REPORT (SO REPORT)**
6. **RIR – RISK STATUS UPDATE (SP REPORT)**
7. **COMMUNICATIONS UPDATE (SO REPORT)**
8. **FREEDOM OF INFORMATION PROTOCOL REPORT (SP REPORT)**
9. **AMENDMENT TO INTER AUTHORITY AGREEMENT (SP REPORT)**
10. **WASTE (WALES) MEASURE 2010 REPORT (SP REPORT)**
11. **ANY OTHER BUSINESS**

NORTH WALES RESIDUAL WASTE TREATMENT PROJECT JOINT COMMITTEE

Minutes of the meeting of the Joint Committee held in the Arfon Chamber, Arfon Area Office, Penrallt, Caernarfon on Friday, 29 October 2010 at 10.30am

Present – Councillor Eryl Williams (Chair) – Denbighshire County Council
Councillor Mike Priestley – Conwy County Borough Council
Councillor Nancy Mathews – Flintshire County Council
Councillor Neville Phillips – Flintshire County Council
Councillor Arwel Pierce – Gwynedd Council

Also Present

Flintshire County Council

Mr Colin Everett, Mr Carl Longland, Ms Louise Pedreschi

Conwy County Borough Council

Mr Andrew Kirkham

Gwynedd Council

Mr William E. Jones and Mr Gwyn Parry Williams (Committee Officer)

North Wales Residual Waste Treatment Project

Mr Stephen Penny and Mr Steffan Owen

Grant Thornton

Mr Saeefar Rehman

Entec UK Ltd

Mr Jonathan Bebb

Apologies: Councillor Meirion Hughes (Conwy County Borough Council), Councillor Hefin Thomas (Ise of Anglesey County Council), Mr Iwan P. Jones (Denbighshire County Council) and Mrs Kerry Feather (Flintshire County Council)

1. APPROVAL OF PREVIOUS MINUTES

The minutes of the meeting held on 3 September 2010 were submitted.

RESOLVED that the minutes be received and approved as an accurate record.

2. MATTER ARISING FROM THE PREVIOUS MEETING

Minute 5 – RIR – RISK STATUS UPDATE

The Project Director stated that he was awaiting confirmation from the WAG in respect of DEFRA objecting to discounting the bottom ash as contributor to recycling. A report will be submitted to the next meeting of the joint committee in January 2011.

RESOLVED to note the report.

3. PROGRESS REPORT

The Project Manager presented the progress report and he referred in particular to the revised budget profile. He noted that the total projected costs were reduced from those last reported by £0.4m to £2.83m and each partner's share were also reduced from £0.645m to £0.566m over the entire project. Also the site option payments were reduced by £0.4m together with additional WAG contribution of £0.15m. The reductions in advisors costs and the contingency have mitigated increases in project management costs.

RESOLVED to note the report.

4. RIR – RISK STATUS UPDATE

The Project Director presented a Risk Register report which highlighted some of the amendments to the risk register that have been made to reflect the current understanding of risks and mitigation measures that are in place.

It was noted that there are no new risks and the only changes to the risk register in this period is to risk W2 in relation to waste flow model and assumptions accuracy amended to reflect the concerns raised at the September 2010 Project Board meeting. The risk register will continue to be reviewed by the Project Director and reported to the Project Board at future meetings.

RESOLVED to note the updated risk register for the project.

5. COMMUNICATION AND ENGAGEMENT STRATEGY REPORT

The Project Manager updated the members on the development of the Communication and Engagement Strategy by outlining the main areas of focus for communication and engagement activities.

It was noted that the project has already become of interest to both external and internal stakeholders as well as members of the public since the Outline Business Case was approved and published. It is critical to a successful project outcome that a Communications and Engagement Strategy is developed and delivered to support the project. A number of key risks in delivery of the project relate to understanding of the project by key stakeholders and the management of communications and engagement and thus a robust strategy is required to manage these risks.

During January 2010, an opinion survey was carried out of approximately 1,000 residents of the five partner authorities. The results of this survey was received during March 2010 and reported to the Communication Officer's Group during April 2010. The survey asked a series of questions relating to waste services and waste management in general, before finally asking some questions about people's attitude towards waste treatment facilities. The officer gave a summary to the members of the main findings of the survey. It is the intention to utilise this information to add to that being gathered from the stakeholder engagement session that will inform the development of the procurement evaluation framework.

The strategy is the overarching document that shapes the project's general approach to communication and engagement and the action plan puts this approach into specific activities and actions over the project period. The document includes the following sections –

- a) Objectives for the strategy.
- b) SWOT analysis
- c) Communication Principles

- d) Key messages
- e) Engagement Strategy
- f) Media relations strategy

The Communication Plan outlines in more detail the communication activities to be undertaken and when they should be undertaken during the procurement process.

A member emphasised the importance of bilingualism in the joint committee's discussions.

RESOLVED

- a) To note the findings of the Opinion Survey.**
- b) To note the draft Communication and Engagement Strategy and Communication Action Plan, allowing for amendments and sign off by the Communication Officer's Group.**
- c) Approve the main areas of communication and engagement activity and note that these documents will become "live" documents that may adapt over the project life.**
- d) Approve for Communication and Engagement to be a regular item on the Joint Committee meetings agenda.**

6. NWRWTP PROCUREMENT EVALUATION FRAMEWORK

The Project Director presented a report on the Procurement Evaluation Framework. He stated that under the Public Contracts Regulations 2006, the procurement is required to use the competitive dialogue procedure which will lead to a preferred bidder. This involves a staged process during which it is essential to maintain fairness and transparency for all bidders. In order to reach preferred bidder, the evaluation framework proposed to evaluate bids must be disclosed to potential bidders before the commencement of the competitive dialogue process. This process will commence following agreement of the select list of pre-qualified bidders and issue of the Invitation to Participate in Dialogue and associated documents to bidders.

At the outline solution stage, the main objective of the evaluation is to test the technical deliverability of the project. Further into the process as the confidence in the deliverability of the technical aspects of the solution increases, the evaluation framework increases the emphasis on the financial and legal aspects. The Partnership has received advice from its legal advisors that it is permissible to specify a range of weightings that will apply to the later stages of the procurement process. This will allow the Partnership to flex the weightings within this range if required. This has been incorporated into the evaluation framework. Throughout the development of the criteria, the project team has considered other options in terms of the weights attached to the criteria. The recommended criteria are considered to provide the best fit with the achievement of the partnership's objectives and to be consistent with best practice.

The Entec representative gave a detailed summary of the evaluation framework together with information regarding the different levels of criteria.

The Project Director informed the members further that amendments were undertaken to some of the initial valuation scores.

A member expressed concern regarding the transport especially if it is possibly an out of North Wales solution. In response, the officer informed the members that it would be possible to review this matter further and insure that the impact of transport is maximised.

RESOLVED

- a) To accept the Evaluation Framework.**

b) To give further consideration to upgrading transportation.

7. EXCLUSION OF PRESS AND PUBLIC

RESOLVED to exclude the press and public from the meeting during the discussion on the following three items because of the likely disclosure of exempt information as defined in paragraph 14, Part 4, Schedule 12A of the Local Government Act 1972. This paragraph applies because disclosure of the sensitive and commercially privileged information contained in the reports could result in breaches of confidentiality and potentially undermine the procurement process.

8. PRE-QUALIFICATION QUESTIONNAIRE EVALUATION AND DEVELOPMENT OF THE SELECT LIST

The Project Director informed the members that the main purpose of the Pre-Qualification Questionnaire (PQQ) is to reduce the number of suppliers to invite to tender to a manageable amount. The Joint Committee agreed that the Partnership would look to select eight bidders to the next stage of the procurement process, but retained the right to select more or less than this number.

The officer gave a summary of the PQQ evaluation framework weightings. In addition to the weightings, a minimum pass/fail threshold applied to the assessment criteria B-Economic and financial information. Bidders were required to score at least 50% of the available marks for this element with the Partnership reserving the right to reject any bidders that fail to meet the minimum pass score thresholds. Responses to questions were evaluated after several initial compliance and completeness checks were made. He gave information regarding the organisations that submitted PQQ responses, the outcome of the PQQ evaluation process and the eight bidders that are recommended to be invited to the next stage of the procurement process.

RESOLVED to approve the select list of eight bidders as recommended within the report for consideration by the Joint Committee.

9. INVITATION TO PARTICIPATE IN DIALOGUE

The Project Director gave a report that the NWRWTP Procurement process is utilising the competitive dialogue (CD) procedure. To commence the CD procedure, an Invitation to Participate in Dialogue is issued to bidders. The documentation requires approval by the Joint Committee before issue to bidders as commencement of the next stage of the procurement process. He summarised the key aspects from the documents as follows –

- a) Scope of the Service
- b) Waste Tonnages and Composition
- c) Contract Period
- d) Residual life of assets
- e) Contract Waste Landfill Diversion

RESOLVED

a) To approve the NWRWTP Invitation to Participate in Dialogue and associated documentation.

b) To approve to the moving to the next stage of the procurement process with issue of the Invitation to Participate in Dialogue and associated documents.

c) To give authority to the Project Director in consultation with the lead technical, financial and legal officers to make minor amendments to the Invitation to Participate

in Dialogue and associated documents before issue to bidders.

10. LAND ACQUISITION UPDATE

The Project Director gave a report on the progress in securing an option for a second site for the location of a residual waste treatment facility. At the previous meeting of this committee it was resolved to endorse the proposed approach to securing a potential option on a second site and noted the intention of the Project Board to commission geotechnical surveys in a timescale that does not compromise the project timetable. Ongoing discussions have been held with the landowner and it is anticipated that a draft option agreement will soon be available for the partnership to review. The option agreement does not commit the partnership to purchase the site and that the Joint Committee would retain the decision of whether to exercise the option or not.

RESOLVED

a) To give authority to the Project Board to consider and agree as necessary an option agreement to be entered into by the Isle of Anglesey County Council on behalf of the partnership.

b) That in the event that the Isle of Anglesey County Council is requested to enter into an option agreement on behalf of the partnership, to agree that the partnership will cover the cost of the purchase of the option agreement and therefore the cost of land purchase, and all reasonable costs incurred by the Isle of Anglesey County Council in the purchase of the land.

11. ANY OTHER BUSINESS

The Project Manager informed the members that discussions have been held with the communication advisers regarding terminating the contract.

It was also agreed to have "Declaration of Personal Interest" as an agenda item.

NORTH WALES RESIDUAL WASTE TREATMENT PROJECT JOINT COMMITTEE

Minutes of the meeting of the Joint Committee held in the Council Chamber, Bodlondeb, Conwy on Friday, 5 November 2010 at 9am (a follow up meeting to the Joint Committee held on 29th October 2010 at the Arfon Chamber, Arfon Area Office, Penrallt, Caernarfon)

Present – Councillor Eryl Williams (Chair) – Denbighshire County Council
Councillor Mike Priestley – Conwy County Borough Council
Councillor Neville Phillips – Flintshire County Council
Councillor Arwel Pierce – Gwynedd Council
Councillor Hefin Thomas – Isle of Anglesey County Council

Also Present

Flintshire County Council

Mr Barry Devies

Isle of Anglesey County Council

Mr Meirion Edwards

North Wales Residual Waste Treatment Project

Mr Steffan Owen

Apologies: Councillor Nancy Matthews (Flintshire County Council)

1. APPROVAL OF PREVIOUS MINUTES

The minutes of the meeting held on 3 September 2010 were approved.

RESOLVED that the minutes be received and approved as an accurate record.

2. MATTER ARISING FROM THE PREVIOUS MEETING

None that were not raised on 29th October 2010 meeting.

Councillor Hefin Thomas gave his apologies for not being able to attend the meeting on 29 October, and explained that this was due to personal circumstances.

RESOLVED for the Legal Officers to look at a way of amending the Inter Authority Agreement to allow greater flexibility of decision making at future Joint Committee meetings. Such an amendment will be brought to the next Joint Committee In January 2011.

3. PROGRESS REPORT

RESOLVED to note the report.

4. RIR – RISK STATUS UPDATE

RESOLVED to note the updated risk register for the project.

5. COMMUNICATION AND ENGAGEMENT STRATEGY REPORT

RESOLVED

- a) To note the findings of the Opinion Survey.
- b) To note the draft Communication and Engagement Strategy and Communication Action Plan, allowing for amendments and sign off by the Communication Officer's Group.
- c) Approve the main areas of communication and engagement activity and note that these documents will become "live" documents that may adapt over the project life.
- d) Approve for Communication and Engagement to be a regular item on the Joint Committee meetings agenda.

6. NWRWTP PROCUREMENT EVALUATION FRAMEWORK

RESOLVED

- a) To accept the Evaluation Framework.
- b) To give further consideration to upgrading transportation.

7. EXCLUSION OF PRESS AND PUBLIC

RESOLVED to exclude the press and public from the meeting during the discussion on the following three items because of the likely disclosure of exempt information as defined in paragraph 14, Part 4, Schedule 12A of the Local Government Act 1972. This paragraph applies because disclosure of the sensitive and commercially privileged information contained in the reports could result in breaches of confidentiality and potentially undermine the procurement process.

8. PRE-QUALIFICATION QUESTIONNAIRE EVALUATION AND DEVELOPMENT OF THE SELECT LIST

RESOLVED to approve the select list of eight bidders as recommended within the report for consideration by the Joint Committee.

9. INVITATION TO PARTICIPATE IN DIALOGUE

RESOLVED

- a) To approve the NWRWTP Invitation to Participate in Dialogue and associated documentation.
- b) To approve to the moving to the next stage of the procurement process with issue of the Invitation to Participate in Dialogue and associated documents.
- c) To give authority to the Project Director in consultation with the lead technical, financial and legal officers to make minor amendments to the Invitation to Participate in Dialogue and associated documents before issue to bidders.

10. LAND ACQUISITION UPDATE

RESOLVED

- a) To give authority to the Project Board to consider and agree as necessary an option agreement to be entered into by the Isle of Anglesey County Council on behalf of the partnership.
- b) That in the event that the Isle of Anglesey County Council is requested to enter into an option agreement on behalf of the partnership, to agree that the partnership will cover the cost of the purchase of the option agreement and therefore the cost of land purchase, and all reasonable costs incurred by the Isle of Anglesey County Council in the purchase of the land.

11. ANY OTHER BUSINESS

Steffan Owen thanked all the Members for attending the meeting at short notice.



AGENDA ITEM NUMBER 5

NORTH WALES RESIDUAL WASTE TREATMENT PROJECT PROGRESS REPORT

NORTH WALES RESIDUAL WASTE JOINT COMMITTEE

Date : 14 January 2011

Period: 22nd October 2010 to 7th January 2011

PROJECT SUMMARY

To procure a sustainable waste management solution for the 5 local authorities in North Wales (Conwy, Denbighshire, Flintshire, Gwynedd and Isle of Anglesey) that will assist with the reduction in greenhouse gas emissions from landfill and will minimise the tonnage of waste residue sent to landfill thus ensuring that the authorities avoid Landfill Allowance Scheme (LAS) infraction penalties and meet National Waste Strategy targets.

PROJECT STATUS

Overall Project Status	
Green	Following Joint Committee approval, the Invitation to Participate in Dialogue (ITPD) was issued to bidders on 5 November 2010 as per timetable. Positive initial dialogue meetings held with bidders later in November, with the Partnership outlining their key priorities clearly. Clarifications now being received from bidders. Work started on detailed planning for the ISOS evaluation process and ISDS documentation.
Budget status	
Green	Actual spend for this financial year up to 31/12/10 is £660,422. Profiled spend for the same time period is £873,805. (Under profile by £213,383). This is mainly due to advisor costs that have not yet been through the system. It should be noted that significant advisor costs are expected to come through during January 2011 (there has been significant advisor activity during October, November and December 2010).



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Status	Meaning
Green	There are no problems; all is progressing well and to plan
Amber	There are some minor/ less significant problems. Action is needed in some areas but other parts are progressing satisfactory
Red	There are significant problems and urgent and decisive action is needed.

PROJECT UPDATE – Activities due for completion 22nd October 2010 to 7th January 2011 (and highlighted longer term actions).

ID	Activity	RAG status	Comments	Forecast	Actual
31	Commission works to mitigate planning risk as a result of Best Practical Environmental Option (BPEO) still being in force in Wales	Green	Draft Sustainability Appraisal report issued.	October 2010	Complete
32	Option developed on second site that is capable of acceptance by Joint Committee	Green	Verbal update at meeting	Late January / early February 2011	
33	Valuation of land and assets complete by District Valuer	Amber	All sites visited by District Valuer. Awaiting report.	January 2011	
34	Condition Surveys of existing sites complete	Green	Work completed.	End September 2010	Complete
35	Develop proposed timetable and methodology for dealing with TUPE	Amber	Pinsent Masons commenced work with Anglesey before moving on to other authorities.	January / February 2011	
42	Engage with WAG re: potential rail related funding	Amber	SP to investigate potential for funding support from WAG	November 2010	Expected March 2011
45	Update Communication	Amber	Joint Committee approved draft	October 2010	Complete



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	and Engagement Strategy		strategy		
46	Develop detailed actions for inclusion in Project Plan following action 45	Amber	SO updating Project Plan	January 2011	
47	Identify site for the location of a waste transfer station to service Conwy and part of Denbighshire's waste arisings	Amber	Potential site identified. Further work to be completed if Participants find the site of interest as part of their solution	October 2010	Complete
48	Engage with WAG and Prosiect Gwyrdd re: evaluation of merchant bids	Green	Meeting held on 7 Dec 10. Follow up meeting to be held 26 January 2011	26 January 2011	
49	Engage with WAG on status of MSP waste reduction target	Green	Verbal update at meeting.	December 2010	Complete
50	Engage with Rail head operator	Green	SP had meeting with operator on 16 Dec 2010. Verbal update at meeting.	16 December 2010	Complete
51	Finalise ISOS evaluation process	Green	Discussions held with advisors and officers on process.	January 2011	Complete
52	Commencement of development of ISDS documentation	Green	Early discussions held with advisors to allocate workload.	March 2011	
53	Second ISOS dialogue sessions	Green	Sessions scheduled for 17 - 20 January 2011	Mid January 2011	
54	Confidentiality Protocol to be agreed by legal officers and Freedom Of Information Officers	Amber	See item 7 on this agenda.	January 2011	

KEY RISKS – See item 6 on this agenda.



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AGENDA ITEM NO: 6

REPORT TO: NWRWTP JOINT COMMITTEE

DATE: 14 JANUARY 2010

REPORT BY: PROJECT DIRECTOR

SUBJECT: RISK REGISTER REPORT

1. PURPOSE OF REPORT

- 1.1. The members of the NWRWTP Joint Committee have requested that they are provided with an update of the risk register at each meeting of the Joint Committee.
- 1.2. This report will highlight some of the amendments to the risk register that have been made to reflect the current understanding of risks and mitigation measures that are in place.

2. BACKGROUND

- 2.1. The Risk Register will require continual update throughout the project.

3. CONSIDERATIONS

- 3.1. There are two new risks/ issues identified this reporting period.
- 3.2. The Top 8 risks (after controls have been put in place) are shown in appendix 1.
- 3.3. Changes to the risk register this reporting period are shown in appendix 2. In summary the changes are :-
 - PO1 amended to reflect increased risks relating to WAG funding availability (in light of new financial constraints faced by WAG).
 - New risk (F14) relating to WAG approval of Final Business Case (FBC) to enable contract award (linked to new financial constraints faced by WAG)
 - New risk (F15) re availability of funding by Partner Authorities to support enhanced "front end" recycling services.
 - W1 amended to reflect risk of partner authorities not increasing front end recycling levels.
- 3.4. The risk register is shown in the accompanying appendix 3.



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3.5. The risk register will continue to be reviewed by the Project Director and reported to the Joint Committee at future meetings.

4. RECOMMENDATIONS

4.1. That the Joint Committee note the updated risk register for the project.

5. FINANCIAL IMPLICATIONS

5.1. Not applicable

6. ANTI-POVERTY IMPACT

6.1. None

7. ENVIRONMENTAL IMPACT

7.1. Not applicable

8. EQUALITIES IMPACT

8.1. Not applicable

9. PERSONNEL IMPLICATIONS

9.1. Not applicable

10. CONSULTATION REQUIRED

10.1. Not applicable

11. CONSULTATION UNDERTAKEN

11.1. Not applicable

LOCAL GOVERNMENT ACCESS TO INFORMATION ACT 1985

Background Documents:

None

Contact Officer: Stephen Penny NWRWTP



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Appendix 1 Top (Red) risks and issues

ID	Risk / Issue (i.e.: Threat to the Project)	Consequence	Current Assessment			How the risk w	
			Impact	L'hood	Overall	Already in Place	Who is Managing
Policy & regulatory Risk – Change in WAG objectives / regulations							
PO1	WAG changes financial support available for residual waste treatment projects due to WAG affordability / budgetary constraints in the current economic climate	Residual waste treatment projects become less affordable for partnership and each partner authority	5	4	20	Project Team to monitor WAG positions in terms of budget availability and lobby at ministerial level if there are indications that proposed funding is to be reduced	PD
PO2	WAG Environmental policy and objectives change	Project is now inappropriate	4	5	20	Keep in close contact with WAG to ensure potential policy changes that may impact on the project are identified early.	PD
PO4	Change in legislation or guidance either at European, National or Regional/Local level	Could require revisit of preferred solution, possible termination of project, excessive LAS compliance costs	3	5	15	Keep in close contact with WAG to ensure potential policy changes that may impact on the project are identified early.	PD
Communication & stakeholders – failure to proactively engage with key stake holders leading to delays and lack of public support for the propose							
CO4	Pressure from lobby groups/public against the preferred solution and location.	Alternative solution/site has to be sought, increased project development costs, delays to project delivery programme, excessive LAS costs, impact on Partner Councils reputation	4	5	20		
Procurement Strategy and Process							
P13	Technological solutions offered are not commissionable within LAS infraction timescales	LA' s face infraction fines for additional landfill above allowance	4	4	16	OBC modelling has shown that each partner authority can meet LAS allowances if they increase "front end" recycling and composting" and the project is delivered to timetable. Any underperformance in this "front end" recycling and composting are outside the scope of this project and any subsequent LAS liabilities will lie with the individual partner authorities. See also risk W1	Partner authorities
Planning and permitting -ability to secure successful planning and permitting outcome for solution							
PS5	Suitable sites are not in council ownership to support development of the solution	Project delayed whilst suitable sites are secured	5	3	15	Project team are identifying sites that could be suitable for location of both the waste transfer stations and residual waste treatment facility(s)	PD
Wastes							
W3	Composition of waste is different from that anticipated (poor data, policy changes, changes in collection practices)	Performance is below required level, excessive LAS compliance costs	3	5	15		
Performance							
PE1	Market/outlet is not available for outputs from the facility(s)	Increased project operational costs, increase in demand for landfill void	4	4	16		



Appendix 2 Changes this reporting period

PO1	WAG changes financial support available for residual waste treatment projects due to WAG affordability / budgetary constraints in the current economic climate	Residual waste treatment projects become less affordable for partnership and each partner authority	5	4	20	Project Team to monitor WAG positions in terms of budget availability and lobby at ministerial level if there are indications that proposed funding is to be reduced	PD		5	3	15	
F14	WAG seeks unachievable levels of VFM at Final Business case review stage and approval process due to financial constraints	WAG funding support is less than anticipated making the project is unaffordable	5	3	15	OBC funding award letter defines the conditions for payment of funding- this is consistent with the Partnership's expectations.	PD	Lobby WAG and liaise with WLGA on this issue.	PD	5	2	10
F15	Partner authorities fail to make financial plans to support additional recycling and composting services to meet "front end" increased recycling levels that are required	Failure to meet WAG "front end" recycling and composting targets with increased residual waste arisings as a result.	4	4	16	Partner authorities to develop long term funding plans to support enhanced front end recycling and composting services.	Partner Authorities		4	3	12	
W1	A Council fail to reach recycling targets by not delivering enhanced "front end" recycling and composting services	Potential excessive project costs due to excess residual waste, threat to affordability, possible excessive LAS penalties if facilities under-sized and fines applied by WAG to authorities for underperforming against recycling targets.	3	4	12	Initial discussions already held on key payment mechanism and inter authority principles to describe risk and how costs will be assigned amongst the partner authorities for under/ over provision of waste tonnages as a result of under/over recycling/ composting performance against agreed waste profiles.	PD	Ongoing engagement and communication with partner authorities to understand proposed waste recycling and composting services so that tonnage profiles can be finalised prior to ISDS stage of the procurement process. Partner authorities to develop plans for meeting enhanced recycling and composting services.	PD	3	3	9



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AGENDA ITEM NO: 7

REPORT TO: **NWRWTP JOINT COMMITTEE**

DATE: **14 JANUARY 2011**

REPORT BY: **PROJECT MANAGER**

SUBJECT: **COMMUNICATIONS UPDATE**

1. PURPOSE OF REPORT

- 1.1. To update Members of the Joint Committee on communication matters concerning the North Wales Residual Waste Treatment Project (NWRWTP).

2. BACKGROUND

- 2.1. This Joint Committee has requested regular updates on communication matters relating to the NWRWTP. This report provides an update on progress to date.

3. COMMUNICATIONS UPDATE

- 3.1. Pre-qualification Press Release: Following the formal pre-qualification evaluation process a statement was released to inform the press on progress to date. The statement named the eight successful bidders to make it through the pre-qualification stage and also highlighted what would be the next stage in the process. This is attached in Appendix 1.
- 3.2. Response to Friends of the Earth Statement: It is understood that Friends of the Earth (FoE) have circulated a statement to elected Members from each of the partner local authorities. Their statement reflected FoE's opposition to any form of incineration, but also contained several inaccuracies which could be misleading. The Project Team has developed a detailed response to the FoE statement, which following agreement of the Project Board has been circulated to all elected Members from all five partner local authorities. This is attached in Appendix 2.
- 3.3. Members Newsletter: The Project Team have circulated a newsletter to elected Members giving them an update on the procurement's progress. This is attached in Appendix 3.



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- 3.4. Website Development: Steffan Owen (Project Manager) and Karen Powell (Personal Assistant) from the Project Team have recently received training on how to update and develop the NWRWTP's specific website. This will allow for efficient and timely uploading of data onto the project's website.
- 3.5. Future Communications Plan: Following the termination of the communication advisor's contract, there is now a need to develop a plan to deal with future communication issues. It is suggested that the Project Team develops a way forward with the communications officers from all five partner local authorities. A meeting of the Communication Officers Group meeting has been scheduled for 21 January 2011. In the meantime, there may be a need for the Project Team to call-in specialist communications support on an 'as and when required' basis.

4. RECOMMENDATIONS

- 4.1. To note the content of this update report.
- 4.2. To provide the Joint Committee with further update reports on communications matters as they arise.

5. FINANCIAL IMPLICATIONS

- 5.1. Not applicable.

6. ANTI-POVERTY IMPACT

- 6.1. Not applicable.

7. ENVIRONMENTAL IMPACT

- 7.1. Not applicable.

8. EQUALITIES IMPACT

- 8.1. Not applicable .

9. PERSONNEL IMPLICATIONS

- 9.1. Not applicable.

10. CONSULTATION REQUIRED

- 10.1. Not applicable.

11. CONSULTATION UNDERTAKEN



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11.1. Not applicable.

LOCAL GOVERNMENT ACCESS TO INFORMATION ACT 1985

Background Documents:

None

Contact Officer: Steffan Owen NWRWTP



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North Wales Residual Waste Treatment Project

Appendix 1 – Press release



CYNGOR SIR
YNYSS MON
ISLE OF ANGLESEY
COUNTY COUNCIL



CONWY
CYNGOR BRIDGESTREF SIWOL
COUNTY BOROUGH COUNCIL



CYNGOR
Sir Ddinbych
Denbighshire
COUNTY COUNCIL



CYNGOR
Sir y Fflint
Flintshire
COUNTY COUNCIL



CYNGOR
GWYNNEDD
COUNTY COUNCIL

13 December 2010

Procurement process enters next phase for the North Wales Residual Waste Treatment Project

Following high levels of interest from prospective bidders the North Wales Residual Treatment Project (NWRWTP) is about to enter the second phase of its procurement process, taking eight companies through from a rigorous Pre Qualification stage.

The Welsh Assembly Government (WAG) has set challenging targets for Wales for recycling and composting, which state that by 2024/25, seventy percent of household waste in North Wales will have to be recycled or composted. The Partnership (Flintshire County Council, the Isle of Anglesey County Council, Conwy County Borough Council, Denbighshire County Council and Gwynedd Council) are all individually committed to continuing their efforts to increasing recycling and composting, however, it still leaves thirty percent that needs to be treated by some option other than landfill. The Partnership have come together and jointly started a procurement process to secure an alternative solution to treat this residual waste.

The eight bidders that have been invited to the second phase of the procurement process are:-

- Biffa Waste Services / E.ON,



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- Complete Circle (a consortium of John Laing Investments Ltd, Shanks Waste Management Ltd, Keppel Seghers and Grays Waste Management Ltd),
- Covanta Energy Ltd,
- Sita UK Ltd,
- Veolia ES Aurora Ltd,
- Viridor Waste Management Ltd,
- Waste Recycling Group / Balfour Beatty Capital and
- Wheelabrator Technologies.

The bidders will now have until February 2011 to submit details of their outline solutions for treating North Wales' residual waste. The procurement process is technology neutral which means that the bidders can put forward any solution that would be able to treat any waste that is not recycled.

Lead Chief Executive for the project and Flintshire County Council, Colin Everett, said: "The Partnership is extremely encouraged by the interest from industry in the project to date. Taking eight bidders forward will ensure that we have a wide choice and are able to purchase the best treatment technology available to meet the needs of North Wales and gain best value for the North Wales Tax payer."

Stephen Penny, Project Director of NWRWTP said "We're very pleased about the strength of interest in the project and are looking forward to hearing from bidders about their proposed solutions. We must reduce our reliance on landfill and this project is aimed at doing just that."

For further information on the project visit the website at www.nwrwtp.org

Ends

For more information contact:

Steffan Owen, Flintshire County Council. Tel: 01352 704915
Email: info@nwrwtp.org



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North Wales Residual Waste Treatment Project

Notes to Editor

The North Wales Residual Waste Treatment Project is a partnership of:

- Isle of Anglesey County Council
- Gwynedd Council
- Conwy County Borough Council
- Denbighshire County Council
- Flintshire County Council

The Partnership was set up to jointly manage residual (left over) waste generated in the five local authorities. Residual waste is the waste which is left over after recycling and composting as much as possible. Until now, this leftover waste has been sent to landfill. The North Wales Residual Waste Treatment Project has started a procurement process to let a contract for managing this residual waste using an approach other than landfill.



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Appendix 2 – Response to Friends of the Earth briefing



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COUNTY COUNCIL



December 2010

Response to Friends of the Earth briefing on the NWRWTP.

Friends of the Earth (FoE) have issued a briefing note on the North Wales Residual Waste Treatment Project. Their note contains a lot of information which does not appear to be strictly correct, or which has already been acted upon by the Partnership.

This response note seeks to address some of the areas which are misrepresented, or already considered and acted upon by the Partnership (headings are replicated from the FoE briefing note).

What is the NWRWTP?

The NWRWTP (the Partnership) is a partnership of five North Wales local authorities (Flintshire, Denbighshire, Conwy, Gwynedd and the Isle of Anglesey). The Partnership aims to purchase a service from the waste industry that will provide a tailored solution for treating the waste that is left over after as much as possible has been recycled. The Welsh Assembly Government (WAG) has encouraged the Partnership to liaise with other neighbouring Welsh local authorities to see if there was potential opportunity for wider partnership working. The position at present is that there seems little opportunity for wider Welsh authority input to the North Wales Residual Waste Treatment Project.

The FoE briefing note does recognise that the Partnership has clearly stated in its Outline Business Case (OBC)¹ that the procurement process will be technology neutral. However the FoE note subsequently goes on to express their objections to Energy from Waste (EfW) as a waste treatment technology. This seems to assume that the outcome of the procurement process is pre determined. This is not the case as the procurement process has been designed to encourage bidders to bring forward a wide range of solutions, with no technology preferred or barred.

The Partnership has developed an evaluation approach that will be used to identify the solution that best meets the Partnership's needs during the procurement process. It

¹ The Outline Business Case (OBC) examined a number of technology options in order to demonstrate project feasibility. In submitting the OBC to the Welsh Assembly Government (WAG) it was necessary to select a deliverable solution in order to demonstrate to WAG that there was a potential solution available to the Partnership which could deliver the required waste treatment objectives in an affordable and environmentally sound basis. The inclusion of EFW within the OBC submission does not in any way preclude other solutions, that can deliver the project's objectives, coming forward from the market.



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should be noted that the Partnership has carried out a number of external stakeholder sessions to develop this evaluation approach and that FoE contributed to this process.

FOE claim that trends in waste arisings do not justify an “EfW incinerator”

The FoE briefing note includes the most recent waste arisings figures for Wales that show a waste reduction. They then go on to state that this means that waste arisings are less than that indicated in the Partnership’s OBC (the Partnership OBC was modelled on waste data flow outputs at the end of 2008/9). FoE are correct in identifying this. However, while it is correct that the most recent waste arisings figures show a decrease, the statistical evidence is far from being comprehensive enough to assert that this is a long term downward trend.

It must be highlighted that the Partnership continually monitors waste arisings and waste projections with any changes in these projections being communicated to bidders so that they can design their solutions based on the latest figures. Thus the Partnership is in no way committed to the OBC waste arisings estimates that were used at the time. The Partnership will continue to review these projections throughout the procurement process to reflect the latest figures so that the finally procured solution meets the latest waste data and projections at that time.

It should also be noted that the FoE briefing note recognises that there will still be residual waste to be dealt with even when meeting the WAG targets². This recognition is welcomed by the Partnership as we believe this reflects the reality of the situation faced by local authorities in Wales. In the Partnership’s view it supports the need for a residual waste treatment project as an alternative to the present reliance on landfill.

The FOE note makes reference to the WAG National Waste Strategy “Towards Zero Waste” that contains a waste reduction figure of -1.2% for municipal waste collected by Local Authorities, (not -1.4% as stated by FoE). The waste partnership is aware of this figure although FoE should understand that this has not yet been formally adopted by WAG and is subject to review following its recent consultation process. The final version of the Municipal Sector Plan (MSP) that will be issued by WAG will have a formal status and the Partnership will of course seek to comply with any targets that this final version of the MSP contains.

The Partnership have formally expressed their concerns (as a formal consultation response to WAG) over the deliverability of this waste reduction target as WAG in their Draft MSP have failed to set out the measures that will be expected to meet this target.

As a point of detail the OBC used a waste growth projection of 0.5%, and not 0.6% as claimed by FoE. In effect this OBC growth rate reflected growth in waste arisings as a result of increases in household and population numbers during the project period and equates to approximately a 0% growth rate per household per annum.

FOE claim that “An EfW Incinerator Will Place an Artificial Ceiling on Recycling”

Yet again the FoE note assumes that EfW will definitely be the technology selected. As previously stated the Procurement process is technology neutral and it is not known what technology will be finally procured at this stage.

² FoE Briefing note section entitled “Use of Other Methods to Deal with Residual Waste”



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FoE seem to be claiming that if the Partnership secures a residual waste treatment solution such as EfW, this will preclude further increases in recycling and composting. This is not the case. The OBC clearly recognised that the Partner Authorities will be required to meet WAG's National Waste Strategy targets and that this will require significant increases in "front End" recycling and composting activities by all the Partner Authorities. The OBC and the subsequent procurement process is based on the clear assumption that these recycling and composting targets will be met by the Partner Authorities (70% by 2024/25). In developing their National Waste Strategy, WAG have taken a view on what are challenging but potentially achievable levels of recycling and composting and therefore the Partner authorities must comply with them. Therefore FoE are incorrect in their claim that the NWRWTP will limit recycling.

This is supported by the recent Waste measure adopted by the Welsh Assembly Government, which is expected to receive Royal Assent this month. The proposed Measure establishes statutory targets for the percentage of a local authority's municipal waste to be recycled, prepared for re-use, and composted. The waste targets culminate in a target of 70 per cent by 2024-25. The proposed Measure also provides the Welsh Ministers with the power to establish financial penalties that could be imposed on local authorities in the event of their failing to meet the targets set under the proposed Measure.

Specifically within their note FoE claim that the population figure for the partnership area in 2026 is forecast to be 570,000, and therefore they claim that waste arisings will be significantly less than the Partnership's original OBC projections. However WAG's Statistics for Wales project a figure of 594,100³ therefore the figures supplied by FoE are incorrect.

FoE also claim that the logical conclusion is that in order for any tonnage commitments to be met material will have to be burnt that would otherwise have been recycled. Yet again FoE have made a sweeping statement that assumes that the Partnership will take no account of the latest waste projections and will not be seeking flexibility from potential solutions that it may finally secure. This is not the case. The Partnership will be seeking to ensure that it is using the latest robust waste projections throughout the procurement and that suitable flexibility is incorporated into the commercial agreements with operators to protect the Partnership as far as is practical from significant changes in long term waste projections and waste arisings.

FoE Claim that "EfW could be costly to local authorities"

The FoE note claims in summary that based on the Partnership's waste projections as outlined in the OBC, "the tonnages available for incineration are likely to fall well below the guaranteed figure" and that "Local authorities would then find themselves paying expensive penalty charges to the incinerator operator".

In the previous section the Partnership has already described its approach to ensuring that the latest waste arisings and projections are utilised for the procurement process and that it will seek flexibility from solutions that it procures.

FoE have failed to recognise that the OBC that was developed for the Partnership clearly demonstrated a strong financial case for securing a residual waste treatment solution for

³ Ref. WAG / Statistics for Wales, "Local Authority Population Projections for Wales (2006-based)", Summary Report, Table 1.



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the Partnership area. This is as a result of significant reduction of materials to landfill and associated escalating costs to the Partnership over the project period. **In summary, not having a solution is a significant financial risk to the Partnership and therefore the individual partner authorities.**

FoE should recognise that residual waste is at present landfilled and that the costs of this are set to rise significantly. Therefore the costs of any solution must be compared to the increasing cost of the current practice of landfilling residual wastes.

FoE claim that EfW does not help combat climate change

FoE have made a claim that recycling generally contributes less to global warming than landfill or incineration. WAG and the Partnership recognises this and as a result are committed to extremely high and challenging recycling and composting targets (70% recycling / composting by 2024/25). WAG have recognised, however, that there are practical limitations to recycling and composting and also recognises that there will be residual waste that will contain a variety of materials that cannot practicably be diverted to recycling and composting markets. In addition to this, WAG have a specific target for residual waste treatment of 30% recognising the role residual waste treatment should have in any balanced solution.

WAG's National Waste Strategy clearly articulates the targets they have developed for waste minimisation, reuse, recycling, composting and residual waste treatment. WAG's conclusion is that this is the best balance for combating climate change. WAG has carried out a life cycle assessment that clearly demonstrates the environmental benefits of residual waste treatment such as EfW over the current reliance on landfill.

The Partnership therefore feel that FoE have failed to recognise that the appropriate comparison in terms of combating climate change should be between any secured residual waste treatment solution and current practice of landfill (landfill likely to be significantly worse in terms of climate change impact than any other residual waste treatment solution that could be provided for North Wales). Yet again, WAG have recognised that continued use of landfill is not a desirable environmental option and has set a target for the maximum amount of waste that can be landfilled of no more than 5% by 2024/25.

FoE also make comment that technologies other than EfW are potentially better in terms of avoiding climate change. The procurement process will seek to understand the environmental performance of any solution brought forward by potential bidders. Yet again, bidders are free to bring forward any technology they feel will meet the Partnership's requirements (that are based on WAG's National Waste Strategy targets).

FoE claim that EfW's emit toxic emissions

FoE claim that EfW's emit toxic chemicals and produce toxic ash. EfW's are amongst the most heavily regulated processes in the EU. Any new EfW would be required to meet the EU waste incineration directive emissions standards, and these standards are set to ensure protection of the environment and to avoid impact on human health. In the UK, EfW emissions have also been subjected to significant health impact analysis, and recently, the Health Protection Agency (the national independent body charged with protecting human health) concluded that *"While it is not possible to rule out adverse health effects from modern, well regulated municipal waste incinerators with complete*



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certainty, any potential damage to the health of those living close-by is likely to be very small, if detectable.” [Ref. The Health Protection Agency “The Impact on Health of Emissions to Air from Municipal Waste Incinerators”, September 2009].

This study was a review of a wide range of studies that have been commissioned to determine if there are any links between EfW and potential health impacts on local communities. The findings from the Health Protection Agency are therefore not in accordance with the claims made by FoE in their briefing note.

The FoE note states that half of bottom ash (a by product of the combustion process) goes to landfill, and that this is hazardous waste. Wider experience of modern UK EfW's suggests that up to 99% of this material can be recycled as a substitute aggregate, and that any bottom ash that is landfilled is considered non-hazardous. Residues derived from Air Pollution Control (APC) systems (a small proportion) require disposal at appropriately licensed sites.

FoE state “what Should Councils Be Doing Instead of Incineration”

FoE list a number of activities that they believe preclude or reduce the need for any residual waste treatment (again FoE assume that the technology will be EfW). As stated above the Partnership are seeking to comply with WAG's National Waste Strategy.

As previously stated, there are duties placed upon the partner authorities to significantly increase levels of waste minimisation, reuse, recycling and composting. The residual waste treatment solution will be designed and sized only to deal with the residual waste that arises once the partner authorities have met those duties.

Therefore FoE's basic premise that by carrying out additional waste minimisation, reuse, recycling and composting activities there will be no need for residual waste treatment facilities is fundamentally flawed.

It should be noted, however, that in the section “Use of Other Methods to Deal with Residual Waste”, FoE make reference to Mechanical Biological Treatment (MBT) as a potential residual waste treatment solution. It is clear therefore that they recognise the requirement for a residual waste treatment solution.

The tone of the FoE is that the partner authorities should be carrying out more waste minimisation, reuse, recycling and composting activities. The Partnership endorses this and the five partner authorities are either already carrying out some or all of the activities suggested by FoE, or are in the process of implementing them, or are considering doing so. Ultimately, all the partner local authorities are committed to maximising their recycling, composting and waste reduction schemes. We do however need to take a practical approach to make the most of the non-recyclable waste this is left over.

FoE's specific comment on suggestions for the Use of other methods to deal with the residual waste

FoE state their opposition to EfW in their briefing note. WAG support EfW as their preferred residual waste treatment technology, however as previously stated, the Partnership's procurement process is technology neutral with no technology preferred or barred.



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FoE make reference to MBT, gasification, pyrolysis or landfill as potential residual waste treatment solutions. The Partnership have a few comments in this regard as follows:

The FoE briefing note states that the outputs from MBT solutions “**may** be clean enough to return to land” – should an MBT solution be proposed by a bidder this would be investigated as part of any tender evaluation. As a general comment, MBT technologies also tend to be net consumers of large quantities of power, which requires assessment of their carbon footprint.

FoE make specific reference to Gasification and Pyrolysis technologies. These are less proven commercially and technically than EfW technologies. The few reference plants which are running generally produce power at around 400 – 500 kWh of electricity per tonne of residual municipal waste, which may be less beneficial overall than EfW. In both instances, the full environmental impact / benefit of any proposed solution will form part of the procurement evaluation.



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Summary

- The FoE briefing note contains a number of factual inaccuracies.
- The FoE briefing note fails to recognise the role of WAG's National Waste Strategy Targets in setting the context and constraints in which the Partnership must operate. This includes the waste minimisation, reuse, recycling, composting, residual waste treatment and maximum landfill targets the partner authorities must achieve and are committed to them. Also, the WAG strategy requires the treatment of residual waste in preference to landfill.
- The NWRWTP is therefore seeking a solution that is not "instead of" waste minimisation, reuse, recycling and composting, but indeed in conjunction with them to provide the best solution for the partner authorities. Any new facility will form part of a much wider system designed to manage waste in the most sustainable way.
- The OBC was required to demonstrate a deliverable solution against which other solutions may be evaluated, however the procurement process is technology neutral, with no technology preferred or barred.
- There will be considerable flexibility within any contract for variations in waste, with no obligation on the Partnership to find material at the expense of recycling. The Partnership will be seeking to ensure that it is using the latest robust waste projections throughout the procurement process.
- The OBC clearly demonstrated that procuring a residual waste treatment solution will provide significant cost avoidance to the partner authorities over continuing to landfill. Therefore FoE's claim that securing a residual waste treatment solution such as EfW "could prove very costly for Local Authorities" is misleading.
- Procuring a residual waste treatment solution will provide considerable climate change benefit over continuing to landfill.
- The five partner authorities are either already carrying out some or all of the activities suggested by FoE (e.g. recycling collections etc), or are in the process of implementing them, or are considering doing so.
- The Health Protection Agency has stated that there are no discernable health effects around modern EfW's. The FoE statement is therefore considered alarmist.
- The FoE briefing note makes statements that some residual waste treatment technologies such as MBT "offer environmental benefits, create far more quality jobs and are cheaper". These claims are not substantiated. The Partnership will ensure through its procurement process that all treatment technologies that are proposed by bidders will be evaluated for their environmental performance, affordability and other factors such as job creation etc. The Partnership will finally procure the solution that best meets the needs of the partner authorities.



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Appendix 3 – January 2011 Members' newsletter



Edition 5

January 2011

NORTH WALES RESIDUAL WASTE TREATMENT PROJECT (NWRWTP)

Progress with the Procurement Process

Since the last edition of this newsletter in May 2010, the Welsh Assembly Government (WAG) confirmed their approval of additional funding to the partnership of up to £142.7 million. This will be in form of £5.72 million each year over the service period of the contract (circa 25 years).

This has allowed the Partnership to commence and progress its procurement process. Following high levels of interest from prospective bidders, the procurement has entered the second phase of its procurement process, taking eight companies through from a rigorous Pre Qualification stage. The eight bidders that have been invited to the second phase of the procurement process are:-

- Biffa Waste Services / E.ON,
- Complete Circle (a consortium of John Laing Investments Ltd, Shanks Waste Management Ltd, Keppel Seghers and Grays Waste Management Ltd),
- Covanta Energy Ltd,
- Sita UK Ltd,
- Veolia ES Aurora Ltd,
- Viridor Waste Management Ltd,
- Waste Recycling Group / Balfour Beatty Capital and
- Wheelabrator Technologies.

The bidders will now have until February 2011 to submit details of their outline solutions for treating North Wales' residual waste. The procurement process is technology neutral which means that the bidders can put forward any solution that would be able to treat any waste that is not recycled, and no waste treatment technology is preferred or barred.

The Partnership is extremely encouraged by the interest from industry in the project to date. Taking eight bidders forward will ensure that there is a wide choice and that the partnership is able to purchase the best treatment technology available to meet the needs of North Wales and gain best value for the North Wales Tax payer.

Communication - New Website

The new NWRWTP website is now available to view online (www.nwrwtp.org), which will provide a key communication tool to inform the public about the NWRWTP. There will be a protected section dedicated to Members only. To access this section, simply type your name and ward when requested on screen. A password will then be created for you. The Member section will contain information regarding future meetings (time and location) and the minutes from all Joint Committee meetings previously held, as well as other information such as reports and background information. This will ensure that Members are able to have



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access to up to date information regarding the project and therefore be fully informed. The partnership is aware that communicating, engaging and consulting with all stakeholders including Members and residents is vital, and it is intended to keep those stakeholders fully informed throughout the process through a variety of means including the website mentioned above, this newsletter and other ways.

Next Steps

As has been stated above, bidders have until February to submit their outline solutions. The Partnership will then evaluate those bids in order for the Joint Committee to select the bidders to invite to submit detailed solutions. This is expected to be later in Spring, and we will issue this newsletter (directly and available via the website) on a quarterly basis to update Members.

If you have any queries, please don't hesitate to contact the Project Team on 01352 704915 or info@nwrwtp.org.

Thank you

Project Team
North Wales Residual Waste Treatment Project



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AGENDA ITEM NUMBER 8

REPORT TO : **NWRWTP JOINT COMMITTEE**

DATE : **14 JANUARY 2011**

REPORT BY : **PROJECT DIRECTOR**

SUBJECT : **CONFIDENTIALITY AND FREEDOM OF INFORMATION PROTOCOL**

1.00 PURPOSE OF REPORT

1.01 To seek approval from members of the Joint Committee for a Confidentiality and Freedom of Information (FOI) Protocol, a Confidentiality Agreement to be signed by Officers and Members and the administrative system to be utilised for dealing with commercially sensitive papers at Joint Committee or individual Partner Authority Members' meetings.

2.00 BACKGROUND

2.01 The Partnership intends to fully embrace the opportunities that Competitive Dialogue provides to all parties during its Procurement Process and intends to engage in open and constructive discussions with all Bidders regarding the development of their proposals.

2,02 However the project team recognises that to enable this to effectively take place a clear and precise protocol needs to be established both to cover how the Partnership will itself deal with these discussions and resulting information, as well the approach to be adopted within the Dialogue itself and information that will need to be shared with a variety of stakeholders at certain stages.

3.00 CONSIDERATIONS

3.01 There are a number of regulatory constraints placed on the Partnership and Procuring authorities in relation to maintaining the confidentiality of bidder's proposals during a procurement process. Specifically, the procuring Authorities must abide by Regulation 18(21) (c) of the Public Contracts Regulations 2006, which **precludes the Authority from revealing to other Bidders "solutions proposed or any confidential information communicated by a participant without that participant's agreement."** The term "revealing to other bidders" by logical extension must also mean bringing into the public domain.



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- 3.02 The purpose of the Protocol is to provide guidance on matters of Confidentiality and Freedom of Information to all stakeholders within the Procurement Process and in particular during the Competitive Dialogue process. The document aims to give a clear indication at each stage as to which stakeholder should have information at that stage. The protocol is shown at appendix 1. The Protocol is in draft form and has been subject to consultation with legal officers from all partner authorities. The Protocol will be finalised following more detailed consultation with Partner authority FOI officers.

NWRWTP'S Proposed Approach to Confidentiality and FOI

- 3.03 Each stage of the Procurement Process will have its own issues relating to Confidentiality and Freedom of Information. The Partnership is required by the terms of the Competitive Dialogue process, to maintain confidentiality with Bidders as to their proposals throughout Competitive Dialogue.
- 3.04 The Partnership will however wish to advise members of the NWRWTP Project Board, NWRWTP Joint Committee and also members of each participant authority on progress during this time, and announce the progress of Competitive Dialogue.
- 3.05 Through the Project Board and Project Team, the Partnership will have colleagues from the individual Partner Authorities, Advisors and Members of the NWRWTP Joint Committee involved at various stages of the Procurement Process. There will also be reporting needs to individual Partner Authority meetings for decisions and reports on progress, to the media where appropriate and to the general public. In addition the Partnership will be entering the public consultation phase in respect of sites and planning applications.

Key Elements of the Confidentiality and Freedom of Information Protocol

- 3.06 The Protocol states that confidential information may only be communicated to authorised people. These will be those to whom the information has been provided and any others who the provider of the confidential information has authorised to receive the confidential information.
- 3.07 The Protocol states that under no circumstances should confidential information be disclosed to an unauthorised person, including advisors, senior officers or members of the NWRWTP Joint Committee or officers or members of the individual Partner Authorities.
- 3.08 If someone claims to be entitled to see confidential information reference, in the first instance, should be made to the Protocol and if clarification is not given then the matter should be referred to the Lead



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Authority Lead Legal Officer who, (following consultation with the NWRWTP Project Director) will have final responsibility within the Partnership for determining any issues regarding confidential information.

- 3.09 In relation to FOI or EIR requests, there is an official method for response to these requests that exist within the lead Authority's (Flintshire County Council) FOI guidance. A process for dealing with FOI requests within the Partnership is set out within the Protocol.
- 3.10 Certain information (bidder's detailed proposals and bidder's communications with the procurement team) will only be accessed electronically and will be password protected. In such cases, access will be restricted to authorised personnel.

Summary of planned Approach to Information Dissemination

- 3.11 The Project Board will have full access to all information relating to the procurement process and bidder proposals. Detailed presentations and reports will be made to the Project Board in relation to bidder proposals and in relation to any planned de-selection of bidders during the procurement process.
- 3.12 The Negotiation and evaluation teams will have full access to all information relating to the procurement process and bidder proposals.
- 3.13 The Joint Committee will be provided with summaries of the key proposals/ solutions proposed by bidders in closed/ private session as well as recommendations for deselection of bidders (and ultimately approvals of preferred bidder/ contract award) at the differing stages of the procurement process.

Information provision to Individual Partner Authorities

- 3.14 The Protocol sets out a proposed approach to the provision of information to Individual Partner Authorities. The Protocol envisages that update reports will be provided by the Project team (in consultation with the technical, financial, legal representatives from each individual partner authority as required) summarising the key aspects of the solutions proposed by bidders at each stage of the procurement process for use in private session only.

Publicly available Information

- 3.15 The Partnership will be able to make information available publicly available where this would not undermine the Partnerships commercial position or disclose a bidders solution during the procurement process



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without their approval. An example of such information that can be made publicly available would be in relation to any new sites secured by the partnership to be made available to bidders, or for example the Partnership's approach to specific issues such as rail etc.

- 3.16 At key stages (e.g. PQQ longlisting, ISOS and ISDS de-selection) it will be possible to make public (and therefore for individual authorities to consider in public session) outcomes of the long listing and de-selection processes. For example the list of companies longlisted as a result of the PQQ stage would be made public as would subsequently the names of those companies being invited to submit detailed solutions, invited to submit final tenders and preferred bidder/ contract award.
- 3.17 In the later stages of the procurement process (post ISDS/ CFT stages) it may be possible to bring some information into the public domain about potential use of the reference or other sites as part of bidders proposals but only with the agreement of the bidders. Should bidders submit a scoping request to a local planning authority relating to their solution this would in effect make their solution public. At that point the Partnership would be at liberty to make reference to this publicly available information. At preferred bidder stage it should be possible to bring information in relation to the proposed solution into the public domain.

CONFIDENTIALITY AGREEMENT

- 3.18 Due to the sensitive nature and scale of the NWRWTP procurement process, it has been agreed by the Project Board that certain Officers involved with the project and Joint Committee Members (or non Joint Committee elected Members attending) should sign a Confidentiality Agreement at any meetings where commercially sensitive details are to be discussed. A working draft of the agreement has been drawn up, which the Legal Officers will be discussing at a meeting later in January 2011. A working draft of this is attached in Appendix 2.
- 3.19 The main points of the agreement are as follows:-
- It instructs the Recipient not to disclose any confidential information to any third parties, and not use the information for any purposes without the agreement of the Discloser.
 - It instructs the Recipient to return copies of Confidential Information to the Discloser.
 - Refers Members to their Code of Conduct.
 - It asks the Recipient to certify that:-
 - They have no direct or indirect interest in or in connection with this procurement or award or proposed award of the Contract.
 - They have not been canvassed or solicited in connection with the preparation, submission and evaluation of this



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procurement exercise or award or proposed award of the Contract

- They have not been compromised by accepting gifts or hospitality from persons who provide goods, services or works for the Partnership Authorities or any other party in connection with this procurement or award or proposed award of the Contract.

ADMINISTRATIVE SYSTEM

3.20 In order to ensure an effective and efficient way of distributing confidential papers to Members (Joint Committee Members and non Joint Committee Members), it is proposed that commercially sensitive papers are dealt with in a specific way.

Joint Committee Papers

- Commercially sensitive Joint Committee papers shall not be distributed via email to Joint Committee Members as is done currently. Individually numbered paper copies of such documents that shall be printed by the Project Team and distributed directly to Joint Committee Members.
- Joint Committee Members shall keep their copies in a safe and secure environment and agree not to photocopy these papers.
- Joint Committee Members shall hand back their numbered copies at the end of the Joint Committee Meeting.

Individual Partner Authority Member meetings / briefings

- Individual partner authority Member Services Sections shall be responsible for printing a limited number of copies of the documents (less than 4 (four) copies), and keeping those copies in a secure room within the Members' area of the Council Offices for a period of [X] days prior to the meeting to enable the Members to view the documentation prior to the planned meeting or briefing. Members shall not be permitted to remove papers from the room or make copies of them. Individually numbered copies shall be distributed by the Member Services Sections at the relevant meeting / briefing. These copies shall be returned to the Member Services Sections by Members at the close of the meeting / briefing, who shall be responsible for shredding those printed copies and those copies held in the secure room. Confirmation shall be given to the Project Team when this is done.

Officers

- The Project Team shall agree to provide printed copies of any commercially sensitive documents to relevant officers for an agreed time. The officers shall agree to keep the documents in a safe and secure environment and not to photocopy the documents. When the Officers are finished with the documents, they shall return them to the Project Team for shredding.



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RECOMMENDATIONS

- 4.01 That the Joint Committee approves the Confidentiality and Freedom of Information Protocol subject to minor amendments and approval by the Legal Officers.
- 4.02 That the Joint Committee approves Confidentiality Agreement subject to minor amendments and approval by the Legal Officers.
- 4.03 That the Joint Committee approves the administrative system as outlined for dealing with commercially sensitive agenda items.

5.00 FINANCIAL IMPLICATIONS

- 5.01 None

6.00 ANTI POVERTY IMPACT

- 6.01 None

7.00 ENVIRONMENTAL IMPACT

- 7.01 None

8.00 EQUALITIES IMPACT

- 8.01 None

9.00 PERSONNEL IMPLICATIONS

- 9.01 None

10.00 CONSULTATION REQUIRED

- 10.01 None

11.00 CONSULTATION UNDERTAKEN

- 11.01 Legal officers from all 5 partner authorities have been involved in review and development of the draft Confidentiality and Freedom of Information Protocol.

12.00 APPENDICES

- Appendix 1 Draft Confidentiality and Freedom of Information Protocol



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Appendix 2 – Draft Confidentiality Agreement

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 **BACKGROUND DOCUMENTS**

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Appendix 2 – Draft Freedom of Information Protocol



[DRAFT]

Confidentiality and Freedom of Information Protocol - Procurement Process

North Wales Residual Waste Treatment Partnership

N.B.

Denbighshire has requested that the Protocol be sent to the ICO for approval. This is not common practise and it not something that falls within the ICO's remit.

Conway and Flintshire have requested that a meeting be held with the relevant officer to discuss the Protocol.



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2. **DISCLAIMER**

- 2.1 This document does not constitute professional legal advice on confidentiality or freedom of information matters ("**Information**") but has been formulated based on current good practice, current UK policy and guidelines issued in relation to Information when using a competitive dialogue process.
- 2.2 This information and communication protocol (the "**Protocol**") is approved by the North Wales Residual Waste Treatment Partnership (the "**Partnership**") joint committee (the "**Joint Committee**"), who are the decision making body for the Partnership procurement process (the "**Procurement Process**"). [Specific contacts for the Procurement Process can be found in paragraph [REDACTED] of this document.]

3. **THE CURRENT SITUATION**

- 3.1 The Partnership is currently undertaking a major procurement process for a new residual waste treatment facility for the North Wales region (the "**Project**") acting through its project team and project office ("**Project Office**") [DN: Need to define Project Office more clearly, i.e. who is a part of it, Steffan Owen etc?]. This will be a public private partnership ("**PPP**") contract, possibly funded by limited recourse project finance, primarily for the development of residual waste facilities. This contract will be procured through a competitive dialogue process ("**Competitive Dialogue**") pursuant to the Public Contracts Regulations 2006 (SI 2006/5).
- 3.2 The Project, with an estimated overall value of £600 to £800 million, will deliver the residual waste treatment management needs for the Partnership for approximately the next twenty-five (25) years.

4. **PURPOSE OF THE PROTOCOL**

- 4.1 The purpose of this Protocol is to provide guidance on Information to all stakeholders (for the list of various stakeholders please see paragraph 5 below) within the Procurement Process and in particular during Competitive Dialogue. As stated in the disclaimer at the beginning of the document (paragraph 2 above) this Protocol does not replace professional legal advice but aims to give a clear indication at each stage as to which stakeholder should have information access.
- 4.2 The Partnership intends to fully embrace the opportunities that Competitive Dialogue provides to all parties during its Procurement Process and intends to engage in open and constructive discussions with all parties bidding for the Project (the "**Bidders**") regarding the development of their proposals.
- 4.3 However, the Partnership recognises that to enable this to effectively take place, a clear and precise Protocol needs to be established. This is to cover:-



- how the Partnership will itself deal with these discussions and resulting information;
- the approach to be adopted within Competitive Dialogue itself; and
- the information that will need to be shared with a variety of stakeholders at certain stages.

4.4 Further to the above, the Partnership also recognise that:-

- the public and press are likely to have an interest in the Project due to its potential environmental, economic and social impact on the region. The Partnership therefore feels that it is important to have this Protocol in place so that requests for information about the Project ("**Information Requests**") can be dealt with in a proficient and consistent manner;
- the five participating authorities involved with the Project (Conwy County Borough Council, Denbighshire County Council, Flintshire County Council, Gwynedd Council and Isle of Anglesey County Council) (the "**Authorities**") in this Procurement Process already have obligations under the Environmental Information Regulations 2004 ("**EIR**") and the Freedom of Information Act 2000 ("**FOIA**") and this Protocol is designed to work alongside those statutory requirements; and
- [there is a Confidentiality Agreement dated [REDACTED] which [REDACTED] have entered into. However, the parties wish to enter into further agreements in relation to the handling of Information Requests, namely this Protocol.]

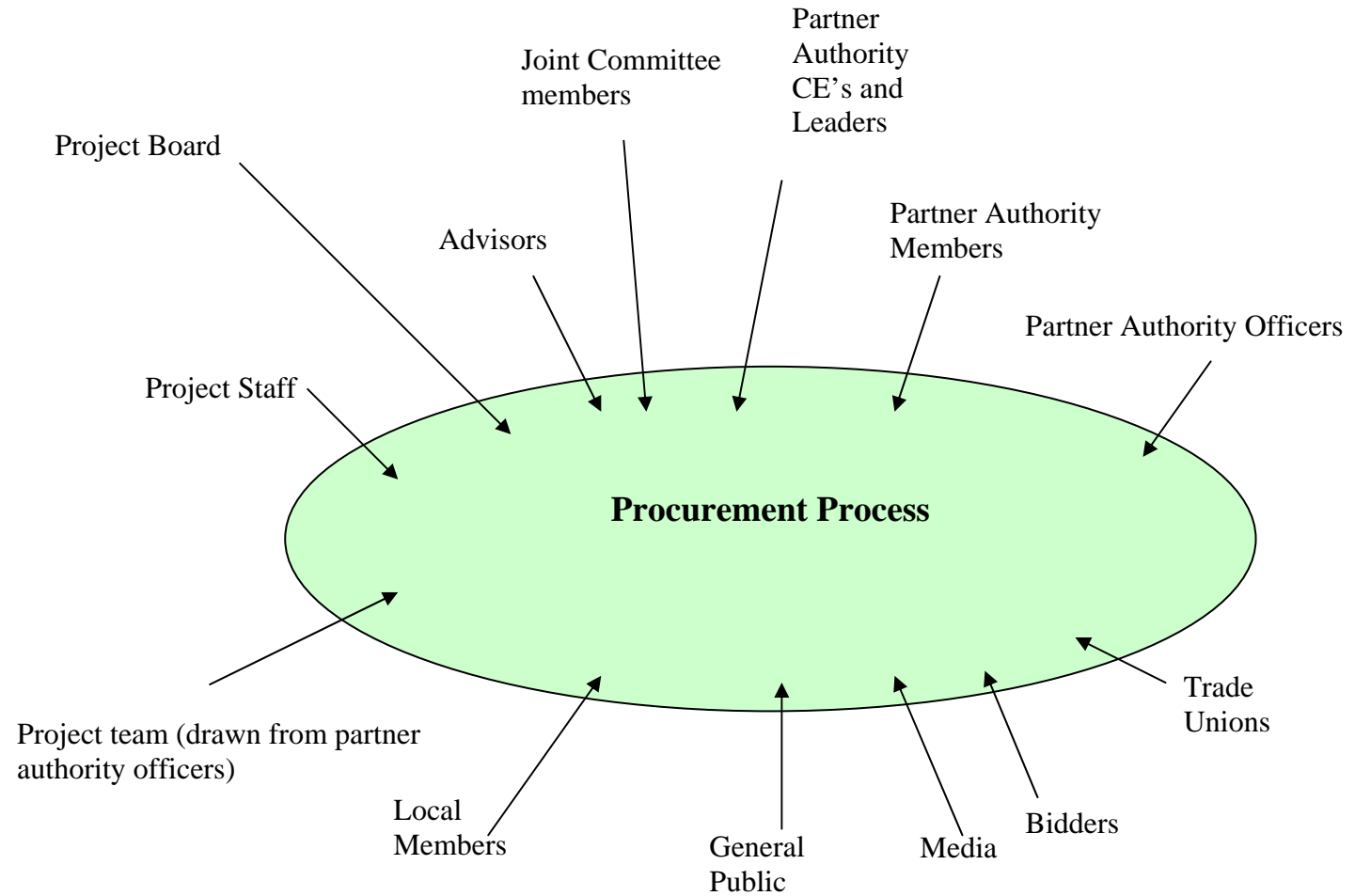
5. **STAKEHOLDERS' MAP**

5.1 There are numerous stakeholders within the Procurement Process, both internal and external, that will need to be aware of the Protocol and will need to be advised of its guidelines.



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6. OVERVIEW

6.1 The Authorities, which individually responsible for how they release Information, should co-operate and consult with each other prior to Information being released.

7. THE LEAD INFORMATION AUTHORITY AND PROPER OFFICERS

[NB: We will need to name who is to be the main contact for Information Requests at the Lead Authority and the other Authorities]

7.1 To help make sure Information Requests are dealt with properly, two (2) key roles will have to be decided between the Authorities - the lead authority (the “**Lead Authority**”) and an officer who will deal with FOIA and EIR Information Requests (the “**Proper Officer**”), whose roles are described below.

- Lead Authority

One (1) Authority should take on the role as a Lead Authority. The Joint Committee has appointed Flintshire County Council as the Lead Authority for the purposes of the Project. An outline of their role is listed below:

- they will manage requests for disclosure addressed to the Partnership
- they will liaise with, and inform the Project Office of, such an Information Request;
- they will maintain a log of all the Information Requests (including the specific information these Information Requests relate to) made under FOIA, EIR or any associated codes of practice; and
- they will have final responsibility within the Partnership for determining any issues regarding confidential Information.

- Proper Officer

Each Authority should nominate an individual who will be their Proper Officer. An outline of their role is listed below:

- ensure compliance with FOIA, EIR or any associated codes of practice in that individual Authority in relation to the Project;



- make sure the guidance in this Protocol is followed, particularly the procedures at paragraph 8 below (Handling of Information Requests);
- decide on which categories of Information can be released under this Protocol; and
- liaise with the other Proper Officers and the Project Office.

8. HANDLING OF INFORMATION REQUESTS

[NB: Once an Information Request has been dealt with do we want a "reporting back" process to the other Authorities to be in place informing them of the outcome? Is this covered under the duties of the Lead Authority (7.1 above, 3rd bullet point down)?]

8.1 The Partnership expects that many Information Requests are going to be made to each of the Authorities. It should be appreciated that Information Requests can come from anywhere and to anyone within each Authority. It is therefore important that different situations are prepared for. Set out below is how to deal with the most common situations.

• **Dealing with an Information Request**

- Should an individual Authority receive an Information Request, the procedure is as follows.
 - (i) the relevant Authority handling the Information Request shall, within five (5 working) days from the date of the Information Request, make a decision on:-
 - (1) whether the Information Request is a valid one;
 - (2) whether FOIA, EIR or any other regime is applicable; and
 - (3) if the Information Request describes sufficiently the Information required.
 - (ii) the relevant Authority shall then inform the Lead Authority of the Information Request within two (2) days afterwards
 - (iii) the Lead Authority will then, within two (2) days, let the relevant Authority know if the Information requested has previously been released or refused to be released;

• **An Information Request is made to an individual Authority which was not the Authority that produced the Information in the first place**



- In this case, the procedure is as follows:
 - (i) the person making the Information Request should be asked (by the relevant Authority) to make the request to the Authority that produced the Information;
 - (ii) if they do, then the Authority that was approached for the Information has no more responsibility under this Protocol;
 - (iii) if not, then the Authority that was approached should handle the Information Request;
 - (iv) if the [Lead Authority][Project Office] are satisfied that the Information can be released, then it shall be. This is subject to the exceptions in the paragraph entitled "How to carry out an Information Request" below.

• **How to an Information Request**

- In all circumstances, when an individual Authority has to an Information Request, it shall carry out appropriate searches to find the Information. The Authority should consider the issue of fees and the public interest test when undertaking these searches. Before the information can be released, and in a number of circumstances, the other Authorities [and the Project Office] should be consulted. These circumstances are listed below:
 - (i) the information has been marked as considered for exemption, or is in an agreed exempt category (decided under this Protocol at paragraph 12.1 below), but is not marked as such;
 - (ii) the individual Authority considers that the Information requested would impact on another Authority.
 - (iii) the individual Authority considers that other Authorities may be able to provide relevant views on the application of the "public interest test" or the application of any exemptions; and
 - (iv) [the Confidentiality Agreement requires notification.]
- [Authorities [and the Project Office] should be consulted within [] days of the Information Request being made, they will then have [] days to respond back to the Authority dealing with the Information Request.]



9. GUIDELINES FOR CONFIDENTIALITY AND FOI BETWEEN AUTHORITIES AND BIDDERS

9.1 Where the Authorities and a Bidder agree that Information is to be treated as confidential, the following safeguards shall apply:-

- **Statutory Protection:** The Authorities will abide by Regulation 18(21)(c) of the Public Contracts Regulations 2006, which precludes any individual Authority from revealing to other Bidders “*solutions proposed or any confidential information communicated by a participant without that participant's agreement.*”
- **Common Law Protection:** The law prohibits the disclosure of information that has been provided in circumstances that create an obligation of confidence and which has the necessary quality of confidence about it.
- **Parallel Dialogue:** Competitive Dialogue takes place in a series of parallel discussions between the Authorities and Bidders and there is no communication between the parallel discussions.
- **[Confidentiality Agreements:** To provide an added safeguard, the Authorities will enter into confidentiality agreements with Bidders.]
- **Internal Protocol:** The Authorities will establish procedures, internally and with external advisors, to protect confidential information.

10. FOI CONTEXT

10.1 Each Authority is bound by FOIA and EIR which provide a duty on the Authorities to respond to an Information Request from any member of the public by telling the applicant whether it holds that Information and supplying a copy of that Information.

10.2 There are a number of exemptions to the disclosure of Information under both FOIA and EIR. For the purposes of Competitive Dialogue, the following are the most relevant:

Exemptions under FOIA

10.3 Information is exempt from disclosure where:-

- it has been provided in confidence;
- disclosure would be likely to prejudice the commercial interests of any person;
- the information is a trade secret;



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- it is prohibited by or under any enactment;
- it is incompatible with any European Community obligation; or
- it would constitute or be punishable as a contempt of court.

Exemptions under EIR

10.4 Information is exempt from disclosure where:-

- it is commercial or industrial information, which is legally protected as confidential so as to protect a legitimate economic interest;
- release of the information would adversely affect intellectual property rights.

10.5 In practice, confidential information provided during Competitive Dialogue will be exempt from disclosure under FOIA and EIR. However, under both FOIA and EIR, it is for the Authorities alone to decide whether an exemption applies. Please also see the Partnership's Inter-Authority Agreement dated 24 June 2010 (the "IAA") at Clause 25 (*Freedom of Information and Environmental Information*) FOIA section.

11. THE PARTNERSHIP'S APPROACH TO CONFIDENTIALITY AND FOI

Overview

11.1 Each stage of the Procurement Process will have its own issues relating to confidentiality and FOI. The Partnership is required, by the terms of the Competitive Dialogue process, to maintain confidentiality with Bidders as to their proposals throughout Competitive Dialogue.

[NB: Query whether the situations where information is shared with the Bidders are exempt situations under the individual Confidentiality Agreements with the Bidders. We will need to find out how the individual Confidentiality Agreements are being dealt with.]

11.2 The Partnership will, however, wish to advise members of the Partnership Project Board, the Partnership Joint Committee and also members of each individual Authority on progress during this time and announce the progress of successive stages of Competitive Dialogue. In addition the Partnership has taken into account current UK guidelines, policy and law in relation to freedom of information and makes its own recommendations for all stakeholders at each stage of the process



- 11.3 The Partnership will have colleagues from the individual Authorities, advisors and members of the Partnership Joint Committee involved at various stages of the Procurement Process. There will be reporting needs for decisions at individual Authority meetings, and also reports on progress to the media and the general public. In addition, the Partnership will be entering the public consultation phase in respect of sites and planning applications. Please also refer to Clause 14 (*Confidentiality and Announcements*) of the IAA.

Confidentiality relating to TUPE

- 11.4 Although the Partnership is committed to open government, members and officers need to recognise that the transfer process involves considerable amounts of Information that is sensitive.
- 11.5 Significant amounts of personal information relating to both transferring employees and service provision may be required to be transferred from any individual Authority (or existing outsourced contractor) to any special purpose vehicle contractor (the "SPV") appointed by the Partnership to deliver the Project. As with all personal information, this should be treated in the strictest confidence in accordance with proper data protection principles. For example, in relation to access to personal information, s.7 of the Data Protection Act 1998 should be considered.
- 11.6 For this purpose, transferring officers to the SPV should not normally seek access to Information confidential to an individual Authority. Such Information should only be disclosed to such officers with the approval of the Head of Human Resources or Head of Legal services or authorised representative..

Information Flow and using the Protocol

- 11.7 Confidential Information may only be communicated to authorised people. These will be those to whom the Information has been provided and any others who the provider of the confidential Information has authorised to receive the confidential Information. [NB: Should "authorised people" be defined, although does the second sentence of this paragraph cover it?]
- 11.8 **Under no circumstances should confidential Information be disclosed to an unauthorised person, including advisors, senior officers or members of the Partnership Joint Committee or officers or members of the individual Authorities.**
- 11.9 If someone claims to be entitled to see confidential Information then reference, in the first instance, should be made to this Protocol and if clarification is not given then the matter should be referred to the Lead Authority lead legal officer who, following consultation with the Partnership's Project Office, will have final responsibility within the Partnership for determining any issues regarding confidential Information.
- 11.10 In relation to FOIA or EIR Information Requests, there is an official method for response to these requests that exists within the Lead Authority's (Flintshire County Council) FOIA guidance. Each individual Authority will also have internal FOIA and EIR guidance in place. Further clarification may be sought from the legal advisors to the Partnership.



- 11.11 Certain Information will only be accessed electronically and will be password protected (see "Use of the Data Room" at paragraphs 11.12 - 11.14 below). In such cases, access will be restricted to authorised personnel and under no circumstances should passwords be shared with another person.

Use of the Data Room for the purposes stated in 11.12 - 11.14 below

- 11.12 In order to provide both:

11.12.1 secure Information on the Procurement Process; and

11.12.2 a confidential forum for both the Partnership and Bidders to discuss issues and ask questions, as well as an opportunity for Bidders to engage with other Bidders when appropriate,

a data room has been established by the Partnership.

- 11.13 The data room will be a web based data access point which will hold a wide range of Information regarding the Procurement Process and will also act as a communications network for the submission of questions, queries and discussion within a confidential arena.

- 11.14 The data room will be available after the Procurement's pre-qualification questionnaire stage and will have a set of security rules and operational guidelines. The data room will be used in the most part by Bidders, advisors and staff and is not intended as a public domain Information source.

12. RECORDS MANAGEMENT AND INFORMATION STANDARDS

- 12.1 Records management will be key to ensuring Information Requests are dealt with quickly and efficiently. The following points provide guidance on how sufficient standards can be achieved:

- appropriate records management should be used relating to Information produced in connection with the Project. These systems will most likely already be in place at each individual Authority;
- the Authorities should listen to recommendations made by the Proper Officers (for example, relating to the voluntary publication of Information and the categories of Information which can be published);
- the Authorities shall decide whether certain Information is exempt from access under FOIA or EIR and then mark the Information accordingly;
- the Authorities can agree categories of Information which should not be released. These categories could include:-



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- Information which is to be released at a later date and therefore cannot be released up to that date;
- Information that contains trade secrets, legal advice or personally sensitive detail;
- Information which has already been disclosed between Authorities as confidential; and
- Information that would prejudice the commercial interests of any Authority. **REPORTING AND FOI STAKEHOLDER SUMMARY**

TABLE ONE: STAKEHOLDERS: Staff, Professional Advisors, Procurement Group and NWRWTP Joint Committee Members

Stage of CDP	Risk/Issue	NWRWTP Project team Staff/Officers	Professional Advisors	NWRWTP Project Board officers	NWRWTP Joint Committee members	Individual Partner Authority members
Issue OJEU	OJEU is a public document - no issues of confidentiality for notice or contents.	Public document	Public document	Public document	Public document	Public document
Issue Pre-Qualification Questionnaire (PQQ) and Descriptive Document	PQQ is not a confidential document, it does not contain commercially sensitive information. Evaluation criteria are not confidential. Descriptive Document is a document which could be published under FOIA	Public document	Public document	Public document	Public document	Public document



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Stage of CDP	Risk/Issue	NWRWTP Project team Staff/Officers	Professional Advisors	NWRWTP Project Board officers	NWRWTP Joint Committee members	Individual Partner Authority members
	because it does not contain information that is commercially sensitive and its publication would be in the public interest.	Public document	Public document	Public document	Public document	Public document
PQQ Evaluation	Replies to the PQQ will be confidential because they contain commercially sensitive information and publication would not be in the public interest because it could prejudice procurement process.	Available to Project Team	Available to Professional Advisors	Not public but a report review will be produced for the Project Board	Yes – the evaluation will be reported to the Joint Committee as private item	Not in the public domain
Long List of Qualified Bidders	Long list of Bidders is a public document	Available to all staff	Available to all Professional Advisors	Yes – the long list of qualified Bidders will be in the public domain	Yes – the long list of qualified Bidders will be in the public domain	Yes – the long list of qualified Bidders will be in the public domain
ISOS						
Competitive Dialogue	None	Available to Project Team	Available to Professional Advisors	Private review report to Project Board	Private report to Joint Committee	Not in the public domain



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Stage of CDP	Risk/Issue	NWRWTP Project team Staff/Officers	Professional Advisors	NWRWTP Project Board officers	NWRWTP Joint Committee members	Individual Partner Authority members
ISOS Evaluation	None	Available to Project Team	Available to Professional Advisors	Private review report to Project Board	Private report to Joint Committee	Not in the public domain
Feedback to bidders	None	Available to Project Team	Available to Professional Advisors	Private review report to Project Board	Private report to Joint Committee	Not in the public domain
Shortlist of Bidders	None	Public document	Public document	Public document	Public document	Public document
Summary of solutions proposed	None	Available to Project Team	Available to Professional Advisors	Private review report to Project Board	Private report to Joint Committee	Headline summary Private report available to partner authorities
ISDS						
Competitive Dialogue	None	Available to Project Team	Available to Professional Advisors	Private review report to Project Board	Private report to Joint Committee	Not in the public domain
ISDS Evaluation	None	Available to Project Team	Available to Professional Advisors	Private review report to Project Board	Private report to Joint Committee	Not in the public domain
Report Summarising solutions proposed	None	Available to Project Team	Available to Professional Advisors	Private review report to Project Board	Private report to Joint Committee	Headline summary Private



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Stage of CDP	Risk/Issue	NWRWTP Project team Staff/Officers	Professional Advisors	NWRWTP Project Board officers	NWRWTP Joint Committee members	Individual Partner Authority members
						report available to partner authorities
Feedback to bidders	None	Available to Project Team	Available to Professional Advisors	Private review report to Project Board	Private report to Joint Committee	Not in the public domain
Shortlist	None	Public document	Public document	Public document	Public document	Public document
ISFT/CFT						
Evaluation	None	Available to Project Team	Available to Professional Advisors	Private review report to Project Board	Private report to Joint Committee	Not in the public domain
Report Summarising solutions proposed (recommendation re Preferred Bidder) and final Business Case (FBC)	None	Available to Project Team	Available to Professional Advisors	Private review report to Project Board	Private report to Joint Committee	Private report available to partner authorities
Feedback	None					Not in the public domain



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Stage of CDP	Risk/Issue	NWRWTP Project team Staff/Officers	Professional Advisors	NWRWTP Project Board officers	NWRWTP Joint Committee members	Individual Partner Authority members
Preferred Bidder clarification and confirm commitments	None	Available to Project Team	Available to Professional Advisors	Private review report to Project Board	Private report to Joint Committee	Not in the public domain
Contract Award Decision (once all material issues agreed)	None	Available to Project Team	Available to Professional Advisors	Private review report to Project Board	Private report to Joint Committee	Private report available to partner authorities
Financial Close	None	Available to Project Team	Available to Professional Advisors	Private review report to Project Board	Private report to Joint Committee	Private report available to partner authorities

TABLE TWO: STAKEHOLDERS: Bidders, Parish/ Town Council etc., Local Members, Officers, Media, Trade Unions and General Public

Stage of CDP	Risk/Issue	Bidders	Town/ Parish/ Other Council/Local Members	Trade Unions	Media	General Public
Issue OJEU	OJEU is a public document - no	Public document	Public document	Public document	Public document	Public document



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Stage of CDP	Risk/Issue	Bidders	Town/ Parish/ Other Council/Local Members	Trade Unions	Media	General Public
	issues of confidentiality for notice or contents.					
Issue Pre-Qualification Questionnaire (PQQ) and Descriptive Document	<p>PQQ is not a confidential document, it does not contain commercially sensitive information. Evaluation criteria are not confidential.</p> <p>Descriptive Document is a document which could be published under FOIA because it does not contain information that is commercially sensitive and its</p>	<p>Public document</p> <p>Request as part of PQQ process</p>	<p>Public document</p> <p>Request under FOIA</p>	<p>Public</p> <p>Request under FOIA document</p>	<p>Public document</p> <p>Request under FOIA</p>	<p>Public document</p> <p>Request under FOIA</p>



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Stage of CDP	Risk/Issue	Bidders	Town/ Parish/ Other Council/Local Members	Trade Unions	Media	General Public
	publication would be in the public interest.					
PQQ Evaluation	None	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain
Long List of Qualified Bidders	None	Public document	Public document	Public document	Public document	Public document
ISOS						
Competitive Dialogue	None	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain
ISOS Evaluation	As with previous stages, information can be released insofar as it is not commercially sensitive.	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain
Report	None	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain
Feedback	None	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain
Shortlist	None	Public	Public	Public	Public	Public



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Stage of CDP	Risk/Issue	Bidders	Town/ Parish/ Other Council/Local Members	Trade Unions	Media	General Public
		document	document	document	document	document
ISDS						
Competitive Dialogue	None	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain
ISDS Evaluation	None	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain
Report	None	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain
Feedback	None	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain
Shortlist	None	Public document	Public document	Public document	Public document	Public document
ISFT						
Evaluation	None	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain
Report (Preferred bidder and final Business Case)	None	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain
Feedback	None	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain
Preferred Bidder clarification and confirm	None	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain	Not in the public domain



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Stage of CDP	Risk/Issue	Bidders	Town/ Parish/ Other Council/Local Members	Trade Unions	Media	General Public
commitments						
Contract Award Decision (once all material issues agreed)	None	Public document	Public document	Public document	Public document	Public document
Financial Close	None					



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Appendix 2 – Draft Confidentiality Agreement

Confidentiality Agreement

This Agreement is made on the day of 2010.

Between:

- (1) of (address) “ The Recipient” and
- (2) Flintshire County Council “ The Discloser”

Now it is hereby Agreed that:

1. The Discloser intends to disclose the confidential information to the Recipient. “ Confidential Information” shall mean any data or information relating to the business or activities of the Discloser relating to the North Wales Residual Waste Treatment Project, whether written, oral or on electronic or other media, at any time supplied by the Recipient or any of it’s advisors.
2. The Recipient shall not use the Confidential information for any purposes, without first obtaining the agreement of the Discloser.
3. The Recipient shall keep confidential and not disclose the confidential information to any third party.
4. Clause 2 and 3 above apply to all of the information disclosed by the Discloser to the Recipient, regardless of the way or form in which it is disclosed or recorded, but not to:
 - a) any information which is or comes into the public domain (unless as a result of any breach of this agreement)or
 - b) any information which is already known to the Recipient and which was not subject to any obligation of Confidence before it was disclosed to the Recipient by the Discloser.
5. Nothing in this agreement will prevent the Recipient from making any disclosure of the Confidential Information required by Law.
6. The Recipient will, on request of the Discloser return all copies and records off the Confidential Information to the Discloser and will not retain any copies or records of the Confidential Information.



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7. Neither this Agreement nor the supply of any information grants the Recipient licence, interest, or any rights in respect of any intellectual property rights of the Discloser.

8. Clauses 2 and 3 will continue in force for x years from the date of this Agreement.

9. This Agreement is governed by and is to be construed in accordance with English and Welsh Law. The courts of England and Wales shall have jurisdiction to deal with any dispute arising out of or in connection with this agreement.

10. The Recipient shall indemnify the Discloser for any loss or damage to the Disclosing Party as a result of the Recipient's breach of the obligations of this Agreement.

11. In addition the Discloser has the right to seek ex-parte injunctive relief in the event of a breach of the Agreement by the Recipient.

12. Any members signing this Agreement are reminded of their obligations under their Member Code of Conduct.

13. **Direct / Indirect Interest:** I hereby certify that to the best of my knowledge and belief I have no direct or indirect interest in or in connection with this procurement or award or proposed award of the Contract. I confirm that should any information come to light that changes this status I will report it to the Designated Project Assurance Representative and withdraw from any further involvement in the procurement exercise without delay.

14. **Canvassing:** I hereby certify that I have not been canvassed or solicited in connection with the preparation, submission and evaluation of this procurement exercise or award or proposed award of the Contract. I confirm that if I am approached or suspect that I am being canvassed in any way I will inform the Designated Project Assurance Representative without delay.

15. **Gifts and Hospitality:** I hereby declare that I have not been compromised by accepting gifts or hospitality from persons who provide goods, services or works for the Partnership Authorities or any other party in connection with this procurement or award or proposed award of the Contract. I confirm that if I am offered any such gift or hospitality I will record and report it to the Designated Project Assurance Representative without delay.

Signed by the Recipient



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North Wales Residual Waste Treatment Project

AGENDA ITEM NO: 9

REPORT TO: **NWRWTP JOINT COMMITTEE**

DATE: **14 JANUARY 2011**

REPORT BY: **PROJECT DIRECTOR**

SUBJECT: **AMENDMENT TO INTER AUTHORITY AGREEMENT**

1. PURPOSE OF REPORT

- 1.1. To update Members of the Joint Committee on the potential options for a variation of the Inter Authority Agreement to reflect an amendment that is deemed required to the Quorum clause for the Joint Committee.

2. BACKGROUND

- 2.1. The Inter Authority Agreement (IAA) currently states:

"The quorum necessary for a Joint Committee meeting shall be five (5) members of the Joint Committee comprising at least one (1) member from each of the Councils (and for the avoidance of doubt such member may be a voting or non-voting member) from each Council (in person but not by telephone)."

In order to allow more flexibility in Joint Committee decision making, it is deemed appropriate by all Authorities that an amendment to this clause is required.

3. CONSIDERATIONS

OPTIONS FOR A PROPOSED AMENDMENT

- 3.1. The Legal Officers have considered various options of allowing more flexibility, which are highlighted below:-

Option 1:- Amend the IAA to allow a minimum quorum of 4 partner authorities represented at Joint Committee meetings.

Option 2:- Leave the IAA as it is at present with a minimum quorum of 5 partner authorities represented at Joint Committee meetings.

Option 3:- Amend the IAA to state the minimum quorum shall remain at 5 partner authorities represented at Joint Committee meetings, however that proxy votes are to be allowed (1 proxy vote for "significant decisions" and 2 votes for other decisions)



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- 3.2. Following discussions with the Legal Officers, there appears to be doubt over the legality of proxy voting, therefore it seems that Option 3 cannot be pursued. The decision therefore rests between options 1 and 2.
- 3.3. A meeting of the legal officers has been organised for later January to finally agree a way forward, however it was deemed necessary update the Joint Committee on the progress on the matter and receive their feedback on their preferred option which can be passed on to the Legal Officers.
- 3.4. It is the intention of the Project Team to bring a brief paper to the next Joint Committee either formally asking approval to amend the IAA, or confirming that no amendments will be made.

4. RECOMMENDATIONS

- 4.1. To note the options for a proposed amendment to the IAA as highlighted above, and that the Joint Committee indicates any preference they may have.
- 4.2. Note the Project Team's intention to bring a paper to the next Joint Committee on the issue.

5. FINANCIAL IMPLICATIONS

- 5.1. Not applicable.

6. ANTI-POVERTY IMPACT

- 6.1. Not applicable.

7. ENVIRONMENTAL IMPACT

- 7.1. Not applicable.

8. EQUALITIES IMPACT

- 8.1. Not applicable.

9. PERSONNEL IMPLICATIONS

- 9.1. Not applicable.

10. CONSULTATION REQUIRED

- 10.1. Not applicable.

11. CONSULTATION UNDERTAKEN



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11.1. Not applicable.

LOCAL GOVERNMENT ACCESS TO INFORMATION ACT 1985

Background Documents:

None

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AGENDA ITEM NO: 10

REPORT TO: **NWRWTP JOINT COMMITTEE**

DATE: **14 JANUARY 2011**

REPORT BY: **PROJECT DIRECTOR**

SUBJECT: **WASTE (WALES) MEASURE 2010**

1. PURPOSE OF REPORT

- 1.1. To update Members of the Joint Committee on the Waste (Wales) Measure 2010.

2. BACKGROUND

- 2.1. The Waste (Wales) Measure 2010 sets statutory targets for local authorities for the percentage of municipal waste to be recycled, prepared for re-use and composted as well as making local authorities liable to pay penalties in the event that they fail to meet these targets. The proposed Measure also enables the Welsh Assembly Government (WAG) to establish other targets in relation to the prevention, reduction, collection, management, treatment or disposal of waste, and impose penalties for noncompliance with such targets.
- 2.2. The Waste (Wales) Measure 2010 was passed by WAG on 2 November 2010 and is scheduled to receive Royal Approval in December 2010. The subsequent draft Order and Regulations are due to be formally adopted in early 2011 following a period of consultation.

3. KEY CONSIDERATIONS OF THE WASTE (WALES) MEASURE 2010

- 3.1. Although the Waste (Wales) Measure 2010 contains several important changes concerning future waste management issues in Wales, two of the most significant for the North Wales Residual Waste Treatment Project (NWRWTP) relate to future recycling/composting targets and the classification of Incinerator Bottom Ash (IBA).
- 3.2. The Waste (Wales) Measure 2010 sets out the following statutory minimum levels for the recycling, re-use and composting of municipal waste by local authorities:
 - 2012/13 – 52%
 - 2015/16 – 58%
 - 2019/20 – 64%
 - 2024/25 – 70%



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- 3.3. As noted within the NWRWTP's Outline Business Case (OBC), partner authorities are committed to achieving very high levels of recycling/composting rates (around 63%) through improved waste collection methods and better separation systems at household waste recycling centres etc. However, even with this high level of recycling at the front end, if the 70% recycling/composting target is to be met by 2024/25, a shortfall of around 7% will still exist.
- 3.4. The OBC concluded that if IBA could be included as a contribution towards recycling in future, then this could assist in meeting the required 70% recycling/composting target by 2024/25.
- 3.5. WAG is currently consulting on its draft Recycling, Preparation for Re-use and Composting Targets (Definitions) (Wales) Order 2011, which runs from 1 December 2010 to 26 January 2011. In the guidance notes for the above consultation, WAG confirms that: **“Incinerator Bottom Ash (IBA) that is obtained following the combustion of local authority municipal waste (as defined) may be counted towards recycling targets where the ash is processed to become a material, substance or product. This includes the use of IBA where it is processed in a way that it ceases to be waste, e.g. where it is used in the manufacture of concrete blocks and similar products”**.
- 3.6. The Welsh Local Government Association (WLGA) will be providing feedback to WAG on its response to the consultation on the Waste (Wales) Measure 2010 Order and Regulations. In its proposed draft response to WAG, the WLGA has suggested the following: *“The issue of Incinerator Bottom Ash (IBA) is a critical one for local authorities and the position needs to be absolutely clear. The ability to include at least some of the IBA towards recycling targets will be vitally important if authorities are to achieve recycling/composting levels of 70%. The draft guidance says that IBA “may be counted towards recycling targets where the ash is processed to become a material, substance or product” (p.3). However, the definition of recycling in the Order states that; “Local authority municipal waste is not recycled for the purposes of the targets if it is used for fuel or backfilling operations” (p.3). Since waste that goes to an Energy from Waste plant could be regarded as fuel, this statement introduces some ambiguity that needs to be resolved”*.
- 3.7. It is clear from the above draft feedback that there still appears to be some further details that need to be clarified with WAG regarding IBA. In addition, it is currently unclear what percentage of IBA will be allowed to be included as recycling in future. It is hoped that further guidance will be made available by WAG on this matter without delay.

4. CONCLUSION

- 4.1. The Waste (Wales) Measure 2010 sets statutory targets for local authorities for the percentage of municipal waste to be recycled, prepared for re-use and composted as well as making local authorities liable to pay



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penalties in the event that they fail to meet these targets.

- 4.2. Following the completion of WAG's consultation process, it is likely that IBA will be allowed to be counted towards recycling, although it is unclear at this stage what methodology will be used to calculate this. Therefore, if the NWRWTP decided to use a waste treatment solution that produced IBA, it is likely that this material would contribute towards future recycling targets.
- 4.3. In addition to the feedback provided by the WLGA on the Waste (Wales) Measure 2010 Order and Regulations, it is recommended that the NWRWTP's Project Team also prepares a formal response to WAG as part of this consultation. This formal response should confirm the NWRWTP's agreement that IBA should be counted as recycling in future.

5. RECOMMENDATIONS

- 5.1. To note the content of this report.
- 5.2. To authorise the Project Team to prepare a formal response to WAG on the Waste (Wales) Measure 2010 Order and Regulations as part of the consultation, confirming its agreement that IBA should be counted as recycling in future.

6. FINANCIAL IMPLICATIONS

- 6.1. Not applicable.

7. ANTI-POVERTY IMPACT

- 7.1. Not applicable.

8. ENVIRONMENTAL IMPACT

- 8.1. Not applicable.

9. EQUALITIES IMPACT

- 9.1. Not applicable .

10. PERSONNEL IMPLICATIONS

- 10.1. Not applicable.

11. CONSULTATION REQUIRED

- 11.1. Not applicable.

12. CONSULTATION UNDERTAKEN



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12.1. Not applicable.

LOCAL GOVERNMENT ACCESS TO INFORMATION ACT 1985

Background Documents:

None

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