

PROSIECT GWYRDD JOINT SCRUTINY PANEL

MINUTES OF THE MEETING HELD AT PENALLTA HOUSE, YSTRAD MYNACH ON FRIDAY, 11TH MARCH 2011 AT 10.30 A.M.

Present:

Councillor C. J. Williams - Chairman (Vale of Glamorgan Council)

Councillors:

Councillor D.V. Poole (Caerphilly County Borough Council)

Councillor R. McKerlich (Cardiff County Council)

Councillors S. Howarth and Ms V. Smith (Monmouthshire County Council)

Councillors S. Jones and D. Williams (Newport City Council)

Together with:

D. Perkins (Caerphilly County Borough Council), R. Phillips (Cardiff County Council), H. Ilett (Monmouthshire County Council), D. Collins (Newport City Council), J. Wyatt (Vale of Glamorgan Council)

Pinsent Masons:

Mr. P. Twist

Prosiect Gwyrdd Officers:

Messrs. M. Williams and H. Singh

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors M.G. Parker, S. Wakefield and Mrs. Kelly Owen, Mr. J. Jones (Caerphilly County Borough Council).

2. DECLARATIONS OF INTEREST

There were no declarations of interest received at the commencement or during the course of the meeting.

3. MINUTES - 3RD DECEMBER 2010

It was agreed that the minutes of the meeting held on 3rd December 2010 be approved as a correct record.

4. EXEMPT MATTER

Members considered the public interest test certificate from the Proper Officer and concluded that on balance the public interest in maintaining the exemption outweighed the public interest in disclosing the information and it was

RESOLVED that in accordance with Section 100A(4) of the Local Government Act 1972 the public be excluded from of the meeting because of the likely disclosure to them of exempt information as identified in paragraph 16 of Part 4 of Schedule 12A of the Local Government Act 1972.

5. **LEGAL ADVICE FROM PINSENT MASONS**

Consideration was given to the report which advised of public procurement law in light of discussions relating to the extent of the Panels role on Prosiect Gwyrdd.

Mr. Twist, of Pinsent Mason, advised that Prosiect Gwyrdd is being procured as a public services contract under the Public Contracts Regulations 2006 ("Regulations") using the competitive dialogue procedure. The contract must therefore be procured in accordance with those Regulations and the relevant case law.

There is nothing in the Regulations which specifically governs the use or participation of scrutiny committees in the public tender process, nor is there any case law specifically on this point. Such arrangements are at the discretion of the relevant participating contracting authority (or authorities), and are neither required nor prohibited by the Regulations. However, the general principles that underpin the Regulations will apply to those arrangements insofar as they affect or influence the tender process from the bidder's perspective. Those general principles imply additional obligations that supplement the detailed provisions of the Regulations.

It was confirmed that pre-decision scrutiny is therefore possible under public procurement law, provided that such scrutiny complies with the requirements of the Regulations and the general principles and, in particular, any decision is ultimately made in strict accordance with the stated evaluation criteria and methodology.

Mr. Twist advised that scrutiny can request regular updates on the progress of Prosiect Gwyrdd and seek comfort that the process is being co-ordinated and marshalled effectively to achieve the aims of Prosiect Gwyrdd and also play a role in ensuring that the decision-making process on tender evaluation is clear and strictly adheres to the published evaluation criteria and process.

Members were advised however, that it was important to manage the expectations of the Scrutiny Panel within the parameters of a procurement of this scale and complexity. Concerns were expressed that the Panel had not been involved at the beginning of the process which would have allowed more opportunity for scrutiny. It was reported that the Joint Scrutiny Panel had been established to overview the delivery of Prosiect Gwyrdd and that the procurement path had already been established, the criteria determined, the timetable set and some approvals had been made prior to the establishment of the Panel. It is however the intention that scrutiny of Project Board decisions and the key milestones contained within the project plan will ensure a level of scrutiny that is both meaningful and able to add value to the process

During the course of the debate Members considered the feasibility of visits to the sites of the shortlisted companies to view the different types of technology or to those who have similar facilities and as to whether it should be to the facilities of the four remaining potential bidders or to the two that will be shortlisted in the near future. Mr. Twist outlined the procurement law risks associated with the Panel making site visits at tender stage and advised that if a contracting authority could clearly demonstrate that the visit was used solely to better understand the practical issues contained in a proposal then there may be an argument that it should be justifiable. It would be necessary to justify the reasons for the site visit and ensure that only lawful considerations were taken into account during, and after, the visit. Members were advised that such visits would have to be arranged in a structured way and the approval of the preferred bidders would have to be sought and, in the event that one does not accede to the request, it would not be prudent to visit the others.

With regards to the Panel undertaking site visits to contractors not involved with the procurement it was noted that it would not be possible to unequivocally demonstrate, in an auditable way, that the purpose behind the visit, and the information obtained during that visit, are directly and solely aligned with the published evaluation criteria and as such should not be considered.

Actions

After considering the legal advice given at the meeting, and whilst noting the risks associated with site visits for the reasons outlined by Members at the meeting, it was agreed that the Joint Committee be requested to consider and approve visits by the members of the Panel to the facilities operated by the final two shortlisted bidders.

Following consideration of this exempt item the meeting was re-opened to the public.

6. GOVERNANCE ARRANGEMENTS FOR PROSIECT GWYRDD JOINT SCRUTINY PANEL

Consideration was given to the report which addressed the external expert legal advisers recommendation to establish formal terms of reference for the Panel and sought the endorsement of Members for improving communication with the Joint Committee and strengthening support arrangements for the Joint Scrutiny Panel.

Members considered the proposed terms of reference as appended to the report and accepted that in order to ensure that the role they perform is meaningful and adds value to the process it is essential to establish a clear terms of reference which defines the role and limitations of the Panel and as such accepted the proposals for improving dialogue and strengthening support arrangements

Agreed

Following consideration of the content of the report the proposed draft terms of reference were approved as follows:-

1. The proposed terms of reference appended to the report be approved and presented to the Joint Committee for agreement;
2. Joint Committee minutes be included with future Joint Scrutiny Panel agendas for information;
3. The Chair of the Joint Committee, or another representative, be invited to attend future meetings of the Panel to give a verbal update on the position of the Project;
4. Mr. Dan Perkins be invited to become the Scrutiny Panel's dedicated legal adviser and management arrangements for meetings be delegated to Caerphilly County Borough Council.

Reference was then made to the information that is being sent to the Panel on the same distribution list as other organisations/third parties which then generates a number of responses to all its recipients. It was requested that the Panel Members be included on a separate distribution list and be in a position to receive the information prior to its more general distribution. It was noted that issues relating to communications had been discussed at a previous meeting but it had been specifically with regards to communicating major announcements from the Joint Committee to the Panel before going to press. It was accepted that this protocol is now in place and that key information and announcements are being received by the Panel, albeit some may be time/date restricted. Notwithstanding the foregoing, the Members still requested to be included on a separate distribution list for the more general communications which are being circulated.

Agreed

Mr. H. Singh to review the existing arrangements with the Communications Officer.

7. PUBLIC QUESTIONS RECEIVED AND RESPONSES GIVEN

Details of a number of questions received and the responses already provided by Cardiff City Council were noted. It was confirmed that members of the public are able to attend meetings of the Panel to listen to the debate (unless exempt information is being considered).

It was noted that in accordance with the agreed communications protocol at present any requests for information must be forwarded to the Prosiect Gwyrdd Team for response. It was requested that in future a copy of all requests and responses should be forwarded to the Panel for information on an electronic basis every fortnight.

Reference was also made to a number of requests for Members of the Panel to individually meet with the public outside of a formal meeting. It was noted that unless otherwise notified, the information circulated to the Members is available to share with the public and, in wishing to ensure that they are fully engaged, they could attend meetings of the Panel should they wish to do so.

8. ELECTION OF CHAIRMAN 2011/12

It was agreed that Councillor C. J. Williams be appointed to Chair the Prosiect Gwyrdd Joint Scrutiny Panel for 2011/12

8. NEXT MEETING

The next meeting would be held at Penallta House, Ystrad Mynach on a date and at a time to be agreed with the Chairman.

The meeting closed at 12 noon.