

PROSIECT GWYRDD JOINT SCRUTINY PANEL

**MINUTES OF THE MEETING HELD AT PENALLTA HOUSE, YSTRAD MYNACH
ON FRIDAY 22ND JULY 2011 AT 10.30AM**

Present:

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

Councillors:

Councillors R. McKerlich and S. Wakefield (Cardiff County Council)

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

Councillor S. Jones (Newport City Council)

Councillor Mrs. M. Kelly-Owen (Vale of Glamorgan Council)

Together with:

D. Perkins and J. Jones (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)

Prosiect Gwyrdd Officers:

M. Williams (Project Director), A. Williamson (Technical Manager), J. Pritchard (Legal Officer), M. Falconer (Finance Manager), R. Quick (Senior Responsible Officer), I. Lloyd-Davies (Communications Officer), M. Williams (Caerphilly County Borough Council)

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors M.G. Parker and D.V. Poole (Caerphilly County Borough Council) and B. Bright (Newport City Council).

2. DECLARATIONS OF INTEREST

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

3. MINUTES - 11TH MARCH 2011

It was agreed that the minutes of the meeting held on 11th March 2011 be approved as a correct record.

Matter Arising

Site visits to Facilities

The Project Director advised that the request of the Panel that the Joint Committee consider and approve visits by the members of the Panel to the facilities operated by the final two shortlisted bidders would be considered in the autumn.

EXEMPT MATTER

It was accepted that in this instance the presentation and subsequent discussions would contain exempt information and that there would be other occasions when it would be necessary to exclude the press and public. However, it was intended that where possible reports would be considered in the open part of the meeting to enable the public to be present.

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 the remainder of the meeting because of the likely disclosure to them of exempt information as identified in paragraph 19 of Part 4 of Schedule 12A of the Local Government Act 1972.

PROSIECT GWRYDD PRESENTATION

Mr. M. Williams (Project Director) gave a presentation which highlighted the commercial sensitivity of the project, the role of scrutiny, the overall timeline, the current bids, risks and issues associated with the project, the overall timeline, the joint working agreement, communications and engagement and the themes of the work programme.

To put the project into context he advised that the outline business case defines its scope as a 25 year contract involving the design, build, finance, operation and maintenance of the facility for circa 35% of the total municipal waste stream from the five authorities (with each also striving to achieve the 70% recycling and compost target set by the Welsh Government). He advised of the aims of the procurement of a long-term contract for the treatment/disposal of residual municipal waste and detailed the value for money of economies of scale of the shared procurement costs (supported by the Welsh Government) which will provide a solution that reduces the reliance on landfill to a minimum.

The process aims to seek to deliver the best environmental, cost effective and practical solution to municipal residual waste that is left over in each authority after recycling and composting has been maximised in each area.

Commercial Sensitivity

Reference was made to the commercial sensitivity of the project and the need for the Panel to determine as to whether, in view of potentially confidential information that may be disclosed, the public should be excluded from its meetings. As discussed earlier in the meeting it was accepted that there would be occasions when it would be necessary to exclude the public but that where possible reports would be considered when they are present.

A query was also raised as to whether the nominated representatives would be able to divulge information to their colleagues and it was confirmed that confidential information received during the course of the meeting should not be discussed although the minutes of the meeting (excluding such confidential details) are a public document. Detailed information is also available on the Prosiect Gwyrdd web site.

Role of Scrutiny

Reference was then made to the governance structure and it was noted that the partnership is governed by a decision making Joint Committee, consisting of two Councillors from each Cabinet/Executive from each authority. The Joint Committee also governs the project through the 'Competitive Dialogue' process and the final decision to appoint a contractor will be made by each Council. The Project Board (with senior advisors from each authority) advises the Joint Committee with the assistance of the Project Team and external advisors. The role of the Joint Scrutiny Committee is to scrutinise the decision making process. However, there are three key decisions that must be made by each individual Partner Council - entering into the partnership, the appointment of a preferred bidder and the final contract award.

Overall Timeline

Reference was made to the timeline for the procurement process (invitation, prequalification, outline solutions, detailed solutions, final tender, preferred bidder) and it was noted that all bids will be assessed against agreed criteria, involving environmental impacts, sustainability, service delivery, cost and value for money. The Partnership is technology neutral and will look at all technologies that may be proposed for the contract, although technology was not prescriptive at the initial invitation stage.

Those who were successful at the pre qualification questionnaire stage (where their bids were evaluated in accordance with the pre-set evaluation criteria for the Project) had been invited to submit outline solutions for the Project, in line with the Procurement Plan. Prosiect Gwyrdd is currently in the middle of the competitive dialogue process at the detailed solutions stages with three separate bidders (there were four but one has subsequently withdrawn). Each is proposing an energy from waste facility. Covanta Energy Ltd is proposing a merchant energy from waste facility located at Brig y Cwm, Merthyr Tydfil, Veolia ES Aurora Ltd an energy recovery facility located at Bowlease Common, Newport and Viridor Waste Management Ltd a merchant energy from waste with combined heat and power facility located at Trident Park, Cardiff.

This stage of the competitive dialogue process requires shortlisted participants to further refine their outline solutions and intimately submit a detailed submission of their solutions. Following this detailed stage of the procurement, Prosiect Gwyrdd has reserved the right to include a 'refined solution' stage, if required, for clarification and further discussions with Participants. Following this stage the successful Participants will be invited to submit a final tender.

It is anticipated that two participants will remain at that stage with the preferred bidder being appointed in August with the contract being finalised by the end of the year.

A query was raised on the number of proposals/technologies submitted and it was noted that the project is technology neutral and the procurement stance was to set out the requirements through a specification and evaluation stage. This was presented to the market with an invitation to submit proposals that best meet those needs. It was explained that the pre qualification stage was evaluated in accordance with the pre-set evaluation criteria for the Project and the eight highest scoring Companies were invited to submit outline solutions for the Project, in line with the procurement. Those that did not score high enough were deselected and two submissions were non-compliant. At the ISOS stage, the Project received five outline solutions (from four companies) and four solutions (from four companies) which were taken through to the detailed stage (invitation to submit detailed solutions). One Solution has subsequently withdrawn.

It was raised as to whether, as there are now only three companies, it would be possible to invite another company to participate. It was confirmed that under procurement rules it is not possible to invite a new company.

Action - It was agreed that a presentation on the selection process be presented at the next meeting.

Risks and Issues

Reference was then made to the risks and issues associated with the project and it was noted that waste flow calculations are critical to the success of the Project and that information is made up of each of the partner's assumptions and predictions over the contract term. This will be a critical area for the Joint Scrutiny Panel to scrutinise.

During the course of the debate reference was made to the tonnage associated with the bids and the subsequent gate fees arising therefrom. It was noted that such detail has not yet been submitted and it would be necessary to calculate the fees once the information is forthcoming.

The Project has identified that a fundamental risk to any waste procurement project is the availability of a suitability site with full planning permission. It was noted that such procurements do not usually envisage planning permission to be received by financial close. However one participant has already received planning permission, another is under consideration and a third is due to be submitted in the near future.

Mr. Williams also outlined the health and environment issues, partner affordability and delivery of value for money and advised that there is also a requirement for the individual Councils to buy in and sign off the project. With regards to health and the environment, he advised that any subsequent changes in legislation would need to be adhered to by the successful contractor, through a 'change in law clause' in the contract.

Joint Working Agreement

The Panel were reminded that Prosiect Gwyrdd cannot contract directly with the successful bidder and a lead authority needs to be selected for this purpose and that the joint working agreement is currently under review in order to achieve this.

Reference was made to the existing joint working agreement which sets out the governance arrangements for the duration of the procurement process that has been signed by each of the participating authorities and to the contractual rights and obligations detailed within that document. It was confirmed that the decision as to award of contract will be a matter for each authority, though it was noted that the agreement contains provision that if the proposed solution meets the output requirements and is within the affordability envelope then any partner authority that fails to confirm the appointment of the Preferred Bidder shall be deemed to have withdrawn from the process and could potentially be required to compensate the remaining authorities subject to a liability cap of £3m.

Action - details of the existing joint working arrangement, and, in the event that not all partner authorities buy in and sign up to the project the implications arising therefrom, be presented to the next meeting.

During the course of the debate reference was made to the elections in May 2012 and the potential for changes in political administration. In noting that the tenders would be invited by that time but that the final report would not be considered by the partner authorities until the Autumn it was agreed that it would be necessary to ensure that seminars specific to Prosiect Gwyrdd are incorporated within the Member induction programme so that they are fully aware of the context and required outcome of the Project when they consider the final report.

Actions

1. Seminars on Prosiect Gwyrdd to be incorporated within the Members induction programme
2. Prosiect Gwyrdd Joint Committee to consider whether the timeline needs to be revised

Member Engagement

It was accepted that at the commencement of the Project it had been recognised that there was a requirement to undertake comprehensive stakeholder/community group engagement and this was achieved through the approved communications strategy and a number of established consultative mechanisms. Further events have been scheduled.

As raised earlier in the meeting the complexity of the commercially sensitive project and the prescriptive procurement process was seen as an issue for engagement. Members reiterated that there had been a perceived lack of transparency and much concern has been raised over the proposed technology and strong public opposition has been received to the proposed sites (Cardiff, Newport and Merthyr).

It was confirmed that the decision on the preferred bidder requires the approval from Council of each of the five partners and that any views expressed would need to be taken into consideration at that time in order that an informed decision can be taken.

It was accepted that there is a risk to the project if it is not signed off by the respective Councils and implications for those partners as detailed in the Joint Working Agreement (and discussed earlier in the meeting). There would be a need to identify an alternative waste solution with a new procurement process, there would be prolonged exposure to both landfill costs and recycling fines and the loss of Welsh Government grant and the procurement costs.

Action - minutes of the Prosiect Gwyrdd Joint Committee to be presented to the Panel

Mr. Williams responded to a number of questions raised over and above those which were considered during the course of the presentation and in particular to the matrix scoring for those companies that originally expressed an interest. Reference was made to the methodology of how the criteria was applied and the subsequent matrix scores and whether they were available to be viewed. It was confirmed that the information has not been released. Mr. Williams explained how the approved process had been implemented at pre qualification stage which had resulted in four being invited to participate in the next stage and reiterated that eight of the highest scoring companies were invited to submit outline solutions for the project and those that did not score high enough were deselected and two submissions were non-compliant.

It was suggested that in view of the amount of queries received from the public such information should be made available in order that the process can be seen to be transparent and there is an explanation as to how a company had either progressed to the next stage or had been disregarded. In noting that many enquires relate specifically to technology, it was confirmed that the pre qualification stage did not evaluate technology.

Action - presentation to be made to the next meeting detailing the selection process, and, if possible, information on the specific matrix scores.

The Project Team were thanked for their informative presentation and responding to questions and issues raised by members.

Action - copy of the presentation, with any confidential information redacted, to be sent to the Panel.

Correspondence received from Councillor B. Bright (Cardiff City Council)

The Panel were circulated with a copy of a statement received from Councillor B. Bright, Newport City Council, which advised that its Labour Group is vehemently opposed to any of the waste incineration options on the current Prosiect Gwyrdd shortlist, and particularly to the one at Bowlease Common. It also raised a number of questions to which he requested a response.

Action - It was agreed that responses to the queries would be collated and sent to Councillor Bright. A copy of the response would be copied to the Panel.

Correspondence received from Rod Walters

The Panel were circulated with a copy of an email from Rod Walters seeking responses to a number of questions that he raised.

Action - It was agreed that responses to the queries would be collated and sent to Mr. Walters and that copy of the response would be copied to the Panel.

The meeting closed at 12.30pm