

**PROSIECT GWYRDD JOINT SCRUTINY PANEL**

**MINUTES OF THE MEETING HELD AT PENALLTA HOUSE, YSTRAD MYNACH ON  
MONDAY, 5TH DECEMBER 2011 AT 2.00 P.M.**

**Present:**

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

**Councillors:**

Councillors M.G. Parker and D.V. Poole (Caerphilly County Borough Council)

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

Councillor S. Howarth (Monmouthshire County Council)

Councillors B. Bright and S. Jones (Newport City Council)

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

**Together with:**

D. Perkins, J. Jones, and C. Forbes-Thompson (Caerphilly County Borough Council),

P. Keeping and R Bowen (Cardiff County Council), D. Collins (Newport City Council), J. Wyatt (Vale of Glamorgan Council) and H. Ilett (Monmouthshire County Council)

**Prosiect Gwyrdd Officers:**

M. Williams (Project Director), I. Lloyd-Davies (Communications Officer), A Williamson

(Technical Manager), M Falconer (Accountancy Manager), I Evans (Procurement Manager)

and J Pritchard (Legal Officer)

**1. APOLOGIES FOR ABSENCE**

Apologies for absence were received from R. Quick (Vale of Glamorgan), M.S. Williams (Caerphilly County Borough Council), and Councillor Ms. V. Smith (Monmouthshire County Council).

**2. DECLARATIONS OF INTEREST**

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

**3. MINUTES – 7 NOVEMBER 2011**

It was agreed that the minutes of the meeting held on 7th November 2011 be approved as a correct record.

**MATTERS ARISING**

4. Further to the advice provided at the meeting on the 7th November 2011 Mr D Perkins informed Members that changes to pre-determination rules are included in the Localism Act, recently passed by Parliament. The Act will apply to England and in part to Wales.

**PUBLIC INTEREST TEST (PIT)**

5. Mr D Perkins advised the meeting that the PIT sets out the reason why the presentation on the shortlisting process should be considered as an exempt item and invited Members to determine if they would accept his recommendation.

Councillor Bright proposed that in the interests of openness and transparency that the commercially sensitive information should be removed and the presentation given while the meeting is open to the public. The meeting could then be closed to the public and the

commercially sensitive information given to Members. Councillor S Jones seconded this proposal.

Prosiect Gwyrdd Officers advised that it would be very difficult as the sensitive information is included throughout the presentation and it could limit Members opportunity for questioning.

A Member suggested that the information in the presentation could be re-drafted without the commercially sensitive information and circulated at a later date, however, it was agreed that it would be difficult to remove the sensitive information from the presentation. Mr Perkins suggested a detailed minute of the meeting, without the commercially sensitive information could be produced.

Members endorsed this suggestion and considered the Public Interest Test 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 for this item because of the likely disclosure to them of exempt information as defined in paragraph 14 part 4 of schedule 12A of the Local Government Act 1972.

### **ISDS EVALUATION & ISFT DOCUMENTATION - PRESENTATION**

6. Mr M Williams introduced the presentation and explained that he would provide a thorough explanation of the ISDS evaluation process. The presentation would cover 4 main areas:

- Key Decisions.
- Invitation to submit detailed solution (ISDS) evaluation.
- Invitation to submit final tender (ISFT) documentation.
- Timeline.

#### **ISDS Decisions**

Mr Williams stated that Schedule 1 of the Joint Working Agreement (JWA) defines the key decisions as follows:

- Approve ISDS Evaluation process and selection of bidders for ISFT.
- Approve of ISFT suite of documents.
- Close competitive dialogue and issue call for final tenders

#### **ISDS Process**

This commenced on 7 December 2010 and there were four participants – Covanta, Veolia, Viridor and WRG. WRG withdrew from the process in March 2011. Detailed solutions were submitted in August 2011 and compliance checking commenced. On 24 October 2011 Covanta withdrew. The evaluation continued with the 2 remaining bidders and the Project Board approved the evaluation on 23 November 2011.

Veolia are proposing an Energy from Waste (EfW) plant at Newport but have yet to obtain Planning Permission or an Environmental Permit. They are proposing a heat off-take system and are developing a land deal with Tata Steel.

Viridor are proposing a 'Merchant' EfW Facility in Cardiff. The land deal is complete and there is already Planning Permission and an Environmental Permit in place.

#### **Technical Evaluation**

The technical section is worth 55% of the evaluation scoring made up of 31 evaluation sub-criteria. The two remaining bidders are offering similar technology and the PG team have developed a bar chart to compare and contrast both bids across the 31 criteria.

Councillor Bright stated that Veolia are proposing a land deal that includes providing heat energy to Tata Steel at the Newport site. He advised that consideration should be given to the recent announcement by Tata that they will be reducing production and mothballing part of the plant, therefore there is no guarantee of the steelworks still being in production in 2016. He also expressed concern that by providing energy to Tata, in effect the Prosiect Gywrdd contract could be seen as subsidising a commercial business.

Mr Williams stated that the heads of terms will develop into a firm contract between Veolia and Tata that will give a secured tenancy and a period of guaranteed heat off-take. Part of the Project's due diligence will ensure the viability of the Project for the duration of the Contract and will not be dependent on the commercial success or otherwise of a third party entity such as Tata.

Councillor Bright stated that steel will be transported to Newport and re-heated, which is not energy efficient.

Mr Williams said that the Project's primary interest is to provide a sustainable answer to waste management in the Partnership area. It is concerned with the high-energy efficiency of the waste facility but could not become involved in how the heat and power is utilised by third party off-takers.

### **Financial Evaluation**

The financial section of the evaluation is worth 30% of the evaluation scoring and has 7 qualitative and quantitative sub-criteria. Price, in itself is not, therefore necessarily the deciding factor. There are two elements to the evaluation of Price and Affordability:

1. Price – The lowest tendered price, after adjusting for direct costs borne by the Partnership such as transportation, will score maximum marks with the other bid also scoring, calculated on a straight-line linear basis provided it's price is within 25% of the lowest price.
2. Affordability - An upper affordability threshold (UAT) was devised and agreed by each partner authority, this allows each bid to be scored on how much it is below the threshold with bids more than 25% below the UAT scoring maximum marks.

Members enquired how the figures for the UAT were arrived at and Mr Williams informed the meeting that a model EfW plant was devised as part of the Outline Business Case (OBC) that was approved by all Partner Councils back in 2009. A 'shadow tariff model' was put together with certain capital and operational cost assumptions, in order to give a possible facility price over a 25-year period. Members asked if the model was independently verified. It was confirmed that technical and financial advisors developed and checked the model and it was also submitted to Welsh Government (WG) where it was further evaluated and subsequently approved with the announcement of long term WG grant funding for Prosiect Gwyrdd. Members requested a copy of the model.

*[Post meeting note: further clarification with members revealed that it was the Evaluation Methodology that was required by Members.]*

**Action:** a copy of the Evaluation Methodology to be provided to JSP. *[done]*

### **Other Financial Criteria**

Mr Williams advised the meeting of the other financial criteria of the evaluation, these are:

- Payment profile
- Sensitivity testing.
- Financial robustness.
- Deliverability of funding.

- Acceptance of payment mechanisms.

### **Legal**

The Legal section of the evaluation is worth 15% and there are 3 sub-criteria. This looks at the following:

- Risk allocation and commercial terms.
- Contractual structure.
- Approach towards key project risks.

### **ISFT STAGE**

Mr Williams advised Members that this stage will formally start with the approval by Joint Committee on 12 December 2011 and it will run until Autumn 2012. The original timetable was extended to take into account the elections in May 2012 and the possibility of new Members who will require detailed briefing on the Project. This stage will see the selection of the Preferred Bidder and will involve the development of the project documentation up until close of dialogue and submissions of Final Tenders in May 2012.

### **ISFT Documentation**

This will be set out as follows:

- Sections 1,2 & 3 – important notices & general requirements.
- Section 4 – preparation & submission requirements.
- Section 5 – technical requirements.
- Section 6 – financial requirements.
- Section 7 – legal requirements.
- Section 8 – evaluation methodology.

### **Technical Issues**

Mr Williams advised that this involves the development of method statements setting out how they will deliver key aspects of the project. There will also be areas for dialogue around commissioning and testing, maximising recycling of outputs, firming up sub contracts, Combined Heat & Power (CHP) proposals and the planning progress.

### **Financial Issues**

Mr Williams stated that this section will firm up financial and commercial issues. Areas for dialogue include R1 efficiency and compliance with WG funding, formal corporate funding approvals, financial impact of planning delay, commercial aspects of CHP deals etc.

Members enquired how the R1 mandatory requirement would be monitored. Mr Williams explained that the Environment Agency will determine if the successful bidder meets the standard (based on energy efficiency criteria) and also if, during the contract, it fails to maintain the R1 standard.

Members asked if PG partners would receive the lowest gate fee and sought confirmation that no other customer would receive a lower price. Mr Williams stated that no other local authority would be able to have a long-term contract with a lower price, however the successful bidder could offer spot contracts with lower costs to other customers.

Members expressed concern that the developing gate fee pricing structure does not guarantee partner authorities the most favourable contract rates when partner authorities are expected to agree a minimum guaranteed payment and a long term contract. Members said that they expected partner authorities to be given the most competitive gate fee price that can be achieved.

Members asked if partners would have a share of the profits from extra tonnage brought by other organisations. Mr Williams confirmed that PG partners could get a share if the minimum

income guarantee is exceeded. For example, should the wholesale price of electricity increase, partners will share the benefit. He also explained that prices charged to commercial and industrial customers could fluctuate according to demand.

Members were concerned that the running costs of the plant would be covered by PG partners, thereby allowing the successful bidder to cover its marginal costs with lower charges to other customers.

Mr Falconer stated that there is a pro-rata element to the contract, which means that partners only pay proportionate fixed overhead costs.

**Action:** Members asked if the JSP could have scenarios where spot market deals could be offered presented to a future meeting.

Members asked what would happen where the successful bidder becomes insolvent. Mr Williams stated that there are contractual protections in the contract that cover that scenario.

Members asked where the compensation would come from. Mr Williams stated that both bidders had signed up to a parent company guarantee and triggers are set in place to call on securities and bonds if there are concerns about the financial position of the parent company.

### **Legal Issues**

Mr Williams stated variations of project agreements will be negotiated and require WG approval. It should be noted that WG would carry out a Health Check before the Project can formally close dialogue. Areas for dialogue include, change in law provisions, compensation on termination, sub-contracts & contractual structure and planning delays.

Members asked if it was possible for the successful bidder to sub-contract to the other bidder should they fail to get planning permission. Mr Williams stated that this was not possible. However, there may be conceivable scenarios whereby if the successful bidder failed to obtain planning permission there could be the option to go to the reserve bidder.

Members asked if possible re-organisation of Councils boundaries has been considered. Mr Williams stated that they could execute an Authority Change.

### **Evaluation**

Mr Williams stated that the evaluation criteria of this final stage would place less weighting on technical and service delivery and more on financial and commercial issues.

### **Other Key Changes**

Mr Williams stated that the other key changes are:

- Contract Waste Flow.
- Bottom & Fly Ash Recycling.

Members asked for information on the composition of the waste stream. Mr Williamson stated that the waste has been analysed for 2009. Members asked for a copy of the waste flow model at the next meeting including the calorific value.

**Action:** Report on waste flow model for 5 partners including calorific values.

### **Communications**

Mr Williams stated that the press pack and Q & A will be sent out on 13 December 2011 and public events are planned from the 7 January until 5 February 2012.

**Timeline**

Mr Williams outlined the timeline for the next stage, as follows:

- ISFT issued & debrief 15 December 2011.
- Draft final tenders 19 March 2012.
- WG health check by 1 April 2012.
- Close dialogue and final tenders 4 May 2012.
- Members briefings & seminars May - Sept 2012.
- Preferred bidder decisions by end Autumn 2012.
- Contract award December 2012.

Members agreed to bring to the attention of the Joint Committee the points raised during the meeting.

**Action:** A letter to be drafted and signed by Chair.

**7. NEXT MEETING**

Mr Jones advised that because of the additional information requests an additional meeting would be required. There has been a good response to the call for evidence so far which will close in the first week of January 2012. Site visits are also to be arranged for the third/fourth week of January to Slough and New Haven to EfW plants.

Meeting closed at 16:05 p.m.