

Cabinet	<b>FP/691/11/11</b>
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**Approval of the final business case and contract award of 1410: Residual Waste Treatment Contract**

Report by Councillor Derrick Louis, Cabinet Member for Procurement, Property and Major Projects

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**1. Purpose of report**

This report summarises the Final Business Case (FBC) for the Residual Waste Treatment Contract (PFI) for consideration by the Cabinet.

This contract will deliver a Mechanical Biological Treatment (MBT) based, residual waste treatment facility at the Essex County Council (ECC) site in Courtauld Road, Basildon. Services will commence in June 2015, following periods of planning, construction, testing and commissioning, and will last for 25 years.

This report includes detail regarding the legal and financial implications of the contract, together with a letter of support from ECC's retained technical advisor. The full Final Business Case is available to Cabinet Members on a confidential basis.

**2. Decision Areas and Recommendations**

*Cabinet are asked to agree the following:*

- 1. Agree the Final Business Case and approve its submission to WIDP (DEFRA) as part of securing the £100.9m Waste Infrastructure Credit (formerly PFI) grant.*
- 2. Agree the award of the contract '1410: Residual Waste Treatment Contract' and the sub-lease of 8.5 hectares of the site to the consortium of Urbaser and Balfour Beatty on the basis that the expected total nominal cost at Financial Close is no greater than £919m.*
- 3. To progress the revised Joint Working Agreement between Essex County Council and Southend-on-Sea Borough Council to a satisfactory conclusion before Contract Award.*
- 4. Delegate authority to the Project Director - Waste to finalise the contract, the sub-lease and Joint Working Agreement in consultation with Finance and Legal Services.*

### 3. Background, context, and area of the County affected

Faced with a significant annual escalation of landfill taxes, together with a central government aspiration for zero-landfill, ECC recognised that continuing to landfill our household waste is neither a pragmatic nor desirable means of managing waste, in both financial and environmental terms.

In order to deliver the least possible landfill whilst maximising our recycling, ECC proposed to deliver an MBT facility in partnership with Southend-on-Seas Borough Council (SBC) to process the residual waste arising across the two Waste Disposal Authority areas.

In October 2009, ECC and SBC jointly submitted an Outline Business Case (OBC) to WIDP/HM Treasury and, following its approval, were provisionally awarded £100.9m of PFI (now Waste Infrastructure) credits to support a 25 year residual waste treatment contract.

On 19 November 2009 a notice was published in the Official Journal of the European Union (OJEU) (Reference 2009/S 225 - 323258), inviting expressions of interest for the waste PFI contract. The project was subject to a bespoke governance process, agreed by ECC Cabinet simultaneously with the OBC, on 23 June 2009 (ref. Minute 26/33). Following a procurement founded on the Competitive Dialogue process, the project's Senior Responsible Officer (Executive Director Environment, Sustainability and Highways) following consultation with the Member Project Board, appointed a consortium of **Urbaser and Balfour Beatty** as Preferred Bidder on 3<sup>rd</sup> January 2012.

The Chief Officer Action confirming that appointment is attached at Appendix 1.

#### **Preferred Bidder's Solution**

The Urbaser Balfour Beatty consortium has proposed an MBT facility to treat kerbside collected residual waste (the black bags), trade waste collected by local authorities, street sweepings as well as all non-recycled waste from ECC and SBC recycle centres for household wastes (RCHW/HWRC).

It will be capable of treating up to 417,000 tonnes per annum, giving the Councils 10% extra capacity in relation to the maximum forecast throughput of 377,000 tonnes per annum. This will provide the flexibility to cope with potential future changes against forecast Contract Waste tonnages without the need to make changes to the process or require additional lines or equipment.

The Contract Waste received will initially be processed through a mechanical treatment stage where recyclables – ferrous and non-ferrous metals, plastics, glass, paper and card - will be recovered and the remaining fraction prepared to be processed through a bio-stabilisation process. The bio-stabilisation process will facilitate mass loss and drying which, after six weeks, will result in a reduction of the biodegradable element resulting in a Stabilised Output Material (SOM) for landfill and/or a Solid Recovered Fuel (SRF) for use in energy plants.

Urbaser Balfour Beatty's solution was unique amongst bidders for this contract in that it offered a single output which will comply with both our SOM and SRF requirements simultaneously. This offers the Councils the possibility of having either/both outputs at the same time and without advance notice being required by the Contractor. The single output means that there is no switching period between SRF and bio-stabilisation mode, thereby removing a significant process risk for both the contractor and the partnering Councils.

Urbaser Balfour Beatty made the following guarantees as part of their bid:

Municipal Solid Waste (MSW) diversion (Bio-stabilisation mode): 47.85%  
MSW diversion (SRF mode): 99.37% (the balance being ad-hoc waste)

Biodegradable Municipal waste (BMW) diversion (Bio-stabilisation mode): 84.2%  
BMW diversion (SRF mode): 100%

Recycling performance (all modes): 14.45%

Urbaser Balfour Beatty's facility design has taken due regard of the input and direction of the ECC Essex Design Initiative, which promotes very high standards for aspirational and sustainable architectural and technical solutions. They have also taken due note of guidance from the following Commission for Architecture and the Built Environment (CABE) and DEFRA publications:

- Grey to Green – CABE publication 2009;
- Urban Green Nation: Building the evidence base – CABE publication 2010;
- Designing Waste Facilities – DEFRA publication 2008.

Urbaser Balfour Beatty has taken particular care with addressing boundary issues, most notable of which is adjacent ECC travellers' site. The ECC Gypsy and Traveller Liaison Manager was engaged throughout the latter stages of the procurement process and again now during the public planning consultation period.

As well as appointing planning consultants, common across all bidders, Urbaser Balfour Beatty took the additional step of appointing an environmental communications company, Sauce, to provide the Authority with additional planning comfort and support their pre-planning public consultation process.

## **Visitor Centre**

Urbaser Balfour Beatty has proposed an Essex and Southend Sustainability Centre which will act as a catalyst for sustainability in Essex and Southend-on-Sea. It will be the hub of a significant range of sustainability activities, including environmental education, community cohesion and business development. Their dedicated community liaison officer will work with the community, leading and facilitating programmes to enable the people of Essex and Southend-on-Sea to make the most of the Facility and the opportunities it affords.

The exhibition space will be an adaptable venue to enable a range of exhibitions and other activities to take place. For example, community groups and organisations will be able to use the space as a temporary art gallery or as a green business exhibition zone. The classrooms will be available for use for environmental and wider sustainability education as well as for health and wellbeing activities.

## **Employment**

Urbaser Balfour Beatty will support local businesses and communities by investing in projects that improve social and economic conditions whilst investing in solutions that minimise environmental impact. They will achieve this through:

- Apprentices forming a minimum of 7% of the workforce during construction

- Providing two new apprentices every two years throughout the operations phase and a minimum of 70% completion rate for all our apprentices
- Offering 100% job interview guarantees for Essex and Southend-on-Sea residents. This commitment is throughout the supply chain and will target recently unemployed skilled workers.

Additionally, Urbaser Balfour Beatty are committed to advertising jobs locally through a wide range of channels including the local Jobcentre, job seeker direct and online at Directgov to ensure that local residents have access to jobs created.

### **Facility location**

Urbaser Balfour Beatty selected to use the site at Courtauld Road, Basildon in which ECC has a long-term leasehold interest. On contract award, ECC will grant Urbaser Balfour Beatty a sub-lease of 8.5 hectares of the site at a 'peppercorn rent'. The site was the subject of a 2008 planning permission for a multi-technology waste treatment facility. Urbaser Balfour Beatty will however be submitting a new planning application for its technical solution and as part of that process they will prepare and submit an Environmental Impact Assessment.

If Urbaser Balfour Beatty are unsuccessful in securing a new planning application then the contract and the sub-lease will terminate (see paragraph 35 of Appendix 4 for further details).

### **Technical approval**

ECC has retained the services of technical consultants AEA Technology throughout the OBC and procurement process. A letter of support for the technical solution is attached at Appendix 2.

## **4. Relevance to ECC's corporate plan and other Strategic Plans**

This contract forms part of the delivery the Joint Municipal Waste Management Strategy (JMWMS) – agreed by ECC full Council in July 2008 - which sets out the shared approach for the development and delivery of local authority waste management services within Essex. The JMWMS and contract contribute to **'protecting and enhancing the environment in Essex'** which delivers **'improving public health and wellbeing'**; a key priority in the 2012 to 2017 Corporate Plan which was approved by EEC full Council in February 2012.

## **5. Internal and External Consultation**

Please see Appendix 3 for the project's consultation strategy paper.

## **6. Legal Implications (Monitoring Officer)**

ECC has been advised throughout by Essex Legal Services and specialist PFI legal advisors, Nabarro LLP.

The procurement has been conducted through the Competitive Dialogue procedure in full compliance with the Public Contract Regulations 2006.

The Contract between the Contractor and ECC is based on the standard form WIDP contract. Please see Appendix 4 for a summary of the legal implications of the Contract.

Financial Close will commit ECC to a twenty five year service contract for the provision of waste treatment services together with a sub-lease of 8.5 hectares of the site to cover the same period.

### **Joint Working Agreement (JWA)**

The JWA between ECC and SBC dated 2008 is currently being updated to reflect the commercial position reached in the PFI contract. This update will capture a flow down of the benefits and liabilities in the PFI contract. In summary, liabilities will be apportioned between ECC and SBC in accordance with the Partnership Share save where the liability has arisen as a direct result of an act or omission of either party (where the offending party will indemnify the other against such liability). The Partnership Share is calculated based on ECC and SBC's actual residual waste tonnages at the Services Commencement Date.

The flow down to SBC also includes the right for SBC to voluntarily terminate those elements of the JWA that relate to the PFI contract on giving ECC 5 years' written notice. This is consistent with ECC having a right to voluntarily terminate the PFI Contract. Where SBC seek to exercise their right to withdraw SBC's liability to either deliver their waste to the Facility or indemnify ECC for the shortfall will be for a fixed period of 5 years. Where SBC withdraw, and Defra reduce the PFI credit available as a result, SBC will indemnify ECC for their share for the remainder of the life of the contract.

### **Inter Authority Agreements (IAA)**

The IAAs between ECC and eleven of the twelve Waste Collection Authorities (WCAs) (excluding Colchester Borough Council), executed in 2010, contain a review procedure in respect of the key issues arising out of the PFI procurement where those impact on the WCAs. This process is underway and is on track to deliver revised and conformed IAAs prior to Financial Close.

## **7. Finance and Resources Implications (Section 151 Officer)**

### **Affordability Summary**

Urbaser Balfour Beatty's proposed solution, based upon current market rates and tonnage forecasts, has a nominal cost of £767m over the 25 year life of the contract. This is within the PFI project affordability figure of £1,045m approved in 2009. Although it is anticipated that the nominal sum will remain at or around this figure (of £767m) at financial close, there are a number of areas that could alter the final price of the contract. These include interest rate and foreign exchange movements and potential timetable delays. Consequently it is prudent to build in some flexibility for those Officers negotiating the final stages of the contract. So authority is being sought from the Cabinet to allow for a contract to be signed allowing for such eventualities up to a nominal value of £919m at financial close. Appendix 5 - Financial Implications - Biostabilisation Model Sensitivity Results table – sets out more detail of the sensitivities that have been tested.

This cost is part of a whole waste programme cost, including Waste Infrastructure Credits, of £3,186m which is below the overall affordability range contained in the 2009 OBC of £3,661m to £4,132m.

The ECC share of the whole system cost is £2,963m compared to the 2009 approved base case of £3,430m (see Appendix 5 - Financial Implications - Allocation of Costs between Authority).

The revised current base case whole system cost and the sensitivities remain within the original approved base case affordability contained in the OBC and well within the worst case position.

Urbaser Balfour Beatty's solution delivers a lower cost solution, while at the same time guaranteeing delivery of at least 48% landfill diversion performance; the level assumed in the Outline Business Case. This performance level rises to 99.6% landfill diversion where the facility is able to operate in SRF mode.

An HM Treasury/WIDP PFI Value for Money Quantitative Assessment was completed for the project as part of the FBC process, which showed that on that basis, the PFI project represented value for money compared to conventional procurement methods.

As part of financial planning for the future costs of the waste programme, the Waste Reserve was set up at the time of the OBC. This was to be used to fund the gap between existing budgets plus the Waste Infrastructure credits and the cost of the programme. The Reserve balance at the end of 2011/12 is forecast to be £39m with a budgeted annual contribution to it of £27m. As part of the FBC preparation, detailed modelling of the affordability of the project and the impact on ECC's budgets has been undertaken. Taking some sample years through the life of the programme, the following results were seen:

	Project Cost less Credits (£m)	Budget (£m)	Gap to be funded from Reserve (£m)
First full year of PFI (2016/17)	77	58	19
Middle year of PFI (2027/28)	105	77	28
Final full year of PFI (2039/40)	145	103	42

This modelling confirms that, if the waste budgets are held flat until 2016/17 and then inflated and the budgeted level of Reserve contributions are maintained, then the combination of the two plus Waste Infrastructure credits will be sufficient to fully fund the programme.

ECC currently holds a lease of the proposed PFI site at a rent of £873,190 per annum, which the Director of Property and Facilities considers to be current market rent. It is proposed to grant a sub-lease to Urbaser Balfour Beatty at a 'peppercorn rent'. This is in line with the ECC's Property Strategy, not to charge market rent or service costs to third party providers of services to ECC, where such sums would be re-charged to the ECC through the contract price.

ECC has an obligation to obtain Best Value for the disposal of property interests, including leasehold interests in excess of 7 years. It is considered that the Best Value obligations under s.123 of the Local Government Act 1972 will be discharged by the competition generated by the PFI procurement process, and the assessment process outlined above.

### **Planning and Permitting Risk**

In the event of a delay in securing planning or permitting approval where the Contractor has undertaken all reasonable endeavours to secure the approvals the unitary charge will be increased to cover their additional costs in accordance with the agreed provisions within the Project Agreement. In a worst case scenario of Planning or Permitting Failure then the Authority would be obliged to pay capped compensation amounts to the Contractor of circa £18m or £12m respectively. These costs exclude any breakage costs for the interest rate and exchange rate swaps.

### **Potential Upsides**

Recyclate Income:

The payment mechanism provides for additional third party income to be shared between the Contractor and the partnering Councils; however the affordability assessment does not rely upon such additional income.

Impact of SRF Production:

The affordability analysis assumes that the facility operates in bio-stabilisation mode for the entire concession to allow for a consistent comparison with the OBC assumptions, whereas the intention is for the facility to switch to SRF as soon as suitable markets are secured. There is increased confidence that these markets will be available from the start of the project, which will make the reference project even more attractive.

The cost of the Landfill Allowance Trading Scheme (LATS) has been removed, following recent changes to legislation, although the risk of such fines or penalties being passed down to Local Authorities remains.

Please see Appendix 5 for a full summary of the financial implications of the contract.

### **8. Human Resources/equality impact implications**

There are no HR implications for ECC. The contract is for the award of a service contract without TUPE implications. On the basis that the contract does not affect ECC staff and the services are not public facing there are no specific equality issues from this decision.

### **9. Background papers**

Final Business Case available to Cabinet Members on a confidential basis if requested.