
To: Council

On: 28 April 2016

Report by: Director of Community Resources

Heading: Clyde Valley Residual Waste Project - approval to enter into Post-Contract IAA and for North Lanarkshire Council to enter into the Project Agreement.

1. Summary

- 1.1 The purpose of this report is to update the Council in relation to the Clyde Valley Residual Waste Project and to approve the entering into the Project Agreement (and other ancillary documents) by North Lanarkshire Council with Viridor Clyde Valley Limited for the Treatment of Residual Waste for a 25 year period following a Competitive Dialogue procurement process, and to seek approval for Renfrewshire Council to enter into the Post Contract Inter Authority Agreement with the other Partner Councils.
 - 1.2 The Partner Councils are: North Lanarkshire Council, East Renfrewshire Council, East Dunbartonshire Council, North Ayrshire Council and Renfrewshire Council. North Lanarkshire Council is the Lead Authority.
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2. Recommendations

It is recommended that Council:

- 2.1 Approves that the Chief Executive enters into the Post Contract Inter Authority Agreement for the joint provision of Residual Waste Treatment and Disposal Services.

- 2.2. Agrees that North Lanarkshire Council as the Lead Authority agrees such amendments to the draft Project Agreement and the draft Parent Company Guarantee as it considers necessary to achieve Financial Close, including the any adjustments to the draft Payment Mechanism for Foreign Exchange as agreed in the Financial Close Protocol and any adjustments required to reflect any change in TUPE costs in the First Employee List.
- 2.3 Delegates authority to the Director of Community Resources to agree such minor amendments to the Post Contract Inter Authority Agreement as may be required.
- 2.4 Agrees that North Lanarkshire Council as the Lead Authority enter into the finalised versions of each of:
- the Project Agreement with Viridor Clyde Valley Limited;
 - the Parent Company Guarantee from Viridor Limited;
 - the Post Contract Inter Authority Agreement;
 - a Certificate pursuant to the Local Government (Contracts) Act 1997 in respect of the Project Agreement;
 - any other ancillary documentation reasonably required in relation to the Project.
- 2.5 Approves the Final Business Case.
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3. Background

3.1 Introduction

In December 2012/January 2013 Renfrewshire Council, along with the other Partner Councils entered into a pre-contract Inter Authority Agreement relating to the joint procurement of long term Residual Waste Treatment and Disposal Services. This Pre Contract IAA included the Appointment of North Lanarkshire Council as Lead Authority and also included Heads of Terms to be expanded to become the Post Contract Inter Authority Agreement.

The five Partner Councils are East Renfrewshire Council, East Dunbartonshire Council, North Ayrshire Council, North Lanarkshire Council and Renfrewshire Council (hereinafter the Partner Councils).

At the Council meeting on 24 September 2015 approval was given for the appointment by North Lanarkshire Council of Viridor as Preferred Bidder following a Competitive Dialogue procurement process carried out under the

terms of the Pre Contract IAA. In accordance with the Pre Contract IAA the agreement to the selection of Preferred Bidder was a matter reserved to Authorities and this agreement was received from all Partner Councils.

Viridor were Appointed as Preferred Bidder on 8 October 2015.

Since the appointment of Preferred Bidder a Final Business Case has been prepared, a Post Contract IAA has been drafted and a Key Stage Review has been carried out by Scottish Futures Trust.

3.2 Final Business Case

An Outline Business Case (OBC) was prepared by SLR Consulting for the Partner Councils and was approved in December 2012. The aims and objectives of the Partner Councils were outlined within the OBC: i.e. that the Partner Councils sought to procure a contract (commencing in December 2019) for the treatment and disposal of Contract Waste (190,000 tonnes per annum of waste that the Partner Councils currently send to landfill), as well as other ad-hoc waste handling and processing services. Under the Waste (Scotland) Regulations 2012 landfill of residual waste will be banned from 2020.

A Final Business Case (FBC) has now been prepared by SLR with input from Financial Advisors Grant Thornton. A copy of the FBC report which contains commercially confidential information received from the preferred bidder is held by the Director of Community Resources and is available for viewing in room 5.1 on request. The FBC shows that the benefits predicted in the OBC have been achieved and that the costs following the tender process will actually be less than those predicted in the OBC.

The FBC has been scrutinised by the Finance and Technical Working Groups made up from officers from each of the Partner Councils and considered by the Clyde Valley Residual Waste Management Initiative, Steering Group.

The Approval of the FBC is a matter reserved to Authorities and its approval is recommended by the Steering Group.

3.3 Post Contract Inter Authority Agreement

A Post Contract Inter Authority Agreement has been prepared. A copy of the draft Post Contract Inter Authority Agreement is held by the Director of Community Resources. Minor amendments may be required to the Post Contract IAA as we move towards financial close but these changes are unlikely to amend the risk profile as set out in the draft post Contract Inter Authority Agreement.

The IAA is a legally binding document and includes the following key points:

- The Commencement, Duration and Termination of the Contract.
- Principles and Key Objectives.
- Duties of the Lead Authority and Other Authorities.
- Decision Making
- Contract Management
- Payments and Audit.
- Liability of the Councils

The Post Contract IAA has been scrutinised by the Legal and Finance Working Groups made up from officers from each of the Partner Councils and considered by the Clyde Valley Residual Waste Management Initiative Steering Group.

The Agreement and Execution of the Post Contract Inter Authority Agreement is a matter reserved to Authorities and approval to enter into the Post Contract IAA is recommended by the Steering Group.

3.4 Key Stage Review

Scottish Futures Trust (SFT) has been a non-executive member of the Steering Group since the beginning of the Project. SFT carried out a Key Stage Review of the Project in December 2015 and a copy of the Key Stage Review Report is held by the Director of Community Resources.

SFT advised that, subject to the recommendations in the report, the project is ready to proceed to the next stage. All the SFT recommendations are acceptable and their implementation will be monitored by the Steering Group.

3.5 Financial Implications

3.5.1 Contract Management Team Costs

The contract period is 25 years from 1st December 2019. It has been agreed that the Contract Management Team will be established in 2016/17. The costs for this team are being allocated across the Partner Councils using the annual budget proportions as detailed in the Inter Authority Agreement. The Renfrewshire Council contribution for 2016/17 will be £40,000 and this will be funded from existing resources. The predicted annual costs to contract start are based on the 2016/17 budget increased by assumed annual pay awards (1% per annum).

3.5.2 Payments to be made to the Contractor

Following the tender process the Renfrewshire Council projected contract costs (the “gate fee”) at commencement will be in the order of £4.4million based on our current tonnage proportions. The actual gate fee will be based on the tonnages delivered as set out in the IAA, and also relevant inflation rates and what is agreed at Financial Close for the foreign exchange rate. This cost excludes a share (again as set out in the IAA) of pass-through NNDR costs for the primary treatment facility estimated at £30,000. The total estimated revenue cost (contractor costs, NNDR and contract management costs) of £4.5million will be managed within existing and projected waste management budgets.

3.5.3 Cost of Transfer Station Upgrade Works

No later than 6 months in advance of the contract commencing, upgrade works to the Council’s transfer station at Middleton Road, Linwood require to be completed. These works are estimated to cost £0.4million. Provision for these costs has been made in the capital plan (in 2017/18) as agreed by Council on 3 March 2016.

3.5.4 Accounting arrangements

Although the primary waste treatment facility is full owned and operated by Viridor, there is a requirement under the current accounting standards to account for the facility as being the subject of finance lease. The contract with Viridor is not a partnership contract with the 5 councils – it is a contract between Viridor and North Lanarkshire Council (NLC) as lead authority. Therefore NLC is principal to the contract and as such is liable to wholly recognise the facility on its balance sheet as a fixed asset with associated long term liabilities. There is no balance sheet impact for Renfrewshire Council.

Implications of the Report

1. Financial

As outlined in section 3.5 of the report.

2. HR & Organisational Development

There may be TUPE implications between the existing contractor who is currently operating the transfer station, and Viridor Clyde Valley Limited at services commencement. There may also be TUPE implications at the end of

the 25 year contract period whether the Council decided to bring the contract back in house (in which case there will be TUPE implications from Viridor Clyde Valley Limited to the Council) or if the Council decide to engage a new contractor (in which case there will be TUPE implications between contractors).

3. **Community Planning**

Greener - This Contract will assist the Council in complying with the Landfill Ban and meeting recycling targets.

4. **Legal**

Renfrewshire Council will have no contractual relationship with Viridor Clyde Valley Limited. NLC will be the only Partner Council with a contractual relationship with Viridor Clyde Valley Limited. Renfrewshire's obligations for the operational phase of the contract shall be governed by the Post-Contract Inter Authority Agreement (IAA) entered into among all the Partner Councils. Post Contract IAA is in an advanced draft and covers (among other things) the following areas:

- Renfrewshire Council's obligation to deliver their proportion of the minimum tonnage
- Renfrewshire Council's obligation to make payment for their share of the unitary charge
- Renfrewshire Council's obligation to make payment for their share of the project management costs
- Renfrewshire Council's obligations in respect of the works required to the transfer station in advance of Service Commencement
- Consequences of withdrawing from the partnership.

5. **Property/Assets**

Renfrewshire Council's Middleton Road transfer station will be operated by the contractor for the duration of the contract. Some upgrades are required to the transfer station in advance of services commencement (see 3.5.3 above). The contractor shall return the transfer station to the Council at the end of the contract.

6. **Information Technology – N/A**

7. **Equality & Human Rights**

The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If

required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.

8. **Health & Safety**

N/A.

9. **Procurement**

The procurement is being conducted in line with the Public Contracts (Scotland) Regulation 2012 under the Competitive Dialogue procedure. There are various stages to this procedure: Outline Dialogue, Detailed Dialogue, Final Dialogue, Selection of Preferred Bidder, Financial Close, and Services Commencement. The project is due to reach financial close on 11 May 2016 with services commencement on 1 December 2019.

10. **Risk**

There are some residual risks that remain with the Partner Councils, these include:

- **Qualifying Change in Law**
If a Qualifying change in Law occurs then the Contractor is entitled to any change in project costs the directly result from the Qualifying Change in Law. The Contractor has to agree any changes required and mitigate the effect of the changes.
- **Foreign Exchange**
A percentage of the price is linked to Foreign Exchange rate. This will be adjusted up or down between Tender submission and Financial Close in line with the change in the ForEx rate. After Financial Close this risk passes to the Contractor.
- **Indexation**
A percentage of the price is adjusted on an Annual basis in accordance with a basket of indices which reflect the impact of increases in fuel, wages and general inflation.

These risks will be monitored and mitigated during the period between financial close and service commencement and throughout the Service Period by the Contract Management Team.

11. **Privacy Impact** – As there are no personal details involved there is no privacy impact.

List of Background Papers

A copy of each of the following is available from the Director of Community Resources on request:

- (1) Final Business Case
- (2) Post Contract Inter-Authority Agreement
- (3) Key Stage Review

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