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Zero Waste: Edinburgh and Midlothian - Award of Food Waste Treatment Contract

Item number	8.8
Report number	
Wards	City wide

Links

Coalition pledges	P49, P50
Council outcomes	C07, C08, C023
Single Outcome Agreement	S012, S014

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Executive summary

Zero Waste: Edinburgh and Midlothian – Award of Food Waste Treatment Contract

Summary

Alauna Renewable Energy Limited (ARE) was appointed Preferred Bidder for the Zero Waste: Edinburgh and Midlothian Food Waste Treatment procurement following a Joint Council Project Board meeting on 20 September 2012.

On 6 November 2012, Midlothian Council agreed to appoint the City of Edinburgh Council as lead authority for the Zero Waste Project for both the food waste and residual waste contracts. This report seeks confirmation of the Council's agreement to act as lead authority for both the food waste and residual waste contracts.

The report provides detail on ARE's final tender and seeks approval for the award of the food waste contract to ARE. Council is asked to note that ARE's final tender remains valid for acceptance until 27 January 2013. Given the timescales, Council is requested to delegate authority to the Director of Services for Communities to enter into the necessary contractual arrangements.

Recommendations

It is recommended that the Council:

- a) notes the decision of Midlothian Council of 6 November 2012 formally to appoint the City of Edinburgh Council as lead authority for the Zero Waste Project;
- b) agrees that the City of Edinburgh Council shall act as "Lead Authority" for the Zero Waste Project between Edinburgh and Midlothian, for both the food waste and residual waste contracts, in terms of Section 56 of the Local Government (Scotland) Act 1973;
- c) approves the award of the food waste contract to ARE;
- d) authorises the Director of Services for Communities to enter into the following documents ("Documents") on behalf of the Council, and designates the Director of Services for Communities (or an alternative officer designated by him in writing) as the proper officer to execute the Documents, in each case subject to such amendments as the proper officer deems appropriate:-

- i) the Project Agreement;
- ii) the inter-authority agreement with Midlothian Council dealing with the contract management regime between the two Councils for the food waste treatment (“Inter-Authority Agreement”); and
- iii) all other ancillary documentation relative to the Zero Waste Project.

Measures of success

That the Council is provided with a Food Waste Treatment Contract that secures value for money over a 20 year period commencing at the end of 2015 in line with legislative requirements.

Financial impact

The tender price submitted by ARE is well within the base case established as part of the agreed Business Case and provides greater value for money than the continuation of short term merchant contracts. It also compares very well in financial terms with recent published UK waste treatment gate price studies.

In addition contract monitoring costs as a proportion of the overall Zero Waste Project (Food Waste Treatment and Residual Waste Treatment Contracts) amount to approximately 1.9% of the total contracts value. This compares favourably against benchmarks provided by the Office of Government Commerce who state that “the financial resource require to manage a major contract has been estimated at 2% of the contract value.” This proportion increases for contracts of lesser value. It is generally recognised that waste contracts have greater complexity than, for example, accommodation projects.

Ultimately ARE’s solution and contract terms provide a far greater degree of long term service and financial certainty than alternatives. The proposed ARE contract costs can be met from the existing landfill budgets.

In the main, all costs to the City of Edinburgh Council under the Project Agreement will be split on a ratio of 80:20 between the City of Edinburgh Council and Midlothian Council. Appropriate provisions are contained within the Inter-Authority Agreement between the two Councils.

Equalities impact

There are no equalities impacts as a result of this report.

Sustainability impact

The proposed food waste contract with ARE will have numerous positive environmental benefits as part of the move towards the more sustainable management of waste including the reduction of waste disposed of to landfill and associated release of greenhouse gases, the recycling of the composted food waste to arable land as a soil improver / fertiliser and the creation of renewable energy.

A number of jobs will also be created at the project site, during both construction and operation of the food waste facility.

Consultation and engagement

The overall plans for a Zero Waste Parc, and in particular the proposed waste treatment facilities at the Millerhill site, have been the subject of extensive community engagement as part of the process leading up to the granting of Planning Permission in Principle for waste facilities by Midlothian Council on 14 December 2011. This permission was granted for a range of waste treatment technologies which included anaerobic digestion for treatment of food waste. In addition mechanical/biological treatments and energy from waste facilities were approved for treatment of residual waste.

The proposals by ARE for an anaerobic digestion plant have, during October and November 2012, been subject to further community engagement, and a planning application which is expected to be submitted to Midlothian Council's Planning Department later in December 2012 will be subject to further statutory consultation.

Background reading / external references

- Zero Waste Project: Purchase of Land – Finance and Budget Committee, 29 November 2012
- Zero Waste: Edinburgh and Midlothian – update to the Transport, Infrastructure and Environment Committee, 21 February 2012
- Zero Waste: Edinburgh and Midlothian Commencement of Procurement – The City of Edinburgh Council, 14 October 2010
- Zero Waste: Edinburgh and Midlothian Commencement of Procurement – Transport, Infrastructure and Environment Committee, 21 September 2010
- Zero Waste Project – Progress Report – The City of Edinburgh Council, 15 October 2009
- Zero Waste Project – Progress Report – Transport, Infrastructure and Environment Committee, 22 September 2009

Zero Waste: Edinburgh and Midlothian – Award of Food Waste Treatment Contract

1. Background

- 1.1 On 15 October 2009 the City of Edinburgh Council approved the Project Initiation Document for the Zero Waste Project, including the governance arrangements, procurement budget and the joint purchase of the Millerhill site in Midlothian. As part of the governance arrangements it was agreed to delegate procurement progress decisions to the Project Board, exceptions being the commencement of procurement, approval to award the contract to the preferred bidder and entry into the Inter-Authority Agreement.
- 1.2 The overall aim of Zero Waste: Edinburgh and Midlothian was:
- To procure a long term waste treatment contract that will enhance household waste recycling levels and will recover value from residual waste that has not otherwise been recovered or recycled;
 - To ensure that the treatment of residual waste, when combined with the source-segregated activities, is sufficient to enable the two Partner Councils to meet their targets for landfill diversion and contribute to their recycling obligations; and
 - To contribute to the Councils' shared vision of a zero waste future.
- 1.3 The Council, on 14 October 2010, was advised that a contract options appraisal had come out in favour of a Design, Build, Finance, Operate (DBFO) approach to the Contract. The Council, at its meeting of 14 October 2010, agreed to include food waste treatment in the scope of the Zero Waste Project but that two separate procurements be advanced commencing with food waste treatment, to be followed by residual waste treatment. The Council also approved a lead authority approach to contracts management.
- 1.4 This food waste treatment procurement was set up with the aim of seeking to procure a contract for the treatment by anaerobic digestion of food waste collected by or on behalf of the partner councils. The Councils established an experienced joint project team including specialist technical, finance and legal officers from both Councils. Specialist procurement advice is provided to the team by Pinsent Masons, legal advisers to the Councils. In addition Scottish Futures Trust, on behalf of the Project Board, have provided a quality assurance role to ensure the procurement follows best practice.
- 1.5 The anaerobic digestion (AD) process used to treat food waste is a fully enclosed accelerated composting process which captures methane gas and uses it to generate renewable electricity. The composted material is recycled as

an agricultural fertiliser in crop production. The composted material, known as digestate, is required to meet a market standard (PAS110).

- 1.6 The food waste treatment procurement commenced in February 2011 with four bidders being shortlisted; AmeyCespa, Kelda Water (now Alauna Renewable Energy); Shanks and Viridor Waste Management Ltd (Viridor). Following submission of detailed tenders on 25 November 2011, the Project Board selected two Bidders (ARE and Viridor) to participate in further dialogue and Final Tenders were invited on 13 July 2012.
- 1.7 Final tenders were received from both ARE and Viridor. These were evaluated in accordance with the evaluation procedure set out and agreed by the Project Board prior to bidders being invited to participate in dialogue.
- 1.8 Having analysed final scores and considered a Key Stage review carried out by Scottish Futures Trust, the Project Board, under powers delegated to it by Council in October 2009, agreed to appoint ARE as Preferred Bidder.
- 1.9 The Project Board is satisfied that ARE has submitted the most economically advantageous tender and recommends the award of the contract to ARE.

2. Main report

Key commercial terms

- 2.1 ARE has proposed an Anaerobic Digestion Plant at the Millerhill site to treat the Partner Councils' food waste. In accordance with the Councils' requirements, this will be a 20 year contract.
- 2.2 ARE's current programme for works is as follows:

Task	Date
Planning Application Determination	2013
Site Enabling Works start	06/02/2014
Facility Construction Works start	06/10/2014
Commissioning Works start	09/09/2015
Service Commencement	31/12/2015

- 2.3 The price tendered by ARE falls within the range of affordability established for the project and is considered to offer the Partner Councils a value for money solution, representing as it does:
 - a significant reduction when compared to the cost of landfill;
 - a competitive price when held against current market conditions being seen in the UK as a whole, and;
 - a significantly cheaper price than those seen in recent comparable Design, Build, Finance, Operate procurement projects in other parts of the UK.
- 2.4 The prices submitted as part of the final tender were evaluated in accordance with the protocols laid out in the tender document, which, when combined with

the Technical and Legal evaluation scores, resulted in ARE being selected as Preferred Bidder for the procurement, having submitted the most economically advantageous tender.

Preferred Bidder Stage

- 2.5 The preferred bidder stage, which the procurement process has reached, is a stage where there is no further dialogue or negotiation on issues. Legally all that is permissible is 'clarification and fine tuning' of the final tender by ARE. Essentially the bid price is set (to 27 January 2013) and only fine tuning of the programme plan for delivery of the service and the fine detail of the Project Agreement (contract) need to be finalised.
- 2.6 In the discussions and refinements leading up to Financial Close (when the legally binding Project Agreement and other documents will be signed), the bidder has given no indication of revising their tendered price, and the Zero Waste Project Team (the "Project Team") has been clear that no unjustified movement in price will be considered. The Project Team is therefore confident that the price brought forward for signature at Financial Close will not differ materially from that tendered.
- 2.7 The Project Team, in agreement with ARE, hope to progress quickly to reach a point by which the contract can be signed by 27 January 2013.
- 2.8 As part of Zero Waste: Edinburgh and Midlothian procedures, the Scottish Futures Trust will carry out a Key Stage Review prior to Contract Close as part of their project assurance role.

Key Contract Terms

- 2.9 The Project Agreement, which is based on a DBFO (design, build, finance and operate) approach, is extremely complex and a summary of key contract terms has been provided to members separately. This type of Agreement follows industry best practice and is well tested on many projects.

Lead Authority

- 2.10 At the meeting of the Transport, Infrastructure and Environment Committee of 21 February 2012, approval in principle was granted to appoint the City of Edinburgh Council as lead authority for the Zero Waste Project. Any final confirmation of such an appointment was conditional on Midlothian Council also appointing the City of Edinburgh Council as lead authority.
- 2.11 At its meeting on 6 November 2012, Midlothian Council moved to formally appoint the City of Edinburgh Council as lead authority for the Zero Waste Project.
- 2.12 This Council is now asked to agree that the City of Edinburgh Council may act as lead authority for the Zero Waste Project. In doing so, the City of Edinburgh Council will discharge the functions of Midlothian Council, in terms of sections 53 and 56 of the Environmental Protection Act 1990. These sections of the 1990 Act relate to the disposal of waste and the recycling of waste respectively. Insofar as those functions relate to the Food Waste Treatment contract and the

Residual Waste Treatment contract, they will be transferred from Midlothian Council to the City of Edinburgh Council.

- 2.13 This is legally permissible as one local authority may appoint another to discharge all or part of one or more of its functions under section 56 of the Local Government (Scotland) Act 1973.
- 2.14 The lead authority shall be the contracting party to both the Food Waste Treatment and Residual Waste Treatment procurements. Accordingly the lead authority's responsibilities under the Food Waste Treatment contract will include but not be limited to the following:
- (a) paying the entirety of each monthly invoice to ARE;
 - (b) enforcing the terms of the contract as required; and
 - (c) making any further payments, receiving any payments due and otherwise being the main contracting party with the Food Waste Treatment contractor and the eventual Residual Waste Treatment contractor.

Inter-Authority Agreement- Key Contract Terms

- 2.15 The City of Edinburgh Council will be liable for payment of all sums to the Contractor under both the Food Waste Treatment and Residual Waste Treatment contracts. The Inter-Authority Agreement will then account for how Midlothian Council's share of this payment will be reimbursed to the City of Edinburgh Council.
- 2.16 To account for the lead authority approach and the fact that only the City of Edinburgh Council will enter into project agreements for the Food Waste Treatment and Residual Waste Treatment procurements, separate "Inter-Authority Agreements" will be required for each procurement. This report asks Council for authority to enter into the Inter-Authority Agreement governing the food waste treatment contract.
- 2.17 Members have been briefed previously as to the key contract terms of the Inter-Authority Agreement.
- 2.18 The contract monitoring costs for both the Food and Residual Contracts are predicted to be 1.9% of the total contract value. This will be split between the two Councils on the basis accounted for in the Inter-Authority Agreement, which will initially be based on the expected tonnage supplied to the contractor, i.e. 80% City of Edinburgh Council, 20% Midlothian Council.
- 2.19 The contract monitoring costs compare favourably against benchmarks provided by the Office of Government Commerce who state that "the financial resource require to manage a major contract has been estimated at 2% of the contract value. This proportion increases for contracts of lesser value". It is generally accepted that waste contracts have greater complexity than, for example, accommodation projects.

Risk Identification

- 2.20 The request for delegated powers is designed to mitigate increased cost exposure which would occur should there be a delay (beyond 27 January 2013)

in signing the contract. This is because ARE have guaranteed their bid price until 27 January 2013. Any delay past this point would most likely result in increased costs to the partner councils.

- 2.21 The Project Agreement is constructed to take account of risk and how it is shared between the partner councils and ARE. In general risk is shared or held by the party best placed to manage the risk. Most risks have a financial impact to them, some which are potentially positive (e.g. where third party revenue increases and is shared) and some of which are potentially negative (e.g. where change in law occurs).
- 2.22 An example of a risk for the partner councils is that the UK Government is proposing to revisit the level of renewable subsidy under the Renewable Obligations Certificates and Feed in Tariffs (FITS). This provides uncertainty for investors as it is not clear yet how these financial incentives for production of renewable electricity will differ and how this will affect the market. However, as soon as ARE achieves an operable status (the point at which it is commissioned) on the AD facility the FITS will be fixed for the duration of the contract.
- 2.23 Monitoring costs have been calculated on the assumption that a joint contract monitoring team will be established for both the Food and Residual Waste Treatment Contracts. Both Partner Councils have made firm commitments to the Residual Waste Treatment procurement in order to meet their statutory duties. While it is very low risk, if a decision was made not to proceed with the Residual Waste Treatment Contract, the implications for the Food Contract would be an increase in monitoring costs. This would increase the total annual cost of this contract to the City of Edinburgh Council by around £87,000.
- 2.24 There are no additional new significant risks associated with this report that are not already known about and managed in risk logs held by the Zero Waste Project. Key high level risks being managed by the Councils are the construction of the new road and bridge access and provision of site services to the Millerhill site.

Conclusions

- 2.25 ARE has been appointed as Preferred Bidder having satisfied the Project Board that their solution provides the Most Economically Advantageous Tender, is within affordable levels and represents a value for money solution.
- 2.26 The proposed contract costs can be met from the Council's Landfill Budget.
- 2.27 This report provides a summary of ARE's tender and the Project Team expects to be in a position during December 2012 or January 2013 where the contract can be signed. Early signature will ensure that the price is fixed.
- 2.28 It is in the best interests of the Councils to conclude this Contract before 27 January 2013 (when the price is still fixed). Delegated powers will be required to adhere to this target.

3. Recommendations

3.1 It is recommended that the Council:

- a) notes the decision of Midlothian Council of 6 November 2012 formally to appoint the City of Edinburgh Council as lead authority for the Zero Waste Project;
- b) agrees that the City of Edinburgh Council shall act as "Lead Authority" for the Zero Waste Project between Edinburgh and Midlothian, for both the food waste and residual waste contracts, in terms of Section 56 of the Local Government (Scotland) Act 1973;
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