

EAST RENFREWSHIRE COUNCIL20 April 2016Report by Director of EnvironmentCLYDE VALLEY RESIDUAL WASTE CONTRACT – AUTHORITY TO SIGN INTER
AUTHORITY AGREEMENT AND ENTER INTO CONTRACT WITH PREFERRED BIDDER
– VIRIDOR LTD**PURPOSE OF REPORT**

1. The purpose of the report is to update the Council in relation to the Clyde Valley Residual Waste Project and to seek authority to enter into a Post Contract Inter Authority Agreement with four Partner Councils and for North Lanarkshire Council as Lead Authority to enter into a Contract (the Project Agreement) with Viridor Clyde Valley Limited (Viridor) for the Treatment of Residual Waste for a 25 year period.

RECOMMENDATIONS

2. It is recommended that the Council:
- (a) approve the Final Business Case
 - (b) authorise the Chief Officer – Legal and Procurement to sign the Post Contract Inter Authority Agreement for the joint provision of Residual Waste Treatment and Disposal Services on behalf of East Renfrewshire Council.
 - (c) authorise the Project Leader to agree such amendments to the draft Project Agreement and the draft Parent Company Guarantee as considered necessary to achieve Financial Close, including any adjustments to the draft Payment Mechanism for Foreign Exchange as agreed in the Financial Close Protocol and any adjustments required to reflect any post-tender changes in the First Employee List.
 - (d) delegate authority to the Head of Environment (Environmental Services and Roads) to agree such minor amendments to the Post Contract Inter Authority Agreement as may be required.
 - (e) Authorise the Chief Executive (or authorised delegate), to execute, [in the presence of a witness], 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.

(all subject to the Inter Authority Agreement being executed by the other Partner Councils)

BACKGROUND

3. In December 2012/January 2013 East Renfrewshire Council entered into a pre-contract Inter Authority Agreement (IAA) 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. The five Partner Councils were East Renfrewshire Council, East Dunbartonshire Council, North Ayrshire Council, North Lanarkshire Council and Renfrewshire Council (hereinafter the Partner Councils).

4. On 16th September 2015 the Council gave approval 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.

5. Viridor were appointed as Preferred Bidder on 8th 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 (SFT).

REPORT

6. 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 1st January 2021.

7. A Final Business Case (FBC) has now been prepared by SLR Consulting with input from Financial Advisors Grant Thornton. A copy of the FBC report, which contains commercially confidential information can be viewed upon request, and is held by Andrew Corry, Head of Environment (Environmental Services & Roads). 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.

8. 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.

9. A copy of the draft Post Contract Inter Authority Agreement has been placed in the Members Lounge. 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.

10. 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

11. 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.

12. 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. A copy of the FBC report, which contains commercially confidential information can be viewed upon request, and is held by Andrew Corry, Head of Environment (Environmental Services & Roads). 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.

FINANCE AND EFFICIENCY

13. 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 shown in the Inter Authority Agreement. The East Renfrewshire Council contribution for 2016/17 is 11% or £22,600 and has been budgeted for as part of the 2016/17 budgeting process.

14. On Financial Close the Council will require to make appropriate financial provision in future budgets for the delivery of the Contract.

15. The Final Business Case 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 Outline Business Case.

CONSULTATION

16. Technical, Legal and Financial consultants have been appointed throughout the Procurement process. Technical, Legal and Financial representatives from all Partner Councils have been consulted throughout all key stages of this process.

PARTNERSHIP WORKING

17. The five local authorities involved in this project in conjunction with the technical, financial and legal professional appointed have worked collaboratively over the last 3 years to bring the project to this point.

IMPLICATIONS OF THE PROPOSAL

18. The report authorises the Project Leader to make any final adjustments to the Payment Mechanism for Foreign Exchange before final financial close.

19. These changes will have no staffing implications for the Council.

20. The proposed service changes will have a beneficial impact on the Council's sustainability agenda, with less waste being sent to landfill.

21. There are no implications in terms of equalities.

CONCLUSIONS

22. The Final Business Case prepared by SLR Consultants with input from Financial Advisors, Grant Thornton, shows that the benefits predicted in the Outline Business Case have been achieved.

23. The Final Business Case has been scrutinised by the partner Authorities, the Finance and Technical Working Groups, and subsequently approved by the Project Steering Group.

24. Scottish Futures Trust have undertaken a Key Stage Review and have approved the Project's move towards Financial Close.

25. The solution proposed will provide a home for ERC waste for 25 years from the commencement of the contract in 2019/20 and will provide a solution to the ban on landfill which occurs from 1st January 2021 onwards.

RECOMMENDATIONS

26. It is recommended that the Council:

- (a) approve the Final Business Case
- (b) authorise the Chief Officer – Legal and Procurement to sign the Post Contract Inter Authority Agreement for the joint provision of Residual Waste Treatment and Disposal Services on behalf of East Renfrewshire Council.
- (c) authorise the Project Leader to agree such amendments to the draft Project Agreement and the draft Parent Company Guarantee as considered necessary to achieve Financial Close, including any adjustments to the draft Payment Mechanism for Foreign Exchange as agreed in the Financial Close Protocol and any adjustments required to reflect any post-tender changes in the First Employee List.
- (d) delegate authority to the Head of Environment (Environmental Services and Roads) to agree such minor amendments to the Post Contract Inter Authority Agreement as may be required.
- (e) Authorise the Chief Executive (or authorised delegate), to execute, [in the presence of a witness], 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.

(all subject to the Inter Authority Agreement being executed by the other Partner Councils)

Director of Environment

Further information can be obtained from - Andrew Corry, Head of Environment
(Environmental Services & Roads)

April 2016

BACKGROUND PAPERS

Waste Management – 9th February 2012

Waste Management – 25th April 2012

Update on Clyde Valley Shared Services – Waste Management – 12th December 2012

Selection of Preferred Bidder for the Clyde Valley Residual Waste Project – 16th September
2015

KEY WORDS

Clyde Valley Residual Waste Project, Waste Disposal, Inter Authority Agreement, Final
Business Case

BLANK PAGE