

Waste Infrastructure Delivery Programme:
Transactor Support - Memorandum of Understanding
between
City of Bradford Metropolitan City Council
(the "Authority")
and
the Waste Infrastructure Delivery Programme ("WIDP")
for the procurement of residual waste treatment capacity

The Authority is undertaking a PFI Project for residual waste treatment capacity (the "Project") which is one of a number of actions it is taking in its capacity as a Waste Disposal Authority, to deliver its Municipal Waste Management Strategy

DEFRA has established the Waste Infrastructure Delivery Programme (WIDP) in order to support Local Authority procurement of infrastructure needed to treat residual municipal waste. WIDP has established a pool of experienced project transactors drawn from 4ps, Partnerships UK and DEFRA with access to expertise and advice from specialists in relevant areas.

DEFRA has agreed to provide Transactor support to the Project. This Memorandum of Understanding (MoU) is not intended to and does not create legally binding obligations enforceable at law but rather sets out the basis upon which WIDP support is provided to the Project:

1. Purpose and Duration of the MoU:

- 1.1. The objective of the Transactor support is to assist the Authority to achieve the successful procurement of the Project in an efficient and timely manner and, thereafter, to remain available to provide on-going support through the implementation and operation phases the Project, if required.

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- 1.2. The support contemplated under this MoU will unless previously suspended or withdrawn in accordance with the terms set out below, continue in being until completion of the Project generally defined as the natural expiry date of the key commercial contract(s) let by the Authority under the procurement.

2. WIDP's Commitment to the Authority

- 2.1. The Transactor provided by WIDP for this project will be David Revell or any designated alternate. A CV is attached at Appendix 1. WIDP may change the designated Transactors having consulted with the Authority.
- 2.2. The WIDP Transactor input available to the Authority will be up to:
 - 2.2.1. an average of 4 Business Days a month up to OJEU
 - 2.2.2. an average of 8 Business Days a month from OJEU to financial close
 - 2.2.3. an average of 1 Business Day a month after financial close
- 2.3. The days specified in paragraph 2.2 above may be reviewed from time to time by the Authority and the Transactors in light of project needs and transactor availability. In the event that the Authority wishes to receive additional support from WIDP beyond the level set out in paragraph 2.2, it is required to make a formal request in writing to the WIDP Programme Director. Fees shall be payable for such support with the terms and conditions of such fees being arranged by separate agreement.
- 2.4. It is expected that the Transactors will provide some, or all, of the following support for the Project:
 - 2.4.1. attend Project Team meetings at key stages of the preparation and procurement of the Project.
 - 2.4.2. The Transactors will endeavour to attend all Project Board meetings at key stages of its procurement and implementation but will have the right to appoint an alternate attendee.
 - 2.4.3. advice in relation to the scope of work, selection, recommendation of appointment and terms of engagement of financial, legal, technical, insurance etc. advisers for the Project.

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- 2.4.4. advice in relation to project development issues, including processes relating to site selection, engagement with stakeholders, analysis of technological options, development of the Reference Project, project management, decision making and governance structures.
 - 2.4.5. act as a conduit for communications with WIDP and provide access to the specialist support available from WIDP.
 - 2.4.6. advice in relation to the availability and content of the relevant training modules available from both WIDP and the 4ps and support as required in the delivery of those training modules.
 - 2.4.7. review and provide feedback on all project documentation, including the Project: Expression of Interest, Outline Business Case, market sounding documentation Descriptive Document (or Information Pack), Pre-Qualification Questionnaire, Invitation to Participate in Competitive Dialogue, Invitation to Submit Outline Solutions (and any other short-listing documentation), the Invitation to Submit Detailed Solutions (or Invitation to Negotiate) including instructions, evaluation criteria, output specification, payment mechanism and model contract, any Invitation to Submit Refined Solutions (or Best and Final Offer) documentation, Call for Final Tenders, the Preferred Bidder letter, the Final Business Case and 'close' documentation.
 - 2.4.8. assist in the evaluation of bids at the pre-qualification, Competitive Dialogue and Preferred Bidder stages.
 - 2.4.9. assist in the evaluation of proposals made in the context of funding and hedging competitions and other ancillary competitions, if used.
 - 2.4.10. assist with commercial negotiations.
 - 2.4.11. assist in developing the contract monitoring arrangements.
 - 2.4.12. share information on solutions previously employed by other local authorities to deal with specific issues arising during the procurement of similar projects.
- 2.5. The Transactors will also provide: (i) access to DEFRA's expertise on the development and procurement of waste projects and will endeavour to ensure that the Project Board is kept informed of any key matter relating to the operation and scope of waste projects which is relevant to the procurement; and (ii) access to WIDP's Contract Coordination team and ensure a WIDP Contract Advisor is allocated to the Project at the appropriate stage in the procurement.

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2.6. In order to facilitate the Transactors support contemplated in paragraph 2 above the Authority shall appoint a Transactor to the Project Board.

3. The Authority's Responsibilities

3.1. In undertaking the Project, the Authority shall retain responsibility for:

- 3.1.1. establishing a Project Board for the development and procurement of the Project, in accordance with good practice in project governance, including with a sufficient number of appropriately qualified personnel to take whatever decisions and provide the overall direction required to conclude a timely and successful procurement.
- 3.1.2. convening regular (i.e. typically monthly) Project Board meetings (and ad hoc meetings if required) and providing adequate notice of meetings and an agenda at least 3 business days' in advance of each meeting except in cases of urgency.
- 3.1.3. appointing an appropriately qualified Project Director and as necessary Project Manager with responsibility for the day to day running of the Project and for reporting the progress to the Project Board.
- 3.1.4. establishing a Project Team for the development and procurement of the Project with a sufficient number of appropriately qualified personnel for the Project to reach close in a timely and efficient manner.
- 3.1.5. for determining its development and procurement budget and a timetable for the procurement as soon as practicable as (and certainly no later than approval of the Outline Business Case). The timetable and budget will be updated from time to time. Such changes to the budget or procurement timetable must be approved by the Project Board.
- 3.1.6. engaging suitable advisers (see 2.3.3) with the necessary skills to assist the Project. Advisers will normally include legal, financial, insurance, and technical advisers, together with any other advisers or consultants that the Project Board considers necessary. All advisers will be selected by the Project Board and formal contracts will be entered into by the Authority.
- 3.1.7. initiating and conducting the necessary competition for the Project and ensuring the procurement will be managed in accordance with best practice.;
- 3.1.8. securing the funding sources required to make the Project affordable.
- 3.1.9. following WIDP and other applicable guidance including, inter alia, SoPC4 relevant HM Treasury Guidance and the 4ps Waste Procurement Pack.

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- 3.1.10. evaluating bids received.
 - 3.1.11. leading negotiations and concluding a contract with a preferred bidder.
 - 3.1.12. submitting monthly IRT returns to the WIDP Data Management team.
- 3.2. The Authority will contribute its expertise on waste management to the Project and will be responsible for ensuring that the Project Board is kept informed of any matters relating to the definition and implementation of Project that are relevant to its development and procurement.

4. Project Governance

- 4.1. The Project Board¹'s responsibilities will include, notwithstanding any other agreement,:
- 4.1.1. endorsing its terms of reference as determined by the Authority in consultation with the Transactor.
 - 4.1.2. the scope, operation and resourcing of any working groups which report to the Project Board.
 - 4.1.3. the approval of the Outline Business Case and Full Business Case for the Project.
 - 4.1.4. the decision to launch the competition for the Project including, for instance, the publication of a notice in the Official Journal of the European Union.
 - 4.1.5. the approval of all documents relating to the procurement.
 - 4.1.6. setting evaluation criteria for bids and evaluating bids.
 - 4.1.7. the appointment or replacement of a Project Director and/or Manager.
 - 4.1.8. the scope of work, selection, and terms of engagement of third party advisers.
 - 4.1.9. the development and procurement budget (and any changes to the Budget).

¹ Note - the Project Board is the name usually given to the body established by the Authority which advises the Senior Responsible Officer with delegated powers to progress the Project's development and procurement in line with policies of the Authority and to make recommendations to the Authority in connection with the conduct and successful conclusion of the procurement.

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4.1.10. delivering the project to the baseline timetable (See Appendix 2).

4.2. The Project Board shall continue to meet after the Project has closed but at less frequent intervals.

5. Costs

5.1. The Authority will bear all the costs it incurs undertaking the development and procurement of the Project.

5.2. The Authority will not be liable to make any payments to WIDP for the Transactor support delivered under the terms of this MoU.

6. Liaison and Dispute Resolution

6.1. In the event that a disagreement arises between the parties over the conduct of the procurement or other issues impacting the successful delivery of the Project during the term of this MoU, the parties shall take the steps set out in this paragraph 6.

6.2. At any time, if WIDP reasonably believes that the disagreement is so serious as to jeopardise the success of the Project or that the delivery of the Transactor support is adversely prejudiced, then it may suspend the provision of Transactor support under this agreement on 7 days' notice (a "Suspension").

6.3. The parties shall nominate representatives and they shall meet to attempt to resolve the matter in issue, including any Suspension by discussion and agreement.

6.4. If the representatives fail to reach agreement within a period of 21 days from the date the disagreement arises, the Authority's nominated officer will meet with the Programme Director for WIDP, promptly, to seek a resolution and the parties shall both use all our efforts to resolving the outstanding issues

7. Withdrawal of Transactor Support

7.1. If the steps in paragraph 6.1 to 6.4 fail to resolve a disagreement then WIDP may withdraw Transactor support for the Project .

7.2. The Authority may proceed with the Project, notwithstanding any withdrawal of Transactor support provided under this MoU.

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7.3. WIDP's commitment to support the Authority in the development and procurement of the Project will end on the date Transactor support is withdrawn as contemplated by paragraph 7.1 above.

8. Confidentiality

- 8.1. The Authority agrees to provide the WIDP with copies of all documentation in relation to the Project, and agrees that such documentation may be disclosed without restriction to WIDP colleagues.
- 8.2. The Authority agrees that WIDP is able to share the documentation referred to in paragraph 8.1 above with other Local Authorities developing similar schemes, at any time in the process, subject to the exclusion of any information that is considered to be commercially confidential.
- 8.3. Subject to any overriding legal, parliamentary or regulatory requirements, the Authority and WIDP shall keep secure and not disclose any information relating to this MoU unless the Party wishing to disclose such information has first secured the written permission of the other party to make the disclosure.
- 8.4. All press or public announcements concerning this MoU will be agreed jointly prior to issue.
- 8.5. Within a reasonable period from Financial Close for the Project, the Authority shall furnish WIDP with copies of each of the signed agreements relating to the Project (including finance documents) either in hard copy form or on CD-ROM.

9. Miscellaneous Provisions

- 9.1. This MoU does not create legally binding obligations enforceable at law and does not create a partnership at law.
- 9.2. Neither party will owe or incur any form of liability to the other under this Memorandum of Understanding.
- 9.3. Paragraphs 8 and 9 will survive the termination of this MoU.

Memorandum of Understanding

This Memorandum of Understanding (MOU) is entered into between the undersigned parties on this day of [Month], [Year].

The undersigned parties, [Party 1] and [Party 2], have agreed to the following terms and conditions:

1. [Party 1] shall provide [Party 2] with [Service/Resource] on a [Duration] basis.

2. [Party 2] shall provide [Party 1] with [Service/Resource] on a [Duration] basis.

3. The parties agree to maintain confidentiality of the information shared under this MOU.

4. This MOU shall remain in effect until [Date] unless terminated by either party with [Notice] days written notice.

5. The parties agree to resolve any disputes arising from this MOU through [Dispute Resolution Method].

6. This MOU shall be governed by the laws of [Jurisdiction].

7. The parties agree to sign and execute this MOU in duplicate, with each party retaining one copy.

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Signed: _____

(Programme Director)

For WIDP/DEFRA

Dated: 7 November 2007

Signed: _____

(Chief Executive)

For City of Bradford Metropolitan District Council

