

AGENDA ITEM 10

NORTH LONDON WASTE AUTHORITY	
REPORT TITLE: WASTE SERVICES PROCUREMENT: GOVERNANCE, PROCEDURAL AND RESOURCE MATTERS	
REPORT OF: DIRECTOR OF PROCUREMENT	
FOR SUBMISSION TO: THE NORTH LONDON WASTE AUTHORITY	DATE: 12 DEC 2007
SUMMARY OF REPORT: This report identifies key governance issues relating to the long-term waste services procurement and some possible approaches, including those in relation to handling sensitive information, engagement with boroughs and the role of inter-authority agreements. Local Government Act 1972 – Access to Information No documents required to be listed. Contact Officer: Tim Judson, Director of Procurement, North London Waste Authority, Camden Town Hall, London WC1H 9JE/ 020 7974 5273/ tim.judson@camden.gov.uk	
RECOMMENDATIONS: That the Authority: <ul style="list-style-type: none">(a) Approves the approaches set out in this paper and, in particular, proposals for the creation of a sub-committee of the Authority to address procurement matters, made up of all Authority Members except those who are Directors of London Waste Limited;(b) Notes proposals for comprehensive advice on other governance and decision-making processes for its February 2008 meeting;(c) Authorises the Director of Procurement and the Legal Adviser to proceed with seeking Borough agreement to a Memorandum of Understanding as detailed in the report and, thereafter, an agreed statement of principles for an Inter Authority Agreement;(d) Notes the proposals for consultation with Boroughs on the need for sufficient revenue resources over the coming year to underpin the procurement process.	

Signed by

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Director of Procurement

Waste Authority Decision-Making

1. The importance and value of the long-term procurement provides particular challenges to the Authority's decision-making processes. It will involve:
 - the consideration of highly sensitive commercial information – such as the details of bids and, when decisions are being taken in respect of selecting bidders, the handling of price sensitive information where those receiving the information may be deemed to be 'insiders' for the purposes of the relevant Markets legislation such as the Financial Services Act 2000;
 - decisions based on analyses of complex technical, financial and contractual information – such as relating to the environmental impacts of different technical solutions and the financial robustness of bids;
 - substantial reports which provide a comprehensive basis for decisions, can withstand any legal challenges to Authority processes and are appropriate for external audit review;
 - over-lapping negotiations and decision-making where the ability to negotiate key components of a solution is essential to a good outcome and where decisions must reflect what is deliverable as well as what is desirable;
 - on occasions, require swift action;
 - potential conflicts for those Authority Members who are Directors of London Waste Limited as they have a duty to act in the best interests of their shareholders as well as a duty to secure best value from the procurement;
 - a full engagement with key stakeholders in the seven boroughs whilst also recognising that the interests of a particular borough may be different from those of the Authority in particular circumstances – e.g. in purchasing land or locating a facility.

2. It is perhaps therefore appropriate to consider:
 - The procedures the Authority wants to adopt for ensuring that appropriate information is provided to Authority Members and key stakeholders, whilst ensuring this is appropriately protected;
 - How the Authority minimises the risk of Members being placed in a position of conflict of interest;
 - Any developmental work or other actions that might usefully be brought forward to assist Authority Members in making time for, and tackling, future decision-making;

- Any possible approaches that support efficient decision-making and scrutiny.
3. On the provision of information and subject to Member views I propose that we:
- Provide full information and advice associated with all key decisions to Authority Members who do not have potential conflicts of interest, but to restrict the distribution of procurement papers to Authority Members who are not London Waste Limited 'A' Directors;
 - Whilst recognising that we shall need to consider matters on a case-by-case basis, accept that the majority of procurement business is likely to be brought forward as exempt from publication for consideration in Part 2 of Authority meetings;
 - Have the Legal Adviser update the December 2006 advice in light of the recent changes in the Model Members Code of Conduct;
 - Limit the distribution of procurement papers to Boroughs other than Authority Members - with the details process to be worked up in consultation with Directors of Environment - to minimise the risk of inappropriate disclosure.
4. Otherwise on potential conflicts of interest I suggest we:
- Identify any stock market sensitive information/ decisions and adopt a 'numbered copy' distribution for papers with an 'insiders' list and appropriate advice on handling this information;
 - Provide supplementary guidance to Members on avoiding conflicts of interest concerning any share trading and any potentially sensitive negotiations with individual boroughs (site acquisition etc).
5. On developmental work or other actions that might usefully be brought forward to assist Members in making time for, and tackling, future decision-making I suggest:
- We organise two briefing sessions for Members that are focused on providing a background understanding of (a) technology choices and issues; (b) commercial, financial and contractual issues that are especially relevant to waste services procurements;
 - In addition to the technical briefing, we offer Authority Members the opportunity to visit facilities. This would provide both an opportunity to see different technologies in operation and an opportunity to assess potential visual impacts that are relevant to sites and planning issues going forward. A draft agenda based on a previous DEFRA programme is attached at Annex A.

Subject to Member views, I propose we invite all Waste Authority Members to such a visit, together with an invitation to Boroughs for a Member with planning interests to attend and relevant officials.

6. On decision-making we do seem to require a committee approach that allows for the distribution of procurement papers only to those Members that do not have a conflict of interest arising from their London Waste Limited responsibilities. Subject to Member views, I propose:
- Setting up a procurement sub-committee of the Authority and the organization of business so that procurement matters are handled at those meetings;
 - A regular procurement update report to those sub-committee meetings, including a look forward to emerging issues that allows Members to identify any issues that should be addressed in subsequent action or advice;
 - Delegated authority to officers, where required, that is generally focused on putting into effect actions that have been considered in principle at sub-committee meetings;
 - Limited information on procurement to regular Authority meetings that provides a general progress report.

Engagement with Borough Interests

7. Whilst the Authority has the relevant statutory responsibilities and powers for organising the disposal solution, it is much more likely that we will secure an effective outcome if there is a positive engagement with all Boroughs and effective partnership working, both between the Authority & Boroughs and between different Boroughs: we need to secure a best value solution across organisational boundaries and an equitable financial solution that, consistent with an overall solution, allows Boroughs to influence the waste disposal costs that they incur. The potential Borough contribution to a successful outcome is also clear in terms of managing risks associated with sites and planning.
8. Both Government and potential bidders will take a significant interest in the extent of partnership working as disconnects represent one of the most significant risks to the successful delivery and cost of a solution. This is an especially important in Joint Waste Disposal Authorities given the variety of financial interests that underpin affordability considerations.
9. There is both a formal and informal dimension to the arrangements we require. In terms of the formal process I suggest we need to:

- Put in place a ‘Memorandum of Understanding’ that provides a high level commitment from the eight authorities to cooperation and partnership working during the procurement process;
 - Agree an ‘affordability envelope’ at Leader level that will represent our best assessment of the likely cost of the long term solution. This is not a target or ambition; rather it is the financial limit that bidders will know;
 - Work towards a full Inter Authority Agreement that provides for the operational and financial commitments that the various authorities need to make to reflect the contractual obligations that the Waste Authority will take on.
10. On the Inter Authority Agreement there is a tension between wanting to agree this early – and thereby provide certainty to bidders that they can take into account when pricing their bid and negotiating on risk transfer. On the other hand, Boroughs are likely to want to see the full operational and financial impacts before signing – that do not become clear until the procurement process is nearly concluded.
11. I suggest we seek to address this tension by moving as quickly as possible to an agreed statement of principles that will later be reflected in the Inter Authority Agreement. Ideally this will be available at the time we submit any Outline Business Case and certainly before we invite substantive tender.
12. Whatever the formal documents, the key engagement will be a much more comprehensive working relationship between the Authority and the seven Boroughs and between the Boroughs themselves. There is a case for a strategic Borough-led group at Leader or Chief Executive level that meets at key decision stages to ensure that there is full corporate agreement to those key decisions. That possible approach is for consideration elsewhere. Otherwise, I propose two main mechanisms:
- Quarterly meeting with the seven Directors of Environment with the meeting chaired by the Haringey Director of Environment who is also the Authority’s technical advisor. These meetings would be the focal point for engagement, ensuring that a full corporate perspective was brought forward from each authority and that more detailed work was appropriately organised and managed;
 - At key decision stages, we should organise bilateral meetings/ presentations with key Borough decision-makers to provide an opportunity to examine the local implications of Authority proposals in rather more detail.
13. I have seen other approaches taken to ensure the right engagement: in particular, procurement stakeholders group meetings can be extended to include all the major Borough interests (waste technical, financial, legal) and to include both

Members with Waste Collection and Disposal interests. The major difficulty with that approach is the size of the meetings and the difficulty of organising them in diary terms. Subject to any views that members may have, I suggest we focus on the Directors of Environment meetings, extending the invitation list (e.g. to Directors of Finance) when required, but otherwise putting the onus on Directors of Environment to ensure corporate consultation and other engagement.

Other Governance and Decision-Making Processes

14. For completeness Members may wish to be aware of the governance, decision-making and executive arrangements that operate at officer levels within the Authority. The following paragraphs identify current arrangements and proposed developments.
15. The Clerk has asked the Authority Financial Adviser to be the 'Project Sponsor' for the procurement, alongside his Finance responsibilities. On this procurement, these responsibilities are primarily concerned with ensuring appropriate progress with the procurement, ensuring that key risks are identified and managed, and ensuring that the right connections are being made between the procurement and other Authority actions, especially its on-going work programme. It is likely that the Director of Finance will need to be closely involved in the key negotiations around London Waste and sites.
16. The Director of Procurement is responsible for providing advice to the Authority on all aspects of the procurement and those commercial matters that are integral to the procurement process. He is responsible for ensuring agreed approaches are implemented and delivered, including managing the resources that the Authority has provided. Whilst the Director of Procurement's responsibilities are generally to the Authority via the project Sponsor where appropriate, he shares a joint responsibility with the Head of Waste Strategy & Contracts for an appropriate fit between the procurement and other Authority programmes, including short term infrastructure development, and for effective partnership working with Boroughs.
17. The Project Sponsor chairs a Procurement Project Board or Steering Group. This group monitors progress against a project plan, reviews risk issues, and brokers relationships with stakeholders, both within and outside the procurement. At present, the Board is largely made up of key officer/ advisor interests from within the Authority's structure, with the DEFRA 'transactor' being the only 'external' interest. The intention is to change attendance to include more waste procurement expertise to complement local authority process expertise.
18. The separate budget submission identifies procurement resource requirements, both in terms of external consultancy support and internal project team resource. The need for these resources arises, in part, because of significant commercial negotiations that will need to be taken forward alongside a procurement process.

Given the additional budgetary pressure that this creates in the coming financial year we will be undertaking further consultations with Boroughs before confirming this budget requirement.

Comments of the Finance Adviser

18. The scale of the procurement challenge and its cost means that it is difficult to be wholly accurate on both the level of the budget and timing of the cash flow requirements. Much will depend on the resolution of many complex and inter-related issues. From a governance point of view it is essential that sufficient resources are available to enable the procurement process to travel at the pace necessary to ultimately secure the best deal for the Authority. This does mean, however, that it is necessary to ensure that the 2008-09 budget is sufficiently robust and flexible to satisfy this requirement. Accordingly, based on the advice of the Director of Procurement and his experience at Greater Manchester Waste Disposal Authority, and that of our consultants who have been appointed under a framework agreement, the proposed procurement budget for 2008-09 is £2.626m. As referred to above, this is subject to further consultation.
19. These costs have been allowed for in the 2008-09 budget forecast elsewhere on this agenda. Members will also find that the overall cost of the procurement process in 2007-08 is now estimated to cost in the region of £0.902m – an increase of £0.202m compared to the original budget provision of £0.700m. A substantial part of this increase relates to the need to establish a separate and secure office base for the procurement team.

Comments of the Legal Adviser

23. The comments of the Legal Adviser have been taken into account in the preparation of this report.

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