

**Agenda Item No:**

**NORTH LONDON WASTE AUTHORITY**

**REPORT TITLE:**

**PROCUREMENT OPTIONS AND TASKS**

**REPORT OF:**

**HEAD OF WASTE STRATEGY AND CONTRACTS**

**FOR SUBMISSION TO:**

**AUTHORITY MEETING**

**DATE:**

**7<sup>th</sup> December 2005**

**SUMMARY OF REPORT:**

This paper introduces the procurement process and issues for consideration by the North London Waste Authority (NLWA) to enable decision-making on the future procurement strategy of waste facilities and services to meet the needs of the North London Joint Waste Strategy (NLJWS). It also sets out the first steps to be taken.

**RECOMMENDATIONS**

The Authority is recommended to:

- i) note the procurement needs of the Authority;
- ii) approve the tendering for consultants to assist the preparation of an Outline Business Case for the Authority's future procurement needs;
- iii) establish a budget provision of £500k in 2006/07 for procurement consultants; and
- iv) delegate authority to the Head of Waste Strategy and Contracts, in consultation with the Chair, to prepare and submit a response to the Government's PFI consultation that protects the Authority's interests.

**Signed by Head of Waste Strategy  
and Contracts**

.....

Date:.....

## 1.0 PURPOSE OF THE REPORT

- 1.1 This paper introduces the procurement process and issues for consideration by the North London Waste Authority (NLWA) to enable decision-making on the future procurement strategy of waste facilities and services to meet the needs of the North London Joint Waste Strategy (NLJWS). It also sets out the first steps to be taken.

## 2.0 BACKGROUND

- 2.1 The NLWA, through the NLJWS has identified the facilities that the Authority needs to provide in order to achieve the statutory recycling targets required of the constituent Boroughs and to achieve the Landfill Directive targets required of the Authority. These facilities and the four options for development are set out in AEA Technology's assessment of the best practicable environmental option report, Appendix 7 to the strategy. The facilities and the timetable for their implementation from that report are set out below:

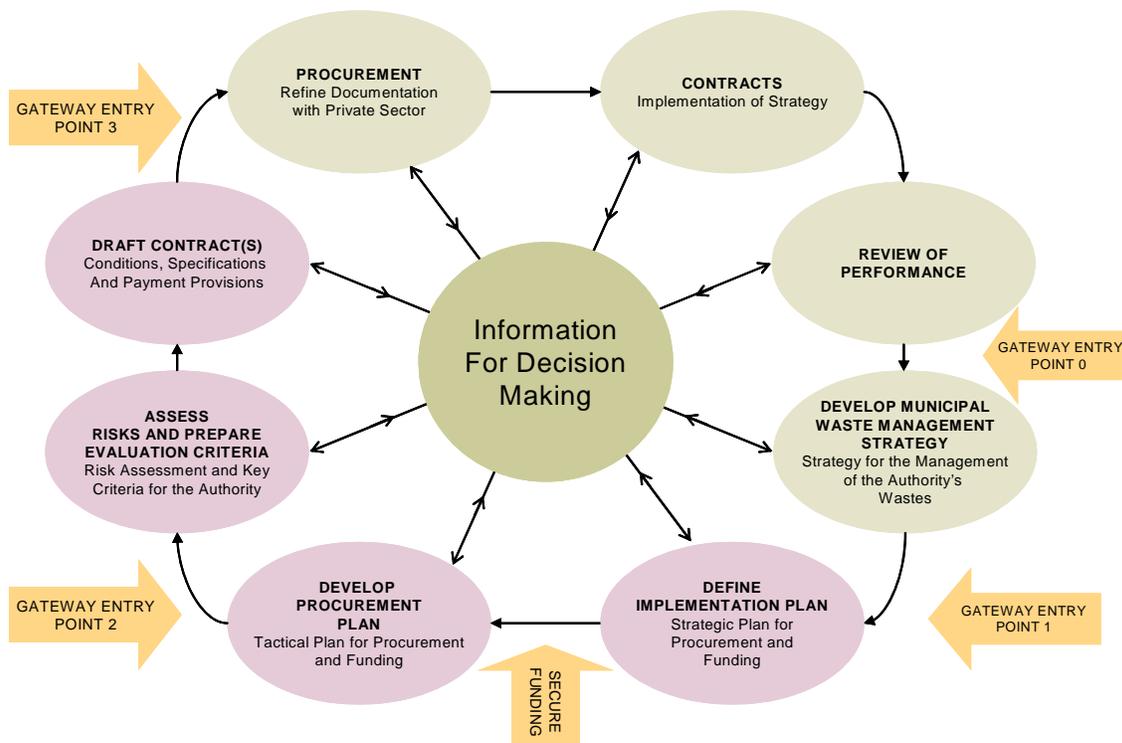
Table 1: Facilities Identified in the NLJWS

<b>Facility Type</b>	<b>Date of Implementation</b>	<b>Tonnage Capacity</b>
Materials Recovery Facility #1	2004	100,000
In-vessel Composting Facility #1	2005	75,000
In-vessel Composting Facility #2	2007	50,000
Materials Recovery Facility #2	2009	100,000
Recycling Bulking Facility #1	2009	30,000
In-vessel Composting Facility #3	2010	75,000
Materials Recovery Facility #3	2013	100,000
Energy from Waste Facility (replacement)	2015	450,000
Mechanical Biological Treatment #1	2015	250,000
In-vessel Composting Facility #4	2017	75,000

2.2 It should be noted that the above figures were based on the assumptions firstly of the municipal waste stream growing at 3% per year to 2010, then just 2.5% thereafter; secondly that all Partners to the NLJWS would be on target for 35% recycling and composting by 2010; and thirdly that step changes in facility provision would have to be managed through interim capacity being bought from waste facilities elsewhere and the risk of some initial under-utilisation if third part feedstocks cannot be found.

### 3.0 PRINCIPAL PROCUREMENT OPTIONS

3.1 At present, the Authority has yet to identify how it will secure the required facilities and how they will be financed, however the costs involved will ensure that EU Procurement process will apply. There is a wealth of information available from central Government setting out the steps to procurement that a Local Authority should take, in line with the Government's *National Procurement Strategy for Local Authorities*. These steps and the review process post procurement are set out as a diagrammatic 'procurement cycle', which DEFRA's Local Authority Support Unit has translated for waste management situations, as shown below (noting that in practice separately identified stages will often run concurrently):



Source: Defra LASU Guidance Brochure, 'Procuring Waste Contracts' April 2005.

- 3.2.1 **Step 1 Review of Performance** may be through Comprehensive Performance Assessments or Best Value Reviews.
  - 3.2.2 **Step 2 Develop Municipal Waste Management Strategy.** This assesses authorities' strategic needs, sets targets and identifies an optimum way of achieving them identified through a "best practicable environmental option" (BPEO) appraisal.
  - 3.2.3 **Step 3 Define Implementation Plan.** This expands upon Step 2 with the development of an Outline Business Case to identify with a mixture of legal, financial and technical models to the optimum procurement path(s) and funding sources. It includes soft-market testing to establish in principle how best to procure facilities and services, bearing in mind prospective tenderers' viewpoints too.
  - 3.2.4 **Step 4 Develop the Procurement Plan,** which is the tactical plan for procuring and funding and should put in place the performance requirements for the contracts, including the scope and type of contract(s) and provisions of new facilities and services.
  - 3.2.5 **Step 5 Assess Risk and Prepare Evaluation Criteria.** It is at this stage that the balance of contractual and commercial risks between the procuring authority and the potential contractor(s) is fully assessed, and the stage at which the procuring authority should prepare and refine its evaluation criteria, so that it can clearly identify what it is that contractors will have to demonstrate in their tenders.
  - 3.2.6 **Step 6 Draft Contracts.** Produce documents, specifications and payment provisions, followed by;
  - 3.2.7 **Step 7 Procurement** process, which is the legal requirement to comply with EU timescales and legislation.
  - 3.2.8 **Step 8 Contract award** implementing the waste strategy.
- 3.3 There are three principal procurement methods prevailing at present. The Open procedure is open to all companies to tender from across the European Union who bid against a pre-determined specification. The Restricted procedure permits a shortlisting stage to reduce the number of bidders to a minimum of five, also against a pre-determined specification. The Negotiated procedure is available under certain circumstances (bearing in mind the EU preference for competition) where there is only one potential service provider, or where there are other unusual limiting factors.
- 3.4 PFI procurements of waste contracts have traditionally started with one form or other of market-testing, but have then used the Negotiated procedure once the procuring authority has decided on its preferred suppliers for its waste facilities and services.

- 3.5 From January 2006, the European Union's Public Procurement Directive 2004/18/EC introduces a set of changes to public procurement procedures and introduces the new purchasing technique, Competitive Dialogue. This allows a procuring authority to develop its ideas and preferred solution through both discussion and tendering as an integral part of a procurement process. It is particularly applicable where outputs can be identified in advance and a wide range of possible solutions are available.
- 3.6 The Mayor of London is a key stakeholder to the North London JWS and must also be notified of any planned procurement of waste contracts throughout London. Formal notification must be given to the Mayor 56 days before the first information notice or 'PIN' (prior information notice) advising of the Authority's intention to let a waste contract. The Mayor is then able to comment on the Authority's plans.

#### **4.0 THE COMPLEXITIES IN NORTH LONDON**

- 4.1 There are three particularly significant complexities that relate to the Authority's procurement needs. The first is the need for new recycling and composting facilities during the closing years of our contract with London Waste Ltd (LWL). The second is the Authority's 50% interest in LWL and the fact that LWL itself owns its site and facilities at Edmonton, together with the limited life of the facility itself. The third is the planning framework to the north of London that is designed now to restrict the receipt of waste from outside their region.
- 4.2 The first question will require close co-operation with LWL in order to achieve a common understanding of the scope of the main waste disposal contract, which was largely premised on recycling and composting being done by the Boroughs rather than the Authority.
- 4.3 The second issue of LWL's ownership of the site and facilities at Edmonton may make competition effectively unviable for some of all of their services.. In addition, the fact that the facility itself may need replacing at the start of the new contract (which is due for 2014) or shortly afterwards adds a further complexity.

- 4.4 The above will all require further consideration before we can decide on the optimum procurement routes for the facilities and services we need. It may indeed be possible to test the market in relation to the Authority using the Negotiated procedure by placing a notice in the Official Journal of the European Union stating the Authority's intentions. What is clear is that there is a very significant amount of preparatory work which needs to be undertaken now in order to take forward the different strands of procurement.

## **5.0 THE PROPOSED WAY FORWARD**

- 5.1 There is a variety of external bodies and Government agencies offering support and advice to local authorities on procurement issues and more specifically regarding procurement of waste management facilities and services. The main sources of support will be the 4Ps, the Improvement and Development Agency, the LGA and DEFRA.
- 5.2 It is the view of the advisers that it is not possible to support the necessary work to support these large procurements from within the existing arrangements both because of the scale and also because of the detailed expertise needed. It is the experience of other waste authorities (and indeed any organisation undertaking a major procurement) that external support is vital. It is therefore essential that the Authority engages external consultants to assist with the procurement process and decision-making at the outset, beginning with the modelling of financial options and contract packaging options and the subsequent development of the Outline Business Case. It is likely that the cost of consultants could exceed £1m per year during the procurement process, based on the experiences from other waste disposal authorities with similar sized procurement projects. Examples of costs from other waste disposal authorities are mentioned below and will vary with the scale and number of contracts involved.

## **6.0 INITIAL PROJECTED FACILITY AND SERVICE COSTS**

- 6.1 At the time of approving the NLJWS it was estimated that each MRF would cost some £15m, each composting facility some £10-13m, the replacement for the energy-from-waste incinerator some £115m and the new residual waste treatment facility for additional landfill diversion some £49m. When these costs were combined with operating costs and converted into gate fee revenue costs it was projected that the Authority's revenue costs exclusive of inflation, landfill tax and recycling credits would increase by over £20m from 2003/04 to 2014/15 (when the contract with LWL ends) and by nearly £40m from 2003/04 to 2020/21 (the end of the NLJWS). No costs of procurement were modelled at this stage

## **7.0 HOW MIGHT THE COSTS BE FUNDED?**

- 7.1 Local authorities are required to show that they have looked at all options for providing the service and have compared the financial implications of different approaches to financing, particularly if they wish to secure support under the Private Finance Initiative. However, a number of different combinations of financing are potentially available to the Authority to procure the facilities and services required.

### **Private Finance Initiative**

- 7.2 The Private Finance Initiative (PFI) is one form of Public Private Partnership through which local authorities can gain access to new or improved capital assets. Unlike traditional procurement the public sector does not buy the assets but rather pays for the use of assets held by the private sector and the services associated with those assets, which then may transfer to public ownership at the end of the concession period. It generally requires competition in the procurement process.
- 7.3 PFI credits relate to the capital cost of providing new or improved facilities and result in the payment of a revenue grant from central Government for the duration of the concession period agreed with the contractor. The grant income is intended to cover the capital element of the contractor's monthly charge for the design, build and operation of the facility.

- 7.4 There is a set of 'general requirements' to applying for a PFI, one of which is a value for money assessment of whether this is the best way to procure the service and a 'public sector comparator' is used to determine this, which looks at the whole life costs of the 'best' conventionally procured alternative in the options appraisal. The PFI option is only supported where it is shown to be best value for money. A full financial appraisal of the costs involved would be necessary in order to apply and justify the business case for an application.
- 7.5 There is a minimum £20 million contract value required in order to apply for PFI credits. NLWA's procurement costs are sufficient to qualify whether modular or fully integrated contracts are let.

### **Prudential Borrowing**

- 7.6 In a report to the February 2004 meeting of the Authority, the Financial Adviser set out a change in the borrowing regulations for local authorities, allowing authorities to take advantage of the new 'Prudential Code' regime. The Prudential Code seeks to ensure that capital investment should only be undertaken after a proper decision making process which can be demonstrated through use of prudential indicators. NLWA could therefore make a case to use prudential borrowing to secure the sites required for the new facilities and thereby maintain ownership of its strategic waste management infrastructure.
- 7.8 The Authority is not yet in a position to determine whether the required procurement of waste facilities and services is best done through the PFI route or through a mixture of private and prudential borrowing.

## **8.0 IMMEDIATE NEXT STEP**

### **Outline Business Case**

- 8.1 Having developed the North London Joint Waste Strategy as a common vision for the way forwards with our constituent borough councils, the next step is to develop an Outline Business Case (OBC). In essence, the NLJWS set out where we want to go, and now we need to start developing our ideas on how we are going to get there. The OBC fits within the Implementation Plan.

- 8.2 The purpose of the OBC is to inform the procurement decision making process with a thorough and rigorous assessment of the local complexities described above in Section 4, and by developing potential commercial solutions through financial, legal and additional technical analysis and through preliminary market testing. It will also need to take forwards our thinking on the major commercial decisions on issues such as whether to pursue a series of relatively small contracts or a single, large, integrated contract for all waste treatment and disposal services; how to make our contract(s) attractive to the private sector, (assuming we do not provide in-house); what type or mixture of funding sources would best suit North London; and how to apportion risk between the Authority and the selected contractor(s). It will give greater weight than the NLJWS to the financial and business implications of choices considered through systematic evaluations of value for money, affordability, strategic and financial risks and overall deliverability.
- 8.3 The OBC must consider the commercial realities of the fact that a number of local authorities will be embarking on procurement of waste 'disposal' contracts to meet 2010 Landfill Directive targets over the next 2-3 years, which could significantly reduce the interest in the NLWA's contract(s) as companies will be in a position to 'pick and choose' the contracts that offer them the most profit and the least complications with regard to planning issues and existing contractual arrangements.
- 8.4 As noted above, to inform the Authority's decision-making processes, a series of legal, financial, technical and insurance modelling exercises needs to be undertaken by experts within the field. Advice from DEFRA, 4Ps and other waste disposal authorities has stressed the importance of engaging external advisers for this modelling now and throughout the procurement processes.

- 8.5 Experience from other waste disposal authorities has shown that it is important not to underestimate the use of external consultants, although the level of involvement will depend on the procurement route(s) selected. In the recently aborted PFI tender process at Gloucestershire County Council, approximately £1m had been spent on external consultants taking the Council to the Best and Final Offer stage over a 3 year period and this has been exceeded in other procurement exercises. Experiences from comparable joint waste disposal authorities have indicated much greater costs equating to approximately £1m per year during the preparation and procurement stages, between £3-5m for 4 years and £2m for 2 years for two separate waste disposal authorities respectively. At this stage it is recommended that the Authority makes a budget provision of £500,000 in the 2006/07 budget, whilst we are commencing procurement work.
- 8.6 It should be noted that it is possible for a different mix of waste facilities to emerge from this process, or at a later stage, as private sector contractors offer different technical solutions to our strategic needs.

## **9.0 FURTHER STEPS FOR PROCUREMENT**

- 9.1 In order to set the next steps in context the 4Ps' indicative procurement sequence for a waste management scheme, which sets out the milestones within the procurement process, is shown below for circumstances where competitive tenders are appropriate.
- Prepare and approve an Outline Business Case (OBC)
  - Publication of the Prior Information Notice (PIN) in the OJEU
  - Expressions of Interest received (EOI)
  - Publish Contract Notice
  - Pre-Qualification Questionnaire (PQQ)
  - Invitation to Submit Outline Proposals (ISOP)
  - Preparation and issue of the Invitation to Negotiate (ITN)
  - Evaluation and second stage shortlisting
  - Invitation to submit Best and Final Offer (BAFO)
  - Selection of preferred bidder
  - Completion and approval of Final Business Case (FBC)
  - Contract sign

- 9.2 The timeframe involved to complete the process up to signature of contracts is likely to take up to three years for a fully integrated contract (with the construction of facilities to follow). If the OBC modelling analysis concludes that modular contracts are preferable, this could be done more quickly, particularly if these are phased.
- 9.3 During the later stages of procurement, the many technical, financial and commercial assumptions made in the preparation of the OBC will be tested, and this will evolve into the subsequent contract documents and Final Business Case.
- 9.4 We will also refine our thinking and make final decisions on the many strategic issues and local complexities raised above, the most significant of which are:
- The choice of which procurement route to use for which facility(ies), i.e. open, restricted negotiated or competitive dialogue procedures;
  - The mixture of waste facilities to be procured;
  - The apportionment of legal, financial and commercial risks within the procurement routes selected, and how these interact if a series of separate contracts is let;
  - The identification and ownership of the sites to provide new strategic waste infrastructure.;and
  - The future relationship between the Authority, the Boroughs and LWL.

## **10.0 P.F.I. CONSULTATION**

- 10.1 DEFRA is currently consulting waste authorities on the future demand for waste PFI credits to inform their decision-making on the amount of PFI credits made available through the next spending review in 2007 for the following three financial years 2008/9, 2009/10 and 2010/11. DEFRA is also consulting on a set of revised criteria relating to applications for PFI credits. A further 7 new criteria have been suggested to complement the existing 6 criteria, which also have been amended in places. Key additions to the existing criteria are:
- The introduction of a requirement to deliver stretch targets for recycling through the contract

- Clear demonstration that a project offers value for money when compared with other solutions
- Clear demonstration that there is a market appetite for the proposed project
- Robust markets established for the outputs from residual waste treatment processes (eg MBT) and reserve marketing plans in place
- Demonstration that the community sector involvement in service delivery has been assessed.

10.2 The consultation closes on 6<sup>th</sup> January 2006, and the Authority is recommended to delegate authority to the Head of Waste Strategy and Contracts, in consultation with the Chair, to prepare and submit a response that protects the Authority's interests whilst it is still considering if it will apply for PFI credits in the future.

## **11.0 COMMENTS OF THE LEGAL ADVISER**

11.1 The Legal Adviser has been involved in the drafting of this report and her comments have been taken on board. It is clear from this report that there are many highly complex legal issues which will emerge during the course of the procurement of the necessary range of facilities required by the NLJWS and the Legal Adviser supports the need for external legal assistance.

11.2 One of the complexities arises from the relationship of the NLWA with LondonWaste and the joint venture agreement with SITA. The NLWA currently nominate the A Directors to the board of LondonWaste and these have traditionally been existing members of the Authority. Members have been advised extensively in the past about the difficulties and potential conflicts of interest that arise in this situation. The advice given to the A Directors to date has allowed them to participate in decisions relating to NLWA's relationship with LondonWaste.

11.3 However, it is highly likely that most of the decisions around the future procurement of waste facilities (and in particular, the procurement of the new waste contract) will result in Members who are also A Directors having a personal prejudicial interest which would preclude them from participating in any discussion of the new contract or the process. This is not the case with this report but decisions about how best to procure the new waste contract for example are likely to have this effect.

## **12.0 COMMENTS OF THE FINANCIAL ADVISER**

12.1 The Financial Adviser has been consulted in the preparation of this report and all comments are incorporated into the report.

## **13.0 RECOMMENDATIONS**

13.1 There are key decisions that the Authority needs to take now in order to proceed with procurement. The Authority is recommended to:

- i) note the procurement needs of the Authority;
- ii) approve the tendering for consultants to assist the preparation of an Outline Business Case for the Authority's future procurement needs;
- iii) establish a budget provision of £500k in 2006/07 for procurement consultants; and
- iv) delegate authority to the Head of Waste Strategy and Contracts, in consultation with the Chair, to prepare and submit a response to the Government's PFI consultation that protects the Authority's interests.

## **14.0 Local Government Act 1972 Access to information**

### **14.1 References**

4Ps: *'The Outline Business Case'* May 2004

4Ps: *'Pre-Procurement Planning for Major Waste Management Projects: Guidance for Local Authority Waste Management Officers.'*

(supplementary guidance to accompany Waste Management Procurement Pack)

Defra LASU: *'Findings from Waste Procurement Related Projects'* May 2005

Defra LASU / Enviro: *'Project 1: Procurement Support Needs Analysis'* September 2005

Defra LASU: *'Procuring Waste Contracts'* April 2005

Defra: *'Draft Guidance on Clean Neighbourhoods Environment Act 2005 Consultation Document'* October 2005

Defra WIP / Searles Associates: *'Procurement Projects'* April 2005

Department for Constitutional Affairs: webpage

[http://www.dca.gov.uk/foi/guidance/exguide/sec43/annex\\_a.htm](http://www.dca.gov.uk/foi/guidance/exguide/sec43/annex_a.htm)

East of England Regional Assembly: *'East of England Regional Waste Management Strategy'* v16.7 03.03.03

IDeA: webpage <http://www.idea->

[knowledge.gov.uk/idk/core/page.do?pageId=1701462](http://www.idea-knowledge.gov.uk/idk/core/page.do?pageId=1701462)

IDeA: *'Procurement Essentials'* a handy guide to procurement for managers.

ODPM: *'Local Government Finance Public Private Partnerships Private Finance Initiative'* webpage [www.local.odpm.gov.uk/pfi/intro1a](http://www.local.odpm.gov.uk/pfi/intro1a)

ODPM: webpage <http://www.odpm.gov.uk/about/ppp/index.htm> General info about public private partnerships and PFIs.

ODPM webpage <http://www.local-regions.odpm.gov.uk/ssdpart/index.htm>

Strategic service delivery partnerships – other forms of PPP's.

ODPM: *'Local Government Private Finance Initiative Applying for PFI Credits Guidance Note'* September 2003

OGC: *'Step-by-Step Guide to the PFI Procurement Process'*

Public Procurement Regulations 20 June 2002: *'Negotiated Procedure regulations 10 and 13'*

Treasury guidance *'Appraisal and Evaluation in Central Government'* (the 'Green Book')

The Treasury: *'PFI: Meeting the Investment Challenge'* 2003

#### 14.2 Tools

OGC: *'Successful Delivery Toolkit'*

Defra LASU: *'Waste Procurement Toolkit'* April 2005

Defra LASU: *'Introduction to Waste Procurement Toolkit'* April 2005

Defra LASU: *'Waste Procurement Toolkit Manual'* April 2005

Mouchel Parkman: *'Waste Modelling Project for London – NLWA'* July 2005

4P's: *'Waste Procurement Pack'* August 2004 plus automatic updates

## GLOSSARY

<b>BAFO</b>	Best and Final Offer
<b>CD</b>	Competitive Dialogue
<b>CIPFA</b>	Chartered Institute Public Finance and Accountancy
<b>DEFRA</b>	Department of Environment, Food and Rural Affairs
<b>EOI</b>	Expression of Interest
<b>FBC</b>	Final Business Case
<b>GLA</b>	Greater London Authority
<b>IDeA</b>	Improvement and Development Agency
<b>ISOP</b>	Invitation to Submit Outline Proposals
<b>ITN</b>	Invitation to Negotiate
<b>LASU</b>	Local Authority Support Unit
<b>LATS</b>	Landfill Allowance Trading Scheme
<b>LGA</b>	Local Government Association
<b>LWL</b>	London Waste Limited
<b>NLWA</b>	North London Waste Authority
<b>NLJWS</b>	North London Joint Waste Strategy

<b>NP</b>	Negotiated Procedure
<b>OBC</b>	Outline Business Case
<b>ODPM</b>	Office of the Deputy Prime Minister
<b>OGC</b>	Office of Government Commerce
<b>OJEU</b>	Official Journal of the European Union
<b>PFI</b>	Private Finance Initiative
<b>PIN</b>	Prior Information Notice, a formal alerting notice placed in the OJEU before the Contract Notice
<b>PPP</b>	Public Private Partnerships
<b>PQQ</b>	Pre-Qualification Questionnaire
<b>PWC</b>	Price Waterhouse Coopers
<b>WIP</b>	Waste Implementation Programme

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**Report Ends**