

# Transport and Environment Committee

14 January 2014

## Zero Waste: Edinburgh and Midlothian Residual Waste Treatment Progress Report

Item number	7.11
Report number	
Wards	City wide

### Links

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Coalition pledges	<a href="#">P49</a> , <a href="#">P50</a>
Council outcomes	<a href="#">C07</a> , <a href="#">C08</a>
Single Outcome Agreement	<a href="#">SO1</a> , <a href="#">S04</a>

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# Executive summary

## Zero Waste: Edinburgh and Midlothian Residual Waste Treatment Progress Report

### Summary

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The procurement of residual waste treatment facilities as part of the Zero Waste Project has now progressed to the point at which it is in the final stages of dialogue with the bidders.

The overall project objective in the Residual Waste Business Case is to procure a long-term residual waste treatment contract that meets the needs of the partner Councils and is clearly demonstrated to be affordable and deliverable.

This report asks the Council to reconfirm its commitment to the Zero Waste Project and its objectives. It confirms that the business case for the residual waste treatment facility is still sound and that there is a high confidence that the final tenders will enable a preferred bidder to be identified that can meet the needs of the Partner Councils and provides a solution that is affordable and represents value for money.

### Recommendations

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It is recommended that the Council:

1. Note the progress in procuring residual waste treatment facilities.
2. Note that a Memorandum of Understanding between The City of Edinburgh Council and Midlothian Council has been concluded.
3. Note that there is a high level of confidence, that final tenders will provide a solution that meets the Partner Council's requirements, is value for money and affordable.
4. Reconfirms its commitment to the Zero Waste Project and its objectives.
5. Note that a further report will be provided to the Council later this year recommending the appointment of a preferred bidder.

## Measures of success

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That the Council is provided with a Residual Waste Treatment Contract that secures value for money over a 25 year period commencing at the end of 2017, ahead of the forthcoming ban on the disposal of biodegradable waste to landfill.

## Financial impact

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As the procurement is currently undergoing competitive dialogue the financial impact of the report is not currently quantifiable; however there is a high level of confidence that final tenders will provide a solution that meets the Partner Councils' requirements, is value for money and affordable. The financial impact will be quantified as part of the request to appoint Preferred Bidder.

## Equalities impact

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

## Sustainability impact

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The residual waste contract will have numerous positive environmental benefits as part of the move towards the more sustainable management of waste including: a significant reduction in the volume of waste disposed of to landfill with associated reductions in greenhouse gases; the recovery of marketable recyclables; and the creation of renewable energy from residual waste.

A number of jobs will also be created at the Project site, both during construction of the facility and throughout the operation of the residual waste treatment contract.

## Consultation and engagement

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A Cross-Party Cross-Council Group, set up to receive regular reports on the Zero Waste Project, last met on 26 April 2013 and will have met again on 2 December 2013.

In producing this report the following parties have been consulted:

- The Partner Councils' Zero Waste Project Board;
- Finance and Legal Officers; and
- Corporate Programmes Office

## Background reading / external references

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### Background reading/external references

- [Zero Waste: Edinburgh and Midlothian – Power Purchase – The City of Edinburgh Council, 30 May 2013](#)
- [Zero Waste: Edinburgh and Midlothian – Capital Contributions – The City of Edinburgh Council – 14 March 2013](#)
- [Zero Waste: Edinburgh and Midlothian – Award of Food Waste Treatment Contract – The City of Edinburgh Council 13 December 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 Residual Waste Treatment Progress Report

### 1. Background

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- 1.1 On 15 October 2009, The City of Edinburgh Council approved the Project Initiation Document for the Zero Waste Project. This included the governance arrangements, procurement budget and the joint purchase of the Millerhill site in Midlothian.
- 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 Residual Waste Treatment Procurement commenced on 21 December 2011 with four bidders being shortlisted. After initial dialogue with bidders, the Project Board agreed to invite bidders to submit detailed tenders by 1 July 2013.
- 1.4 Bidders were asked to produce proposals to carry out the primary treatment at the Millerhill site. The primary treatment includes reception of residual waste, extraction of recyclable material and production of a Solid Recovered Fuel (SRF) from the non-recyclable waste.
- 1.5 Bidders have the option of providing the secondary treatment either by building an energy from waste plant on the Millerhill Site or alternatively sending the SRF to be used elsewhere via an off-take contract. In either case, electricity will be generated from the consumption of SRF arising from the treatment of the Partner Councils' residual waste.
- 1.6 On 14 March 2013 the Council agreed, subject to the agreement of Midlothian Council;
- a) to offer to the bidders a capital contribution to be injected when the plant is fully commissioned with a year's track record of service delivery and not to exceed 30% of the cost of the asset or assets constructed at the project site (providing said assets revert to Partner Council ownership at the end of the concession);

- b) to delegate to the Director of Services for Communities and the Director of Corporate Governance in consultation with the Convener and Vice-Convener of the Finance and Budget Committee, the authority to decide at the point of selection of Detailed Tenders. This will be in accordance with the established evaluation criteria of the Zero Waste Project, if the injection of public capital represents the optimal value for money solution and to pursue said injection, including entering into a suitable legal agreement with Midlothian Council should that be the case.

Following agreement by Midlothian Council this offer was included in the Invitation to Submit Detailed Tender (ISDT).

The capital contribution that was offered is effectively a lump sum paid to the contractor for 30% of the construction costs of any facility built at the Millerhill site provided that asset returns to the Councils at the end of the contract period.

- 1.7 On 30 May 2013 the Council agreed, subject to Midlothian Council reaching a similar agreement, to offer to jointly purchase electricity produced by the contractor up to a maximum of 90,000MWH per annum at a nominated price for a period of 10 years from the commencement of services. Following agreement by Midlothian Council this offer was included in the ISDT.
- 1.8 The ISDT was issued on 3 June 2013 requesting tenders by 1 July 2013.
- 1.9 Project Assurance is carried out by the Scottish Futures Trust at key stages in the Project on behalf of the Project Board. In addition the City of Edinburgh Council's Corporate Programmes Office (CPO) carried out a review in April 2013. This Council report addresses a number of the recommendations arising from the review.
- 1.10 The procurement of residual waste treatment facilities is part of the overall Zero Waste: Edinburgh and Midlothian programme which also includes the separate procurement project for the treatment of food waste. A contract for the food waste treatment facilities was signed with Alana Renewable Energy in February 2013. This food waste contract was recognised as the first collaborative joint Council waste treatment contract in Scotland and the Partner Councils are now progressing well with the second such contract.
- 1.11 A number of other procurement activities are ongoing to support the Zero Waste Project and the wider Zero Waste Parc vision. Steady progress is being made by the Councils to provide first time utilities (electricity, drinking water, foul and surface water drainage) at the site, and as part of a new road access, a new bridge to be built over the Borders Rail has been incorporated in the Borders Rail contract.

## 2. Main report

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### Procurement Business Case Review

- 2.1 Following receipt of Detailed Tenders on 1 July 2013 the Procurement Business Case has been reviewed and noted by the Joint Project Board.
- 2.2 The Project Board subsequently agreed to invite the following two bidders to participate in further dialogue:
  - FCC Medio Ambiente SA
  - Viridor Waste Management Ltd
- 2.3 In order to maintain the necessary competitive tension in procurement and to preserve commercially sensitive bidder information, it is not possible to include the full detail of the Business Case in this report at this sensitive stage. It is therefore not appropriate to confirm bidders' positions on key areas such as use of capital contributions from the Councils, whether they have accepted the Partner Councils' offer to purchase electricity or indeed whether they propose to site an energy from waste plant at the Project site.
- 2.4 The final stages of dialogue are ongoing and expected to be concluded in January 2014 prior to calling for final tenders.

### **The Business Case**

- 2.5 The original justification for commencing this Project in 2009 was that, unless the Partner Councils could in coming years guarantee to divert sufficient waste from landfill, they would incur punitive fines and incur high landfill tax charges for sending quantities of Biodegradable Municipal Waste ("BMW") to landfill in excess of the escalating Landfill Allowance Scheme (LAS) and EU landfill diversion targets.
- 2.6 Since then, the Scottish Government has published its Zero Waste Plan in 2010, a Policy Statement in 2011 and the Waste (Scotland) Regulations 2012. These all impose more demanding recycling and landfill diversion targets on the Councils, including a complete ban on the disposal of biodegradable waste to landfill from 1 January 2021. These have only served to increase the need for dedicated residual waste treatment facilities as an alternative to landfill disposal rather than relying on trying to secure short term treatment availability elsewhere at an affordable price.
- 2.7 The Business Case Review considered by the Joint Project Board in September 2013 concluded that:
  - The residual waste treatment project remains financially viable;
  - The balance of risk remains well understood and within the Councils' appetite; and
  - The procurement programme is robust.

- 2.8 Two bidders remain in the competition; both of whom are believed to be capable of providing in their final tender a solution that meets the Councils' requirements and is affordable.

### **Governance Arrangements**

- 2.9 The Zero Waste Project being a joint Council procurement benefits from a robust set of governance and project assurance arrangements and these were considered as part of the Corporate Programmes Office (CPO) assurance review in April 2013.
- 2.10 The Project Board has accepted a number of recommendations from the CPO assurance review including recommending that the appointment of the preferred bidder should be referred to the Councils for agreement. At the stage of appointment of preferred bidder the final proposed solution is known and in accordance with procurement rules only clarification and fine tuning of the proposal is permitted ahead of financial/contract close. It was therefore felt appropriate and in line with other major projects that this decision be taken by Council.

### **Memorandum of Understanding**

- 2.11 A review by the CPO highlighted that there was a need to seek a more formal commitment to the residual waste procurement from the Partner Councils. Similar recommendations had been made by the Scottish Futures Trust who work in partnership with the project team and board.
- 2.12 The Project Board agreed to progress a Memorandum of Understanding (MoU) between the Councils setting out the respective roles and responsibilities of the Partner Councils during the procurement stage of the project. This has now been finalised and signed by both Councils' Heads of Service.
- 2.13 The MoU runs from the date of signing until financial close when a further Inter Authority Agreement ("IAA"), similar to that of the Food Waste Treatment Contract, will be entered into by the Councils to govern the contractual phase.
- 2.14 The MOU, unlike the IAA, which will be contractual in nature, is more able to reflect the partnership working of the Councils during procurement.
- 2.15 The MoU addresses the following matters:
- Agreed objectives of both Councils in regard to completion of the procurement.
  - Appointment of The City of Edinburgh Council as Lead Authority for the procurement.



- Governance will be in accordance with the previously agreed Procurement Phase Project Management and Governance Arrangements document signed by the Councils in February 2011.
- The MoU details matters that are reserved for the decision of each Council and matters that may be decided by the Project Director or the Project Board.
- It provides a framework for managing the project through to contract signature. The Councils will require to approve the appointment of the preferred bidder but authority is delegated to the Zero Waste Project Team to manage the procurement and dialogue with bidders up to this stage.
- The Zero Waste Project Team will inform the Project Board, and be guided by the Project Board, who shall oversee and co-ordinate the Procurement Milestones.
- Dispute Resolution provisions ensure the interests of both Councils are protected.
- The MoU does not fetter either Council in the carrying out of their statutory duties.
- All procurement costs, other than Land Acquisition and road/utilities, are split between the Councils on a 70/30 CEC/MC basis. Land acquisition and roads/utilities costs are split 80/20.
- Early Termination.
- A mechanism is provided to deal with the possibility that either or both Councils decide to withdraw from the procurement. Should both decide to withdraw, then provision is made for a sharing of liabilities and costs to the date of termination on the proportions as set out in the MoU. Should one Council wish to continue with the procurement on its own, then provision is also made for this with an undertaking that sufficient land will be made available at Millerhill.
- The MoU also confirms both Councils' commitment to enter into an Inter-Authority Agreement regulating their respective rights and obligations during the operational phase of the Project.

### **Affordability**

- 2.16 The Project Board has communicated its expectation that the procurement should deliver a final solution which demonstrates greater value for money when compared to alternative treatment arrangements and is affordable.
- 2.17 On 21 September 2010 the Transport Infrastructure and Environment Committee were advised of a number of procurement and contract options that had been identified as being appropriate for comparison. The contract options considered and their assessment is provided at Appendix 1. While a private sector Design, Build, Finance, Operate Contract (DBFO) was identified as the preferred option the procurement has in the main remained flexible such that alternative structures proposed by bidders could have been considered.

- 2.18 Extensive modelling has also been carried out to address the Project Board's expectation. The conclusion that a solution sourced via DBFO Public-Private Partnership offers the greater potential for value for money than alternative arrangements. Confidence is high that it is within each bidder's capacity to satisfy the Partner Councils requirements. The Project Team continues to work closely with the bidders on their detailed proposals through further dialogue to identify opportunities for greater value for money.
- 2.19 It is important to recognise that value for money encompasses both the price of the contract and the added benefits arising from the adoption of such a solution. This includes long term security for waste treatment and the appropriate transfer of risk to the private sector partner. As such, the procurement is not solely focussed on deriving the cheapest solution possible.
- 2.20 The affordability of the solution procured under the Zero Waste Project is dependent on the unit price per tonne and the volume of waste delivered. The latter of these is outwith the scope of control of the procurement, therefore the relevant driver is the unit price. The base case financial model constructed for the procurement generated a price per tonne which would, under the current projected tonnages available to the project, be contained within existing budgets without the need for additional resources.
- 2.21 The base case unit price is therefore critical in assessing the affordability of the bids submitted by the private sector entities bidding for the contract. As dialogue is underway with the bidders at this time the prices which they are presenting are in flux, with finalisation expected when final tenders are submitted in January. The Zero Waste Team will report the outcome of the final tender as part of the appointment of Preferred Bidder.
- 2.22 However, there is a risk that an increased volume of residual waste would have to be treated through the Zero Waste contract if the level of recycling achieved by the Councils at the kerbside and recycling centres was less than that modelled. This risk is not unique to the Zero Waste Project but, if realised, would require existing budgets to be supplemented in addition to any increase that may at some future point be necessitated by indexation. For this reason there remains a clear determined focus on increasing recycling levels throughout the City.

### **Risk Management**

- 2.23 The Project Team manages an issue log and risk log which accords with good project management practice. Key risks being controlled include ensuring that the new road access and utilities are provided to the contractor by set dates.
- 2.24 The draft Project Agreements (Contracts) are constructed to take account of risk and how it is shared between the Partner Councils and the successful

Contractor. In general, risk is shared or held by the party best placed to manage the risk.

2.25 There are no new risks arising from the recommendation.

### **Procurement Plan**

2.26 The Residual Waste procurement plan has the following key target dates:

Call for Final Tenders	January 2014
Appointment of Preferred Bidder	May 2014
Contract Close	From October 2014

This timetable will be kept under review and adjusted if necessary depending on progress with further dialogue and readiness for calling for final tenders.

### **Conclusion**

2.27 The residual waste procurement is proceeding well and there is a high level of confidence that final tenders will provide a solution that meets the Partner Councils' requirements, is value for money and affordable.

## **3. Recommendations**

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3.1 It is recommended that the Council:

1. Note the progress in procuring residual waste treatment facilities.
2. Note that a Memorandum of Understanding between The City of Edinburgh Council and Midlothian Council has been concluded.
3. Note that there is a high level of confidence, that final tenders will provide a solution that meets the Partner Council's requirements, is value for money and affordable.
4. Reconfirms its commitment to the Zero Waste Project and its objectives.
5. Note that a further report will be provided to the Council later this year recommending the appointment of a preferred bidder.

## **Links**

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**Coalition pledges** P49 - Continue to increase recycling levels across the city and reducing the

	proportion of waste going to landfill.
	P50 - Meet greenhouse gas targets, including the national target of 42% by 2020.
<b>Council outcomes</b>	CO7 - Edinburgh draws new investment in development and regeneration. CO8 - Edinburgh's economy creates and sustains job opportunities.
<b>Single Outcome Agreement</b>	SO1 - Edinburgh's Economy Delivers increased investment, jobs and opportunities for all  SO4 - Edinburgh's communities are safer and have improved physical and social fabric
<b>Appendices</b>	1 - Residual Treatment Contract Options

## **Mark Turley**

Director of Services for Communities

## APPENDIX 1

### Residual Treatment Contract Options Considered

On 21 September 2010 the Transport Infrastructure and Environment Committee were advised of the following contract options that had been identified as being appropriate for comparison:

- Private sector designs and builds with the Councils paying for the asset on completion then operating the facility (DB);
- Private sector designs, builds then operates under a long term contract, with the Councils paying for the asset on completion and for the services as provided (DBO);
- Private sector designs, builds, finances (using corporate or third party finance) and operates under a long term contract with the Councils paying for the services and finance on a monthly basis following completion of the asset (DBFO);
- Councils pay a gate fee for spare capacity in merchant plant(s) on a short term contract (circa 5 years).

These options were then assessed against a list of criteria. Totals were out of 500 with the higher scores representing favoured options.

### Residual Waste Options

Criteria	Weightings	DB	DBO	DBFO	Merchant
Time to Procure	15	60	45	30	60
Capital Impacts	15	15	15	75	45
Revenue Impacts/Transport	15	45	45	60	75
Contractual Arrangement/ Operational Control	15	75	45	60	15
ZWP Policy Compliance	10	50	50	50	30
Community Benefits/Economic Regeneration	9	45	45	45	9
Risk Transfer	6	6	12	30	18
Site Usage/Asset Reversion/Condition on Expiry	6	12	24	24	6

Cost to Procurement/Complexity	3	12	6	9	15
Market Capacity and Competition	3	12	6	15	3
Flexibility to Accommodate and Costs of Change	3	9	12	15	3
<b>Totals</b>	<b>100</b>	<b>341</b>	<b>305</b>	<b>413</b>	<b>279</b>

As can be seen from the tables:

- Merchant capacity scored comparatively poorly, mainly due to the lack of Council ownership/control of the facilities, the lack of future consented sites of sufficient capacity in the area and the loss of opportunity for community benefit/economic regeneration. It was considered that merchant facilities afford Councils limited control over proximity, technology or specification exposing them to greater risks;
- DB and DBO also scored comparatively poorly, mainly due to the high capital impact in both cases;
- A further factor contributing to the lower score for the DB option was risk transfer as once the facility is complete, the Councils will be responsible for operation, maintenance and defects once the liability period of the DB contractor expires;
- Further factors contributing to the lower score for the DBO option were risk transfer (as there is no third party funder carrying out due diligence or incentivising compliant performance), contractual arrangements (as standard form waste contract is based on a full DBFO option) and procurement complexity (as DBO is not a commonly used solution, and may involve the entering into by the Councils of two separate contracts with two entities);
- As the Councils have an identified need on a continuing ongoing basis this lends itself to DBFO, which scored best in comparison to other contract options for both long-term food and residual waste treatment;