

NWRWMG Joint Committee January 2014

Item 2 – Minutes of the Meeting of the 20th November 2013, reconvened on the 4th December 2014

North West Region Waste Management Group Joint Committee
Wednesday 20th November 2013 Limavady Borough Council Offices

Present:

Ballymoney Borough Council

Councillor Evelyne Robinson (Chair)

Alderman Cecil Cousley

John Dempsey

John Michael

Coleraine Borough Council

Councillor George Duddy

Roger Wilson

Kieran Doherty

Derry City Council

Councillor Shaun Gallagher

John Kelpie

Conor Canning

Limavady Borough Council

Alderman Michael Coyle

Councillor Jack Rankin

Noel Crawford

Magherafelt District Council

Moyle District Council

Councillor Robert McIlroy

Richard Lewis

Aidan McPeake

Strabane District Council

Malcolm Scott

NWRWMG

Eamon Molloy

Jonathan Gray

Philip Kingston (DCC, Solicitor to the
NWRWMG)

Keith Swerdlick

Joanne Curran

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Addleshaw Goddard
Jonathan Davey

DOE
Wesley Shannon
Oonagh Warke

SIB
Alan McVicker

Item 1 - Apologies

The following apologies were recorded:

Councillor William King
Councillor Jay McCauley
Sharon O'Connor
Liam Flanigan

Councillor Catherine McCambridge
Councillor Kieran McGuire
Danny McSorley
Brett Hannam

Item 2 - Minutes 6th November 2013

The Chair reviewed the previous minutes with the Committee on a page-by-page basis.

The minutes of the meeting of the 6th November 2013 were:

PROPOSED by Alderman Coyle and **SECONDED** by Councillor Duddy

Item 3- Matter Arising

There being no matters arising the Chair moved to the next item of business.

Item 4 - Waste Infrastructure Project - Confidential

The Chair requested that the meeting go into Committee. This was **PROPOSED** by Councillor McIlroy and **SECONDED** by Councillor Gallagher

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The Chair said that in order to protect the staff, she was requesting Mr Swerdlick and Miss Curran to leave the meeting at this point.

Mr Swerdlick and Miss Curran left the meeting.

The Chair invited the Development Officer to present his report. The Development Officer proceeded to outline to the meeting the background to the project and the significance of Preferred Bidder (PB) status. He stated that once PB had been achieved only fine tuning and clarification was permissible; major or material changes were not.

He stated that as had been previously indicated to the Joint Committee that previously repeated requests had been made to the bidder for detailed information and up to now this had not been provided. However, a paper had now been received from the bidder and this had been passed to the legal team for advice. The position paper had raised considerable concerns as it contained significant proposals including: -

- Planning - bidder on notice for application for a Judicial Review
- Rocs - qualification deadline (March 2017)
- Technology provider
- Security Wrap
- Makeup of the consortium
- Removal of conditions in the PB letter

The cumulative effect of the issues raises the question of whether or not we have: -

1. A confirmed consortium
2. Confirmed technology

Mr Gray commented on the above and added that all of the above have the potential to extend the period for the delivery of the project and that this was a crucial consideration given the deadline of March 2017. A best estimate of the impact of the proposed changes on the timeline was 18 - 24 months and that this couldn't include further unknowns that could emerge as a result of the proposals.

This raises two potential perspectives: -

- Commercially if we could, would the Contracting Authority want to take additional risk
- Are any or all of the proposed changes legally permissible

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Mr Davey informed the meeting that the matter had to be looked at under EU procurement rules and Contract rules.

EU Procurement rules are designed to ensure fairness, openness and transparency.

No bidder should be put in a position of either advantage or disadvantage.

The rules are explicit on the permissibility of change.

In this instance the magnitude of the apparent combined changes could be considered to go beyond legal permissibility.

The proposals are arguably a different project

The risk of challenge would be considered high - this could come through the courts or could emerge as a challenge from the EU Commission

Risk might be mitigated but would remain medium to high

On the contract side it is open to the Joint Committee / Contracting Authority to decide how to proceed.

The issue that singly could be most easily dealt with is the replacement OpCo but this is conditional on the removal of the PB appointment letter conditions.

There is no obligation to award the contract.

In this case there is no responsibility for the consortium's costs.

The Development Officer added that Members would now need to consider this information and advice before deciding on how we should now proceed.

The Chair thanked the officer and Mr Davey for the comprehensive report and stated that there was a great deal to consider.

Councillor Gallagher thanked the team and asked the Chair to adjourn the meeting for ten minutes so that members could reflect on the matter alone. He added that the leaks of information on the project were coming from officers.

The Chair agreed to the adjournment and the officers and advisers left the meeting.

The Development officer spoke with the Chair and advised that it would be inappropriate for officer to rejoin the meeting unless the Member substantiated or withdrew his comments regarding officers.

After a further short adjournment the Chair informed the meeting that the meeting would be adjourned to a later date and that she would liaise with the Development Officer to facilitate this.

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The meeting adjourned at 2.00pm

The meeting reconvened at 12.00pm on Wednesday the 4th December 2013 in the offices of Ballymoney Borough Council

Present:

Ballymoney Borough Council

Councillor Evelyne Robinson (Chair)
Alderman Cecil Cousley
John Michael

Coleraine Borough Council

Councillor George Duddy
Councillor William King
Kieran Doherty

Derry City Council

Conor Canning

Limavady Borough Council

Councillor Jack Rankin

Magherafelt District Council

Councillor Kate Lagan
Andrew Cassells

Moyle District Council

Councillor Robert McIlroy

Strabane District Council

Councillor J McCauley
Councillor K McGuire

NWRWMG

Eamon Molloy
Jonathan Gray
Philip Kingston
(DCC, Solicitor to the NWRWMG)

SIB

Alan McVicker

The Chair opened the meeting and thanked everyone for their attendance. She reminder all present that the meeting remained in Committee.

The Chair said that she wished to address a matter from the last meeting regarding a statement that had been made which had caused dismay. The Chair informed the meeting that the statement had been withdrawn.

The Chair proceeded to Item four on the agenda, the point at which the meeting had been adjourned and handed over to the Development Officer.

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The Development Officer referred to the previous discussions and asked if members were content or wished to revisit the information. The Chair detailed her understanding to members: -

- At preferred bidder stage only fine tuning and clarifications are permissible
- Significant changes had been proposed
- Legal advice received indicated that the changes may be beyond the legal scope and would potentially be open to challenge

Mr Kingston confirmed the accuracy of the position.

The Development Officer advised the meeting that further information had been submitted by the Bidder and that it was appropriate to consider this now as part of the deliberations.

He added that the bidder had confirmed that they would proceed with option A and that two new companies would provide the EPC and security wrap. In addition the bidder is in advanced talks with a company to provide the OpCo.

In light of this information further legal advice was sought and the Development Officer outlined the information that would now be required in order that a report could be brought to the Joint Committee.

Mr Gray outlined the issues facing the Group in terms of the operation of the procurement competition and explained that the bidder would have to re-qualify in the event that changes are made.

Councillor McIlroy thanked the officers for the work that had been undertaken and said that he was satisfied that the legal advice was clear and so he **Proposed** that the letter as outlined should be sent to the bidder.

The Development Officer explained that if progress was being made then this was to be welcomed however, there were still areas of concern and these needed to be addressed in a timely fashion.

A lengthy discussion ensued and members were satisfied that:-
Specific information was required.
Time is of the essence and the deadline will not be extended.
There is no room for ambiguity.

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A decision needs to be made and will be made on the information provided by the given date.

Councillor McGuire left the meeting at 1.20pm

The Chair invited comment from the officer team. Mr Canning said that the officers concurred with the approach as outlined.

The Chair stated that a proposal had been made and Councillor Duddy **Seconded** the proposal.

Item 5- Consultation on the introduction of Restrictions on the landfilling of Food Waste

The Development Officer referred to the attached paper and stated that this draft response was due for submission by the 3rd December 2013. In light of the circumstances he informed the Committee that he had made the submission and now sought retrospective approval.

Councillor Duddy thanked the officer for taking this action and so **Proposed** this was **Seconded** by Councillor King.

Item 6 - AOB

The Development Officer suggested that the date of the next meeting should be changed to 22nd January 2014 to accommodate analysis of the response from the bidder. This was agreed by the meeting.

The venue was confirmed as Magherafelt District Council.

The Chair informed the meeting that this was Councillor Lagan's last meeting as she was stepping down in December. On behalf of the Group the Chair thanked Councillor Lagan and wished her a long and happy retirement.

The Development Officer wished Councillor Lagan well on behalf of the officers.

The meeting terminated at 2.05pm

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Signed:



Cllr Evelyne Robinson (chair)