
Meeting: Executive
Date: 8 December 2009
Subject: Bedfordshire Energy and Recycling (BEaR) Project – PFI Outline Business Case Approval

Report of: Cllr David McVicar, Portfolio Holder for Safer & Stronger Communities
Summary: This report seeks the endorsement by the Executive of the revised Outline Business Case (OBC) for PFI funding.

The report includes detail of the revised affordability envelope for the BEaR Project which takes into consideration the latest market conditions and updated sensitivities. It also seeks to refresh the project following the withdrawal of Bedford Borough Council from the Partnership.

Advising Officer: Gary Alderson, Director of Sustainable Communities
Contact Officer: Ben Finlayson, BEaR Project Manager
Public/Exempt: Part Exempt (Appendix B – Exempt)
Wards Affected: All
Function of: Executive
Key Decision Yes
Reason for urgency/ exemption from call-in (if appropriate) This item is exempt from call-in due to the requirement from DEFRA to submit a revised Outline Business Case by the 11 December 2009. If this deadline is not met, the Partnership may no longer be eligible for PFI funding of £78.8m.

CORPORATE IMPLICATIONS

Council Priorities:

The recommendations of the attached report contribute to Central Bedfordshire Council (CBC) achieving its objective of meeting the National and European targets for landfill diversion to reduce the increasing impact of landfill tax and waste disposal costs and help to achieve long lasting environmental benefits. This will assist with the delivery of the Council's priority of managing growth effectively as increased housing stock will lead to additional waste arisings and therefore increased taxation.

More specifically, the EU Landfill Directive (1999) sets targets for reducing the amount of Biodegradable Municipal Waste (BMW) landfilled. The UK Government using the Waste and Emissions Trading Act (WET Act - 2003) has introduced the Landfill Allowance Trading Scheme (LATS) to ensure that authorities meet these EU targets. Authorities that exceed permitted allowances are susceptible to fines of up to £150 for every tonne landfilled over their allocation.

Financial:

All cost projections and analysis have been prepared in accordance with DEFRA and HM Treasury PFI guidelines and in alignment with good practice. Further details on the financial implications of the Project can be found in Appendix B.

The BEaR Project is a financially critical scheme for CBC with the potential to realise significant savings over the long term. The following figures assume a PFI credit award of £78.8m to the Partnership which equates to £143m of PFI grant payable to the Partnership over the project's life.

For CBC alone, the updated cost of the project represents a saving over the Do-minimum option of approximately **£93m over the contract period (approximately £3.7 million per year)**. The benefits for Luton Borough (£36m) also demonstrate the importance of the project to all parties.

The Do-minimum option is also subject to a number of risks that have not been included in this cost projection, including:

- Any further increase in the rate of landfill tax or LATS
- Any significant reduction in landfill availability over coming years

The updated cost of the **Affordability Envelope** (Reference Project plus sensitivities) has increased in comparison to the original OBC. This is due to the Project working to meet the more stringent requirements of DEFRA and Project Review Group (PRG) in demonstrating adequate contingency in the projected costs.

Members should be aware of three factors which could influence this assessment.

- The sensitivities contained in the affordability envelope are intended to show that if certain key financial drivers changed unfavourably, additional costs could accrue to the project, eliminating any financial benefits. However, the probability of all of the modelled sensitivities changing unfavourably and to the quantum modelled is unlikely but cannot be ruled out.
- The costs do not include some income which the project could reasonably be expected to deliver (based on other similar projects). This is a requirement of DEFRA to ensure that the most prudent case is shown. A reasonable assessment of the likely revenues based on current experience is around £81m.

Legal:

CBC is a Waste Disposal Authority (WDA) under Sections 51 and 55 of the Environmental Protection Act 1990 and is under a duty to dispose of controlled waste within its administrative area. The current primary method of waste disposal is landfill. Concerns over the environmental impact of this disposal method have resulted in European and National legislation driving change to existing waste management practices.

The BEaR Project has been initiated to ensure that CBC is able to meet its legislative requirements and deliver a more sustainable solution. Failure to agree the recommendations will lead to a delay in the delivery of the project, which may cause CBC to suffer financial penalties for failure to achieve these targets.

As part of the OBC submission, the Partnership authorities must agree and sign up to a revised Joint Working Agreement (JWA), a legally binding document that will come into force as of Friday 11th December 2009. The previous JWA between the legacy

Bedfordshire County Council, Bedford Borough Council, Mid and South Bedfordshire District Councils and Luton shall cease as per the relevant provisions therein upon expiry of Bedford Borough Council's notice period of termination (29th December 2009).

The JWA has been revised to reflect the change in the Partnership structure following Bedford Borough's withdrawal, to comply with the latest WIDP guidance and to address any gaps in the provisions of the previous JWA which could potentially be open to misinterpretation by the Authorities. The key changes introduced in the revised JWA are outlined in Appendix A.

Under the provisions of the revised JWA, a number of decisions remain as "Reserved Matters" and therefore can only be determined and approved by the Partnership authorities' Executive Committees. A list of all the reserved matters can be found in Appendix A.

Risk Management:

There are a number of risks that need to be considered when reviewing the recommendations outlined in this report. The BEaR Project has a robust risk management process in place to ensure that these risks are monitored and mitigated where possible.

Risks arising from a failure to agree the recommendations include:

- PFI bid failure and subsequent increase in the affordability gap leading to a less affordable solution.
- Delays in the project that could lead to the authority being subject to LATS fines plus additional costs to final solution through inflation.
- Dissolution of the Partnership and economy of scale savings being lost.
- Continuation of landfill could see increased taxation above that included in the model due to legislative changes.
- Reduced market interest due to a perception that the Project is not fully supported by the Partnership authorities.

Staffing (including Trades Unions):

N/A

Equalities/Human Rights:

N/A

Community Safety:

N/A

Sustainability:

The preparation of the OBC has considered a number of sustainability criteria, including the Environment Agency's assessment tool for sustainable waste management – "WRATE" (Waste and Resources Assessment Tool for the Environment) and the Corporate policies and priorities of CBC.

Land filling waste leads to the release of substantial amounts of methane, a potent greenhouse gas with over twenty times the global warming potential of carbon dioxide. The BEaR Project aims to significantly reduce the amount of waste going to landfill thereby reducing the impact of waste disposal on the environment.

The full environmental impact of the final solution will not be known until a technology is selected during the procurement. During evaluation, all environmental implications including emissions will be assessed to ensure that the chosen solution reduces the environmental burden of waste disposal.

One of the key objectives of the BEaR Project is to provide a local solution for locally arising (Partnership) waste. The impact of the solution in terms of road journeys should therefore not be significantly different from current practice. Being a local solution, the future potential for long range transport of waste for disposal would also be reduced.

This proposal meets: The requirements of Waste Strategy 2007, The Corporate policies and priorities of the Council. The Bedfordshire Authorities Municipal Waste Management Strategy 2006 and The Bedfordshire and Luton Minerals and Waste Local Plan, adopted 2005.

Summary of Sustainable Communities Overview and Scrutiny Comments:

At their meeting on the 24 November 2009, Central Bedfordshire Council Sustainable Communities Overview and Scrutiny Committee recommended that the Executive approve the recommendations included in this Executive report with the exception of:

- Recommendation 1.a. which has been amended since the Overview and Scrutiny meeting to seek delegated authority to approve and submit the Outline Business Case.
- Recommendation 1.e. which has since been amended since the Overview and Scrutiny meeting to seek delegated authority to approve the Joint Working Agreement.

RECOMMENDATION(S):

1. that the Executive:

- (a) Notes the detail of the revised Outline Business Case (OBC) for Private Finance Initiative (PFI) funding as outlined in this report and authorises the Director of Sustainable Communities in consultation with the Portfolio Holder for Sustainable Communities to approve the final OBC for submission to DEFRA on the councils behalf;**
- (b) Approves the revised affordability envelope, procurement costs and application for PFI credits;**
- (c) Authorises the BEaR Project Board to commence the procurement of a waste treatment solution on a technology neutral basis following PFI approval;**
- (d) Re-affirms its commitment to achieve recycling/composting targets laid down in the Waste Strategy 2007 and where possible exceed these targets with the aim of achieving 60% recycling in the long-term future.**

- (e) **Authorises the Director of Sustainable Communities in consultation with the Portfolio Holder for Sustainable Communities to approve the revised Joint Working Agreement between the Council and Luton Borough Council.**

2. that the Executive commits to:

- (a) **Central Bedfordshire's division of the Reference Project cost over the period between 2016 and 2041, in the total sum set out in the exempt Appendix B; and**
- (b) **Bridging the affordability gap to the sum indicated in exempt Appendix B based on the Reference Project assumptions and affordability envelope.**

Reason for Recommendation(s): Approval of the above recommendations will enable the Partnership (Central Bedfordshire and Luton Borough Council) to submit its application for PFI credit funding of £78.8m to DEFRA for approval and commence the procurement of the waste treatment contract.

Background

1. The BEaR Project aims to provide a means to divert waste that is not recycled from landfill to a more sustainable form of disposal in Bedfordshire. In doing this, the Partnership that has been formed between Central Bedfordshire and Luton aims to meet tough EU targets and minimize the impact of escalating waste disposal costs on council budgets.
2. Land filling waste leads to the release of substantial amounts of methane, a potent greenhouse gas with over twenty times the global warming potential of carbon dioxide. The BEaR Project aims to significantly reduce the amount of waste going to land fill thereby reducing the impact of waste disposal on the environment.
3. The Partnership is seeking financial assistance to deliver a waste treatment solution through the Private Finance Initiative (PFI). To obtain this funding the Partnership authorities are required to compile and submit a fully compliant Outline Business Case (OBC) to the Department for Environment, Food and Rural Affairs (DEFRA) by the 11th December 2009.
4. In October 2008, Bedfordshire County Council (Legacy Authority) and Luton Borough Council submitted an OBC to DEFRA in a bid for £110m of Private Finance Initiative (PFI) funding. Following a small number of clarifications, the OBC was subsequently approved by DEFRA and passed to the next stage for consideration by the Project Review Group (PRG), a subsidiary of HM Treasury. The Project was scrutinised by PRG in March 2009 and four issues were raised for clarification.

5. The four clarification points were:
 1. The appointment of a permanent Project Director,
 2. Securing an Option agreement on a suitable parcel of land,
 3. Addressing market interest concerns; and
 4. Providing a more robust affordability position.
6. Extensive work was undertaken to address these points (included in Appendix A) and in September 2009 the Project Board recommended to Bedford Borough Council (BBC) Executive the approval of a revised affordability position. BBC decided not to approve the revised affordability position, therefore choosing to withdraw from the BEaR Partnership in order to seek its own long term waste treatment solution.
7. In light of this decision, the Project Board agreed that the remaining partners should rework the project and continue in their bid for PFI funding based on a two authority solution. Due to the withdrawal of BBC, the waste data of the remaining partners was re-modelled; subsequently the size of the solution based on the needs of the partnership at the end of the contract period has decreased from 195,000t to around 125,000t. A revised OBC has been created to account for the changes in the Project and due to the extent of the changes to the Project, it is returning to the Executive of each partner authority for permission to continue.
8. This report and the associated OBC sets out the detailed proposals to deliver a PFI funded waste treatment solution for the authorities of Central Bedfordshire and Luton. PFI funding will assist the authorities to bridge the affordability gap between their projected waste budgets and the future costs of waste disposal.

Outline Business Case

9. The OBC approved by the Shadow Executive of CBC on 30th September 2008 has been fully revised to account for the changes to the project since this date. The main revisions have been the reference site proposed in the document, the authorities constituting the Partnership, the financial information and waste arisings information. Appendix A provides an overview of the OBC content.
10. The change to the financial modelling was a key requirement ahead of returning to PRG for PFI approval. Previously PRG had considered the contingency available within the costs too low. This has subsequently been revised to allocate more funds as a contingency in the model. It should be noted that an increase in the contingency, together with a change in the funding terms of the project due to market conditions has a significant effect on the total affordability envelope, as outlined in Appendix B (exempt item). A reduction in plant capacity due to the withdrawal of BBC also has the effect of increasing costs for the remaining authorities due to reduced economies of scale.
11. The OBC is an application for £78.8m of PFI credits which equates to a PFI grant to the partnership authorities over the duration of the contract of £143m. This grant is passed directly to the authorities on an annual basis to offset the costs of the facility. CBC's proportion of this grant is £78.6m.

Alternative options

12. Funding Options:

A number of alternative funding options have been considered during the development of the OBC. In accordance with HM Treasury's requirements, a Value for Money (VfM) assessment was undertaken for the OBC assessing the infrastructure included within the reference project and determining whether the use of PFI offers better VfM than a conventionally procured solution.

13. Technical Options:

In 2005, an Options Appraisal was undertaken as part of the Bedfordshire Authorities Municipal Waste Management Strategy (BAMWMS) to find the best treatment option for Bedfordshire's residual waste in the future. In the intervening time there have been considerable developments in Government waste policy, and the best practice requirements for Option Appraisal modelling have also been reviewed nationally. Because of this, in early 2008, the original process was updated by undertaking an Options Review. The updated review took new information into account and also incorporated use of the recently released Environment Agency Waste and Resource Assessment Tool for the Environment (WRATE). An overview of the appraisal process can be found in Appendix A.

14. The reference technology option that emerged from the process was waste minimisation, and increased recycling to at least 50% followed by treatment using Energy from Waste (EfW) with Combined Heat and Power (CHP). It must be noted that the technology solution outlined in the OBC is a reference technology used to model the costs and deliverability of the Project. The Partnership is not bound to any technical solution at this stage and will ask the waste industry to propose solutions that they feel best suit the Partnership.

15. Partnering Options:

The Partnership authorities do have the potential to deliver similar projects either alone or in conjunction with other partners, however there are significant benefits to the Partnership authorities of a joint working approach for this Project including:

- Procurement costs split between authorities
- Economy of scale savings in construction and operation costs
- Greater market appeal and hence more effective procurement competition due to size
- Eligible for PFI credits
- Joined up thinking – single message for Central Bedfordshire & Luton

16. It should also be noted that the authorities surrounding Central Bedfordshire are already undertaking similar projects, some with the benefit of PFI funding. If either partner were to join any of these other projects they would not be eligible for PFI funding.

Exempt Information

17. Due to the commercial nature of the costs identified within the OBC they have been removed from this summary report and are instead included in Appendix B (not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972).

Next Steps

18. Following approval of the revised OBC by the Partnership authorities' Executive Committees, the Project Team will submit the document to DEFRA for scrutiny. Subject to any clarification points, the OBC will then be passed to the Minister ahead of final scrutiny by PRG in March 2010. If PFI funding is awarded, the Partnership plans to issue a contract notice at the beginning of April.

Appendices:

- Appendix A – Background Report
- Appendix B – Financial Information (Confidential)
- Appendix C – Glossary
- Appendix D – Overview and Scrutiny Comments

Background Papers:

None