



Belfast City Council

Report to: Health & Environmental Services Committee

Subject: **Award of arc21 Organic Waste Treatment Service Contract**

Date: 5th November, 2008

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Relevant Background Information

This report has been prepared in relation to the award of the arc21 Organic Waste Treatment Service Contract and follows on from the Joint Committee consideration and approval of contract award at its recent meeting on 9 October.

Members may recall the arc21 Organic Waste Treatment Service Contract Tender Report (appendix 1) was brought to the September 2006 meeting of the Joint Committee which was followed by a further Addendum Tender Report (appendix 2) presented to the December 2007 Joint Committee meeting on foot of the Judgment of Deeny J in the Queens Bench Division of the High Court of Justice.

The decision of the Joint Committee at its December 2007 meeting was that, "*subject to financial close and securing appropriate confirmations from NWP, the tender is awarded to NWP*" and that "*the recommendations are then considered as soon as possible by each Council in accordance with the requirements of the arc21 Terms of Agreement*".

This decision was communicated forthwith to all bidders together with the relevant advantages of the winning bid in comparison to their offers, as required under The Public Services Contracts Regulations 1993 (the governing Regulations, being those extant at the time of dispatch of the Contract Notice). None of the bidders requested any further information.

Subsequent to the decision of the Joint Committee, appropriate confirmations have been received, financial close has been achieved and the final details of the contract documentation agreed. The Council's Legal Services Department is currently completing the administrative task of drawing together the appropriate bundles of documents and preparing the schedules for signature and this work is now almost complete and ready for arc21 to sign the documents.

Accordingly, following approval of the arc21 Joint Committee and its referral to the constituent councils, it is proposed that the City Council approves the Joint Committee decision to award the Organic Waste Treatment Service Contract to Natural World Products Ltd.

The following contractual issues were highlighted in the September 2006 Organic Waste Treatment Service Contract Tender Report (appendix 1) to the arc21 Joint Committee and are revisited for clarity:

“3 Contractual Issues

3.1 Tender Documents

The main elements of the tender documents are as follows:

3.1.1 Service Delivery Plan

The specification was designed as an output specification requiring Tenderers to demonstrate through a Service Delivery Plan, how the Client’s requirements would be met. The documents specified the minimum requirements to be included in each section of the Service Delivery Plan and the fact that the Plan would be incorporated as a binding contractual requirement in any tender accepted.

3.1.2 Specification

Organic Waste Treatment Service Contract Summary

Objective:

- 1. To provide an Organic Waste Treatment Service to assist arc21 in meeting recycling targets and the requirement to divert materials from landfill.*

Elements include:

- Feedstock material delivered from kerbside collections, primarily commingled (Type 2). Material in a separate stream collected at Civic Amenity Sites (Type 1) will also be presented. Materials will comprise single stream and commingled source segregated organic kitchen and garden waste.*
- Individual Councils deliver kerbside collected waste and Civic Amenity waste to the Contractor’s facilities (see Appendix IV).*
- Compliant bid to utilise the three offered Council sites located within Antrim, Belfast and Down*
- Option to include alternative bids subject to the inclusion of a compliant bid.*
- Contractor may offer start up arrangements to process material in advance of the permanent facilities becoming operational.*
- Planning risk with arc21, the Contractor having to comply with reasonably foreseeable planning conditions and with contractual arrangements in place for termination without fault and compensation of agreed costs in the event of planning refusal.*
- Permitting risk with Contractor.*
- Council sites offered are included as a catalogue with the tender documents, provided without prejudice.*
- Recognized Quality Standard specified for output material to ensure landfill diversion and sale of outputs.*
- Contractor to market outputs.*

3.1.3 Conditions of Contract / Pricing Mechanism

- Single service contract for all facilities.*
- Gate fee contract to provide capacity from the processing facilities.*
- Gate fee banded by tonnage for input materials.*
- Year on year price indexation arrangement.*
- Profit sharing mechanism should the market value of outputs rise dramatically.*
- Minimum tonnage guaranteed by the Client (80% of projections).*
- Minimum feedstock quality guaranteed by the Client (Maximum 10% contamination in any one load – Maximum 5% overall annual average).*

- *Projected tonnages and material streams as per arc21 Waste Management Plan and agreed with each Council (see Appendix V).*
- *First three years tonnages to be agreed with the successful contractor to allow Council roll-out of brown bins to match treatment capacity coming on-line.*
- *Exclusivity clause requiring all relevant organic kitchen and garden waste feedstock to be committed to the contract.*
- *Contract duration of fifteen years, with optional extensions of one-year blocks subject to six months advanced notice being given.*
- *Cost of a bond to the value of £100,000 to be included as an option to be taken up at the Client's discretion.*

3.1.4 Other Issues

- *Where a Council delivers less than their guaranteed tonnage resulting in arc21 failing to deliver the guaranteed tonnage to the Contractor, then the Council will be expected to make a payment at the prevailing rate..."*

Rates and Prices

The Organic Waste Treatment Service Contract allows for annual indexation (RPI04) of the gate fees to enable the contractor to recover inflationary increases in its operating costs over the life of the contract. The first indexation was due at October 2007 and the second is due at October 2008. This makes the Type 1 October 2008 price £34.74 (up from £31.75 in 2006) and the Type 2 October 2008 price £44.69 (up from £40.85 in 2006).

The contract did not allow for construction indexation as contractors were required to absorb planning delay (up to a 2 year long-stop) and obviously their own construction time was at their own risk (but with a contractual requirement to complete construction within 18 months of planning permission being granted).

The contract did not contemplate any other construction cost escalation as a legal challenge was not foreseen. As matters have turned out however, there has been 14 months of delay and construction cost escalation that was not contemplated by the contract. arc21 have a duty to act fairly and reasonably in the administration of the contract and accordingly have taken expert legal and financial advice on this issue. This has resulted in a one off increase of £0.90 in the price of Type 1 and £1.12 in the price of Type 2 being deemed fair and reasonable in the circumstances and makes the final October 2008 contract Type 1 price £35.64 and Type 2 price £45.81.

Tonnage and Start-up

The contract allows for up to 2 years for arc21 to achieve planning permissions on all three sites (treatment plant, Antrim transfer and Down transfer) and then requires the contractor to have completed construction of all the new facilities in their bid by the end of 18 months from the granting of the last of the three arc21 planning permissions.

The date on which service commences is the date on which the contractor receives the first material from arc21 for processing after all the arc21 member councils have approved the award. The service adjustment date is the date on which all the new facilities in the bid are fully operational. The start-up period is then the period between the service commencement date and the service adjustment date.

On the basis that achievement of planning permission on all three sites takes between 6 months and 2 years from present day, the start-up period will last between 2 and 3 ½ years (i.e. 18 months after grant of the last planning permission).

During the start-up period, the tonnage is to be progressively agreed between arc21 and the contractor as progress with planning permissions and construction programmes becomes clear with a presumption that the contractor will make available as much capacity in excess of 40,000 tonnes as it can, based on planning permissions and its construction programme and that councils will endeavour to fill the available capacity, based on expiry of their current commitments and roll-out of brown bins and food waste collections.

Once the start-up period has ended and the service adjustment date has been reached, the contractual commitment on councils is to supply all their source segregated organic waste to the contract with a minimum commitment of 80% of the council figure in the contract (see appendix 1, Tender Report 2006 – page 19).

Key Issues

Regarding the award of the Organic Waste Treatment Services Contract, arc21 has now received appropriate confirmations and financial close has been achieved and the final details of the contract documentation agreed. The Council's Legal Services Department is currently completing the administrative tasks and preparing the schedules for signature and this work is now almost complete.

Accordingly, the Joint Committee confirmed its decision to award the tender to NWP and that the recommendations contained within the arc21 Joint Committee report are then considered as soon as possible by each Council in accordance with the requirements of the arc21 Terms of Agreement and that in so doing each council resolve to:

- Agree the award of the contract to NWP and inter alia,
 - Deliver source segregated organic waste to the contract and pay arc21 at the appropriate rate per tonne,
 - Provide source segregated organic waste exclusively to the contract,
 - During the start-up period, to endeavour to fill the available capacity, subject to expiry of current commitments and appropriate roll-out of brown bins and food waste collections,
 - After start-up, to provide a minimum of 80% of projected tonnage (as per appendix a, Tender Report 2006 – page 19) and
 - To provide source segregated organic waste with no more than 10% contamination in any one load and no more than 5% overall annual average contamination.

Resource Implications

Members will be aware that a report was approved by Committee to include kitchen waste within the brown bins, in accordance with the Council's Waste Plan. The award of the above contract provides a treatment facility which can appropriately treat both co-mingled kerbside collected waste (Type 2) and Recycling Centre waste (Type 1), both of which count significantly towards meeting the Council's obligations under the Northern Ireland Landfill Allowances (NILAS) Regulations due to their high organic content. The cost to the Council of treating these wastes is likely to be in the region of £690,000 for 2009/10.

This compares with a figure of £888,000 should this material be directed to landfill, and this figure would increase further to approximately £1 million pounds in 2010/11 with the increase in the landfill tax escalator.

Members will be aware that as part of the Council's Waste Disposal Financial Strategy, allowance has been made in previous years' revenue estimates to limit the impact on the ratepayers of the enormous step increases in waste disposal cost which were forecast to be incurred between 2006-2010. In the interim period, the additional financial provision has been used by the Council to fund non-recurring projects across the Council. As the actual

increased waste disposal costs are incurred, such as the commencement of the Organic Waste Treatment Service Contract, the funding previously used for these projects is transferred to the operational waste disposal costs without additional impact on the ratepayer.

Recommendations

The Committee is requested to adopt the confirmed decision of the arc 21 Joint Committee and to agree the award of the Organic Waste Treatment Services Contract to NWP and inter alia:

- To deliver source segregated organic waste to the contract and pay arc 21 at the appropriate rate per tonne
- To provide source separated organic waste exclusively to the contract
- During the start up period, to endeavour to fill the available capacity subject to expiry of current commitments and appropriate roll out of brown bins and food waste collections
- After start up, to provide a minimum of 80% of projected tonnage (as per Appendix 1, Tender report, September 2006 – page 19)
- To provide source segregated organic waste with no more than 10% contamination in any one load and no more than 5% overall annual average contamination.

Abbreviations

NWP – Natural World Products Ltd
NILAS – Northern Ireland Landfill Allowances

Documents Attached

Appendix 1 – arc21 Joint Committee Organic Waste Treatment Service Contract Tender Report, September 2006

Appendix 2 – arc21 Joint Committee Organic Waste Treatment Contract Tender Addendum Report, December, 2007

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