

RESOURCE RECOVERY CONTRACT ADVISER SUPPORT
WDA/16/14

Recommendation

That:

1. Members approve the continued use of the professional advisers who supported the Authority's RRC procurement and for the arrangement to be reviewed in twelve months.

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Report of the Treasurer

1. Purpose of the Report

- 1.1 The report updates Members on the position regarding adviser support for the Resource Recovery Contract (RRC) and seeks approval to continue with the appointments during the implementation of the contract, albeit in a significantly reduced amount.

2. Background

- 2.1 On 23rd December 2013 the Authority signed the RRC and entered into a 30 year arrangement with Sita Semcorp UK (SSUK) to develop and deliver a long term solution for Merseyside's household waste disposal.
- 2.2 At the outset of the procurement professional advisers were appointed to provide specialist advice to the Authority on detailed aspects of the procurement; specifically legal, financial and technical. Their advice has proved invaluable in enabling the Authority to conclude the procurement, but at the conclusion of the procurement their appointments are drawing to a close.
- 2.3 The nature of the RRC involves a highly complex arrangement of agreements and schedules that is now available for the Authority to start to fully manage. The complex nature of the interlinked arrangements is such that on occasion the advice of the specialist advisers is likely to prove very helpful to ensure the documents are fully understood and that all parties to the contract always share an understanding of each part of the contract.

3. Resource Recovery Contract

- 3.1 The Authority developed a strategy for procurement of a sustainable long term approach to waste disposal that avoided landfill over seven years ago. The procurement of the RRC was a lengthy process that involved almost two years of dialogue and over a year of evaluation; before the preferred bidder was appointed, a legal challenge was overcome and the contract was awarded and signed.

- 3.2 At the beginning of the Authority's procurement professional advisers were appointed to provide detailed support throughout the various stages of the procurement. Those advisers were:
- Eversheds – Legal
 - SKM Enviros – Technical
 - EY – Financial
 - Mouchel – Planning (until planning risks transferred to bidders)
- 3.3 The detailed technical support of the advisers has been critical to ensuring the Authority was able to meet its objectives of delivering a winning bid and appointing a long term partner that provided the Most Economically Advantageous Tender for Merseyside and Halton.
- 3.4 Now that the contract has been signed it has been recognised on all sides that the original appointments are coming to a conclusion and will end when all parties are satisfied that all the technical documents have been delivered to the Authority. The next phases of construction, commissioning and full service delivery are matters for the Authority to deliver in partnership with SSUK.
- 3.5 The RRC is a very extensive and detailed agreement which will require a very significant investment by the Authority and its officers, both to understand all aspects fully, and to manage effectively to ensure that the full value of the contract accrues to the Authority.
- 3.6 In reviewing the procurement and examining the depth and detail of the documentation that forms the contract it is acknowledged at the Authority that there is an extensive level of specialist knowledge and expertise within the professional adviser base. That knowledge and expertise is likely to be very useful in helping the Authority to develop both its own expertise and its management arrangements for managing the contract in the medium to long term. At present there is no contract with the advisers for any further support after the final handover of the RRC and so the Authority faces the prospect of losing access to specialist advice and a loss of knowledge regarding the contract.
- 3.7 Therefore, it is proposed that the appointments of the remaining advisers: Eversheds, EY and SKM Enviros, be extended to provide such support as the Authority requires to enable the Authority to get best value from the RRC. It is not proposed that the continued support will be extensive compared with that provided in the procurement phase, and a financial

boundary will be imposed to ensure that this is limited and that the use of advisers does not grow or become the norm. The standard approach will be for Authority officers to manage the RRC, and only to seek support where there is a matter of judgement or dispute over how a detailed aspect of the contract should be interpreted or implemented.

- 3.8 It is proposed that the continuing appointment of the remaining advisers will be done without tender as the services they have provided previously means that they now have specialist knowledge and the Chief Executive is satisfied there is no reasonably satisfactory alternative without very significant additional costs. This is in line with Rule 10 (i) (b) of the Authority's Contract Procedural Rules which allows the Chief Executive to make an exception from tendering procedures under these circumstances.
- 3.9 An additional benefit of agreeing to this approach is that the specialist adviser teams will also retain some of their knowledge about the contract and the Authority. This will be important in enabling the Authority to keep costs down in future should any significant matters be raised, as the advisers would not have to invest as much in the future in re-mobilising and re-interpreting contract clauses that they are currently familiar with.

4. Risk Implications

- 4.1 There are two main risks arising from this report. The first is the potential loss of knowledge and expertise and the accompanying failure to transfer knowledge effectively. If the Authority loses its knowledge of the way the contract has been constructed then it may not realise all the benefits of the contract as fully as expected. Therefore the continued but limited appointment of the advisers is important. If this appointment is approved it will be reviewed after 12 months to assess whether it remains important, and if so how much support will continue to be required.
- 4.2 The Authority does run a risk in appointing the advisers without a competitive process that they will not provide value for money. However, this can be countered by ensuring the terms of any further appointment are the same as the initial appointments (which were subject to tender); only calling for support when it is required; and managing the level of support provided so that the costs do not escalate.

5. HR Implications

5.1 There are no direct HR implications.

6. Environmental Implications

6.1 There are no environmental implications.

7. Financial Implications

7.1 The Authority approved a budget on 31st January 2014 that included provision in 2014-15 for continuing support for the RRC procurement of up to £110k (net). This amount was included for any dispute which may have continued during 2014-15.

7.2 The proposed amount provides scope for the Authority to continue to obtain specialist advice during 2014-15 in support of the RRC.

7.3 It is proposed to report to Members on the extent of support called for during 2014-15 as a part of the revised estimate process. In the event that the Authority has used the support available a further proposal would then be made seeking Members' approval for adviser support potentially beyond 2014-15.

8. Conclusion

8.1 The Authority has used a group of professional advisers during the procurement of the Resource Recovery Contract. In order to obtain best value from the contract that is now in place, it is proposed that the services of the professional advisers be retained, albeit on a reduced basis.

8.2 The proposed appointment of the advisers will be reviewed after 12 months to enable Members to consider whether they are likely to continue to deliver value for money for the Authority thereafter.

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The background documents to this report are open to inspection in accordance with Section 100D of The Local Government Act 1972 - Nil.