Residual Waste Project – Selection of Preferred Bidder

Cabinet Date	14th December 2011
Finance and Change	Councillor Ray Theodoulou
Key Decision	Yes
Background Documents	To approve the business case for Residual Waste Procurement, 23rd April 2008. Residual Waste Contract – Competitive Dialogue Evaluation Framework, 19th November 2008. Residual Waste Project – Selection of Bidders to be Invited to submit Detailed Solutions, 16th December 2009. Residual Waste Project – Strategic Re-appraisal, 16th March 2011.
Main Consultees	Waste Project Board, Environment Scrutiny Committee, Gloucestershire Waste Partnership and stakeholders including Gloucestershire residents through the consultation exercise in summer 2008.
Planned Dates	Contract award in summer 2012
Divisional Councillor	All
Officer	Jo Walker, Director Strategic Finance (01452 427492; joanna.walker@gloucestershire.gov.uk) Ian Mawdsley, Residual Waste Project Lead (01452 425835; ian.mawdsley@gloucestershire.gov.uk)

Purpose of Report	To select a preferred bidder for the Residual Waste Project.
Key Recommendations	(a) endorse the selection of the preferred bidder subject to satisfactory agreement of the letter of appointment; (b) authorise the Director Strategic Finance following consultation with the Cabinet Member for Finance and Change to agree the preferred bidder letter of appointment; and (c) subject to (a) authorise the Director Strategic Finance to continue with the clarification and confirmation of commitments required to finalise the contract with the preferred bidder, develop final documentation, and report back to Cabinet to seek authority for contract award.
Resource Implications	Resource implications remain within the resources and affordability approved by Cabinet on 23rd April 2008. There is an increased cost risk in the event the project does not proceed.

Exempt Information

1. Please note that this report contains exempt information (which is printed on pink paper) and non-exempt information. If Cabinet wish to discuss exempt information, consideration should first be given to whether the public should be excluded from the meeting by passing the following resolution:

   That in accordance with Section 100 A (4) of the Local Government Act 1972 the public be excluded from the meeting for the business specified in item no. 7 because it is likely that if members of the public were present there would be disclosure to them of exempt information as defined in paragraph 3 of Part 1 of Schedule 12 A to the Act and the public interest in withholding the information outweighs the public interest in disclosing the information to the public.

Background

2. Continuing to landfill is not environmentally or financially sustainable. Diversion of waste from landfill is essential to meet the targets for limiting the amount of biodegradable municipal waste that is landfilled. It is also essential to reduce the amount of methane gas produced. Methane is a greenhouse gas over 20 times more powerful than carbon dioxide in terms of global warming potential and landfill contributes 27% of the UK's total. In addition landfill tax, a tax imposed on any municipal waste that is landfilled, continues to rise and will reach £80/tonne by 2014.

3. The council has an aspiration to achieve a 70% recycling rate by 2030 by increasing kerbside recycling, which includes the collection of food waste. This will be treated using technologies approved under the government's national waste strategy review[1]. This recycling rate has been modelled in the council's waste forecast which has been given to bidders. This forecast has also been compared with the latest Defra scenarios[2] through to 2030. This shows that the council's forecast is reasonable, being mid point of Defra's four scenarios. The results of this are shown at Annex A.

4. The project was advertised in the Official Journal of the European Union in January 2009 and a short project history is shown at Annex B.

Procurement

5. The council is procuring a solution to the residual waste problem using a procurement process which is specified under UK procurement law known as competitive dialogue. This is used where the requirement is known but the solution has not been specified.

6. The council received four submissions from the Invitation to Submit Detailed Solutions (ISDS) stage of the competitive dialogue process. After thorough evaluation of the ISDS solutions, Cabinet approved two bidders to be invited to submit refined solutions. These were:
   a. Complete Circle (John Laing, Shanks, Keppel Seghers)
   b. Urbaser Balfour Beatty

[1] Government Waste Policy Review in England 2011 (Defra), and Anaerobic Digestion Strategy and Action Plan. 2011 (Defra and DECC).
[2] The Economics of Waste and Waste Policy, June 2011 (Defra)

7. The core technology proposed by both bidders is Energy from Waste (EfW) (otherwise referred to as incineration with energy generation). Both bidders propose Javelin Park as the location for a facility. Further detail on the bidders' solutions is provided in Annexes C and D.

8. Since March 2011 both solutions have been subject to detailed negotiation on all key areas of the contract and price. This culminated in the submission of final tenders in October 2011, which were evaluated against financial, technical (including environmental), legal and integrity criteria.

9. Following the selection of one bidder there is a process, which sets out for the preferred bidder, the terms of the appointment and the areas that require fine tuning before a contract could be awarded.

10. The procurement process has recently been subject to an internal audit review which concluded that the conduct of the procurement process has been acceptable in terms of management of risk and levels of control and that procurement regulations and guidance has been followed.

11. This paper seeks to appoint a preferred bidder with the aim of awarding a contract in summer 2012.

Nature of the contract

12. Annex E contains detail of the nature of the contract and the commercial principles underlying it. In summary the contract will be for 25 years and in accordance with the standard Defra contract for waste projects.

Evaluation of final bidders

13. The evaluation methodology used has been consistent at each stage of the procurement and has used a range of technical, financial, legal and integrity criteria. The key factors taken into account were as follows:

    a. Compliance with the council's bid requirements.
    b. Technical criteria including delivery of the council's service requirements, robustness of the technical solution, environmental performance and deliverability in terms of sites and planning.
    c. Financial and commercial criteria including robustness of the proposed commercial structure and funding deliverability, the economic cost, and affordability of the solutions.
    d. Legal criteria including the acceptance of the council's contract provisions which had been developed through the competitive dialogue process.
    e. Integrity of the bid in that it is cohesive, credible, deliverable and consistent.
    f. The underpinning warranties and guarantees on which the council can rely for assuring technical, operational, and commercial performance by the contractor and any third parties.

14. The evaluation principles for the Invitation to Submit Final Tenders (ISFT) were approved by Cabinet on 19th November 2008. The structure and weightings in the evaluation model for this stage of the procurement process are shown overleaf. The aim of this stage is to select a preferred bidder, in accordance with procurement best practice.

Area	Weighting at ISFT
Environmental and Technical	30%
Financial and Commercial	50%
Legal	10%
Integrity	10%
Total	**100%**

15. The final bidders' tenders have been subject to a thorough evaluation exercise undertaken by the full project team including council officers and specialist advisors from RPS (technical), Ernst & Young (financial), Eversheds (legal) and Marsh (insurance).

16. The outcome of the evaluation is described in Annex F (exempt). In brief, the evaluation confirmed that both bidders had submitted tenders that are compliant with the council's requirements. However, the results showed that one bid clearly emerged as the leading bid overall.

17. In addition to the formal evaluation of the economic cost as part of the bid evaluation, the internal project team looked at a value for money (VfM) assessment which compared the prices bid in respect of the project with a 'do nothing' base case of the council continuing to dispose of residual waste to landfill. Annex F (exempt) sets out details of this evaluation.

18. Selecting a preferred bidder will enable work to commence on the final stage of the procurement and lead up to a final decision on awarding the contract.

19. The main benefits of the proposed solution and contract are:

    a. The council would be protected from the rising cost of landfill and landfill taxes which would avoid an additional whole life cost of up to an estimated £150 million.

    b. Over 90% of residual waste would be diverted from landfill using a thermal treatment which would avoid the production of methane which is a greenhouse gas over 20 times more powerful than carbon dioxide.

    c. The solution would reduce the effects of climate change, significantly reducing the CO_2 emissions when compared to continuing to landfill residual waste.

    d. Electricity (equivalent to that required to power at least 20,000 homes) which could be provided to the council, schools and hospitals in Gloucestershire. This would be a renewable and price-stable source of electricity. Any surplus would be sold to the grid.

    e. Heat could be provided to both commercial and domestic users as a renewable and price-stable source of energy.

    f. Bottom ash, a by-product of the process, would be reprocessed and used in roads and housing, displacing the use of virgin quarried material. Metals would be recycled.

    g. About 300 new jobs would be created in construction and around 40 jobs over the period of the service of 25 years.

Performance management

20. The performance management of the contract following service commencement is through the pay and performance mechanism and the performance measurement framework. Further details on this are set out at Annex E.

21. A key risk in delivering the project relates to the planning process and any possibility of delay, for example if the planning decision is called in by the Secretary of State or is refused and is then followed by an appeal. A delay to awarding the contract could lead to increased costs as the final prices are fixed for a certain period and would then be subject to indexation. The project team has considered these risks and their possible implications in reaching the decision to recommend the selection of a preferred bidder. The position will be kept under close review as the fine tuning of the contract with the preferred bidder progresses.

Planning and permitting

22. The two bidders have commenced pre-planning consultation for their proposed Energy from Waste solutions in advance of submission of a full planning application. Two public exhibitions have been held to date, the most recent in November 2011.

23. Planning consent will be required before any facility could be built. The council as the Waste Planning Authority will determine the planning application unless it is called in by the Secretary of State or subject to appeal. The planning and procurement processes are kept entirely separate, with the Cabinet taking decisions on the procurement process and the Planning Committee determining the planning application. Planning decisions are made on planning grounds. They are guided by local, regional (if appropriate) and national planning policy and other material planning considerations.

Environmental and health implications of EfW

24. EfW technology is widely and safely used in many European countries and is increasingly being used in the UK. There are approximately 390 Energy from Waste plants across Europe[3]. The treatment facility will need to be permitted by the Environment Agency who has responsibility for regulating waste treatment plants. They have strict rules for such facilities as required by European law under the Waste Incineration Directive (and any forthcoming legislation) and will not allow anything that is unsafe. Modern monitoring techniques mean that continuous monitoring of gas emissions is now standard and this will be made readily available to the public via the internet.

25. The health implications of EfW incinerators have been well researched. In particular the Health Protection Agency (HPA) has considered studies examining adverse health effects around incinerators and is not aware of any consistent or convincing evidence of a link with adverse health outcomes. The HPA also stated in a report in 2006 that the current levels of dioxin emissions from incineration are unlikely to increase the human body burden significantly, since incineration accounts for less than 1 per cent of UK dioxin emissions. (HPA Response to the British Society for Ecological Medicine

[3] Confederation of European Waste to Energy Plants 2009.

Report). The HPA have produced a position statement[4] on EfW which is available on their web site[5] which states that "Incinerators that are well run and regulated do not pose a significant threat to public health."

Evaluation conclusion

26. The evaluation has demonstrated that the proposed preferred bidder is the best in relation to the evaluation criteria, and that the offer is acceptable in relation to price and risk. Therefore the Cabinet is recommended to endorse the selection of the preferred bidder.

27. This recommendation is made on the understanding that there are a number of areas that will require further work; however these are not permitted to substantially modify any aspects of the tender. These areas include the contractualisation of certain procedural documents, the firming up of the terms of financing and the final agreement by the banks' credit committees.

Next steps

28. After the preferred bidder letter of appointment has been issued, a period for the clarification of certain aspects and the confirmation of commitments in relation to the contract commences. Under the competitive dialogue process there can be no negotiation at this stage. If the council believes that the preferred bidder is unable to meet its commitments or clarifications provide unsatisfactory answers it may chose to re-open competitive dialogue with the other bidder.

29. Following satisfactory confirmation of commitments and consideration of the final value for money assessment, the Cabinet will then be asked to recommend the award of contract which is currently anticipated in summer 2012. A three year period for construction and commissioning is required, so depending on planning permission, the facility could start operation in 2015.

Financial and staff implications

30. The financial implications of the contract are outlined in detail at Annex F (exempt). The final Bidder evaluation has demonstrated that better value for money can be provided through the contract compared to continuing to landfill residual waste. Provision for the contract will be made through the Medium Term Financial Strategy in the budget setting process. The resources required to complete the procurement process have been identified.

Consultation

31. The process and the results of the evaluation were discussed in detail with the Waste Project Board. They supported the recommendations within this report. The

[4] The Impact on Health of Emissions to Air from Municipal Waste Incinerators RCE 13 http://www.hpa.org.uk/webc/HPAwebFile/HPAweb_C/1251473372218

[5] http://www.hpa.org.uk/NewsCentre/NationalPressReleases/2009PressReleases/090903Airpollution/

recommendations will also be discussed with both the Gloucestershire Waste Partnership and Environment Scrutiny Committee in advance of the Cabinet decision.

Officers' recommendation

32. That Cabinet:

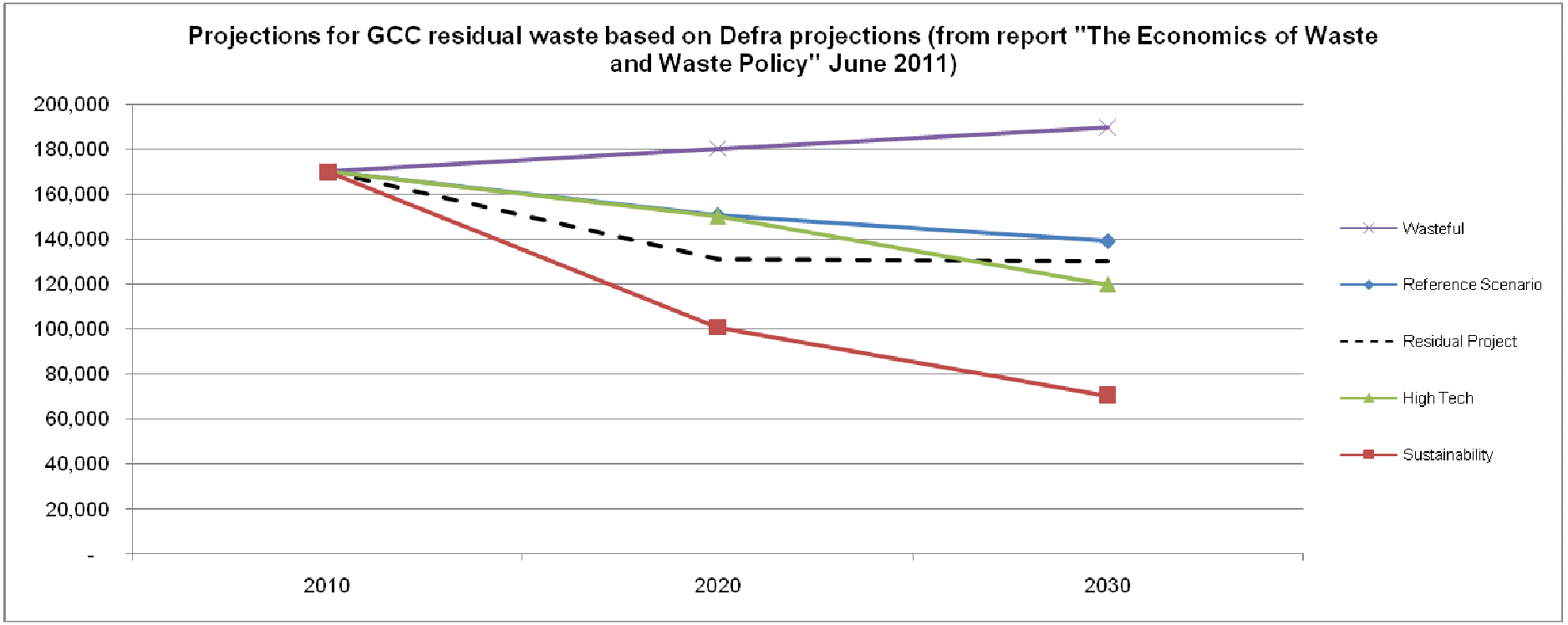
a) endorse the selection of the preferred bidder subject to satisfactory agreement of the letter of appointment;

b) authorise the Director Strategic Finance following consultation with the Cabinet Member for Finance and Change to agree the preferred bidder letter of appointment; and

c) subject to (a) authorise the Director Strategic Finance to continue with the clarification and confirmation of commitments required to finalise the contract with the preferred bidder, develop final documentation, and report back to Cabinet to seek authority for contract award.

Annex A

Residual Waste Projections



Wasteful	Unlimited Wastefulness characterised by a lack of action and an increasing waste intensity. (Overall intensity and arisings increase strongly due to an early period of economic stagnation)
Reference scenario	Business-as-usual. (The scenario assumes current trends to continue).
Residual Project	GCC's residual waste forecast (high recycling rates reaching 70% by 2030)
High tech	High-Tech/Large-Scale Solutions where technology is the key to dealing with waste issues. (High tech approaches are regarded as the key to solving waste and resource problems, rather than a shift in behaviours).
Sustainability	Sustainability Turn driven by societal decision and behaviour change to go green. (The entire nation (society, industry and politics) opts for deep green).

Annex B

History of the Residual Waste Project

2007

GCC undertook a series of detailed studies which informed the residual waste procurement plan (approved November 2007, see below). These studies included:

- technology review
- soft market testing
- procurement and financial review

18th July 2007 – Cabinet approve the acquisition of Javelin Park through negotiation.

30th September 2007 – GCC submit Expression of Interest to Defra for Private Finance Initiative (PFI) credits.

10th October 2007 - Cabinet approve five technologies scenarios that are recognised as being potential solutions for Gloucestershire:

- Energy from Waste (EfW) with Combined Heat & Power (CHP).
- Mechanical Biological Treatment (MBT) producing a biologically stabilised material that is sent to landfill.
- Mechanical Biological Treatment (MBT) producing a fuel sent to a dedicated CHP.
- Autoclave producing recyclates and an active fibre fuel that is sent to a dedicated CHP.
- Advanced Thermal Treatment (ATT) with syngas used to produce electricity and recovery of heat energy (CHP).

28th November 2007 - Cabinet approve the residual waste procurement plan to procure a long term residual waste solution to manage Gloucestershire's residual waste up to 2040. This included the decision to develop and submit a business case to government for PFI credits.

2008

23rd April 2008 - Cabinet approve the submission of an Outline Business Case (OBC) to Defra. The reference project is energy from waste facility based at Javelin Park, but GCC is clear within the OBC that this is not its preferred option and that GCC is both site and technology neutral.

Summer of 2008 - GCC undertake a public consultation to understand stakeholder priorities when developing the evaluation framework to evaluate solutions against. The results help shape the weighting of criteria (Cabinet approve evaluation framework 19th November 2008).

12th November 2008 - Defra award GCC £92 million of PFI credits.

19th November 2008 – Cabinet approve the evaluation framework, which will be used to award the residual waste contract.

2009

January 2009 – GCC complete the purchase of part of Javelin Park.

30th January 2009 - GCC commence the procurement for a residual waste solution. GCC submit its OJEU notice, and the Pre-Qualification stage commences.

24th June 2009 – Ten bidders invited to submit outline solutions (ISOS).

16th December 2009 - Cabinet approve the short list of four bidders to be invited to submit detailed solutions (ISDS).

2010

20th October 2010 – Defra withdraw PFI funding from GCC's residual waste project.

October 2010 – March 2011 (Strategic Review). GCC decide to pause the project to review whether there is still a valid need for the project and that it is still affordable.

2011

16th March 2011 – Cabinet approve the continuation of the project and to short list two bidders to be invited to submit refined solutions (ISRS). Both solutions include EfW at Javelin Park.

16th July 2011 – Bidders commence pre-application consultation to begin the planning process for their application to build, construct and operate an Energy from Waste facility at Javelin Park.

16th – 19th July 2011– first public exhibition held at Javelin Park.

12th – 14th November 2011 – second public exhibition held at Javelin Park.

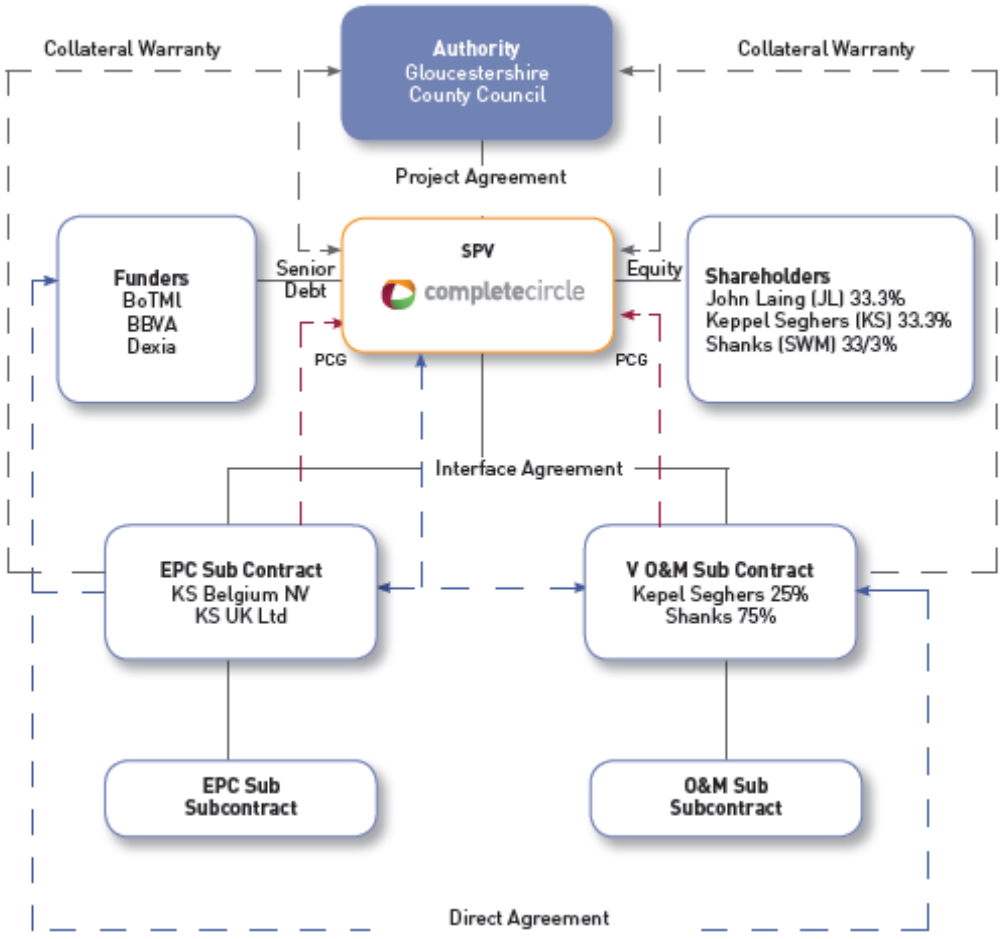
Bidders Proposals

Complete Circle

Commercial Structure

1. Complete Circle Limited is a Special Purpose Vehicle (SPV) set up for the purposes of bidding for this competition. The SPV structure and key relationships are shown below.

Fig. C1 Complete Circle SPV structure and key relationships.



Technical Proposal

Brief Description of Solution

2. Complete Circle has proposed a modern Energy from Waste Facility based at Javelin Park, a 12 acre site owned by the Council. The facility will receive Gloucestershire's household residual waste and also some third party commercial and industrial waste. The plant will have a planned maximum capacity of 180,000 tonnes per annum. The predicted stack height is 85 metres.

3. The process will use moving grate technology to combust residual waste. The hot gases produced during combustion pass through a boiler to produce steam which creates electricity and heat. These gases then pass through a flue gas cleaning process and the cleaned gases are released to atmosphere. The cleaning system generates a by-product known as Air Pollution Control residues. Bottom ash is also produced from the combustion process.

4. A visitor's centre is proposed as part of the facility. In addition, Complete Circle are proposing to install a solar photovoltaic system on the roof of the facility.

Performance and Guarantees

5. Complete Circle will divert at least 90% of residual waste from landfill and provides for the diversion of 95% of all biodegradable waste.

6. The facility will generate around 100,000MW hrs of electricity annually which is sufficient to power up to 20,000 homes. The facility will be capable of providing renewable heat energy to nearby businesses. Complete Circle is investigating the opportunities for the export of heat to neighbouring industrial and other potential users. The photovoltaic system is projected to generate 38 MW hrs a year of renewable solar energy.

7. The facility will have a flue gas cleaning system that will ensure compliance with the Waste Incineration Directive and the forthcoming Industrial Emissions Directive emission limits. The residual emissions will be strictly monitored to ensure no risk to public health and emissions data will be published on a website.

Outputs and Markets

8. Bottom Ash, the residue remaining after the waste has been processed, will be used as an aggregate substitute in the construction industry. Scrap metals will be recovered for recycling. The bottom ash will be transported off site for processing by Days Aggregates.

9. Air Pollution Control residues (often referred to as 'fly ash') will be taken to be reprocessed off site at Cenin Ltd in South Wales, in conjunction with Castle Environmental. The process creates a low carbon cement replacement product that can be used in the manufacturing of pre-cast concrete products. Any remaining non recyclable residues will be sent to a licensed landfill site.

10. Any unacceptable waste such as asbestos received at the facility, which cannot be processed, will be either sent to a licensed landfill site or appropriate reprocessing facility.

Sustainability

11. Complete Circle has proposed that the solution will achieve high quality civil engineering and obtain *a* 'Very Good' rating under CEEQUAL[6] (with an aspiration to achieve 'Excellent'). This is an assessment used to measure overall sustainability of building developments. The solution incorporates Sustainable Urban Drainage Systems

[6] Civil Engineering Environmental Quality Assessment and Award Scheme.

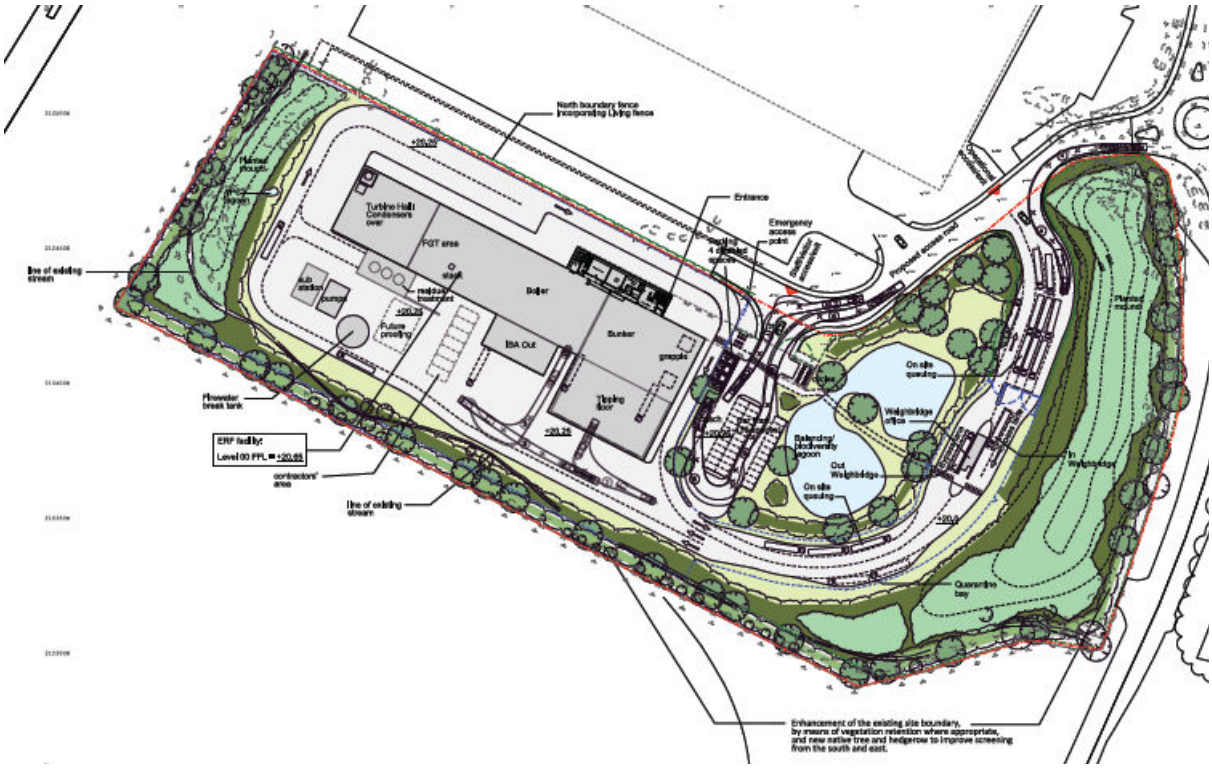
within its design. The design also includes amenity areas and a significant water feature to enhance the biodiversity of the site. In addition the existing stream will be maintained and enhanced.

12. The proposed solution contributes positively to reducing its impact on climate change when compared to continuing to landfill.

Design and Layout

Fig. C2 Artist's impression of Complete Circle facility.

Fig. C3 Plan of Complete Circle facility.



Jobs

13. The project will create the equivalent of 41 full time jobs during operation and up to 300 jobs during construction.

Community

14. The facility will also include a visitor centre which will have meeting room facilities for community use. In addition Complete Circle will develop a community liaison group.

Timeline

Milestone	**Date**
Works period	February 2013 to June 2015
Commissioning period	April 2015 to November 2015
Service commencement date	November 2015

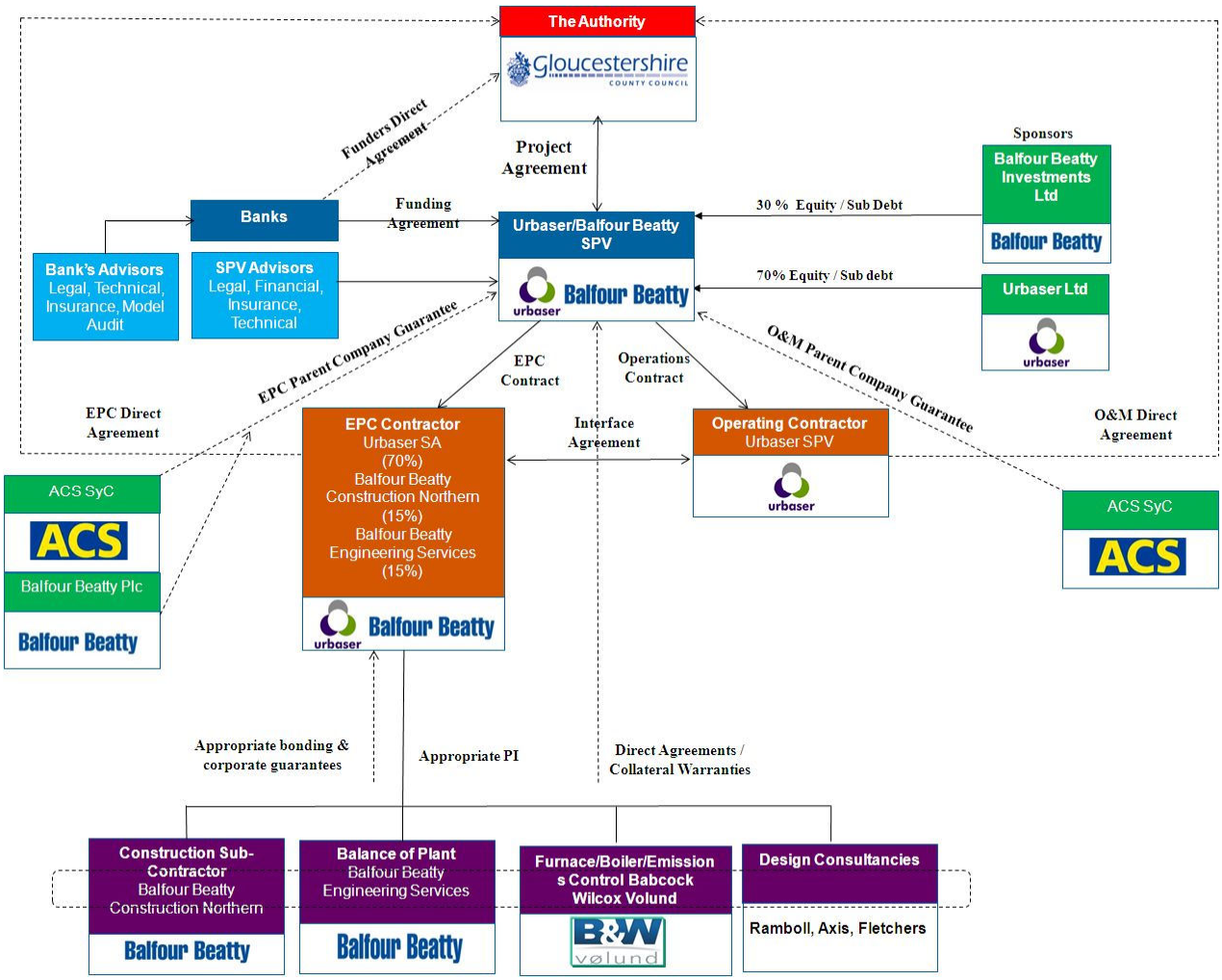
Bidders Proposals

Urbaser Balfour Beatty

Commercial Structure

1. Urbaser Balfour Beatty is a Special Purpose Vehicle (SPV) set up for the purposes of bidding for this competition. The SPV structure and key relationships are shown below.

Fig. D1 Urbaser Balfour Beatty SPV structure and key relationships.



Technical Proposal

Brief Description of Solution

2. Urbaser Balfour Beatty has proposed a modern Energy from Waste Facility located at Javelin Park, a 12 acre site owned by the council. The facility will receive Gloucestershire's household waste and also some third party commercial and industrial waste. The plant will have a planned maximum capacity of 190,000 tonnes per annum. The predicted stack height is 70 metres.

3. The process will use moving grate technology to combust residual waste. The hot gases produced during combustion pass through a boiler to produce steam which creates electricity and heat. These gases then pass through a flue gas cleaning process and the cleaned gases are released to atmosphere. The cleaning system generates a by-product known as Air Pollution Control residues. Bottom ash is also produced from the combustion process.

4. The facility will also include onsite reprocessing of the bottom ash to produce a secondary construction aggregate. This process also extracts metals from the bottom ash for recycling.

5. A visitor's centre and wildlife zone is proposed as part of the facility.

Performance and Guarantees

6. Urbaser Balfour Beatty will divert over 92% of residual waste from landfill and provides for the diversion of 96% of all biodegradable waste.

7. The facility will generate around 116,000MW hrs of electricity annually which is sufficient to power more than 25,000 homes. The facility will be capable of providing renewable heat energy, which can be used by neighbouring industrial users. Urbaser Balfour Beatty is investigating the opportunities for the export of heat to neighbouring industrial and other potential users.

8. The facility will have a flue gas cleaning system that will ensure compliance with the Waste Incineration Directive and the forthcoming Industrial Emissions Directive emission limits. The residual emissions will be strictly monitored to ensure no risk to public health and emissions data will be published on a website.

Outputs and Markets

9. Bottom Ash, the residue from the combustion process will be recycled on site, and be used as a secondary aggregate in the construction industry. Scrap metals will be recovered on-site for recycling.

10. Air Pollution Control (APC) residues (often referred to as 'fly ash') will be transferred off-site to a suitably licensed treatment facility, an out of county hazardous landfill site. Urbaser Balfour Beatty recognise that different options for APC residue utilisation may be considered feasible in the near future providing the availability of users (e.g. cement providers, construction developments).

11. Any remaining non recyclable residues or unacceptable waste such as asbestos received at the facility, which cannot be processed on site will be either sent to a licensed landfill or appropriate reprocessing facility.

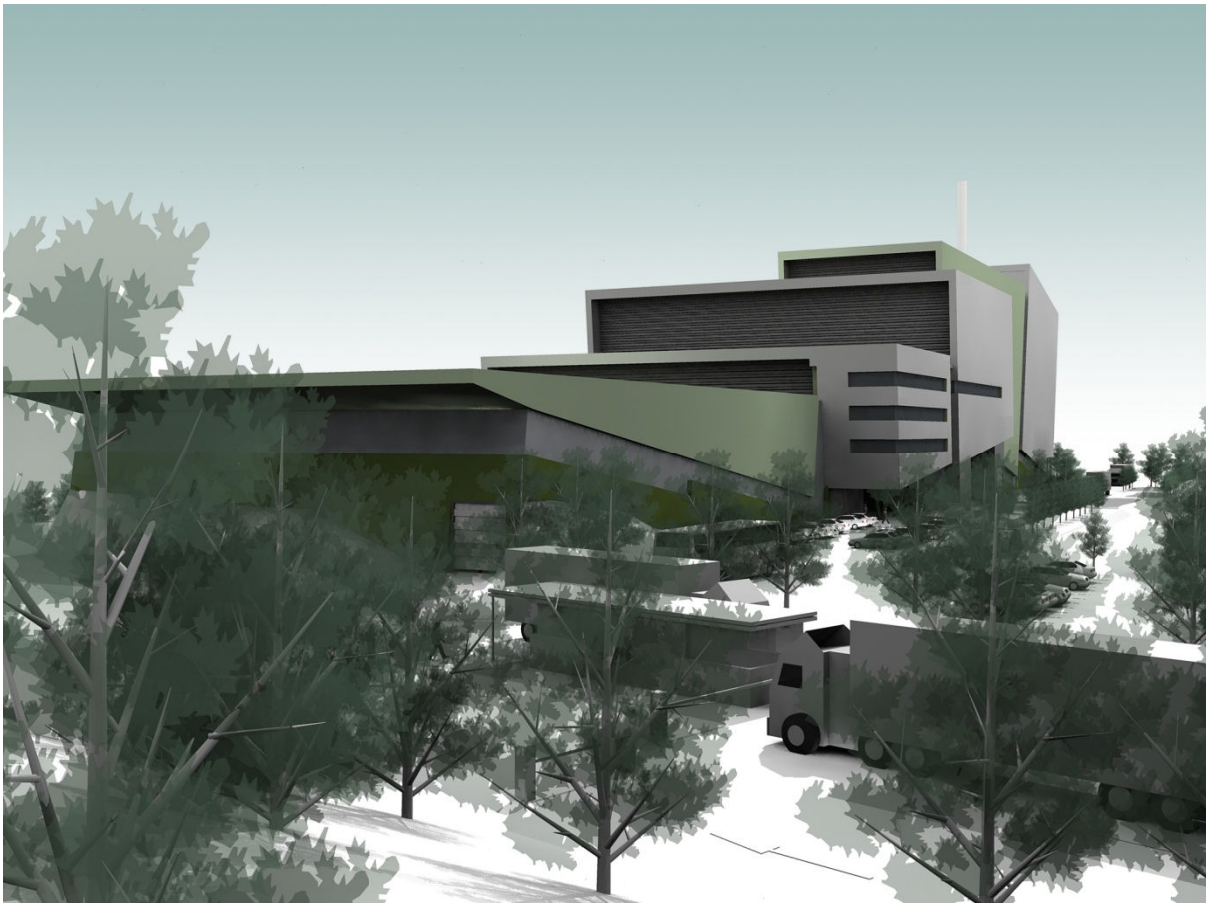
Sustainability

12. Urbaser Balfour Beatty has proposed that the solution will achieve high quality civil engineering and will obtain a CEEQUAL[7] 'Excellent' rating and a BREEAM[8] 'Very Good' rating. These are assessments used to measure overall sustainability of building developments. The proposed design incorporates Sustainable Urban Drainage Systems. The design also includes maintaining and enhancing the existing stream and the wildlife corridor.

13. The proposed solution contributes positively to reducing its impact on climate change when compared to continuing to landfill.

Design and Layout

Fig D2.Artist's impression of Urbaser Balfour Beatty facility.



[7] Civil Engineering Environmental Quality Assessment and Award Scheme
[8] Building Research Establishment Environmental Assessment Method

Fig. D3 Plan of the Urbaser Balfour Beatty facility

Jobs

14. The project will create the equivalent of 43 full time jobs during operation and about 300 jobs during construction.

Community

15. The facility will also include a visitor centre and wildlife area for use by all members of the community. In addition Urbaser Balfour Beatty will facilitate a community liaison group for local residents.

Timeline

Milestone	**Date**
Works period	February 2013 to June 2015
Commissioning period	May 2015 to October 2015
Service commencement date	November 2015

Annex E

Contract Summary

1. This section gives an overview of the contract which is based on the standard Defra contract for waste projects.

Length of Contract

2. The contract will cover the period whilst the facility is constructed and commissioned (approximately 3 years), and a 25 year service period from the date that the treatment service starts. However, the council will not pay the unitary charge until waste begins to be delivered for treatment. The council will repay the significant investment that the contractor will have made to build the facility over the life of the contract. A contract term of this length is used for large waste contracts as it allows the council to repay the financing costs over a longer period of time, in much the same way as a mortgage, and therefore helps the council's affordability position.

3. The contract will be between the council and a special purpose vehicle (SPV) with guarantees and warranties as outlined in the commercial structure for each bidder shown as Annexes C and D. The contractor will set this up specifically to build and operate the facility.

Acceptance of Waste

4. The facility will be designed to treat residual waste collected at the kerbside and from the household recycling centres which the facility will be required to accept. However, there are a limited number of materials that are not suitable for treatment in an EfW facility, for example, asbestos, and the contract sets out what these are and the protocol for dealing with them should they be delivered.

Pay and Performance

5. In common with contracts of this type the payment and performance mechanism is based on the principle of 'no service no payment'. The contractor is paid for each tonne of waste accepted and processed and there are incentives to ensure that landfill diversion targets are met and the contractor can also receive additional payment if the amount of waste landfilled is decreased.

6. The contractor will receive 'non acceptance deductions' if it fails to accept waste in addition to the loss of the tonnage payment. This covers any additional costs to the council for diverting the waste.

Performance Measurement Framework

7. The contract will set out the council's requirements for treating residual waste and how the contractor's performance will be monitored in a performance measurement framework (PMF). The PMF will include a range of measures; for example key operational data including emissions, vehicle turnaround times, cleanliness of the site, availability of the visitor centre, and service reporting. Failure to achieve agreed standards in the PMF will result in deductions from the unitary charge, and therefore incentivises the contractor to achieve good performance. Continued poor

performance can ultimately result in termination of the contract. Performance failures are categorised from A to E (depending on the severity of the failure) and deductions are made either per occasion or when the failure has not been rectified within the permitted period.

Calorific Value (CV) risk

8. The calorific value (CV) of the waste determines the speed at which the waste can be combusted by the EfW facility and the amount of electricity that is produced. Every Energy from Waste facility will have its own firing diagram (a diagram which shows the relationship between CV and the tonnage of waste that can be accepted). This diagram shows an optimum point (design point) in relation to tonnage and CV and the contractor will try and operate the facility around this point for the facility to be at its most efficient with regards to energy production. Therefore, if waste with a lower CV is sent to the facility, the contractor will try to blend this with waste of a higher CV to achieve the design point (and the greatest energy production), and vice versa.

Supervening Events

9. The contractor undertakes to ensure Service Commencement by a fixed date, however there may be circumstances in which the contractor should fairly be relieved from liability for failure to commence or provide the service. When a contractor is relieved from this liability it is known as a supervening event.

10. There are three types of supervening events:

    Compensation events – which are at the council's risk and in respect of which the contractor should be compensated. These are extremely limited, for example, failure by the council to offer the County's residual waste to the contractor.

    Relief Events – events in which the contractor bears the financial risk but there are no rights of termination for the council e.g. fire, strikes and failure by a utility provider.

    Excusing clauses – where the contractor bears part of the financial risk but is limited to closure of the facility on agreement of the council, e.g. implementation of a change in law and where the council declares an emergency.

Third Party Income

Electricity

11. In the event that the electricity output falls below the guarantee the contractor will make a payment to the council. If the contractor exceeds the guarantee then any additional income will be shared 50:50.

12. The council is investigating the prospect of purchasing the electricity from the facility under a "netting off" arrangement. This would mean the council buys the electricity at wholesale price and in doing so saves on electricity costs. Any surplus would be sold either to the grid or to other users. The council is in discussions with other public

sector users who would be provided with a renewable and price stable form of electricity. The risk of giving correct forecasting data to an electricity off taker will be borne by the bidder. The council does not guarantee power production to the off taker. It should be noted that the council has taken a conservative view of generating this additional saving and this potential gain is not contained within the business case.

Termination

13. Termination is generally considered an unlikely risk and has only happened on one closed PFI project in the UK to date. Two of the main termination scenarios are:

    a. For contractor default the council has been able to negotiate a re-tendering position which means that if a contractor fails to perform, the service will be re-tendered and a new contractor brought in. In such circumstance the price the council pays remains the same but any rectification needed is adjusted within the purchase price paid by the incoming bidder. If no one bids then the council effectively gets the facility free of charge.

    b. Under a force majeure termination, because of the failure to obtain planning, the council will be liable for capped costs relating to hedges, redundancy costs and any pre planning expenditure but excluding bid costs.

Change of Law

14. The contractor must comply with all applicable legislation. A failure to comply could give rise to an event of termination for Contractor Default. The cost of complying with legislation which is current or foreseen at the time of the contract is built into the price the contractor bids to provide the service. Nevertheless, the contractor may not, for example, be capable of including in the price specific costs arising from changes in law which are not foreseeable prior to contract signature.

15. Contractors have in the past expressed concern that change of law is a risk which they cannot control and which they regard as being within the control of the council or wider Government. In practice, however, many authorities (particularly local authorities) have negligible influence over legislation whereas the private sector has traditionally proved adept at managing the effects of changes of law and minimising their impact on their business. Hence it is appropriate for the contractor to share in the risk.

End of Contract

16. The facility will revert to the council at the end of the contract term.