

## Residual Waste Project – Award of the contract for the treatment of residual waste

<b>Cabinet Date</b>	12 <sup>th</sup> September 2012
<b>Finance and Change</b>	Councilor Ray Theodoulou
<b>Key Decision</b>	Yes
<b>Background Documents</b>	<p>To approve the business case for Residual Waste Procurement, 23<sup>rd</sup> April 2008.</p> <p>Residual Waste Contract – Competitive Dialogue Evaluation Framework, 19<sup>th</sup> November 2008.</p> <p>Residual Waste Project – Selection of Bidders to be Invited to Submit Detailed Solutions, 16<sup>th</sup> December 2009.</p> <p>Residual Waste Project – Strategic Re-appraisal, 16<sup>th</sup> March 2011.</p> <p>Residual Waste Project – Selection of Preferred Bidder, 14<sup>th</sup> December 2011.</p>
<b>Main Consultees</b>	Waste Project Board, Environment Overview and Scrutiny Committee, Gloucestershire Waste Partnership and stakeholders including Gloucestershire residents through the consultation exercise in summer 2008.
<b>Planned Dates</b>	Service commencement – spring 2016
<b>Divisional Councilor</b>	All
<b>Officer</b>	<p>Peter Jones, Deputy Chief Executive (01452 426347; peter.jones@gloucestershire.gov.uk)</p> <p>Ian Mawdsley, Residual Waste Project Lead (01452 425835; ian.mawdsley@gloucestershire.gov.uk)</p>

<b>Purpose of Report</b>	To award a contract for the treatment of residual waste.
<b>Key Recommendations</b>	<p><b>The Cabinet is RECOMMENDED to award the contract for the treatment of Gloucestershire's residual waste to Urbaser Balfour Beatty and:</b></p> <ul style="list-style-type: none"> <li>i. to authorise entering into the contract with Urbaser Balfour Beatty;</li> <li>ii. to delegate authority to the Deputy Chief Executive in consultation with the s.151 Officer and Monitoring Officer as well as the Cabinet Member for Finance and Change to execute the contract in accordance with the council's Contract Standing Orders and Financial Regulations and conclude any minor amendments and changes needed to effect the execution and protect the council's contractual and financial position;</li> <li>iii. to authorise the use of the Strategic Waste Reserve to support the project funding; and</li> <li>iv. to authorise the Strategic Finance Director to issue</li> </ul>

	<b>a certificate under the Local Government (Contracts) Act 1997 (the Certificate).</b>
<b>Resource Implications</b>	Resource implications remain within the resources and affordability approved by Cabinet on 23 <sup>rd</sup> April 2008 and within the approved Medium Term Financial Strategy budget. Applying the Strategic Waste Reserve to assist funding the project is the most prudent use of these earmarked funds, as it reduces the contractor's requirement to borrow from banks, therefore reducing the overall costs of the project. There is an increased cost risk in the event the project does not proceed.

## Background

1. Continuing to landfill is neither environmentally nor financially sustainable. The diversion of waste from landfill is essential to meet the EU targets for limiting the amount of biodegradable municipal waste (BMW) that is landfilled. It is essential to reduce the amount of methane gas produced through landfilling. Methane is a greenhouse gas over 20 times more powerful than carbon dioxide in terms of its 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, has risen from £18/tonne in 2005 and is set to reach £80/tonne by 2014.
2. The procurement has been shaped from the outset by the Gloucestershire Joint Municipal Waste Management Strategy (JMWMS). This is a proactive strategy which looks at the whole municipal waste stream and has the waste hierarchy at its core. The council and the district councils are delivering new collection services and waste infrastructure that is increasing recycling and composting and is helping to reduce the amount of waste going to landfill. Gloucestershire achieved a recycling and composting rate of 47% in 2011/12. This currently places Gloucestershire in the top quartile<sup>1</sup> of waste disposal authorities in England for waste recycling and composting performance. The aim of the JMWMS is to achieve 60% recycling by 2020.
3. In addition the council has an aspiration to achieve a 70% recycling rate by 2030 by further increasing kerbside recycling, which includes the collection of food waste. This would be treated using technologies approved under the government's Waste Policy Review<sup>2</sup>. This would still leave the remaining 30% - 40% for the council, as the waste disposal authority (WDA), to dispose of over the next 25 years.
4. To divert waste away from landfill in accordance with the Gloucestershire JMWMS, the council has provided infrastructure to recycle food and garden waste and provided financial incentives to the district councils to collect recyclable and compostable materials, and in addition, the council has been procuring a residual waste treatment contract. This followed a detailed technology appraisal in 2007, leading to the submission of an outline business

<sup>1</sup> Based on 2011/12 'N192' recycling performance for all English Authorities (unaudited data)

<sup>2</sup> Government Waste Policy Review in England 2011 (Defra), and Anaerobic Digestion Strategy and Action Plan. 2011 (Defra and DECC).

case, which was approved by the Cabinet in April 2008. This in turn led to a successful bid for Private Finance Initiative (PFI) credits to Defra, which required the purchase of a parcel of land at Javelin Park. In January 2009 the contract was advertised in the Official Journal of the European Union (OJEU). This was subsequently followed by a successful industry day in February 2009. Bidders were asked to put forward a solution for Gloucestershire's residual waste, diverting it from landfill using a closed loop solution, which was environmentally and economically deliverable. Further detail giving the context and history of the project can be found in annex 1.

5. Unfortunately in October 2010 the council was one of a number of local authorities who lost their PFI credits as part of the Comprehensive Spending Review. Defra did however acknowledge that a need remained to find a solution to Gloucestershire's landfill problem. The project underwent a strategic review which assessed whether the outline business case remained valid specifically with regard to the requirement and affordability and whether any new technologies had emerged which had not been part of the original appraisal. The outcome of the strategic review demonstrated that the outline business case remained valid, the technologies proposed still represented an effective solution, no new technologies had emerged, and that the procurement should continue. This conclusion was approved by the Cabinet in March 2011.
6. In December 2011, the Cabinet agreed the selection of Urbaser Balfour Beatty (UBB) as preferred bidder, and since then a process of clarifying and confirming commitments in the proposed contract has been ongoing. The purpose of this report is to explain the nature of the proposed contract and its financial implications including the allocation of risk between the council and the contractor, and to recommend the award of the contract to UBB.

### **Residual waste requirement**

7. Residual waste tonnages and their associated rate of annual growth have varied in recent years. This has been as a result of both the economic downturn and service changes which have allowed the residents of Gloucestershire to recycle more. Waste growth rates have varied between -4.8% and +6% in the last 10 years. In 2011/12 Gloucestershire produced 280,205 tonnes of municipal waste of which 154,630 tonnes of residual waste was disposed of to landfill.
8. The outline business case in 2008 included a forecast for residual waste tonnage of around 175,000 tonnes by 2039/40. The WDA has continually challenged the waste tonnage forecast since project inception. This has seen the outline business case requirement reduce from 175,000 tonnes to a nominal 150,000 tonnes of residual waste by 2039/40.
9. The council has continued to critique and refine Gloucestershire's waste tonnages using Defra models, Defra's 'Spending Review 2010 - Changes to Waste PFI Programme' report data and the most recent available trend data for Gloucestershire. This has resulted in a tonnage requirement as outlined in table 1, which also formed part of the Waste Core Strategy (WCS).

**Table 1: Waste Core Strategy Tonnages**

Scenario	2027/28 (tonnes per annum)	2039/40 (tonnes per annum)
Core model based on JMWMS (60% recycling from 2020)	143,000	154,372
WCS inspector's Upper Tonnage Limit (published 3rd September 2012)	145,000	N/A

10. As these tonnage have been published as part of the WCS process they have therefore been subject to public examination. The WDA tonnage forecast range lies within the WCS upper limit identified by the inspector in his report<sup>3</sup> by 2027/28 (the period covered by the WCS).

11. In referring to the current WDA waste forecasts the inspector in his report states:

*"It seems to me that GCC's view of the future MSW scenario is, in general terms, likely to be of the right order. It is based upon an analysis of locally derived data in the context of knowledge about local circumstances, particularly those that would influence the likely effectiveness of planned waste reduction and service change initiatives."<sup>4</sup>*

12. Given the range required, the proposed contract has been designed to be flexible and capable of adapting to the range of tonnages which the WDA has forecast. UBB would use any remaining capacity to treat commercial and industrial (C&I) waste which would enable some of Gloucestershire's C&I waste that is currently being disposed of in landfill to be diverted. Further detail on the residual waste tonnage requirement is found in annex 1.

### Alternative options

13. As previously noted, the strategic review in 2011 concluded that continuing with the procurement was the best course of action for the council (annex 1). The only alternative to awarding the proposed contract would be to commence another project. Given the need to divert waste from landfill for environmental and economic reasons, a new procurement would be required which would take a number of years to complete and cost up to £3M in procurement costs. There would be subsequent delays to facilities becoming operational and the consequential costs of landfill and landfill tax in the meantime. Given that this would also be the council's third residual waste competition in ten years, market confidence would be very low and the council would probably need to underwrite bidders' costs if there were to be any chance of a true competition.

<sup>3</sup> <http://www.goucestershire.gov.uk/extra/wcs-adoption>

<sup>4</sup> Para 28 Waste core strategy inspector's report. <http://www.goucestershire.gov.uk/extra/wcs-adoption>

## **Progress since preferred bidder selection**

14. In December 2011 the Cabinet agreed the selection of UBB as preferred bidder. Since January 2012 the project team have been clarifying and confirming commitments in the final tender submitted by UBB as outlined in this report and its annexes.

## **Technical solution**

15. UBB propose to provide a 190,000 tonnes per annum incinerator with energy recovery facility (energy from waste – or EfW) at Javelin Park. The facility is forecast to treat the council's residual waste each year over the life of the contract (25 years from service commencement). The facility would divert from landfill at least 92% of the residual waste received and would generate 116,000MWhr of electricity per annum, sufficient to power around 25,000 homes. The facility would be combined heat and power enabled allowing for future heat off-take should suitable end users be identified and realised. Further detail on the UBB technology solution for Gloucestershire can be found in table 2 below and in annex 2.

**Table 2: Outputs from the EfW facility**

<b>EfW facility outputs</b>	<b>Description</b>
Electricity	14.5 MW net per hour (116,000 MWhr/annum)
Metals (ferrous and non ferrous)	Approximately 3,100 tonnes per annum, or 1.7% by weight of total waste input
Incinerator bottom ash (IBA)	Approximately 40,000 tonnes or 21.3% by weight of total waste input. Of this, approximately 32,000 tonnes would be recycled (remainder is sent to landfill which is included in residues below)
Air pollution control Residues	Approximately 4,500 tonnes or 2.4% by weight of the total waste input (sent to landfill which is included in residues below)
Total residues to landfill (or possible treatment)	This includes residues from incinerator bottom ash, air pollution control residues and waste that is sent to the facility but cannot be accepted for treatment, for example, asbestos and tyres

## **Programme**

16. UBB's current programme indicates that the detailed design, construction, and commissioning of the facility would take 38.5 months. This currently means that if planning permission were granted late in 2012 the facility would become fully operational in 2016, following commissioning.

## **Analysis of the contractual position**

17. A detailed analysis of the nature of the contract and the commercial principles underlying it are outlined in annex 3. The underlying principle is that risks should be taken by the party best able to manage them. The contract has been based on HM Treasury's Standardisation of PFI Contracts version 4 (SoPC4) and the derogations approved by Defra for waste projects.
18. The contract would be for 25 years from the date of service commencement. This length ensures that the life of the underlying asset is matched by the borrowing ensuring the project is affordable for the council. This is a standard length of contract for infrastructure projects of this type and scale.
19. The council would pay for the services on the basis of a unitary charge, i.e. a price per tonne against which deductions can be made for poor performance. The underlying principle is 'no service – no payment'.
20. The contractor would be taking the risks associated with the design and construction of the facility and any latent defects that occur in service. The contractor would also retain liability for any decontamination of the site and decommissioning of the facility should that be required at the end of the contract (as opposed to handover to the council). During the operation of the facility the contractor would manage the risk of changes in waste composition resulting from consumer behaviour, changes in calorific value, failure to meet performance standards and non-availability of the facility. Any costs associated with architectural enhancements required by the planning permission would be met by the council and could affect the unitary charge. The cost of obtaining consents including the application process and appeal (up to a capped sum) would be met by the contractor and included in the financial model.
21. The council would take the risk of having insufficient waste to provide by committing to a base tonnage. This is common for projects of this type and is set at a level significantly below the WDA forecast. Should the council fail to deliver this tonnage it would have to pay as though it were making use of this capacity. This can be mitigated by the opportunities provided by Gloucestershire's C&I waste.
22. A number of risks would be shared between the council and the contractor. Demand risk (the risk on the facility's income) is shared and UBB has guaranteed a certain level of third party (commercial) gate fees. Income above the guarantee would be shared with the council on an equal basis. The costs of changes in legislation are a shared risk. Planning is a shared risk and the council would be responsible for the costs of this up to a cap in the event that planning is not ultimately obtained. These costs are detailed in exempt annex 4.
23. UBB would guarantee to produce 116,000 MWhr of electricity per annum. The council would bear the associated price risk of this electricity. This is considered

to be a minimal risk in the short to medium term given the forecast trends for energy prices. As well as the income it provides, which has been taken account of within the unitary charge, it also provides a hedge against future electricity price increases above the rate of inflation such that as the cost of electricity for the council rises so there would be a compensating rise in the council's electricity income. The council would gain all the upside benefit of any electricity sold. The council also plans to enter into a 'netting off' arrangement with a power company which would allow it to consume some of this electricity at a favourable price when compared with purchasing it from electricity suppliers. The council's usage is currently around 60,000 MWhr per annum (including schools) and any surplus could be sold off to other public sector bodies. This approach has been endorsed by the Government Procurement Service.

24. The council has taken advice throughout the procurement from the project's external advisors who include Defra, RPS, Ernst & Young LLP, and Eversheds LLP as regards whether the proposed contract award offers both sound technical and business sense, and is competitive with current offers elsewhere in the UK.

## **Resource implications**

### *Value for money*

25. A competitive procurement process is the way in which the public sector aims to achieve Value for Money (VfM) in its procurement activities. HM Treasury advises that strong competitive tension throughout the procurement ensures that participants deliver their best price and therefore deliver VfM. Initially eight companies submitted outline solutions and this was finally reduced to a point where two companies were asked to submit refined solutions. UBB were selected as preferred bidder using the agreed evaluation criteria which were notified to the bidders prior to their bid submission. The contract which is being proposed closely follows SoPC4 and as such represents a reasonable allocation of risk between the council and the contractor. On this basis the procurement has been able to demonstrate that it has been carried out in a manner which should deliver VfM.
26. As part of the selection of preferred bidder, a VfM assessment was undertaken to compare the final tender submitted against the cost of continuing to dispose of residual waste to landfill. The assessment included all costs associated with the treatment solution and continuing to landfill waste, including the cost of landfill, landfill tax, haulage and transfer. This assessment has been repeated and the result is set out in exempt annex 4. In addition UBB's price has been compared with a 'should cost' model of a similar facility and this again shows that the bid is competitive.
27. In addition, in order to try to reflect the respective risks and potential for changes to costs and income, a number of sensitivities were run on both the cost of UBB's bid and also the 'do nothing' case (continuing to landfill) to understand the level of risk and provide a range of potential costs under each of the scenarios. The sensitivities were performed on the following factors:
  - a. Changes in waste volumes.
  - b. Changes in electricity income.

- c. Delay in planning determination.
- 28. The sensitivity assessment demonstrates that taking into account the potential downside risks associated with each scenario, the contract with UBB still represents VfM. Further detail of the sensitivities run is included in exempt annex 4.

#### *Affordability*

- 29. The contract is affordable within the Medium Term Financial Strategy as shown in exempt annex 4 and within the affordability limit originally set by the Cabinet on 23 April 2008, which has been adjusted to reflect the latest tonnage forecast.
- 30. The capital investment would be funded by a consortium of banks; each bank would make an equal contribution. The length of debt would be around twenty three years leaving a debt free (or tail) period of two years. UBB have demonstrated that funding is available for this project.
- 31. A bank-funded project means that the project would be subject to a high level of technical, legal and financial due diligence prior to contract award. It also means that in the event of continuing poor performance the banks are incentivised to step-in in order to protect their investment.
- 32. Given the current uncertainty in financial markets which has increased the cost of borrowing, officers have explored the opportunity to make a contribution. The benefit of this contribution would be to reduce the amount funded by the banks resulting in an additional saving on the overall project cost. With regard to funding the project, an opportunity has become available in that the recent government Waste Review has announced the ending of the Landfill Allowance Trading Scheme (LATS) in England after the 2012/13 scheme year. The LATS scheme aimed to reduce BMW sent to landfill to 35% of 1995 levels by 2020 to ensure that the government meets the requirements of the EU Landfill Directive. Each waste disposal authority is able to determine how to use its allocation of allowances in the most effective way. It is able to trade allowances with other authorities, save them for future years (bank) or use some of its future allowances in advance (borrow). Under this scheme, the council was allocated a fixed number of allowances (tonnages) each year up to 2020.
- 33. The Strategic Waste Reserve was established in 2008 to enable the council to purchase LATS certificates and thus avoid fines. A review of the council's LATS position has been undertaken to explore opportunities of funding a contribution to the project. Remaining LATS liabilities is estimated to be in the region of £0.5M, leaving £13M from 2013/14 available to fund the residual waste project. Given that HM Treasury is now intent on using landfill tax as the main policy tool to incentivise the move away from landfill this would seem logical.
- 34. Given the current uncertainty in financial markets which has increased the cost of borrowing, officers have explored the opportunity to use the £13M in the Strategic Waste Reserve for the residual waste project. Detailed analysis has been carried out by the council's financial advisers and this shows that this would generate an additional annual saving over the life of the project. This is shown in exempt annex 4. This is net of any opportunity cost, i.e. the interest the council would earn on the reserve. The s.151 officer believes that this would be

a prudent use of funds by making use of the reserve rather than requiring the contractor to borrow from the banks which would increase the cost of the project.

### **Planning and contract close**

35. Planning has always been identified as a key risk for the project. UBB submitted its planning application on 31<sup>st</sup> January 2012.
36. Planning consent would be required before any facility could be built. The council, as the Waste Planning Authority (WPA), would determine the planning application unless it is called in by the Secretary of State or subject to an appeal. The planning determination and procurement processes are kept entirely separate, with the Cabinet taking decisions on the procurement process and the Planning Committee determining the planning application.
37. Planning decisions are made on planning grounds and any application should be determined in accordance with the adopted Development Plan (comprising local and regional policies) unless material considerations (including emerging development plan policies, national and European policy and any overriding and demonstrable 'need' for the development) indicate otherwise.
38. Recently the Gloucestershire Waste Core Strategy was subject to independent examination in public by an inspector appointed by the Secretary of State for Communities and Local Government. The inspector's report on the Waste Core Strategy was published on 3<sup>rd</sup> September 2012. Comments made by the inspector that could materially impact the planning application would be addressed by UBB who would set out any additional mitigation considered appropriate as part of their planning application.
39. As stated above, UBB has submitted its planning application which has now been validated and registered which means the planning process has begun. In the event that either the application is called in by the Secretary of State under section 77 of the Town and Country Planning Act 1990, or the WPA refuses to grant planning permission or, the WPA grants permission which does not comprise a satisfactory planning permission<sup>5</sup> in accordance with the contract, then UBB would take the advice of leading counsel as to the merits of pursuing any appeal proceedings. If counsel advises that there is a reasonable prospect of success then UBB would institute proceedings subject to the approval of the council. The costs of taking proceedings and gaining counsel's opinion are covered by UBB up to a certain level and then substantially by the council.
40. If both parties conclude it would not be possible to obtain satisfactory planning permission then the council would be able to request that UBB proposes a revised project plan that is able to set out elements such as a revised technical solution, a revised site and the revised costs.
41. If successful planning permission can ultimately not be obtained and the contract is terminated by the council, the council would be liable to pay a capped sum in compensation as outlined in exempt annex 4. Importantly for contract

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<sup>5</sup> Satisfactory planning permission is defined in the contract as one that meets a series of test including not requiring agreement of a third party, a requirement to carry out off site works and expenditure and something that renders the contractor unable to perform the service.

termination to occur, then the council would have to conclude that there was no reasonable prospect of success in obtaining planning permission. UBB would also be required to demonstrate that all reasonable endeavours have been used (such term being specifically defined for the purposes of the planning provisions) to obtain planning permission. Experience in other counties indicates that whilst the planning process may create delays, it rarely results in contract termination.

42. In reaching a decision to award the contract the Cabinet needs to be mindful of whether the contract is whether to close the contract in advance of the decision on the planning application being determined. It is usual for PFI/PPP waste contracts to be closed before planning consent is secured and the Defra model contract includes drafting to inform an appropriate risk share between authorities and contractors in relation to planning risk. This provides certainty of the funding and the terms of that funding, and fixes the costs of capital expenditure subject to agreed indexation.
43. In comparison, if contract close were delayed until after planning permission had been achieved, the council would not have certainty about key costs including increases in funding costs and/or increasing prices from the suppliers. Increased costs would be payable over the life of the contract, which may be a significant amount compared to the costs payable in the unlikely event of contract termination due to an inability to obtain satisfactory planning permission. In conclusion, the project team and advisors consider that the contract provides VfM now and compares well against other similar procurements. There are significant risks and uncertainties associated with delaying contract close which are considered to outweigh the cost of termination should planning permission not be achieved.

### **Environmental and health implications of EfW**

44. 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<sup>6</sup>. The treatment facility would 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 would not allow anything that is unsafe. Modern monitoring techniques mean that continuous monitoring of gas emissions is now standard and this information would be made readily available to the public via the internet.
45. The health implications of EfW facilities 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% of UK dioxin emissions. (HPA Response to the British Society for Ecological Medicine Report). The HPA have produced a

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<sup>6</sup> Confederation of European Waste to Energy Plants 2009.

position statement<sup>7</sup> on EfW which is available on their web site<sup>8</sup> which states that “Incinerators that are well run and regulated do not pose a significant threat to public health”.

## **Environmental benefits**

46. The wider environmental benefits of the JMWMS and entering into the contract have been discussed in previous reports to the Cabinet. Of particular significance is the continuing improvements in recycling and composting performance, investment in new infrastructure and collection services, and the level of diversion that this contract would deliver make a significant contribution in working towards zero waste to landfill. It would move waste up the waste hierarchy from disposal to recovery helping to deliver the Gloucestershire JMWMS.
47. Recovering energy from waste supports the low carbon agenda including the delivery of the Gloucestershire Sustainable Energy Strategy and the council's Climate Change Strategy. The council's own analysis using WRATE (waste and resources assessment tool for the environment) demonstrates that technologies that produce electricity perform well in terms of carbon reduction potential compared to continuing to landfill. Based on UBB's own WRATE analysis, the solution would help to reduce reliance on fossil fuel energy and avoid landfill, giving the net reduction of just over 40,000 tonnes of carbon dioxide (CO<sub>2</sub>) equivalent annually<sup>9</sup>.
48. UBB's facility would apply for R1 coefficient status under its environmental permit application which means it would be recognised as a recovery rather than a disposal facility.

## **Summary of Benefits**

49. The main benefits of the proposed solution and contract are:
  - a. The proposed solution forms an integral part of the integrated waste management operation for Gloucestershire, treating the 30% to 40% residual waste left over having reduced, reused and recycled.
  - b. The council would be protected from the rising cost of landfill and energy prices which would avoid an additional whole life cost of up to an estimated £190 million.
  - c. Over 92% of residual waste would be diverted from landfill which would avoid the production of methane (a greenhouse gas over 20 times more powerful than carbon dioxide).

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<sup>7</sup> The Impact on Health of Emissions to Air from Municipal Waste Incinerators RCE 13  
[http://www.hpa.org.uk/webc/HPAwebFile/HPAweb\\_C/1251473372218](http://www.hpa.org.uk/webc/HPAwebFile/HPAweb_C/1251473372218)

<sup>8</sup> <http://www.hpa.org.uk/NewsCentre/NationalPressReleases/2009PressReleases/090903Airpollution/>  
<sup>9</sup> Taken from the UBB planning application submitted to the WPA

- d. The proposed solution would reduce the effects of climate change, significantly reducing the CO<sub>2</sub> emissions when compared to continuing to landfill residual waste.
- e. Electricity will be generated (equivalent to that required to power 25,000 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.
- f. Heat could be provided to both commercial and domestic users as a renewable and price-stable source of energy.
- g. Incinerator 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.
- h. About 300 new jobs would be created in construction and around 40 jobs over the period of the service of 25 years.

### **Equality impact assessment**

50. An equality impact assessment has been undertaken and this is included at annex 5. The main conclusion is that the council has no reason to believe that the proposals would have any greater or lesser impact on people sharing any of the nine characteristics.

### **Jobs and economy**

51. The contractor would create around 300 jobs in construction and about 40 full time jobs during the 25 years of operation. There would also be apprenticeship opportunities during construction and operation. There would be a guaranteed interview for jobs at the facility for Gloucestershire residents meeting the person specification.

### **Local Government (Contracts) Act 1997 Certificate**

52. It is a requirement of the contract that a certificate under the Local Government (Contracts) Act 1997 be delivered to UBB. The Act was passed in order to overcome lenders' fears that contracts entered into by a local authority could subsequently be ruled "Ultra Vires" or outside the powers of that local authority leaving the banks and the contractor without any remedy for any losses they might suffer as a result. The Act provides a procedure for local authorities to certify that they have the authority to enter into a contract and for the contractor and any funders of that contractor (in this case, UBB) to rely on the certificate. The effect of the certificate is that in the unlikely event that the court were to set aside the contract on the basis that it was outside the local authority's powers, then this is treated as an authority default giving rise to an obligation on the part of the authority to pay compensation.

## **Next steps**

53. If the Cabinet accepts the recommendation to conclude the procurement and award the contract, following the completion of the scrutiny process, the contract award notice would be published in accordance with the Public Contracts Regulations 2006 and would be followed by a ten day standstill period before the contract could be signed. The intention would be to complete the contract award in October/November. In the meantime any remaining confirmation and clarification of the contractual commitments would continue and would particularly focus on ensuring harmonisation of the legal drafting across the contract documentation including inserting details that can only be provided at contract close such as interest rates, exchange rates and bank margins. To allow a limited amount of flexibility for this process to be completed the Cabinet is requested to delegate authority to the Deputy Chief Executive in consultation with the Cabinet Member for Finance and Change and the council's statutory officers to approve minor amendments to the contract and any ancillary documents which do not modify substantial aspects of the contract or the commercial agreement with UBB as outlined in this report.
54. Subject to gaining planning approval, the facility would be expected to become operational in 2016.
55. The Cabinet is RECOMMENDED to award the contract for the treatment of Gloucestershire's residual waste to Urbaser Balfour Beatty and:
  - i. to authorise entering into the contract with Urbaser Balfour Beatty;
  - ii. to delegate authority to the Deputy Chief Executive in consultation with the s.151 Officer and Monitoring Officer as well as the Cabinet Member for Finance and Change to execute the contract in accordance with the council's Contract Standing Orders and Financial Regulations and conclude any minor amendments and changes needed to effect the execution and protect the council's contractual and financial position;
  - iii. to authorise the use of the Strategic Waste Reserve to support the project funding; and
  - iv. to authorise the Strategic Finance Director to issue a certificate under the Local Government (Contracts) Act 1997 (the Certificate).