

Lancashire Waste: Not to be repeated

01/04/2007

One of the largest UK waste PFI schemes and the fourth to reach financial close in the past six months – the Lancashire waste deal features an unusual level of local authority involvement in the planning procedure and financial close came much later in the planning process than the norm on UK PFI waste deals.

The 29-year concession for the £2 billion (over the life of the concession) scheme was awarded to a joint venture between Global Renewables Ltd – the Manchester-based subsidiary of Australian engineering and development group, GRD Limited – and contractor Bovis Lend Lease.

The sponsors secured a debt package of £320 million over 25-years. The lead arrangers are Bank of Ireland, NIBC, Bayerische Hypo-und-Vereinsbank, Lloyds TSB Bank and Commonwealth Bank of Australia. The margin on the debt is around 120bp. Both project sponsors contributed 50-50 to £52 million of equity.

Lancashire County Council itself sought planning consents during the preferred bidder stage and insisted on clauses in the project documentation for 'all reasonable' assistance by the project company to acquire the necessary planning consents and the ability for the authority to default upon failure to get the requisite consents. It was also solely left for the project company to acquire the waste management licenses.

Despite the authorities' insistence on these terms, lenders are mitigated from planning risk through a clause negotiated by their legal team – Lovells – that sets the assessment of a default condition some way in the future.

It is understood PUK will not be putting the project forward as a template to copy. One negative from a due process perspective is that the authority is both an interested waste partner and (albeit with Chinese walls between departments) arbiter of planning consents.

The project, supported by £90 million of PFI credits, incorporates two waste processing sites at Leyland and Thornton capable of processing some 600,000 tonnes of household waste per year. The project company will treat waste collected by 15 district councils on behalf of Lancashire County Council and Blackpool City Council.

The sites will be processing waste with mechanical biological treatment technology using Global Renewable's UR-3R technology. The scheme includes recycle separation, processing handling and despatch and enclosed composting/anaerobic digestion, in order to maximise recovery rates from the waste and minimise the amount of waste sent to landfill. The organic portions of the waste are turned into renewable energy and a high quality compost suitable for woodland or energy crop planting, together with land reclamation and remediation.

Construction will start in mid-2007, with the first of the two plants expected to become fully operational in 2010.

To boost its green credentials and have a positive environmental and social impact the project also incorporates the planting of 2.5 trees and an educational centre for school children. Despite the environmental advantages and less controversial nature of the mechanical and biological treatment process (MBT) of landfill reduction over incineration, UK waste projects continue to be politically sensitive at the local level.

A local action group of nearby residents has brought judicial review proceedings based on procedural issues relating to

the granting of planning consent on the Leyland site. The authority is likely to defend the action, and the project company has lodged an application to be an interested party in the proceedings to help the authority defend the action and 'use all reasonable efforts to assist' under the terms of their agreement.

Local residents to the Leyland site claim the scheme will create extra traffic, they will suffer smells and that it is too close to their homes. Lancashire County Council has rebutted these claims stating that smells would be minimized because lorries would unload behind closed doors and that the plans include extensive screening and landscaping.

Project participants are confident that the judicial review will be surmountable. If the Leyland component is removed from the scheme a revised project plan will be put in place on a 'no better-no worse' basis. If both Leyland and Thornton sites (the latter has made an application for its consent that has not yet been granted) are the subject of a judicial review ruling in favour of the protestors, then the project company and lenders will be protected by force majeure.

Putting together the deal was a sizeable legal challenge. The sponsors, lenders and awarding authority had to surmount detailed negotiations regarding the role and responsibility of the preferred bidding in the planning process and negotiations regarding default events and termination liabilities.

A team of 15 from Addleshaw Goddard advised the Global Renewables-Bovis Lend Lease consortium. The lenders received legal advice from Lovells, and Walker Morris acted for Lancashire County Council.

The Lancashire Waste deal is the fourth UK deal to close in quick succession, the others being the Northumberland, Cornwall and Nottinghamshire schemes. Lancashire stands out from these schemes in that the others followed the more conventional route of the authority awarding preferred bidder status and then letting the private consortium obtain the requisite planning permissions.

It seems certain that the sponsors and PUK will chalk the Lancashire deal down as experience and it is unlikely that in future an awarding authority will take such a proactive role in the planning process at such an early stage.

Next in the market is the Viridor-Laing sponsored Manchester waste PFI scheme, backed by NIB Capital and Bank of Ireland. The scheme is likely to have an initial capex requirement of around £300 million and the contract could be worth up to £3 billion over the duration of the concession.

Lancashire Waste PFI

Status: Financial close 5 March 2007

Description: £320 million financing for two MBT waste sites in Lancashire, UK

Sponsors: Global Renewables Ltd, Bovis Lend Lease

Lead arrangers: Bank of Ireland, NIBC, Bayerische Hypo-und-Vereinsbank, Lloyds TSB Bank, Commonwealth Bank of Australia

Sponsor legal counsel: Addleshaw Goddard

Lender legal counsel: Lovells

Authority legal counsel: Walker Morris

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