

NOTTINGHAMSHIRE COUNTY COUNCIL

PRIVATE FINANCE INITIATIVE

FINAL BUSINESS CASE TO DELIVER A MUNICIPAL WASTE STRATEGY FOR NOTTINGHAMSHIRE



**Nottinghamshire
County Council**

MAY 2006

Redacted Version 19 May 2008

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11 May 2006

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Dear Simon

NOTTINGHAMSHIRE WASTE PFI - FINAL BUSINESS CASE

Further to our recent correspondence in respect of the above, I have pleasure in enclosing our Final Business Case and appendices for your consideration.

As you know we have worked closely with yourselves and Partnerships UK as a pathfinder project over several months and have now reached agreement with PUK on the various waste specific SOPC3 derogations required.

The project has clearly changed and developed since the Outline Business Case was approved in 2002, however it now delivers not only high level recycling and composting, but also a significant degree of over-performance against the landfill diversion targets set for Nottinghamshire.

The risk transfer remains in line with other PFI projects and in accordance with the profile proposed at OBC, and although capital and revenue costs have risen since this time (generally for reasons outside of our control), the Veolia solution continues to offer Value for Money for the council, remains within our defined affordability envelope, and has now received endorsement from cabinet such that sign off can be achieved as soon as reasonably practicable.

Overall the project offers a high quality service with the development of long term assets, which revert to the council at the end of the contract, providing a stable base for improving and maintaining recycling, composting and landfill diversion rates in Nottinghamshire over the next 26 years and beyond.

Clearly the timescales for your assessment are now very tight if we are to meet the proposed contract close date of 26 May 2006, but I trust that the engagement

and discussion previously undertaken will enable you to progress the approvals process as rapidly as possible.

Given the brevity of the report I have not included an Executive Summary, however, if you feel it necessary, one can be produced in the early part of next week.

In the meantime, should you have any queries or require the detailed financial models please do not hesitate to contact either Malvin Trigg or myself.

I hope the documents meet your needs, and look forward to a useful dialogue leading to financial close before the end of May.

Yours sincerely



Mick Allen
Acting Group Manager Waste Management

Enc.

- c.c. Ron Bates – DEFRA
- Wole Ajibola - DEFRA
- Malvin Trigg - NCC
- Helen Lester - NCC
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- Heather Dickinson – NCC
- John Gray – PUK
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ABBREVIATIONS

AD	-	Anaerobic Digestion
BAFOs	-	Best and Final Offers
BMW	-	Biodegradable Municipal Waste
BPEO	-	Best Practicable Environmental Option
BVPI	-	Best Value Performance Indicators
CRT	-	Cathode-Ray Tube
DCF	-	Discounted Cash Flow Techniques
DEFRA	-	Department of Environment, Food and Rural Affairs
DSO/DLO	-	Direct Service / Direct Labour Organisation
EfW	-	Energy from Waste
EPA	-	Environmental Protection Act
ERF	-	Energy Recovery Facility
EU	-	European Union
FBC	-	Final Business Case
FRS	-	Financial Reporting Standard
HWRC	-	Household Waste and Recycling Centres
ICE	-	Institute of Civil Engineers
ISOP	-	Invitation to Submit Outline Proposals
ITN	-	Invitation to Negotiate
KPI	-	Key Performance Indicator
LATs	-	Landfill Allowance Trading Scheme
MBT	-	Mechanical Biological Treatment
MRF	-	Materials Recycling Facility
MSW	-	Municipal Solid Waste

NCC	-	Nottinghamshire County Council
NNDR	-	National Non Domestic Rates
NPV	-	Net Present Value
OBC	-	Outline Business Case
OJEC	-	Official Journal of the European Communities
PFI	-	Private Finance Initiative
PMSU	-	Prime Minister's Strategy Unit
PQQ	-	Pre-Qualification Questionnaire
PSA	-	Public Service Agreement
PUK	-	Partnerships UK
SOPC3	-	Standardisation of PFI Contracts Version 3
SPV	-	Special Purpose Vehicle
TTF TN1	-	Treasury Private Finance Taskforce's Technical Note 1
VfM	-	Value for Money
WCA	-	Waste Collection Authority
WDA	-	Waste Disposal Authority
WEEE	-	Waste Electrical and Electronic Equipment Directive
WET Act	-	Waste and Emissions Trading Act
WRG	-	Waste Recycling Group
WS2000	-	Waste Strategy 2000

SECTION 3 - STRATEGIC CONTEXT

3.1 Profile of Nottinghamshire County Council

Nottinghamshire County Council (NCC) covers 805 square miles and has a population of 760,000, with 330,000 households. It is the 11th largest local authority in the United Kingdom and is geographically diverse with a mix of rural and urban areas, market towns and villages.

The County Council area is two-tier with 4 Districts (Ashfield, Bassetlaw, Mansfield, and Newark and Sherwood) and 3 Boroughs (Broxtowe, Gedling and Rushcliffe). Each of the seven district and borough council areas in the county has a population of around 100,000. Below is a map to show the Nottinghamshire districts:



The other council in Nottinghamshire is Nottingham City Council, a Unitary Authority with a population of 275,000. The City Council does not form part of this Private Finance Initiative (PFI) procurement process because it has an established contractual arrangement for disposal of the majority of its waste to an existing Energy from Waste (EfW) Plant until 2032.

3.2 Business Case for Partnership Working in Nottinghamshire

In Nottinghamshire, 580,000 tonnes of municipal solid waste (MSW) is produced each year of which 460,000 is managed by the County Council and seven district councils. Of this, 60,000 tonnes is already committed under existing long term contractual arrangements to an existing EfW facility at Eastcroft within the City of Nottingham until 2032, and only the remaining 400,000 tonnes is considered as part of this PFI proposal.

Nottinghamshire County Council (The County) is a Waste Disposal Authority (WDA) with a statutory duty under the Environmental Protection Act 1990 (EPA) and its attendant subordinate legislation to make arrangements for the disposal of Municipal Waste collected by the Waste Collection Authorities (WCA's) in their areas.

Waste in Nottinghamshire is collected by the 7 District and Borough Councils (WCA's), whose functions as waste collection authorities are governed by section 48 of the EPA. The County is required to dispose of all waste delivered to it by the District Councils as Collection Authorities. The collection services are all operated by the Direct Service/Labour Organisations (DSO/DLO) of the council concerned.

Recycling is a top priority to the County and features in the Council's new strategic plan ("All Together Better"), which is currently being drafted. It was also a top priority in the 2001-2005 Strategic Plan "Building a Better Future" under the Council's commitment to "safeguard the natural and built environment, and work for more and better public transport options, better roads, more recycling and less waste".

Overall recycling performance within Nottinghamshire has been very good:

- The County Council's waste management service was rated as "Good with Excellent Prospects for Improvement" in the Audit Commission's Best Value Inspection in 2002.
- Rushcliffe Borough Council is a beacon authority for Waste and Recycling and one of the country's top 6 recyclers.
- Ashfield District Council has moved from a position of recycling and composting only 4% in 2001/2 to around 30% in 2005/6.

Detailed below are the actual performance figures for each District/Borough in the County for the period 2001/2 to 2004/5.

Council	2001/2	2002/3	2003/4	2004/5
Ashfield DC	4.1%	5.4%	12.8%	18.6%
Bassetlaw DC	5.9%	7.2%	14.4%	18.8%
Broxtowe BC	4.6%	10.8%	17.5%	27.7%
Gedling BC	10.8%	14.5%	15.8%	21.1%
Mansfield DC	4.6%	4.5%	8.5%	17.1%
Newark and Sherwood DC	5.8%	6.3%	8%	11%
Rushcliffe DC	10%	16.6%	26.6%	46%

The County has a history of partnership working with the District and Borough Councils and in autumn 2000 published a joint “Draft Municipal Waste Management Strategy for Nottinghamshire”. Furthermore, two joint Boards were established to oversee the implementation of the Waste strategy: a Joint Member Board consisting of the portfolio holder and chief technical officer for each WCA, chaired by the county council cabinet member for Environment; and a Joint Officer Board comprising Senior chief technical officers from the Districts/Boroughs and County Council.

The Councils also worked together to achieve the 2004/05 Public Service Agreement (PSA) stretch target of 27% recycling countywide a year early (which was previously set at 24%). Achievement of this stretch target required a major step change in recycling from many of the WCA’s and twin bin dry recyclable collections have now been introduced across all areas. Several of the Districts received funding from DEFRA for the provision of the additional wheeled bins, and the County Council made further funding available via the PSA pump prime funding to purchase extra bins as necessary.

The County Council also worked alongside the WCA’s to develop and market the twin bin collection regimes via a dedicated Recycling Officer with extensive experience in introducing such systems. This included advising on leaflets and promotional literature, planning and undertaking roadshows, and liaising with the collection workforce to raise awareness and improve customer care. A second Recycling Officer works with businesses, schools and the public to address minimisation and awareness issues at the grass roots level.

In achieving this major improvement over such a short time the partners have shown willingness to: work together towards common aims; and to pool resources and experience to deliver outcomes.

3.3 Waste Management Strategy

In 1999 a report was commissioned to look at existing waste collection and disposal methodology, and consider how this could be improved using best practice from across the United Kingdom and worldwide. This report, by Envirospire Aspinwall, recommended a series of options to help the Partners meet potential challenging recycling and recovery targets in the years ahead.

These options informed the development of a “Draft Municipal Waste Management Strategy for Nottinghamshire”, which following extensive consultation with stakeholders (Contact 1000, District, Borough and City Councils, County Councillors, Parish Councils, community groups, local companies, contractors for the waste industry, Government departments and neighbouring authorities) was adopted as the model for waste disposal in the County in autumn 2000. A copy of this Strategy is included at Appendix 1.

The aims of the Waste Strategy are to:

- Achieve national targets for recycling and recovery,
- Provide a framework for Nottinghamshire Councils to plan and manage waste in an integrated way,

- Promote waste minimisation, increase recycling, composting and reuse of waste,
- Meet the needs of Nottinghamshire residents,
- Secure environmentally acceptable and affordable solutions to waste management.

The key outputs required in delivering the Waste Management Strategy form the basis of this project in addition to other initiatives already in place or being delivered.

3.4 Waste Local Plan

The joint Nottinghamshire and Nottingham Waste Local Plan was adopted in January 2002 and has a plan period which ended on 31st December 2004. However, the Plan will remain valid until replaced by new Waste Development Documents prepared under a new planning system.

The new Waste Development Documents will comprise a Waste Core Strategy, development control and Site specific Document.

- Preparation of the Core Strategy and development control document has now commenced and the first full public consultation exercise on Issues and Options is due to commence in June. Adoption is currently scheduled for November 2007.
- Preparation of the Site specific Document will follow. This document will allocate sites, where possible, to meet requirements set out in the Core Strategy. Adoption of this document is scheduled for May 2008.

The current Waste Local Plan makes site specific provision for a new landfill site at Bentinck in Ashfield and for a third line at the Eastcroft Incinerator in the City of Nottingham. It also contains areas of search (i.e. selected employment areas) for other forms of waste management such as waste transfer stations and Household Waste and Recycling Centres (HWRCs). Criteria policies also exist along with a range of other environmental protection and general waste policies.

3.5 Public perception

Triennially, Nottinghamshire County Council monitor public satisfaction with the HWRCs under BV90c. The Council also chooses to undertake an annual survey to enable improved monitoring and management of customer satisfaction levels. The results of the last 3 years are shown in the table below. The unweighted data shows a slight increase in public satisfaction over the last three years. However, when weighted (to represent the population from which the sample was drawn), there is actually a decline in satisfaction from 82% in 2003/4 to 78% in 2005/6.

Nottinghamshire County Council	2003/4		2004/5		2005/6	
	Unweighted	Weighted	Unweighted	Weighted	Unweighted	Weighted
BV90c	83%	82%	82%	81%	84%	78%

The district and borough councils also monitor public satisfaction with waste collection and recycling facilities under BV90a and BV90b respectively. The 2003/4 results are shown in the table below. The data shows that Bassetlaw, Broxtowe and Gedling have the highest levels of satisfaction.

2003/4	BV90a Weighted	BV90b Weighted
Ashfield District Council	87%	72%
Bassetlaw District Council	90%	76%
Broxtowe Borough Council	90%	72%
Gedling Borough Council	89%	72%
Mansfield District Council	81%	64%
Newark & Sherwood District Council	88%	59%
Rushcliffe Borough Council	75%	68%

In January 2006 satisfaction surveys were carried out at the HWRCs to establish a baseline satisfaction level before the start of the new contract. The survey was conducted by face to face interviews with HWRC users during the last three weekends in January. Interviews were conducted at all 16 applicable sites and in total, 901 HWRC users were interviewed.

Visitors were asked to state how satisfied they were about a number of aspects of their experience that day. The results showed that the majority of visitors were happy with the service they received on the day that they visited, with over 90% expressing their satisfaction with every feature apart from the length of the queues (84% satisfied). When these satisfaction ratings were aggregated, the overall satisfaction was 92%. Regular surveys will be used in the future to monitor the satisfaction levels and to determine service improvements.

3.6 National and European Legislation Overview

Underpinning the local waste management activities is a strategic context defined by various EU and National policy documents:

The National Waste Management Strategy – ‘Waste Strategy 2000’, supports the need for the development of more sustainable waste management processes and sets, amongst other things, specific targets for recycling, recovery and diversion from landfill.

The Best Practicable Environmental Option (BPEO) was the key consideration, encompassing the waste hierarchy and the proximity principle to ensure waste is minimised or treated in an appropriate way and, wherever possible, as close to source as practicable. BPEO evaluation has now been superseded by a sustainability review, although the basic principles remain, and the council remains convinced that the assessment undertaken during the development of

the Nottinghamshire strategy is still valid, although this will clearly be reconsidered through the planning process for the new facilities.

The key national (average) targets within “Waste Strategy 2000” are:

- to recover value from 40% of municipal waste with at least 25% of household waste recycled or composted by 2005;
- to recover value from 45% of municipal waste with at least 30% of household waste recycled or composted by 2010;

The *EU Landfill Directive* defines diversion targets for the biodegradable fraction of municipal solid waste from landfill disposal and set the following targets at Outline Business Case (OBC) stage.

- by 2010 to reduce biodegradable municipal waste (BMW) landfilled to 75% of that produced in 1995
- by 2013 to reduce BMW landfilled to 50% of that produced in 1995
- by 2020 to reduce BMW landfilled to 35% of that produced in 1995

The subsequent introduction of the Landfill Allowance Trading Scheme (LATS) by DEFRA has set specific year on year biodegradable municipal waste (BMW) landfill allocations for Nottinghamshire as follows:

- Reduce the amount of BMW going to landfill to 181,603 tonnes from 226,938 baseline (2001/2) by 2010
- Reduce the amount of BMW going to landfill to 120,960 tonnes from 226,938 baseline (2001/2) by 2013
- Reduce the amount of BMW going to landfill to 84,640 tonnes from 226,938 baseline (2001/2) by 2020

In addition the Prime Minister’s Strategy Unit (PMSU) proposed solutions to the barriers associated with complying with Waste Strategy 2000 and the Landfill Directive under the title “*Waste Not, Want Not*” in 2002.

The Government in its response to this report did “recognise that national recycling rates higher than the current targets are both possible and desirable”, and will review the national targets in 2004 in light of 2003/04 performance.

The targets in the initial report were:

- Recycle 35% by 2010
- Recycle 45% by 2015

Building on this, Defra’s Waste Strategy 2006 consultation proposes the following national recycling and recovery targets up to 2020:

Proposed national targets	2010	2015	2020
Household recycling and composting	40%	45%	50%
Municipal waste recovery	53%	67%	75%

All of these drivers define a framework for maximising waste recycling, as far as is practicable, through recovering materials for beneficial reuse. Where materials cannot be recovered, energy recovery should be maximised. Only then should waste residues be disposed to landfill with appropriate pre-treatment to comply with the requirements of the landfill directive.

The procurement of the PFI waste contract for Nottinghamshire supports all of these strategic documents and forms a local focus to the development of the facilities and services necessary to meet the proposed targets.

3.7 Legal Powers

By virtue of the EPA the County is empowered and indeed bound to arrange for the disposal of waste. Under s 52 and as described in Part II of Schedule 2 of the Act, however, the Disposal Authorities may not dispose of the waste themselves (although they may hold assets for the purpose). Rather, Disposal Authorities must contract with a waste disposal contractor. Disposal Authorities must also provide civic amenity sites for local residents, such facilities being known in Nottinghamshire as Household Waste and Recycling Centres (HWRC's).

In addition to the primary empowering act, the Partners are bound by the duty to secure "*Best Value*" as set out in the Local Government Act 1999 and in the various circulars issued pursuant to it. Most recently the County will be bound to carry out its procurement in accordance with Circular 03/03.

S2 Local Government Act 2000 empowers local authorities to do anything which is not expressly prohibited in another statute and which will promote well-being in their areas. This section is relied on widely by local Government in addition to s 111 of the Local Government Act 1972, but such reliance is unnecessary in this case given the primary power is in the EPA. Nevertheless the partnership between the County and Districts reflects true joint working across a number of agencies in the spirit of the well-being provisions.

The contract let will be certifiable under the Local Government (Contracts) Act 1997 and the tendering procedure has been carried out following the statutory process detailed in Section 10.1

SECTION 4 - DELIVERING THE PROJECT OBJECTIVES

4.1 Original Project Objectives

The project aims to address the full range of wastes that the Council, in its capacity as a Waste Disposal Authority, has responsibility for with the exception of difficult wastes (e.g. asbestos, clinical/hazardous wastes, abandoned vehicles) and the management of Waste Electrical and Electronic Equipment (WEEE) given the current uncertainty over the statutory obligations of Waste Disposal Authorities in this area.

The Council considered three service delivery options:

- | | |
|----------------------------------|---|
| Option 1 – Status Quo: | Maintaining current levels of service provision and performance, including the levels of investment necessary to halt the deterioration of the service. |
| Option 2 – Meet Current Targets: | Improving performance to meet existing targets as defined by Best Value Performance Indicators (BVPI) and Waste Strategy 2000 (WS2000). |
| Option 3 – Enhanced Performance: | Achieving enhanced and longer term recycling and recovery performance to achieve and exceed targets defined by the Landfill Directive and PMSU. |

Each option was assessed against the following performance indicators:

BVPI targets for the County in 2003/04 and 2004/05 (on a District by District basis).

WS2000 targets: 30% recycling by 2010
 33% recycling by 2015

PMSU targets: 35% recycling by 2010
 45% recycling by 2015

An absolute reduction of MSW sent to landfill on an annual basis from 2007

Landfill Directive Targets: 2010: Reduce biodegradable waste to landfill to 75% of total BMW (by weight) produced in 1995
 2013: Achieve a 50% target
 2020: Achieve a 35% target

Of the options assessed, only Option 3 achieved the highest practicable levels of recycling to meet BVPI, WS2000, PMSU and Landfill Directive targets throughout the life of the project. Option 1 did not satisfy any of the targets and Option 2 did not satisfy any of the PMSU or Landfill Directive targets.

The options were assessed financially using a cost model and discounted cash flow techniques (DCF). The financial assessment gave the following results:

	Option 1: Status Quo (£m)	Option 2: Meet Current Targets (£m)	Option 3: Enhanced Performance (£m)
CAPEX	9.9	15.9	48.2
OPEX	266.6	250.4	209.2
Landfill Tax	150.0	119.6	65.7
Recyclate Revenue	(12.0)	(35.1)	(49.1)
Net Present Cost	414.5	350.7	273.9

Option 3 was chosen as the preferred option in offering for value for money, expressed both in monetary terms and in terms of achievement against waste management targets, and became the reference project.

The assumptions made in that project and detailed in the OBC were:

Kerbside Recycling

It is assumed in the reference project that multi-material kerbside collection of recyclable materials is rapidly expanded to the whole area. The collection profiles for each district are as follows:

Ashfield, Bassetlaw, Broxtowe, Gedling, Mansfield and Newark & Sherwood will make collections of mixed recyclables throughout the project. A collection of glass will be introduced in 2009/10.

Rushcliffe will collect paper and green organic waste throughout the length of the project introducing a collection of organic kitchen waste in 2009/10.

Material capture rates are progressively increased to 69% of targeted materials by 2019/20, reflecting an increase in participation and recovery rates to 90%. This will be achieved by raising public awareness through long term education programmes, effective incentives, and a 'design for recycling' philosophy.

Collected materials are sorted at a Materials Recycling Facility (MRF). The MRF facilities included in option 3 are as follows:

Two 75kTpa facilities at [Calverton and Mansfield] to provide both sorting and bulking facilities. These will be operational from the start of the project.

30kTpa bulking facility at [Worksop]. This facility will be operational from 2009/10.

This gives a total capacity of 180kTpa from 2009/10.

Household Waste Recycling Centres (HWRC)

Material capture rates are progressively increased to 29% of the total input by 2019/20, reflecting an increase in recovery rates over the life of the project to 95%. These increases reflect the improvements made to the standard of the sites via an upgrade programme over the first five years of the project.

Bring Sites

The current levels of bring site recycling are increased in line with household waste growth for the duration of the project.

Organic Waste Collection

Green waste is collected both via HWRC sites and through the kerbside collection in Rushcliffe. It is processed in a covered windrow facility. The project includes a facility with a capacity of 40kTpa, which will be operational from 2004/05.

From 2009/10 the collection is expanded to include kitchen waste collected in Rushcliffe. Since it is highly unlikely that the composting of mixed organic waste could be satisfactorily carried out outdoors (due to the requirements of the Animal By-Products (Amendment) Order) from 2010 the entire kerbside collected organic fraction is to be processed in an in-vessel composting facility in order to meet anticipated regulatory requirements. The reference project therefore includes an in-vessel facility with a capacity of 15kTpa operational from 2009/10.

Other Recycling/Recovery Facilities

These facilities complement conventional kerbside collections, MRF's and composting facilities to enable recycling and recovery to be maximised such that the recycling and recovery targets can be met. The reference project incorporates two additional (Mechanical Biological Treatment (MBT) or Anaerobic Digestion (AD) based) recycling/recovery facilities, each of 100kTpa capacity to be brought on-line in 2009/10. Given the presence of an existing Energy from Waste (EfW) facility at Eastcroft, it is considered that no significant additional EfW capacity will be required through this PFI project.

Transfer

The provision of additional recycling facilities will conserve landfill void. However, there will still be a requirement for Transfer Stations in Newark and Worksop to act as delivery points for wastes remote from the planned facilities.

Landfill

It is inevitable that there will always be residues and waste that cannot be treated or recovered/recycled that will need to be disposed of to landfill. Landfill is therefore an essential element of this option, although reliance on this disposal method is minimised.

4.2 Procurement Process

The procurement process commenced in 2002 as a public private partnership arrangement, but following the approval of the OBC in September 2003 the project became a PFI scheme.

In compliance with the Public Service Contracts Regulations 1993 and Section 19 of Schedule 2 of Part II of the Environmental Protection Act 1990 a contract notice seeking bids to deliver the requirements of the Waste Management Strategy and the legislative recycling and landfill diversion targets was placed in the Official Journal of the European Communities (OJEC) on 29 June 2002. This specified that the negotiated procedure would be followed and a contract would be awarded on the basis of the bid which represents the “most economically advantageous tender”.

The tender documents set out the outputs bidders were required to deliver and which in turn are required to be provided by the County Council as waste disposal authority in order to provide an integrated service for waste treatment and disposal in line with Waste Management Strategy and legislative requirements. As is normal with long term PFI contracts procured under European Union (EU) procurement regulations, the tender documents did not specify the methodology or any specific or prescriptive service delivery options. The manner in which the bidders' proposals would meet the requirements of the County Council was to be determined by each of the bidders in their tender returns.

The application of the selection process in compliance with the negotiated procedure, prescribed by the procurement regulations, reduced the number of bidders from over 50 interested organisations at Expression of Interest stage to 2 by October 2004, Onyx (now known as Veolia) and Waste Recycling Group (WRG). This involved various stages of submissions by bidders followed by a detailed evaluation by the project team using a pre-published evaluation and assessment process.

Best and Final Offers (BAFOs) were received from both bidders on 10 January 2005. At that time there remained a number of issues for each bidder which had

not been resolved to the Council's satisfaction. Accordingly the project team undertook second round negotiations and further clarification on each bidder's BAFO was sought, and as a result the bidders submitted revised BAFOs on 16 May 2005.

These revised BAFOs were evaluated in accordance with the agreed evaluation framework and the outcome was reported to the Councils Waste PFI Project Board on 21 June 2005 (a cross party board established by Council meetings on the 23 July 2003 and 19 May 2005, consisting of 3 elected members and 4 senior officers). Project Board recommend the outcome of the evaluation process to Cabinet on 27 July 2005, and Veolia were appointed as preferred bidder.

Since that date the procurement teams on both sides have worked diligently towards financial close. Reports were taken to Full Council on 23rd February 2006 and to Cabinet on 3rd May 2006 to approve the appointment of Veolia as the County Council's waste management contractor.

4.3 Veolia's Proposal

The output specification for the PFI contract commits Veolia to deliver:

- Recycling and Composting of 52% by 2020 through the kerbside collection of mixed dry recyclables (plastic bottles, paper, card and tin cans etc), green waste and glass, and the recycling of street sweepings. Interim contract targets are 43% recycling and composting by 2010 and 48% recycling and composting by 2015, which exceed the national recycling targets proposed in Defra's Waste Strategy 2006 Consultation.
- Compliance with the Council's Landfill Allowance Diversion Targets throughout the contract life with virtually no direct delivery of biodegradable material to landfill from 2011.

The facilities proposed to achieve this performance are:

- The provision of a new Materials Recycling Facility at Crown Farm Way, Mansfield to handle up to 85,000 tonnes per annum of mixed dry recyclates from 2008.
- Composting – The development of a new dedicated windrow composting facility near Bilsthorpe together with the use of existing third party composting sites to handle approximately 100,000 tonnes of green waste per annum.
- The development of a new HWRC to serve Worksop and the upgrade and ongoing operation of the Council's existing network of HWRC sites.
- Development of two new Transfer Stations to serve Newark and Worksop, and the use of existing Transfer Stations, to receive and handle collections from the Waste Collection Authorities.

- The construction of a 180,000 tonnes per annum modern Energy Recovery Facility (ERF) to serve the greater Mansfield/Ashfield area to convert the remaining residual waste into energy from 2011, when direct delivery of waste to landfill will be dramatically reduced. The bottom ash from this process will be reprocessed into aggregate after being screened to recover metals.
- The use of a network of existing and proposed landfill sites to take residual waste.

Veolia are to produce a Joint Waste Minimisation Strategy with the Council and WCAs to address waste minimisation, reuse and recycling in recognition of their position at the top of the waste hierarchy. A key performance indicator within the contract is the production of an annual action plan setting specific targets for our joint involvement in local and national initiatives such as Real Nappy week, National Composting week and the National Christmas Card Recycling Scheme, which the Council co-ordinates on behalf of the Woodland Trust, Tesco and WHSmith.

4.4 Summary of Changes from OBC

The basic principle of PFI projects is to enable the parties to the agreement to optimise their expertise, to ensure service and facility delivery, and project risks are best placed and managed, and that value for money is achieved.

As a result such contracts are generally procured on an output based specification, where the procuring authority specifies its requirements in terms of service provision, and the market identifies the best and most effective method of delivery.

Particularly in respect of large complex projects such as waste, rather than the simpler accommodation based projects like schools, prisons etc, proposals can be quite disparate while still achieving the same overall objectives.

In the case of the Nottinghamshire Waste PFI this was further complicated by the council's original decision to consider letting the contract in any combination of four service blocks comprising, landfill, composting, household waste and recycling centre management, and recycling and recovery.

Proposals were therefore diverse, however they were all evaluated through a robust framework to enable a preferred bidder to eventually be selected. The Veolia solution does in many ways follow closely to the original preferred Option 3, in that it maximises kerbside collections to deliver high level recycling and composting, but where it differs is in the fact that it utilises proven processes and technology to provide residual waste treatment which can guarantee landfill diversion performance.

The basic changes to the project are:

Kerbside Recycling

The provision of one 85ktpa MRF at Mansfield operated on a two shift per day system. If contract tonnage increases, or third party demand is identified then a third shift could be introduced to increase capacity. The current capacity has been calculated by assessing current mixed dry recyclate collection performance from all of the WCA's in the county, rather than at a theoretical level at OBC, when coverage of the service was only partial. The Mansfield site is one previously identified and secured by the council and benefits from outline planning approval for a MRF.

Household Waste Recycling Centres

Veolia propose to enhance and manage the current and future planned network of HWRC's in the county using sub contract "totters". They have also identified, and are currently planning, a new site for Worksop to replace an exiting third party site which is life expired. The Council is also looking to develop a new site at Newark to replace the Cotham site, where planning approval is due to expire, in 2008. Veolia have committed to an ongoing improvement of recycling and composting performance at the sites.

Bring Sites

These will continue to be managed by the District and Borough Councils and will be focused on materials not collected through any of the kerbside schemes, or on multi material facilities in hard to reach areas (i.e. flats, communal blocks, sheltered accommodation etc)

Organic Waste Collections

Since OBC many of the WCA's in Nottinghamshire have implemented limited green waste collections in order to improve overall recycling and composting performance, following the success of a borough wide scheme in Rushcliffe.

Across the county, kerbside collections of garden waste will be systematically increased from current levels to give full county-wide coverage by 2009/10. As a result there will be no need for collections of kitchen organics in order to reach contract targets, and all the material can be processed using on-farm windrow facilities.

Veolia propose to construct a new windrow compost facility at Bilsthorpe (50ktpa) on a site that currently has planning approval for the same purpose, but at a lower tonnage. The material produced on this site will be marketed under the "Progrow" brand. Veolia will also continue to use 3rd party on farm facilities around the county, including Simpro at Oxtun, who

were a bidder for the PFI contract at Invitation to Negotiate (ITN), to provide a further 50-60ktpa capacity. This solution offers flexibility should legislation require a move to more controlled windrow operations or in vessel composting at some point in the future.

Other Recycling/Recovery Facilities

In view of the above, only limited additional recycling will be required in order to meet contract targets, which will be met by recycling street sweepings into aggregate using a current Veolia operation in Sheffield, "Glacier".

Transfer Facilities

Veolia propose the use of existing 3rd party transfer facilities from day one of the contract, together with the use of an existing NCC facility for dry recycle located at Giltbrook, and a Veolia site at Freeth Street in Nottingham. New facilities will subsequently be developed to supersede the 3rd party facilities at Worksop and Newark, and at the ERF and/or MRF as required.

Landfill diversion

Veolia have been unswerving in their proposal that Energy Recovery by Incineration is the only technical solution that can provide guaranteed diversion at a known risk and financial profile. At ITN they proposed an Energy Recovery Facility to serve the greater Mansfield/Ashfield area, where the majority of waste outside of the greater Nottingham conurbation is produced, to handle 120ktpa of residual waste.

Following detailed discussions and interaction between suppliers the size of this facility has been increased to 180ktpa, which gives Nottinghamshire a virtually non-BMW landfill solution from 2011. The marginal cost of increasing the size of this facility is offset against landfill savings and the potential sale of LATS, although since ITN the unprecedented increase in global steel prices has seen the price of the facility increase substantially. The ERF will generate around 91,314 megawatt hours of electricity per year, a proportion of which (over and above operating requirements) will be sold to the national grid for distribution. Veolia has underwritten a price of **Redacted** for this electricity, but will share any revenue above this level equally with the council.

A site for the ERF was identified at ITN but was leaked to the local media and a local action group was formed which has resulted in the owner removing the site from the market. Veolia are however in negotiation for various other potential sites to serve the greater Mansfield/Ashfield area where the majority of the directly delivered residual waste, that requires treating, is produced, and will secure an option before financial close.

Dependent upon the location of this site, potential opportunity for Combined Heat and Power provision will also be investigated.

These changes are assessed in the table below. The table shows that the changes have resulted in an increase in costs, but with significantly improved outputs.

Metric	OBC	Veolia's proposal
Capital Expenditure (nominal)	£68.7M	Redacted
Total Nominal Cost	£625.6M	£847.7M
Affordability gap before PFI credits	£106.6M	Redacted
Affordability gap after PFI credits	£38.1M	Redacted
2010 Recycling Performance	43%	43%
2020 Recycling Performance	52%	52%
2020 BMW to Landfill	59,135t	Redacted
2020 BMW Landfill Diversion achieved	259,624 t	Redacted

SECTION 5 - STAKEHOLDER COMMITMENT

5.1 Council Decisions

The key decisions that have been taken by the Council, in relation to the waste PFI contract, are summarised in the table below:

Date	Forum	Title	Purpose
28/03/01	Cabinet	Municipal Waste Management Strategy for Nottinghamshire	Inform on the implications of the Government's targets. Seek views on the Draft Municipal Waste Management Strategy. See support on the proposed Waste Management Strategy.
26/06/02	Cabinet Member	New Waste Management Contracts	Advise on the procurement programme.
23/08/02	Cabinet Member	New Waste Management Contracts	Approval of the procurement programme.
23/08/02	Cabinet Member	Extension of Waste Disposal Contracts	Approve extension of current Waste Disposal contracts to a date that is co-terminus with the commencement of the PFI contracts.
25/09/02	Cabinet Member	Waste Management Services: New Waste Management Contracts Analysis of Results to Date	Note the outcome of the first stage of evaluation.
06/11/02	Cabinet Member	Evaluation Criteria for the Waste Management Contracts	Note evaluation criteria.
15/01/03	Cabinet	Outcome of the Invitation to Submit Outline Proposals (ISOP) for Waste Management	Advise on outcome of ISOP and endorse selection of the top five companies.
04/06/03	Cabinet	Waste Strategy PFI	Approve submission of OBC.
23/07/03	Cabinet	Waste Strategy PFI	Approve the financial implications in the OBC and approve appointment of technical consultants.
31/07/03	County Council	Waste Strategy PFI	Approve the financial implications in the OBC.
05/11/03	Cabinet	Waste Strategy – PFI Funding	Advise on the success of the PFI credit application and seek approval for short-term disposal arrangements.
30/12/03	Cabinet Member	Progress with the Waste Strategy – Approval to Let Short Term Waste Contracts	Approve short-term contracts for dry recyclable material and garden waste. Endorse bid for replacing HWRC at Newark and Worksop.
24/03/04	Cabinet	Award of Landfill Disposal Contract	Approve the award of a short-term contract to WRG for the disposal of household waste to

Date	Forum	Title	Purpose
			landfill.
29/07/04	County Council	Arrangements to Manage the County Council's Waste Disposal Responsibilities	Safeguard the probity and integrity of the County Council's position by preventing members of the Project Board from participating in the Waste Local Plan Review.
19/05/05	County Council	Progress with the Waste PFI Contract Procurement and Re-Establishment of Project Board	Re-establish Project Board following local elections and delegate decision-making powers to the Director of Environment.
27/07/05	Cabinet	Recommendation of a Preferred Bidder for the Waste PFI Project	Appoint a preferred and reserve bidder.
23/02/06	County Council	Approval to the Award of a 26 Year PFI Supported Waste Management Contract to Companies in the Veolia Group (Formerly Known as Onyx Aurora Limited)	Approve appointment of Veolia and delegation of approving the final contract details to Cabinet.
03/05/06	Cabinet	Approval to the Award of Two Waste Management Contracts to Companies in the Veolia Group (Formerly Known as Onyx Aurora Limited)	Approve the conclusion of the PFI integrated waste project with Veolia group companies.

5.2 Signed approval of Scheme

Cabinet unanimously approved the award of the contract on 3rd May 2006 (resolution 2006/074) and the decision is subject to a five-day call-in period and the ten-day Alcatel standstill period. Financial close is expected on 26th May 2006 and the contracts will be signed by one of the Council's approved officers as outlined in Section 14.5 of the Council Constitution.

5.3 Other Interested Parties

The council has endeavoured to engage with a whole host of stakeholders during the procurement process ranging from the Waste Collection Authorities to community groups and industry players.

The project has been a "Pathfinder" for DEFRA in identifying waste specific derogations from SoPC3 (Standardisation of PFI Contracts version 3), and the council has worked with the 4P's, PUK and the ICE in various fora to build experience and confidence in the sector.

The overall PFI procurement process has been overseen by a number of bodies, including a cross party steering group, Project Board. This comprises the portfolio holder for Environment and Sustainability; the portfolio holder for Finance; the Leader of the opposition; and chief/deputy officers from: financial

services, legal services and the environment department at Nottinghamshire County Council. Project Board takes an executive overview of the project and reports back to Council and Cabinet.

Quarterly meetings of a Joint Member Board and monthly meetings of a Joint Officer Board support this. The Joint Member Board comprises the portfolio holder and chief technical officer for each WCA, and is chaired by the county council cabinet member for Environment. The Joint Officer Board comprises chief technical officers from the Districts/Boroughs and County Council and addresses issues on a less formal basis.

The result of this cooperation is the development of a Partnering Agreement, which will ensure that Veolia receive all the waste materials collected at the kerbside and that all partners work together for the benefit of County residents. The Partnering Agreement augments the Council's statutory powers available to it as a WDA (pursuant to the EPA and Waste and Emissions Trading Act 2003 (WET Act)) and requires the WCA to deliver up its waste in a segregated form rather than retain for its own recycling schemes.

Through the proposed Partnering Agreement the districts will potentially receive a generous financial incentive to reflect the degree of partnership working necessary to achieve the Waste Strategy and the targets in the contract. The County Council's intention was to conclude the Partnering Agreement at the same time as the PFI project. However, due to the complex nature of negotiations with the WCAs and the need to identify and agree the final budget arrangements, it has not been possible to achieve this.

SECTION 6 - COMPETITION AND VALUE FOR MONEY ANALYSIS

6.1 Level of Support at Procurement Stages

In the two years between OBC and appointment of preferred bidder the waste industry moved rapidly from a position of few projects in procurement to many either in pre-qualification or seeking tenders. Of the few projects in procurement in 2003, even less are still live, several having fallen by the wayside as a result of problems with technological solutions, and others as a result of a lack of bidders.

In Nottinghamshire through the procurement process the number of bidders was reduced by robust and structured evaluation from over fifty at Expression of Interest stage, to twelve at Initial Statement of Proposals, to just five at Invitation to Negotiate, one offering only composting services and the other four a fully integrated solution. Of these four, one proposed energy from waste (EfW) for residual waste treatment, one mechanical biological treatment (MBT), one a combination of the two, and the fourth had yet to propose a solution to this element of the contract.

Given the stance taken by the council at OBC, that EfW was unlikely to feature in the PFI contract, the Council, through the 4P's, clarified that such a solution would be acceptable to DEFRA. Having obtained the necessary clarification, the council was confident in progressing these five bids, however as a result of market pressures two of these bidders subsequently withdrew from the process and chose not to submit bids in response to ITN.

Following evaluation, two companies, both offering an integrated approach, Onyx (now Veolia) Environmental and Waste Recycling Group were chosen to progress to a Best and Final Offers (BAFO) Stage.

Initial submissions at BAFO from both companies were deficient for very different reasons, and therefore revised BAFO's were sought. After close scrutiny and detailed evaluation through the prescribed model Veolia were recommended to Council as preferred bidder.

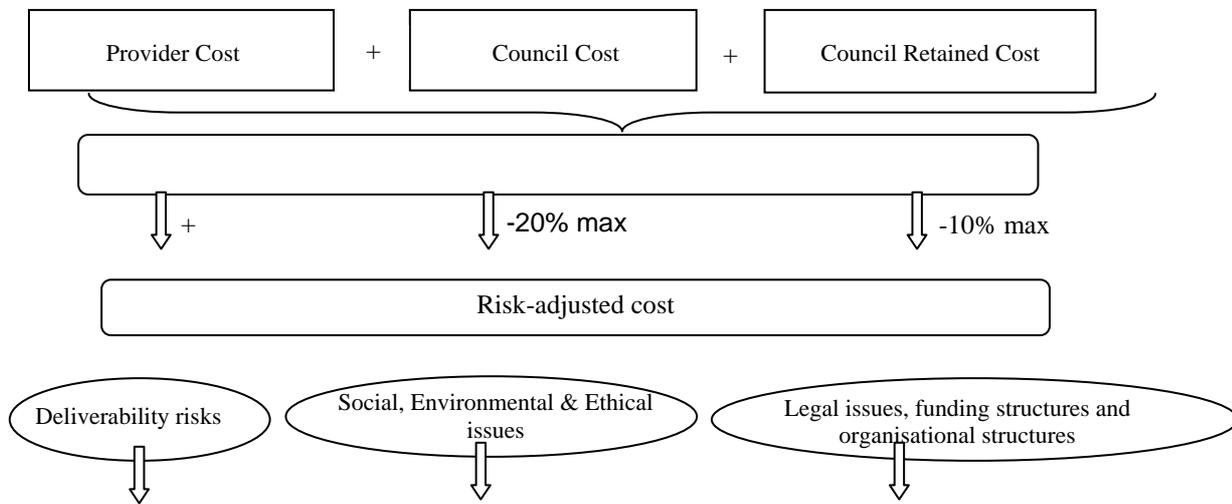
The council chose to maintain competitive tension throughout the procurement process, and this has proven to be an excellent strategy with competitive prices submitted by both bidders at revised BAFO. Following final evaluation, Veolia were clear winners, although on price alone the bids were difficult to separate.

6.2 Preferred Bidder

The evaluation model used throughout the contract covered 6 specific areas:

- Provider Cost
- Council Cost
- Council Retained Risk
- Deliverability Risk
- Social, Environmental and Ethical Issues
- Legal Issues, Funding and Organisational Structures

The principle of the process is set out below:



In essence, the process calculated the actual costs associated with the bids under the headings of Provider Cost and Council Cost (including District Council Waste Collection Authorities' costs), which were then subjected to qualitative scoring reflecting the distribution and level of project risks, sustainability (social, environmental and ethical) issues, and legal and associated issues. After these elements had been scored, the costs were “risk adjusted” and incorporated into the overall evaluation scores. The bid with the lowest overall risk adjusted cost (price) coming out of the evaluation process determines the successful bidder to be taken forward to preferred bidder.

The evaluation highlighted various key issues:

Redacted

The outcome of the evaluation determined that the bid from Veolia had a lower risk adjusted cost than the bid from Waste Recycling Group and therefore that Veolia should be invited to become preferred bidder for the Waste PFI contract.

6.3 Value for Money

As detailed in Section 4.1 the Value for Money (VfM) of a PFI solution was considered at OBC stage against a number of options including Status Quo (Do Nothing) and Meet Targets (Waste Strategy 2000).

At that time the PFI (Enhanced Performance) option produced an overall Net Present Value (NPV) of £273.9m, compared to £350.7m for the Meet Targets and £414.5m for the Status Quo option.

Although the project has now increased in cost due to the delays in procurement and substantial increases in global steel prices and the knock on effect on facility construction costs, the current project NPV of £342m is still lower than any of the other options considered at the time. And while the proposed recycling and composting performance for the project has been maintained at Enhanced Performance levels the landfill diversion performance has increased substantially such that it now offers a virtual no BMW to landfill solution from 2011.

It can safely be assumed that the Meet Targets option would also have increased in line the same construction cost indices, although this effect would be much lower on the Status Quo option which involved no capital expenditure.

Maintaining competition through to the latter stages of procurement has also ensured that the solution offered by Veolia offers financial returns to the contractor at the lowest sustainable level. Details of the competitive nature of the procurement are detailed in Section 4.2.

Although a full VfM assessment has not been undertaken, and the Public Sector Comparator has not been revisited, the project is still considered to represent best value, and maintain the VfM position identified at OBC.

6.4 Reserve Bidder

The council as part of its approvals process chose to appoint Waste Recycling Group as reserve bidder for the contract, rather than reject the bid entirely.

This was in recognition that although the WRG bid was not as attractive as the proposal from Veolia, it could be developed into a deliverable project with the necessary work.

In order to ensure it was possible to revert to WRG at some point in the future, should negotiations with Veolia falter, the options on sites required by WRG, but not Veolia have been extended, and the council has continued to build its relationship with WRG through the current landfill and Energy from Waste operations.

A full and frank debrief was held with both the chief executive and commercial director of WRG in the period following the appointment of Veolia as preferred bidder, in order to ensure lessons learnt from both sides of the table were fully utilised in this and future contracts.

SECTION 7 - RISK ALLOCATION AND ACCOUNTING TREATMENT

7.1 / 7.2 Risk Allocation and Retained Risks

The allocation of the risks associated with the contract are outlined in the table in Appendix 2. Unless stated otherwise, the provisions of Contracts A and B are identical; accordingly the risks are displayed in one table.

7.3 Off Balance Sheet Opinion

A key consideration when negotiating a PFI contract is the accounting treatment, and whether the Local Authority should account for the project's underlying assets off balance sheet. There is a presumption that the assets relating to the PFI project will not be on the public sector's balance sheet, as the risks relating to the assets will rest with the PFI partner. The Authority will, in substance, be seen as receiving a service rather than an asset.

The main accounting standard relevant to PFI transaction is Financial Reporting Standard 5 (FRS5). The accounting treatment assessment applies the accounting guidance in HM Treasury Private Finance Taskforce's Technical Note 1 – How to Account for PFI Transactions (TTF TN1).

The County Council's Financial Advisor undertook an initial accounting treatment appraisal in accordance with Application Note F to FRS5. Based upon the information available, their initial view, after applying the key principles, and the qualitative and quantitative indicators and methodologies that make up the accounting guidance in TTF TN1 to the transaction, is that the newly created assets in the Project transaction should be accounted for as off the Council's balance sheet. In applying TTF TN1 the following key factors have been taken into account:

1. Separability

The purpose of the analysis is to determine who bears the majority of the risks and rewards of the property underlying a PFI transaction. The conclusion is that the contract is separable, and all elements of the project comprise a mix of substantial fixed assets and integrated services. Consequently the project should be accounted for under TTF TN1 as a contract for services.

2. Qualitative Indicators

- Termination for operator default

A key test of asset ownership is whether the bank financing the arrangement is fully reimbursed for amounts outstanding in the event of operator default. There is no guarantee that the Council will repay the Operator's bank financing in the event of operator default.

- Nature of the operators financing

TTF TN1 states that very high levels of gearing indicate that insufficient risk has been transferred and that the purchaser would have ownership of the asset.

The proposed finance package contains a proportion of 'at risk' project finance that substantially exceeds the indicative level of 8-10% in PFI projects.

- Who determines the nature of the property?

The operator will bear the property design and operation risk, especially in relation to costs, maintenance and technology. The operator has determined the nature of the property on which they intend to accept the operating cost risk, as what they consider the best response to the Council's output specification.

Taken together, the first two of the three indicators show that the recourse of the proposed project Financing is limited to the Council's unitary charge payments, and any third party income, hence that the Council is not in substance entering into a financing arrangement. In addition, the third indicator, taken together with the key risk cost indicators, shows that the operator determines what kind of property is provided and how it is operated. Consequently, these indicators support an arrangement that the Council will not have an asset of the Project's property.

Initial discussions with the Council's auditors have not identified any concerns with the opinion to date. An updated report is currently being prepared on the basis of the latest contractual position and this will be forwarded for comment as soon as it is received.

SECTION 8 - CONTRACT AND PAYMENT MECHANISM

8.1 SOPC3 Compliance

Instead of a standard single PFI contract, Veolia's proposal is for delivery of an integrated service through two parallel SOPC3 compliant contracts (Contracts A and B).

Contract A will be entered into between the Council and a corporately funded Veolia Special Purpose Vehicle (SPV) - Veolia ES Nottinghamshire Limited. Contract B will be entered into between the Council and a second Veolia SPV - Nottinghamshire Environmental Services Limited.

Contract A will be for the design, build, finance and operation of the front-end services (including the HWRCs, MRF, all composting sites and transfer stations) and the planning and permitting process for the ERF. Contract B will manage the construction and operation of the ERF only.

The two contracts will be related and will effectively operate as one, with stringent interface obligations in place to protect service delivery. Contract A will be responsible for managing the interface between the two contracts.

Both contracts will be entered into at Financial Close. Contract B will be entered into on a conditional basis, subject to the satisfaction of the following Conditions Precedent:

- Obtaining Satisfactory Planning Permission for the ERF; and
- Obtaining Satisfactory Pollution Prevention and Control (PPC) Permit for the ERF both in accordance with the terms of Contract A by an agreed deadline (Planning Longstop Date); and
- Satisfying the Council that the ERF Construction Costs have not risen above the agreed ceiling.

If the Conditions Precedent are not satisfied (and the Council chooses not to waive the requirement for them to be satisfied), Contract B will be null and void. In these circumstances the Council can decide also to terminate Contract A but (in the event Contractor A is not in default) the Council would have to pay compensation to Contractor A on a force majeure (no fault) basis to recognise that on termination of Contract A the Contract A facilities will revert to the Council at nil value. Alternatively the Council may continue with Contract A and procure alternative landfill diversion arrangements.

The contracts will both be for a period of 26 years and 10 months from 1st June 2006 until 31st March 2033 and will be coterminous unless:

- either contract is terminated sooner; or
- Contract B is extended in the event of planning delay in relation to the ERF.

8.2 SOPC3 Derogations

The proposed twin contracts are compliant with guidance and required drafting contained in SOPC3 save for the derogations identified in the table in Appendix 3, which except for some minor drafting issues, have now been agreed with PUK.

In accordance with HM Treasury and Defra's drive towards standardisation in PFI, only changes of substance have been made to required and suggested drafting where these are justifiable on a project or sector specific basis.

No mere drafting or style changes have been made since the Parties have accepted that this will not be acceptable to Defra or HM Treasury at Final Business Case (FBC).

The Parties have further agreed and incorporated the changes identified in HM Treasury's supplementary guidance SOPC Version 3 Addendum (December 2005) to the extent applicable to the project.

The contracts are also consistent with extant guidance in:

- 4Ps' Waste Management Procurement pack (June 2004);
- 4Ps' Local Government Supplement to SOPC3 (July 2004).

Finally, notwithstanding that the guidance was published after the Council appointed its preferred bidder and notwithstanding that the guidance remains in draft, the contracts are also broadly reflective of Defra's Standardisation of Waste Management PFI Contracts: Guidance on SOPC Derogations (Draft October 2005).

The table in Appendix 3 identifies the areas where the contracts are not compliant with the draft guidance. The parties consider that they are excused from compliance with these limited areas given the circumstances referred to in the paragraph above.

KEY

SOPC3 derogations are highlighted in **green**. These are derogations justified on a project or sector specific.

Issues arising from Defra's draft guidance are highlighted in **yellow**.

Provisions reflecting guidance and drafting in 4Ps' Waste Management Procurement Pack are highlighted in **pink**.

Note, Appendix 3 has been sent to Defra in advance of this Final Business Case, on 2 May 2006, together with full copies of contracts A and B.

8.3 Payment and Performance Mechanism

The payment mechanism has been divided into 2 contracts, Contract A (composting, Household Waste Recycling Centres, handling of recyclate materials and landfill) and Contract B (Energy Recovery Facility). A copy of the payment mechanism (final draft) is included at Appendix 4.

The Contractor is paid in two main ways:

- Availability payments (**Redacted** of total) - for making facilities available according to the Council's requirements; and
- Tonnage payments (**Redacted** of the total) - for waste processed.

Availability payments are at risk should the facilities not be made available (e.g. closed for repairs); tonnage payments will change according to the actual tonnes of waste produced by the residents of the County in any year. In addition to these payments being at risk, the Contractor is also subject to paying additional landfill tax should the Contractor landfill more than expected and also performance deductions of up to **Redacted** of the contract value for Key Performance Indicators (KPIs) chosen by the Council.

The unitary charge for Contract A is composed of

- Composting
- Landfill
- HWRCs
- Recyclable Waste/Street Cleaning
- Ad Hoc Waste
- Landfill Tax
- Monthly Deductions
- Tipping Away Payments
- NNDR Reimbursements
- Additional Services
- Interim Services

Composting Services relates to green waste. Payment is based on the tonnage delivered. There are 2 tonnage rates (up to the contract facilities opening and after the contract facilities have opened).

Landfill relates to residual waste taken to landfill, handled at Transfer Stations and arising at HWRCs. Payment is based on tonnage.

HWRCs relate to waste at HWRCs. The payment is based on:

- an Availability Payment for the number of hours than a HWRC is available
- a tonnage payment based on the amount of compostable waste and hardcore transported from HWRCs
- the number of fridges, loads of fluorescent tubes and CRTs.

Recyclable Waste/Street Sweepings relates to waste at MRFs. The payment is based on:

- an Availability Payment for the number of hours than a MRF is available
- a tonnage payment based on the amount of recyclable waste delivered
- a tonnage payment based on the amount of street cleansing waste delivered
- an adjustment for Non Contract Waste processed if applicable.

Ad Hoc Waste relates to any ad hoc waste which the contractor is required to handle. The cost of this waste is uplifted by **Redacted**.

Landfill Tax relates to the tax payable by the authority. The payment is based on a tonnage payment based on the amount of planned landfill.

Monthly Deductions relates to deductions incurred if Contract A is not satisfied. The calculation is based on the Performance Mechanism and Satisfaction Scores.

Tipping Away Payments relates to the cost incurred by the Waste Collection Authority (WCA). The cost is based on the additional miles and tonnes diverted due to the Delivery Point being unavailable.

NNDR Reimbursements relates to cases where the contractor pays the NNDR for HWRCs, Transfer Stations, MRF and Composting Facility.

Additional Services relates to any additional service that the contractor has agreed to undertake. The cost of this additional service is uplifted by **Redacted**.

Interim Service Payment relates to tonnage rates that need to be applied in the event that the ERF Commencement Date is delayed.

The unitary charge for Contract B is composed of:

- ERF Services
- Third Party Income Share
- Monthly Deductions
- Landfill Tax
- Tipping Away Payments
- NNDR

ERF Services relates to contract waste delivered to the ERF. The payment is based on:

- an Availability Payment for the number of hours than an ERF is available
- a tonnage payment based on the amount of contract waste delivered
- an adjustment for Non Contract Waste processed if applicable.

Third Party Income Share relates to income due to the authority with respect to electricity sold by the ERF and also any other sales.

Landfill Tax relates to the tax payable by the authority. The payment is based on a tonnage payment based on the amount of waste to be landfilled.

Monthly Deductions, Tipping Away Payments and NNDR are the same as per Contract A but relating to the ERF Services.

8.4 Penalties

The performance mechanism allows the council to make deductions from the payments made to the contractor for failure to deliver contract performance in key areas.

The total deductions are capped at **Redacted** of the overall unitary charge. This equates to a figure of around **Redacted** at year one of the contract, which is at risk if the contractor fails to perform to the contract specification.

The various KPI's are detailed in Appendix 5, however it should be noted that some KPI's are common to the two contracts, while some will only operate on one contract at a time. As a result, as and when contract B becomes live, the profile of available deductions on contract A will change, although they will remain at all times limited to the **Redacted** of the unitary charge noted above.

Several of the KPI's relate to performance at facilities which affect the WCA's, such as vehicle turnaround times and capacity, while others address sustainability performance, although the major penalties are understandably linked to performance against landfill diversion and recycling targets.

Some KPI's will be measured monthly while others rely on an annual assessment of performance, and/or the development of an annual action plan, which will be used to set a baseline.

The Contract is intended to be self-monitoring, and the contractor will therefore also receive additional performance deductions for failing to undertake the necessary self-monitoring or failing to report performance failures that subsequently come to light.

How the performance deductions will be calculated is detailed in Appendix 6 (final draft Performance Mechanism).

8.5 Annual Charge

The projected annual payment to the contractor in 2006/07 is **Redacted** million, assuming a start date of 1/6/06. This will increase to **Redacted** million in 2008/09 when the first major facility, the Materials Recycling Facility, is available. The projected annual unitary payment in 2012/13, following completion of the other main facility, the Energy Recovery Facility, will be approximately **Redacted** million. Over the life of the project, the total unitary charge is £342m (NPV). As stated in Section 9.1 these charges will be met by the Council's existing Waste Management budget, PFI credits, and an additional injection of Council funding

of approximately **Redacted** million in 2007/08. The Council funding will then be subject to an annual inflation uplift.

8.6 Market Testing

The following Services will be subject to Benchmarking and/or Market Testing throughout the contract period:

- HWRC Services;
- Landfill Services;
- Management of Ad Hoc Waste.

HWRC Services

Benchmarking of HWRC services shall be undertaken on 1st April 2011, and thereafter every 5 years, unless otherwise agreed by the Parties.

During the year before the benchmarking date a review of the HWRC Services being provided shall be undertaken to provide a comparison of the levels of performance against current KPI's, performance achieved by the Contractor compared to those achieved nationally and in all immediately adjacent Waste Disposal Authorities, as well as Waste Disposal Authorities assessed by CIPFA to be most comparable to Nottinghamshire.

Revised performance requirements can then be incorporated in the benchmarking exercise as required by the council, subject to the council meeting additional costs associated with contract changes.

Landfill Services

Redacted

As with the HWRC Services above the next Landfill Market Testing Date shall be 1st April 2011 (or concurrent with the opening of the ERF) and thereafter every 5 years, unless otherwise agreed by the Parties.

The market testing shall include all Landfill operators within 30 miles of any Delivery Point and a minimum of three Landfill operators in respect of all parts of the Contract Area, and bids will be evaluated for holistic costs associated with the particular bid, including tipping away and or transport costs incurred by the contractor and third parties including WCA's.

As above the first Landfill Market Testing Date shall be 1st April 2011 (or concurrent with the opening of the ERF) and thereafter every 5 years, unless otherwise agreed by the Parties.

The market testing shall include all Landfill operators within 30 miles of any Delivery Point and a minimum of three Landfill operators in respect of all parts of the Contract Area, and bids will be evaluated for holistic costs associated with the particular bid, including tipping away and or transport costs incurred by the contractor and third parties including WCA's.

Management of Ad Hoc Waste

Within the Service Delivery Plan, the Contractor shall maintain Ad Hoc Waste Rates comprising a market-tested unit rates for each of the Ad Hoc Waste types defined in the contract which includes amongst other things tyres, asbestos, gas canisters etc which although representing a very small percentage of the waste stream require specialist disposal.

These Ad Hoc Waste Rates shall be derived from tenders received from no less than three Subcontractors, subject to availability, in respect of each Ad Hoc Waste type and will be reviewed regularly at the direction of the council. The rates will represent the cost from the subcontractor plus a margin of **Redacted** for Veolia.

SECTION 9 - AFFORDABILITY AND COST REDUCTION

9.1 Project Affordability

The County Council needs to be satisfied that it can afford the project cost of the new facilities, taking into account available resources over the whole life of the project.

An affordability envelope has been established by the Council as part of its Medium Term Financial Strategy, and in doing so has demonstrated an intention to underwrite a significant financial contribution over and above existing revenue budgets.

A spreadsheet analysis of the affordability of the PFI project has been undertaken by the Council's Financial Advisors (Appendix 7). This identifies, all sources of project funding and matches this against payments to be made to the bidder and other costs to the Council. This indicates an affordability gap of around £ **Redacted** m with effect from 01 April 2007.

The Full Council meeting on 23 February 2006 approved additional revenue contributions from 2007/8 to a maximum of **Redacted** m per annum. This was subsequently endorsed by Cabinet on 3 May 2006.

The County Council's Project Team is therefore satisfied that there will be a prudent margin within the level of delegated authority provided by Cabinet to deal with any cost issues arising up to Financial Close.

Redacted

9.2 Asset Transfer

The Council currently operates 17 Household Waste Recycling Centres in Nottinghamshire, which with the exception of one third party site are either owned or leased by the council directly. Under the new arrangements these sites will be leased to Veolia for a peppercorn and will be returned to the council at the end of the contract or upon termination. The new site being identified and planned by the contractor will in due course be purchased or leased by the council on a standard set of terms that Veolia will negotiate on its behalf. The only other Council asset that will transfer to the contractor is the Giltbrook Transfer Station which is owned by Nottinghamshire County Council and shares a site with the adjacent HWRC. This will be subject to the same transfer regime as the HWRC.

Any new build facilities for the contract such as the MRF, ERF and Bilsthorpe composting site will also be acquired or leased by the council, on standard agreed terms to be negotiated by Veolia in order to ensure the assets become available to the council at the end of the contract. Handback criteria will be applied to all contract assets to ensure they are serviceable at the end of the contract, and have minimum operational life of 5 years. In the case of the MRF

the building structure will have a significantly greater life but the plant and equipment will require some renewals after that time. The ERF however should have an operational life of at least 50 years, with only regular overhaul and maintenance required, except for unexpected failures and/or regulatory upgrades. This latter issue is a council risk even during the contract period.

The transfer of all specific contract assets ensures that the council takes full benefit from the capital costs spent on the project and inherits waste infrastructure that should operate at nominal cost for a considerable period after the end of the existing contract.

This issue was accounted for at evaluation and strikes a chord with members of the county council given that we currently benefit from enhanced recovery performance and lower waste disposal costs as a result of the existing long term Eastcroft Energy from Waste facility contract which takes 60,000 tonnes of Nottinghamshire waste until 2032. These long term investment decisions taken by the predecessors of the county council in the early 1970's are still showing benefits today, and the current members are keen to provide a similar inheritance to future generations.

9.3 Third Party Income Proposals

MRF

Recyclable materials recovered through the MRF will be sold by Veolia into the UK, European and worldwide markets.

Veolia have agreed to underwrite all revenues from the MRF and discount the gate fee accordingly. All risks and rewards are therefore passed to the contractor for this element of the service.

Composting

In other integrated contracts Veolia produce compost from green waste, bag it and market it under the ProGrow brand. In Nottinghamshire around half of the contract tonnage will be managed by 3rd party composters who will generally use the material on site as a growing medium, although the new contract facility, currently proposed for Bilsthorpe, will be used to produce ProGrow for retailing. Any revenue from this will be retained by Veolia who will be taking the market risk and discounting the gate fee by a proportion of the revenue received.

ERF

The ERF will generate around 91,314 megawatt hours of electricity per year a proportion of which (over and above operating requirements) will be sold to the national grid for distribution. Veolia has underwritten a price of **Redacted** for this electricity, but will share any revenue above this level equally with the council. Should the steam from the ERF be used for Combined Heat and Power applications then any "profit" resulting will also be shared. This latter element is clearly dependent upon the location being suitable for this purpose, and will be negotiated as and when the final site and plant layout is known.

LAT's

The council is taking all risks and rewards associated with the sale or purchase of LAT's. Within the evaluation of the revised BAFO's, and as part of the affordability calculations detailed elsewhere in this document a prudent value for LAT's generated through the contract has been assumed given the embryonic status of the trading market. Thanks to the councils excellent recent recycling performance we currently however hold a surplus of LAT's with a market value (at £20/tonne) of £1.2m.

Significant increases in the value of LAT's could potentially improve the council's affordability position considerably through the life of the project.

9.4 Unitary Payments

As noted in Section 8.5, total unitary payments of £342m (NPV) will be made over the life of the project.

9.5 PFI Credits

A major procurement process was commenced in 2002, initially as an invitation to negotiate for a public private partnership. However, following the preparation of an Outline Business Case (OBC) presented to the Department of Environment, Food and Rural Affairs (Defra), the Council was awarded project funding of £31.93m in provisional PFI credits. The OBC is summarised in Section 4.1.

In 2005 the Council applied for additional PFI credits because there had been significant changes in the sector since OBC, which the Council, supported by DEFRA, 4Ps and PUK had been at the forefront of addressing; most notably, the project would now deliver virtually no BMW to landfill from 2011. As a result, the PFI credits were increased by £6.38m to give a total credit allowance of £38.31 million.

SECTION 10 - STATUTORY PROCESSES

10.1 Statutory Proposals and Approvals

The statutory process to secure the contract has been pursuant to a number of regulatory regimes:

- The Public Services Contracts Regulations 1993
- S18-21 EPA Sch 2 part II
- The Councils' standing orders and codes of practice

The process followed has been:

- EC/ Trade Adverts (OJEC)
- PQQ
- Expressions of Interest and initial Shortlisting
- Bidders' Conference
- Invitation to Submit Outline Proposals
- Evaluation and shortlisting
- Invitation to Tender
- Evaluation and further shortlisting
- Best and Final Offers
- Evaluation
- Revised Best and final Offers
- Evaluation and Selection of preferred bidder
- Approval to award the contract

The Evaluation of bids at all stages was undertaken to a predetermined framework and within a rigid and structured regime to ensure fairness of competition. The approvals process is detailed in Section 5.1.

10.2 Planning Permission / Licensing

MRF

The need for local MRF capacity to support the twin bin collections of mixed dry recyclate by the WCA's had been identified during the development of the Waste Strategy in the late 1990's. Without this

capacity the regional MRF market is likely to be overloaded with material within the very near future.

Therefore, prior to commencing procurement of the long term waste contract in 2002, the county council undertook a search for sites suitable for the construction of a Material Recycling Facility to serve the county. This identified two potential sites, one in the north of the county at Mansfield, and one near the greater Nottingham conurbation in Calverton.

Detailed discussions were held with the Waste Planning Authority to establish if the proposed use would be acceptable, and option agreements negotiated with the owners prior to outline planning applications being submitted for 45ktpa MRF's on both sites. The applications were subsequently successful and the two sites were offered to all bidders as potential locations for contract facilities.

Although the Calverton site has not been taken up by Veolia, the Mansfield site, at Warren Way, Crown Farm Industrial Estate has been taken forward as the preferred location for the MRF.

Veolia has, since appointment as preferred bidder, been developing a detailed design and planning case for an 85ktpa MRF on this site, including undertaking a full Environmental Impact Assessment. The pre planning consultation has recently commenced with a public exhibition and will culminate in a full planning application in June 2006.

The site is felt to offer an ideal location for the MRF, being in a large purpose designed industrial area with easy access to the major highway network, proximate to the greater Mansfield Ashfield conurbation, and within easy delivery distance for large parts of Newark & Sherwood and Gedling, thereby minimising the need to bulk and haul large amounts of recyclates. The site benefits from outline permission for a similar facility and is zoned for employment purposes within the structure plan.

Composting

Veolia have identified a site at Inkersall Grange Farm, Bilsthorpe near Mansfield as suitable for the development of a contract windrow composting facility to deal with around 50ktpa of green/garden waste. The site is rural in nature and benefits from planning approval for windrow composting but at a lower capacity than that now proposed. It has direct access onto the major road network and is well located for direct delivery of green/garden waste from the greater Mansfield/Ashfield area, Newark and Sherwood and parts of Gedling.

Landfill

The landfill requirement within the contract will be provided by way of a sub contract with Waste Recycling Group until 2011, the major landfill operator in Nottinghamshire. WRG have sufficient existing capacity to fulfil the contract landfill requirement until the ERF comes on line in 2011, although as part of their commercial operations they may propose the development of further capacity at some point during the life of the sub contract arrangements.

Energy Recovery

Veolia has identified that an Energy Recovery Facility in the north of Nottinghamshire, to serve the greater Mansfield/Ashfield area where the majority of the direct delivered waste will be generated, is the preferred solution for residual waste treatment. A site search undertaken at the start of the procurement process, and recently refreshed, identified a significant number of potential sites suitable for development of an ERF. This site search has now been refined and a number of sites have been shortlisted. Veolia are currently negotiating commercial terms for these sites and propose to enter into an option agreement on one or more sites prior to financial close. Clearly the likelihood of achieving a satisfactory planning permission is a major factor in identifying a preferred site, and Veolia has employed Cluttons as land agents alongside Terence O'Rourke planning consultants to undertake the necessary assessment work.

Planning risk on the ERF will be shared between the Council and Veolia in accordance with the recommendations in the 4P's waste toolkit.

Transfer Stations/Household Waste Recycling Centres

Veolia are proposing to develop a new transfer station to serve Newark and a transfer station and new HWRC to serve Worksop. Potential sites have been identified through the procurement process and Veolia will be commencing the formal planning process for these facilities as and when the commercial negotiations with the current site owners are complete. In the interim period third party facilities will be used to provide the service required.

10.3 Statutory Issues

The Council's intention was to conclude the Partnering Agreement with the WCAs at the same time as the PFI project. However, due to the complex nature of negotiations with the WCAs and the need to identify and agree the final budget arrangements, it has not been possible to achieve this.

If a formal Partnering Agreement is not achieved, the County would still work with the WCAs to ensure they deliver kerbside collected material to contract facilities, as this approach reflects the recommendations of the Waste Strategy, which the WCAs have been working towards since 2001.

In the absence of a Partnering Agreement and in the event that any WCAs want to enter into their own independent contracts to recycle waste, the County would have to consider using its powers under the EPA to prevent them from doing so and/or use its power of Direction, under the EPA and WET Act, to direct the WCA to a County facility, built via the PFI process for that purpose.

The Council believes that a Partnering Agreement is the best way forward provided that the Districts are willing to agree to matters that could not be included in a Direction. Accordingly it is hoped that relying on the Council's statutory powers will not prove necessary and that the partner councils within Nottinghamshire will be able to work together to agree terms reflecting a proactive, forward thinking approach to collaborative waste collection and disposal, making optimum use of public funds and the long term facilities which the waste PFI contract has specifically procured for the implementation of the Waste Strategy.