

Barnsley / Doncaster / Rotherham (BDR) Joint Waste PFI Project

Arrangements for Decision Making and Scheme of Delegations

Barnsley MBC has entered into a Joint Arrangement with Doncaster and Rotherham MBCs to provide for the disposal of waste in the three boroughs. The project includes significant investment in waste treatment facilities funded by Waste PFI (Private Finance Initiative) credits.

The project involves the three councils entering into a range of contractual document, including the Inter-Authority Agreement (known as IAA2) and the BDR Waste PFI Contract (known as the Principal Contract), which regulate the operation of the joint arrangements between the councils. This establishes a Joint Waste Board (JWB) as a joint committee under section 101(5) of the Local Government Act 1972, to which each council appoints one Elected Member.

The JWB is supported by the Barnsley / Doncaster / Rotherham (BDR) Steering Committee, made up of officers of each council, and has appointed the BDR Manager to make the day to day decisions required for the management and administration of the Principal Contract. Each council is represented on the Steering Committee as follows:

Barnsley MBC - Assistant Director Environmental Services, or in their absence the Group Manager Waste Services

Doncaster MBC - Assistant Director Environment, or in their absence the Head of Service (Street Scene)

Rotherham MBC - Director of Streetpride, or in their absence the Waste Strategy Manager

Arrangements for decision making were considered at a meeting of the JWB on 29th June 2012. The meeting noted that Schedule 2 Appendix A of IAA2 reserved certain matters for unanimous decision making by each authority at meetings of the JWB. These matters are set out in the attached appendix 1.

The JWB authorised the Assistant Director Environmental Services Barnsley MBC (“the (first) authorised Steering Committee Member”) to exercise all other powers where these matters are not reserved to the JWB, acting in consultation with the Steering Committee representatives of the other two councils. The authorised Steering Committee Member was also authorised to delegate further powers to the BDR Manager, particularly in relation to the day-to-day operation of the project, except in the circumstances set out in appendix 2, where these matters must be referred to the Steering Committee for consideration. The Steering Committee may refer any matter to the JWB. Any matter where the Steering Committee cannot reach a unanimous decision must be referred to the JWB. The BDR Manager is also authorised in turn to delegate any decisions to a member of the Joint Waste Team, subject to the agreement of the authorised BDR Steering Committee Member.

Appendix A

Matters reserved for a unanimous decision by the JWB under the Principal Contract

Clause	Issue
11.3	Exercising option to extend the Expiry Date by 5 years
11.4.1	Agreement of the Unitary Charge for the Extension of Contract Period
20.11.4(a)	On planning failure (ITS) giving notice that the Councils wish to terminate the Contract
20.12.7	Agreement or rejection of the Draft Revised Project Plan
20.24.10	Terminate the Contract where s36 Proceedings are not instituted or if they are withdrawn or determined leaving an Unsatisfactory s36 Consent
20.25.1	On s36 Consent failure giving notice that the Councils wish to terminate the Contract
64.17.2(a)	Option to terminate the Contract (paying compensation on a Force Majeure basis) or allow this to continue in respect of an Uninsurable Risk relating to third party liability insurance or contractor's pollution liability insurance
64.17.2(b)	Where an Uninsurable Risk has occurred and the Councils have elected to allow the Contract to continue under 64.17.2(a) above then the Councils shall have the option to either pay to the Contractor an amount equal to the insurance proceeds that would otherwise have been payable or to terminate the Contract (paying compensation on a Force Majeure basis)
79.2.5(b)	Terminate the Contract where an Alternative SRF Plan has been rejected or has failed to be submitted
81.2	Exercise of option to transfer Contractor's right, title and interest in the Assets to the Councils or as otherwise directed following termination on Councils Default
83.1	Issue of a termination notice
83.4	Issue of a termination notice

Clause	Issue
83.5	Issue of a termination notice (failure to implement the relevant rectification programme)
84.1.1(a)	Decision to retender in accordance with Clause 84.2
84.2.1(l)	Determination of Compliant Tenders
84.2.1(s)	Election to follow the no retendering procedure under Clause 84.3
84.3.2	Agree the Adjusted Estimated Fair Value of the Contract
84.3.6	Exercise of option to transfer Contractor's right, title and interest in the Assets to the Councils following Termination on Contractor Default
85.5	Termination of the Contract where the Contractor is unable to comply with the Contract for more than 180 Days due to Force Majeure or there is no Agreement of appropriate terms to mitigate the effects of a Force Majeure Event by 120 Days after the commencement of the Force Majeure Event
85.6.2	Exercise of option to transfer Contractor's right, title and interest in the Assets to the Councils following Termination on Force Majeure basis
85.7	Accept notice served under Clause 85.5 by the Contractor to terminate the Contract or serve notice requiring the Contract to continue
86.8	Exercise of option to transfer Contractor's right, title and interest in the Assets to the Councils following Termination on Force Majeure basis
87.2.2	Termination of the Contract if a Prohibited Act is committed by the Contractor
87.2.3	Termination of the Contract if a Prohibited Act is independently committed by an employee of the Contractor
87.2.4	Termination of the Contract if a Prohibited Act is committed by a Sub-Contractor or an employee of a Sub-Contractor who is not acting independently

Clause	Issue
87.2.5	Termination of the Contract if a Prohibited Act is committed by the SRF Offtaker or an employee of a Sub-Contractor or the SRF Offtaker who is acting independently
87.2.6	Termination of the Contract if a Prohibited Act is committed by any other person
88.3	Exercise of option to transfer Contractor's right, title and interest in the Assets to the Councils (Termination on Corrupt Gifts and Fraud)
89.1.1	Termination of the Contract on a voluntary basis
89.1.3	Exercise of option to transfer Contractor's right, title and interest in the Assets to the Councils following Voluntary Termination by the Councils
91.1.1	Termination of the Contract for wilful breach by the Contractor of the Refinancing provisions in Clause 59
91.1.3	Exercise of option to transfer Contractor's right, title and interest in the Assets to the Councils or as otherwise directed following Termination for Breach of Refinancing Provisions
93.2.2	Election of method of paying the Adjusted Estimated Fair Value of the Contract, Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount element of the Termination Sum
93.2.4	Further election of method of paying the Adjusted Estimated Fair Value of the Contract, Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount element of the Termination Sum in full
120.12.1	Election to pay the Councils' Proportion of Increased Capital Expenditure to be incurred at the Ferrybridge Facility by way of a lump sum

Limitations on the delegated powers of the BDR Manager

The BDR Manager is authorised to make all decisions and take any action necessary on behalf of the Authorities relating the Principal Contract (unless they are reserved to the JWB under IAA2).

This delegation is subject to the following restrictions which, if they apply, mean that a particular decision should be referred to the Steering Committee for approval (subject to the urgent action arrangements set out below):

- Where it may have a reputational / political impact on any of the Authorities
- Where it has an adverse impact on any of the Authorities' services and strategies.
- Where it has an adverse impact on the Contractor's performance
- Where there would be an adverse transfer of risk to any of the Authorities
- Where it has an adverse impact on any of the Authorities' budgets, e.g. commitment to additional expenditure
- Where it has an impact on the policies of the Lead Authority

The following arrangements will apply where the BDR Manager is required to make a decision (unless it is a decision reserved to the JWB under IAA2) or take any action necessary in circumstances where there is either an emergency or a situation that requires urgent action by a given deadline where one of the restrictions set out above applies:

- a. The BDR Manager will, where practicable and without undue delay, notify the BDR Steering Committee in writing of the situation, the decision required and set out the recommended course of action for approval. The written report will also specify a deadline after which the recommendation of the BDR Manager will be deemed to have been accepted by the BDR Steering Committee in the absence of a response to the contrary. The BDR Manager will also make contact with the Authorised BDR Steering Committee member and notify them of the situation. The Authorised BDR Steering Committee member will then consult (wherever possible) with other BDR Steering Committee members.
- b. If it is not practicable to implement the process set out at (a) above, the BDR Manager will make contact with the Authorised BDR Steering Committee member without undue delay and notify them of the situation. The Authorised BDR Steering Committee member will make the relevant decision following consultation (wherever possible) with other BDR Steering Committee members.
- c. If it is not practicable to implement either of the processes set out in (a) or (b) above in a given situation then the BDR Manager will make all

decisions and take any action necessary on behalf of the Authorities. As soon as practicable afterwards the BDR Manager will notify the BDR Steering Committee in writing of the situation and the decision that was taken. The matter will then be discussed at the next BDR Steering Committee meeting.

An urgent decision is one where a delay in the making of that decision would seriously prejudice the interests of one or more of the Authorities or the public's interests.