



**LOCAL GOVERNMENT AUDIT SERVICE**

**Statutory Audit Report**

**to the**

**Members of Dublin City Council**

**for the**

**Year Ended 31 December 2011**



**Comhshaol, Pobal agus Rialtas Áitiúil**  
**Environment, Community and Local Government**



## **Appendix 1**

### **Review of Expenditure to 31 December 2011 on Thermal Treatment Plant**

As part of the current audit I decided to review cumulative expenditure to date in respect of the proposed thermal treatment plant, although some aspects of this project were reviewed at previous annual audits. The reasons for this review include the delays in the commencement of the construction stage and the materiality of expenditure incurred to date.

Dublin City Council's current estimate of construction costs is approximately €400m.

The results of my review are set out below, under a number of headings:

1. Background and timeline for project
2. Financial Management of the Proposed Thermal Treatment Plant at Poolbeg
3. Summary of Total Expenditure on Proposed Thermal Treatment Plant
4. Analysis of Expenditure on Client Representative
5. Site Assembly at Poolbeg Peninsula
6. Poolbeg Site Management Expenditure
7. Project Funding
8. District Heating Project Expenditure

A number of acronyms used in this appendix are shown below:

DCC: Dublin City Council  
DECLG: Department of the Environment, Community and Local Government  
DONG: Danish Oil and Natural Gas  
DPC: Dublin Port Company  
DWEL: Dublin Waste to Energy Limited  
EPA: Environmental Protection Agency  
HLCL: Hammond Lane Company Limited  
NDFA: National Development Finance Agency  
PPP: Public Private Partnership  
RWMP: Regional Waste Management Plan  
TTCDLDPS: The Trustees of Clearway Disposals Limited Directors Pension Scheme  
WTHL: Westway Terminals Hibernian Ltd

## 1. Background and timeline for project

A Regional Waste Management Plan (RWMP) was adopted by the four Dublin local authorities in 1998. A Waste to Energy Facility was proposed as an integral part of the RWMP. Dublin City Council (DCC) acted as the lead authority on behalf of the other Dublin authorities and appointed RPS as client representative (following a competitive public tender) for the Thermal Treatment Plant at Poolbeg. A project agreement was signed in 2007 by Danish Oil and Natural Gas (DONG) and Covanta Energy Limited (together called "Dublin Waste to Energy Limited") and DCC for the design, build, operate and finance of a proposed Waste to Energy Plant on the Poolbeg peninsula.

Important timelines in relation to the Waste to Energy Project are as set out below:

| Date | Event  |
|------|--|
| 1996 | Four Dublin local authorities issue OJEU Notice for consultants to prepare a waste management strategy for the Dublin region.  |
| 1998 | Dublin local authorities adopt the Regional Waste Management Plan.   |
| 2001 | DCC appoint RPS as client representatives for the Thermal Treatment Plant Project.   |
| 2002 | DCC advertise for expressions of interest to participate in the project.   |
| 2004 | January: Project Board (an advisory board), comprising representatives of DCC, DECLG, NDFA and client representatives, established. Project Executive Board, made up of members of DCC management, with responsibility for project management, established.  |
| 2005 | April: Agreement in principle reached with Elsam AS and heads of agreement signed.   |
| 2006 | September: DECLG granted approval to project agreement. Elsam AS subsequently merged with Danish Oil and Natural Gas (DONG).   |
| 2007 | January: DONG proposes to invite Covanta Energy, a US company, to join the consortium.<br>May: Project Board approve proposal from Covanta / DONG consortium (now called DWEL), who are awarded the contract for the project in accordance with the original sanction.<br>September: The Project Agreement between DCC and DWEL was signed.<br>November: An Bord Pleanála grants planning permission for the Thermal Treatment Plant. CPO to acquire site at Shelly Banks Road also confirmed. |
| 2008 | December: Environment Protection Agency issue final waste licence.   |
| 2009 | September: Authorisation from Commission for Energy Regulation received for the construction of a generating station at Poolbeg.   |
| 2010 | September: Deadline for commencement of contract passed as conditions were not met.<br>October: An Bord Pleanála confirmed CPO on lands acquired in the absence of foreshore licence.  |
| 2011 | June: Hennessy Report, examining the potential financial risks associated with the project, published.   |
| 2012 | November: Decision date on commencement of construction contract deferred further to April 2013.   |



## 2. Financial Management of the Proposed Thermal Treatment Plant at Poolbeg

Based on the information and explanations provided by DCC as part of my review, it is evident that the financial management, as part of project management by the Environment and Engineering Department for this project, has been weak. There needed to be evidence of much more comprehensive oversight in monitoring and controlling expenditure. No proper classification of expenditure on an invoice basis was available to account for monies spent on this project at the initial audit stage (April 2012). A full retrospective analysis on an invoice basis was subsequently provided (August 2012). The lack of financial reports from the outset of the audit indicated that the financial control procedures in place were not adequate for such a project. There is no evidence of monitoring of detailed budgets or financial forecasts tied into project schedules or that detailed monthly/quarterly reports were examined to control expenditure apart from client representative summary reports and cumulative cost centre reports presented to DCC Management. It is also noted that the Project Executive Board did not meet on a formal basis and therefore no minutes of meetings were retained.

The total paid to the client representative amounted to €28.4m (including PR costs) compared to the original contract for €8.3m. The continued appointment of the Client Representative should have been reviewed as far back as 2005 in accordance with procurement guidelines. In relation to the construction of new premises for Westway Terminals Hibernian Limited (WTHL), which was contracted in 2004, the Council did not procure their own Consultant but relied on reports and invoices produced from WTHL consultants on the overall relocation expenditure. The Consultants were appointed in agreement with DCC to carry out this work.

## 3. Summary of Total Expenditure on Proposed Thermal Treatment Plant

Table 1 outlines the cumulative expenditure incurred on the Thermal Treatment Plant to 31 December 2011:

| <b>Table 1 - Overall Expenditure on Project</b>   | <b>€</b>          |
|---|-------------------|
| Client Representative                             | 28,442,827        |
| Purchase of Land at Poolbeg Peninsula             | 9,887,923         |
| Relocation of Westway Terminals Hibernian Limited | 31,003,745        |
| Relocation of Hammond Lane Company Limited        | 1,480,787         |
| Site Management                                   | 3,015,785         |
| DCC Payroll Costs*                                | 1,986,197         |
| Legal Costs                                       | 1,722,789         |
| Local Office, Community Consultation and PR       | 1,675,449         |
| Specialist Advice re: Site Procurement            | 973,965           |
| Other Expenses                                    | 1,556,337         |
| <b>Total</b>                                      | <b>81,745,804</b> |

\* DCC Payroll costs include Council project staff and staff in the public office in Ringsend.

#### 4. Analysis of Expenditure on Client Representative

The original contract with the Client Representative Team agreed on the 2<sup>nd</sup> March 2001 was for €8,327,510 incl. VAT. The lead consultant on the Client Representative team is RPS/COWI JV (formerly MCOS/COWI JV). The Sub-Consultants would have included PWC and Durango Browne (Commercial/Financial), McCann Fitzgerald (Legal), EC Harris (Procurement) and Mary Murphy and Associates (PR/Public Consultation). The total paid to 31 December 2011 was €28,442,827 (including for PR). This client representative contract was not re-advertised when it breached the 50% threshold rule in 2005.

The analysis in Table 2 was provided by the Environment and Engineering Department in DCC. This involved a retrospective analysis of invoices from the client representative. The client representative also carried out work directly for the PPP Company (DWEL) in seeking statutory approvals. This work was billed through DCC and recouped from the DWEL in 2007 and amounted to €2.364m. It is included in the overall client representative expenditure.

| Table 2 - Client Representative Expenditure   | Amount to 31/12/2011 |
|---|----------------------|
|   | €                    |
| Mobilisation & Review                         | 708,849              |
| Update Background Data                        | 888,589              |
| Public Communication                          | 10,307               |
| PPP Assessment & Procurement Procedures       | 840,551              |
| Contract Documentation                        | 899,807              |
| Procurement Pre-qualification                 | 497,335              |
| Tendering & Award of Contract                 | 3,835,195            |
| Project Meetings & Management Reporting       | 2,485,162            |
| Legal Advice                                  | 1,972,235            |
| Administration of Agreement                   | 1,954,646            |
| Licences/Complete Conditions Precedent        | 1,921,668            |
| Design Review & Certification                 | 1,466,656            |
| Planning Applications                         | 1,241,339            |
| Finalise Project Agreement                    | 877,415              |
| Environment Impact Statement                  | 777,125              |
| Programme Review & Strategy                   | 730,127              |
| Miscellaneous                                 | 686,344              |
| Variation of Project Agreement                | 458,664              |
| Ground Investigation & Site Clearance Works   | 357,638              |
| Baseline Monitoring                           | 301,290              |
| Air Monitoring                                | 263,354              |
| Renegotiate Reconciliation For Effective Date | 255,196              |
| Clearway Planning                             | 123,852              |
| Expenses                                      | 1,880,047            |
| Public Relations (See below)                  | 3,009,437            |
| Total   | 28,442,828           |



## **Client Representative – Public Relations**

The original contract in March 2001 provided for €1,296,783 (excluding VAT) for the public involvement aspect of the client representative service. This was to be paid in amounts of €43,226 (excluding VAT) bi-monthly for 5 years. Due to the delays in the project, RPS was paid a total of €3,009,437 on this basis up to April 2011. Managers Orders should have been raised for the additional cost of this service at the time. A new public consultation retainer of €14,000 (excluding VAT) per month was agreed from May 2011 to February 2012. This has now been discontinued.

## **5. Site Assembly at Poolbeg Peninsula**

### **Pigeon House Road/Shelly Banks Road Area (€9,887,923)**

DCC paid Dublin Port Company (DPC) €8.5m for their interest in the Pigeon House Road/Shellybanks Road site under a Compulsory Purchase Order in September 2011. This freehold interest covered an area of 5.239 hectares out of a total area of 6.239 hectares required for the WTE plant. The award was agreed with DCC's Chief Valuer's Office. Other payments included interest of €925,918.

### **Site Purchase and Relocation of Westway Terminals Hibernian Limited (WTHL)**

A site of one hectare was purchased by agreement from Westway Terminals Hibernian Ltd. As part of the agreement DCC was to acquire an alternative site and pay for the construction of a new premises for WTHL.

Table 3 outlines the total expenditure incurred in relocating WTHL:

| <b>Table 3 - Construction &amp; Relocation Expenditure</b> | <b>€</b>          |
|--|-------------------|
| Cost of Land and Stamp Duty                                | 3,432,000         |
| Construction Works   | 22,091,277        |
| Engineering Services                                       | 2,825,426         |
| Site Works/ Running Costs                                  | 630,149           |
| Planning & Feasibility of Project                          | 210,513           |
| Other Expenses   | 1,814,380         |
| <b>Total</b>   | <b>31,003,745</b> |

The ESB was paid €2.4m for the purchase of a site on Whitebank Road/South Bank Road in order to relocate this business. The award was agreed with the DCC Chief Valuer's Office. Stamp Duty of €432,000 was paid in respect of this purchase. DCC also purchased the Pigeon House Generating Station from the ESB at a cost of €600,000.

Table 4 outlines the construction expenditure incurred to provide alternative premises for WTHL:

| <b>Table 4 - Construction of New Premises for WTHL</b>             | <b>Final Account November 2008</b> | <b>Original Tender November 2003</b> |
|--|------------------------------------|--------------------------------------|
|  | €                                  | €                                    |
| Civil Engineering Contract Price inc. VAT                          | 22,091,277                         | 11,912,254                           |
| <b>Contract Price includes Sub-Contracting Work Outlined Below</b> |                                    |                                      |
| Mechanical Sub Contractors   | 5,916,668                          | 4,043,398                            |
| Tank Sub Contractors   | 3,947,074                          | 2,871,482                            |
| Electrical Sub Contractors   | 506,916                            | 395,804                              |

Consultants were engaged by WTHL, in agreement with DCC, to certify the expenditure paid to the principal contractor. The original contract price was €11,912,254 incl. VAT. I have requested a detailed report outlining the reasons for the differences between the original tender and the final account.

#### **Purchase of Leasehold Interest and Relocation of Hammond Lane Company Limited (HLCL)**

There were leasehold interests held on 4.704 hectares of the DPC lands. The Trustees of Clearway Disposals Limited Directors Pension Scheme (TCDLDPS) held the primary lease, and Hammond Lane Company Limited (HLCL) held a sub lease. DCC acquired these interests by way of CPO and provided an alternative premises.

Up-to the end of 2011 a total of €1,480,787 was spent by DCC on relocating this business. This included €339,117 on consultancy fees and €858,495 on moving the business to a temporary site.

The Compulsory Purchase Order on the leasehold interest went to arbitration. During 2012, arbitrators awarded €5,075,000 and €1,525,000 plus interest and costs to the claimants HLCL and TCDLDPS, respectively. These amounts are not included in the expenditure to 31 December 2011.

#### **6. Poolbeg Site Management Expenditure**

Site management costs to 31 December 2011 total €3,015,785. Initial costs paid in 2006 and 2007 were €1,045,778, this was for work carried out by Dublin Waste to Energy Limited (DWEL) on behalf of DCC. Costs to DCC since DWEL took over the site total €1,970,007, for expenses such as site clearance, consultancy, security, insurance and administration fees.

#### **7. Project Funding**

The funding for this project is provided by the four Dublin local authorities together with a grant of €7.5m from DECLG. The Council also received a refund of expenditure from Dublin Waste to Energy Limited of €4,537,048 for works carried out



by DCC on its behalf. The funding contribution from the local authorities, as set out below, is based on the 2006 population census figures.

|   |        |
|---|--------|
| Dublin City Council                     | 42.64% |
| South Dublin County Council             | 20.80% |
| Fingal County Council                   | 20.22% |
| Dún Laoghaire / Rathdown County Council | 16.34% |

Table 5 outlines the funding of the project to 31 December 2011 as shown in DCC accounts:

| <b>Table 5 - Overall Funding on Project</b>             | <b>€</b>          |
|---|-------------------|
| Dublin City Council                                     | 16,198,703        |
| South Dublin County Council                             | 14,444,799        |
| Fingal County Council                                   | 14,038,799        |
| Dún Laoghaire / Rathdown County Council                 | 11,350,389        |
| Department of Environment, Community & Local Government | 7,561,838         |
| Refund of Expenditure from DWEL                         | 4,537,048         |
| <b>Total</b>  | <b>68,131,576</b> |

Debtors in respect of these contributions from the other Dublin authorities amounted to approximately €8m at the end of 2011.

#### **Manager's Response**

The Waste to Energy Project has proved extremely challenging indeed more challenging than other controversial projects that the Environment and Engineering Department has been involved in such as the Regional Waste Water Treatment Plant.

A separate project management arrangement was put in place by DCC at the outset of the project in 2002. It involved the Project Engineer working in tandem with the Client Representative to directly manage all aspects of the project including financial management. A full retrospective analysis on an invoice basis was prepared when requested at audit and is set out in this report. The Project Engineer certified all expenditure based on his intimate knowledge of the project. However given the issues that have arisen with the project, the DCC Project Management Office was given a greater involvement earlier this year and revised project financial procedures were put in place. These revised procedures deal with the issues raised at audit. The Project Executive Board was to consist of the Assistant City Manager, City Engineer and the Project Engineer. However given that there was constant contact among this group in order to progress the project it was not done on a formalised or documented basis. Ongoing project costs were discussed at monthly meetings of the Assistant City Manager DCC and the Directors of Services of the other three Dublin Authorities.

Regarding the length of time the Client Representative has been in place, the circumstances which have prevailed during this project have involved unexpected and unforeseeable lengthy delays. It was not possible to change the Client Representative Team due to the ongoing pressure of work in dealing with the

obstacles placed in the path of the delivery of this vital infrastructure project. The initial procurement of the PPP Company (DWEL) was a very lengthy process as were the procedures to obtain planning permission, the EPA Waste Licence and approval of the Commissioner for Energy Regulation. The site acquisition process spanned almost 10 years. The history in relation to the Foreshore licence is well known and caused further delays to finalising the project agreement which persist to the present time. The previous Minister appointed an Authorised Officer to examine the potential financial risks associated with the project. Complaints to the Competition Authority and the EU Commission have all required the experience of the Client Representative to prepare the responses. The length of engagement of the Client Representative is the subject of queries from the EU Commission, which are in process at the moment.

Arrangements have now been put in place to engage separate Client Representative services for the Construction and Commissioning phase of the project.

In relation to the construction of new premises for Westway Terminals Hibernian Limited (WTHL), it should be noted that following the lodgement of the Compulsory Purchase Order for the main site in 2002, An Bord Pleanála indicated that the CPO would be dealt with in tandem with the planning application for the plant. This was not dealt with until 2007 at which point the CPO was also confirmed. In the interim it was considered prudent to begin to assemble the site through negotiation where possible. Securing the WTHL site was crucial to the site assembly and agreeing the terms of the relocation resulted in their objection to the CPO being withdrawn. DCC approved of the Consultant Engineering firm appointed by Westway Terminals Hibernian Limited (WTHL) to monitor and certify the expenditure paid to the principal contractor (who was appointed in September 2004). The Consultant was deemed to have experience relevant to the processes involved in the particular business. The Consultant liaised with the City Engineer at the time. Some of the issues that gave rise to increased cost included having to increase pile lengths and dealing with contaminated ground which delayed commencement and finalising the wayleave for the pipeline to the Docks, which delayed completion. However as requested by the auditor a report will be prepared by the Consultants outlining in more detail the reasons for variations between the tender price and the final account.



## 8. District Heating Project Expenditure

### Introduction

At the outset of the Waste to Energy project, DCC identified the possibility of using energy from the incinerator as part of a District Heating system and this was confirmed by An Bord Pleanála when a feasibility study was required as one of the conditions of approval. To facilitate this project, DCC incurred construction and consultancy expenditure. Although the proposed District Heating system can run on conventional fuel, the realisation of the greatest potential benefits would be achieved by utilising the energy from the Waste to Energy Plant. Expenditure on the District Heating project included:

- Widening, at design stage, of the Liffey Services Tunnel close to the East Link Bridge to accommodate heating pipes; and
- Construction of infrastructure in the apartment blocks at Spencer Dock and the surrounding area to accommodate district heating.

### Expenditure

Table 6 outlines the cumulative expenditure incurred on the District Heating project at 31 December 2011:

| Table 6 - Expenditure on District Heating |  | €          |
|---|--|------------|
| Consultancy Costs                         |  | 1,274,665  |
| Construction Costs                        |  | 5,379,713  |
| Liffey Tunnel Works                       |  | 2,936,116  |
| Misc. Expenses                            |  | 442,402    |
| Total                                     |  | 10,032,896 |

### Consultants Expenditure

DCC did not adhere to normal procurement legislation and guidance in appointing RPS/COWI Consultants for this work in 2004. DCC stated it made the appointment due to COWI's experience in Denmark, where district heating is commonly used.

### Construction Costs

DCC made payments to the construction company for district heating works conducted in developments in the Docklands Area. No contracts were signed with the construction company but COWI/RPS certified the expenditure as the works were completed.

### Liffey Tunnel Works

The Liffey Services Tunnel was originally part of an overall plan to deliver enhanced water and sewerage infrastructure to the Docklands area. The plan was changed to accommodate district heating.

### Manager's Response

The proposed District Heating offers significantly reduced carbon dioxide (CO<sub>2</sub>) emissions, energy efficiencies and reduced operating and maintenance costs over standard heating systems. The appointment of RPS/COWI Consultants in 2004 was made due to COWI's experience in Denmark, where district heating is commonly used and also in view of the fact that 200,000 sq metres of development in Spencer



Dock was imminent and the time line for normal procurement procedures would have precluded any alterations to the design.

In order to reduce future costs to the district heating project, design changes to heating systems were agreed by COWI/RPS and monitored/reviewed by Dublin City Council. Because it was not possible to have open tendering on the private development sites referred to above, open book systems were used where work was underway. An open book system is where there is free access to all purchase orders and invoices and any other information associated with the work being undertaken. Where work had not commenced budget prices were agreed in advance.

Regarding the Liffey Tunnel Project the most significant change to the original plan was the addition of two district heating pipes that resulted in the requirement to increase the internal tunnel diameter. All of this work was incorporated into the tender documents for this project and procured in accordance with the EU Directives.