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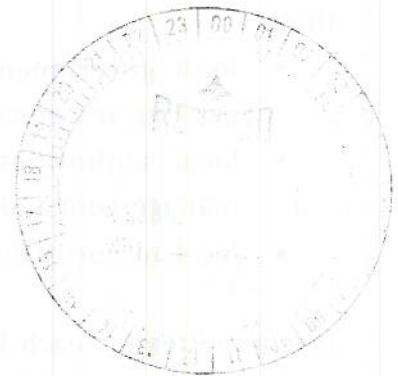
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Meeting 120-
27/03/2014



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

13 March, 2014

Ms. Niamh Maguire,
Committee Secretariat,
Committee of Public Accounts,
Leinster House,
Dublin 2.



Dublin Waste to Energy Facility – Request for Information

Dear Ms. Maguire,

I refer to your recent correspondence requesting details of monies spent on the Dublin Waste to Energy project at the Poolbeg site and accountability for same.

Waste Management

The Department's role in relation to waste management generally is to provide a comprehensive policy and legislative framework through which the relevant regulatory bodies such as local authorities and the Environmental Protection Agency operate.

As the Committee will be aware, this particular project is being developed by Dublin City Council, on behalf of the four Dublin local authorities, as part of the implementation of the region's waste management plan. In accordance with the provisions of the Waste Management Act 1996, the preparation and adoption of a waste management plan, including in respect of infrastructure provision, is the statutory responsibility of the local authority or authorities concerned. The progression of the project is a matter for parties to the contract, Dublin City Council and its private partner, Covanta.

The Department therefore has no role in terms of the delivery of the project or expenditure incurred as part of its delivery, with the exception of grant assistance provided by the Department to Dublin City Council at a much earlier stage in the process (provided over a four-year period between 2001 and 2005), as detailed in previous information provided to the Committee on 20 October 2011 and 21 February, 24 April and 18 July 2012 which outlined the limited grant assistance provided towards client representative costs over that 4-year period.

Local Government Finance

In terms of local government finance, the Department's primary focus is on ensuring that:

- local government has an appropriately structured funding system to meet existing and emerging challenges;
- local authorities operate to the highest possible standards of financial management and accountability; and
- local authority finances, as far as is practicable, are on a sustainable footing.

It is a matter for each local authority to determine its own spending priorities in the context of the annual budgetary process, having regard to both locally identified needs and available resources. The elected members of a local authority have direct responsibility in law for all reserved functions of the authority, which include adopting the annual budget, and the Manager is accountable to the elected members of the Council for the discharge of executive functions within the policy parameters laid down by the elected members.

As the Committee will also be aware, under the existing policy and legislative framework, the Local Government Audit Service (LGAS) provides independent scrutiny of the financial stewardship of local authorities and other local bodies. Part of its role is to carry out the audit of local government bodies in accordance with its statutory *Code of Audit Practice*, thereby fostering the highest standards of financial stewardship and public accountability. The LGAS previously identified shortcomings in relation to the financial management of the Dublin Waste to Energy project in its statutory audit report on the City Council's accounts for 2011; these related mainly to client representative contract costs overruns, site acquisition costs and financial reporting.

Where an audit has been completed by the local government auditor, the local authority is required to furnish a copy of the audited financial statement and any associated statutory audit report to every member of the local authority for consideration at the next practicable meeting of the local authority or body concerned.

The 2011 report has been considered by the elected members of Dublin City Council and by the Council's Audit Committee. The transcript of the elected members' discussion of the 2011 audit report is available at the link below (see in particular paragraph 24).

<http://www.dublincity.ie/YourCouncil/CouncilMeetings/Documents/MinutesDecember0312.pdf>

It is also understood that the City Council engaged an external expert to advise on issues in relation to the future governance of the project and that the Council's Audit Committee is currently considering that expert's report.

The Department has noted the issues raised in the Local Government Auditor's Report for 2011. The Department also acknowledges that the Local Government Auditor recently gave a more positive assessment in his statutory audit report on the 2012 accounts, noting that:

"Revised financial procedures have since been put in place which includes regular meetings of the Project Executive Board, improved financial reporting and the timely approval of change orders."

The transcript of the elected members' discussion on the 2012 statutory audit report is available at the link below (see in particular paragraph 12).

<http://www.dublincity.ie/YourCouncil/CouncilMeetings/Documents/OctoberMinutes2013.pdf>

In addition, copies of the statutory audit reports on the accounts of Dublin City Council for the years 2006 to 2012 are available at the following link:

<http://www.dublincity.ie/YOURCOUNCIL/ABOUTTHECOUNCIL/COUNCILSPENDINGREVENUE/Pages/CouncilSpendingRevenue.aspx>

It should also be noted that the client representative contract which had been the subject of some of the criticisms in the Local Government Auditor's Report (and was also the subject of a now-closed complaint to the EU) has been terminated with effect from 31 January, 2014.

Costs to date of the DWtE Project

Notwithstanding the clearly defined role of the Department in terms of waste management planning and local government finance as set out above and the existing policy and legislative framework in relation to the accountability of local authority Managers to their elected members, I enclose for the Committee's information a copy of the submission made by the Dublin City Manager, Mr. Owen Keegan, to the Joint Oireachtas Committee on the Environment, Culture and the Gaeltacht, ahead of his appearance before the Joint Committee on 22 January last to discuss the project. Containing a full breakdown of expenditure incurred to date, it also provides details on the chronology of the project and addresses some of the main points contained in the Local Government Auditor's report.


As outlined in the City Manager's submission to the Joint Oireachtas Committee, the breakdown of expenditure on the project as of 31 December 2013 (categorised into the main cost areas) is as follows:

| COST ELEMENT | AMOUNT |
|--|--------------------|
| Client's Representative | €29,774,795 |
| Consultancy (incl. reports on site selection, EIS, Planning) | €1,344,559 |
| Site Acquisition | €52,277,607 |
| Legal fees (not associated with site acquisition) | €1,820,222 |
| Public Relations/Consultation (includes local office overheads and staffing) | €4,337,723 |
| Statutory fees | €186,348 |
| Site Management, security and monitoring costs | €3,966,463 |
| Other (incl. DCC Project Engineer & other staff costs) | €2,565,322 |
| Total | €96,273,039 |

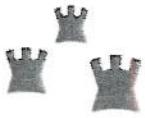
It should be noted that €4,537,048 was refunded to Dublin City Council from Dublin Waste to Energy Limited (the PPP company) in relation to site planning, EIS etc. cost upon signing of the contract.

I trust the foregoing will be of assistance.

Yours sincerely,



Geraldine Tallon
Secretary General



Baile Átha Cliath
Dublin City

Proposed Dublin Waste to Energy (DWtE) Facility at Poolbeg

**Submission by Dublin City Council to the Oireachtas Joint
Committee on Environment, Culture and the Gaeltacht**

20 January 2014

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Section 1 Opening Statement

The background to the Dublin Waste to Energy (DWtE) project together with a project chronology is set out in detail in Section 2 of this submission.

Dublin City Council, acting on behalf of the four Dublin local authorities, has been pursuing the provision of the DWtE facility following the adoption of the Dublin Region Waste Strategy in 1998.

The DWtE Project was developed as a Public Private Partnership (PPP) using the appropriate EU procurement procedure and carried out in accordance with the '*Capital Appraisal and Public Private Partnership (PPP) Guidelines*' issued by the Department of Finance. The public tender competition was conducted by the Client Representative on behalf of Dublin City Council to award a contract for the design, build, financing, operation and maintenance of a thermal treatment facility.

A Project Board was established in January 2004 to oversee the project. The Project Board is comprised of representatives from Dublin City Council, the DoEHLG, the National Development Finance Agency (NDFA) and the Client's Representative (CR).

In response to a public procurement process three bids were received on 16 April 2004. In June 2005 the Procurement Report was finalised and issued to the DoEHLG, NDFA and to the Dublin local authorities. The project was subject to financial assessment by the NDFA which confirmed in 2005 (and again in 2007 following a financial restructuring by the preferred bidder), that the project represented value for money. The Project documents were submitted for approval to the DoEHLG and NDFA in approximately June 2005. In September 2005, a letter issued by the Assistant Secretary, Environment Division of the DoEHLG confirmed that the Department following a detailed technical review had no objection to Dublin City Council proceeding to enter into contractual arrangements based on the documents received.

A Project Board meeting was held on 14 May 2007 at which Dublin City Council requested approval to proceed to finalise the Project Agreement with the PPP Co. The Project Board decided that approval to award the contract for the Project would be given in accordance with the original sanction. The Project Agreement was executed on 4 September 2007.

Planning permission was granted by An Bord Pleanála on 19 November 2007. The Environmental Protection Agency subsequently granted a Waste Licence for the facility in December 2008. The necessary licences from the CER were granted on 4 September 2009.

Since the DWtE project was conceived in the late 1990s it has remained entirely consistent with regional, national and EU waste management policy. In addition to its importance in meeting waste management objective for the Dublin region its provision is crucial if the State is to meet 2016 landfill diversion targets without dependence on the

export of municipal waste to overseas facilities. The policy background is dealt with in detail Section 3 of this submission.

Delivery of the DWtE project has proved extremely challenging and it has gone on for far too long. In particular it has been subject to unanticipated delays due to a range of factors largely outside the control of the Dublin local authorities, all of which are detailed in this submission. These factors include the following:

- a successful High Court challenge to a variation to the Regional Waste Management Plan. The variation was necessary, following the increasing penetration of private waste operators in the Dublin household waste market, if the Dublin local authorities were to be in a position to retain control of waste arising in the Dublin region in order to meet the '*put or pay*' provisions in the original Project Agreement,
- a complaint to the Competition Authority,
- the failure to secure Foreshore Licences required to facilitate the DWtE project and
- complaints to the EU Commission on State Aid and Public Procurement grounds, stretching back over three years, which have yet to be determined.

The delays to the project are dealt with in more detail in Section 4 of this submission.

These delays have contributed to the very significant costs, which have been incurred to date by the Dublin local authorities and the PPP Company, in seeking to advance the project. A total of €96.3m had been spent on the project by the Dublin local authorities to 31 December 2013. Of this total €4.5m was recouped from the PPP Company, in accordance with the Project Agreement, and grant aid of €7.5m was received from the DoEHLG. Full details of the expenditure incurred to date are given in Section 2 of this submission.

Total expenditure to date on the project should be seen in the context of an anticipated investment by the PPP Company of circa €500m on the DWtE facility should the project proceed.

With the termination of the CR contract from 31 January 2014 expenditure on the project from 1 February 2014 will be confined to site security costs, DCC project engineer costs and certain on-going costs arising from the statutory consents, pending a decision on whether the project is to go ahead or not.

The Principal Local Government Auditor as part of his audit of Dublin City Council's Accounts for the year ended 31 December 2011 reviewed cumulative expenditure on the DWtE facility to 31 December 2011. In his report he drew attention in particular to the following issues:

- serious weaknesses in the financial management of the project by the City Council,
- the escalation in the cost of relocating Western Terminals Hibernian Ltd and
- the escalation in the cost of the CR contract due to the fact that the contract was extended well beyond the 50% increase in value permitted under EU procurement rules. He noted that the continued appointment of the CR should have been reviewed as far back as 2005, when the 50% threshold rule was breached in accordance with procurement guidelines.

On foot of the Local Government Auditor's report financial management of the DWtE project by DCC has been considerably strengthened especially in relation to monitoring and controlling of expenditure. In addition, the executive Board overseeing the project meets on a fortnightly basis and their meetings are minuted. The Council's response in relation to the cost of relocating Western Terminals Hibernian Ltd. is set out in Section 5 of this submission as is the Council's position relation to the CR contract, which will terminate on 31 January 2014.

If the project does not proceed the bulk of the costs incurred by the Dublin local authorities will not be recouped. In addition, the PPP Company has incurred significant costs to date. It may seek to recover these costs.

If the project does proceed then, subject to certain assumptions, there is a real prospect that the Dublin local authorities will recoup the investment they have made in the project to date albeit over a long time period. In addition, the DWtE facility will make a very significant contribution to the achievement of regional and national waste management targets. The project will generate on average 275 jobs, with a peak of about 500 jobs during the construction phase and 60 jobs once it is operational. It will also generate significant community gain.

The current status of the project is that the PPP Company has put in place a funding package which is acceptable to the Dublin local authorities. The Project Agreement has been renegotiated to reflect the new funding package and the removal of the '*put or pay*' clause in the original Project Agreement. DCC is awaiting the outcome of the complaints to the EU Commission. Assuming a favourable outcome to these complaints from DCC's perspective and that the project can proceed to construction phase DCC will proceed as follows:

- the revised Project Agreement will be finalised,
- a detailed suite of reports including the revised Project Agreement will be submitted to both the NDFA and Project Board for approval,
- the views of the Elected Members of the four Dublin local authorities will be sought and

- subject to the necessary NDFA and Project Board approvals a final decision will be made to proceed or not with the project by the Dublin City and County Managers.

Section 2 Background to DWtE Project

2.1 BACKGROUND

In 1996, the four Dublin local authorities began the process of developing a new waste management strategy for the Dublin Region. The project required a thorough technical environmental and economic appraisal of waste management practice in Dublin together with a review of internationally available technologies and waste management policies elsewhere.

After a wide ranging public consultation process the new Waste Strategy was published in January 1998. It advocated an integrated approach to waste management in accordance with best international practice. A policy of '*maximum realistic recycling and minimum landfill*' was recommended. The mechanism recommended for dealing with the residual waste left over following recycling and biological treatment was thermal treatment of up to 750,000 tonnes per annum (reduced to 600,000 tonnes per annum in the subsequent PPP contract).

A site selection study for the thermal treatment facility recommended Poolbeg as the optimal site but PPP applicants were invited to propose alternative sites, if such were under their control in areas with appropriate zoning. The technology choice and eventual size of the plant was to be determined by as part of the PPP procurement process.

2.2 PPP PROCUREMENT PROCESS

The DWtE Project was developed as a Public Private Partnership (PPP) using the appropriate EU procurement procedures and in accordance with the Capital Appraisal and Public Private Partnership (PPP) Guidelines issued by the Department of Finance. The public tender competition was conducted by the Client Representative on behalf of Dublin City Council (on behalf of the four Dublin local authorities) to award a contract for the design, build, financing, operation and maintenance of a thermal treatment facility.

In March 2001, Dublin City Council appointed a consortium to act as Client's Representative (CR) for the DWtE project. From 2001 to 2003 base data for the project was collated. The data was then subject to an independent review by the International Solid Waste Association. Over the same period a procurement strategy and associated contract documentation were developed. These were subsequently approved by Dublin City Council and the then Department of the Environment, Heritage and Local Government (DoEHLG).

In July 2002, the City Council commenced the procurement process and set strict and detailed criteria with respect to financial strength, relevant technology, operations experience and organisation strength to be met by applicants to pre-qualify. It was made clear that all proven technologies would be considered. The preferred site for the facility was the Poolbeg peninsula, but applicants were invited to propose alternative sites, if such

were under their control in areas with appropriate zoning. The Invitation to Negotiate was issued to the selected bidders on 4 November 2003. At that time further due diligence carried out to validate the amount of waste to be diverted from landfill. This informed the put-or-pay element of the Project Agreement. (The put-or-pay aspect of the Project Agreement set an obligation on the Dublin local authorities to deliver (or arrange delivery of) 320,000 tonnes of waste per annum to the Poolbeg facility or pay an amount equal to that which would have been received by the economic operator had such 320,000 tonnes of waste per annum been processed.)

A Project Board was established and first convened in January 2004. The Project Board was comprised of representatives from Dublin City Council, the DoEHLG, the National Development Finance Agency (NDFA) and the CR.

Three bids were received on 16 April 2004. In April 2005 agreement in principle was reached with the PPP Company. In June 2005, the procurement report was finalised and issued to the DoEHLG, NDFA and the Dublin local authorities. In addition the project was subject to financial assessment by the NDFA which confirmed in 2005 (and again in 2007 following a financial restructuring by the preferred bidder), that the project represented value for money. The Project Documents were submitted for approval to the DoEHLG and NDFA around June 2005. In September 2005, a letter issued by the Assistant Secretary, Environment Division of the DoEHLG confirmed that the Department following a detailed technical review had no objection to Dublin City Council proceeding to enter into contractual arrangements based on the documents received. The Project Agreement between the PPP Company and the Dublin local authorities was signed in September 2007.

2.3 PLANNING CONSENT, EPA LICENSING AND CER APPROVALS

The project required planning consent, a waste licence and relevant approvals from the Commission for Energy Regulation (CER). Planning permission was granted by An Bord Pleanála on in November 2007. The Environmental Protection Agency (EPA) subsequently granted a Waste Licence for the facility in December 2008. The licences from the CER were granted in September 2009.

These consents allowed the facility to accept up to 600,000 tonne per annum of non-hazardous municipal and industrial wastes. The consents were underpinned by EU, national and regional waste policy as clearly set out in the legally adopted Waste Management Plan for the Dublin Region 2005-2010.

A Project Board meeting was held on 14 May 2007, at which Dublin City Council requested approval to proceed to finalise the Project Agreement with the PPP Co. The Project Board decided that approval to award the contract for the Project would be given in accordance with the original sanction. The Project Agreement was executed on 4 September 2007.

2.4 SPEND TO DATE ON THE PROJECT

The total spend to 31 December 2013 on the DWtE project was €96.3m. The breakdown of this expenditure is shown in the table:

| COST ELEMENT | AMOUNT |
|--|--------------------|
| Itemised spending by key sub-divisions as follows: | |
| Client Representative | €29,774,795 |
| Consultancy (include. reports on site selection, EIS, Planning) | €1,344,559 |
| Site Acquisition | €52,277,607 |
| Legal fees (not associated with site acquisition) | €1,820,222 |
| Public Relations/Consultation (includes local office overheads and staffing) | €4,337,723 |
| Statutory fees | €186,348 |
| Site Management, security and monitoring Costs | €3,966,463 |
| Other (Inc DCC Project Engineer & other Staff costs) | €2,565,322 |
| Total | €96,273,039 |

An amount of €4,537,048 was refunded to Dublin City Council from Dublin Waste to Energy Limited (the PPP Co.) in relation to site planning, EIS etc. cost upon signing of the contract. A grant of €7.5m was received towards the cost of the project from DoEHLG.

A breakdown of the €52.277m land acquisition costs is given below:

| COST ELEMENT | AMOUNT |
|---|--------------------|
| Dublin Port Company | €8,500,000 |
| Westway Terminals/Hibernian Molasses (incl. replacement site cost & building of replacement facility) | €31,003,745 |
| Clearways / Hammond Lane | €8,951,881 |
| Legal & Professional fees for all parties, stamp duty, financial valuations/advice | €2,979,090 |
| CPO costs & Professional fees/reports/attendance at Oral Hearings, experts reports etc | €842,889 |
| Total | €52,277,606 |

2.5 PROJECT CHRONOLOGY

| Time | Event |
|---------------------|---|
| 1996 | Four Dublin Local authorities issue OJEU Notice for consultants to prepare a waste management strategy for the Dublin Region. |
| 1997 | Waste Strategy Report prepared. |
| Jan 1999 | Integrated Waste Management Plan for Dublin Region adopted. and. |
| Nov 1999 | Report on Siting and Environmental Issues associated with thermal treatment facility completed. |
| 25 May 2000 | DCC issues OJEC Notice for Client's Representative (CR) for Waste to Energy facility. |
| Mar 2001 | CR appointed. |
| Jun – Aug 2001 | Form of Contract and Communications Strategy developed |
| Mar 2001 – Sep 2002 | Background reports prepared by CR and submitted |
| Mar 2001 | Independent review of Background Data |
| Jul 2002 | Procurement Paper; Project Information Memorandum; Project Questionnaire completed. |
| Jul 2001 – Oct 2003 | Contract Documentation development in co-operation with DCC and DoEHLG |
| Nov 2001 – May 2003 | Prequalification process |
| Jul 2002 | OJEC Notice dispatched – Notice with invitation to pre-qualify. |
| Aug 2002 | District Heating Feasibility Study completed. |
| Aug 2002 | Prequalification Methodology Report, procedures and evaluation criteria for prequalification prepared. |
| Mar 2003 | Prequalification Evaluation Report. |
| Oct 2003 | Invitation To Negotiated (ITN) approved. |
| Nov 2003 | ITN issued to Bidders. |
| Jan 2004 | Project Board first convened |
| 16 Apr 2004 | Bids Received. |
| May 2004 | Compliance check. |
| Apr 2005 | Bid Evaluation Report |
| Apr 2005 | Value for Money Report |
| Apr 2005 | Agreement in Principle reached with Preferred Bidder. |
| Apr 2005 | Completion of contract documents. |
| Jun 2005 | Procurement Report finalized. |
| Jun 2005 | Project Documents were submitted for approval to the DoEHLG and NDFA. |
| Sept 2005 | Project Agreement Approval. |

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|---------------------------------|---|
| Jun 2006 | Planning Application and EIS lodged with An Bord Pleanala. |
| July 2006 | Application for Waste Licence submitted to EPA. |
| Sept 06 – Mar 07 | Further information requested was lodged with An Bord Pleanala. |
| Jan 2007 | Pre-qualification re-conducted. |
| April – June 07 | Oral Hearing on Planning Application by An Bord Pleanala |
| May 2007 | Project Board confirmed original sanction still applied to the DONG/Covanta consortium. |
| August 2007 | Review of Funding Proposal. |
| 4th Sept 2007 | Contract Signing. |
| Nov 07 | Planning permission granted. |
| May 2008 | Applications lodged with Commission for Energy Regulation. |
| April – May 2008 | Oral Hearing on Waste Licence application to EPA. |
| Aug 2008 | Foreshore Licence application made to Department of Agriculture, Fisheries and Food. |
| Dec 2008 | EPA issued final Waste Licence. |
| Sept 2009 | Approval from CER to licence applications. |
| Jan 2010 | Responsibility for Foreshore Licensing transferred to DoEHLG |
| Jan – Jun 2010 | Numerous letters to DoEHLG seeking information on status of Foreshore Application. No response received. |
| Feb 2010 | Appointment by Minister for the Environment of “Authorised Officer” to investigate Project Agreement and financial risk. |
| Feb 2010 | Competition Authority notified DCC of complaints from IWMA on competition grounds. |
| July 2010 | Letter from Competition Authority to DCC confirming there was no breach of Irish Competition Law. |
| July 2010 | Letter to DoEHLG informing them of intention of DCC to use CPO powers to acquire foreshore lands. |
| August 2010 | CPO for foreshore lands lodged with An Bord Pleanala. |
| 4 Sept 2010 | Longstop Date (3 years from signing of PA) passed. |
| Oct 2010 | Letter from ABP authorising DCC to proceed to confirm CPO. |
| Oct 2010 | DCC confirmed CPO of foreshore lands. |
| Oct 2010 | “Authorised Officer” submitted report to Minister. |
| Nov 2010 | DoECLG responded to informal request from EU Commission for information on alleged State Aid to the project. |
| May 2011 | DG Competition informs DoECLG that formal “State Aid” Complaint lodged with EU Commission, DoECLG issues response directly. |
| Jun 2011 | Redacted report of “Authorised Officer” published by Minister. No issues arising for DCC from Report. |
| July 2011 | DoECLG notified DCC that formal “State Aid” complaint lodged with EU Commission. |

| | |
|---------------------|---|
| Feb 2012 | Heads of terms letter between DCC and Covanta signed |
| Mar 2012 | DCC meet with DG Competition to discuss complaints related to alleged State Aid within the Project Agreement. |
| June 2012 | Covanta begins discussion with bank consortium to provide Project finance for DWtE project. |
| Jun 2012 | Submission by DCC on State Aid complaint |
| July 2012 | Commission issue a number of queries related to submission of June 2012. |
| 21 Sept 2012 | Letter from EU DG Internal Markets and Services setting out an alleged infringement of EU procurement rules. |
| Nov 2012 | Irish State issue response to alleged infringement of EU procurement rules. |
| Nov 2012 | Irish State issues pre-notification to DG Competition in relation to DWtE Project Agreement. |
| Feb 2013 | Irish State issues additional paper to DG IM & S, related to Procurement complaint. |
| Feb 2013 | Irish State issued additional paper to DG Comp, related to State Aid complaint. |
| May 2013 | Irish State issues additional information to DG Comp as requested. |
| July 2013 | DCC issues draft of suite of reports to NDFA for review. |
| Sept 2013 | DG Comp. issue draft of preliminary assessment letter to Irish state |
| Oct 2013 | DG Comp. issue preliminary assessment letter to complainant |
| Jan 2014 | CR Contract Terminated |

Section 3 DWtE Project in the Context of EU, National and EU Waste Management Policy

3.1 EUROPEAN WASTE POLICY

In recent years, EU waste policy has increasingly been directed towards ‘resources efficiency’ as part of the Europe 2020 strategy. In 2011, the EU Commission published a roadmap to a resources efficient Europe by 2020. The EU has set as an objective, the management of all waste as a resource with landfill virtually eliminated and high quality recycling ensured.

The Waste Framework Directive outlines a revised Waste Management hierarchy and sets a priority order that must be adhered to by Member States when developing waste prevention and management legislation and policy. The revised hierarchy specifically defines ‘Waste to Energy’ as a recovery activity, placing it above disposal and thus landfill in the hierarchy. The Directive also enshrines the principals of Self-sufficiency & Proximity within the European regulatory framework.

The EU Landfill Directive (1999/31/EC), the EU Waste Incineration Directive (200/76/EC) and the Renewable Energy Directive (2001/77/EC) further outline European policy in terms of waste management and the generation of renewable energy.

The Landfill Directive (1999/31/EC), requires the progressive diversion of biodegradable waste in particular away from landfill towards more superior recycling and recovery options. It also sets out challenging targets for the Irish waste sector. Ireland was given a four year derogation in meeting these targets due to its heavy dependence on landfill and lack of alternative waste management infrastructure. The target for 2016 is set out below:

Maximum 35% of the total amount (by weight) of Biodegradable Municipal Waste produced in 1995 (427,000t in the case of Ireland) to go to landfill.

It should be noted that the EPA in its 2011 National Waste Report has acknowledged that this target remains at risk. Without Poolbeg the ability of the State to meet the 2016 diversion targets will be heavily dependent on the export of waste to overseas facilities.

The Renewable Energy Directive (2001/77/EC) obliges EU Member States to set national targets for the amount of electricity supplied by renewable sources by 2020. This Directive considers thermal treatment with energy recovery as renewable energy.

3.2 NATIONAL LEGISLATION AND POLICY

3.2.1 Changing our Ways (1998).

Waste Management Policy in Ireland since 1998 has been determined in accordance with the policy statement ‘*Changing Our Ways*’. A key message of the policy was the regionalisation of waste management strategy between neighbouring local authorities. The

'development of integrated and innovative waste management solutions' was strongly encouraged. The policy further stated:

'while landfill disposal of residues will always be required, mass burn waste to energy is efficient in diverting over 70% of municipal waste away from landfill and if properly controlled has a considerably lower environmental impact than landfill'.

3.2.2 Preventing and Recycling Waste: Delivering Change (2002)

In March 2002, a Policy Statement '**Preventing and Recycling Waste: Delivering Change**' was primarily focused on waste prevention and recycling. It restates that '*the emphasis must be given to the widest practicable realisation of waste prevention, minimisation, reuse, materials recycling and biological treatment, before energy recovery through thermal treatment and final disposal in landfill*'. This policy statement also builds on the commitment in '**Changing Our Ways**' to gradually introduce a 'polluter pays' principal.

3.2.3 Taking Stock and Moving Forward (2004)

In April 2004, the Government issued a further Policy Statement for Waste Management '**Taking Stock and Moving Forward**'. This Statement outlined progress to date on the implementation of the Regional Waste Management Plans. While progress was noted in the Dublin Area, the other regions were minded to

'to give early consideration to how they envisaged accelerating progress towards meeting the objectives of their waste management plans in relation to thermal treatment'.

There was particular concern at diminishing landfill capacity in most regions. It was recognised that

'thermal treatment with energy recovery has a role to play as only one element in the integrated approach to waste management'.

The cornerstone of Irish waste policy is waste prevention and recycling followed by residuals management. In line with such policy a National Waste Prevention Programme was first developed by the Environmental Protection Agency in 2004. The roll out of the kerbside collection (green bin) in our cities and towns in accordance with the Regional Plans in a three to four year rolling programme was unprecedented in Western Europe. These initiatives together with the '**Race Against Waste**' public awareness campaign have been central to Ireland's success where we now recycle 40% of our municipal waste.

3.2.4 National Strategy on Biodegradable Waste (2006)

In April 2006, the *National Strategy on Biodegradable Waste* was published. This Strategy stated that *'thermal treatment with energy recovery in accordance with the internationally accepted waste management hierarchy is a key element of Irish waste management policy'*.

The Strategy noted that regional waste management plans recognised the role of thermal treatment and facilities. Such facilities had been proposed for the treatment of residual waste by six of the ten regions. In the Strategy, two broad options are shown as currently available for residual waste treatment – Thermal Treatment and Mechanical Biological Treatment (MBT). It is further stated that neither system should be seen as *'an alternative to the separate collection and recycling policies set out in this strategy'*.

The strategy further stated:

'even allowing for the achievement of the very ambitious prevention, recycling and biological treatment targets for biodegradable municipal waste (BMW), the estimated total amounts of residual BMW generated varies from 950,221 tonnes to 1,276,307 tonnes per annum nationally over the period 2010 to 2016'.

As mechanical biological treatment (MBT) is a pre-treatment method for either landfill or incineration and since the organic material recovered by MBT *'typically emerges as a low quality material – 'stabilised bio waste' – that has limited applications'*, the Strategy noted that *'Some recyclable materials are recovered from the MBT process, but the majority of the residue is usually sent to energy recovery, or to landfill'*. Thermal treatment with energy recovery is recognised in the Strategy as the preferred treatment system for residual bio waste post recycling.

Furthermore, since the National Biodegradable Waste Strategy favours 3-bin source separation of BMW this does not sit well with MBT which caters mostly for non-source separated waste. The use of the three bins – green bin for dry recyclables, brown bin for the wet fraction (BMW) and the black bin for residual waste – is an internationally accepted method to maximise recycling all across the developed world. It is premised on the fact that the resource value in waste deteriorates as waste is mixed once discarded and a system of separate bins, which does not allow this mixing to occur, is the optimum approach for maximum resource reuse. The Environmental Education Programmes pursued by the four Dublin local authorities and actively promoted by the Environmental Awareness Officers over the past 8 to 10 years and the Government backed *'Race Against Waste'* awareness campaign draws attention to the need to prevent and minimise waste together with maximising its resource value through source separation recycling.

3.2.5 National Development Plan (2007-2013) 'Transforming Ireland – a Better Quality of Life for All'

In the National Development Plan (NDP) 2007-2013 *'Transforming Ireland – a Better Quality of Life for All'* there is a specific reference to thermal treatment in the context of reducing *'our reliance on landfill as a method of waste disposal'*. The NDP goes on state:

'in line with National Policy on the integrated approach to waste management thermal treatment with energy recovery will be preferred option for dealing with residual waste after achieving ambitious targets in respect of waste prevention, recycling and recovery... in the case of the Dublin Region, the relevant authorities are proceeding by way of a public private partnership for which the necessary statutory approvals are being sought'.

The NDP specifically lists thermal treatment under *'Central Government Investment Priorities'* wherein it is stated that under the Waste Management Sub-Programme some €750 million will be invested in dealing with the problem of legacy landfills and supporting the recycling and recovery effort.

3.2.6 National Climate Change Strategy (2007-2012)

The Strategy seeks to reduce Ireland's greenhouse gas emissions by over 17 million tonnes of carbon dioxide equivalent in the period 2008 to 2012. A range of measures in various parts of the economy are identified which will reduce our carbon footprint in the years ahead. Chapter 9, which deals with waste management, speaks of the *'priority given to the diversion of waste from landfill'*. Under the heading Residual Treatment it is made clear that *'this is meant to mean thermal treatment with energy recovery or by way of mechanical biological treatment'*. The clear policy preference for using thermal treatment with energy recovery as the preferred option for residual waste is very obvious from the following paragraph in the Strategy:

'While substantial volumes of municipal waste will be diverted from landfill as a result of high levels of recycling and biological treatment, significant quantities of residual waste will remain. To maximise the recovery of useful material and energy from residual waste, the National Strategy on Biodegradable Waste identifies thermal treatment with energy recovery as the preferred option in most waste management plans adopted by local authorities. The National Strategy on Biodegradable Waste also recognised, particularly in the shorter term prior to the development of adequate thermal treatment capacity, a potential role for mechanical biological treatment (MBT).'

The document goes on to state

'in accordance with the methodology developed by the Inter- Governmental Panel on Climate Change (IPCC), the CO₂ emissions resulting from the combustion of biodegradable waste are considered to be carbon neutral and are not counted for the purposes of Kyoto obligations'.

The IPCC Fourth Assessment Report (2007), '**Chapter 10, Waste Management**', assesses emission trends, policies and long-term considerations of waste management and climate. On review of incineration and other thermal processes for waste to energy the report indicates that

'Incineration reduces the mass of waste and can offset fossil fuel use; in addition, GHG emissions are avoided, except for the small contribution from fossil C'.

The report also acknowledges that

'Waste incinerators have been extensively used for more than 20 years with increasingly stringent emission standards' and

'Thermal processes can efficiently exploit the energy value of post-consumer waste'.

'In addition, the generation of heat and electricity in thermal treatment plants reduces the need to produce this energy from fossil fuels and will therefore replace CO₂ emissions from these sources. By exploiting an indigenous energy source, the waste to energy plants make a contribution to national security of energy supply. In the current process of revising the Waste Framework Directive (2006/12/EC), mechanisms are being considered which would encourage waste to energy plants to increase efficiency to a level comparable to conventional power plants, thereby allowing the energy content within waste to be transformed into electricity and heat for beneficial use in accordance with Best Available Techniques (BAT). The Government supports this approach in the context of the waste hierarchy which will minimise climate impacts through the sustainable management of waste'.

3.2.7 Waste Management Policy in Ireland – A Resource Opportunity' (2012)

In July 2012, the Department of Environment Community and Local Government (DoECLG) published its latest national waste policy '**A Resources Opportunity Waste Management Policy in Ireland**', which is firmly grounded in the EU Waste Policy in particular the Waste Framework Directive and the EU Landfill Directive (1999/31/EC). The Policy seeks to:

- maximise the resource value in waste,
- ensure a sufficiency of waste management infrastructure within the State to manage municipal waste,
- consolidate waste management regions from 10 to 3,
- ensure new Waste Management Plans are in place by early 2014,
- ensure sufficient waste management infrastructure is available within the State to manage municipal waste,
- retain side by side competition in the household market until 2016, when a review by the Competition Authority will be undertaken,
- enhance the waste collection permitting system, and
- eliminate the use of landfill by 2020

The policy document seeks *‘the virtual elimination of land-filling of municipal waste’*. It also seeks *‘to ensure a sufficiency of waste management infrastructure within the State to manage municipal waste’*. That should prevent the export of residual waste for recovery if the necessary recovery infrastructure is provided in Ireland in accordance with the Regional Waste Management Plans.

In terms of future regulation of waste, the Policy states that there will be *‘a strengthened permitting system...supportive of a resource efficient and sustainable approach’*. The waste management regions will be reduced to a maximum of 3 thus ensuring that the Dublin will be part of a substantially larger region than it is currently. There will also have to be greater flexibility between regions on a national basis to ensure resource efficiency. In terms of regulation the Policy states that

‘the Department of the Environment, Community and Local Government and the EPA will monitor how compliance with the waste hierarchy is achieved through implementation of the new regional waste management plans...The Competition Authority is being requested by the Government to maintain oversight of household waste collection markets as the retention of the current market structure combined with a strengthened regulatory regime, will need to be subject to close monitoring’.

As for export of waste, the new policy states that the storage and export of waste material:

“will be strictly policed to ensure no environmental damage arises from the storage of such materials prior to export”,

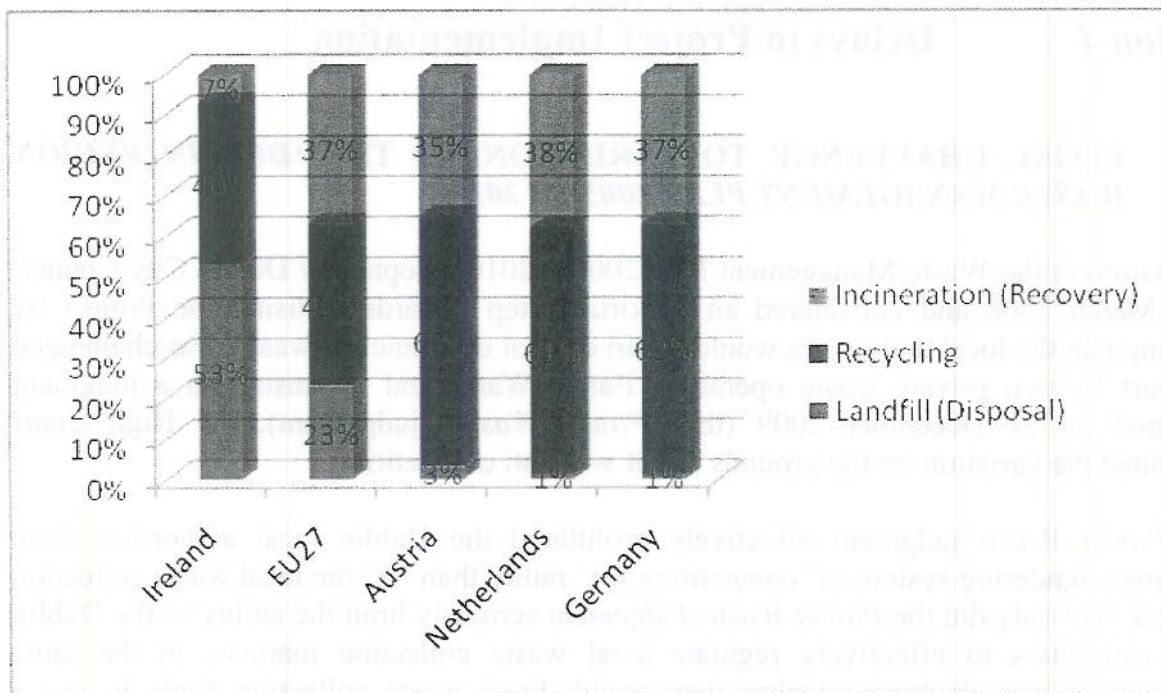
The Policy states that exports should avoid environmental and reputational damage and ensure that waste is treated in the country of destination to the standards specified. This is a reference to the increased level of residual waste exports (including SRF and RDF type materials) from Ireland since 2011 due to lack of adequate recovery infrastructure nationally

In terms of waste recovery, the new policy clearly states:

‘Ireland requires an adequate network of quality waste treatment facilities...with the ultimate goal of virtually eliminating landfill’.

3.2.8 The Current Management of Municipal Solid Waste (MSW) in Ireland and Europe.

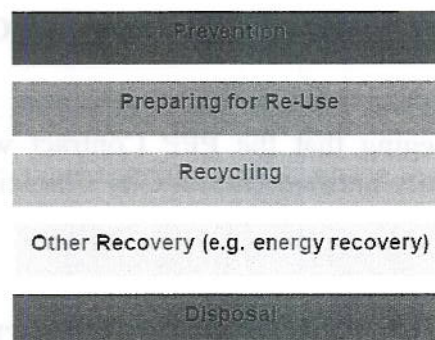
The treatment of Municipal Solid Waste (MSW) in Ireland and Europe, including the top three performing European countries in the area of recycling in 2011 is shown in the chart below:



Overview of MSW Management Ireland and EU

It is clear that the EU countries with the highest levels of recycling of municipal solid waste and the lowest levels of disposal to landfill rely heavily on thermal treatment.

Finally, the focus of the current policy and legislation is on the development of waste as a resource in-line with the waste hierarchy which prioritises prevention, reuse and recycling in advance of energy recovery and final disposal.



Waste Hierarchy.

Section 4

Delays in Project Implementation

4.1 LEGAL CHALLENGE TO VARIATION TO THE ‘DUBLIN REGION WASTE MANAGEMENT PLAN 2005 TO 2010’

A variation to the Waste Management Plan 2005 – 2010, adopted by Dublin City Council on 3 March 2008 and considered an important step towards realising the Project by ensuring that the local authorities would retain control of municipal waste, was challenged in Court by two private waste operators, Panda Waste and Greenstar. In a judgment delivered on 21 December 2009 (the “*Panda Waste*” judgement), the High Court prohibited the variation on the grounds that it was anti competitive.

The *Panda Waste* judgment effectively prohibited the Dublin local authorities from adopting a tendering system of ‘*competition for*’ rather than ‘*in*’ the local waste collection markets. Not only did the *Panda Waste Judgement* seriously limit the ability of the Dublin local authorities to effectively regulate local waste collection markets, in the same judgment, it was doubted whether they could direct waste collection firms to use a particular waste disposal or waste recovery method or facility for waste collected within the Dublin area.

In light of this judgement and the increasing penetration of private firms in the Dublin household waste market the Dublin local authorities could not be certain to deliver or arrange delivery of 320,000 tonnes of waste per annum to the planned Poolbeg facility. As a consequence the ‘*put or pay*’ guarantee in the Project Agreement had to be revisited.

4.2 COMPLAINT TO THE COMPETITION AUTHORITY

In February 2010, a complaint was made to the Competition Authority by the Irish Waste Management Association alleging that the PPP Contract was anticompetitive. In July 2010, the Competition Authority notified Dublin City Council that there was no breach of Irish competition law

4.3 FAILURE TO SECURE FORESHORE LICENCES

The Project encountered further delay in obtaining necessary foreshore licences to facilitate construction. An application for these foreshore licences was lodged by Dublin City Council to the Minister for the Environment, Heritage and Local Government in August 2008. However, by January 2010 the licences still had not been granted. As a result, the relevant sites had to be acquired by compulsory purchase order, a process that took until November 2010.

4.4 EU COMPLAINTS

The revised Project Agreement between Dublin City Council and Dublin Waste to Energy Limited is currently the subject of two complaints to the European Commission which allege infringements of both State Aid and Public Procurement requirements.

The State Aid complaints process has been on-going since November 2010, when the DoEHLG received an informal request from the European Commission for information on alleged State Aid to the project. A formal complaint relating to State Aid was lodged with the Commission in July 2011. There has been ongoing communications between the Commission and both the complainant and Dublin City Council since this time.

Dublin City Council's latest submission issued to the European Commission in May 2013. This submission examined the proposed Project Agreement for the DWtE project from the perspective of the Dublin local authorities as economic investors. The Commission issued a preliminary assessment letter in response to this submission in October 2013 which in summary indicated that as the Project Agreement is likely to generate a fair profit to the authorities for the risks undertaken, the Project Agreement is a normal commercial agreement not involving State Aid.

Dublin City Council is still awaiting a formal conclusion to the State Aid complaints process.

The complaints process relating to alleged infringements of Public Procurement commenced in September 2012. The substance of the Public Procurement complaints relate to the extension of the CR beyond 50% of its original value and to the revisions to the Project Agreement. The Commission has indicated that it is in a position to close the complaint related to an alleged infringement of public procurement relating to the CR contract in early February, following the decision by Dublin City Council to terminate their appointment by the end of January 2014. Dublin City Council is still awaiting an outcome of the complaint in relation to the revisions to the Project Agreement.

Section 5

Local Government Auditor's Report

5.1 REPORT OF THE LOCAL GOVERNMENT AUDITOR

The Principal Local Government Auditor as part of his audit of Dublin City Council's Accounts for the year ended 31 December 2011 reviewed cumulative expenditure on the DWtE facility to 31 December 2011.

He concluded in relation to the financial management of the DWtE project by Dublin City Council as follows:

'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 Engineering and Environment 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 the 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 no minutes of meetings were retained.

The total paid to the client representative amounted to €28.4 (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 on new premises Westway Terminals Hibernian Ltd (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.

On foot of the Local Government Auditor's report financial management of the DWtE project by DCC has been considerably strengthened.

5.2 CR CONTRACT

A contract between Dublin City Council and the CR was entered into in March 2001 following a public procurement process.

The CR was a joint venture of M C O'Sullivan and Cowi Consulting Engineers. The group also included a public information/public consultation element to develop and provide a

public information strategy and legal and commercial advisors. They were appointed to act as the CR on behalf of the Dublin local authorities to develop a tender procurement strategy including tender documentation, tender evaluation and award of contract and bring the proposed DWtE facility to construction stage. The initial cost proposal was €8,258,689 with an annual CPI adjustment. By 31 December 2013 this cost has increased to €29.774m.

At the time of the appointment of the CR team it was envisaged that the activities to be performed by them would have been concluded in late 2006. In light of the controversy surrounding the project and the extraordinary and unforeseen delays to which it has been subjected it was not considered appropriate to change the CR due to the on-going requirement for input from the CR in dealing with the obstacles placed in the path of the delivery of the project. The initial procurement of the PPP Company was a very lengthy process as were the procedures to obtain planning permission, the EPA Waste Licence and approval of the Commission 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. The High court challenge to the validity of a variation to the Dublin Region Waste Management Plan, the complaint to the Competition Authority and the complaints to the EU commissions all delayed the project. Dealing with these issues required the experience of the CR. DCC considered that the exceptional circumstances surrounding this project justified a departure from normal public procurement in relation to the extension of the CR contract.

Following a complaint to the EU Commission DCC was advised in late 2013 that the CR contract should be terminated. The CR has now been advised that the contract will be terminated with effect from 31 January 2014.

5.3 WESTERN TERMINALS HIBERNIAN LTD

The Local Government Auditor drew attention to the fact that the final account for the civil engineering contract for the construction of new premises was €22.091m in November 2008 compared with the original tender price in November 2003 of €11.913m. He requested a detailed report outlining the reasons for the differences in price between the original tender and the final account.

An interim detailed report explaining the differences was prepared by the City Engineer and Director of Traffic and submitted to the Local Government Auditor and DCC's Audit Committee in February 2013. This Report is reproduced below:



Comhairle Cathrach
Bhaile Átha Cliath
Dublin City Council

v

Office of Director of Traffic,
Civic Offices, Wood Quay, Dublin 8

Oiling an Bhainisteora Tráchtá,
Oifigí na Cathrach, An Ché Adhmaid, Baile Átha Cliath 8
T. 01 222 2033 F. 01 222 2221

Report to the Local Government Auditor and Audit Committee
Interim Report re Westway Terminals Hibernian Molasses Ltd

The Local Government Auditor as part of his report to the City Council on the 2011 AFS requested a detailed report outlining the reasons for the differences between the original tender price and the final account.

A final report is being prepared in conjunction with the Consultants Fahy Fitzpatrick Consulting Engineers who supervised the project but has been delayed due to illness on the part of the Principal prior to Christmas. I expect it will be complete in the next couple of weeks. However this interim report provides important explanatory information.

(1) Chronology of the Contract (See Appendix 1 for more detail):

- Agreed in principle with Hibernian Molasses for an exchange of lands in 1999
- Planning permission granted in July 2003
- Tenders for the contract were submitted in October 2003.
- Construction commenced in October 2004
- Revised proposed completion date was mid 2005
- Actual completion date was approx. October 2007.

The conditions of the Contract adopted for the contract were the standard conditions used on all public sector contracts at the time i.e. "Conditions of contract for use in connection with Works of Civil Engineering Works", third edition 1980 (revised and reprinted 1990). These conditions of contract included provision for the reclaiming of labour, plant and materials post the tender date. It also permitted claims for unforeseen ground conditions.

These conditions of the contract have since been withdrawn by the government contracts body and replaced with new conditions which include as part of the contract the transfer of risk in relation to increases in material and labour costs and any variation in ground conditions to the contractor.

The delays were caused by:

(a) Delay in initial access to the site (approx 12 months)

In September 2001, Dublin City Council entered into formal discussions with the Dublin Port Company (DPC) and its lessee Westway Terminals Hibernian Molasses Ltd (WTHML) regarding relocation to a new site and the implications for any legal agreements.

At the conclusion of these negotiations in November 2003 it was agreed that WTHML would relocate to an alternative site acquired by the City Council on the same terms and conditions as their current lease. Discussions on the new site in the South Port Area involved reaching agreement with the ESB and DPC. This latter agreement and legal transfer was completed in October 2004.

(b) Unforeseen ground conditions (2 months)

While a site investigation was carried out prior to the tendering of the contract, where piling is involved it is only when the initial test piles are loaded to check their bearing capacity that a decision on the length of the piles can be made.

The initial site investigation had indicated a suitable bearing stratum at 12m below ground level. The test pile failed at this level. The next stratum considered suitable was at 29m depth but this also failed. Further boreholes were drilled below 30m depth and a suitable level found. The piling was then completed.

This delay was on the critical path for the overall project as the foundations and super structures could not be completed until the piling was finished.

(c) Pipeline from Plant to Quay Delays

The City Council were given indications prior to the contract that there would be no difficulty in accessing lands for the construction of the pipeline from the plant to quayside. This proved not to be the case and access was only achieved in spring 2006. The pipeline consisted of two pipes, a 450mm diameter mild steel and a 200mm stainless steel and covered a distance of approximately 800m. Some of the pipeline was over-ground and some was underground while maintaining the berths open for container shipping and other imports. It was also not possible to do a site investigation in this area until access for the actual construction was achieved which resulted in further delays while the design was being finalized. This design required having to get planning permission where it was necessary to build a pipe bridge over Pigeon House Road. This permission was granted in February 2007.

The increased cost, of approximately €8.9million, is mainly composed of the following items:

| | |
|--|---------|
| i) Tanks, Mechanical and Electrical Services | €2.590m |
| ii) Variations | €2.658m |
| iii) Labour and Material increases (excl i)) | €1.470m |
| iv) Delays due to access | €0.821m |
| v) Delay and disruption to pipeline | €1.255m |

While the detailed report is in preparation I have endeavoured to set out below the context in relation to the state of the construction industry during the period when the contract was carried out.

Tanks

One of the most prominent materials on this contract was steel of many types. The locations varied from steel used in large circular tanks to pipes, pipe supports, walkways etc. As a result any price variation that occurred would have a large impact. In 2004 while the average increase for construction materials was 12.5% the increases for structural and reinforcing steel were 61.5% and 48.4% respectively. It was during this period that orders were placed for such materials. The increase in steel over the contract period was 70%. This increase was as a result of a global shortage in steel caused by the booming economies in the Far East.

Variations

Further information will be provided on the variations in the contract. However the additional piling due to the unforeseen ground conditions (€607k approx), removal of contaminated earthworks (€702k) and miscellaneous steelwork (€212k) form a large part of the total amount (€2,658,142).

Labour and material costs

This project was carried out during a period of high inflation and a shortage of resources. This was particularly relevant to the construction industry which in 2006 had grown to €39 billion or 25% of GNP whereas in 2011 it had reduced to €8.7 billion or 7% of GNP. It was also a period where large increases occurred in particular materials at different times during the contract. Thus in 2004 the price of structural steel and reinforcing steel increased by 61.5% and 48.4% respectively, whereas in 2006 while there was no increase in the price of steel but the price of bituminous materials increased 17.0% and electrical fittings approximately 10%.

Overheads

The delays in gaining access to the site at the commencement of the contract, delays due to the unforeseen ground conditions and the delays for the construction of the pipeline were on the critical path for the project and as a result the overhead costs associated with the contract and the extended time period had to be reimbursed.

Michael Phillips

Director of Traffic and City Engineer

Appendix 1

Chronology of the Westway Terminals Hibernian Molasses Ltd (WTHML) Contract

- 1999 DCC agreed terms in principle with WTHML for an exchange of lands (conditional on DCC procuring an alternative site for WTHML from Dublin Port Company (DPC))
- 2002 DCC agreed that WTHML would commission a Feasibility Study on the relocation costs associated with them moving to an alternative site – prepared by their nominated consultants Fahy Fitzpatrick Consulting Engineers (Fahy Fitzpatrick). **Final Heads of Agreement were signed with HM in November 2002.**
- 2003 **Planning permission granted in July.** (Fahy Fitzpatrick acting for WTHML).

Fahy Fitzpatrick placed ad in newspapers (27/5/03) for contractors (main – civils, mech & elec and tank fabrication) stating expected start date of Sept 2003 – 21 months duration.
Additional site investigations approved in July due to concern over contaminated soil
Post tender meetings held – start date now Jan 04

- 2004 Letter of Intent issues to SIAC as main contractor. WTHML withdraw objection to CPO. There are legal issues in acquiring new site for WTHML. Licence between ESB & DCC executed September

- 2005 Jan - contracts approved. Jan – SIAC instructed to carry out additional soil investigation for piling – additional costs estimate at circa €496k. **Contracts between SIAC and WTHML signed in May.** SIAC submitted revised Programme to take account of early piling finish. Site meeting May – flagged costs for steel contractor and delays/costs in laying pipeline if wayleave approval not granted.

Fahy Fitzpatrick wrote to DCC in June advising of additional costs – price went from €10.7m to €15.9. Site meeting June – Fahy Fitzpatrick state that SIAC Programme revision 3 is agreed and that final costs on piling are to be agreed with SIAC and Fahy Fitzpatrick. Site meeting in Dec – final account on piling costs agreed between Fahy Fitzpatrick and SIAC – flagged at this meeting that if pipeline delayed beyond Feb 06 additional costs would accrue.

- 2006 Fahy Fitzpatrick advise DCC that pipeline works will start in June. Fahy Fitzpatrick advised in June (site meeting 31) that exploratory works on pipeline would start in July and would result in delay to programme. SIAC further stated that there would be a delay in the overall programme due to the non commencement of shipping lines. Fahy Fitzpatrick issued letter in October granting SIAC extension of time on the programme. Completion date now April 2007

- 2007 Planning permission for Pipe bridge over Pigeon House Road obtained in February. Fahy Fitzpatrick notified DCC on 1st October that development is at **Practical Completion**

- 2008 Draft **Final Account from SIAC** in February = €19.3m. Revised Final Account Nov = €19.4

- 2009 **Final Account from Fahy Fitzpatrick** submitted May = €935k

