

Waste Infrastructure Delivery Programme Contract Management Training



Norfolk County Council

Benchmarking and Market Testing

8th May 2013 – NAME REDACTED



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Objectives of the Module



- Understand aims of Benchmarking and Market Testing
- Understand the process of Benchmarking and Market Testing
- To consider the Council's and the Contractors roles



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Agenda



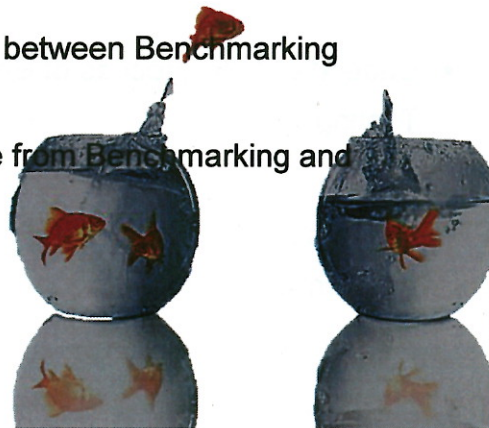
- Background – 5 mins
- Exercise 1 – 10 mins
- Roles of Parties – 10 mins
- Exercise 2 – 40 mins
- Key Points – 10 mins



Benchmarking and Market Testing - Background



- What are the aims of Benchmarking and Market Testing?
- What are the differences between Benchmarking and Market Testing?
- What should you achieve from Benchmarking and Market Testing?



What should you achieve from Market Testing



- Effective competition
- Market price for the same or improved service
- Possible improved performance, innovation, quality from potentially new Sub Contractor



Local  Partnerships

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 Infrastructure UK

What should you achieve from Market Testing (cont'd)



- Watch out for
 - Price creep
 - Double counting re Changes in Law and Indexation
 - EU Procurement Directive infringements e.g. OJEU boundaries, open, transparent and inclusive



Local  Partnerships

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 Infrastructure UK

Market Testing – Exercise 1 ([15] mins)



In table groups determine in [10] mins

- (i) Which areas are market tested under your contract and when would you require Market Testing?

Clause 34

Feedback (5 mins)



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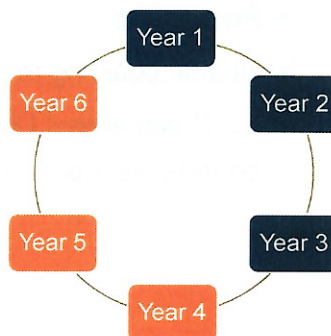


Typically Market Tested



▪ Which elements are typically Market Tested?

- Bottom Ash Disposal,
- Fly Ash Disposal,
- CLO or SRF disposal,
- Haulage,



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Typically Market Tested



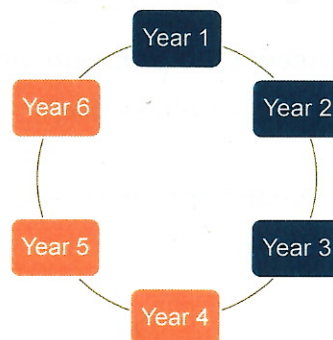
- Which elements are typically Market Tested?
 - Landfilled untreated waste,
 - Adhoc Waste,
 - CA sites management under integrated contracts etc.



Typically Market Tested



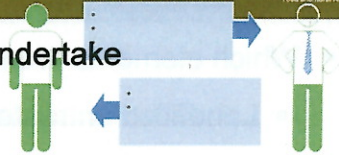
- When is it undertaken
 - At periods defined in the contract, typically every 4-6 years



Roles of the Parties – Contract Management Team



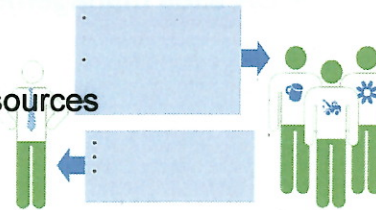
- Develop evaluation criteria and undertake your own Due Diligence



- Identify adjustments to the specification and performance framework

Your Relationship with

- Identify internal and external resources required



Roles of the Parties – Contract Management Team (cont'd)



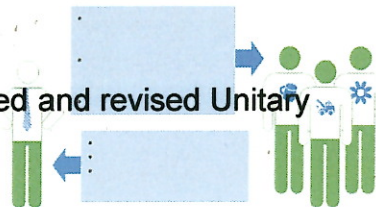
- Develop detailed plans and process 12 months in advance



- Accept the proposal, or alter for material errors or omissions

Your Relationship with

- Pay the reasonable costs involved and revised Unitary Charge



Roles of the Parties – Contractor



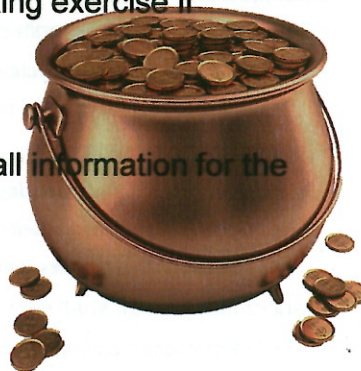
- Undertake process and award the Sub Contract
- Manage potential conflicts of interest
- Consult with the Authority on the appointment



Roles of the Parties – Contractor



- Undertake a follow up Benchmarking exercise if Market Testing fails
- Transparency and Full access to all information for the Authority



Exercise 2 (40 mins)



In two table groups determine in 20 mins

- (i) Outline the proposed benchmarking and market testing process defined in the contract (one group to consider each)?
- (ii) Briefly highlight the key responsibilities of the Council throughout this process?
- (iii) Identify the actions the Council need to undertake prior to commencement of the benchmarking/market testing process (one group to consider each)?

Feedback (20 mins)



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Exercise 2 – Answer (i)



Benchmarking

- Contractor provides 1 month prior to price testing date
 - Detailed breakdown of charges, gate fees etc for last 5 years
 - Methodology for carrying out benchmarking process
- Council approve methodology and jointly appoint benchmark monitor
 - Done within 5 business days of receiving the above info
 - Costs of benchmark monitor borne equally
 - Benchmarking process undertaken in good faith
- Benchmark monitor shall submit benchmark price
 - Most economically advantageous
 - Council 20 bus days to agree
 - Contractor a further 10 days to agree to match price or market test



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Exercise 2 – Answer (i)



Department for Environment,
Food and Rural Affairs

Market testing

- To commence no later than 120 days prior to testing date
 - Contractor responsible for costs
 - Contractor responsible for process
- Parties to agree upfront
 - Changes to service spec
 - Manner of advertising tenders
 - Evaluation criteria
 - Terms and conditions
 - Numbers of tenders required (to be valid)
 - Number of tenders to be shortlisted



Exercise 2 – Answer (i)



Department for Environment,
Food and Rural Affairs

Market testing (continued)

- **Potential candidates 15 days to submit EOI after advert**
 - Contractor to evaluate financial standing, technical and managerial
- **Contractor provide council with shortlist**
 - Council has 5 days to dispute/veto
- **Contractor provide Council with proposed tender documentation**
 - Council has 15 days to agree using reasonable Endeavours
 - Once agreed documentation is issued within 15 days
- **Contractor to evaluate and inform Council of result**
 - Within 4 months of commencement of process
 - Council to receive copy of evaluation report/analysis
 - Council has 15 days to agree or dispute



Exercise 2 – Answer (ii)



Council Responsibilities

•Benchmarking

- Approve process within 5 days of receipt
- Jointly appoint benchmark monitor
- Agree or dispute benchmark price

•Market testing

- Agree up front changes to service scope
- Agree up front Tender details/ Evaluation criteria etc
- Review of and interaction with 'procurement' process

Exercise 2 – Answer (iii)



Council Actions

- Identify appropriate personnel
- Clearly understand process and obligations
- Identify a co –ordinated plan for interaction throughout the process
- Determine what is likely to be acceptable (gain intelligence)
- Market testing – in effect prepare for a procurement
- Contractor – ensure early engagement with the Contractor – no surprises

Key Points



- Council must understand process and obligations
- Need to ensure the Contractor fully understands process and obligations
- Upfront planning is critical
- Contract management manual - record key details

Further Reading



- WIDP Contract – Clause 43 - Market Testing
- WIDP Contract – Clause 53 – Revision of Base Case and Custody
- WIDP Contract – Clause 84.4.7 (b) – Due Diligence information required in relation to Market Testing
- WIDP Contract – Sch 15 – Best Value and Continuous Improvement

Further Reading (cont'd)



- WIDP Contract – Sch 19 - Revision of Base Case and Custody
- WIDP Contract – Sch 21 – Change Protocol
- WIDP Contract – Sch 22 – Disputes Resolution
- WIDP Contract Management Guidance – [Ref tbc]

Further Reading (cont'd)



- Operational Taskforce Note 1: Benchmarking and Market testing guidance, October 2006
- Standardisation of PFI Contracts Version 4 (SoPC 4)", March 2007