

7 February 2022

Ofwat
Centre City Tower
7 Hill Street
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By email: [REDACTED]

Dear colleagues

BIORESOURCES BID ASSESSMENT FRAMEWORK – CONSULTATION RESPONSE FROM SOUTH WEST WATER

Thank you for the opportunity to respond to the consultation on the bioresources bid assessment framework. We have addressed the specific questions raised in the consultation paper in the attached Annex, and provide more general background and feedback below.

South West Water supports the implementation of the bid assessment framework in principle. We would, however, welcome further consideration on the timing of the introduction of the bid assessment framework.

There is considerable uncertainty and risk in the bioresources market at present following the recent interpretation and enforcement of Farming Rules for Water (FRfW) by the Environment Agency (EA). This action has the risk of restricting current outlets and recycling routes for bioresources and is generating uncertainty in new the market which may act as a deterrent to any third-party new entrants or Water and Sewerage Companies (WaSCs) considering entering the market.

Similarly, the application of the Industrial Emissions Directive (IED) to bioresources treatment and disposal has generated a need for significant investment in technological improvements to manage ground, water and air pollution. Until the outcomes of initial proposals to comply with IED are known across the industry, there are considerable unknowns for the current incumbent WASCs before the management of a new market is considered.

Several approaches are being explored at present to bring clarity to the implications of FRfW and the long-term impact this may have on current bioresources recycling routes. There is a need for regulators and the industry to collectively agree a sustainable process to reduce the risk of nutrient

run-off to rivers and other watercourses, to manage the risk of diffuse pollution and agree a safe and sustainable means by which bioresources can be returned to the environment. Until this situation is resolved any benefits to the market, from a bid assessment framework, may be outweighed by the disruption generated by the current environmental permitting uncertainty.

It is possible that significant technological changes may be required to manage the closing of traditional bioresources recycling routes under FRfW. A market mechanism alone will not bring about this technological change but rather the WaSCs through the price control mechanism. At this time, it is not clear if the price control mechanism for bioresources is set up to manage the likely scale of the investment needed across the industry, therefore we believe that the PR24 price review methodology should provide a framework for WaSCs to plan for and manage this step change in technology, in which case, we consider that it would be more appropriate for WaSCs to agree to publish their final bid assessment frameworks after the PR24 price review methodology for bioresources is published by Ofwat.

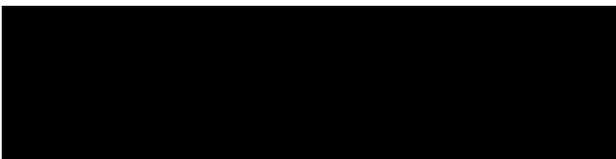
The implementation of IED has also highlighted the need to improve the bioresources asset base to comply with IED. Until initial proposals are agreed with EA, then the market may not be expected to bid under such uncertain conditions.

Until a conclusion is reached on both FRfW and IED, the industry remains in a position of great uncertainty around the costs and recycling routes available for Bio-resources.

South West Water have had no approaches from the market, so as such have no bids to consider, at present, our priority remains working with the regulators and the wider industry to gain clarity on sustainable recycling routes and disposal outlets for bioresources rather than appraising bids from the market.

We hope you find our comments helpful. Please contact me if you would like further detail.

Yours faithfully



Regulatory Director

D: 

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ANNEX 1: CONSULTATION QUESTION RESPONSES

Q1: Do you agree with, or have any comments on, the draft guidance for the bioresources bid assessment framework set out in this consultation?

We agree with the draft guidance on the bioresources bid assessment framework but would raise the following points in addition:

1. We accept that bioresources activities could help to create greater economic and environmental value through technological changes, economies of scale, inter-company optimisation and co-digestion of sludge with other organic waste. However options for disposal of a co-digested product are limited and have limited environmental benefit. This is a challenge which may require further consideration from both the environmental and economic regulators.
2. We welcome the ability to generate a company specific bid assessment framework, as given our unique largely peninsula location, options for bids may differ from other WaSCs and would be proportionate to local market conditions.
3. We believe that the principles outlined in Section 4.1 represent procurement practice and compliance with procurement rules, therefore a bid assessment framework provides a mechanism to record standard business practice. As such we would question the need to include the principles outlined in Section 4.1.
4. In Section 4.1.1 we would question how companies could effectively demonstrate, in audit, that no bids from the bioresources market have been received so far. Given our obligations to comply with procurement legislation there appears to be little additional benefit to adding an additional requirement for Ofwat to audit our compliance to our bid assessment framework.

Q2: Do you agree with, or have any comments on, our proposal timeline for implementation of the bioresources bid assessment framework?

We would suggest that Autumn 2022 would be a more appropriate timeline for WaSCs to publish their draft bid assessment frameworks, with final bid assessment frameworks published in Summer 2023. This would allow for publication and consideration of the PR24 methodology.

Rather than the proposal to use the bid assessment framework to inform PR24 business plans we suggest greater alignment between the bid assessment framework timeline and that of the PR24 business planning process. In this way the PR24 methodology for bioresources can be utilised to inform scenarios for bioresources planning.

Some of the uncertainty regarding FRfW and IED may also be addressed, through the Water Industry National Environmental Programme (WINEP). A draft programme to deliver environmental benefits will be presented to EA in September 2022 for their approval, which will include options for investments in bioresources to address environmental needs and drive improvements. This will provide greater clarity to those in the market who may be considering bids at that time.

Q3: Do you have any thoughts or opinions on how company bid assessment frameworks can be best used to resolve the bioresources specific issues highlighted within 4.2?

We agree that the bioresources market has different characteristics to water resources and that there are specific bioresources related issues that WaSCs need to address within their bid

assessment frameworks, as such we would not choose to amalgamate the bioresources and water resources, demand management and leakage services frameworks.

We agree with the principles set out in Section 4.2.1 *Contract Risk*. At present there are few disposal routes for bioresources where the duty of care does not remain with the incumbent. We would therefore require a high degree of operational resilience in any bid undergoing assessment.

That contract risk may not be clearly understood by a third party and we would work with third parties and other WaSCs to ensure our risk appetite was clearly understood and considered in the pre-qualification stage of the bidding process.

Any misalignment of those expectations of risk would be clearly communicated as part of the the bid assessment Pre-qualifying process. This would happen in a similar way to the 'coaching' described in Section 4.2.2 *Pre-qualification stage*, where an incumbent would help a prospective third-party contractor to understand the detail of their bioresources business area and support them through that process to ensure we maximise the benefits of the bid assessment process to the advantage of all parties.

We acknowledge that effective and timely data provision is key to a successful bid process, however, would suggest that Data Sharing Agreements could then become an enabler for such bids to take place. There may also be differences in how individual WaSCs record and store operational data in particular. This could lead a third party to believe they were being disadvantaged by a WaSC who could not provide operational (and other) data in the same way as others. If in due course the market could share their combined experience of good practice and best practice for data collection and provision, without compromising competition then the bid assessment process could deliver benefits in this area.

We agree that variation in sludge quality and characteristics is a considerable challenge in effectively managing or guaranteeing the final quality of a bioresources product. While it seems sensible to agree terms around quality parameters early in the bid process (ideally at the pre-qualifying stage) we must also consider the occasional urgent requirements of the sewage treatment processes beyond the control of the incumbent, which may in turn present challenges to the third-party treating sludge.

Care is needed such that incumbents are not responsible (and penalised) for every occurrence that can impact the quality of a final bioresources product. Again, coaching of the third party in the pre-qualifying stage can raise awareness of the challenges in delivering a consistent product. In this way the bid assessment framework can support in managing expectations and raising awareness of specific industry challenges.