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Bioresources bid assessment framework – final guidance

About this document

This document sets out our final guidance for sewerage companies' bioresources bid assessment framework. The introduction of bid assessment frameworks will complement the existing market structure and will help ensure that companies procure bioresources services in a way that is transparent and promotes the market.

This guidance applies to the eleven largest companies that hold appointments as both a water undertaker and a sewerage undertaker under the Water Industry Act 1991.

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1. Introduction

A market for bioresources can benefit customers and the environment. A key form of market interaction is by other sewerage companies¹ or third parties bidding to provide bioresources services to sewerage companies.

To support this bidding activity, we expect sewerage companies to implement bid assessment frameworks for bioresources activities. These would detail how companies would assess bids from other market participants. Bid assessment frameworks will complement the existing market structure and help to ensure that companies procure bioresources services in a way that promotes the market.

Sections 4, 5 and 6 set out our final guidance to companies. We expect sewerage companies to use this when developing their bid assessment frameworks.

The remainder of the document is structured as follows:

- Section 2 contains the background to our proposals and the interaction with other bid assessment frameworks.
- Section 3 sets out our engagement with the sector on this topic and includes our response to the key issues raised in our [recent consultation](#).
- Section 4 highlights the existing obligations and rules that companies are required to follow when procuring bioresources services.
- Section 5 provides details of the high-level principles we expect companies to follow, as well as bioresources specific issues that should be accounted for within the frameworks.
- Section 6 provides details on the implementation and next steps in the development of the bid assessment frameworks.
- Appendix 1 contains a table that details where there is crossover between the bioresources bid assessment framework guidance and the earlier framework guidance document for water resources, demand management and leakage services.
- Appendix 2 contains a diagram that provides an example of the elements a high-quality bid assessment framework may contain.

¹ By 'companies' or 'sewerage companies' we mean the largest 11 companies that hold appointments as both a water undertaker and a sewerage undertaker under the Water Industry Act 1991.

2. Background

2.1 The context

Bioresources activities comprise around £3bn² (6%) of allowed revenue for the 2020-25 period. The annual [cost to customers](#) can vary significantly between companies' areas – ranging from as low as around £13 to over £32 for a typical household customer³.

With the right conditions, 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 (for example, food waste from kerbside collection).

To help support these changes, we have taken a number of steps to support the functioning of the bioresources market over recent years. For example, during the 2019 Price Review we introduced a separate price control for bioresources activities – this was aimed at enabling targeted regulation of bioresources activities, revealing improved information and promoting the bioresources market.

However, our recent [review of the bioresources market](#) found that there are a number of barriers to the full development of the market. Our [second bioresources market monitoring report](#) provided further evidence that the market is operating below its full potential.

2.2 Why a bid assessment framework for bioresources?

Our review of the bioresources market found that there are a number of issues as follows.

- One of the themes from our initial assessment of companies' business plans at PR19 regarding bioresources was that, in most cases, the level of detail on approaches to third-party engagement was limited.
- At PR19 we introduced a bidding market for water resources, demand management and leakage services to address concerns that potential third parties are deterred due to a lack of information, high search/bidding costs and water companies' bias towards their own in-house solutions – based on the evidence at our disposal, we consider that the same issues are likely to apply to bioresources.
- At PR19 we did not include funding for Anglian Water to deliver additional sludge digestion capacity, a decision which the company challenged as part of the CMA's redetermination of its price controls. The [CMA included funding in the redetermination of Anglian Water's price controls](#) as they were not convinced that relying on the

² This estimate is based on our final price review determinations in December 2019.

³ This is the annual average bioresources bill per household over the 2020 to 2025 period. Figures are in real terms (17/18 FYA CPIH) and based on our PR19 determinations.

emergence of significant bioresources suppliers was an appropriate basis for their determination. We consider that adopting a transparent approach to market engagement and option assessment could help to make it easier for companies to identify market-based options and reduce the likelihood of these disagreements in future. This will become increasingly important as the bioresources market develops.

- [Jacobs' bioresources market review report](#) considers that companies' procurement approach is a constraint as they typically take a streamlined approach to procurement which has the effect of restricting access to opportunities. Jacobs recommend companies undertake open procurement for new capacity.
- Jacobs' report considers that an 'in-house' bias created by companies' current organisation could hinder the market. It recommends the creation of a framework to assess third party capacity efficiency and the creation of a bid assessment framework.
- [United Utilities' paper](#) on the bioresources market finds that alternative market models (such as bidding, Direct Procurement for Customers and bilateral entry) could bring benefits and that in the longer term it would be beneficial to consider these.
- Jacobs' report considers that the potential risk of supplier failure could suppress market activity. They recommend that resilience is taken into account, including diversification and emergency options, when assessing third party trades.

To address these issues, we considered alternative market models for the bioresources market. Our preferred option was to implement a bidding market, with bid assessment frameworks as a key way of developing this. These frameworks will provide bidders with clarity over how their bids would be assessed and improve the transparency of the process.

2.3 Interaction with the bid assessment framework for water resources, demand management and leakage services

We already require companies to implement bid assessment frameworks to support the bidding market for water resources, demand management and leakage services. These are applicable to bids to provide water resource management options to the water companies. This is to support bidding activity, encourage innovation and give confidence to potential third-party providers interested in providing such options to water companies.

We produced [guidance](#) for companies to follow when producing these frameworks. We were not overly prescriptive and companies made use of the guidance to develop their own bespoke frameworks. The guidance consists of high-level principles and detail around the interaction of the framework with existing obligations and rules.

Given the similar issues being addressed, we consider that much of the guidance for the water resources, demand management and leakage services bid assessment framework would be useful to apply to bioresources. During our earlier engagement stakeholders shared this view – indeed, some companies suggested that their bioresources bid assessment framework could

look similar to that which is in place for water resources, demand management and leakage services.

For these reasons, there is a high level of similarity between the guidance for bioresources bid assessment frameworks set out in this document and the guidance that applies to water resources, demand management and leakage services. This is particularly the case for guidance around the principles companies should abide by and interaction with existing obligations and rules⁴.

During our engagement, some stakeholders indicated that a proportionate approach may be for companies to produce one all-encompassing bid assessment framework, with separate chapters for water resources and bioresources. This would be within companies' discretion. The bioresources bid assessment framework should not simply replicate the water resources, demand management and leakage services framework. The bioresources market has different characteristics to the water resources market and companies' bid assessment frameworks should reflect this. Further detail on bioresources specific issues that the framework should cover is contained within section 5.2.

For clarity, appendix 1 contains a table that details where there is crossover between the bioresources bid assessment framework guidance and the earlier framework guidance document for water resources, demand management and leakage services.

⁴ However, there are some areas where notable difference may exist as well. For example, our guidance for bid assessment framework for water reflected the Water Resource Management Plans process, and trading and procurement codes.

3. Assessment of key points from our consultations

3.1 Our initial stakeholder engagement

We considered stakeholders' responses to our bioresources market review consultation in developing our proposals for the bid assessment framework. The feedback from this initial consultation was broadly positive with nine of the ten respondents in this area expressing support for our proposals. Key points raised by respondents included that companies should be able to develop their own bespoke frameworks and that contract risk should be accounted for within them.

Following the positive feedback we received to our consultation, we undertook further engagement to better understand stakeholders' views on the potential merits of a bioresources bid assessment framework and how this could be implemented. This further engagement included bilateral interviews with sewerage companies, third party waste processors who have expressed an interest in the bioresources market and trade associations.

Based on stakeholders' consultation responses and the findings from our further engagement, we decided to implement our preferred option, i.e. a bidding market where we expect companies to produce a bid assessment framework and demonstrate they have adhered to this framework. We therefore published [draft guidance](#) for these bioresources bid assessment frameworks for consultation in November 2021.

We set out in our [draft guidance](#) how our earlier engagement had shaped our approach. We noted the following.

- We consider bid assessment frameworks should not be too cumbersome to implement where they implement good practice already being undertaken by companies.
- Although we see potential benefit in a common bid assessment framework across companies, we are not making this a requirement at this time since this would take longer to produce and it is unclear whether the benefits of this would be proportionate to the additional administrative burden this would create.

3.2 Responses to the consultation on our draft guidance

We received responses from ten sewerage companies⁵ and Aqua Enviro⁶. Stakeholders were generally supportive of our guidance. In the rest of this section, we address the key points raised by respondents to our proposed guidance and provide our view on these.

3.2.1 Feedback regarding our general guidance

Separation of bid and assessment teams

In our draft guidance, we proposed that where a third-party bid is assessed against a sewerage company's in-house solution, we would expect that the team assessing the bids to be completely separated from the team that designed the in-house solution. This requirement exists in our bid assessment framework guidance for water.

Anglian Water and Yorkshire Water raised concerns with this approach. They considered it would be difficult to achieve complete separation, especially for technical criteria as bioresources teams are often small and specialised. Anglian Water considered that where there was any conflict of interest this could be managed with their procurement processes and governance which includes the identification of a bid assessment manager who is fully independent.

We consider that the guidance we proposed in our consultation is appropriate. The separation of teams is an important measure to address the risk of conflicts of interest. We note that expertise can be procured from elsewhere to help implement this requirement, so even for specialised areas this requirement is achievable.

Capacity and scope

Southern Water and Thames Water sought clarity on whether the bid assessment framework would apply to new capacity only. Southern Water also asked what activities are in scope.

All aspects of sewage sludge transport, treatment and disposal are within the scope of the guidance. The guidance applies to existing activities – for example, the replacement of an existing sludge treatment centre – as well as enhancement expenditure. However, as our guidance points out, companies should use their judgement and be mindful of the principle of

⁵ We are grateful for responses from Anglian Water, Hafren Dyfrdwy, Northumbrian Water, Severn Trent, Southern Water, South West Water, Thames Water, United Utilities, Wessex Water and Yorkshire Water.

⁶ Aqua Enviro is a specialist environmental consultancy, conference and training provider in the water, wastewater, bioresources and organic waste sectors. Aqua Enviro's comments relate to the measurement of sludge quality. They state that renewable energy generation potential can be directly measured by Biochemical Methane Potential testing and this in turn can be used to give a maximum financial value for that sludge. They suggest that if this were adopted as the main measure of sludge quality, it could be applied universally.

proportionality when deciding if certain procurements should be excluded from the full processes laid out within the bid assessment framework. This may mean that a lighter-touch approach may be appropriate in some circumstances.

Relationship to Utilities Contract Regulations

Southern Water considered that many of the obligations set out were similar to the Utilities Contract Regulations (UCR) and asked if the bid assessment framework was additional to this.

We recognise that procurement law will, where relevant, take precedence over the bid assessment framework, but as we noted in the consultation the UCR does not apply in all cases. One benefit of a bid assessment framework will be to help ensure that there is consistency and a standardised approach whether or not the UCR apply.

Inclusion of principles

South West Water considered that the proposed principles we had set out represented current procurement practice and compliance with existing procurement rules, so questioned whether they needed to be included.

We agree that the principles set out are best practice and therefore it is important that that they are reflected in bid assessment frameworks to ensure bidders have confidence that best practice will be observed.

Ofwat audit

South West Water questioned how they could demonstrate in audit that no bids from the bioresources market had been received.

We consider that companies can still demonstrate that the process they have followed (such as setting out an appropriate pre-qualification stage, providing the required information etc.) has adhered to our guidance.

3.2.2 Feedback regarding bioresources specific issues

The comments received on the consultation regarding bioresources specific issues focused on regulatory certainty for third-party contracts.

Regulatory certainty for third-party contracts

Yorkshire Water noted that uncertainty around regulation of long-term contracts is a challenge that is yet to be addressed and suggested that third-party revenues which are demonstrated to be efficient under the bid assessment framework should be guaranteed. Wessex Water

asked that we account for significant contracts placed as a result of the bid assessment framework in future price reviews if regulatory changes lead to additional costs being incurred by the third party.

We set out our position on this issue in annex 2 of [“Our proposed approach to funding bioresources activities at PR24”](#). We consider that providing different degrees of regulatory protection would create an additional administrative burden and we did not propose this alternative approach. We would also note that whilst there are risks to third-party contracts there are also potential benefits – companies can benefit if a third-party contract allows them to achieve cost saving. If regulatory protection is only provided for cost increases this would be one-sided, which would not create the right incentives nor protect customers' interests.

3.2.3 Feedback regarding implementation

Timing of companies' final bid assessment guidance

Most companies agreed that the ultimate deadline was reasonable. Northumbrian Water had concerns about implementing the bid assessment frameworks until the Environment Agency's Sludge Strategy and Industrial Emissions Directive requirements were settled. However, they considered the 2022 timeframe as reasonable. South West Water suggested delaying the bid assessment frameworks until 2023 to better align with their business planning. Wessex Water also asked for a delay in final publication to October 2022.

Companies' bid assessment frameworks should provide a standardised approach for inviting and considering bids, this will provide third parties with assurance that their bids will be considered fairly and help the development of a bioresources bidding market. To help achieve a functioning bioresources bidding market we consider that companies should still aim to publish their final bid assessment frameworks by the end of September 2022. Companies should make use of their bioresources bid assessment frameworks to inform their PR24 business plans where possible, for example to assess the best options where they might require additional capacity. However, we do not expect companies to delay procurement in order to apply their final bid assessment framework.

Timing of companies' draft bid assessment guidance

South West Water suggested that Autumn 2022 would be a more appropriate timeline for companies to publish their draft bid assessment frameworks.

Yorkshire Water agreed with the ultimate deadline but asked for flexibility around the consultation timeline to avoid consultation 'overload' where many companies are engaging the same stakeholders in a given month. A delay in the draft publication date was asked for by Southern Water and Wessex Water, who asked for a two month and one month delay respectively to help manage peaks in their workload.

We agree that companies should have flexibility as to when they consult on their bid assessment guidance. This could help companies' bid assessment frameworks to be delivered efficiently and effectively, whilst still ensuring they are finalised in time for the September 2022 deadline.

Stakeholder engagement

Severn Trent Water and Hafren Dyfrdwy asked for clarification on which stakeholders they should consult with. Thames Water also asked how they should circulate their draft bid assessment framework to better engage stakeholders, suggesting advertising it via the trade press as well as their own website.

We are concerned that providing detailed guidance for how consultations should be carried out risks companies' engagement becoming a 'tick-box exercise'. We consider that companies should own this process and manage their relationship with potential market participants. We have therefore decided not to set out who companies should consult with or how they should advertise their consultations.

Publishing companies' draft bid assessment frameworks

Wessex Water and Thames Water asked that we place a link to companies' draft bid assessment frameworks on our website to help with visibility in the consultation process.

We intend to publish weblinks to companies' final bioresources bid assessment frameworks to ensure that these frameworks are accessible to potential third party providers (as we do for the [water resources bid assessment frameworks](#)). We consider it would also be appropriate to host weblinks to companies' draft bid assessment frameworks on our website, where a company considers that this would help with their stakeholder engagement.

Overlap with water bid assessment framework

Thames Water asked to what extent they can use the same process developed for their water bid assessment framework.

We consider there to be some overlap between frameworks with appendix 1. However, the bioresources bid assessment framework should not simply replicate the water resources, demand management and leakage services framework. The bioresources market has different characteristics to the water resources market and companies' bid assessment frameworks should reflect this. We also note that stakeholders for the water resources and bioresources bid assessment frameworks are different.

Assessment criteria

Thames Water asked to what extent they can take a flexible approach such as leveraging discounts from different packages of work and making trade-offs from a more holistic perspective.

Companies should act in accordance with the principles we have set out, including the principles of 'transparency' and 'equal treatment and non-discrimination'. We are concerned that a 'flexible' or 'holistic' approach to procurement may not be consistent with these principles.

4. Existing obligations and rules

Our principles for company bid assessment frameworks draw on and reinforce the key principles derived from procurement law and competition law. We want to ensure our principles are consistent with these and minimise the burden of regulation. Our principles-based approach means that sewerage companies will retain the flexibility to adopt appropriate procurement methods. Relevant obligations and rules are highlighted below.

4.1 Competition law compliance

Companies are obliged to comply with competition law. Nothing in this document should be read as requiring companies to act in a way that is inconsistent with their competition law obligations. In particular, during the tender process companies should ensure that they do not:

- artificially narrow competition (where the design of the procurement is made with the intention of unduly favouring or disadvantaging certain or all parties);
- distort competition in the market by abusing a dominant position (for example, through unfair prices or other unfair trading conditions); or
- facilitate collusion between third parties by disclosing confidential bid information.

This type of conduct may raise competition law concerns.

4.2 Procurement rules

The legal framework that governs the procurement process is dependent on the nature and value of the contract. The [Utilities Contracts Regulations 2016](#) (UCR16) set rules about the procurement of goods and services by companies, but the rules do not apply in all cases. The application of the UCR16 will be a matter for the relevant parties to assess, but we note that third parties may not have a right of action under this legislation if they consider they have been treated unfairly during the procurement process.

Where procurement rules (such as the UCR16) apply, companies are obliged to adhere to the key principles, which include obligations to ensure transparency, equal treatment/non-discrimination for all potential bidders and proportionality. These are discussed further in section 5.1. These principles should be formally integrated into each company's bid assessment framework for bioresources. This will ensure there is a standardised approach and some consistency among companies' procurement processes, while minimising the regulatory burden. We recognise that procurement law will, where relevant, take precedence over companies' bid assessment frameworks. We expect companies to update their bid assessment frameworks when necessary to reflect developments in the law.

4.3 Environmental regulations

Companies are subject to environmental regulations that govern bioresources activities. Some of these regulations apply even in cases where the sewerage company may not be undertaking the entirety of the sludge transport, treatment and disposal activities that make up bioresources. These include but are not limited to:

- **Duty of care etc. as respects waste (section 34 of Environmental Protection Act 1990)**
– applies to any person who imports, produces, carries, keeps, treats, disposes of controlled waste or, as a dealer or broker, has control of such waste. It makes provision for the safe management of waste to protect human health and the environment. It applies to sludge other than where sludge is treated, kept or disposed of within the curtilage of a sewage treatment works as an integral part of the operation of those works.
- **Urban Waste Water Treatment (England and Wales) Regulations 1994** – regulation 4 provides that the duty imposed on sewerage undertakers by section 94(1)(b) of the Water Industry Act 1991⁷ includes a duty to ensure that sludge is reused whenever appropriate and that disposal routes minimise adverse effects on the environment.

For example, if a firm were to use the bid assessment framework to make a successful bid to provide sludge disposal services to a sewerage company, this does not relieve the company of its obligation to ensure that the sludge is disposed of in line with the above requirements.

Companies' bid assessment frameworks should be consistent with their obligations under environmental law.

⁷ Under section 94(1)(b) of the Water Industry Act 1991 it is the duty of every sewerage undertaker "to make provision for the emptying of [its public] sewers and such further provision (whether inside its area or elsewhere) as is necessary from time to time for effectually dealing, by means of sewage disposal works or otherwise, with the contents of those sewers".

5. Scope and content of bid assessment frameworks

This section sets out the principles we expect companies to follow when developing their bid assessment framework, as well as specific issues related to bioresources activities⁸ which we expect companies to address. It also contains a high-level summary of the approach companies should take.

5.1 The principles

Companies should produce a bid assessment framework that shows a clear commitment to the three key principles of:

- **Transparency** – The principle of transparency requires the process for selecting third parties and award criteria to be transparent to all bidders. Transparency in the process ensures confidence that companies will not favour their own in-house solutions or allow unfair advantage to other bidders. This in turn should help to stimulate third parties to make bids.
- **Equal treatment / non-discrimination** – All potential suppliers should have an equal opportunity to compete to provide the service (unless a difference in treatment can be objectively justified) and there should be objective comparison of tenders. This also applies to the consideration of bids against a company's in-house solution.
- **Proportionality** – Companies should ensure that the way in which they assess bids and design tenders is proportional to the service that is being procured. For example, bidders should not be discouraged from bidding for a relatively small contract because of the specification of a disproportionately large number of criteria.

Companies should also take steps to avoid conflicts of interest. This and the principles are discussed in further detail below.

5.1.1 Transparency

The principle of transparency is intended to ensure that the overall process for submitting bids is clearly explained and the assessment criteria are specified.

We expect companies to publish bid evaluation criteria alongside an invitation to submit bids. This is a key element of transparency and will enable all potential bidders to understand what they will be assessed against, thereby reducing bidding costs. We expect companies to outline sufficient details of the overall process, including timescales. Companies should also make

⁸ By "bioresources activities" we mean all aspects of sewage sludge transport, treatment and disposal.

efforts to support bidders in understanding what information they must provide as part of a bid. This is particularly the case for small or inexperienced firms for who submitting bids may be a costly and time-consuming process.

The bid assessment framework should provide clarity to a third party by including specific details for where bid opportunities and details will be advertised. If a third party wishes to submit a speculative bid, the bid assessment framework should either specify how to do this or provide details on where the information can be found.

Feedback is a key element of transparency, so we recommend companies provide feedback to unsuccessful third parties as to why their bid was rejected, aligned with the published criteria.

Bid assessment frameworks must include an appropriate appeals and complaints process for third parties. An appropriate complaints process includes the opportunity for a bidder to appeal at each stage of the bidding process. After the bid award is communicated there should be a specified timeframe for submitting a complaint, along with a complaint form and instructions on how to submit. The bid assessment framework should also outline who will assess the complaint, along with timescales for the process to be completed and a decision communicated.

We would also expect the procurement process to be documented and an audit of compliance to be retained and made available to Ofwat, should we require it.

5.1.2 Equal treatment / non-discrimination

The bid assessment framework should provide clarity and confidence to third party bidders that their bid will be assessed fairly. If there is an in-house proposed solution from the sewerage company then the bid assessment framework should explicitly state that the same published evaluation criteria will be applied to both bids. This avoids any unfair advantage, perceived or actual, to the sewerage company.

An application of non-discrimination within a bid assessment framework process is when an in-house solution team is treated comparably to the market, receiving equivalent information at the same time and receiving no preferential treatment. Non-discrimination within a bid assessment framework process can be strengthened by having separate teams with defined roles within the process. For example, where a third-party bid is assessed against a company's in-house solution, we would expect that the team assessing the bids would be completely separated from the team that designed the in-house solution. Companies' procurement functions in the wholesale part of the business should oversee the process and ensure that it is carried out appropriately.

Another key purpose of non-discrimination is to provide reassurance to third party bidders that any commercially sensitive information is protected and cannot be used as an advantage to

the in-house solution development team, either at the time or in the future. It is critical to the integrity of the bid assessment framework that any commercially sensitive information is subject to a confidentiality ring with restricted access. This will prevent conflicts of interest, avoid distortion of competition and safeguard against misuse and the perception of misuse by the in-house team to gain an unfair advantage.

5.1.3 Proportionality

The principle of proportionality is intended to ensure the bid specification detail is appropriate for attaining the objective pursued and ultimately provides value for money for customers.

Proportionality can apply in a variety of ways. For example, companies should facilitate bidding activity by being conscious of the specificity of the requirements bidders must fulfil. If the requirements are overly complex this may increase bidding costs and deter potential bidders. Companies should though take care to ensure that the requirements are sufficiently thorough to provide them with the information they need to assess a bid properly – bidders should not be rejected for failing to provide information which was not requested within the requirements.

Using the full process set out within company bid assessment frameworks may be disproportionate for certain arrangements that occur in bioresources. Examples of this could include:

- short-term, emergency sludge trades between companies – these arrangements are often required at short notice to mitigate potentially serious consequences and so it may be appropriate for a company to depart from the full processes laid out within its bid assessment framework in these circumstances;⁹ and
- low value sludge transport contracts where any efficiencies gained could be minimal.

Companies should use their judgement and be mindful of the principle of proportionality when deciding if certain procurement should be excluded from the full processes laid out within the bid assessment framework. The bid assessment framework should clearly state the criteria for taking procurement exercises out of the scope of the regular process and the process which they will follow instead, in order to maintain transparency. This alternative approach should still maintain as much of the bid assessment framework arrangements as possible, rather than being fully exempt.

⁹ Companies may plan ahead for this possibility and agree trades in advance. In this case, these arrangements should still be subject to the full bid assessment framework.

5.1.4 Avoiding conflicts of interest

We expect sewerage companies to take appropriate measures to prevent, identify and remedy any conflicts of interest arising from the procurement process, to avoid distortion of competition and ensure equal treatment of all bidders.

5.2 Bioresources specific issues

As discussed in section 2.3, there is similarity between the guidance we set out for bioresources bid assessment frameworks and the guidance for water resources, demand management and leakage services that is already in place. Companies may choose to amalgamate the frameworks for bioresources and water resources, demand management and leakage services.

The bioresources market has different characteristics to water resources and there are specific bioresources related issues that companies should address within their bioresources frameworks. These are discussed below.

5.2.1 Contract risk

The nature of the bioresources industry means that sewerage companies need to be confident that the sludge for which they hold responsibility can be properly treated and disposed of at all times. Maintaining operational resilience is therefore a key concern for companies.

Our earlier sector engagement suggested that sewerage companies' concerns around the continuity of supply from third parties is a key issue hindering the bidding market. Market participants suggested that these concerns may have led to bids being rejected without adequate explanation.

We consider that companies' bid assessment frameworks should ensure that the assessment of risk is addressed appropriately. We expect companies to consider bids to provide bioresources services in the context of the overall operational resilience across their bioresources operations.

Companies should make clear the information needed from bidders surrounding operational risk and include this within the pre-qualification stage of the bid assessment process (see section 5.2.2). Where bids are rejected on the grounds of risk, companies should provide feedback to bidders in line with the principle of transparency set out in section 5.1.1. When consulting on their bid assessment framework (see section 6), companies should ensure they seek feedback that their approach to evaluating risk is appropriate.

5.2.2 Pre-qualification stage

Our engagement with firms who have experience of bidding for bioresources services has highlighted the importance of a pre-qualification stage within the bid assessment process. Often these firms have limited experience of the bidding process and may be unaware of the regulatory environment that the sewerage companies operate in and therefore what requirements a bid may need to fulfil. This can lead to third parties submitting bids that fall short of companies' expectations. It also imposes significant cost on firms if they are required to submit a full bid specification up front.

For these reasons, we consider that sewerage companies should implement a pre-qualification stage as part of their bid assessment framework process. This should be proportionate, allowing companies to assess whether a prospective bid could progress to the full evaluation stage, but without imposing an overly heavy time investment or cost on the bidder.

Companies should also look to support bidders at the pre-qualification stage. Of those companies who use pre-qualification stages within their existing procurement processes, some have informed us that they open two-way dialogue with bidders early on and look to 'coach' bidders through the process. This type of arrangement can help to maximise the benefits of the bid assessment framework. Companies should consider how they can best utilise the pre-qualification stage to facilitate high quality bids.

5.2.3 Data provision

Bid assessment frameworks were introduced in 2018 for water resources, demand management and leakage services. We understand that one concern that may be impacting the effectiveness of these is that in some cases bidders are unable to comply with bid requirements due to them needing to access data held by companies. If sewerage companies refuse to allow access to relevant information, then third parties would be disadvantaged.

As stated earlier, all parties must benefit from equivalent information at the same time. Therefore, companies must not unreasonably withhold information that bidders may need in order to fulfil bid requirements.

5.2.4 Sludge quality

Through our engagement with market participants, we have learned that differences in sludge quality and characteristics is a significant barrier to agreeing sludge trades. This was also noted as a market constraint by Jacobs in their report to support our review of the bioresources market.

For example, while companies may be able to identify an opportunity for a mutually beneficial sludge trade, it may be more difficult to agree exact terms around the quality of sludge, given that this can vary considerably. This in turn impacts on the complexity to treat it, the ability to process it, and its renewable energy generation potential which will all affect the financial terms of the trade. If sludge quality is only discussed later in the negotiation/bidding process then bidders may incur significant cost and time investment developing a bid, before seeing it rejected due to sludge quality issues.

Companies' updated market information will mitigate this issue somewhat. However, there may also be ways that the bid assessment framework can help to resolve this. For bids concerning sludge treatment activities, discussions around sludge quality could be included as part of the pre-qualification stage for example. Companies must consider this issue and how their bid assessment framework can be best used to address it.

5.3 Summary of approach

Company bid assessment frameworks should provide a standardised process for inviting and considering all bids.

We consider our approach to be proportionate and one that strikes an appropriate balance between needing to stimulate third party bids and avoiding an undue regulatory burden. We expect a high-quality bid assessment framework from each company to give bidders a clear understanding of:

- pre-qualification requirements, to avoid submitting bids which will be automatically rejected (as discussed in section 5.2.2);
- the specifications required (though this should be done in line with the principle of proportionality detailed in section 5.1.3); and
- the evaluation criteria.

It should also give third party bidders confidence that:

- the bid will be assessed fairly and according to the same evaluation criteria as the sewerage company's own in-house solution;
- the bid will be treated the same as the other bids submitted;
- commercially sensitive information will be subject to a confidentiality ring with restricted access, to safeguard against misuse or the perception of misuse by the sewerage company to gain an unfair advantage;
- the decision-making process will be expedient, fair, transparent and subject to oversight by the procurement team; and
- there is a robust and accessible complaints/challenge process in place, should they consider their bid has not been appraised in accordance with the bid assessment framework.

6. Implementation

6.1 Timing

Companies should comply with the bid assessment framework guidance as soon as reasonably possible. We consider that the end of September 2022 to be a reasonable deadline for full implementation.

We did not require companies to consult on their water bid assessment frameworks. Instead, we published the requirements for these bid assessment frameworks as part of our PR19 methodology and assessed them as part of our Initial Assessment of Business Plans. For bioresources, given that the sector can draw on the experience of producing water bid assessment frameworks and that we are implementing this guidance at an earlier stage in the price control process, we consider that the process should incorporate a more direct relationship between sewerage companies and their stakeholders. We are therefore setting the below timeline for implementation which includes an expectation that companies would consult publicly on a draft of their bid assessment framework. This would give potentially affected stakeholders an opportunity to comment and will mean that the finalised frameworks should better reflect prospective bidders' needs. This should maximise the effectiveness of the bid assessment framework.

We are happy to host a weblink to companies' draft Bid Assessment Frameworks on our website, where a company considers that this would support their consultation with their stakeholders.

Companies should take account of their stakeholders' views when finalising their bid assessment frameworks. We recommend that they keep a log of the feedback they received from their consultation and how they took this into account. This should be available to be shared with us on request.

Figure 1: Implementation timetable



Companies should make use of their bioresources bid assessment frameworks to inform their PR24 business plans where possible. However, we do not expect companies to delay procurement in order to apply their final bid assessment framework. Although we generally expect companies to adhere to the principles set out in section 5 now, companies' bid

assessment framework need only apply to 'new' procurement – i.e. procurement that is initiated once companies have published finalised bid assessment frameworks.

We expect companies to publish their final bioresources bid assessment frameworks alongside the bioresources market information on their websites and to inform us when they have done so. To ensure these are easily accessible to third parties, we will provide a link to these publications from our website.

6.2 Assessment

We will keep under review whether to formally assess companies' compliance. Given companies' previous experience in developing bid assessment frameworks for water (including our previous feedback on these) and companies taking account of their stakeholders' views on their draft bioresources bid assessment framework, we expect the sector to produce high quality bioresources bid assessment frameworks.

However, if companies exhibit consistently poor practice we may take steps to address this. In the first instance we could look to highlight poor practice within our annual bioresources market monitoring report. If we still had concerns then we would consider further options, such as assessing compliance at PR24.

In section 3.1, we state that we are not requiring companies to produce a common bid assessment framework that applies across the industry at this time, despite the benefits this may have for bidders. We will keep this issue under review and may introduce greater commonality requirements if the bid assessment framework is not working as intended in facilitating third party provision.

A1 The link with our water bid assessment framework guidance

In section 2.3 we stated that there is significant crossover between the guidance contained in this document for bioresources bid assessment frameworks and that related to the frameworks for water resources, demand management and leakage services.

For clarity, table 1 refers to the [water resources, demand management and leakage services guidance](#) document and indicates the key points where there is crossover between the two guidance documents.

This table is provided purely for information. Companies should not simply use this table and the water resources, demand management and leakage services guidance to infer what is required from their bid assessment frameworks. Sections 4, 5 and 6 in the main body of this document contains our guidance.

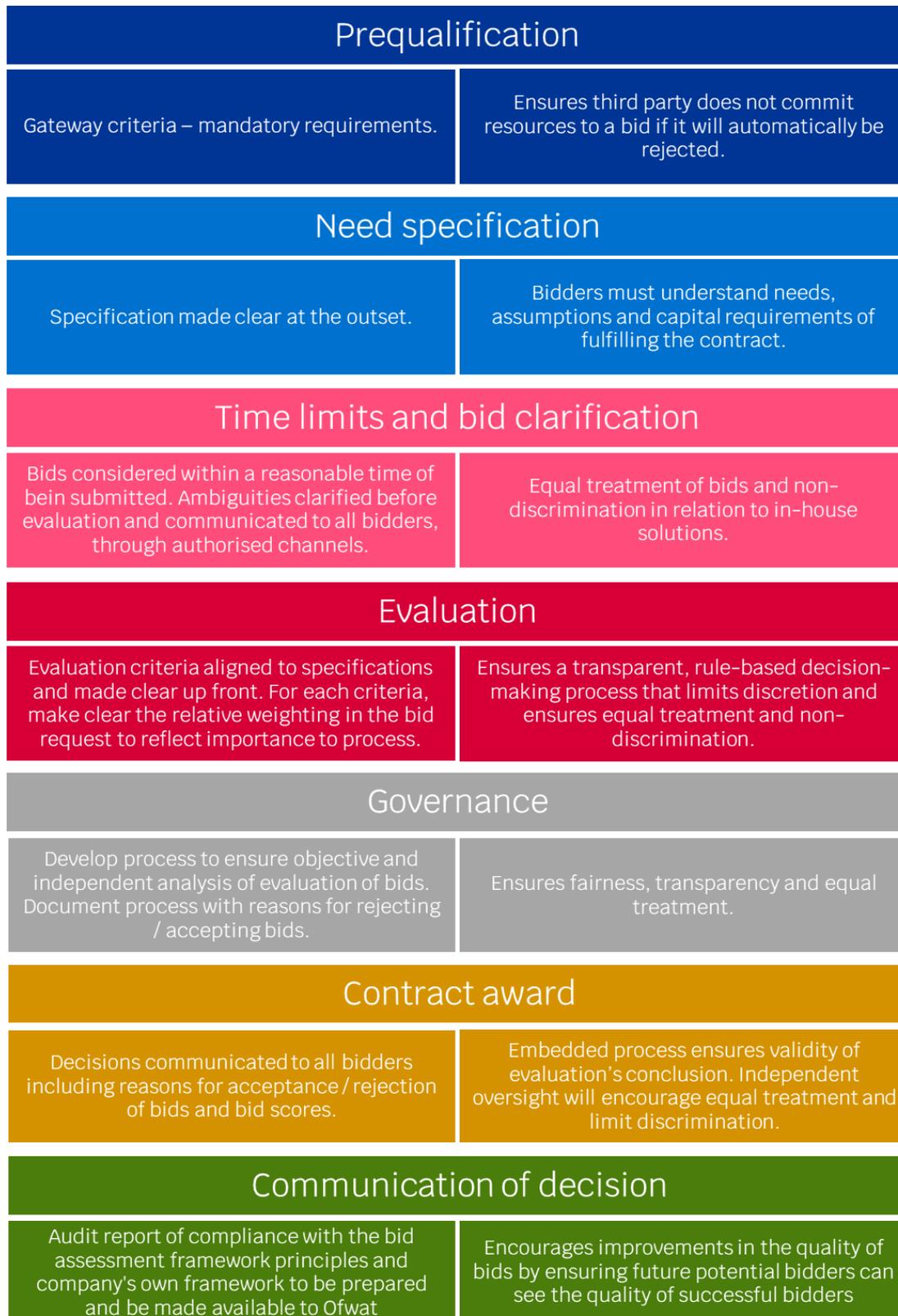
Table 1: Areas of the water resources, demand management and leakage services bid assessment framework guidance which crossover with the bioresources guidance.

Section of water resources, demand management and leakage services guidance document	Degree of crossover	Key points
Section 1	None	
Section 2	None	
Section 3	High	<ul style="list-style-type: none"> Sections 3.2 and 3.3, concerning competition law compliance and procurement rules, are replicated fully between the two sets of guidance. Sections 3.1, 3.4 and 3.5 are specific to water resources, demand management and leakage services and so are not included within the bioresources guidance.
Section 4	Medium	<ul style="list-style-type: none"> We have retained the same underlying principles of transparency, equal treatment and proportionality within the bioresources guidance. We have, however, adjusted these where necessary, for example concerning how the principle of proportionality applies to short-term sludge trades. Requirements around conflicts of interest have not been carried over to the bioresources document in full. Companies should follow the guidance laid out within this document. Section 4.2 has been closely replicated in section 5.3 of this document.
Section 5	Medium	<ul style="list-style-type: none"> Parts of section 5 of the water resources, demand management and leakage services guidance are accounted for in this document. The same is true of the best practice recommendations we made in our January 2019 Bid assessment framework information note.

		<ul style="list-style-type: none">We have included a similar process diagram to that housed within section 5 of the water resources, demand management and leakage services guidance in appendix 2 of this document.
Section 6	None	

A2 Diagram of process

Figure 2: Overview of an example bid assessment framework process



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We regulate the water sector in England and Wales.**

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