

## Waste Procurement Damages

**March 2010**

Work has recently started on the biggest waste recycling contract in Europe with the commencement of building for two household waste and recycling centres in Bolton. The Greater Manchester Waste Disposal Authority (GMWDA) contract value is reported to be £3.8 billion over its term and covers 36 facilities across 23 sites. It has also recently picked up the European Waste Deal of the Year 2009 at an awards ceremony held by Project Finance and Infrastructure magazine last week. However, at the same time it was collecting the prize, it was also appearing before a judge in the High Court trying to throw out SITA UK's claim for damages over the procurement, with a renewed call for the action to be dismissed as being out of time. The scheduled two day hearing actually lasted four days and involves SITA seeking damages of – let me pause before I say this – nearly £92 million!

Counsel for GMWDA argued that if the claim was not struck out, then the potential cost of damages risked being passed on to the GMWDA's members, and, ultimately, the region's council tax payers. This argument was countered by SITA UK's counsel, who claimed that it was in fact more in the public interest to proceed with the company's claim, which is based on its not being allowed to resubmit a bid when the costs of the contract, which was awarded to Viridor Laing, changed significantly.

"The size of the contract makes it even more imperative that the case be dealt with," he said, adding that "this is an enormous contract with very substantial increases in capital expenditure built in and there must be real question as to whether that award has been made on the basis of the most economically advantageous tender." Highlighting particular issues with how GMWDA

conducted its procurement process, the counsel said that the case should be allowed to continue because of "the conduct of the authority throughout the process in failing to give a fair picture on the basis of which SITA had been eliminated and the basis on which that continued to a correct decision."

Due to the complex nature of the contract, the judge has suspended giving his judgment for at least another couple of weeks (quite unsurprisingly) and it will be very interesting when it comes out. At the same time, another waste firm Veolia Environmental Services is taking Thurrock Council to court over its award of a waste management contract. Veolia has lodged proceedings over what it describes as "the council's unlawful management of the procurement process" and is pursuing a claim for damages against the authority. This week, the Public Accounts Committee have also attacked the Department for Transport for its "inadequate" contract management, which it said has resulted in losses of up to £410m for the taxpayer into the collapse of Metronet. The PAC found the department's assumptions were "flawed from the outset".

The above cases, as well as many others currently being reported, such as one involving Stoke-on-Trent City Council, highlight how the tables are turning quite rapidly against public sector organisations. It appears that suppliers are now very happy to bite the hand that feeds them. At a time when spending cuts and job losses are on the horizon, the situation could very easily turn into a complete nightmare as authorities try to balance reduced resources with having to deliver major new projects that are expected to bring savings. If they are not careful, the £20 billion expected to be saved from Total Place may just be enough to cover the large multi-million pound claims – and of course the lawyers fees!



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