

Department for Environment Food and Rural Affairs

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Waste Private Finance Initiative (PFI) – frequently asked questions (FAQs)

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Private Finance Initiative (PFI) - General

What is PFI?

It is a type of Public Private Partnership (PPP)¹ and is one of the main mechanisms through which the public sector can improve value for money in partnership with the private sector. It does this by involving the private sector more directly in asset provision and operation and allocating risk to the party best placed to manage that risk. PFI was launched in 1992.

The principle of PFI is that a public sector body obtains a service for a fixed price rather than an asset. A private sector contractor funds any asset required and is then paid for the services actually provided by reference to pre-agreed standards. Value for money for the public sector is achieved by transferring the risk of providing the services on time and on budget to the private sector.

What are the advantages of PFI?

The key advantages of PFI include:

- Desired service standards are maintained – since private sector capital, not just its profit, is at risk, there is a strong incentive for the private sector to maintain high and reliable service standards over the life of the contract;
- New services are more likely to start on time – since the private sector contractor does not get paid until it delivers the specified outputs (it is worth noting that the record of conventional procurement is comparatively poor in this respect);
- Contractors are given an incentive to deliver the required service under the whole life of the asset – the private sector partner gets paid only if it maintains standards over the length of the contract;
- A better understanding of the total costs of providing the required service is demonstrated up-front – in PFI procurement, the public sector client can clearly define the service it requires, and the private sector partner gives a price for the total cost of that service; and,
- New ways of working, and new approaches to service delivery – the public sector defines the service to be delivered, but it is for the private sector partner to decide how to deliver it.

However this is not to say that PFI always offers the most appropriate procurement solution. Procuring authorities are encouraged to consider all possible options that may be suitable for the procurement contemplated, including PPPs (Public Private Partnership projects) and Prudential Borrowing.

¹ Further information on HM Treasury website: http://www.hm-treasury.gov.uk/documents/public_private_partnerships/ppp_index.cfm

WIDP & Waste PFI Process

What is WIDP?

The Waste Infrastructure Delivery Programme (WIDP) was established in 2006 to support local authorities to accelerate investment in the large-scale infrastructure required to treat residual waste, without compromising efforts to minimise waste and increase recycling levels.

WIDP works to ensure cost-effective, value for money and timely delivery of the major infrastructure required to bridge the shortfall in residual waste treatment capacity needed in order for England to meet its share of the UK's Landfill Directive diversion targets.

WIDP brings together the resources and roles of Defra, Partnerships UK (<http://www.partnershipsuk.org.uk>) and Local Partnerships (<http://www.localpartnerships.org.uk>) to provide high quality, comprehensive support to local authorities, including:

- Financial help through PFI credits (where appropriate). WIDP oversees the allocation of PFI credits.
- Dedicated Transactors give guidance and support to individual authorities' procurement projects (both PFI and non-PFI)
- Generic guidance to help all waste infrastructure projects.

What are Transactors?

WIDP has established a pool of experienced project Transactors to support individual authorities from project development to commissioning and throughout the operational phase of waste projects. Transactors strengthen the authority client team rather than substitute the use of advisers and complement existing skills development and procurement quality assurance processes. The support provided by Transactors include acting as a conduit for communications with WIDP, attending Project Team meetings at key stages of the preparation and procurement of projects, providing advice in relation to project development issues and engagement of advisers, reviewing project documentation and assisting negotiations and evaluation of bids. A comprehensive list of the allocated Transactor's commitments will be provided in the Memorandum of Understanding signed with the authority.

What is the Commercial Team?

The Commercial Team supports authorities largely through WIDP Transactors to assist in the resolution of commercial, financial and legal issues, thereby assuring the deliverability of the project. Before the close of dialogue, a formal Commercial Team assessment of readiness to close dialogue will also be conducted prior to Call for Final Tenders. This review will assess commercial issues, such as the payment mechanism, the output specification, non

reversion of assets (where relevant), liability for Contractor's non-performance,² and the suitability of any proposed derogation.

Are parties outside Defra involved in the evaluation process for waste PFI projects?

Defra's objective during evaluation of prospective waste treatment PFI projects is to engage with an appropriate stakeholder spectrum. As part of this process, Defra has invited Government Offices (GO) and the Waste Resources and Action Programme team (WRAP) to assist in the evaluation of Outline Business Cases (OBC), from Round 2 onwards. The Greater London Authority (GLA), the Environment Agency (EA) and the Regional Improvement and Efficiency Partnerships (RIEP) have joined this process, at the evaluations of Round 4 Expressions of Interest (EOI) and OBC (Outline Business Case) stages.

Does the approval of an EoI guarantee the authority that it will receive PFI Credits?

No. Decisions regarding the allocation of PFI Credits will be based on the OBC submitted later in the process. Credit allocations will also be subject to the submission of a satisfactory Final Business Case (FBC). The approval of an EoI only indicates that Defra considers the authority is ready to move onto the preparation of an OBC. Also, if a Waste Infrastructure Delivery Programme (WIDP) Transactor has not already been allocated to offer professional support to the authority, it will trigger the start of that support.

Is there guidance on the preparation of FBCs?

WIDP has prepared an FBC template and accompanying guidance note.³ The guidance sets out, amongst other things, the timing for submission of this document and the involvement of the WIDP Commercial Team.

It should be noted that the new PFI support guide,⁴ issued by the Department for Communities and Local Government (CLG), requires authorities using the competitive dialogue procedure to submit their FBCs to the sponsoring Department (Defra in this case) for agreement before selection of the preferred bidder.

Will PFI credits meet the full funding requirement?

PFI credits are available for residual waste treatment projects and will support up to a maximum of 50 per cent of the capital value as measured by the NPV of the senior debt service cash flows (as quantified in accordance with WIDP's OBC template), within the current funding rounds.

² Further details on the WIDP Commercial Team Sign Off and Derogations Review can be found in the WIDP FBC Guidance. This document is available from pfiapplications@defra.gsi.gov.uk

³ The FBC template and guidance note can be obtained by contacting: pfiapplications@defra.gsi.gov.uk

⁴ <http://www.communities.gov.uk/localgovernment/localgovernmentfinance/pupprivatepartnership/centralgovernment/>

Can projects be awarded additional credits after the initial OBC approval?

There is scope for procuring authorities to make a case for the award of additional credits where there has been a material and unforeseen change to the position stated in the OBC. Defra will consider any application for additional credits on its merits and in the context of managing the available credits for the whole of the programme. All additional awards will require the approval of Defra Ministers and, in line with HM Treasury guidance, any awards greater than the lower of £10m or 20% of the original credit award will require the approval of the PRG. Any request for additional credits needs to be considered (by WIDP) well in advance of the submission of the FBC, so that the FBC affordability position can be based on the approved and adjusted level.

In approving an additional allocation, Defra reserves the right to set this at a level lower than requested, depending on the circumstances. We are also keen to dispel the perception that additional credits will normally be available to bridge affordability gaps identified late in the project. Authorities should note that the award of additional credits is an exceptional procedure and awards are made only where there has been a material change to the position stated in the OBC.

How will PFI credits awarded to Defra in Comprehensive Spending Review (CSR07) be split between award rounds?

The £2bn PFI credits awarded to Defra in the CSR07 are expected to be sufficient to cover Rounds 1 to 4. There is no ring-fencing of PFI credits for each round.

Will there be more award rounds after Round 4?

In the CSR07 Defra secured enough credits to fund 4 award rounds. No decision has as yet been made on any future PFI funding rounds.

Are Defra's PFI criteria published in May 2006 still valid?

Yes. It is expected that all OBCs will comply with these criteria.

What evidence is required (in the OBC) to show that Local Authority (LA) members are fully signed-up to the full potential costs of the project?

Defra and ultimately PRG require clear and unambiguous evidence that the appropriate decision making body of the LA has understood and is committed to meeting the full "potential" costs of the reference project over the lifetime of the contract. This should include evidence that the Authority has considered a range (derived by sensitivity analyses which reflect those included in the OBC) of best to worst case cost scenarios. Acceptable evidence of sign-up would include both minutes of cabinet/executive/members meetings at which the approval was given as well as a copy of any report presented to members/cabinet/executive clearly setting out the position. It is not acceptable, in the evidence, to merely refer members to where the information can be found in the OBC, as this provides no comfort that members have read and understood the cost implications or committed to meeting the affordability gap.

Authorities need to evidence, through reports to the appropriate decision making body and minutes of executive/cabinet/members meetings, that they have committed to meeting any gap in affordability within a specified envelope (derived from sensitivity analyses). For example, the wording of recommendation in a report to cabinet might read: **“Approves that the Council proceed with the PFI procurement on the basis of a £xxxm to £xxxm affordability range and confirm it is committed to meet this affordability gap.”** If there is any doubt, contact the WIDP team.

Guidance: Procurement & Planning

What guidance is available?

In addition to the project specific guidance provided by Transactors, WIDP has published generic guidance on a wide range of issues in residual waste treatment procurements.⁵ Guidance in the waste sector takes the form of the WIDP Procurement Pack which is being published in a modular format to assist in promulgating updates as best practice evolves.

Which modules of the WIDP Procurement Pack have been published?

Six modules of the WIDP Procurement Pack have been published to date covering the options appraisal, project governance, prudential borrowing, the payment mechanism, the output specification and joint working. The standard residual waste treatment PFI contract is being finalised and a consultation version is currently available.⁶

What guidance is available for local authorities to help in managing the planning process?

WIDP has developed planning systems guidance which addresses means to help reduce the planning risks associated with delivering waste facilities (irrespective of the nature or size of the proposed waste facility) to which procurements are exposed in the situation up to the adoption of a Development Planning Document covering waste as an element of the Local Development Framework. The purpose of the guidance is to facilitate a transitive process in planning towards the delivery of successful procurement outcomes, avoiding as far as possible complications arising late on in the procurement process or during implementation. The planning guidance can be found at:

<http://www.defra.gov.uk/environment/waste/localauth/funding/pfi/guidance.htm>

Further guidance on planning can be found from the Planning Inspectorate (PINS), which has recently published “Examining Development Plan Documents: Learning from Experience”, which can be found at:

http://www.planning-inspectorate.gov.uk/pins/appeals/local_dev/index.htm

⁵ <http://www.defra.gov.uk/environment/waste/localauth/funding/pfi/guidance.htm>

⁶ <http://www.defra.gov.uk/environment/waste/localauth/funding/pfi/consultation.htm>

The Planning Advisory Service (PAS) also offers support to authorities for developing waste plans and can be contacted via the relevant Government Office. Further information on PAS can found at:

<http://www.pas.gov.uk>

Where can I send guidance related queries?

The WIDP Contracts and Guidance Team can be contacted via

WIDP.guidance@defra.gsi.gov.uk

Policy/ Legislation

Why do some authorities not require a waste strategy?

Detailed guidance on the duty of LAs in two-tier areas to have a joint municipal waste management strategy can be found at:

<http://www.defra.gov.uk/environment/waste/localauth/powers-duties.htm>

In summary:

In line with the Government's commitment to freedoms and flexibilities, section 33 of the Waste and Emissions Trading (WET) Act 2003 provides for the Secretary of State to exempt from the duty to have a joint strategy for the management of municipal waste, where certain conditions are met, namely:

- high performing authorities (automatically); and
- whole two-tier areas (on application).

The criteria for exemption are set out in regulations under section 33 of the WET Act.

On what grounds can an authority be exempt?

Authority Exemption

Individual authorities in two-tier areas will be exempt automatically from the duty to have in place a joint strategy if the authority is categorised as 'excellent' through Comprehensive Performance Assessment (CPA) and/or it is a waste disposal authority; has met its statutory performance standards for waste and, from 2006/07, has met its obligations for the most recent financial year under Landfill Allowance Trading Scheme (LATS); and, has met its most recent statutory performance standards for waste.

Any authority exemption will be automatic and will be confirmed in writing by the Secretary of State.

Area Exemption

An entire two-tier area will be exempt where the following conditions have been met:

- the waste disposal authority has met its most recent statutory performance standards for waste and, from 2006/07, has met its obligations, including by banking, borrowing or trading allowances, for the most recent financial year under LATS; and, either
- at least half the waste collection authorities have met their statutory performance standards for waste; and
- all other, non-exempt, waste collection authorities make a joint application in writing to the Secretary of State for area exemption; or

- all waste authorities for the area have made a joint application in writing to the Secretary of State for the disapplication of the duty.

All exemptions of whole two-tier areas will be confirmed in writing by the Secretary of State.

Will the Clean Neighbourhoods Bill revoke the Environmental Protection Act regarding whether LAs will be able to tender for their own contracts?

With the repeal of the divestment provisions in the Environmental Protection Act 1990, waste disposal will be treated in the same way as any other LA function under Best Value. Legally therefore a LA could tender for one of its own contracts or bring its waste disposal function back "in house" so long as it satisfied Best Value requirements.

How will the LAs that are tendering now ensure their facilities are ready by their target dates given the existing planning regime?

Some LAs are tackling the issue head on, for example, all LAs are encouraged to go out to public consultation on issues as broad as their Joint Municipal Waste Management Strategies and as specific as what solutions and technology should be applied and on what sites. Through working with colleagues at the Department for Communities & Local Government (DCLG) and feeding into the policy development and consultation process, with the revision of PPS10 planning guidance, along with the Waste Strategy for England 2007 (WSE2007) and the development of and adoption of Development Plan Documents, the planning process will become more streamlined and therefore quicker and simpler.

The debate on waste should be technically well informed. What is being done to train local government on waste issues?

This is being addressed on a number of fronts. Defra, through WIDP, is making itself more visible and is engaging with LAs, e.g. at events such as the WIDP conference, held in Birmingham June 2009, and through publications like the Waste Wood Information Report published by Defra in April 2008 and the CHP Information Note published in February 2009⁷.

Better informed decision making at all levels needs more information and, in addition to the above, we are making more information available to LAs and the industry through the New Technologies Supporter Programme, which aims to address the perceptions that some people have about this area.

The requirement for LAs in those areas to work together in developing their Joint Municipal Waste Management Strategies has helped to address this. However we are constantly looking for other ways to influence and encourage greater partnership working between LAs.

⁷ <http://www.defra.gov.uk/environment/waste/residual/widp/documents/chp-information-note090127.pdf>

A range of options for working in partnerships is available to local authorities – one size doesn't fit all. The Local Government and Public Involvement in Health Act 2007, introduced powers to allow a new option: for groups of two or more local waste authorities to submit proposals (to the Secretary of State) to create a Joint Waste Authority to discharge one or more of their waste functions (collection, disposal and/or street cleansing).

Technology & Markets – Reference Project

When an Authority identifies a particular technology as the Reference Project in its OBC, does it effectively determine the solution that will be procured?

In producing an OBC, an Authority must demonstrate that there is at least one solution that meets the Output Specification and is deliverable, bankable and affordable. Therefore the OBC will include what is referred to as the "reference project". This is a fully costed solution that should be based on an existing plant, shown to be capable of operating on a similar scale and processing waste of comparable composition. The choice of technology for the reference case (which should be based on a robust options appraisal) will be driven by detailed waste flow modelling that will determine the size of the facility/facilities required to meet the authority's waste management objectives.

However, in selecting the technology in the reference project, the authority is not committing itself to delivering the specified outputs using that technology. An Output Specification should be used in the procurement process allowing bidders to determine the best way to deliver the specified outputs.

We would ask that authorities share with the WIDP team any press releases on this, prior to publication, to ensure clarity that any technology mentioned at this stage is NOT necessarily the final outcome of the procurement process.

Where the Reference Project is Mechanical and Biological Treatment (MBT) producing Refuse Derived Fuel (RDF)/Solid Recovered Fuel (SRF), what disposal options have to be included in the Reference Project?

Where disposal of RDF/SRF is involved, the PFI credit allocation criteria state:

“Residual disposal solutions (e.g. refuse derived fuel, fibre, soil improvers) must demonstrate the destination of any residual output and the existing or intended commitments for and cost of effecting such disposal”.

WSE2007 requires that we reduce the amount of waste created and increase the amount of waste that is re-used and recycled. It requires us to maximise the cost effective pre-treatment of waste before disposal; and where disposal requires combustion, to maximise the climate change benefit through use of Combined Heat and Power (CHP), where possible.

There is an expanding range of outlets for RDF/SRF that LAs need to consider when formulating waste management solutions based around MBT.

These include industrial intensive energy users with an existing heat load/ CHP; public sector installations like MoD estates, prisons, hospitals etc.; cement kilns; purpose built RDF/SRF disposal plant with or without CHP; and co-firing SRF with coal or biomass, as proposed in the Government's response to the Renewables Obligation Banding Review and set out in the Renewables Obligation Order ("ROO").

It is for this reason that Defra is developing both the producer and user markets for SRF, recognising that industrial users may prefer to take an engineered fuel product onto their sites, rather than black bag Municipal Solid Waste (MSW). Please refer to the CHP Information Note in footnote 7.

Is Defra (WIDP) promoting the market for RDF/SRF?

MBT, Autoclave and AD are all examples of intermediate technologies that produce residues that need a disposal outlet. The PFI credit allocation criteria stipulate that projects using intermediate technologies must demonstrate a clear, realistic disposal solution for the output residues. Defra (WIDP) wants intermediate technologies to be genuine waste management options for Authorities and has been, and continues to take, steps to stimulate markets for RDF/SRF. A minimum standard for SRF has been developed and is incorporated into the Renewables Obligation Order 2009 which came into effect on 1 April 2009. A copy is also available from WIDP, upon request.

RDF/SRF is a waste product and will continue to be classified as a waste which means that it needs to be disposed of in a Waste Incineration Directive ("WID") compliant combustion facility. Defra continues to work with DECC to incentivise the use of waste derived biomass for both electricity and heat production. An Information Note on CHP and SRF can be accessed through the web link in footnote 7.

What is the Government's stance on incineration?

As set out in the WSE2007 and the Energy White Paper, Government supports the use of incineration with energy recovery, for the treatment of residual waste which cannot be safely or practically composted or recycled. Incineration with energy recovery is acknowledged to be a viable waste management option by its inclusion in the waste hierarchy, below recycling and composting, but as a more sustainable disposal option than landfill.

The message that Energy from Waste solutions have a role to play in the overall picture is a core element of WSE2007. As with all energy production, it is important to minimise the carbon impact and maximise energy efficiency both of which can be achieved through CHP solutions. We advise all authorities to utilise WRATE, the EA model developed to gauge climate change impacts as part of the options appraisal process.

Does incineration have a detrimental effect on public health?

The Health Protection Agency (HPA)⁸ recently reviewed research undertaken to examine the suggested links between emissions from municipal waste incinerators and effects on health. Their conclusion⁹ was that, while it is not possible to rule out adverse health effects from modern, well regulated municipal waste incinerators with complete certainty, any potential damage to the health of those living close-by is likely to be very small, if detectable. This view is based on detailed assessments of the effects of air pollutants on health and on the fact that modern and well managed municipal waste incinerators make only a very small contribution to local concentrations of air pollutants. The Committee on Carcinogenicity of Chemicals in Food, Consumer Products and the Environment has reviewed recent data and has concluded that there is no need to change its previous advice, namely that any potential risk of cancer due to residency near to municipal waste incinerators is exceedingly low and probably not measurable by the most modern techniques.

Where an authority has not recently procured any large scale infrastructure, what is being done to address any gaps in the authority's procurement skills?

The creation of WIDP underlines Defra's commitment to assisting LAs in this regard. One of WIDP's roles is to also provide guidance for LAs and the sector as a whole, to assist in the delivery of residual waste infrastructure. In this regard, WIDP has published a number of pieces of guidance covering for example planning, project governance, and options appraisals relating to technology choice. Further guidance is also being developed, for example, a standard project agreement for residual waste treatment projects went out to consultation over the summer. Full details of WIDP guidance can be found at www.defra.gov.uk/environment/waste/localauth/funding/pfi/guidance.htm.

Local Partnerships also provide training for Project Directors, details of which can be found at the following link: <http://www.localpartnerships.org.uk/>.

By the end of the 2007/08 fiscal year, Defra had helped LAs to deliver £300 million worth of efficiency gains on waste and street cleansing services. While the delivery of efficiency gains rests with authorities, Defra is committed to assisting LAs to secure these savings, mainly by promoting more effective joint working, promoting best practice and standardisation of procurement operations. The efficiency agenda means it has never been more important to get this support right, and give a strong additional focus to the kinds of support that Defra is already seeking to provide.

⁸ The Agency's role is to provide expert advice on public health matters to Government, stakeholders and the public. The regulation of municipal waste incinerators is the responsibility of the Environment Agency.

⁹ http://www.hpa.org.uk/webw/HPAweb&HPAwebStandard/HPAweb_C/1251473372175?p=1202115571251

It is inefficient for LAs to have to reinvent the wheel for every major waste project. Would Defra investigate the potential to set up ‘a centre for waste procurement excellence’?

Defra has established WIDP to promote quality and consistency of approach in the procurement of residual waste treatment facilities. Similar objectives are targeted by the RIEPs in relation to the procurement of collection and recycling services.

Design Quality

Does the authority have a track record of well-designed buildings? Has the authority appointed an overall LAs Design Champion?

Departments could ask the Commission for Architecture and the Built Environment (CABE), Government Offices for the Regions, and the authorities themselves about any building or other design awards. CABE has produced a helpful guide – “Local Authority Design Champions”- available from www.cabe.org.uk. An authority champion is generally desirable where there is a flow of projects. This achieves a coherent overall approach, and avoids diversity of opinion and the need for time-consuming co-ordination to hold together the local design strategy. In some cases, though, e.g. single purpose authorities, there may not be the flow to allow this, so project-specific champions would be appropriate.

Defra published, in autumn 2008, a document on ‘Sustainable Design in Waste’¹⁰, which is a reference document for various approaches to sustainable design for waste facilities around the world.

Where more than one site is available, have design/sustainability issues influenced the choice of site, and has the context influenced the approach to design?

Options appraisals should take site-specific issues into account. However, a balance has to be found in the appraisal between the weighting attached to such issues, and that attached to other matters such as cost.

Are stakeholders involved in deciding on design/sustainability issues?

Design Quality Indicators (DQIs) are a valuable tool for measuring the reaction of a range of stakeholders to the design of the project. See www.dqi.org.uk.

Examples include:

- Cost reductions in construction as a result of smarter procurement processes (e.g. management of supply chain)
- Reduction in accidents on site
- Construction workforce improvements – “Respecting people” agenda
- Use of off-site construction for elements of project

¹⁰ <http://www.defra.gov.uk/environment/waste/localauth/facilities.htm>

- Has the Council considered nominating the project as a Demonstration Project?

Full details from Constructing Excellence: www.constructingexcellence.org.uk

Are external design advisers (e.g. CABI or appointed client-side firms) being used?

One possibility is the involvement of CABI design enablers, which provide a fixed number of hours to support project teams and help them set up best practice to get design quality high on the agenda.

As part of its commitment to sustainable construction, WIDP, in conjunction with WRAP, aims for all successful projects to adopt practices which continuously reduce the quantity of waste arising and increase the recovery of materials for reuse and recycling on all construction projects.

(www.wrap.org.uk/construction)

Is the intended quality affordable? Does the reference scheme adequately reflect the standards required in the PFI scheme?

This is a matter of judgement, but comes down to the question “has the authority underestimated the cost of achieving the standards they require”. Partnerships UK (PUK) can be expected to comment on this in their assessment if there are any indications of an inadequate budget. It is, however, worth raising in the context of design quality or stated aspirations regarding sustainability of the project. The Treasury Green Book and 2004 guidance on Value for Money in PFI projects deal with the balance of quality, cost and value.

Has adequate time been allowed in the authority’s procurement programme for quality responses to be produced by bidders, especially for grouped projects?

This is again a matter of judgement on which WIDP may comment. It is worth raising because stakeholder involvement in design takes time and resources, and may conflict with Government’s desire to see procurement times shortened. Judgement therefore needs to be exercised on priorities for each project.

Has an environmental impact assessment been carried out?

The environmental impact of buildings can be measured using BREEAM (Building Research Establishment Environmental Assessment Method). Projects should be aiming to achieve "excellent" ratings (note that in the case of schools projects there is a separate schools BREEAM rating so projects using this should aim to achieve at least a "very good" rating – which is roughly equivalent to an "excellent" general rating).

Publicity, Freedom of Information (FOI)/Environmental Information Regulations 2004 (EIR)

What is Defra's view on releasing PFI documents into the public domain?

Such documents should be released by authorities into the public domain – consistent with the duty under Regulation 5 the EIR. We view this as part of an authority's consultation with its stakeholders. We encourage authorities to upload these onto their own website and then to provide us with the link.

What should an authority do if asked to release PFI applications documents under the EIR?

A number of authorities have recently been requested to release Expressions of Interest, Outline Business Cases and Final Business Cases ("PFI application documents"). Under Regulation 5 of the EIR, authorities are obliged to make such information available unless it falls within certain exceptions and the public interest in maintaining the exception outweighs the public interest in disclosing the information.

If an authority, having internally consulted its FOI contact and legal department, considers that any part of the information requested should be withheld under the relevant exceptions of the EIRs (or if appropriate the Freedom of Information Act 2000), then it should provide the applicant with specific reasons why such redactions are required.

Should an authority proactively publish its PFI application documents?

Yes. We believe that authorities should publish these documents as part of their consultation with stakeholders. Hence, as a matter of policy, Defra encourages authorities to release such documents into the public domain and NOT to wait for FOI/EIR requests before doing so. Authorities may choose to withhold some of the contents of such documents but should be aware that they may subsequently be asked to release any information withheld. Content should therefore only be withheld if the authority considers it to be in the public interest to do so.

How should such documents be released?

Ideally by electronic means, which will make it easily accessible to the public. If authorities upload this onto their own website they should provide WIDP with a link. WIDP in turn will add this to the authorities' PFI fact files on the Defra website.

What does Defra do when it is asked to release PFI application documents under the EIR?

If Defra is asked to disclose an authority's EoI, OBC or FBC, we will inform the authority of the request and invite the authority to offer its opinion as to whether any sections of the document should be withheld. We will take the authority's opinion into account when applying the public interest test. However, the final decision regarding a request made to Defra will rest with the Department.

What does Defra do when it is asked to release its evaluation of PFI application documents under the EIR?

Defra is bound by the same statutory obligations as Local Authorities, thus the Department is obliged to release the information requested unless it falls within the exemptions/exceptions in FOI/EIRs and, where relevant, the public interest in maintaining the exception outweighs the public interest in disclosing the information.