



VII
2010

BILLET D'ÉTAT

WEDNESDAY, 24th MARCH, 2010

RESIDUAL WASTE TREATMENT –
RESTORATION OF PREFERRED BIDDER
ORIGINALLY SELECTED

B I L L E T D ' É T A T

TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE**, on **WEDNESDAY**, the **24th MARCH, 2009**, immediately after the meeting already convened for that day, to consider the item contained in this Billet d'État which has been submitted for debate.

G. R. ROWLAND
Bailiff and Presiding Officer

The Royal Court House
Guernsey
19 March 2010

REQUÊTE

RESIDUAL WASTE TREATMENT – RESTORATION OF PREFERRED BIDDER ORIGINALLY SELECTED

THE HUMBLE PETITION of the undersigned Members of the States of Deliberation SHEWETH THAT:-

1. On 30th July 2009, after consideration of a Report dated 29th May 2009 of the Public Services Department (Billet d’État XX of 2009), the States resolved *inter alia*:

“To agree to the appointment of Suez Environnement as the Preferred Bidder for the design build and operation of a residual waste treatment facility as detailed in that Report.”

2. Following that Resolution, your Petitioners understand that the Public Services Department and Suez Environnement (“Suez”) progressed their discussions, as required, to the stage at which Suez had made its application to obtain planning consent from the Environment Department. Significant costs have been incurred by both Suez and the States of Guernsey pursuant to the States Resolutions culminating in those on Billet d’État XX of 2009.

3. On 25th and 26th February 2010, the States of Deliberation debated a Requête signed by Deputy Kuttelwascher and six other Members of the States in Billet d’État IV of 2010, the prayer of which petitioned the States “to instruct the Public Services Department to return to the States to seek authorisation for the execution of a final contract with Suez Environnement for the design build and operation of a residual waste treatment facility”. Deputy Lowe moved an amendment (“the Lowe amendment”) to substitute the proposition to read:

- “1. To rescind the Resolutions on Billet d’ État No. XX of 2009.
2. To rescind Resolutions 4 and 5 on Billet d’État No. I of 2007.
3. To direct the Public Services Department to give written notice to Suez Environnement of the States’ decision to withdraw its status as Preferred Bidder and to withdraw from the procurement process.
4. To direct the Public Services Department to return to the States as soon as practicable with a Report setting out proposals for a revised strategy for disposing of solid waste.”

4. Following considerable debate on the Lowe amendment, the States voted in favour of it by 21 votes to 20 votes, with six abstentions. Five of the six Members who abstained are the members of the Environment Department.

Before the final vote on the Article relating to the Requête, an amendment moved by Deputy Matthews resulted in there being a fifth proposition directing the Policy Council to ascertain from the States of Jersey the most beneficial contractual terms on which the States of Jersey will agree to import and dispose of waste exported from Guernsey and to report to the States thereon as soon as practicable.

5. Your Petitioners are of the view that some or all of the members of the Environment Department believed that, because of their involvement in determining the planning application submitted by Suez, they had no option but to abstain from voting on the Lowe amendment. Your Petitioners understand that there was no absolute legal or procedural bar preventing any member of the Environment Department from exercising his or her entitlement to vote for or against the Lowe amendment, albeit that there would be consequences flowing from doing so in relation to their participation in the planning process. Your Petitioners further understand that a number of Members of the States have reflected on the consequences arising from the States' vote on the Lowe amendment and consider that if a fresh vote were now taken on the issue the conclusion might be different.
6. Your Petitioners are greatly concerned that the decision of the States to withdraw the status of Suez as Preferred Bidder and to end the procurement process has, and will continue to have, a significant and long-lasting impact on Guernsey. This impact is both reputational and financial and will, in the view of your Petitioners, adversely affect future procurement exercises.
7. Your Petitioners further believe that reaching a decision to end the procurement process with Suez through the involvement of only 41 of the 47 Members reflects poorly on the democratic processes of the States. Given the significant financial and potential legal consequences of the vote on the Lowe amendment, which will result in long-term consequences for the public and local industry, in the interests of absolute clarity, your Petitioners believe that a fresh vote is desirable in order to ascertain whether or not a majority of Members agree with the direction in which the waste strategy has been taken as a result of the Lowe amendment.
8. Your Petitioners are aware that the Public Services Department has, as directed, complied with Resolution 3 arising from the Lowe amendment and given the written notice required to Suez. However, your Petitioners believe that there is an opportunity to restore the position of Suez as the States' Preferred Bidder with a view to closing the contract with Suez on mutually acceptable terms.
9. Your Petitioners believe that it is in the interests of the States to re-visit the question of whether the Suez option for the design build and operation of a residual waste treatment facility, as previously agreed, is the most appropriate solution for Guernsey as soon as practicable, and with a view to there being full participation of all Members of the States in reaching such an important decision.

THESE PREMISES CONSIDERED, YOUR PETITIONERS humbly pray that the States may be pleased to resolve:

- (a) to rescind Resolutions 1, 2, 4 and 5 on Article 14 of Billet d'État No. IV of 2010;
- (b) to re-affirm the principles of the Procurement Strategy as set out in section 14 of Billet d'État No. I of 2007 and the steps taken thereunder;
- (c) to direct the Public Services Department to negotiate with Suez Environnement with a view to restoring (i) that entity's status as the Preferred Bidder for the design build and operation of a residual waste treatment facility as detailed in Billet d'État No. XX of 2009 and (ii) the contractual position in accordance with the letter of intent between the States and Suez as it was prior to February 2010; and
- (d) to reinstate Resolutions 2, 3 and 4 on Billet d'État No. XX of 2009.

AND YOUR PETITIONERS WILL EVER PRAY

GUERNSEY

This 8th day of March 2010

A Spruce
 G H Mahy
 S L Langlois
 R Domaille
 T J Stevens
 A H Langlois
 M G G Garrett
 M P J Hadley
 P L Gillson

(NB In pursuance of Article 17 of the Rules of Procedure the views of the Departments and Committees consulted by the Policy Council, as appearing to have an interest in the subject matter of the Requête, are set out below.)

ENVIRONMENT DEPARTMENT

Deputy L S Trott
Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

11th March 2010

Dear Deputy Trott

RESIDUAL WASTE TREATMENT – RESTORATION OF PREFERRED BIDDER ORIGINALLY SELECTED

Thank you for your letter dated 7th March 2010 inviting the Environment Departments comments on the Requête signed by Deputy Spruce and 8 other members.

The Department has no comment that it wishes to make on the desirability or otherwise of the Requête. The Department would, however, in response to paragraph 5 of the Requête, wish to make the following clear.

All members of the Board were fully aware, prior to entering the States Assembly on Wednesday 24th February, of the options before them in respect of the Lowe Amendment and the Kuttelwascher Requête. Members understood that they had a right to exercise their vote in the debate and that right could not be and was not removed from them. Members also understood that to vote either for or against the Lowe amendment could be seen as demonstrating a perceived bias and that such perceived bias could compromise the subsequent determination of any planning application associated with the construction of the resultant waste management plant. Members understood, therefore, that if they voted in the Assembly on the amendments then they might be required to stand down from voting on any associated planning application. Members recognised that this could ultimately result in the planning application relating to a very significant development project being determined at delegated officer level. Members noted that such an outcome could, of itself, be seriously detrimental to good planning governance in Guernsey.

Members were also aware that to vote on the un-amended Requête, solely on the basis of the poor governance issues as set out in the Department's letter of comment, would not carry the same risks of perceived bias in any planning determination.

As a consequence of the above members were not denied a right to vote, recognised that there was no "absolute legal or procedural bar" to prevent them from voting but also recognised that probity in planning matters required them to give very careful consideration to the implications of voting. Members took the action they did in the full knowledge of these matters and only having taken legal advice prior to the commencement of the States debate.

Yours sincerely

P R Sirett
Minister

PUBLIC SERVICES DEPARTMENT

Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

11th March 2010

Dear Deputy Trott

RESIDUAL WASTE TREATMENT – RESTORATION OF PREFERRED BIDDER ORIGINALLY SELECTED

I refer to your recent letter seeking the Department's comments in respect of the above requête.

As you know, the Public Services Department is required to follow whatever direction may be given by the States in respect of waste management. Until recently, the will of the States was that the Department should progress the procurement of an integrated waste management facility, and this is what it did.

Now, however, the States has decided that it would prefer to follow a different strategy – as yet undefined – regarding waste management. In accordance with its mandate, the Department must now look to fulfil the terms of the most recent States Resolution, and this is something it will progress without delay.

Clearly if the requête is successful, the Department will not need to pursue the new work streams and will revisit its previous work in this respect.

In light of its role in delivering whatever strategy is determined by the States, the Department does not consider it appropriate to comment on the requête.

Nevertheless, thank you for this opportunity to express the Department's views on this matter.

Yours sincerely

B M Flouquet
Minister

(NB The Treasury and Resources Department has no comment on the proposals.)

(NB The Policy Council has no comment on the proposals.)

The States are asked to decide:-

Whether, after consideration of the Requête dated 8th March 2010, signed by Deputy A Spruce and eight other Members of the States, they are of the opinion:-

1. To rescind Resolutions 1, 2, 4 and 5 on Article 14 of Billet d'État No. IV of 2010.
2. To re-affirm the principles of the Procurement Strategy as set out in section 14 of Billet d'État No. I of 2007 and the steps taken thereunder.
3. To direct the Public Services Department to negotiate with Suez Environnement with a view to restoring (i) that entity's status as the Preferred Bidder for the design build and operation of a residual waste treatment facility as detailed in Billet d'État No. XX of 2009 and (ii) the contractual position in accordance with the letter of intent between the States and Suez as it was prior to February 2010.
4. To reinstate Resolutions 2, 3 and 4 on Billet d'État No. XX of 2009.

Attached for the assistance of States Members are

- States resolution of 26 February, 2010 on Billet d'État No. IV (referred to in proposition 1 of the Requête)
- States resolution of 1 February, 2007 on Billet d'État No. I, together with section 14 of Billet d'État No. I (referred to in proposition 2)
- States resolution of 30 July, 2009 on Billet d'État No. XX (referred to in proposition 4)

G. R. ROWLAND
Bailiff and Presiding Officer

IN THE STATES OF THE ISLAND OF GUERNSEY ON THE 26th DAY OF FEBRUARY, 2010

(Meeting adjourned from 25th February 2009)

**The States resolved as follows concerning Billet d'État No IV
dated 5th February 2010**

REQUÊTE

RESIDUAL WASTE TREATMENT – CONTRACTING WITH SELECTED PREFERRED BIDDER

XIV.- After consideration of the Requête dated 16th December 2009, signed by Deputy J Kuttelwascher and six other Members of the States:-

1. To rescind the Resolutions on Billet d' État No. XX of 2009.
2. To rescind Resolutions 4 and 5 on Billet d'État No. I of 2007.
3. To direct the Public Services Department to give written notice to Suez Environnement of the States' decision to withdraw its status as Preferred Bidder and to withdraw from the procurement process.
4. To direct the Public Services Department to return to the States as soon as practicable with a Report setting out proposals for a revised strategy for disposing of solid waste.
5. To direct the Policy Council, with assistance from the Public Services Department, to ascertain from the States of Jersey the most beneficial contractual terms on which the States of Jersey will agree to import and dispose of waste exported from Guernsey and to report to the States thereon as soon as practicable.

IN THE STATES OF THE ISLAND OF GUERNSEY ON THE 1st DAY OF FEBRUARY 2007

(Meeting adjourned from 31st January 2007)

**The States resolved as follows concerning Billet d'État No I
dated 8th December 2006**

ENVIRONMENT DEPARTMENT

WASTE DISPOSAL PLAN

After consideration of the Report dated 12th October 2006, of the Environment Department:-

1. TO NEGATIVE THE PROPOSITION to endorse the waste arisings and growth projections as set out in Appendix 3.
2. To commit to high recycling for household and commercial waste, with a target of 50% and a 2010 delivery date.
3. To direct the Public Services Department:
 - (a) to introduce significant price increases on all mixed/contaminated loads arriving at Mont Cuet;
 - (b) to review existing charges at the Fontaine separation facility;
 - (c) to publish the revised charges as soon as practicable.
4. To agree to seek competitive tenders for the design, build and operation of either
 - (a) A Mass Burn Energy from Waste Facility, or
 - (b) A Mechanical Biological Treatment plant coupled to an Energy from Waste facility, which facility may be a Mass Burn or Advanced Thermal Treatment plant

such facilities, whether through procurement of successive modules or not, to have the capacity to deal with the waste arisings to be endorsed, but that tenders for any, or any combination, of MHT, MBT and ATT should also be considered.
5. To endorse the principles of the Procurement Strategy as set out in section 14.
6. To agree to the output criteria as listed in paragraph 14.14.

7. To approve the draft Waste Disposal Plan as set out in Appendix 8.
8. To direct the Public Services Department to appoint engineering and legal consultants to assist with the preparation and issue of tender packs, the assessment of tenders and post tender negotiation.
9. To direct the Environment Department, in accordance with Strategic Policy 31 of the 2006 Strategic Land Use Plan, to make provision for those facilities identified in the waste disposal plan as adopted by the States, through review of the detailed development plans.
10. To direct the Public Services Department to seek planning approval and ensure provision of, at the appropriate opportunity, In vessel composting, Civic Amenity sites, Scrap Metal facilities, Dry Materials Recovery Facilities and Mixed Waste Materials Recovery Facilities.
11. To direct the Public Services Department to report back to the States, in due course, on the delivery, where reasonably practical, of interim waste processing facilities and services as set out in section 17.
12. To approve the appointment of a recycling officer as a permanent established post.
13. To direct the Commerce and Employment Department to investigate and report back on the role and mechanisms for setting up an economic regulator as set out in paragraph 14.13
14. To direct the Environment Department to investigate and report back on mechanisms and legislation to regulate waste movements hence guaranteeing a waste stream to the facilities as set out in paragraph 14.12
15. To direct the Director of Environmental Health and Pollution, as a matter of urgency, to advise the Environment Department as to additional legislative provisions required under the Environmental Pollution (Guernsey) Law, 2004 to give effect to the above decisions.
16. To direct the Public Services and Environment Departments to investigate the costs and human resource impacts of the above recommendations on their departments and to make appropriate recommendations to the Treasury and Resources Department which shall take the final decision on the transfer of capital, revenue and human resources.
17. To direct the Treasury and Resources Department, paying particular regard to paragraph 20.16, to make necessary funds and establishment available to implement the above decisions.
18. To direct the Public Services Department to ensure that the Environment Department is represented on the Project Board as set out in paragraph 14.18.

Section 14 of the Report dated 12th October 2006 of the Public Services Department

14. Procurement

14.1 The output of the procurement workshop (see 5.2 above) - whilst recognising that no decisions were being taken - was for an output based specification for a States owned facility with a 25 year operation contract with finance provided by the States (the States could take a gate fee etc to meet the contract costs) and possibly procured through a strategic partnership. It was also made clear during the workshop that the generally held view is that the contract let should not be for an integrated contract as per Deputy Parkinson's proposed "complete package of waste management and disposal solutions" but should rather be a design build and operate contract for the plant in question. The Board has developed this starting point into a proposed procurement strategy as set out below.

14.2 It will be appreciated that not all elements of a procurement strategy form part of the contract with the facility supplier. The role of an economic regulator to regulate the waste facilities' gate fees, as suggested below, is a case in point. The extent of any regulator's functions and the mechanisms under which a regulator might be appointed must be carefully considered and will need to be addressed in subsequent reports. This may also be the case for other elements of the procurement strategy. The intent of the following paragraphs is, therefore, to enable the States to debate the principles rather than to prescribe the detail.

14.3 In considering the key elements of the procurement strategy the Board was mindful of the following questions:

What is the extent of the service required?

How long is it required for?

How is it going to be funded?

Who will provide/own the various elements?

What are the consequential issues?

What contract/structure is used to procure the resultant package?

These questions were considered in more detail as follows.

14.4 Extent of the Service Provision

Current advice (Office of Government Commerce, Kelly Report, Procurement workshop) is to avoid complete solution integrated package contracts which fall at one extreme end of the output based/input based specification line. In identifying what should be covered in the contract the following options were considered:

- a.) Should the contract include collection – Parish Doorstep, Kerbside Doorstep, bring banks servicing, Civic Amenity (CA) site operation etc?
- b.) Should the contract include post collection/pre treatment sorting – Materials Recovery Facilities (MRF)?
- c.) Should the contract include ancillary services – Sewage, Street Cleaning, Scrap Metal, Landfill operation, Composting etc?
- d.) Should the contract be limited to the key disposal infrastructure – MBT, EfW, ATT etc?
- e.) Should the contract require recycling/recovery?

14.5 Elements of the contract

Previous criticism (Independent Panel Report) included that the DC2O mass burn EfW contract did not deliver best value and that a longer-term operation contract, possibly a Guernsey version of a PFI should have been let. The following options were considered:

- a.) Should it be a design build and operate contract?
- b.) If so should the operation be for the typical life of the plant (excluding retro fitting) typically 25 years? – This may introduce contract risk management issues resulting from changes in service delivery, waste type, legislation etc during the life of the contract.
- c.) Should funding be by the States or the contractor? – Risk transfer would put funding with the contractor but previous advice was that best value comes from States funding.
- d.) Where should ownership of land/facility rest?

14.6 Potential consequential issues resulting from the above

- a.) Will the States be prepared to sell the land at Longue Hougue?
- b.) How do we envisage guaranteeing the contractor the required revenue income?
- c.) How do we envisage regulating gate fee? – Does the States welcome a monopoly and if so how does it intend to control the undertaking?
- d.) Is there any need to regulate the States in terms of gate fee setting and will the States seek a guarantee on revenue income.

14.7 Strategic Partnership/Contract issues

- a.) If a strategic partnership what will the States be bringing to the partnership?
- b.) If the States is sharing risk through funding to what extent does it want to specify the technology?
- c.) Is there an intention to specify other outputs e.g. electricity generation, steam or other energy generation, track record, environmental credibility, land take, residue quantity and quality, waste acceptance criteria, landfill diversion, recycling levels, markets for residues, limitation on export, business continuity/resilience, others?
- d.) Will the States incentivise the contractor by open book accounting with share of pain and gain?
- e.) What form of partnership does the States want?

14.8 Notwithstanding the list above, there is benefit in starting with the fundamental outcome that resulted from the procurement workshop namely that the States should enter into a strategic partnership. A strategic partnership functions on the basis that for both partners to optimise their gain (rather than one partner benefiting at the other's cost) it is necessary to align desired outcomes and to assign risk to the partner best able to manage it. In addition it is desirable if both partners share the pain and gain and hence are incentivised to optimise the business.

14.9 When looking at strategic partnerships it is important to identify who can bring what to the table. In this case Guernsey needs the partner(s) to bring waste management skills, along with technology operation, build and maintenance skills. (Although the States could, with some technologies, elect to self operate as is the case in Jersey.) The States has three valuable commodities to contribute: Land, Waste (the raw product) and Finance (there is little doubt that the States can fund any capital expenditure, whether through use of Treasury money or through underwriting loans, more cheaply than the private sector).

14.10 This then provides a useful starting point for risk allocation and helps formulate answers to the other issues, the first of which is strategic resilience. The States does not just need a waste solution now but it needs it to last the strategy life (potentially 25 years) and it needs the ability to procure future waste solutions. In this respect the States must be careful in not giving up the commodities it can bring to a strategic partnership. As such it is strongly recommended that the States retains ownership of the land both for the long-term future but also in the event of a breakdown of the partnership. As such the Department recommends

that the States retains ownership of the land and leases it to the partnership for the life of the contract but with step in rights during the life of the contract.

- 14.11 Whilst some suppliers have said they are able to fund the infrastructure they would provide, this presents a “Trojan horse” gift. In the first instance the private sector’s funding would cost more than public sector underwritten funding and hence result in higher gate fees thus costing Guernsey more. The gate fees could reach levels that require subsidy and hence effectively result in part funding by the States. Secondly it is likely to be much harder for the States to secure and exercise step in rights on a facility it has not funded hence compromising the strategic resilience requirement. Whilst PFI is adopted in the UK this is largely due to the fact that local authorities do not have the funds or the borrowing authority or capability to support major capital projects. In addition Central Government will only give local authority financial credits if the PFI rules are adopted. As such PFI in its truest sense is not available in Guernsey and the appropriate substitute is a PPP or public private partnership. There is no requirement for the private sector partner to provide the funding to a PPP and the driving force should be best value. Best value is most likely to be achieved through the States underwriting the funding of the project. The Department recommends that the States provides the funding (possibly by underwriting a loan) to the PPP.
- 14.12 Notwithstanding the fact that the funding risk sits primarily with the States, the Private Partner will demand an annual income to meet operating costs and a profit. The States also needs to be sure that its capital investment is working and that there is, if not an income on capital, at least a repayment of capital and interest. This, as for any project, is only possible if the project has a supply of the raw products. There remains, therefore, a need to ensure that the strategic partnership (the PPP) receives the waste. It is not sufficient to assume that the private waste hauliers and the Parishes will bring their waste to the facility. They will adopt whatever option presents to them best value. For some this may mean fly tipping or illegal burning. For others it may mean exploiting export routes. More realistically industrial premises may see the financial value in undertaking waste processing operations resulting in more or expanded Pointes Lane type facilities. For these reasons it is necessary to guarantee the strategic partnership a revenue stream and hence by default it is necessary to control the movement of the waste. The Department recommends that the States ensures, by legislation or other means, that Parish waste and other specified waste will be delivered to the facility.
- 14.13 It should be recognised that the above structure is very close to a monopoly, at least within the restricted area of waste treatment/disposal. As such, even with the States as one part of the partnership, there is a potential need to regulate activities and gate price. However, of equal significance is the function of a regulator to act as substitute competition ensuring an efficient and effective service. An independent regulator is, therefore, of assistance to the States as it operates, inter alia, as an independent scrutineer of operational efficiency. The

Department recommends that the operation of the facility including the gate fee should be subject to regulation by an economic regulator and that the economic regulation approach should apply to waste sector near monopolies including, for example, scrap metal, MRF, dry recyclables facility and in vessel composting facility.

14.14 From the basic structure set out above it is possible to address each of the questions listed in sections 14.3 to 14.7.

A.) Should the contract include collection

No. Whilst a strategic partnership enables the option of moving other existing or required waste services into the partnership's operation the contract should not require this in the first instance. All the expert evidence and Government research suggests that these "complete service contracts" fail to deliver best value, fail to attract competitive tenders and fail to support local waste service providers.

B.) Should the contract include post collection/pre treatment sorting – MRF

Only to the extent required as part of the main treatment facility. As a separate service provision the comments above are equally applicable. However, some end disposal technologies can only operate if the waste first passes through a MRF designed to turn the raw waste into a product suitable as a feedstock for the disposal facility. In these cases the MRF is in effect part and parcel of the end treatment plant and hence would be included in the contract.

C.) Should the contract include ancillary services – Sewage, street cleaning, scrap metal, landfill operation, composting etc

No. See A above. However, the contract should include, within the waste streams, sewage sludge.

D.) Should the contract be limited to the key disposal infrastructure – MBT (mechanical biological treatment), CHP (Combined heat and power), ATT(advanced thermal treatment) etc.

Yes. See A above.

E.) Should the contract require recycling/recovery

There is no technical reason why this must be included. From an environmental perspective the issue is extremely complex. Only by carrying out full life cycle analysis of Guernsey's waste arisings could we be certain that recycling is in fact the best practical environmental option. However, part of any strategy must be public acceptability and there is little doubt that the current will of the States is to maximise recycling and recovery before disposal. Whilst this originated as

an interim driver, it is now firmly embedded in many people's perceptions as a fundamental element of any long-term strategy. As such front end high recycling is considered desirable and this should be supported by requiring the end treatment facility contractor to extract recyclables from its waste residues. For example, an MBT plant may wish to remove inert recyclables from the "waste in" stream prior to the plant processing stages.

F.) Should it be a design build and operate contract

Yes. See 14.6 and 14.7 above.

G.) Should the operation be for the typical life of the plant (excluding retrofitting) i.e. 20/25 years.

Yes. Whilst this may introduce contract risk management issues resulting from changes in service delivery, waste type, legislation etc during the life of the contract, the strategic partnership approach coupled with the economic regulator will ensure these are managed in such a way as to optimise the benefits/costs to both parties.

H.) Should funding be by the States or the contractor.

States. Whilst financial risk transfer would put funding with the contractor this ignores the more complex issues surrounding risk transfer and results in loss of best value (see discussion above). The States should as a minimum, underwrite the financing of the facility.

I.) Where should ownership of land rest.

With the States. See 14.8 above

J.) Where should ownership of facility rest

With the States or the Partnership – Not with the Contractor. As funder of the facility and in recognition of the strategic resilience issue the States must have step in rights. This is readily achieved by States ownership of the facility but there are structures which could allow ownership to rest with the partnership but with subsequent infrastructure transfer to the States on completion of the contract.

K.) How do we envisage guaranteeing the contractor the required revenue income.

An economics regulator can set the gate fee to reflect return on capital. It remains necessary to ensure a waste stream at that gate fee hence the need to control waste movements. See 14.10 above.

L.) How do we envisage regulating gate fee.

Economics regulator. (See key decision 14.10 above)

M.) Is there any need to regulate the States in terms of gate fee setting and will the States seek a guarantee on revenue income.

Yes. An economics regulator can set the gate fee to reflect return on capital, operating costs and profit. It remains necessary to ensure a waste stream at that gate fee hence the need to control waste movements. See 14.10 above.

N.) What will the States be bringing to the partnership

Land, finance/funding, waste.

O.) If the States is sharing risk through funding to what extent does it want to specify the technology

The States might choose to specify criteria rather than technology. However, risk increases as the States divorces itself from technology choice whilst funding that technology and/or whilst allowing ownership of that technology to rest with the strategic partner. The Department has identified its preferred technology.

P.) Is there an intention to specify other outputs.

Yes. In addition to specifying the technology to be tendered the department believes the following outcomes should be addressed in the tender package.

- I. ENERGY RECOVERY. This need not be electricity but it must be deliverable and of actual benefit to offset existing use of non-renewable resources.
- II. TRACK RECORD. This links to the strategic resilience issue. The States must be confident that the facility will work on the type of waste presented and perform at the efficiency and costs quoted in the tender. This can only be demonstrated by a sound track record. The States must also be able, not only to step in and take over the facility, but also be able to acquire all the spares, wear parts, manufacturing capability, labour etc to ensure the plant continues to operate.
- III. IPPC CONFORMITY. The plant must be capable of obtaining a licence from the Director of Environmental Health and Pollution .
- IV. LAND TAKE. With limited land availability and competing demands for Longue Hougue land take is a key issue.

- V. RESIDUE QUANTITY AND QUALITY. Many companies quote original diversion from landfill. However, unless the quantity and quality of resulting residue after treatment can be guaranteed this original diversion will be compromised as the residue is returned to landfill.
- VI. WASTE ACCEPTANCE CRITERIA. This is the counter side of the coin to residues. The amount of Guernsey's waste the facility can take is a key issue otherwise it may achieve 100% diversion of a specified waste stream but still leave many tonnes of waste untreated and destined for landfill. The facility must also accept sewage sludge.
- VII. GUARANTEED MARKETS FOR RESIDUES. Many suppliers will specify that the end product is suitable for a range of applications but leave that end product with the client to take to market. The markets don't materialise and the "product" is then land-filled.
- VIII. LIMITATION ON EXPORT. In light of the States resolutions a facility that relies heavily on export of waste for disposal (as opposed to waste for recycling) would not meet the strategic sustainable resilience criteria.
- IX. BUSINESS CONTINUITY/STRATEGIC RESILIENCE. The plant must have built in resilience either through baling and storage or through dual redundancy.
- X. UK/Guernsey LAW. A company that is not prepared to contract under the law of the land will be transferring risk back to the States.
- XI. RECYCLING LEVELS. Assuming that the States wishes to support high recycling as well as energy recovery, recycling targets will need to be set.

Q.) If strategic partnership with States funding, will the States incentivise the contractor by open book accounting with share of pain and gain?

This is a viable option but will need to be structured in light of the role of the economics regulator.

R.) What form of partnership does the States want, - Joint Venture Company, Golden share, others?

Defer decision. Legal advisors will structure the Partnership to deliver the criteria set out above.

- 14.15 The above analysis does not address the fundamental issue of cross subsidy and polluter pays. Whilst the economics regulator would ensure that gate fees represent competitive costs for the service provided there is no guarantee that those gate fees will be publicly acceptable. In addition it is possible that gate fees at one facility will be such as to drive companies and individuals to deliver their waste to another cheaper but perhaps less suitable facility. Economic gate fees may, for example, discourage certain recycling activities.
- 14.16 For example, if processing dry recyclables carries a true economic gate fee higher than the end disposal facility gate fee, there is a possibility that the dry recyclables MRF will have undersupply and the end disposal facility oversupply of waste. Whilst licensing the movements/destination of waste will exercise some control in this area, companies will always seek to exploit loopholes to minimise cost. As such it may prove necessary to artificially adjust gate fees through cross subsidy in order to best manage the waste streams.
- 14.17 The Department does not consider that this issue can be fully addressed until firm costs and hence economic gate fees can be set for the various facilities and services contributing to the overall strategy. However, as a principle, the Department believes that the polluter pays approach should be adopted but with cross subsidy within the waste services in order to drive the strategy in the desired direction. This is an issue which will require in depth study with and by the Economic Regulator.
- 14.18 The Department understands that, whilst it is a function of the Public Services Department to deliver the Waste Disposal Plan, the Strategic Property Unit will lead in the tendering and procurement of the key infrastructure. The Department has been advised that such substantial projects will, in future, be overseen by a Project Board of interested stakeholders. The Board firmly believes that the Environment Department should be represented on any such Project Board.

**IN THE STATES OF THE ISLAND OF GUERNSEY
ON THE 30th DAY OF JULY, 2009**

**The States resolved as follows concerning Billet d'État No XX
dated 26th June 2009**

PUBLIC SERVICES DEPARTMENT

RESIDUAL WASTE TREATMENT – SELECTION OF PREFERRED BIDDER

After consideration of the Report dated 29th May, 2009, of the Public Services Department:-

1. To agree to the appointment of Suez Environnement as the Preferred Bidder for the design build and operation of a residual waste treatment facility as detailed in that Report.
2. To authorise the Treasury and Resources Department to advance to the Public Services Department a loan to the maximum sum of £93.5m to be drawn down according to the schedule and for the purposes outlined in that Report.
3. To direct the Public Services Department to set a gate price from time to time that covers the full capital and operating cost of the facility.
4. To direct the Treasury and Resources Department to take into account the revenue implications associated with the proposals set out in that report when recommending to the States Cash Limits for the Public Services Department for 2012 and subsequent years.