

## Advantages and disadvantages of the two planning approaches as set out in the DEFRA guidance:

### ***Option 1: an approach where a local authority applies for a full planning permission based on a particular design.***

- ***Advantages***
  - Avoids the uncertainty associated with the permaturity as planning environments change
  - Submission will fully engage both functions of the authority/authorities i.e., waste disposal and planning. An application may demonstrate the extent to which consultation has satisfied any planning or other objections to the development and provide the opportunity for resolving any remaining issues.
  - Sets a minimum design standard/threshold can clarify likely planning requirements during the competitive process
  - Shortens the overall procurement timetable
    - Attractive to bidders
    - Improves the LATS position
  - Consequence of soft market testing will help engender bidder confidence with regards to planning deliverability but only in relation to the reference project in the OBC.
  - Creates certainty for the bidders making the project more attractive to the market
  - Removes bidder risk and therefore has the potential to be better VfM
  - Aids advanced consultation on the scheme
  - By managing the planning risk early in the process it removes the risk of planning failure late in the programme
    - Where there are less options with which to manage the consequences
    - There are still competitive tensions rather than single party negotiation - a commercially beneficial position for the Authority

- There is still an opportunity to cancel the procurement
  - Projects that seek planning determination post FC run the risk of the whole procurement entering 'stand still' if the planning application fails
- The Authority on the reference project site will have significantly enhanced understanding of local issues, member and public engagement, and the likely planning sensitivities when compared to the private sector
- Timing can be chosen to avoid uncertainty associated with elections etc.
- *Disadvantages*
  - Implies two applications for every proposed site development and the associated costs
  - If applications are submitted by the local authority (in its capacity as WDA), there is no right of appeal
  - Possible impact on nature of solutions proposed through loss of innovation given that a full planning application is likely to be required.
  - The WDA is less well placed to develop and apply for planning permission than a Contractor who has previous experience and a financial incentive to deliver.
  - WDA planning applications presume certain choices regarding technology have already been made
  - Query whether the planning permission is transferable and validity of baseline data where there is a gap in the timing for carrying out the monitoring and submission of the planning application.
  - Cost to WDA and duplication of cost by the Preferred Bidder in making a subsequent planning application.
  - Site for which the WDA has planning approval may not present the most economically advantageous tender once bids have been evaluated and the grant of permission may adversely affect the chances of obtaining permission elsewhere.

***Option 2: an approach where the Contractor applies for its own planning permission based on its own design. This approach will usually mean that an application is not submitted until the Preferred Bidder has been chosen***

- *Advantages*

- Application will be design specific.
- Application will be submitted by experienced people with clear financial incentive to succeed utilising contractors' skills and experience.

- *Disadvantages*

- Potentially onerous planning conditions are imposed at a stage in the procurement where competitive tension is diminished or lost.
- Delays in the planning determination to failure to secure planning permission will have significant to unlimited LATS implication
- The contractual remedies to progress the project with a new site or the termination of the contract will have significant time and cost implications
- Potential for lack of engagement by Authority in planning process – illustrated as a problem with some PFI procurements.