

Appendix 5.b

Risk Allocation Matrix

Following a Risk Allocation Workshop hosted by the Project's external legal advisors, Pinsent Masons, the following Risk Allocation Matrix was derived. Based on the 4ps template for waste PFI projects, but tailored for Project Transforms needs, it highlights different risks and to whom these risks are allocated.

Detailed examples and comments on typically allocated risks

Design Risks

Risk	Description	Risk Allocation			Comment
		Partners	SPV	Shared	
Failure to design to brief	Failure to translate the needs of the Partners into the design		X		The Partners needs a strong and clear intention of design and project intent, identifying site specific issues where appropriate. The brief should be balanced so that it is open enough to allow innovative interpretations, but at all times should give a clear understanding of the design quality and functionality expected.
Continuing development of design	The detail of the design should be developed within an agreed framework and timetable. A failure to do so may lead to additional design and construction costs.		X		Unless it is unavoidable the design intent should not alter during the procurement process. Changes to the overall intent of the project create delays/costs in the procurement process and will be unattractive to bidders
Change in project content by the Partners	The Partners may require changes to the overall service specification - additional design and construction costs may be incurred.	X			Changes in the overall scope of the project must be avoided. The Partners should be clear on the overall boundaries for the project before going to market. This should include agreements between the Partners and with the WCAs, a clear understanding of waste volumes and composition both now and into the future. These issues will have a fundamental impact on the final design of the facilities.
Change in design required by the operator	This is the risk that the operator will require changes to the design, leading to additional design costs.		X		Bidders may propose changes to the design intent which may provide an advantage to the Partners in terms of operation and costs. . The Partners will need to ensure it extracts its proportion of the value created by this change.
Change in design	There is a risk that the designs will			X	External changes may have an impact on the

required due to external influences	need to change due to policy, legislation or regulatory changes/interpretations. Planning issues and constraints may also lead to design changes.				project. For example, changes could be made in emissions standards, the Regional Spatial Strategy, preferred government technologies or recycling rates etc. i
Failure to build to design (including life expectancy)	Misinterpretation of design or failure to build to create specifications during construction may lead to additional design, construction or operational costs.		X		The private sector should bear the risk of not building to its proposed design.

Construction Risks

Risk	Description	Risk Allocation			Comment
		Partners	SPV	Shared	
Incorrect time estimates	The time taken to complete the construction and the commissioning/testing phases may be different from the estimated time.		X		All time estimates need to be realistic and achievable. The consequences of this delay to all parties need to be clearly understood. The Partners need to be clear what contingencies are in place to deal with this issue, and what responsibilities or part they must play in the solution.
Unforeseen ground/site conditions on new/existing sites	Unforeseen ground/site conditions may lead to variations in the estimated costs		X		To reduce the time involved in the procurement the Partners are likely to undertake at least a desk study and a stage one site investigation to gain a better understanding of the ground risks. Additionally the Partners may undertake a full EIA/TIA. Information that is site specific would be procured to a standard acceptable to the Bidders and warranties offered from the consultants providing the survey.

Delay to sites already in Partners ownership	A delay in gaining access to a site may put back the entire project.	X			Substantial costs are associated with delays in this area and quickly involve re-runs of the Financial Model and indexation of all base costs to the Authorities detriment.
Delay in gaining access to sites not in Partners ownership	A delay in gaining access to a site may put back the entire project.		X		In principle this will be a Contractor risk.
Availability of services or infrastructure etc. to provide the service	The unavailability of access, utilities etc.		X		This can include access to the power grid, or appropriate water supply which inhibits the construction of the proposed facilities.
Theft of/damage to equipment or materials	Theft and/or damage to equipment and materials may lead to unforeseen costs in terms of replacing damaged items and delays		X		Transfer of rights to the land, and putting the land obligations into the SPV's hands normally also involves the transfer of security responsibilities for sites solely in control of the SPV.
Responsibility for maintaining site safety	The Construction Design and Management Regulations 2007 (CDM) must be complied with.		X		<p>The Partners would typically be the CDM Co-ordinator up to the appointment of the Preferred Bidder . Their duties typically include: -</p> <ul style="list-style-type: none"> • Appoint a CDM co-ordinator and principal contractor; • Check competence and resources of all appointees; • Ensure there are suitable management arrangements in place; • Allow sufficient time and resources for all stages of design and construction; • Provide pre-construction information to designers and contractors; • Ensure there are suitable welfare facilities and there is a construction phase plan in place prior to the start of the construction phase; • Provide information relating to the health

					<ul style="list-style-type: none"> and safety file to the CDM co-ordinator; Retain and provide access to the health and safety file. <p>Clearly the extent of the work will be effected by the number of Bidders chosen</p>
Third party claims	The risk refers to the costs associated with a third party claims arising out of the construction activities.		X		The contractor holds the risk of third party claims although he will seek to pass back the responsibility for existing problems.
Compensation Events	An event of this kind may delay or impede the performance of the contract and cause additional expense	X			<p>Compensation Events are wholly at the risk of the private sector and give rise to compensation for the Contractor. A practical consequence of a Compensation Event occurring is that the Planned Service Commencement Date may have to be postponed, usually by the length of any delay caused (and any long-stop date will be similarly put back). This means that the start date of the Contractor's revenue stream is also delayed and/or additional costs are incurred for which the Contractor will require compensation.</p>
Relief Events	An event of this kind may delay or impede the performance of the contract and cause additional expense and lead to time extension			X	<p>Relief Events are events which prevent performance by the Contractor of its obligations at any time, in respect of which the Contractor bears the financial risk in terms of increased costs and reduced revenue but for which it is given relief from termination for failure to provide the full Service.</p> <ul style="list-style-type: none"> fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion;

					<ul style="list-style-type: none"> • failure by any statutory undertaker, utility company, local Partners or other like body to carry out works or provide services; • any accidental loss or damage [to the development or any roads servicing it]; • any failure or shortage of power, fuel or transport; • any blockade or embargo which does not constitute a Force Majeure Event, and any: <ul style="list-style-type: none"> ○ official or unofficial strike; ○ lockout; ○ go-slow; or ○ other dispute, <p>generally affecting the waste management industry or a significant sector of it,</p>
Force Majeure	In the event of Force Majeure additional costs will be incurred. Facilities may also be unavailable			X	<p>The purpose of force majeure provisions is to give the Affected Party relief from liability and, if the event continues for a certain period, to give the parties an opportunity to terminate the Contract.</p> <ul style="list-style-type: none"> • war, civil war, armed conflict or terrorism; or • nuclear, chemical or biological contamination unless the source or the cause of the contamination is the result of the actions of or breach by the Contractor or its subcontractors; or • pressure waves caused by devices travelling at supersonic speeds,
Termination due to Force Majeure	There is a risk that an event of Force Majeure will mean the parties are no longer able to perform the contract			X	<p>The parties would share the financial consequences of a Force Majeure termination.</p>
Main contractor	In the case of main contractor		X		While this is a private sector risk it is important that

default and Sub-Contractor costs or over runs	default, additional costs may be incurred in appointing a replacement, and may cause of delay				the Partners are comfortable with the capabilities of the key suppliers to the SPV so as to minimise the likelihood of a contractual breach.
Poor project management	There is a risk that poor project management will lead to additional costs. For example, if subcontractors are not well co-ordinated, one sub-contracted could be delayed because the work of another is incomplete.		X		The Partners will satisfy themselves as to the project management capabilities of the selected contractor.
Contractor or Sub-Contractor industrial action	The industrial action may cause the construction to be delayed, as well as incurring additional management costs.		X		
Politically motivated protester action	Protester action against the development may incur additional costs, such as security costs			X	This is influenced by the type of technology chosen, and the location of the site. Careful consideration should be given to this. Organised pressure groups can be disruptive during construction but also in procurement, but the Partners will narrowly restrict any relief given to the contractor.
Protester action caused by actions of the private sector operator	Protester action against the development may incur additional costs, such as security costs		X		
Incorrect time and cost estimates for commissioning new plant	The estimated cost of commissioning the new plant may be incorrect, there may also be delays leading to further costs including interest rates etc.		X		It is important to establish the testing regime and the times required to undertake the tests proposed. The Partners will have some responsibilities including (eg ensuring an adequate supply of waste) in connection with the commissioning)
Archaeological, ground and	The construction/development could be delayed by		X		Typically the following cause issues in the timely developing a site: -

ecological issues	archaeological/antiquities issues/contaminated land, ecological issues and drainage				<ul style="list-style-type: none"> • newts • bats • badgers • water voles • Salmon • frogs • UXB • SSSI • TPO's • Heritage sites • Listed Buildings <p>A good EIA should identify the sensitive issues but the issues of warranties will be explored. Equally if the site is not actively managed between surveys the issues can change. Who carries the risk of change need careful thought in the light of the report</p>
Availability and standards of subcontractors	Sub-contracted out work may be delayed due to the availability of subcontractors resources or if below the required quality were undertaken by sub standard contractors		X		This is entirely the risk of the private sector.
Sub standard materials	The materials used in construction may not be of sufficient/adequate quality		X		This requires clear statements in the Output Specification relating to quality and a detailed review of the Bidders offer in the Contractor's Proposals/Method Statements.
Land acquisition cost risk	The risk that land costs for facilities are higher or lower than forecast			X	This will be dependent on sites chosen.

Planning Risks

Risk	Description	Risk Allocation			Comment
		Partners	SPV	Share	
Failure to submit the planning application on time	Delay in or non-submission of the Planning application		X		In order to try to ensure that the anticipated timetable for the Project is adhered to, the Partners may include a specific termination right if the Contractor fails to submit the planning application by a specified date.
Planning submission	Cost and submission of planning process up to initial determination by Planning authorities		X		<p>The Partners propose to apply for planning permission on the preferred site for the principal facility. These initial costs will rest with the Partners.</p> <p>However the final Bidder solution will almost certainly be sufficiently different to require a new planning application on the same site.</p> <p>The Contractor controls the designs and all the information submitted for the planning process and should carry these costs.</p> <p>Performance risk and contingency for planning delay – bidders should be asked to propose interim contingency plans for planning delay and cost of contingency, which should reflect a shared risk .</p>
Planning appeal	Cost of appeal or other proceedings (above defined cap)			X	The Contractor shall bear the costs up to a certain sum (to be bid), following which it is shared between the Partners (90%) and Contractor (10%)
Planning conditions	Cost of compliance with planning conditions		X		
Planning determination	Cost and time of planning determination			X	

Judicial Review	Cost and time of judicial review			X	
Planning failure	Failure to achieve planning permission by Planning Longstop Date			X	<p>Provided Contractor has used all reasonable endeavours to obtain a satisfactory planning permission, this is a shared risk. The parties will then seek to agree a way forward but if they cannot termination follows.</p> <p>If termination occurs, the Partners pay compensation on a Force Majeure basis.</p>

Operational Risks

Risk	Description	Risk Allocation			Comment
		Partners	SPV	Shared	
Integration and Interface risks	Operational interface between several different WCA contractors and the WCAs	X			Each interface presents a point at which the SPV and the collection contractors could argue about liability over a difficulty (e.g. queuing times, The Partners will need to manage the relationship with the WCAs and their contractors.
Disposal of surplus operational plant and equipment at the start of the contract	Surplus operational plant and equipment may be expensive to decommission and dispose of		X		Information on the nature, maintenance, and condition of surplus operational plant and equipment to be disposed of by the contractor should be supplied by the Partners to avoid multiple condition surveys from ISDS bidders.
'Fitness for purpose' of any operational plant and equipment transferred from the Partners to the incoming contractor at the start of the contract	Existing operational plant and equipment transferred by Partners at the start of the concession might prove inoperable or expensive to replace. Any incoming contractor would be allowed to do its own survey of this equipment/plant before electing to use it		X		Warranties on fitness for purpose carry clear risks to the Partners and should be avoided.
Latent defects in new build	Latent defects appear in the structure of the new build asset(s), which require replacement		X		The Contractor should bear the risk of new building defects
Latent defects in existing build	Latent defects appear in the structure of the exiting assets, which are transferred to the incoming operator			X	The Partners will seek to place this risk with the incoming contractor. It will be dependent on the results of surveys undertaken.

Change in specification imposed by procuring entity	There is a risk that, during the operational phase of the project the Partners will require changes to the specification	X			This can involve adding additional facilities to the site under the direct or shared control of the Contractor. Extensions to plant capacity, higher performance standards, alterations to operating hours, responses to carbon charging etc would be typical areas
Performance of sub-contractors	Poor performance of subcontractors can lead to poor co-ordination, and under-performance by contractors. This may create additional costs in the provision of services		X		This is a Contractor risk but the Partners will, during the procurement process, satisfy themselves as to the robustness of the proposed sub-contractors.
Default by Contractor or Sub-Contractor	In the case of default by the Contractor or Sub-Contractor, there may be a need to make emergency provision. There may also be additional costs involved in finding a replacement		X		This is a Contractor risk. The Partners will limit the risk of default through the procurement process
Relief Events	An event of this kind may delay or impede the performance of the contract and cause additional expense			X	See comment made under the Construction Risks for this element.
Force Majeure	In the event of Force Majeure or additional costs will be incurred. Facilities may also be unavailable			X	See comment made under the Construction Risks for this element.
Termination due to Force Majeure	There is a risk that an event of Force Majeure or will mean the parties are no longer able to perform the contract			X	See comment made under the Construction Risks for this element.
Obtaining and maintaining licences and consents, including those issued	Licences and consent will be required to deliver the service.		X		The Contractor will need to obtain and maintain these.

by the Environment Agency					
The sub standard plant operation	<p>The assets may not operated as intended due to: -</p> <ul style="list-style-type: none"> • Sub standard maintenance • Sub standard materials • Sub standard quality of construction • Sub standard management 		X		This should lead to payment mechanism deductions, ratchets for continuing failure to correct, warnings of intent to replace contractors and possibly termination depending on the significance/duration of the issues.
Responsibility for maintaining health and safety, quality and environmental standards	<p>Cost of compliance with relevant health and safety, quality and environmental standards may be more than envisaged.</p>		X		The Contractor will be responsible for health and safety issues. It is important that operational H&S issues are fully dealt with under the Method Statements provided by the Contractor.
Loss of Third Party income	<p>Third party income (i.e. income from a source other than the Partners under the Contract) in waste projects may be derived from:</p> <ul style="list-style-type: none"> a) sales of dry recyclables and compost; b) electricity and heat-related sales; c) "income" from SRF/RDF disposal and/or ROCs (Renewable Obligation Certificates); and/or d) non-Contract waste (commercial waste, waste from other authorities etc). 		X		<p>Assumptions of third party income by the Contractor in the Base Case financial model assist value for money and affordability for the Partners. The Partners will however also consider that estimates of third party income that prove to be over optimistic may have a significant impact on the long-term financial stability of the Contractor .</p> <p>The Partners will be alive to the potential for changes in markets which give rise to third party income. If the Contractor and funder do not value the possible upside in the Base Case, the Partners would still contemplate the possibility of such upside materialising. Unless there is a value for money alternative it is the contract should include a sharing mechanism and/or a price benchmarking exercise to avoid windfall gains from third party income accruing to the Contractor alone.</p>

					Changes in law may affect third party income and will be borne in accordance with the arrangements proposed by Defra for third party income.
Increase of income from energy recovery or recycling	<p>The recycling/recovery income may be greater than expected due to: -</p> <ul style="list-style-type: none"> • the total volumes of waste presented for treatment being greater than projected • market price for recyclate or electricity/steam being above that projected 		X		If the bidders only estimate a price for recyclate /energy recovery income due to uncertainty over the future market price, the Partners will consider sharing the up side gain in a way that still stimulates proactive performance of the Contractor in this area
Income from recycling and /r energy recovery may be less than the budget due to:-	1. The total volumes of waste presented for recycling/recovery may be less than that projected		X		The payment mechanism will protect the Contractor against volumes falling below a minimum level
	2. The composition of waste containing a lower proportion of that recyclate or lower calorific value than that projected		X		
	3. The market price for processed recyclate and/or energy being below that projected		X		
	4. No markets secured for processed recyclate		X		Unlikely to be no market, unless a poor quality product is produced.
	5. Lower market price due to quality of recyclables		X		
	6. The total volume of wastes presented for recycling be less than that projected (CA sites)		X		As 1.
	7. The composition of wastes containing a lower proportion		X		As 1.

	of recyclates than projected (CA sites only)				
Trade waste income less than projected	Trade waste income may be less than expected due to: - <ul style="list-style-type: none"> • Trade waste volumes being less than projected • Trade waste tariffs be less than projected 		X		The Partners will consider the level of C&I waste they consider acceptable. A certain volume of trade waste may be needed to ensure that any EfW is kept at or close to capacity for operational efficiency reasons.
Incorrect estimated transport cost of providing specific services under the contract within market testing periods	The cost of providing transport may be different to that expected, because of unexpected changes in the cost of the equipment, labour, fuel, and other supplies		X		
Securing a beneficial out-let for bottom ash			X		Bidders will be expected to make proposals for the beneficial use of bottom ash
Incorrect estimated cost of providing specific services under the contract at points of market testing	The cost of providing these services may be different to the expected, because of unexpected changes in the cost of the equipment, labour, utilities, and other supplies		X		
Incorrect estimated cost of maintenance	The cost of building and engineering maintenance may be different to the expected costs		X		
Estimate of NNDR (National Non-Domestic Rate)	Rate costs are higher or lower than forecast			X	The expectation is that there will be a pass through of these costs but that the Contractor will be required to assist in minimising the assessed value of facilities.
Estimated cost of	1. The estimated cost of the		X		This requires the Partners to provide accurate data

transferring the employment of staff to the new employer is incorrect	transfer of the employment of staff including under TUPE may be incorrect.				on staff (age, pension provisions, conditions of service, years of service, grade, etc)
	2. Inaccurate information provided by the Partners		X		
The estimated cost of restructuring the workforce providing services under the contract is incorrect	The estimated cost of restructuring the workforce at any time during the operating days, such as recruitment costs and redundancy payments.		X		It is anticipated that Bidders will seek an adjustment to the unitary charge where inaccurate information relating to employees has been provided by the partners
Public Liability	Cost of third party claims for death, injury or other loss.		X		
Non-performance of services	Payment will only be made by the Partners for services received		X		If the design, operation, legal position, financial model, method statements etc are provided in sufficient detail/quality and they have been reviewed properly by the Authorities Advisers and the Bidders'/Funders' advisers the probability of this is low
The termination due to default by the Partners	The risk that the Partners default leading to contract termination and compensation for the private sector	X			The Contractor will be allowed the right to terminate the Contract where the Partners or potentially government act in a way which renders their contractual relationship untenable or completely frustrates the Contractor's ability to deliver the Service. This is relatively unlikely. However the costs of termination would be very significant.
Default by the operator leading to step-in by financier	The risk that operator or individual sub-contract service providers default and financiers step-in.		X		If there is a default by the operating contractor or one of its sub-contractors that may lead the financiers to step-in to the contract to protect their investment
Termination due to default of the	The risk that the operator defaults leading to contract		X		Typical reasons for termination are breach by the Contractor of any of its material obligations

operator	termination				under the contract, Persistent Breach,, an insolvency event occurs, the Contractor breaches a key clause of the contract, or suffers an excessive number of deductions under the performance and payment mechanism.
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Residual Value Risks

Risk	Description	Risk Allocation			Comment
		Partners	SPV	Shared	
The procuring Partners no longer require sites at the end of the contract	The risk that the Partners will not require the assets at the end of the contract period.	X			The Partners will have the option to require the assets to be transferred back to them at no cost so the Contractor will have priced this into its bid.
Decontamination of sites which are transferred at the end of the contract to either the Partners or another incoming contractor	Decommissioning costs could be significant.		X		The Partners will bear the risk of existing contamination but the Contractor will be responsible for contamination caused during the contact period.
Disposal of surplus operational plant and equipment at the end of the contract if not required by the Partners	Surplus operational plant and equipment may be expensive to decommission and dispose of		X		The Partners may require plant equipment to revert to them or be made available to a new contractor at the end of the contract period. Otherwise the Contractor will be required to keep and dispose of it.

Surplus operational plant and equipment at the beginning of the contract is not required by the Partners or contractor	Surplus operational plant and equipment may be expensive to decommission and dispose of		X		The Contractor will take the LAWDC and all its assets.
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Financial Risks

Risk	Description	Risk Allocation			Comment
		Partners	SPV	Shared	
Lifecycle replacement	Plant and equipment replacement		X		The Partners must ensure that sufficient funds are allowed within the Contractor's Financial Model .
Inflation	Inflation above RIPX		X		It is recognised that the bidders may propose alternative inflation indices for part of the unitary charge.
Interest rates	Interest rate movements prior to Financial Close	X			Sufficient sums should be allowed for this within the OBC.
Funder interest margin and interest rates	The risk that finance cannot be secured on the terms used to price the contract and/or the interest rates move following Financial Close		X		The increasing market in waste, the standardisation of the contract forms and the improving understanding of the risks by the funder should lead to increasing pressures on margins at a micro level. At a macro level long term rates need to be kept under review an specialist advise will be required to assess the value for money of any assumptions made by the bidders
Foreign exchange risk	The risk that costs change due to movement in foreign exchange rates		X		This is a material risk on waste schemes as key elements of the supply will be from overseas.

Performance Risks

Risk	Description	Risk Allocation			Comment
		Partners	SPV	Shared	
Failure to meet performance standards	There is a risk that operational and maintenance services (O&M) will not provide the required quality of service. This may be costly to correct		X		
Availability of facilities	There is a risk that some or all of the facilities will not be available for the use to which it is intended. There may be costs involved in making the facility available		X		
Recycling and energy recovery targets	Recycling and energy recovery targets set by the Partners and government legislation may not be met due to:-		X		
	1. Waste composition including calorific value				
	2. Contractor's performance		X		
	3. Public participation		X		
	4. Failure to deliver according to delivery regime	X			
	5. Failure of technology			X	
	6. Inadequate management		X		

Demand Risks

Risk	Description	Risk Allocation			Comment
		Partners	SPV	Shared	
Changes in the volume of demand for services at each facility	There is a risk that the volume of demand for waste services will change. This may occur due to demographic factors for changes in the size of the catchment area, for example.		X		
Changes in general waste composition	There is a risk that the composition of waste inputs will change.		X		

Technology and Obsolescence Risks

Risk	Description	Risk Allocation			Comment
		Partners	SPV	Share	
Unexpected changes in technology	Unexpected changes in technology may lead to a need to re-scale or reconfigure the provision of services	X			Both parties will be committed to the technology specified in the contract. The Partners will only be able to vary this through an authority change for which they will pay the cost.
Asset obsolescence	Buildings, plant and equipment may become obsolete during the contract		X		

Regulatory Risks

Risk	Description	Risk Allocation			Comment
		Partners	SPV	Shared	
Legislative or regulatory changes which are discriminatory	Discriminatory changes leading and variations in cost	X			<p>Discriminatory Change in Law means a Change in Law, the terms of which apply expressly to:</p> <ul style="list-style-type: none"> the Project and not to similar projects procured under the PFI; the Contractor and not to other persons; and/or PFI Contractors and not to other persons.
Legislative or regulatory changes which are waste industry specific	The changes in waste industry specific legislation, leading to change in the requirements and variations in costs	X			<p>Specific changes in law that are foreseeable are the Contractor's risk but otherwise are a public sector risk</p> <p>In order to provide some certainty for both the Contractor and the Partners with regard to what is currently foreseeable for the purposes of the Change in Law provisions the recommended approach is that the parties should agree a specific list of waste sector laws which, although foreseeable, may not be priced at a level that represents value for money (the Waste Law List). The Partners typically takes the risk for these changes in law.</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p style="font-size: small;">(Subject to sharing and incentives for the Contractor)</p> </div> <p>Specific Change in Law means any Change in Law which specifically refers to the provision of</p>

					<p>services the same as or similar to the Service or to the holding of shares in companies whose main business is providing services the same as or similar to the Service.</p> <p>On EfW facilities, it is sometimes requested by bidders that the definition of the Service, in the context of the Change in Law regime, should be extended to include any Changes in Law affecting electricity generation (with the consequence that costs arising from such Changes in Law would be the Partners' risk. Any such allocation of risk would be resisted by the partners. However it is recognised that a change in law discriminating against the sale of electricity generated from an EfW plant, or (in relation to an EfW)relating to emissions to the atmosphere would be classified as a specific change in law. Similarly changes in the law relating to carbon trading permits would fall to be treated in this way.</p>
Legislative or regulatory change: general	A change in law which is general in its effect		X		General changes in law are for the Contractor's account other than in relation to changes requiring capital expenditure where they would be shared.
Environment Agency Interpretation	Changes in the Environment Agency's interpretation of current legislation			X	<p>The Environment Agency has a discretionary right to change the conditions of Environmental Permits regardless of whether there is a breach of the existing conditions attaching to the Permit.</p> <p>The recommended approach is for any change to the conditions of the Environmental Permit to be a Contractor risk, where such change arises as a result of the Contractor's acts or omissions (other than where such act or</p>

					omission results from an obligation under the Contract). Save as mentioned above any change in the Environmental Permit arising from how the EA interprets or implements the meaning of existing law or regulation) would be treated as Partners' risk.
Compliance with existing environmental regulations or legislation	The facilities may fail to meet existing environmental/regulations legislation due to: <ul style="list-style-type: none"> Inadequate plant design Inadequate maintenance Use of substandard materials 		X		
Compliance with new environmental regulations or legislation	The facilities may fail to meet new environmental regulations legislation	X			If the obligation to comply relates to a Specific Change in Law it will be a Partner risk.

Taxation Risks

Risk	Description	Risk Allocation			Comment
		Partners	SPV	Shared	
Changes in taxation	The scope and level of corporate taxation will affect the cost of providing services		X		
Changes in the rate of VAT	Changes in the rate of VAT will affect the costs of the project	X			
Other changes in VAT	Changes in VAT legislation other than changes in the rate of VAT payable		X		
Landfill tax	Changes in the rate of landfill tax	X			Generally, the private sector will not bear the risk of changes in the rate of landfill tax

Renewable obligation certificates	Changes in the basis of renewable energy certificates	X			Current uncertainty in relation to the ROCs regime is likely to be clearer by the time Project Transform moves into procurement. Subsequent changes are likely to arise as a result of a Specific Change in Law
Tradable permits	Changes in the: - (i) value of tradable permits subject to (iii) below;	X			Contractors are reluctant to take LATS Risk because: a) Although the maximum penalty is known, it is difficult to quantify the market value of buying excess Landfill Allowances; b) The Contractor cannot compel an Partners to bank or borrow Landfill Allowances and can therefore not practically take all steps necessary to effectively manage this risk; and c) The size of the potential liability that may arise if LATS risk crystallises may jeopardise shareholder returns. Risk share for LATS depends on solution – parties may agree upside share as well as downside deductions Likely to be less of a problem for EfW solutions than MBT. Share to Contractor should only be available to the extent Council actually receives an income (i.e. LATS may not have a value, Council may decide to bank)
	(ii) basis of tradable permits;	X			A change in the basis of tradable permits is likely to arise from a Specific Change in Law.
	(iii) cost of fines and / or permits above planned level due to Contractor underperformance;			X	The private sector is unlikely to wholly to take the risk of LATS but will be bound to meet contract BMW Diversion targets. Failure to meet BMW Diversion targets will result in deductions calibrated to reflect a proportion of LATS losses (and loss of bargain (see above))

Insurance Risks

Risk	Description	Risk Allocation			Comment
		Partners	SPV	Shared	
Un-insurability	There is a risk that some insurances become uninsurable			X	Those insurances which are designated Required Insurances benefit from un-insurability protection in accordance with standard guidance.
Business Interruption Insurance - Partners Insurable Interest	Relating to the Authorities interest in Third Party Income		X		Depending upon the third party income sharing provisions, the Partners may have an insurable interest in third party income generated by the Project. For a waste project this can represent a high share of total revenue. Accordingly the Partners may wish to be named as an additional insured under the Business Interruption policy with respect to this insurable interest, and have their interest noted in the Required Insurance Schedule. The Partners, in conjunction with their advisors, should first assess the cost of effecting and maintaining such cover and consider whether this represents value for money.
Premiums	There is a risk that insurance premiums increase as a result of general market conditions			X	Where insurance premiums increase substantially as a result of market conditions the parties will share the cost of that increase.