

Dublin: 28 March 2012

A formal complaint was submitted to the EU Commission offices on Dawson Street by Joe McCarthy and Valerie Jennings. The complaint concerns breaches of the EU Public Procurement Directives by Dublin City Council.

The complaint also covers the use of public monies and Cohesion funds by the Council for procurement of advisors and for procurement of a contractor for the Poolbeg Incinerator.

The breaches are:

- The contract for the incinerator was awarded to a company which did not bid.
- The contract for the incinerator was almost double the size advertised.
- The amount spent on services was over four times the amount awarded.

Dublin City Council should have re-opened the bidding to comply with the public procurement directives but they failed to do so.

The construction cost of the incinerator has been put at €350 million by Covanta and the revenue potential of the project has been put at over €1 billion by the Council's advisors.

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Internal documents released under Freedom of Information confirm the original requirement was for an incinerator of 400,000 tonnes per annum for 20 years. The actual contract signed was for 600,000 tonnes and for 25 years. The lifetime tonnage was almost doubled from 8,000,000 tonnes to 15,000,000 tonnes.

The reasons for the increase were

- To obtain approval from the NDFA for the Put or Pay guarantee
- To get Covanta to take over the contract from Elsam who no longer wanted to finance the project

The Council agreed a *Put or Pay* guarantee to deliver 320,000 tonnes of waste per annum or payment in lieu. The guarantee constituted 80% of the original capacity at 400,000 tonnes but the level of guarantee was reduced to under 60% by increasing the size of the plant.

The *Put or Pay* guarantee keeps the commercial risk on the Local Authority and thus on the State. The cost of building the plant would have been a liability on the state but internal documents reveal that the NDFA said that Value for Money could be achieved simply by getting the project off the government balance sheet. The change in size facilitated this assessment.

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Negotiations took place with only one bidder, Elsam of Denmark, and when they changed their mind on providing finance the Council started negotiations with an entirely new partner namely Covanta of New Jersey, USA. Covanta was not a bidder and could not have bid because it was bankrupt and in Chapter 11 from 2002 to 2004.

Initially 51% of the project was transferred to Covanta with provision in the contract to transfer a further 24% before construction commenced and a final 25% before the incinerator started operation. The effect of these manoeuvres was to transfer 100% of the project to Covanta in circumvention of EU rules.

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The original award for Client Representative services was for €6.9 million. DCC has revealed in a detailed statement to Councillors earlier this month that €30.1 million was actually been spent – an overspend of €23.2 million. The additional spend was not re-

tendered and therefore breached the EU procurement rules. The EU Cohesion Fund provided €6.9 million towards these services.

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Covanta is no longer willing to provide balance sheet finance. Dublin City Council is insisting that the project is still alive but they are now seeking a change of law to allow them control the direction of municipal waste. They want to direct waste to their incinerator in order to fulfil the *Put or Pay* guarantee.

Such interference in the market would prevent the development of more competitive waste disposal options which would have higher merit in the EU waste hierarchy.

The Council has a conflict of interest because it has a vested interest in supplying the Poolbeg incinerator to fulfil their *Put or Pay* guarantee. Their vested interest also includes revenue sharing arrangements for electricity generated by the plant and for revenue from processing waste above a certain tonnage.

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Now there is a proposal from Indaver to takeover the contract from Covanta. Indaver are offering a 400,000 tonne plant with no *Put or Pay* clause. Any engagement with Indaver without re-advertising the contract would be a gross interference with the EU procurement process.

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Joe McCarthy commented: “We have seen nothing but massaging, obfuscation, and downright bias by Dublin City Council and their advisors in pushing for this incinerator. The original strategy study had serious omissions which biased the decision in favour of incineration. Their procurement process failed spectacularly with just one bidder entering negotiations. The transfer of the contract to Covanta was entirely against EU procurement rules. So too was the massive increase in the size of the incinerator and the increase in the duration of the contract. And now they want to change the law. DCC won’t tell anyone what details are in the secret agreement with Covanta. We know they have spent €80 million so far. How much more are they going to commit to this fiasco? We will be paying for it for a generation. It should be stopped.”

ENDS

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Background

Attached: background material

Also is available on www.fiasco.ie

About Joe McCarthy & Valerie Jennings

Joe McCarthy and Valerie Jennings are residents of Sandymount. They participated at the oral hearings on the Poolbeg incinerator held by An Bórd Pleanála and the EPA. Their arguments were accepted at both hearings. They previously campaigned successfully against the evoting project, gave evidence to the Oireachtas and made submissions to the Commission on Electronic Voting.