

Waste & Resources Action Programme

OMK002 An examination of the limits for Potentially Toxic Elements (PTE) in anaerobic digestates

Desk-based examination of the current UK AD industry data on PTE concentrations in digestate & an assessment of the potential impact on the UK AD industry of European proposals to set new PTE limits in End-of-Waste criteria for digestates

Tender Invitation Document

| Contents | Page |
|--|-------------|
| Section 1: Background | 3 |
| Information about WRAP | |
| Section 2: Scope of work | 3 |
| The aim of the work, including services/tasks and deliverables | |
| Section 3: The tender submission - Information required | 5 |
| Including your proposed working methods, tender prices and other information requested by WRAP | |
| Section 4: Evaluation criteria | 6 |
| The criteria used by WRAP to assess and select its tenderers | |
| Section 5: Application procedure / tender process | 7 |
| Details on how to submit a tender and the proposed timetable | |
| Appendix I – Form of Contract | 9 |
| WRAP's Terms and Conditions of Contract | |

Section 1: Background

- 1.1 WRAP (The Waste & Resources Action Programme) is a not-for-profit private company backed by funding from the Department for Environment, Food and Rural Affairs, the Scottish Government, the Welsh Government and Northern Ireland Executive.

WRAP works in partnership to encourage and enable businesses and consumers to be more efficient in their use of materials and recycle more things more often. This helps to minimise landfill, reduce carbon emissions and improve our environment.

- 1.2 This document sets out the scope of work that the Waste and Resources Action Programme ("WRAP") wishes to commission. WRAP selects its tenderers through a competitive process and this document describes that process and explains how tenderers may tender for the work described.
- 1.3 WRAP works closely with a range of stakeholders in the agriculture and food industries, to provide the evidence they require to demonstrate that the use of quality digestates and composts in agriculture meets their requirements.

Section 2: Scope of work

Background and Scope of Work

- 2.1 When PAS110 was originally compiled, there was an extremely small commercial Anaerobic Digestion (AD) sector in the UK, and data for digestate quality were scarce. Limits for Potentially Toxic Elements (PTE) were therefore drawn across from the compost specification (PAS100), which are set on a dry matter (DM) basis. It was always thought possible that AD operators would find it difficult to consistently adhere to these limits, as there are very low DM contents in whole and liquor digestates.
- 2.2 To overcome this difficulty, an alternative control mechanism was written into PAS110 in the form of annual limits on PTE application rates to soil (per hectare). These are listed in the 1989 Sludge Use in Agriculture Regulations¹, which require operators to monitor PTE loading rates to comply with a 10 year rolling average. This presents a different difficulty, since it requires that digestate be traced from production through to use over at least this time period. This is a challenge for auditors of the PAS110 specification, and does not sit comfortably with the UK's developing end-of-waste approach, which regards some (Quality Protocol or PAS, depending upon the UK nation) compliant materials as products. Products need not be traced through to their end market.
- 2.3 During December 2011 WRAP held a series of workshops with assistance from the EA, SEPA and REA to seek industry feedback on all aspects of PAS110 and the AD Quality Protocol (ADQP) / Additional Scheme Rules for Scotland (ASRS). Various comments and suggestions were made on the current approaches to limiting PTEs in PAS110, including:
1. Would limits based on a mg/l basis be more appropriate than the current mg/kg (DM) approach, and if so – what should those limits be to ensure that they were equally protective of the environment?
 2. Given that digestate application rates are likely to be limited by either their nitrogen or phosphate contents within COGAP, could new PTE limits be set as ratios with specified nutrients?
- 2.4 The main purpose of the project being tendered is to examine current UK AD industry data on PTE concentrations in digestate and to determine whether other limits could be set (either on a dry matter basis or utilising alternative approaches) that are equally protective of the environment as the current PAS110 approaches. For the purposes of this project, digestate includes both whole, separated liquor and separated fibre fractions.

¹ <http://www.legislation.gov.uk/uksi/1989/1263/contents/made>

- 2.5 In addition, and given the recent release of the consultation on the second working document on End-of-Waste (EoW) criteria for Biodegradable waste subject to biological treatment², a supplemental aim is to provide an assessment of the impact on the UK AD industry of the European proposals to set new PTE limits for digestates and suggest alternatives that are appropriate to a UK context that could be communicated to the relevant European authorities.
- 2.6 The maximum anticipated budget for this work is £15,000 (including VAT) across the entire project lifetime, which is anticipated to span FY2011/12 and FY2012/13. WRAP anticipates the budget spanning both financial years and expect deliverables based invoicing including an initial planning and development invoice before the 31st of March 2012.
- 2.7 Applicants should submit projects that are designed and costed for the entire project period, FY2011/12-2012/13. However, you are reminded that this is a competitive process and tenders in excess of the maximum anticipated budget will only be considered if they contain strong justification for the requested expenditure.

Requirements or Services

- 2.8 Applicants should include in their proposals an explanation of how they will deliver the following services and any other services that the applicant considers would add value to WRAP's objectives for this project (see above) and the Deliverables (see below).
- 2.9 The successful contractor **will be required** to work with the Biofertiliser Certification Scheme (BCS), which has agreed to facilitate access to the PTE data so that industry confidentiality is maintained³. Working with the BCS and suitable AD industry partners, the contractor is expected to:
1. Examine and report upon current UK AD industry data on PTE concentrations in digestate and to determine whether other limits (either on a dry matter basis or utilising other approaches) could be set that are equally protective of the environment as the current PAS110 approaches; and
 2. Provide a summary assessment of the impact of European proposals to set new PTE limits in End-of-Waste criteria for digestates on the UK AD industry (environmental & health, economic, market and legislative) – and suggest alternatives that are appropriate to a UK context that could be communicated to the relevant European authorities.
- 2.10 It is expected that WRAP will make the outputs from this project publicly available. As a market-facing organisation, WRAP has to ensure that evidence is transparent, robust and presented in a balanced way. All reports should be written clearly using language that is accessible to the intended audience and a writing guide will be issued to the successful contractor. To accommodate this, applicants should plan for several rounds of WRAP comments and amendments to project outputs, to ensure that the results can be communicated appropriately. WRAP may request that the report be copyedited, at the contractor's cost, where it does not reach the required standard.
- 2.11 The successful applicant will be expected to attend project meetings as appropriate, including as a minimum a project initiation meeting and a final meeting.

Deliverables

- 2.12 Provide WRAP with milestone reports as appropriate.

²<http://susproc.jrc.ec.europa.eu/activities/waste/documents/IPTSEoWBiodegradablewaste1stworkingdocument20110221.pdf>

³ this data is held by the appointed laboratory and by the individual AD plants.

- 2.13 A final report which collates, analyses and discusses: the data analysed during this project; the alternative limits that could be set; and the assessment of the impact of the European End of Waste PTE criteria for digestates on the UK AD industry.
- 2.14 A PowerPoint presentation providing an overview of the project and the key findings.

Programme

- 2.15 The target deadline for the work programme is detailed below:

Work Programme

Work to commence by: March 5th, 2012*

Work to be completed by: May 31st, 2012*

* WRAP reserves the right to change the timetable

Section 3: The tender submission - Information required

- 3.1 Your tender submission should be submitted electronically to rachel.tipping@wrap.org.uk by the closing date provided below. Where electronic submission is not possible, your application should be printed double sided, submitted on recycled paper wherever possible and should be limited to no more than 20 pages (excluding appendices).
- 3.2 Your tender submission must include the following information (preferably in order):
- (1) An executive summary** of no more than one side of A4 in length, outlining the proposed work and including the total cost of the proposed work, inclusive of Value Added Tax ("VAT") and anticipated expenses.
 - (2) Company/Organisation details**
WRAP will need the following information:
 - The name of the Company submitting the tender;
 - The registered office name, address, VAT number (if applicable) and company or charity registration number;
 - The name of the nominated contact person within the tenderer's organisation;
 - Contact details including: address (if different to the above), telephone number, fax number and e-mail address.

WRAP accepts tenders both from individual companies and from consortiums. Should you decide to tender as part of a consortium you will need to identify one member of the consortium (the "Lead Contractor") to act as the contracting party. All other consortium members will be sub-contractors to the Lead Contractor.
 - (3) A description of your working methods**
You will need to make clear how you intend to deliver the work and provide estimated timescales for delivery.
 - (4) A description of the project team who will manage and deliver the work**
This should include a list of individuals, their respective roles within the organisation and, for the purposes of this work their relevant skills and experience including any relevant professional qualifications.
 - (5) An identification of any sub-contractors to be used**

You should include a list of any sub-contractors you intend to use to fulfil the requirements of the work.

- (6) The total cost of the work** (inclusive of VAT) together with a full breakdown of costs. Expenses should be identified separately but must be included as part of the total cost of the work.
- (7) Identification of any conflicts of interest** which might arise if you were selected to undertake the work and if such a conflict were to arise, an indication of how this conflict would be addressed. Where you tender as part of a consortium, all members of the consortium should be considered.
- (8) A copy of your Environmental Policy** and evidence of any accredited Environmental Management System.
- (9) As appendices**, tender submissions should include:
 - **Audited or management accounts for the last 2 financial years;**
WRAP reserves the right to reject bids from Contractors where the accounts show that the Contractor might be at risk of insolvency.
 - **A statement of any material litigation, pending or threatened, or other legal proceedings;**
WRAP reserves the right to reject bids from Contractors subject to legal proceedings where in WRAP's reasonable opinion such proceedings could impact upon the Contractor's ability to deliver the services required.
 - **Evidence of the level of professional indemnity, public liability and property damage insurance cover held.**
WRAP will require minimum cover levels of:
 - £1 million professional indemnity;
 - £2 million public liability;
 - £2 million property damageTo be considered for evaluation, Contractors must have this cover in place at the time of bidding or must include (as part of the tender submission) a commitment to take out such cover in the event of being appointed to the framework.

- 3.3 Should you have any questions in relation to the type of information required by WRAP please contact the person identified in Section 5.3 of this Tender Invitation Document to discuss.
- 3.4 All tender submissions will be treated on a confidential basis by WRAP and its advisers, subject to the provisions of the Freedom of Information Act 2000.

Section 4: Evaluation criteria

- 4.1 WRAP must be satisfied that each potential contractor has the appropriate capabilities and resources available to undertake the work to WRAP's requirements and provide the necessary services
- 4.2 The process WRAP uses to select its contractors is a competitive one. Your tender submission should be written to address the key requirements and scope of the work and demonstrate how it meets the evaluation criteria below:
 - Price including both:
 - total price (weighting 15%); and
 - average daily rate, calculated by dividing the total price by the number of contractor days offered (weighting 15%).

- Quality of proposal: strength of interpretation of the requirements, clear demonstration of how the Deliverables will be achieved successfully and consistently with the Services, clear workplan with realistic and testable milestones (weighting 35%).
- Details of the contractor: ability to provide the proposed services based on evidence of project management capability, authority of allocated personnel, their skills and technical capability (weighting 30%). Demonstrated capabilities and a demonstrated knowledge and understanding of the following issues will be particularly relevant:
 - understanding of the impact of PTEs on the environment;
 - ability to engage with key UK AD industry contacts; and
 - understanding of PAS110.
- Corporate environmental commitment: evidenced by a credible environmental policy and/or environmental management system (weighting 5%).

Section 5: Application procedure / tender process

- 5.1 Completed tender forms must have been received electronically by rachel.tipping@wrap.org.uk by the time and date set out below.
- 5.2 All correspondence relating to this tender, including tenders submitted, must be clearly marked 'Confidential Tender: OMK002 Potentially Toxic Elements Limits.
- 5.3 If you have an enquiry about the work being commissioned or the processes WRAP uses to select its tenderers, please contact: sarah.macnaughton@wrap.org.uk.
- 5.4 All tender submissions must remain valid for a minimum period of 90 days following the deadline for receipt of tender submissions.
- 5.5 All tender submissions will be competitively assessed against the evaluation criteria, (stated in Section 4 of this document).
- 5.6 The target timetable for this process is as follows:

Tender Timetable*

| | |
|---|---|
| Deadline for receipt of tender submissions | 12:30 pm 21 st February 2012 |
| Tenderers receive written notification of WRAP's decision | 01 st March 2012 |
| Work to commence | 05 th March 2012 |
| Work to complete | 31 st May 2012 |

*WRAP reserves the right to change the timetable if deemed necessary by WRAP

- 5.7 All tenderers will receive written notification of WRAP's decision and tenderers will be given the opportunity to obtain feedback on their tender submission.
- 5.8 This information is offered in good faith for the guidance of interested parties, but no warranty or representation is given as to the accuracy or completeness of any of it. WRAP and its advisers shall not be under any liability for any error, misstatement or omission. No aspect of this procedure shall constitute a contract or part of a contract. Tenderers participate in the process on the strict understanding that the procedure may be altered or that WRAP may not proceed for any reason. WRAP reserves the right not to follow up this Tender Invitation Document in any way and in particular not to enter into any contractual arrangement with any of the tenderers. WRAP does not bind itself to enter into negotiations or proceed

with or accept any tender. Any decision to tender is at the sole discretion of the tenderer and WRAP excludes all liability in respect of any tendering costs incurred.

- 5.9 Tenderers taking part in this process acknowledge and accept that WRAP may publish details about the winning bid (such as the contract value and the name of the winning bidder) on WRAP's website.

Appendix I – Sample Form of Contract

SERVICES AGREEMENT

Between

The Waste and Resources Action Programme

And

Name of Contractor

WRAP Contract Reference No. xxxx

Add title

THIS AGREEMENT is made

Between: **The Waste and Resources Action Programme** (Co. No. 4125764) whose registered office is at The Old Academy, 21 Horse Fair, Banbury, Oxfordshire, OX16 0AH ("**WRAP**")

And: **Name of Contractor** (Co. No. xxxx) whose registered office is at address not PO Box (the "**Contractor**").

NOW IT IS HEREBY AGREED as follows:

This agreement shall come into force when both parties have executed the agreement.

1. KEY OBLIGATIONS

1.1 The Contractor undertakes:

- 1.1.1 to carry out, or procure the carrying out of, the Services;
- 1.1.2 that the Services shall be carried out with the competence, skill, care and due diligence that might reasonably be expected of a contractor that has held itself out to be an expert in every aspect of the performance of the Services;
- 1.1.3 to commence, or procure the commencement of, the Services on or before the Services Commencement Date;
- 1.1.4 to complete, or procure the completion of, the Services on or before the Services Completion Date.

1.2 WRAP will pay the Contractor:

- 1.2.1 Milestone Payments, in aggregate up to the Services Payment Total, following receipt of relevant invoices raised upon performance in full of each Milestone, and which quote WRAP's project code; and
- 1.2.2 Out-of-pocket expenses reasonably incurred by Contractor staff in the proper performance of the Services, in aggregate up to the Contract Expenses Total, which have been agreed in advance by WRAP and (where applicable) are in accordance with the rates for expenses set out in Schedule 1 (Definitions and Agreement Details).

All invoices submitted by the Contractor must be on headed paper and must quote the following:

- The Milestone completed (if applicable); and
- The amount of payment requested; and
- The Contractor's bank details; and
- The project/contract reference number.

WRAP reserves the right to return, without payment, invoices not containing the above information. WRAP will pay invoices within 30 days of WRAP being satisfied that payment is due

2. CONTRACTOR'S REPRESENTATIONS

2.1 The Contractor represents to WRAP at all times that the following representations are true and accurate in all material respects, and are not misleading, and will notify WRAP of any breach of any of such representations at the earliest opportunity:

- 2.1.1 the Contractor is duly incorporated and validly existing and the Contractor has the power to enter into and perform, and has taken all necessary corporate action to authorise its entry into and performance of, this agreement;
- 2.1.2 no breach of this agreement is continuing; and
- 2.1.3 all information provided to WRAP for the purposes of this agreement is true and accurate as at the date it was provided and as at the date of this agreement.

3. INDEMNITY AND INSURANCE

- 3.1 The Contractor will, on demand, indemnify and agrees to keep indemnified WRAP against all costs, expenses, actions, charges, claims, damages, proceedings and other liabilities sustained or incurred by WRAP as a result of any breach of this agreement by the Contractor.
- 3.2 The Contractor will maintain public liability insurance cover for at least £1,000,000 and professional indemnity insurance cover for at least £250,000 in connection with the Services with reputable insurers (and provide evidence of such insurance to WRAP on request).

4. PUBLICATION, CONFIDENTIALITY, INTELLECTUAL PROPERTY

- 4.1 The Contractor will not publish any information supplied by WRAP or any of the results arising from the Services without the prior written consent of WRAP and will acknowledge WRAP in any publicity material in respect of the Services.
- 4.2 The Contractor undertakes to maintain in confidence and not use for any purpose other than the performance of this agreement all information acquired or generated in consequence of this agreement or otherwise relating to WRAP which comes into its possession save where such information:
- 4.2.1 is in the public domain;
 - 4.2.2 enters the public domain lawfully and through no breach of any obligation of confidentiality;
 - 4.2.3 is disclosed to the Contractor by a third party acting lawfully;
 - 4.2.4 is the subject of the express consent of WRAP for publication or disclosure; or
 - 4.2.5 is obliged to be disclosed by law.
- 4.3 The Contractor and WRAP shall each retain ownership of all their Intellectual Property Rights in existence at the date of this agreement
- 4.4 All intellectual property including, without limitation, all data, databases, reports, records, drawings, photographs, specifications, plans, software, designs, inventions and/or other material created by the Contractor (or any employee or person engaged by the Contractor) in the course of the performance of the Services under this agreement shall vest in and be the property of WRAP.
- 4.5 The Contractor hereby grants to WRAP a non-exclusive, irrevocable, royalty free, perpetual licence (but with the right to grant sub-licences and transferable only for the purposes of publishing and disclosure) in respect of all the intellectual property rights of the Contractor in existence at the date of this agreement which in the opinion of WRAP is necessary or useful in order for WRAP to publish and disclose details of the Services and all or any of the other data, information or knowledge relating to the Services.

5. TERMINATION

- 5.1 WRAP may terminate this agreement immediately by written notice if:
- 5.1.1 One of the following insolvency events occurs:
 - (a) a receiver, trustee or similar officer is appointed in respect of the whole or any part of the undertaking or assets of the Contractor or its assets;
 - (b) any action is taken for or with a view to the winding up (which includes, where such person is or has legal status other than as a company (as defined in the Companies Act 1985) any corresponding process applicable to that person) or administration of the Contractor (or the bankruptcy of the Contractor where applicable);
 - (c) the Contractor becomes, or is deemed to be insolvent (or, where applicable, bankrupt), unable to pay its debts as they fall due, or is deemed under applicable law to be so, or has an excess of liabilities over assets (taking into account contingent and prospective liabilities); and
 - (d) the Contractor ceases to operate (or, where applicable, dies or ceases to have legal capacity).

5.1.2 the Contractor fails to comply with the terms of this agreement in any material respect (unless such non-compliance is remediable in the opinion of WRAP); or

5.1.3 any representation made by the Contractor is or proves to have been incorrect or misleading in any material respect (unless such representation is remediable in the opinion of WRAP),

and in such circumstances WRAP may, at its discretion, pay the Contractor a fair and reasonable amount for the Services completed before the date of termination to the satisfaction of WRAP or cancel payment under this agreement.

5.2 WRAP will also have the right to terminate this agreement at any time by notice to the Contractor and in such circumstances WRAP will pay the Contractor a fair and reasonable amount for the Services completed to the satisfaction of WRAP before the date of termination but the Contractor will not be entitled to any other payment or recourse from WRAP.

5.3 In the event of termination, the Contractor will promptly provide WRAP with a full report on the status of the Services together with all information, documentation, property and materials relating to the Services as soon as reasonably practicable and in any event within 14 days.

6. MISCELLANEOUS

6.1 Terms will have the meaning given to them in Schedule 1 (Definitions).

6.2 Any notice under this agreement will be in writing and served by sending the same to the other party at its address set forth above marked for the attention of the company secretary or such other address from time to time notified by that party for the purpose of notices under this agreement.

6.3 The Contractor shall not assign or transfer any of its rights and/or obligations under this agreement.

6.4 The Contractor shall not enter into any subcontract for the performance of its obligations under this agreement except with the prior written consent of WRAP. Where a subcontract has been consented to by WRAP this shall not relieve the Contractor of any of its obligations under this agreement.

6.5 This agreement comprises the entire understanding of the parties in relation to the matters referred to in this agreement.

6.6 The authorised officers for the receipt of all day to day communications relating to this agreement shall be as stated in Schedule 1 hereto under day-to-day contacts.

6.7 This agreement is governed by English law and the parties hereby submit to the non-exclusive jurisdiction of the English courts.

6.8 Nothing in this agreement is intended to confer on any person any right to enforce any provision of this agreement which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

6.9 The provisions of Clauses 4 (Publication, Confidentiality, Intellectual Property), 5 (Termination) and 6 (Miscellaneous) will survive the termination of this agreement irrespective of the reason for termination for a period of 6 years.

IN WITNESS WHEREOF, the parties have executed this agreement.

For and on behalf of: **The Waste and Resources Action Programme**

Signature:

Name and title:

Date:

For and on behalf of: **Name of Contractor**

Signature:

Print name:

Title:

Date:

Schedule 1

Definitions and Agreement Details

In this agreement the following terms will have the following meanings:

1. Services***Background***

1.1 List Background to the Services to be performed

Objectives

1.2 List objectives

Services

1.3 List Services to be performed by the Contractor and deliverables including due by dates

1.4 List Services etc.

2. Other agreement details

2.1 "Day-to-Day Contact" means:

2.1.1 for WRAP: name; email: ; telephone number;

2.1.2 for the Contractor: name; email: ; telephone number.

2.2 "Key Personnel" means name, being the individual that is fundamental to the performance of the Services.

2.3 "Services Commencement Date" means date.

2.4 "Services Completion Date" means date.

3. Financial Details

3.1 "Contract Expenses Total" means a maximum of £ xxxx including VAT, to be invoiced in accordance with clause 1.2.2 (Payment) hereto.

3.2 "Maximum Contract Value" means £ total of the Contract Expenses Total and the Services Payment Total including VAT.

3.3 **EITHER** "Services Payment Total" means £ xxxx including VAT to be paid in full on completion. **OR USE TABLE**

| Type | Maximum (excl. VAT) | VAT | Total |
|------------------|---|--------------------|--------------------|
| Lump sum fees | Up to £xxxx | Up to £xxxx | Up to £xxxx |
| Time charge fees | Up to £xxxx calculated as follows: £xxxx per period of time for person | Up to £xxxx | Up to £xxxx |
| Total | Up to £ xxxx | Up to £xxxx | Up to £xxxx |

3.4 Milestone Payments excluding Expenses

| Mile-stone | Milestone Services and Deliverables | End date | Maximum invoice value (incl. VAT) |
|------------|--|----------|-----------------------------------|
| 1 | Details of Services required by the milestone end date and delivery of satisfactory Progress Report and occurrence of satisfactory progress meeting. | date | £ xxxx |
| 2 | Etc | date | £ xxxx |

Incurred Expenses, agreed in advance with WRAP, should be included in each invoice but should (cumulatively) not exceed the Contracts Expenses Total.

4. Schedule of rates for Contract Expenses

| Expense | Rate inclusive VAT |
|------------------------------------|---|
| Motor vehicle mileage | at 45 pence per mile inclusive of VAT |
| Public transport | <u>actual cost</u> of travel – based upon receipts for tickets |
| Parking, garaging and tolls | <u>actual cost</u> – based upon receipts |
| Hotel & breakfast in London | <u>actual cost</u> up to a maximum of £90 night including VAT |
| Hotel & breakfast outside London | <u>actual cost</u> up to a maximum of £75 night including VAT |
| Personal Incidental Expenses (PIE) | at a rate of £5 including VAT for each overnight stay |
| Refreshments & lunch (receipted) | <u>actual cost</u> up to a maximum of £5 including VAT per day |
| Dinner (receipted) | <u>actual cost</u> up to a maximum of £20 including VAT for each overnight stay |
| Other | at a rate agreed with WRAP prior to incurring the expense |