

CABINET
13 DECEMBER 2018**WASTE CONTRACT**

Relevant Cabinet Member

Mr A P Miller

Relevant Officer

Director of Economy and Infrastructure

Recommendation

1. **The Cabinet Member with Responsibility for Environment recommends that:**

(a) **Cabinet notes the progress since the reports to Cabinet in December 2013;**

(b) **subject to paragraph 2 below, the Director of Economy and Infrastructure be authorised in consultation with the Chief Finance Officer, Head of Legal and Democratic Services and Herefordshire Council to negotiate the form of a Variation to the existing Waste Management Services Contract (WMSC) with Mercia Waste Management Limited (Mercia) to put into effect Mercia's proposals:**

- i. to increase the capacity of the EnviRecover facility at Hartlebury, subject to satisfactory planning permission;**
- ii. relating to such other ancillary issues as are appropriate in relation to the WMSC;**
- iii. to extend the duration of the WMSC by a period of up to 5 years**

(collectively the "Contractor's Proposals") provided such a Variation is in compliance with:

- The Planning Parameters**
- The Financial Parameters**
- The Contractual Parameters, and**
- The Technical Parameters**

all as set out in this report and collectively the "Parameters"; and

(c) **the Director of Economy and Infrastructure reports back to Cabinet to seek formal authority to execute such a Variation when he considers, having regard to any advice from advisors, that the Parameters have been materially satisfied.**

2. The authorisation under 1(b) is subject to Herefordshire Council giving approvals substantially in the same form as those contained in paragraph 1 of this report and the two councils agreeing in principle to vary the Joint Working Agreement to reflect any changes (should this be required).

Why is this important?

3. Taking account of the history of the Waste Management Service Contract as set out below, the successful commissioning of the new plant, EnviRecover, and the current performance of this, it is felt timely that Mercia make a proposal (the "Contractors Proposal") regarding the contract and potential extension.

Background

4. The Waste Management Services PFI Contract (WMSC) was signed between Herefordshire and Worcestershire Councils and Mercia Waste Management Ltd (Mercia) in early 1999 for 25 years. Members are referred to previous reports to Cabinet setting out the detailed history of subsequent developments under the WMSC, which is summarised for convenience here. It is important to recognise that the WMSC was for an integrated solution to be delivered by Mercia for the disposal of all domestic waste arising within the 2 counties. The Councils' local authority waste disposal company (Beacon Waste) was transferred at the same time to Mercia which took on responsibility for disposing of all 'Contract Waste'.

5. The Waste Management Services Contract included requirements for: a Mixed Waste Material Reclamation Facility (MRF), Transfer Stations, Pre-Sorted MRF, Household Waste Sites (now Household Recycling Centres), Operations and Management of Hill and Moor Landfill, Construction and operation of a Waste to Energy Plant, Composting facilities. Mercia duly started the construction of the facilities required under the contract, other than the Waste to Energy Plant which required the land to be secured, planning and other consents. The more modern terminology for 'Waste to Energy' is 'Energy from Waste'; this is normally shortened to EfW and is based on incineration of waste.

6. It is important to remember that the contract duly procured in 1998 was based on an EfW solution for dealing with residual waste. Mercia started the process to deliver such an EfW at the anticipated British Sugar site in Kidderminster. However, their planning application failed at appeal in 2002 and it was therefore acknowledged that the proposed EfW plant was undeliverable at that particular site.

7. Accordingly, the Councils and Contractor agreed a "standstill" position whereby the respective rights of the parties to terminate the WMSC as a result of the failure to obtain planning permission for the Kidderminster EfW plant by the anticipated 'longstop' date were 'frozen' to allow the parties to continue to discuss alternative solutions for the disposal of residual waste. The WMSC continued subject to its potential termination should the standstill agreement be brought to an end.

8. The loss of the anticipated EfW facility to divert residual waste from landfill as per the contract meant the landfill site at Hill and Moor was filling considerably more quickly than had been anticipated under the WMSC and therefore some means of diverting waste from landfill needed to be developed. Interim arrangements were made by Mercia to dispose of some of the residual waste at EfW plants outside the counties to ease the situation.

9. Various solutions for the residual waste were investigated including out of county disposal/treatment and autoclaves. Planning permission was obtained in 2005 for an autoclave solution at Hartlebury Trading Estate (Worcestershire) and Madley (Herefordshire).

10. In 2006 Worcestershire County Council acquired the land at Hartlebury Trading Estate for the purposes of residual waste disposal, with the intention of developing an autoclave facility there. However, autoclave negotiations with Mercia broke down in 2007 due to the uncertainty about the end market for the process by-product. A satisfactory end market was a planning requirement but it became clear that this could not be met with any certainty and so the autoclave option was not deliverable.

11. The Joint Municipal Waste Management Strategy (JMWMS) sets out the policy approach to disposing of waste including how the councils will manage waste in accordance with the Waste Hierarchy. In line with national guidance Waste Prevention is prioritised in order to reduce the amount of waste produced by the two councils. We then, in order of priority, encourage Reuse, Recycling and Composting of waste. Any waste remaining is 'residual waste' which the strategy identified should be treated to Recover Energy. Only after all these things have been done can we consider landfill as a means of disposing of any waste that remains.

12. The JMWMS was originally adopted in 2004 and the 2009 JMWMS Review included a list of possible options for the treatment of residual waste and an appraisal of these was carried out by Environmental Resources Management Limited (ERM). This included; a financial assessment of Capital and Operational expenditure (CAPEX and OPEX) costs of the various options for comparative purposes and an assessment of the different options against environmental criteria undertaken using the Environment Agency's life cycle assessment tool – Waste and Resources Assessment Tool for the Environment (WRATE).

13. The Residual Waste Options Appraisal ranked EfW high, particularly with combined heat and power (CHP). On 17 September 2009, Cabinet adopted the revised JMWMS. This included a new policy to increase diversion away from landfill. The Residual Waste Options Appraisal (Annex D to the JMWMS) informed the method for treatment of residual waste, and Mercia was expected to bring forward proposals for disposing of residual waste in response to the JMWMS review.

14. In line with the JMWMS, Mercia proposed an Energy from Waste facility to deal with residual waste and commenced a site search. This resulted in the site at Hartlebury Trading Estate being selected as the best site available in the two counties for an EfW plant. The concept contained in Mercia's EfW proposal and it progressing to planning was supported in principle by the Cabinet on 17 December 2009.

15. The Director of Environmental Services (now, Director of Economy and Infrastructure) was tasked to negotiate with Mercia a variation to the WMSC to give effect to the EfW proposal within certain parameters, and report back to Cabinet should planning permission be obtained. The proposed site at Hartlebury Trading Estate (which had previously been acquired by the Council for the autoclave facility) was appropriated by the Council for planning purposes relating to the EfW proposal.

16. Mercia then sought planning permission for their proposal for an EfW plant at the identified Hartlebury site. Worcestershire County Council's Planning and Regulatory Committee considered Mercia's application for planning permission in March 2011 and decided they were "minded to grant planning permission". As the site is situated in the Green Belt, this provisional decision was referred to the Secretary of State for Communities and Local Government who subsequently made the decision to "Call in" the planning application and determine it himself.

17. The Secretary of State granted planning consent for the EfW Plant at Hartlebury in July 2012 following a comprehensive call-in Planning Inquiry. The consent required any development on site to commence within three years, i.e. July 2015. All relevant issues associated with site selection, objections and process were dealt with at length in the inquiry and in the decision report.

18. In February 2012, the Cabinet had authorised the Director of Business, Environment and Communities (now Director of Economy and Infrastructure) to negotiate and conclude with Mercia a variation to the WMSC to provide the EfW Plant at Hartlebury, subject to certain Planning, Financial, Contractual and Technical Parameters.

19. In December 2012, the Director of Business, Environment and Communities reported to Cabinet on progress of the variation negotiations and satisfaction of the Parameters. This report included a refresh by external experts of the JMWMS Residual Waste Options Appraisal which continued to rank EfW highly (with or without CHP).

20. In December 2012, Cabinet authorised the Director of Business, Environment and Communities, in consultation with the Director of Resources (and in consultation with the Cabinet Member with Responsibility for Environment and Waste Management), to pursue proposals for alternative methods of finance for the EfW plant given the relatively expensive bank debt financing which was being proposed.

21. The Director of Business, Environment and Communities in consultation with the Cabinet Member with Responsibility for the Environment and Waste Management was also authorised to procure and commence enabling works at Hartlebury for the proposed EfW up to a maximum capital cost of £1.8M, without prejudice to the final decision on residual waste.

22. The Director of Business, Environment and Communities was asked to report back in 2013 regarding proposals for financing and procuring the proposed EfW plant (either by variation of the existing Waste Contract or fresh procurement), to enable Cabinet to take a final decision by weighing up the options available.

23. In December 2013 Cabinet agreed recommendations to vary the existing waste contract and have an EfW plant at Hartlebury.

24. The Cabinet recommendations on specific financing aspects of the plans (detailed at Paragraph 1(h) of the December 2013 Cabinet report) were agreed by Worcestershire County Council's Full Council on 16 January 2014.

25. In May 2014 the Variation to the contract was concluded to have an Energy from Waste Plant at Hartlebury.

26. The Energy from Waste plant, EnviRecover, was constructed, progressed through the commissioning process and became fully operational as planned in March 2017.

27. In November 2017 Cabinet approved an addendum to the joint Municipal Waste Management Strategy (JMWMS) for Herefordshire and Worcestershire 2014 – 2034. This update was required to reflect the changes in national policy, local provision and projections for future demand that had occurred since the Strategy was originally adopted. Other councils in Herefordshire and Worcestershire also approved the update.

28. Since becoming operational EnviRecover has been performing well, in fact better than expected as per the model provided by Mercia, and is now in a steady state of operation.

29. As the plant is operating more efficiently than anticipated there is an opportunity to increase the current restrictions on the plant to process a greater amount of waste allowing up to 30kt pa additional waste to be processed each year. This would provide an additional revenue stream that could be shared between the contractor and the councils. A Planning Application is being made by the Contractor to increase the capacity.

30. Recognising the history, the successful commissioning and current performance of EnviRecover and the profile of the other waste assets it is felt timely to ask Mercia to make a proposal (the "Contractor's Proposal") regarding the contract and potential extension, because the Councils may be in a position to benefit from the successful delivery of this asset by Mercia at this time.

Parameters

31. Given that the Waste Management Service Contract is already in effect pursuant to the decisions of the Councils at its inception and subsequently (in relation to any changes), and in order to avoid iterative decision-making on points of detail which are likely to be meaningless in isolation, it is suggested that Cabinet defines a mandate by reference to certain parameters ("the Parameters") within which any Variation can be concluded.

32. The Parameters are split into: Planning, Financial, Contractual and Technical, and are detailed in the Appendix to the report.

Planning Parameters

33. Without an effective planning consent, Mercia will be unable to bring forward their Contractor's Proposals. Notwithstanding this point, the Councils may not be

prepared to accept Contractor's Proposals based upon any planning consent e.g. onerous conditions. The Council's position on these issues is defined in the Appendix – Planning Parameters.

Financial Parameters

34. In deciding whether or not to approve the recommendations contained within this report, members will no doubt want to know that any Variation would:

- (a) be affordable;
- (b) represent value for money; and
- (c) not burden the Councils with unpredictable costs in the future.

35. The Waste Management Services Contract already contains a payment mechanism (the PayMech) which applies a Baseline Fee for each tonne of waste received by Mercia, with an uplift fee per tonne for treatments other than landfilling such as recycling and energy from waste.

36. When members receive a further report on a proposed Variation they will no doubt consider the overall cost envelope in the context of current budgets plus projections and the projected cost of starting the procurement process afresh.

37. The Financial Parameters set out in the Appendix are intended to address the points referred to in the paragraphs above.

Contractual Parameters

38. Legally enforceable public procurement rules have been established to prevent public bodies from improperly purporting to use variations to existing contracts to avoid costly and time-consuming re-procurement. Two golden rules are that:

- (a) There must be no material change in the services and means of delivery compared with that envisaged when the original contract was let; and
- (b) If there is any change in the risk/reward share in the original contract, it should not be to the benefit of the contractor.

39. In relation to the latter point, any amendments to the Contract will be limited to those necessary to give effect to the Contractor's Proposals and to any benefits the Councils are seeing from the opportunity created by the making of the Variation. The Council's position on these issues is defined in the Appendix – Contractual Parameters. Importantly the intention is that Mercia's rate of return is not improved.

Technical Parameters

40. There are a number of Technical Parameters as set out in the Appendix to also be addressed including the need to ensure the ongoing technical performance of EnviRecover is maintained and the operational life of the other facilities is considered.

Advisors

41. Recognising that the Cabinet and the Directors/Chief Officers will properly be

relying on the advice of the Council's advisors dealing with legal, technical and financial issues (the "Advisors") who hold the requisite professional indemnity insurances in relation to the advice they give to the Councils, it is suggested that any future delegated mandate to execute the Variation be subject to receipt of appropriate advice from the Advisors recording their opinion in relation to the extent to which the Parameters have been met.

Legal, Financial and HR Implications

42. The Legal and Financial matters associated with this are set out as part of the Contractual and Finance Parameters as referenced above (see Appendix). The original procurement process envisaged a contract of up to 30 years. WMSC also provides for potential extension.

43. There are no specific HR implications for the Council as this is a contracted service.

Privacy and Public Health Impact Assessments

44. The Privacy and Public Health Impacts of any Variation to the existing WMSC will be assessed once a Contractors Proposal that meets the Parameters has been received.

Equality and Diversity Implications

45. The Equality and Diversity implications of any Variation to the existing WMSC will be assessed once a Contractors Proposal that meets the Parameters has been received.

Supporting Information

- Appendix – The Parameters (electronic only)

Contact Points

County Council Contact Points

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Background Papers

In the opinion of the proper officer (in this case the Director of Economy and Infrastructure) the following are the background papers relating to the subject matter of this report:

Agenda and background papers for the meetings of the Cabinet held on 9 February 2012, 12 December 2013 and 2 November 2017.