

## **Waste Management Service Contract Parameters**

The Parameters are split into:

- Financial Parameters
- Contractual Parameters; and
- Technical Parameters.

### **The Parameters**

#### **Financial Parameters**

In order to satisfy the Financial Parameters agreed in 2018 it is necessary to demonstrate that the terms of the proposed Variations

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

#### **Contractual Parameters**

In order for the Contractual Parameters agreed in 2018 to be satisfied it is necessary to demonstrate 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 other than permitted under Regulation 72 of the Public Contract Regulations; and
- b) if there is any change in the risk/reward share in the original contract, it should not be for the benefit of the contractor.

#### **Technical Parameters**

There are also a number of Technical Parameters set out below which include ensuring that the technical performance of EnviRecover is maintained and the operational life of the other facilities is considered

As indicated in the report from 13 December 2018 the Council has obtained advice from appropriately qualified advisors dealing with legal, technical and financial issues (“the Advisors”) in relation to the proposed terms of the variation who each hold the requisite professional indemnity insurances in relation to the advice they give the Councils. The following table has been prepared by internal legal advisors to the Council, following consideration of such external advice where applicable:

<b>Financial Parameters</b>		
<i>Parameter</i>	<i>Status</i>	<i>Commentary</i>
<p>The contract extension represents value for money when assessed:</p> <ul style="list-style-type: none"> <li>a) absolutely in terms of the Contractor's Proposals;</li> <li>b) relatively with the market; and</li> <li>c) in light of the opportunity cost and other disadvantages of alternative options.</li> </ul>		<p>Confirmed.</p> <p>The Council has appraised the offer made by the Contractor in detail and have concluded that it represents value for money on its terms and compared to the risks of reprocurring these services at this time</p> <p>There is a significant degree of uncertainty due to the anticipated impact of the Environment Act when it brought into force. Significant unknowns for the Councils are:</p> <ul style="list-style-type: none"> <li>• the requirement to collect and process food waste separately;</li> <li>• the introduction of a Deposit Return Scheme;</li> <li>• the introduction of Extended Producer Responsibility.</li> </ul> <p>All of these have the potential to have an impact on volumes of municipal waste capable of being processed at EnviRecover and volumes of recyclate and agreeing an extension mitigates this risk to the Council</p> <p>The waste management market is experiencing a period of significant volatility. Officers are aware of a number of takeovers or mergers, one of which has so far been referred to the Competition and Markets Authority. The two businesses have been ordered to be kept separate at this time and not integrate business practices. It is considered that this alone may effectively remove two potential bidders from pursuing any interest in any tendering exercise in the near future</p>
<p>The Internal Rate of Return (IRR) over the life of the WMSC shall not exceed the IRR used in the financial model in the original procurement.</p>		<p>Confirmed</p>
<p>DEFRA (WIDP) approve the variation (as required).</p>		<p>Confirmation that DEFRA (WIDP) approval to the Variation is not required has been obtained. The PFI contract will come to an end in January 2024.</p>
<p>The life-cycle costs beyond 2023, especially in relation to EnviroSort, are clear and affordable.</p>		<p>Confirmed.</p> <p>Lifecycle costs until proposed contract expiry date of 11 January 2029 have been agreed. These are considered to be clear and affordable-</p>

Delivery of a revenue saving for the Councils.		Confirmed, a revenue saving will be delivered to the Councils with effect from calendar year 2021 until expiry in January 2029.
<b>Overall Parameter Status</b>		<b>Officers' view is that the Financial Parameters are satisfied</b>

<b>Contractual Parameters</b>		
<i>Parameter</i>	<i>Status</i>	<i>Commentary</i>
There are no alterations to the WMSC, its structure or financial basis, as a result of any extension, save for those:		
a) necessary to give effect to the extension;		Confirmed. The changes to the WMSC which are required shall include variation to the Unitary Payment and payment mechanism, provisions and may require variations to the bond and guarantee and direct agreement. A review of the Maintenance and Exit Plans will also be necessary .
b) bringing the WMSC into compliance with current and foreseeable legislation; and		Confirmed. The WMSC was thoroughly reviewed in 2014 as part of the Variation agreed to construct EnviRecover The Environment Act received Royal Assent on 9 November 2021. It is not possible at this stage to identify any changes which may be required to the WMSC when the Environment Act is brought into force
c) the net effect of which is to deliver a commercial benefit to the Councils.		Confirmed.
External legal advice has been obtained that there is no realistic prospect of a material delay to or cessation of the extension of the contract as a result of challenge on procurement grounds.		Confirmed., relevant advice has been obtained by Officers
Herefordshire Council and Worcestershire County Council have entered into an agreement to extend the Joint Working Agreement insofar as it relates to the extension of the contract.		Negotiations between the Councils are progressing and the revised JWA will be executed simultaneously with other documentation
<b>Overall Parameter Status</b>		<b>Officers' view is that the Contractual Parameters are satisfied</b>

<b>Technical Parameters</b>		
<i>Parameter</i>	<i>Status</i>	<i>Commentary</i>
The Reliability, Availability, Maintainability and Safety (RAMS) and Life Cycle Costs are such that:		
a) the costs in extending the contract are comparable to the market; and		Confirmed
b) the costs of running the facilities are not deflated during the period up to the end of the WMSC at the expense of increased running costs from that point to the end of the design life of the facilities (notably EnviRecover).		Confirmed The terms of the WMSC require the Contractor to <ul style="list-style-type: none"> <li>• maintain EnviRecover in accordance with the manufacturer's recommendations; and</li> <li>• hand back the facilities in a previously agreed condition.</li> </ul> These terms are not subject to change as a result of the proposed extension
2. The <b>return condition</b> of the facilities at the expiry of the WMSC, shall be such that they;		
a) are in accordance with the specifications pursuant to which they were procured (save for agreed changes); and		The return condition of the facilities will be in accordance with the contractual provisions which remain unchanged. Condition surveys will be commissioned at appropriate times to ensure that this will be the case.
b) are in a condition consistent with proper use up to that point in time; and		See above
c) are capable of being operated for the remainder of their design life; and		See above

d) are likely to be capable of being re-financed at commercial rates; and		The return condition of the facilities will be in accordance with the contractual provisions which remain unchanged. Condition surveys will be commissioned at appropriate times to ensure that this will be the case.
3. Any prescriptive specification items required by the Councils have been incorporated in the specification.		Not relevant to proposed extension. There are no prescriptive specification items to consider
4. Any operating restrictions required by the Councils have been incorporated in the operating requirements.		Not relevant to proposed extension. There are no operating restrictions required by the Councils to consider
5. Any major component warranties required by the Councils have been requested in Mercia's contract documents for the facilities.		Not relevant to proposed extension. The Councils' requirements for major component warranties have already been addressed and warranties provided
<b>Overall Parameter Status</b>		<b>Officers' view is that the Technical Parameters are satisfied</b>