

<b>MEETING:</b>	<b>CABINET</b>
<b>DATE:</b>	<b>13 DECEMBER 2012</b>
<b>TITLE OF REPORT:</b>	<b>TO CONSIDER FUTURE OPTIONS FOR WASTE CONTRACT</b>
<b>REPORT BY:</b>	<b>HEAD OF SPECIAL PROJECTS</b>

## **1. Classification**

Open

## **2. Key Decision**

This is a Key Decision because it is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates:

Notice has been served in accordance with Part 3, Section 9 (Publicity in connection with key decisions) of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

## **3. Wards Affected**

County-wide

## **4. Purpose**

To consider the proposals being made by Mercia Waste Management for the treatment of residual waste.

## **5. Recommendation(s)**

**THAT: Subject to Worcestershire County Council giving approvals substantially in the same form as those contained in the recommendations of this report**

- (a) **Notes, pursuant to the Cabinet Report of 16<sup>th</sup> February 2012 relating to a variation to the existing waste contract to provide for an Energy from Waste plant at Hartlebury Trading Estate (the EfW Plant), the ongoing discussions with Mercia Waste Management Limited (Mercia) in relation to their proposals and the current status of satisfaction of the Parameters identified in that report;**

- (b) **Cabinet authorises the Director for Places and Communities in consultation with the Cabinet Member for Major Contracts, the Chief Officer Finance and Commercial and Worcestershire County Council and through the joint governance arrangements between the two authorities to pursue terms for alternative methods of finance for the EfW plant;**
- (c)
- (i) **authorises the Director for Places and Communities in consultation with the Cabinet Member for Major Contracts and Worcestershire County Council and through the joint governance arrangements between the two authorities, to consider how the commissioning and operation of the EfW Plant could be integrated into the existing arrangements with Mercia, and**
- (ii) **if the Director for Places and Communities considers there is no satisfactory resolution in respect of point (i) above then (subject to f) below) he is authorised if he considers it necessary (in consultation with the Cabinet Member for Major Contracts and Worcestershire County Council and through the joint governance arrangements between the two authorities) to launch a tendering exercise to commence the direct procurement by the 2 Councils of the EfW Plant in accordance with paragraph 9.9 below;**
- (d) **Notes that Worcestershire County Council are authorised to procure and commence enabling works up to a maximum capital cost of £1.8m at Hartlebury in order to maintain the programme for the EfW Plant;**
- (e) **Require the Director of Places and Communities to report back during the summer of 2013 with proposals for financing and procuring the EfW plant (by variation of the existing PFI contract or fresh procurement) to enable Cabinet to take a final decision; and**
- (f) **Notes that Worcestershire County Council is expected to approve similar recommendations and that c ii) is subject to satisfactory negotiation and agreement with Worcestershire County Council of necessary amendments to the current Joint Working Agreement in place between the Councils; and**
- (g) **Requires the Director for Places and Communities to report back to the Cabinet in the report referred to in (e) on the decisions taken by Worcestershire County Council on waste contract management and any implications for Herefordshire Council, .**

## **6. Key Points Summary**

- **The Secretary of State for Communities and Local Government granted planning permission for the construction of a 200,000 tonnes per annum Energy from Waste Plant at Hartlebury, Worcestershire (a site in the ownership of Worcestershire County Council) on the 19<sup>th</sup> April 2012.**
- **The decision of Cabinet of the 16<sup>th</sup> February 2012 required a set of parameters to be met before agreeing to proceed with a variation to the Waste PFI Contract. These parameters**

related to Planning, Technical, Financial and Contractual matters.

- The Planning and Technical Parameters have been met or would be before a variation was signed.
- It is believed that the Financial Parameters and in particular Value for Money could be improved by investigating the financing of the project by using alternative methods of finance.
- The Review of Herefordshire and Worcestershire JMWMS Residual Options Appraisal continues to show that EfW with or without CHP is the preferred option and the consent for EfW at Hartlebury strengthens their rankings.
- The current method of residual waste disposal is by landfill at Hill and Moor in Worcestershire; the landfill will be full by 2023 if the two counties continue to landfill at current rates.

## **7. Alternative Options**

7.1 The purpose of this report is to allow Officers to explore alternative options for the financing the EfW at Hartlebury.

## **8. Reasons for Recommendations**

8.1 The recommendations allow the Councils to explore options that potentially deliver better value for money and reducing any adverse effects of programme delay by commencing enabling works at Hartlebury.

## **9. Introduction and Background**

9.1 On the 16<sup>th</sup> February 2012 Cabinet authorised the Director of Places and Communities to enter into negotiations with Mercia to conclude a Variation to provide the EfW Plant in line with certain Parameters set out in four categories as follows: Planning, Financial, Contractual and Technical. Appendix 1 shows the current position in the satisfaction of the parameters as a result of the Councils' on-going confidential commercial negotiations with Mercia.

### **9.2 Planning Parameters**

The Planning Parameters were satisfied when the Secretary of State granted planning consent in summer 2012 following the call-in Planning Inquiry. The consent requires any development on site to commence within 3 years of the grant i.e. by July 2015.

### **9.3 Technical Parameters**

AMEC, the Councils' technical advisers, have provided an opinion that Mercia's proposals for EfW Plant satisfy the Technical Parameters (see Appendix 4).

1. Previous Cabinet reports dealt with the Options Appraisal contained with the Joint Municipal Waste Management Strategy (JMWMS) 2009. The proposals from Mercia are in the context of the JMWMS and this has been subject to detailed consideration in the Planning Inquiry and Options Appraisal which has been conducted as part of the project. The relationship between the JMWMS and Mercia's proposals was dealt with in detail in the Planning Inquiry.

The JMWMS has not become outdated as a result of any material changes in waste treatment technology since its publication as shown by an Options Appraisal refresh that was

commissioned in Autumn 2012. This document, which continues to rank EfW highly (with or without CHP), is attached at Appendix 2.

#### 9.4 Financial Parameters

The Financial Parameters remain the focus of current activities, particularly around Value for Money, which ties in with many of the observations made by some members of the public and objectors in relation to these proposals.

#### 9.5 Financial Parameters – Affordability

The latest draft financial model provided by Mercia for operating the waste disposal services including the EfW plant is subject to commercial confidentiality and it is still subject to on-going negotiation being based wholly on relatively expensive bank debt financing. Because of the potentially expensive bank funding, this model may not be the optimal solution for the Councils. Based on an initial examination of the model and adjusting the Councils' current budget to bring it into line with waste tonnage predictions, the average annual cost for the 2 Councils under current arrangements could be in the region of £32m pa. This compares with an average cost to the 2 Councils of about £38m pa under Mercia's proposals with the EfW Plant. However, this potential increase of about £6m pa equates to an increase of about £36 per tonne in the 'do nothing' scenario continuing to use landfill as the primary means of disposal (Appendix 3 shows the estimated trajectory of landfill tax). Also, if landfill physically continues at the current rate, the void space will become exhausted in 2023 on current estimates when the Councils could be expected to pay rates similar to that proposed by Mercia, with a mark-up, and no controls or capacity guarantees.

#### 9.6 Financial Parameters – Value for Money

As part of developing their proposals, Mercia have undertaken a tendering exercise for the EFW Plant. The Council's Technical Advisors, AMEC, have undertaken due diligence work, including sight of Mercia's confidential data, which has provided reassurance that and have expressed the view that Mercia's process for obtaining have obtained very competitive tender prices for the EfW Plant should not be a bad deal for the Councils (see Appendix 4). The issue that remains is that of Value for Money (VfM) due in the most part to the costs of alternative methods of financing the project. These include:

- a) Bank debt (as proposed by Mercia);
- b) Institutional financing (such as a bond or investment from a pensions provider);
- c) The use of state Guarantee to re-finance the "balloon" that would arise from financing the EfW Plant over its life rather than the shorter life of the existing contract;
- d) Part or full public finance using prudential borrowing;

Cabinet is asked to authorise officers to pursue proposals for alternative methods of finance for the EfW plant.

#### 9.7 PFI Structure

The original PFI contract was awarded a grant to support the additional cost of private sector bank financing (PFI credits). Due to the effects of inflation and other economic factors, the grant only supports about half of the level of debt that would be required by the project going forward. This support has been justified historically by the value of the risk transfer, particularly on balance sheet debt from the public to the private sector, but this has become blurred in recent years.

The Councils will need to be cautious about mixing different sources of finance in terms of the project procurement and the rules associated with PFI. Appropriate advice will be taken on this issue.

#### 9.8 Contractual Parameters

As Mercia's proposals represent a variation to an existing contract that anticipated a similar facility (at a different time and in Kidderminster) the required terms are essentially in place. The main provisions that need to be varied are those which will flow from the satisfaction of all the Parameters.

#### 9.9 Procurement

It is recommended that consideration be given to how the commissioning and operation of the EfW Plant could be integrated into the existing arrangements with Mercia. However in the event that the best blend of finance does not meet existing Contractual Parameters, the Councils may need to seek tenders for the direct procurement of the EfW Plant. Authorisation for these actions is sought.

#### 9.10 Joint Working Agreement

Subject to the agreement of a variation our contract for the procurement of an EfW Plant, Worcestershire County Council and Herefordshire Council will vary the existing Joint Working Agreement so that:

- a. its duration is commensurate with the intended design life of an EfW Plant; and
- b. so that the assets and liabilities of the assets to which the JWA relates can by agreement and/or expert adjudication be distributed equitably at its expiry having agreed to the respective contribution of the Councils over its life.

#### 9.11 Programme

Adverse effects on the programme for the provision of an EfW Plant caused by further negotiations and/or a further tender process should be mitigated by the commencement of enabling works, including planning conditions satisfaction, for which Worcestershire County Council require authorisation. This would be funded by Worcestershire County Council and would be at Worcestershire's risk pending the final decision on the EfW Plant, this risk is worthwhile as the enabling works would further the opportunity to exercise the planning consent and reduce delay.

### **10. Key Considerations**

- 10.1 The report and proposed recommendations are intended to enable the Councils to consider different options for the financing of the EfW Plant to ensure that the authorities secure a proposal that delivers the best possible Value for Money.

### **11. Community Impact**

- 11.1 The proposed plant is sited in Worcestershire; however the proposal enables both Counties to move from their current reliance on the landfilling of residual waste.

### **12. Equality and Human Rights**

- 12.1 The report and its recommendations do not have an impact on Equality or Human Rights.

### **13. Financial Implications**

- 13.1 The purpose of the report is to give Officers the authority to explore other options to finance the development of the EfW at Hartlebury. The Council currently retains KPMG to act as its financial advisors solely to that Herefordshire Council to advise on Value for Money and Affordability.

## **14. Legal Implications**

- 14.1 This report does not commit the Council to any variation to the existing contract and the Councils' will continue to receive Legal Advice from the Project's Legal Advisors, Eversheds.

## **15. Risk Management**

- 15.1 At this stage the recommendations merely allow further options to be explored for the funding of the project. The principle risk at this stage the risks of adverse effects on the programme for the provision of an EfW plant at Hartlebury caused by further negotiations and/or a further tender process. These risks can be mitigated by the commencement of enabling works, including planning conditions satisfaction. The implementation of Recommendation 1(d) is intended to mitigate this risk.

## **16. Consultees**

- 16.1 None

## **17. Appendices**

Appendix 1 – Current status of Parameters

Appendix 2 – Options Appraisal – October 2012

Appendix 3 – Landfill Tax Trajectory

Appendix 4 – AMEC report on Technical Parameters

## **18. Background Papers**

- 18.1 None identified.