

Appendix A to Waste Cabinet Report:

Herefordshire & Worcestershire Waste Programme: Parameters Report

Parameters

1. Purpose / Introduction

Recognising the existing Waste Management Services Contract (WMSC) and in order to avoid iterative decision making on points of detail, Cabinet agreed to a defined mandate – set of parameters – within which any Energy from Waste (EfW) Variation to the Waste Management Services Contract could be concluded.

The parameters are split into:

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

This update shows the status of these parameters as at 2 December 2013.

2. The Parameters

Planning Parameters		
<i>Parameter</i>	<i>Status</i>	<i>Commentary</i>
There are no planning conditions which degrade the performance of the plant to such an extent it is not suitable to meet the output specification.		Conditions to Planning Application will have no impact on the performance of the Plant. Parameter Complied with – no further action
There are no planning conditions which render the Variation not value for money for the Councils.		Conditions to Planning Application will have no impact on the Value for Money of the Plant. Parameter Complied with – no further action
Overall Parameter Status		COMPLETE

Financial Parameters		
<i>Parameter</i>	<i>Status</i>	<i>Commentary</i>
1. The Councils are satisfied that the additional cost of the Variation is affordable in relation to:		
a) the Councils' MTFP and relevant reserves; and		The Financial Plans for the two Councils now incorporate the likely increases in costs.
b) the total cost of Waste Contract and the Variation for the life of the Waste Contract to 2023 (or as extended) compared with the inflated financial envelope of what was originally intended to be delivered (Kidderminster); and		<p>In summary, the Energy from Waste Plant Contract Variation, is the preferred solution for the Waste Disposal Authorities. The Value for Money Options Analysis shows that this option represents a cost to the Councils of:</p> <ul style="list-style-type: none"> • Circa £678 million in Net Present Cost Terms over the whole Useful Life of the Energy from Waste Plant. <p>In Net Present Cost terms, the EfW Variation is £128 million cheaper than the "continue as is" option for the disposal of residual waste for Herefordshire and Worcestershire over a 25 year period post construction.</p>
c) likely costs of ownership and operation beyond the life of the Waste Contract (as extended) whether out-sourced or not (including the amount of any balloon		The preferred option from a Value for Money analysis is an EfW option that includes a requirement for the Councils to take on the unamortised debt from the EfW at the expiry of the PFI contract (2023).

payment to be made on termination/expiry).



<p>2. The additional cost of the Variation represents value for money when assessed:</p>		
<p>a) absolutely in terms of the processes used by Mercia to procure competitively the facilities comprised within the Contractor's Proposals; and</p>		<p>This was undertaken by the Councils' Technical Advisors who have confirmed that the process used and evidence presented represents a sound position to allow the continuation of the procurement of the Engineering, Procurement and Construction (EPC) contractor</p>
<p>b) relatively with other similar facilities procured recently;</p>		<p>The procurement exercise has been reviewed by the Councils' Technical Advisors who have confirmed that Engineering, Procurement and Construction (EPC) was a competitive process and the costs presented are within the range seen on similar and recent comparative deals.</p>
<p>c) absolutely in terms of the processes used by Mercia to procure competitively the facilities comprised within the Contractor's Proposals; and</p>		<p>Duplicate of 2 (a)</p>
<p>d) relatively with other similar facilities procured recently;</p>		<p>The procurement exercise has been reviewed by the Councils' Technical Advisors who have confirmed that Engineering, Procurement and Construction (EPC) costs are within the range seen on similar and recent comparative deals.</p>
<p>e) in the light of the opportunity cost and other disadvantages of the "do nothing" option having regard to both:</p>		

(i) the effects of an increasing land fill tax		The Options Appraisal carried out as part of the Value for Money Assessment considered a number of options including "do nothing" ('Continuing as is'). This is detailed in the main report.
(ii) the finite capacity of existing landfill and the absence of a planning consent for any other form of residual waste treatment; and		
f) in the light of the opportunity cost of terminating the Waste Contract (in whole or in part) and re-procuring the facilities afresh		
3. The amendments to the Schedule 6 prices and Payments Mechanism are made on the assumption that capital costs are amortised linearly over the design life of the facilities comprised within the Variation.		See 1c) above
4. The Internal Rate of Return (IRR) over the whole life of the Waste Contract shall not exceed the IRR used in the financial model in the original procurement.		Currently the IRR contained in the Mercia Financial Model is lower than that agreed within the 1998 deal
5. DEFRA (WIDP) approve the Variation Business Case .		A draft Variation Business Case has been submitted to Defra. The authorities are currently working through points of clarification with Defra.

6. Neither DEFRA nor Audit Commission indicate that they have an objection to the Variation on grounds of value for money.

Currently working with DEFRA and Treasury on points of clarification following submission of the draft Variation Business Case in July 2013 and subsequent updates and discussion.

Contractual Parameters		
<i>Parameter</i>	<i>Status</i>	<i>Commentary</i>
1. There are no alterations to the Waste Contract, its structure or financial basis (including models) resulting from the incorporation of the Variation, save for those		
<ul style="list-style-type: none"> a) necessary to give effect to the Variation; and 		<p>A draft Variation Agreement is being considered by officers in conjunction with legal, technical and financial advisors.</p> <p>The Variation uses the structure of the Waste Contract only varying where necessary. The Variation will also include a number of key supplemental contractual documents such as the construction contract for the Plant, an updated operation and maintenance contract to reflect the revised arrangements for the services to be provided at the Plant and property documentation to provide the necessary access to the Council's site for the purposes of constructing and operating the Plant. The Variation also provides for some aspects of the Waste Contract to fall away such as the references to the original bank financing documentation and provisions specifically related to the British Sugar site being the original location for the Waste to Energy facility.</p>

<p>b) bringing the Waste Contract into compliance with current and foreseeable legislation; and</p>		<p>The draft Variation Agreement also proposes to update a number of provisions to reflect current legislation and good practice such as provisions in respect of confidential information and Freedom of Information Act requests. The draft Variation Agreement will require that the Plant complies with current and foreseeable legislation. It cannot operate if it does not comply with the law. The current position as regards the management of unforeseeable waste legislation will be updated having regard to the revised arrangements for the Plant.</p>
<p>c) the net effect of which is to deliver a commercial benefit to the Councils</p>		<p>As highlighted above, a draft Variation Agreement is being considered by officers in conjunction with legal, technical and financial advisors. This draft includes various schedules where specialist input is being obtained</p> <p>A number of areas of the draft Variation Agreement are subject to further review and discussion with Mercia as necessary.</p> <p>All outstanding matters are being progressed with the objective of achieving the stated parameter and being in the best interests of the Councils.</p>

<p>2. Legal opinion from Leading Counsel has been obtained confirming that the execution of the Variation by the Councils, in particular in relation to the "balloon" payment, should not be construed as ultra vires the power of the Councils.</p>		<p>The Councils rely upon advice from Leading Counsel sought on a number of occasions.</p> <p>Ongoing consideration and negotiation of the draft Variation Agreement is being undertaken with the advice received in mind and the proposals continue to be checked and validated with Leading Counsel.</p>
<p>3. There is no realistic prospect of a material delay to or cessation of the execution of the Variation as a result of a challenge to how the facility is being procured or operated and the European Commission, having been apprised of all of the facts (e.g. through the issue of a voluntary ex ante transparency notice) relating to how the Counties intend to effect the Variation, has not indicated that it has an intention to challenge UK government on procurement grounds.</p>		<p>Ongoing consideration and discussion of the draft Variation Agreement with Mercia is being undertaken in accordance with advice received to date and the proposals continue to be checked and validated with Leading Counsel.</p>
<p>4. The period of the Waste Contract is not extended unless such extension produces an economic benefit to the Councils and is in any event for no longer a period than that envisaged by the original EU procurement process.</p>		<p>The draft Variation Agreement does not propose to extend the duration of the Waste Contract.</p>

<p>5. Both DEFRA and the Audit Commission have indicated that they have no objection to the Variation (in its final form) being executed by the Councils.</p>		<p>Currently working with Defra and HMT on points of clarification following submission of the draft Variation Business Case (and subsequent clarifications).</p>
<p>6. Herefordshire Council and this Council have entered into an agreement to extend the Joint Working Agreement insofar as it relates to this facility for a period commensurate with the intended life of the facility.</p>		<p>The Councils have agreed the Principles of a new Joint Agreement and have instructed legal advisors to draft a revised Joint Agreement. This revision will also include; agreed changes to the Payment Split between the two Councils to ensure VFM is delivered to both authorities and revisions to governance.</p>

Technical Parameters		
<i>Parameter</i>	<i>Status</i>	<i>Commentary</i>
1. The Reliability, Availability, Maintainability and Safety (RAMS) and Life Cycle Costs (LCC) are such that:		
a) the costs of running the facility are the same or better than those for recently procured similar plants (adjusted for capacity and time); and		<p>The Councils' Technical Advisors have reviewed the proposed operational costs and maintenance plans and forecasts for the facility and are satisfied that:</p> <ul style="list-style-type: none"> • the proposed Operational costs are in line with current market positions. • the maintenance plans and forecast maintenance expenditure although under ongoing review to ensure that there is no reduction in maintenance at the expense of long term running costs, are clearly identified throughout the anticipated life of the facility, both when under the control of MWM and after handback to the Authority at the end of the current contract term • The long term maintenance and lifecycle provisions are in general alignment with current market expectations.
b) the costs of running the facility are not deflated during the period up to the end of the period of the Waste Contract at the expense of increased running costs from that point to the end of the design life of the facility.		

<p>2. The return condition of the facilities comprised within the Variation at the expiry of the Waste Contract, shall be such that they;</p>		
<p>a) are in accordance with the specifications pursuant to which they were procured (save for agreed changes); and</p>		<p>The proposed operational and maintenance budgets have been reviewed by the Councils Technical Advisors as part of their evaluation of MWMs proposals and those set out within the EPC specifications.</p>
<p>b) are in a condition consistent with proper use up to that point in time; and</p>		<p>The proposed maintenance regime, if followed, should ensure that the facility is operated and maintained to a standard such that on termination of the existing contract it is in a condition commensurate with its age.</p>
<p>c) are capable of being operated for the remainder of their design life; and</p>		
<p>d) are likely to be capable of being re-financed at commercial rates; and</p>		<p>The provision and magnitude of the maintenance reserve account has been reviewed to ensure that it is set at a level that balances value for money against the need to provide comfort to any incoming operation and maintenance contractor. Recognising the required remaining useful life of the plant at the point at which it is "handed back" to the authorities (in 2023,) a more rigorous approach to confirming that planned maintenance has been carried out by MWM has been proposed in order to ensure that the handback condition is of the standard anticipated. This remains subject to approval by MWM.</p>
<p>e) are in a condition which, having regard to the adequacy of any maintenance reserve does not create an operational and/or maintenance burden for the remainder of the design life.</p>		

3. Any prescriptive specification items required by the Counties [such as additional pollution control/de-nox] have been incorporated in the specification for the facility.		No prescriptive restrictions currently required. Complete
4. Any operating restrictions required by the Counties have been incorporated in the operating requirements for the facility.		No operating restrictions currently required. Complete.
5. Any major component warranties required by the Counties have been requested in Mercia's contract documents for the facilities.		<p>These have been reviewed by the Councils Technical Advisors as part of their overview of the MWM EPC tender process. Further work will be undertaken on the final EPC specification proposal to confirm compliance with the required parameters prior to Financial Close.</p> <p>The Councils Technical Advisors have confirmed that Mercia Waste Management has considered the warranties offered as part of their evaluation of the tenders, and have pressed their suppliers on the level of warranty offered. The Councils Technical Advisors have seen evidence of these warranty discussions and can confirm that the contract documents include the component warranties. As negotiations around these matters are currently being finalised a final review of the warranties and guarantees offered under the EPC</p>

		contract will be required prior to Financial Close.
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