

<b>MEETING:</b>	<b>CABINET</b>
<b>DATE:</b>	<b>7 JANUARY 2010</b>
<b>TITLE OF REPORT:</b>	<b>HEREFORDSHIRE AND WORCESTERSHIRE WASTE DISPOSAL CONTRACT – FUTURE ARRANGEMENTS</b>
<b>PORTFOLIO AREA:</b>	<b>ENVIRONMENT &amp; STRATEGIC HOUSING</b>

**CLASSIFICATION:** Open

### **Wards Affected**

County-wide

### **Purpose**

To authorise, subject to similar approval from Worcestershire County Council, our Waste Disposal Contractor, Mercia Waste Management Ltd, to progress proposals for the development of an Energy from Waste Plant at Hartlebury Trading Estate near Kidderminster (the EfW Proposal).

To agree to indemnify the contractor the reasonable costs of Mercia in bringing forward and pursuing the EfW proposal. This indemnity be treated in the same way as other significant costs under the PFI contract in accordance with the current standstill arrangements should the costs prove abortive and no Variation be agreed.

### **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.

It was listed in the Forward Plan.

### **Recommendation(s)**

**THAT:** subject to similar approvals being given by Worcestershire Council, in relation to (a), (b), (c) and (d) and having due regard to the technical assessment received from the technical advisers to the Councils in relation to the Energy from Waste proposal described in paragraph 8 of this report (the EfW proposal), and the Joint Municipal Waste Management Strategy, the Cabinet:

- (a) Supports in principle the concept contained in the EfW proposal and the progression of the proposal to planning stage;**
- (b) Authorises the Director of Environment and Culture, in consultation**

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Further information on the subject of this report is available from  
Andy Tector, Assistant Director (Environment and Culture) on (01432) 261989

with the Director of Resources and the Assistant Chief Executive (Legal and Democratic), to enter into negotiations with Mercia Waste Management Ltd (Mercia) and to prepare a potential variation (the Variation) to the existing Private Finance Initiative (PFI) Contract (the Contract) to give effect to the EfW Proposal for subsequent consideration by the Cabinet should planning permission be granted in respect of it;

- (c) Agree that the reasonable costs of Mercia in bringing forward and pursuing the EfW proposal be treated in the same way as other significant costs under the PFI contract in accordance with the current standstill arrangements should the costs prove abortive and no Variation agreed;

and

- (d) Receives a further report in due course to consider any recommended Variation to the Contract or at the earliest opportunity if it becomes apparent that Herefordshire's contribution towards the indemnity may exceed £650,000.

## **Key Points Summary**

- The EfW Proposal is to develop an Energy from Waste Plant at Hartlebury Trading Estate near Kidderminster. The site is owned by Worcestershire County Council who are proposing to appropriate the land to Mercia.
- Authorisation is required to progress necessary contract negotiations re potential variation with Mercia and for our contractor to progress a Planning Application.
- If approved by Cabinet the contractor is to be indemnified for the costs of concluding the Variation in the event that the costs prove abortive and no Variation be agreed.
- A future report is to be put before Cabinet which will give detailed cost implications of the Variation to the authority.

## **Alternative Options**

- 1 The Cabinet may decide not to authorise the proposals set out in this report. In this event the contractor will not be instructed to progress the EfW Proposal. This may put the authority at risk from not meeting its lawful obligations to meet necessary landfill diversion targets as set out under the Landfill Allowance Trading Scheme and incur significant cost.

## **Reasons for Recommendations**

- 2 The Waste Disposal Contractor has presented the EfW Proposal in response to the councils' requirement for a suitable Residual Waste Treatment Solution.
- 3 The Contractor's proposal is supported by the recently endorsed First Review of the Joint Municipal Waste Management Strategy.

## **Introduction and Background**

- 4 This report refers to the Waste Management Private Finance Initiative (PFI) Contract (the

Contract) that was entered into between Herefordshire and Worcestershire County Councils (the Councils) and Mercia Waste Management Ltd. (Mercia) in December 1998.

## Key Considerations

5 At the Cabinet meeting of the 22 January 2009, the Director of Environment and Culture set out the recent history of the Contract, some of the key terms and the statutory targets that have been set for Waste Disposal Authorities for the diversion of Biodegradable Municipal waste from landfill. At both of these meetings the Director of Environment and Culture was authorised to encourage Mercia to bring forward proposals under the existing PFI contract for future residual waste treatment facilities (Minute 84). Members are referred back to the previous reports and history of this Contract.

6 On the 10 September 2009, the Director of Environmental and Culture presented a report on, and Cabinet endorsed and adopted the first review of the Joint Municipal Waste Management Strategy (JMWMS). Paragraph 20 of this paper contained the following text:

*“20 The prescriptive approach to treatment of residual waste by an autoclave process has been removed from the draft revised strategy. There is now a new policy to increase diversion away from landfill supported by a Residual Options Appraisal (Annex D). This provides a detailed appraisal for waste treatment options capable of increasing the value derived from the residual waste stream. The appraisal informs the method for future treatment of residual waste, proposals for which are expected to come forward from the Waste Disposal Contractor (Severn Waste Services). The robustness of the strategy is important in supporting necessary applications for planning consent.”*

7 The residual options appraisal in Annex D of the JMWMS has the technology of Energy from Waste with Combined Heat and Power as the highest ranked solution for the Councils' needs. This is the technology in the EfW proposal below.

8 The proposal Mercia wishes to bring forward to the Councils is for the construction of an Energy from Waste Plant with Combined Heat and Power at Hartlebury Industrial Estate in Worcestershire (the EfW proposal). The proposed capacity is 200,000 tonnes per annum.

9 Entec, specialist technical advisers to the Councils on waste, have examined the EfW Proposal both in relation to their own assessment of the Councils' requirements and the JMWMS. The Executive Summary of Entec's report concludes that the EfW Proposal is likely to provide the flexibility required for the Counties' ongoing waste management needs over a number of differing waste growth scenarios. A copy of that executive summary is attached at Appendix 1.

## Community Impact

10 The proposed Energy from Waste plant is to be established in Worcestershire.

## Financial Implications

11 The financial assessments that need to be made are whether the EfW Proposal is:

- a. Affordable, and
- b. Represents Value for Money

12 The affordability test is one of expenditure against the budget and the impact upon the Councils from landfill tax and LATS (Landfill Allowance Trading Scheme) if the Council

continues to dispose of waste through landfill.

- 13 Value for money could be assessed by objective comparison, perhaps with other projects. In this case, Mercia has offered to conduct its tendering for the key components and work packages on an open book basis which should ensure that the advantages of competitive pricing reach the Councils. Some details have been provided by Mercia on a confidential basis as containing commercially sensitive information relating to the business affairs of Mercia and the Councils which would be exempt information should Cabinet wish to discuss those details.
- 14 Other than giving an indication that, on balance, the EfW Proposal should pass these assessments, it is not possible at present to provide a detailed and robust financial assessment because:
  - a. Current market conditions in the banking sector are unstable and minor movements in interest rates and banking margins affected by those conditions cause significant changes in the costs to which the Councils would be exposed;
  - b. There is significant volatility in commodity pricing affecting the construction costs of the proposals.
  - c. With much of the material for the EfW Proposal being procured outside the UK, current disadvantageous Foreign Exchange rates are having an adverse effect on the cost of materials;
  - d. Given that any secure planning permission may be 12 to 18 months away, current trends and market conditions may improve significantly in that period. Conversely, Mercia's pricing of the risk of further deterioration in market conditions may have an unduly adverse effect on the economics of the EfW Proposal;
  - e. Any planning permissions may themselves contain conditions or restrictions which have a significant effect on the construction or operational costs of the EfW Proposal;
  - f. The open book tendering process described in paragraph 12 may result in significant changes in current pricing assumptions;
  - g. Negotiations which are yet to take place between the Councils and Mercia may have a material effect on price.
- 15 Given that there are many imponderables, it is suggested that the Cabinets of the 2 Councils receive a further report providing detailed analysis of the financial and waste disposal issues should planning permission be obtained by Mercia in respect of the EfW proposal. This would allow the Cabinets to fully consider any proposed Variation to the PFI contract at that time. In the meantime, the Director will negotiate with Mercia to explore the potential for any variation based on the EfW proposal. Deloitte's, financial advisors to the Councils on this matter, are undertaking a detailed financial assessment of Mercia's proposal.
- 16 Cabinet will recall that it has encouraged Mercia to come forward with proposals to deal with future residual waste treatment under the PFI Contract. Mercia's proposals for an EfW facility with Combined Heat and Power on the Hartlebury Industrial Estate site appear a good match with the JMWMS and are worth progressing through a planning application with a view to considering a Variation to the PFI contract should planning permission be secured.
- 17 The Contractor will incur significant costs in pursuing the EfW proposal which would be abortive if the PFI contract ultimately terminated prematurely without any Variation being put into effect. As the Councils are not in a position to agree any Variation at this stage, and

having previously incurred significant costs in connection with its earlier proposal at Kidderminster, it would be unreasonable for the Council to expect Mercia to bear the costs of bringing forward the EfW proposal in the event that it proved abortive. Consequently, the Councils have been requested to agree that such reasonable costs are dealt with in the same way as other significant costs under the PFI Contract in accordance with the terms of the current standstill arrangements. In this case it is expected that Herefordshire would have to underwrite in the region of 25% of the costs that Mercia might incur, resulting in a liability to Herefordshire Council of a maximum of £650,000.

- 18 In early 2007, Worcestershire County Council acquired land at Hartlebury Trading Estate for the purposes of developing a waste disposal facility on the site. The specific intention was the construction of an Autoclave Waste Treatment facility. The planning permission granted for this facility contained a condition requiring the proposer to demonstrate a viable market for the by-product of the autoclaving process. The owner of the autoclave technology, Estech, was unable to satisfy this condition before the expiry of the planning permission earlier this year such that the consent lapsed. For the purposes of clarity and to the extent that it is necessary, now that it appears clear that development of an autoclave will not proceed on the site, it is proposed that the Hartlebury land interest be appropriated for planning purposes relating to the EfW Proposal.

## **Legal Implications**

- 19 There are clearly a large number of legal issues that need to be considered in this matter. The Councils have consistently used specialist legal advice from Eversheds on such issues as, the terms of the PFI Contract Variations and Procurement challenge. Eversheds are currently advising that the approach we are adopting is achievable with the risks of a successful procurement challenge being low. All legal advice has been provided by Eversheds Solicitors, appointed by Worcestershire on behalf of both Authorities, but before Herefordshire Council contractually commits to its share of the recommended indemnity or to the proposed contract variation further advice will be obtained as necessary on legal issues, particularly in relation to European procurement rules.

## **Risk Management**

- 20 The principal risks relate to Mercia failing to secure Planning Permission and the inability of both Councils and Mercia to negotiate the Variation to the Contract and to procure from Mercia the EfW.
- a. To mitigate these risks the Contractors have employed specialist Planning Consultants to advise on their application.
  - b. The proposed Variations to the PFI Contract and procurement are complex and will require specialist financial, technical and legal advice. The Councils have instructed Deloitte to provide financial advice, Entec to provide technical expertise and Eversheds as legal advisors.

## **Consultees**

- 21 Worcestershire County Council

## **Appendices**

- 22 Appendix 1 - Entec report – Executive Summary

## **Background Papers**

Joint Municipal Waste Management Strategy For Herefordshire And Worcestershire – First Review – Cabinet report 10<sup>th</sup> September 2009