

**RESOURCE RECOVERY CONTRACT - PROGRESS UPDATE**  
**WDA/12/17**

**Recommendation**

That:

1. Members note the current state of developments with delivery of the Authority's 'Resource Recovery Contract' and the key issues currently arising.

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**Report of the Chief Executive**

**1. Purpose of the Report**

- 1.1 This report provides the Authority with an update on the progress of construction and commissioning of the Resource Recovery Contract (RRC), and the arrangements for disposal of the Authority's residual waste until operational full service commences.

**2. Background**

- 2.1 Update reports have previously been presented at the Authority meetings on 25<sup>th</sup> November 2016 and 3<sup>rd</sup> February 2017. Additional background detail to the Contract is contained within those reports.
- 2.2 MRWA have a contract with Merseyside Energy Recovery Ltd. (MERL), signed in December 2013, for waste management transfer and treatment services on behalf of Merseyside and Halton.
- 2.3 MERL has sub-contracted both the construction of the facilities and the operation and maintenance of the contractual delivery to waste management company, Suez. Upon satisfactory completion of construction and commissioning, the plants are handed from the construction sub-contractor to Suez for operation. Once MERL move from commissioning to full operation (termed Facility Operation Date, FOD), only then do they take on full contractual liability for the Authority's residual waste. Until then, MERL do retain contractual exclusivity over MRWA's residual waste for the purpose of commissioning, as and when they request it.

**3. Contract progress update**

**Wilton EfW**

- 3.1 As previously reported, the Wilton Energy from Waste (EfW) facility was completed and formally handed over from the construction contractor to MERL on 23<sup>rd</sup> December '16. Suez have since been operating the facility.

### Kirkby RTLS

- 3.2 The Kirkby Rail Transfer Loading Station (RTLS) has been handed over from the construction sub-contractor to Suez, and is now formally under their control. The facility has not yet, however, been formally completed and has one outstanding issue remaining with modifications being undertaken to waste compactor units to enable them to perform to contract specification. These are anticipated to be completed imminently.
- 3.3 An accident that occurred at the site in January (when a 'container handling unit' struck a roof beam in the facility container loading hall) has unfortunately meant a further delay to progression to full operations. As a direct result of the accident and the subsequent repair programme, the loading hall cannot be accessed whilst repairs are undertaken meaning that trains cannot be loaded for transfer during this time. The repairs are expected to be completed in July.
- 3.4 Whilst commissioning was originally planned to be completed with full service achieved by 1<sup>st</sup> October 2016, the ongoing issues at the Kirkby facility mean that the Contractor is not yet in a position to provide the Authority with the full services as defined under the Contract. It is for these reasons that MERL has not yet proceeded to operational full service (FOD) and the contract therefore formally remains in commissioning. MERL's intentions are to progress to FOD at the earliest opportunity, and they have stated they expect to achieve FOD shortly after completion of the roof repairs. They are not however currently able to provide a firm commitment to a definitive new full operations date.

### Interim Waste Disposals

- 3.5 Until full service (FOD) commences, and notwithstanding MERL's exclusive right to any waste they call for during commissioning, the liability for ensuring suitable and sufficient outlets for residual waste remains with MRWA. MERL are endeavouring to progress to FOD at the earliest practicable opportunity and are currently endeavouring to transfer as much as possible of the Authority's waste from Merseyside to the Wilton facility (as 'commissioning' waste). The challenges they continue to face mean that they cannot currently provide operational certainty over waste acceptance until roof repairs are completed.
- 3.6 As previously reported to the Authority, MRWA entered into a short-term agreement in December 2016 (initially running to end January 2017 but subsequently extended to end March 2017) when it became apparent that

alternative contingency disposal facilities would be necessary as a result of the MERL contract delays.

- 3.7 The unforeseen accident at the RTLS facility, and ongoing delay mean that the interim arrangements have now needed to be extended to end June 2017.
- 3.8 The agreement with Suez is for disposal capacity and gate fee rates for a range of residual waste disposal outlets with third party operators across the north-west. These disposal outlets will be used for any waste not requested by MERL for ongoing commissioning.

#### Impacts of delay

- 3.10 Despite the ongoing delays, there are not expected to be any impacts on District Council residual waste deliveries; they will continue to use existing disposal points (i.e. at the Authority's transfer stations) until further notice.
- 3.11 Because of the continued delays to progression to FOD, there is anticipated be an extended period of disposals to landfill, further increasing the amount of waste disposed to landfill above that previously anticipated.
- 3.12 The combination of disposals rates being paid to MERL for commissioning waste and to Suez for the alternative interim disposal arrangements are currently less than the Unitary Charge rate that was budgeted to be paid to MERL from full service (FOD). For these reasons, there is not expected to be any net negative financial impact on the Authority, rather there is anticipated to be a financial saving as a result of the current delay.

#### **4. Kirkby RTLS – odour management**

- 4.1 The issue of odour management at the Kirkby facility was previously reported to the Authority in both the November 2016 and February 2017 reports.
- 4.2 Since the previous reports, Suez was issued with a 'Regulation 36' Enforcement Notice by the statutory regulator, the Environment Agency (EA). The Notice required Suez to provide the EA with an updated Odour Management Plan (OMP) detailing how they, as the facility operator, plan to manage to facility to mitigate odours. Suez complied with that Notice and the updated OMP is in the process of being reviewed by the EA.
- 4.3 Suez commissioned independent odour specialists 'Odournet' to undertake a review of the Kirkby facility and its operations with a view to

recommending measures to improve odour management at the site. As of the writing of this report Suez have received the final Odournet report, are considering its contents and recommendations and are compiling their response to the work.

- 4.4 The Authority remains focussed on odour management at the Kirkby facility as a key issue of concern, and continues to work with the key stakeholders (including the EA and Knowsley MBC) to ensure matters are appropriately addressed in an effective and co-ordinated manner.

## 5. **Risk Implications**

- 5.1 The key risks to the Authority arising from the matters highlighted in this report are as follows:
- 5.2 There is a potential risk that further delay in progression to full operations will result in an extended liability on the Authority to have an alternative disposal outlet for waste that MERL does not request during ongoing commissioning.
- 5.3 There is a potential risk of challenge to the Authority's use of a negotiated procedure for the interim disposal agreement with Suez.
- 5.4 There is a risk that Suez do not fundamentally resolve their odour management issues in reasonable timescales because of the challenges in identifying the underlying causes and practicably deliverable solutions resulting in ongoing complaints and stakeholder concern.
- 5.5 Should the Environment Agency assess that appropriate measures are not been taken by Suez to address odour emissions, there is a risk of further enforcement action against Suez by the EA (which could include suspension of their Permit) and subsequent reputational damage, not just to Suez, but also to the Authority.
- 5.6 A summary of the risks and mitigating actions is provided below:

<b>Identified Risk</b>	<b>Likelihood Rating</b>	<b>Consequence Rating</b>	<b>Risk Value</b>	<b>Mitigation</b>
Extended commissioning and further delay to delivery of the Kirkby RTLS and progression to 'full operations' with the need to continue with interim disposal arrangements, leading to	3	3	9	1. Contingency agreement for alternative disposal arrangements negotiated with Suez; 2. Legal advice has been sought on MWDA's options and contingency arrangements;

risk of challenge.				3. Situation and arrangements will remain under constant review by MRWA senior management.
Odours issues at Kirkby RTLS unresolved by Suez in the short-medium term resulting in the risk of environmental enforcement action and reputational damage to the Authority.	3	3	9	1. Stakeholder engagement and co-ordinated action between key parties (EA/KBC/MWDA); 2. Legal advice sought to inform the Authority's position and appropriate response.

## 6. HR Implications

6.1 There are no HR implications associated with this report.

## 7. Environmental Implications

7.1 If Suez fail to substantially resolve their odour management issues in the short to medium term, there is the potential for continued odour impact and complaints from the local area.

7.2 As a result of the ongoing delays, further waste that was expected to be sent for energy recovery is expected to be disposed of to landfill.

## 8. Financial Implications

8.1 As the combination of the rates paid to both MERL for commissioning and to Suez for the interim alternative disposal outlets are lower than the rates that will be paid once the contract is in operational full service (termed the 'Unitary Charge'), there is not expected to be a negative financial impact on the Authority in 2017/18 as a result of the ongoing delay.

## 9. Legal Implications

9.1 The potential exists for a challenge to the use of the interim disposal agreement negotiated with Suez. Legal advice has been sought (and will continue to be sought) as required to inform the Authority's ongoing review of matters.

## 10. Conclusion

10.1 Positive progress has been made with both the Wilton EfW and Kirkby RTLS facilities now under Suez operational control. However, the Authority's strategic contract with MERL continues to experience some

operational issues with the Kirkby RTLS facility, resulting in an ongoing delay to progression to full operations.

- 10.2 There are not expected to be any significant impacts on District deliveries during the continued commissioning period, and MRWA officers will continue to work with all parties to ensure that this continues to be the case.
- 10.3 The Authority will continue to use temporary, interim disposal arrangements agreed with Suez. The requirement for these will be routinely reviewed by senior management.
- 10.4 Odours management at the Kirkby facility remains a key priority for the Contractor to satisfactorily address to ensure both full compliance with relevant statutory consents and to prevent the facility causing nuisance to the surrounding neighbours.
- 10.5 A further update will be provided to the Authority in the June meeting.

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The background documents to this report are open to inspection in accordance with Section 100D of The Local Government Act 1972 - Nil.