

**STRATEGIC REVIEW****WDA/05/14****Recommendation**

That:

1. Members agree to the proposed next phase of the Strategic Review of the Authority to meet the Authority's current and anticipated operational needs;
2. Members agree the terms to be offered for a time-limited period for Early Retirement and Voluntary Redundancy, as set out in Paragraphs 5.15, 5.16 and 5.18 of the report;
3. Members agree the principles of the Authority's (shareholder's) requirements set out at paragraph 6.4 for Mersey Waste Holdings Ltd (MWHL) to implement changes to the scale of operations of MWHL and to review the Shareholders Agreement and
4. Members delegate authority to the Chief Executive as shareholder's representative to undertake all necessary actions on behalf of the Authority to facilitate the Board achieving the Authority's requirements, including, but not limited to, the reduction of share capital and any changes to the Shareholders Agreement.

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**STRATEGIC REVIEW****WDA/05/14****Report of the Chief Executive****1. Purpose of the Report**

- 1.1 This report discusses the scope of the next stage of the strategic review of the Authority, in particular now that the Resource Recovery Contract has been signed.
- 1.2 The report proposes a number of actions in relation to external consultancy support, procurement advisors, volunteers for early retirement or redundancy, and MWHL.

**2. Background**

- 2.1 The Authority embarked on, and delivered, an ambitious procurement programme to deliver a number of contracts in order to fulfil its statutory duty to provide a sustainable and value for money waste management service for Merseyside. Large, long-term, value for money contracts are now in place for landfill, recycling and resource recovery, with beneficial Interim contracts being used to save money and increase diversion from landfill in the meantime.
- 2.2 As well as the management of a suite of waste contracts, the Authority also leads on waste strategy and waste minimisation delivering education, community support, environmental management and administration of waste for Merseyside.

**3. Suite of Contracts**

- 3.1 The suite of contracts managed by the Authority is as follows:

**Merseyside Waste Disposal Authority****31<sup>st</sup> January 2014**

### Residual Landfill

- 3.2 Two contracts (one via Mersey Waste Holdings Ltd) to provide sufficient capacity, on a reducing basis, for the landfill of residual waste which has not been recycled, or which it is not economically sustainable to recycle.

### Waste Management and Recycling Contract

- 3.3 This is a 20 year contract with Veolia, which is now in its fourth year. The contract is to manage the Waste Transfer Stations, Materials Recycling Facilities (MRFs), Education Facilities and Household Recycling Centres, together with haulage to other treatment facilities and haulage to residual landfill.

### Interim Contract

- 3.4 A Framework Contract with three organisations to divert waste from landfill until such time as the Resource Recovery Contract becomes operational. This has resulted in 70,000 tonnes being treated in the last two years.

### Other Interim Arrangement

- 3.5 An Inter Authority Arrangement with Greater Manchester Waste Disposal Authority (GMWDA) to divert up to 80,000 tonnes/year for two years from 2013 with a possible 12 month extension from 2015.

### Resource Recovery Contract

- 3.6 A 30-year contract has now been signed with Sita, Sembcorp UK (SSUK) with Financial Close occurring on the 23<sup>rd</sup> December 2013. The Energy from Waste facility is due to be operational in 2016.

## **4. Fitness for Purpose**

The Authority needs to adapt and change as the demands upon it change.

- 4.1 The savings which will accrue from the suite of contracts are substantial (prudently over £100M throughout the contract in the case of the RRC).

- 4.2 However, it is vital to adequately resource the contract management function of the Authority to avoid any dilution of the value for money of the contract throughout its life, so called 'Value for Money drift'.
- 4.3 The Contract Management function of the Authority serves to ensure the smooth and effective day-to-day running of each of the waste management contracts. In practical terms, this means dealing with the contractors performance, any change in circumstances, communications, Public and Community Relations, joint working, emergencies or abnormal situations, together with innovations and performance improvement programmes.
- 4.4 The contract management function also serves to control contractual costs and ensure the continued long-term delivery of value for money throughout the contract period. To put this into context, it should be noted that contractual payments will account for over 82% of the Authority's annual expenditure (£54M in 2013/14, out of a total Authority budget of £65M) and hence amounts to the vast proportion of the costs passed through to the Constituent Districts via the Levy.
- 4.5 Any failure to control costs can see significant Value for Money 'drift' in contracts over their life. Given that the RRC contract is for 30 years, the risk of drift or 'upward creep' in costs is significant.
- 4.6 Contractors may try to drive prices upward in order to boost their profit margins. There is a particular temptation for a contractor to secure price increases early on in the life of a contract, as these increases will be compounded every year over the remaining life of the contract.

## **5. Phase of Work – RRC**

- 5.1 The Resource Recovery Contract procurement has several remaining phases of work necessary to effect the transition from procurement to contract management. These can be summarised as:
1. Phase One - Preferred Bidder to Financial Close and Contract Signing- (completed)
  2. **Phase Two - Construction and Commissioning**
  3. Phase Three – 'Steady-State' Contract Management
  4. Phase Four – Contract end

## **Phase Two – Construction and Commissioning**

5.2 The next phase of the implementation of the Resource Recovery Contract is the construction of the EFW (Wilton) and the conversion of the Rail Transfer Loading Station (Kirkby). During this aspect of the Contract, the role of the Authority will be to ensure that what is built conforms to the contract and that it is fit for purpose.

5.3 In particular, the Authority will need to be adequately resourced to deal with:

- any Change Requests
- monitor costs and value engineering cost reductions
- monitor completion schedule impacts
- manage the overall programme plan and budgets in conjunction with the Contractor
- agree and manage the commissioning programme
- liaise with the Independent Certifier
- develop a management system for dealing with issues relating to Land, Property and Lease aspects of the Contract
- incorporate contract requirements into the management and administration of the Authority
- evaluate commissioning tests and develop a logistics plan to co-ordinate the movement of material between the transfer stations and direct deliveries by Districts.

5.4 There will a programme of training designed to maximise the value from their contracts and to improve their contract management capabilities for these complex and high value contracts.

## **External Support**

- 5.5 The external Procurement Director was engaged to conduct the overall programme, conclude dialogue and reach a position for Financial Close. Close was achieved with the Preferred Bidder and this has now been accomplished. Both contracts are now in place. It is proposed therefore to terminate the contract with the Procurement Director forthwith.
- 5.6 The work of external expert advisors, Eversheds, EY and SKM Enviros will be dramatically scaled back, save for any necessary contract follow up actions and assistance in delivering the contract management training programme. This is reflected in the proposed Budget for 2014/15 (Report WDA 03/14) elsewhere on this Agenda.
- 5.7 There will be a need to manage the transfer of knowledge, especially from the outgoing Procurement Director and expert advisors, to Authority Contracts Management Staff at all levels who will be dealing with the contract and the contractor for 30 years.
- 5.8 Many of the organisational changes will need to be made during the construction and commissioning phase to give time for staff to train and develop the required roles. However, it is intended to review contract management requirements again, particularly at the end of the construction and commissioning stage, to prepare for the 'steady-state' contract phase.

## **Waste Development Fund**

- 5.9 The successful procurements of the Waste Management and Recycling Contract (WMRC) and the Resource Recovery Contract (RRC) on the terms secured means that the Authority no longer has a need for the sinking fund for its original purpose. The fund which was collected from District Councils at the start of the procurement process provided a precaution against potentially very large levy increases once the terms and price of the contracts was finalised.
- 5.10 The Authority is therefore able to realign the fund to the achievement of the Joint Recycling and Waste Management Strategy (JRWMS) targets through the proposal to create a Waste Development Fund. This fund will be distributed to constituent District Councils under the terms of a Memorandum of Understanding (MOU). The Authority has consulted the District Councils on

the concept of joint working using the Waste Development Fund and the issue is the subject of a separate report elsewhere on this agenda.

## **Staffing**

- 5.11 High levels of resource and effort have gone into the procurement phase of work in the last few years (the WMRC took 3 years to procure and the RRC 7 years). Most of that has been via the use of external consultants (Procurement Director) and expert advisors, such as Eversheds, SKM Enviros and EY. However, a very substantial level of internal resource has also been employed from the Chief Executive, Directors and Contract Management staff.
- 5.12 With the reduction in procurement activity following the signing of the RRC, it is possible to release capacity, particularly management capacity, to concentrate on priority areas of work, including contract management, waste strategy and prevention, capital programme, and facilities and asset management.
- 5.13 It is now possible to consider reducing the number of employees without adversely impacting on the Authority's fitness for purpose in this phase of work.
- 5.14 In order to be able to achieve a potential reduction in staff numbers without compulsory redundancies, Members are asked to agree to a time-limited offer of Early Voluntary Retirement (EVR) and Voluntary Redundancy (VR) terms, within the relevant existing policies.
- 5.15 The existing policies give discretion to the Authority to offer various terms for early retirement or voluntary redundancy. Members are asked to agree to offer voluntary redundancy payments based on two weeks pay. The offer for EVR/VR to remain open for volunteers until the 28<sup>th</sup> February 2014.
- 5.16 Subject to Members agreeing the recommendations of this report, the Chief Executive will offer EVR/Voluntary redundancy (VR) to employees and select individuals for early retirement or voluntary redundancy within those policy terms, according to the requirements of the service, including the retention of key skills and experience to meet the present and anticipated needs of the Authority.
- 5.17 The Chief Executive will consult the Trade Union as necessary.



- 5.18 In order to ensure that key skills are retained and knowledge and experience is transferred within the workforce, Members are also asked to agree to the proposed EVR/VR terms be extended to apply to volunteers who will be eligible for EVR in 2014/15 or who wish to be considered for VR in 2014/15, to take effect in the financial year 2015/16. This will enable a two-year phased transition to a reorganisation of staff resources. Staff will be asked to express an interest this year to take EVR/VR next year. Any release of staff under these arrangements will be managed to achieve a full year's saving, i.e. from April 1<sup>st</sup> 2014 and April 1<sup>st</sup> 2015.

## 6. Mersey Waste Holdings Limited

### Shareholder Proposed Requirements

#### Background

- 6.1 The company was established under statute as a Local Authority Waste Disposal Company (LAWDC) in the early 1990's and the then Government directed that all waste disposal authorities were required to either deliver services through the company or by tendering to the private sector. MWHL delivered Merseyside services until June 2009 when Veolia, under the Waste Management and Recycling Contract, took over service delivery and all the 200+ staff were TUPE transferred to Veolia.
- 6.2 In order to ensure the most competitive price for the WMRC was secured, MRWA determined that the company legacy issues would be managed out by a new MWHL Board rather than transferred to Veolia and over the last five years, pension scheme arrangements, contractual disputes, insurance claims and legacy liabilities have been eliminated or put on a sustainable footing.

#### Current Position

- 6.3 The company is now in the position where it is contracted to provide a landfill contract to MWDA until 2021 and is managing the deferred and actual pensioner liabilities from the company's previous, more operationally active, phase. As a result of this more stable position, the company, at the request of the Authority, has worked with the Chief Executive of the Authority, as Shareholder Representative, to consider the likely future requirements for the company and hence the future arrangements between the Authority and MWHL.

6.4 The Authority has entered into contract with SITA for the Resource Recovery Contract and therefore completed its contract procurement programme, with MWHL providing landfill capacity to the RRC contractor on behalf of the Authority. As a consequence of the conclusion of the contracting programme, the Chief Executive has been able to consult with the current MRWA Chair regarding the likely future requirements that the Authority will need from MWHL. The Chief Executive is therefore now seeking Authority agreement to the following draft principles:

- That the Authority notes the stable position now achieved by the MWHL Board in respect of the company's structure and liabilities.
- In light of the certainty now provided by the Authority's contracting arrangements, the Authority, in the short to medium term, has no additional requirements of the company other than its current activities of managing legacy liabilities, and delivering contracted landfill capacity to the Authority.
- That the Authority will continue to provide the necessary Guarantees, Warranties and revenue funding sufficient to allow MWHL to manage and deliver these requirements.
- That the Authority requests that the MWHL Board undertake the necessary measures to further reduce the revenue funding required to fulfil the company's objectives in light of the above clarification of requirements by the Authority and reiteration of its financial commitments.
- That the Authority requests that the MWHL Board take the appropriate measures to return the maximum level of dividends (post tax) to the Authority, including ,but not limited to, the consideration of the reduction of Share Capital.
- In light of the above the Authority will be requested to delegate authority to the Chief Executive as shareholder representative to undertake all necessary actions on behalf of the Authority to facilitate the Board achieving the above requests made by the Authority including, but not limited to, the reduction of Share Capital and review of the shareholder agreement.

### **MWHL Position**

6.5 Should the Authority agree to adopt the draft principles above, the Chief Executive will ask the MWHL Board to implement the shareholders request within the terms of the company objectives and statutory business requirements.

## 6.6 Risk Implications

Identified Risk	Likelihood Rating	Consequence Rating	Risk Value	Mitigation
Negative changes in Authority risk position and reduced financial benefits arising from failure to understand and manage suite of contracts	3	4	12	<p>Implement next phase of Strategic review</p> <p>Contract Management Training and Review</p> <p>Knowledge transfer programme and phased reduction in staffing over two years</p>
Failure to manage knowledge transfer	2	4	8	<p>Knowledge transfer programme and phased reduction in staffing over two years</p> <p>Team exercises and dry runs</p> <p>Contract administration procedures and systems</p> <p>Contract financial procedures and systems</p>
Failure to match MWHL resources to Authority requirements	3	4	12	<p>Review Shareholders agreement and reduce share capital in MWHL</p>

## **7. HR Implications**

- 7.1 Volunteers will be sought for EVR/VR, and thereafter, subject to the requirements of the service, the Chief Executive will reorganise the staff resource to ensure the organisation remains fit for purpose.

## **8. Environmental Implications**

- 8.1 There are no environmental implications associated with this report.

## **9. Financial Implications**

- 9.1 Given the salary levels, timing and early retirement/voluntary redundancy terms being recommended, it is expected to result in establishment savings within one year of a post being vacated/becoming redundant.
- 9.2 Subject to the report recommendations being agreed, MWHL will respond to the principles contained in this report and implement a programme to fulfil these principles in discussion with the Chief Executive as Shareholder's Representative. The final financial outcome of these actions will be reported to Members through the normal budget reporting cycle.

## **10. Conclusion**

- 10.1 There is a need to continue the programme of Strategic Review. This report sets out the scope of the next stage of the strategic review and in particular identifies that:
- 10.2 The need to call heavily upon the services of the Procurement Director and Financial, Legal and Environmental Advisors has significantly diminished and their services should be terminated (in the case of the Procurement Director) or dramatically scaled back.
- 10.3 It is proposed to seek volunteers for early retirement or voluntary redundancy. The Authority is asked to agree to a time-limited offer of EVR/VR terms based on two weeks' pay.

- 10.4 The Chief Executive intends to review staff roles and structures following the call for volunteers for EVTR/VR and in light of the need to manage the next phase of the RRC procurement through construction and commissioning, to ensure that the Authority remains 'fit for purpose' and especially to protect the anticipated contractual savings from upward price creep and any reduction in value for money.
- 10.5 Subject to Members agreeing the principles contained in this report, MWHL Board will be asked to consider and respond to those principles, in particular to examine the potential reduction of share capital in the company and the revision of the shareholders agreement.

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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.