

RESOURCE RECOVERY CONTRACT - PROGRESS UPDATE
WDA/28/16

Recommendation

That:

1. Members note the progress made against the delivery of the Authority's 'Resource Recovery Contract' and the key issues currently arising and;
2. Members are asked to delegate powers to the Chief Executive to implement a procurement process for interim waste disposal, should such a procurement become necessary.

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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) signed with SITA Sembcorp UK on 23rd December 2013 and which is coming to the end of construction and commissioning and will shortly be entering its fully operational phase.
- 1.2 The report also seeks approval from the Authority to delegate powers to the Chief Executive to undertake a procurement exercise for interim waste disposal arrangements, should the need for such arrangements and a formal procurement become necessary.

2. Background

- 2.1 The Authority signed a contract (termed the 'Resource Recovery Contract, RRC) in December 2013 with SITA Sembcorp UK Ltd. (a 'special purpose vehicle' company) for the provision of waste management transfer and treatment services on behalf of the metropolitan boroughs of Merseyside and the Unitary Authority of Halton. SITA Sembcorp subsequently changed their name to Merseyside Energy Recovery Ltd. (MERL).
- 2.2 The Contract, running for a period of 30 years from 2013, provides a rail transfer loading facility in Kirkby linked to an Energy from Waste (EfW) facility at the Wilton International industrial estate on Teesside.
- 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.
- 2.4 Under the Contract the Authority will manage Merseyside and Halton's household and municipal waste each year (amounting to approximately 430,000 tonnes at present). The Contract is expected to create around 75 permanent jobs when in full operations and will produce 49 MW of electricity

each year, sufficient to power the equivalent of approximately 63,000 homes.

- 2.5 MERL has invested over £250 million on new infrastructure to service the Contract. Construction at Wilton commenced in January 2014 with work on the Kirkby Rail Transfer Loading Station (RTLS) facility commencing in January 2015 and the contract was planned to be fully operational from 1st October 2016.
- 2.6 From the commencement of full service, the Authority's contract means that MERL will be responsible for the dealing with Merseyside and Halton's residual household and municipal waste for the remainder of the contract term.
- 2.7 Until full service commences, the liability for ensuring that there are sufficient ongoing and suitable disposal outlets for residual waste remains with MWDA. During the commissioning period, MERL request waste from MWDA each week, with any tonnages not requested for commissioning currently being disposed of under the Authority's existing arrangements with FCC to landfill at Arpley in Cheshire. The landfill disposal contract with FCC will terminate on 31st January 2017 (which is four years earlier than originally anticipated due to inputs to the site being higher than envisaged by FCC at the time our contract was signed.)

3. Contract progress update

- 3.1 Both the Kirkby and the Wilton facilities have been substantially completed in line with the projected construction programme and have been progressing through their commissioning phases.
- 3.2 Whilst commissioning was planned to be completed with full service achieved by 1st October 2016, a small number of technical issues have been identified during the commissioning process which have delayed progress in accordance with the planned timescales; the contract therefore currently remains in formal commissioning.
- 3.3 MERL have written to the Authority confirming the reasons for the delay to achieving the planned full service date and setting out the measures they are undertaking to finish the commissioning phase and have the plants ready for formal contract handover. Although the technical and contractual issues are not critical when considered in the context of the overall developments, they do need to be properly resolved before the contract can be handed over. To date MERL have not been able to provide a firm commitment to a definitive new 'full operations' date.

3.4 Impact of delay

- 3.4.1 The full impacts of the delay in achieving operational full service on MWDA are the subject of ongoing, detailed analysis by officers but are not currently expected to be significant in nature; where any potential impact has been identified, this is set out in the following sections. The contractor MERL has confirmed that they expect to be able to receive full tonnages under commissioning arrangements or under full contract operation.
- 3.4.2 There are not expected to be any impacts on District deliveries; they will continue to use existing disposal points until further notice.
- 3.4.3 Because of the delay, there is expected to be an extended period of disposals to landfill, further increasing the amount of waste disposed to landfill above that anticipated for this current year.
- 3.4.4 The precise detail of any financial impacts that may arise as a result of the delay to operational full service are not currently clear. There are financial provisions within the Authority's contract with MERL that serve to mitigate this situation. Officers are currently reviewing the detail of the relevant contractual provisions with MERL and the likely financial impact the current and ongoing situation may have, and will report the findings to the Authority at the February meeting.

4. **Kirkby RTLS – odour management**

- 4.1 An issue that has arisen since wastes started being accepted at the Kirkby facility in June is odours management at the site. Complaints have been made by a neighbouring business and a small number of other local stakeholders regarding odours apparently emanating from the site, with a number of comments also made on local social media sites.
- 4.2 MERL are currently working to both better understand the extent and quantum of the concerns that have been highlighted and to ensure that they are fully implementing all appropriate measures to deal with any potential odour management issues at the facility.
- 4.3 The environmental permit for the facility (which among other things covers odour management) belongs to Suez (as the operators of the facility) and is issued and regulated by the Environment Agency (EA). As a condition of the permit, Suez are required to have a detailed 'Odour Management Plan' (OMP) explaining how they will manage the facility to comply with their permit and ultimately preventing the facility causing a nuisance from odour.

- 4.4 Suez (as the operator) are currently undertaking a review of the odour management activities and their OMP with the EA. In addition, Suez are currently attempting to identify and address the underlying cause of the odour issues at Kirkby and are undertaking a period of on-site trials to identify both why the current arrangements appear not to be adequate and what further measures need to be undertaken to ensure that odours are appropriately managed. They have also employed external odour management specialists to assist them in addressing the issues.
- 4.5 Since the first comment was made about the odours at the Knowsley RTLS, the Authority has worked both directly with MERL (with whom we have the contract), with Suez (as operators) and with wider stakeholders in the local community to ensure matters are brought to a satisfactory conclusion as swiftly as possible. Some key specific actions the Authority has already undertaken are as follows:
- i. The Chief Executive and senior officers of the Authority have met with the Chairman of MERL and the senior management team responsible for the Kirkby facility and have expressed the Authority's clear expectations at that meeting and in writing that MERL treat the matter with the utmost urgency and priority it deserves;
 - ii. We are working in close collaboration with Knowsley MBC to ensure a co-ordinated approach to the issue and appropriate engagement with local stakeholders. In particular, we are working with Knowsley MBC and the Environment Agency (as statutory regulators) to ensure a co-ordinated regulatory response;
 - iii. Suez's actions are being closely monitored by Authority officers to ensure they are addressing the odour issues at Kirkby and we have required them to keep us fully apprised on progress and furnish us with all relevant documentation and reports pertinent to their management of the issue. Officers will review and comment on the reports and proposals and will consider seeking any appropriate independent technical advice as may be considered necessary;
 - iv. We are working with our waste management contractors Veolia (who are responsible for waste transfer stations and transport of waste collected by District Councils) to ensure that they have all necessary measures in place to manage waste they handle and deliver to Kirkby to mitigate against the potential to exacerbate the local issues;

v. Officers are commissioning legal advice to better understand the Authority's position under the contract and to ensure that we are able to identify the most appropriate course of action to deal with the matters at the Kirkby facility.

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 risk that the delay to commissioning (and therefore progression to full operations) may be extended for a further period caused by delays in resolving the underlying technical issues resulting in an extended liability on the Authority to have an alternative disposal outlet for waste not required by MERL for commissioning.
- 5.3 Officers are currently exploring all appropriate avenues to ensure security of disposal arrangements for the Authority's waste in the eventuality that the above risk is realised, and our current interim arrangement with FCC for landfill disposal expires. Should existing contractual arrangements with MERL not be able to provide the security we require, the Authority may need to undertake a procurement exercise for temporary interim disposal arrangements. This report seeks approval from the Authority to delegate powers to the Chief Executive to undertake such a procurement exercise should this become necessary.
- 5.4 There is a risk that the current odour management issues may not be resolved as swiftly as we would wish because of the challenges in identifying the underlying causes and suitable solutions.
- 5.5 Should the Environment Agency assess that appropriate measures have not been taken to address odour emissions, there is a risk of potential enforcement action against Suez by the EA and subsequent reputational damage, not just to Suez, but also to the Authority.
- 5.6 There is a risk that the extended period of commissioning and disposal of more waste to landfill than was originally expected during 2016/17 may have an impact on the financial outturn.

5.7 A summary of the risks and mitigating actions is provided below:

Identified Risk	Likelihood Rating	Consequence Rating	Risk Value	Mitigation
Extended commissioning & risk of further delay to delivery of facilities and progression to 'full operations' with potential need to seek new interim disposal arrangements.	4	3	12	1. Legal advice being sought on MWDA's options and contingency arrangements; 2. Contingency disposal arrangements being put in place for the eventuality of further delay.
Odours issues arising at Kirkby resulting in the risk of environmental enforcement action and reputational damage to the Authority.	4	3	12	1. Legal advice being sought to inform the Authority's position and appropriate response; 2. Stakeholder engagement and co-ordinated action between key parties (EA/KBC/MWDA)
Extended period of commissioning and disposal to landfill resulting in a potential impact on the financial outturn.	2	3	6	1. Legal advice being sought to clarify and advise on contractual position and ability of MWDA to mitigate any adverse impacts; 2. Officer reviewing detail of provisions and financial impacts with a view to ensuring robust approach to mitigation.

6. HR Implications

6.1 There are no HR implications associated with this report.

7. Environmental Implications

7.1 If the site odour management issues remain unresolved in the short to medium term, there is the potential for continued odour impact on the local community.

7.2 Should MERL be unable to resolve the current technical issues in the short to medium term, and thereby be unable to accept all of the Authority's waste (as was anticipated from 1st October) there may be further waste disposed of to landfill during 2016/17 than was originally anticipated.

8. Financial Implications

- 8.1 The precise financial implications of the current delay to achieving full operations are not yet clear; however, we understand the Contract contains provisions that are expected to mitigate this scenario, although how they work in practice remains to be clarified. The detail of how such provisions may work remains under review by officers.
- 8.2 Legal advice has been sought on the matter and the Contracts Team continue to review how the current situation may financially impact on the Authority. Any financial variances that may arise will be detailed in the revised estimate that will be provided at the February Authority meeting.

9. Legal Implications

- 9.1 There are not anticipated to be any specific legal implications arising from the matters highlighted in this update report.
- 9.2 Legal advice has been sought in relation to the matters arising from the current delay of progression to full operations.
- 9.3 Legal advice is also being sought in relation to the odours management issue at the Kirkby facility.

10. Conclusion

- 10.1 The Authority's strategic contract with MERL is experiencing some technical issues with commissioning of the facilities, resulting in a delay to progression to full operations. The precise impacts of this are under review by Officers.
- 10.2 There are not expected to be any significant impacts on District deliveries during the continued commissioning period, and MWDA officers will continue to work collaboratively with all parties to ensure that this continues to be the case.
- 10.3 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 that the facility does not cause any nuisance to the surrounding neighbours.
- 10.4 Members are asked to delegate powers to the Chief Executive to implement a procurement process for interim waste disposal, should such a procurement exercise become necessary.

10.5 A further update will be provided to the Authority in the February meeting.

The contact officer for this report is: Ian Stephenson

MRWA

7th Floor

No. 1 Mann Island

Liverpool

Merseyside L3 1BP

Email: ian.stephenson@merseysidewda.gov.uk

Tel: 0151 255 2532 Fax:

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