

**CONTINGENCY WASTE DISPOSALS – NOTICE OF URGENT ACTION**  
**WDA/03/17**

**Recommendation**

That:

1. Members note the urgent action that was undertaken to enter into a temporary negotiated contract arrangement in relation to the Authority's residual municipal waste disposals.

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**CONTINGENCY WASTE DISPOSALS – NOTICE OF URGENT ACTION****WDA/03/17****Report of the Chief Executive****1. Purpose of the Report**

- 1.1 An urgent situation arose in late November 2016 that required the Chief Executive, in consultation with the Chair and Deputy Chair, to make a decision to enter into a temporary negotiated (non-procured) contract arrangement with Suez for interim disposal of residual municipal waste.
- 1.2 The purpose of this report is to inform the Authority (as required by the Authority's Procedural Rules) of the decision taken.

**2. Background**

- 2.1 The Authority's Resource Recovery Contract (RRC) with Merseyside Energy Recovery Ltd. (MERL) was planned to enter operational 'full service' with effect from 1<sup>st</sup> October 2016. From this 'full service' date (termed Facility Operation Date, FOD) MERL will have full and exclusive responsibility for the management of the Authority's residual municipal waste. Until that date, they request waste for the purposes of 'commissioning', but have no contractual liability for receiving and treating the Authority's waste.
- 2.2 For a variety of technical and contractual reasons, MERL did not achieve the Planned FOD on 1<sup>st</sup> October 2016 (as reported to the Authority at the meeting on 25<sup>th</sup> November) and have not at the date of writing this report, achieved FOD. This means that MRWA maintains the liability for disposing of all residual municipal waste that MERL does not request for commissioning.
- 2.3 It was recognised in November that there may be an extended delay in MERL achieving FOD, and hence approval was requested (and granted) from the Authority to undertake a procurement exercise for interim waste disposal, should that have been considered necessary.
- 2.4 However, an urgent situation arose during the week commencing Monday 28<sup>th</sup> November. MRWA was informed by MERL that the Wilton Energy from Waste facility (EfW) was to be closed down for a period estimated to be around 2 weeks whilst urgent repairs were undertaken. The closure had been imposed on MERL by the construction sub-contractor, CNIM

Clugston. This situation necessitated that MERL would cease accepting the Authority's residual waste for the closure period from Thursday 1<sup>st</sup> December.

- 2.5 This situation coincided with the pending closure - and restricted availability - of the Authority's alternative procured arrangement for disposal of waste through the contract with FCC to Arpley landfill.
- 2.6 The convergence of these two urgent and unforeseen situations left the Authority in a position where it had no other alternative, formally procured contract outlet for a large proportion of its residual municipal waste at that time. The very serious risk existed that without such disposal arrangements in place, MRWA may have been unable to find disposal outlets for the Districts and HWRC collected residual waste.
- 2.7 An agreement was therefore swiftly negotiated with Suez whereby MRWA would have access to the emergency disposal facilities for disposal of residual municipal waste under a direct contract arrangement between MRWA and Suez.
- 2.8 It was believed at that time that the disposal arrangements negotiated with Suez would only have been required for a short period (whilst final works at the Wilton EfW facility were completed). However, the challenges experienced at the Kirkby facility have meant an extended period of restricted inputs to the site (and limited availability of existing contracted landfill space) with the requirement for MRWA to continue with the use of the alternative disposal facilities negotiated with Suez.

### **3. Authority Constitution**

- 3.1 At the November Authority meeting, powers were delegated to the Chief Executive to undertake a formal procurement for contingency arrangements, should that have been considered necessary. However, the sudden and unforeseen nature of the requirement to utilise emergency contingency arrangements much sooner than anticipated did not allow for a formal procurement process to take place.
- 3.2 The Authority's Constitution sets out the following for dealing with such matters;

#### Authority Procedural Rules

- 3.3 Paragraph 23 of the Authority Procedural Rules sets out the arrangements for dealing with urgent matters / emergencies, as follows:

(1) Where urgent matters arise and time does not allow for the calling of the committee concerned or Authority there shall be delegated to the Chief Executive all the powers of the Authority to deal herewith, provided that;

(a) the power is exercised in consultation if possible with the Chair and Deputy Chair of the Authority;

(b) no decision shall be made which is contrary to a resolution of the Authority or to an established practice; and

(c) all decisions shall be documented in the form of a minute as soon as possible after they are taken and a copy thereof signed by the Chief Executive and the Chair and Deputy Chair if consulted and sent to the Proper Officer. All decisions taken under these powers will be notified to the Authority.

#### **4. Decision taken**

4.1 Given the situation faced by the Authority at the time, the options open to the Authority were relatively limited, as follows;

Option 1 – negotiate an arrangement with Suez for access to their range of sub-contract disposal outlets;

Option 2 – MRWA to negotiate individual arrangements directly with a number of potential third party disposal operators;

Options 3 – negotiate and make arrangements for access to the disposal facilities of a neighbouring Waste Disposal Authority.

4.2 A formal procurement exercise at that time was not feasible, given the extreme urgency of the situation and the timescales (estimated at 2-3 months) required for a formal procurement to be undertaken.

4.3 MERL have (since the start of commissioning) had exclusivity over the Authority's waste, but are only obliged to accept waste they specifically request during commissioning. Suez, as the sub-contracted operators of the RRC contract, will have exclusivity over MRWA's waste from full service and full liability for any similar contingency arrangements. The alternative, contingency arrangements they proposed (being those they would also expect to have in place once in full service), were both geographically and (in terms of disposal and impact on transport rates) financially the most appropriate at that time.

4.4 Given the set of circumstances faced, the urgent decision was taken by the Chief Executive in consultation with the Chair and Deputy Chair to:

i) enter into a temporary, negotiated contract agreement with Suez for the disposal of residual municipal waste for which the Authority has statutory responsibility;

ii) to publish the details of the contract award in the European Journal, as required by the legislation.

## 5. **Risk Implications**

5.1 The following summarises the key risks identified:

<b>Risk</b>	<b>Likelihood</b>	<b>Impact</b>	<b>Rating</b>	<b>Mitigation</b>
There is a risk of challenge to the use of non-procured waste disposal arrangements.	2	3	6	1. Legal advice has been sought on the appropriate course of action. 2. Legal advice will remain under review as appropriate. 3. The ongoing use of the non-procured disposal arrangements will remain under routine review.
There is a risk that FOD is not achieved for a further protracted period, caused by technical & other issues resulting in extended requirement for alternative disposal facilities.	4	2	8	1. Work closely with MERL & Suez to ensure progress to FOD is as swift as possible. 2. Keep the requirement for temporary alternative disposal arrangements under constant review.

## 6. **HR Implications**

6.1 There are no HR implications associated with this report.

## 7. **Legal Implications**

7.1 Legal advice has been sought which supports the Authority's course of action.

## 8. **Environmental Implications**

8.1 The ongoing delay to FOD and requirement to use alternative disposal arrangements means that there will be more waste sent to landfill during 2016/17 than was originally anticipated.

## 9. **Financial Implications**

9.1 The expenditure with Suez for the alternative disposal arrangements is instead of that paid to MERL for commissioning waste. The net cost of the

alternative disposal arrangements is expected to be lower than would have been paid to MERL had FOD been achieved. There is therefore expected to be a saving to the Authority as a result of the use of alternative disposal arrangements when compared to the existing budget.

## **10. Conclusion**

- 10.1 An urgent decision has been made by the Chief Executive in consultation with the Chair and Deputy Chair to enter into a negotiated contract with Suez for the disposal of residual municipal waste for which there are no alternative procured disposal outlets.
- 10.2 This report ensures compliance with the requirement under the Authority's Procedural Rules to notify the Authority of the decision taken.

The contact officer for this report is: Ian Stephenson  
7th Floor  
No 1 Mann Island  
Liverpool L3 1BP

Email:

Tel: 0151 255 2532

Fax: 0151 227 1848

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