

INTER AUTHORITY AGREEMENTS
WDA/03/08

Recommendation:

1. That Members approve the Inter Authority Agreement (IAA) for Merseyside and the IAA for Halton and that the Solicitor to the Authority be authorised to sign\seal both IAAs' on behalf of the Authority.
2. That Members delegate authority to the Director to make minor amendments to the IAA that result from final discussions with the parties prior to signing and sealing by the Authority's Solicitor.

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Report of the Director

1. Purpose of the Report

- 1.1 This report seeks Members' agreement to approve the Inter Authority Agreement (IAA) for Merseyside and the IAA for Halton and that the Solicitor to the Authority be authorised to sign\seal both IAAs' on behalf of the Authority.

2. Background

Merseyside IAA (Appendix 1)

- 2.1 A Memorandum of Understanding (MOU) on waste management joint working was approved by MWDA at its meeting on 28th January 2005 and ratified by all Merseyside Partners. The MOU came into effect on 11th November 2005.
- 2.2 The document introduced the need for closer working across Merseyside and covers the purpose and status of the MOU, together with the guiding principles and operational arrangements for partnership working.
- 2.3 The MOU has been developed to support partnership working between the MWDA and the Partner Waste Collection Authorities in furtherance of the Joint Municipal Waste Management Strategy but it is not a legal document. Following ratification, the Partners agreed to work towards developing a more detailed IAA which would have legal status.

Merseyside Waste Disposal Authority
1st February 2008

- 2.4 The general **principles** of the IAA for Merseyside agreed by the Authority in 2006 are:
- The polluter pays;
 - Equity and fairness. This relates to the division of responsibilities and the cost/risk burden between the partners;
 - Best Value to be demonstrated in the delivery of the overall project;
 - Flexibility to address operational and financial consequences of changes in collection, treatment or disposal contracts and the responsibilities on each Partner;
- 2.5 The IAA for Merseyside as proposed will therefore demonstrate the development of a closer working relationship between the signatories, establish contractual joint working practices, identify the roles, obligations and responsibilities between all the Partners (Merseyside Waste Disposal Authority (MWDA), Knowsley Metropolitan Borough Council, Liverpool City Council, St Helens Metropolitan Borough Council, Sefton Metropolitan Borough Council and Wirral Metropolitan Borough Council) both during the procurement, of and through the operation of, the waste contracts. This will provide certainty to the participants in the procurement process and as far as is reasonable reduce any detrimental impact on other Partners of any failure to carry out obligations under the IAA.
- 2.6 Approval of the IAA will also demonstrate commitment by the Partners to the delivery of the JMWMS agreed in 2005. An Update of the which is been submitted to this Authority meeting.
- 2.7 Key outstanding issues raised in the Authority report number WDA/28/06 dated September 2006 have been discussed and included in the IAA which are:

- **Delivery Points (Schedule 1):** There is an acknowledgement by the WCAs in the IAA that they will deliver to the facilities listed or such other delivery points as the Parties shall agree from time to time.
- **WCA Baseline Information (Schedule 1):** The nature of the waste that WCAs are obliged to deliver is of course key to the operation of the waste contracts, as it is likely to have a direct effect on the sums payable under these arrangements by MWDA;
- **The Levy Payment Mechanism (Schedule 3):** the Joint Waste Disposal Authorities (Levies) (England) Regulations 2006 set out MWDA's power to issue levies on the WCAs to meet all relevant liability falling to be discharged by MWDA. The Authority approved a change in the mechanism on 28 January 2005 and it is this charging mechanism set out in Schedule 3 and will be subject to review in accordance with Clause 5.3 of the Agreement.

2.8 To have maximum impact the IAA needs to be ratified by all partners to give confidence to the participants in the procurement process that all partner WCAs and the MWDA are committed to the procurement of waste contracts for landfill, recycling and recovery and therefore helps to reduce the exposure of all the Partners to an increasing price risk. It is therefore important that the IAA is agreed before the commencement of the Invitation to Submit Detailed Solutions (ISDS) for the Resource Recovery Contract in March 2008.

2.9 The IAA is the next stage in the development of partnership working between the Partners. It is envisaged that in the future there will be further agreements to enhance governance and financial arrangements in the light of the waste contracts.

3. Summary of Provisions of the Merseyside IAA

3.1. General

3.2 MWDA can only fulfil its obligations to the contractors with the co-operation of the WCAs. Should the obligations under the Waste Contracts not be met (whether this is the fault of MWDA or any WCA) MWDA will be legally responsible under the Waste Contracts.

3.3 As a consequence of this, the IAA does impose obligations on WCAs.

4. Partnering Ethos (Clause 4)

4.1 Although there will be specific obligations under the IAA, it is also important that MWDA and each WCA work together, both during procurement of and through operation of the waste contracts. This concept was included in the MOU, and now refers specifically (clause 4.2.6) to amendment of the IAA to reflect the finalised terms of the waste contracts.

5. Charging Costs Payment and Compensation (Clause 5)

5.1 The WCA's will pay MWDA for waste disposal services under the existing levy mechanism but MWDA will review the levy mechanism within six months of the award of the last of the waste contracts.

6. Waste Contracts (Clause 6)

6.1 This clause ensures that the WCAs are kept informed of any changes to the waste contracts.

6.2 It also contains fairly broad terms (clause 6.5) stating that the WCAs will take and/or avoid action which would put MWDA in breach of the waste contracts. This is appropriate in terms of principle because, as stated above, MWDA carries all the risk of liability under the waste contracts and relies on the WCAs to carry out its obligations.

7. Principal Obligations of MWDA (Clause 7)

- 7.1 This clause sets out the primary obligations of MWDA to the WCAs to accept and dispose of waste through the waste contracts and to be guided by the Partnering Ethos.
- 7.2 Any costs incurred by MWDA shall be payable in accordance with the Levy Regulations.

8. Principal Obligations of the WCAs (Clause 8)

- 8.1 MWDA has a statutory duty to dispose of waste and the WCA's have no power to make their own waste disposal arrangements. This clause contains the primary obligations of the WCAs. The most important elements of this will be obligations to deliver waste that complies with the WCA Baseline to certain specific Delivery Points AND deliver waste that meets the appropriate Facility Input Specification.

9. Ownership of Waste and Duty of Care (Clause 9)

- 9.1 This makes it clear that, until the waste is transferred to a contractor under a waste contract, ownership of, and responsibility for, waste remains with the relevant WCA.

10. Exclusivity and WCA Waste

- 10.1 As mentioned above, clause 8 sets out one of the WCA's primary obligations; to deliver waste to the contractors via the MWDA contract relationship. This clause acknowledges that, under the waste contracts, the private sector partners have an exclusive entitlement to all Contract Waste (as defined in the waste contracts) within the administrative area of the WCA's.

11. Review of the Agreement (Clause 10)

- 11.1 The waste contracts are likely to contain provisions in relation to change to those contracts. Such changes could be required by

MWDA, proposed by the contractor or necessitated by a change in law. To enable MWDA to meet such changing requirements, the IAA must “flow-down” appropriate change provisions from the waste contracts. It is therefore appropriate that the Partners meet to review this agreement in line with such reviews of the waste contracts as shall be developed through the procurement process.

12. Insurance (Clause 12)

12.1 Each party shall have :-

- (i) Employer’s Liability Insurance;
- (ii) Public Liability Insurance; and
- (iii) Professional Indemnity Insurance

12.2 There will be no requirement for WCA’s to provide indemnities to MWDA or to other WCA’s. A decision has been made by the treasurers of MWDA and the WCA’s that any losses incurred by MWDA will be dealt with under the existing levy mechanism.

13. Dispute Resolution (Clause 13)

13.1 The IAA will include a dispute resolution clause, the aim of which will be to encourage the resolution of disputes without resorting to legal proceedings in the courts. Disputes arising between the parties shall be discussed by the parties in an attempt to resolve the matter. An escalation procedure will provide for initial meetings between parties’ representatives and then by Chief Executives. If this fails to resolve the situation, the dispute will be referred to a mutually agreed mediator or appointed by the President of the Law Society. If a mutual agreement is not reached, and only once this process has been exhausted will there be recourse to the courts.

13.2 It is important to have express dispute resolution provisions as, without them, courts are increasingly unwilling to make an award of costs at the end of a trial on the basis that the parties had not

explored alternative means of dispute resolution before going to court.

14. Exit Arrangements (Clause 14)

14.1 This clause provides that before the waste contracts end, MWDA and the WCA's will meet in order to discuss and determine, in accordance with Partnering Ethos set out at clause 4, the arrangements for exiting the IAA.

15. Data Protection, Confidentiality and Freedom of Information (Clauses 15, 16, 17)

15.1 These provisions are now fairly standard in agreements involving public sector bodies, and set out obligations in relation to the flow of information between the authorities.

16. Notices and Representatives (Clauses 18 and 19)

16.1 These clauses ensure that it is clear where any formal notices under the IAA must be sent (clause 18) and, at clause 19, provides that particular representatives must be appointed by each Partner for the purposes of the IAA. This means that the other Partners are entitled to rely on communications of that Partner as binding on the relevant authority, without the need to enquire in each case whether the representative was authorised to make a particular decision.

17. Halton

17.1 An MOU was ratified by MWDA and Halton. The MOU introduced the need for closer working between both authorities, together with guiding principles and operational arrangements for partnership working.

17.2 On 19 July 2007, Halton passed a resolution delegating certain of its waste disposal functions to MWDA, to enable MWDA to enter into the Waste Management Recycling Contract and the Resource Recovery Contract on behalf of Halton.

18. Halton IAA (Appendix 2)

18.1 The purpose of the IAA for Halton is similar to the Merseyside IAA in that it is intended to establish joint working arrangements between the MWDA and Halton. It differs in that Halton is a unitary authority with disposal as well as collection responsibilities (unlike the WCA's within Merseyside) has no statutory relationship with MWDA.

19. The IAA with Halton

19.1 As the intention is similar, the terms of the IAA with Halton are also similar to the IAA with Merseyside but has additional clauses to reflect the fact that Halton is a Waste Disposal Authority and has no statutory obligations to make payments to MWDA. Clauses 7 and 8 therefore provides for Halton's participation in the waste contracts, clause 9 and Schedule 2 provide a charging mechanism and clause 16 provides for indemnities to be provided by a party to the IAA who terminates the IAA.

20. Conclusion

20.1 Members are asked to approve the attached Inter Authority Agreements, authorise the Director to make minor amendments that arise in the final stages of discussion and authorise the Solicitor to the Authority to sign\seal them on behalf of the Authority.

The contact officer for this report is Neil Ferris, MWDA, North House, 17 North John Street, Liverpool, L2 5QY.

Background documents open to inspection in accordance with Section 100D of the Local Government Act 1972 - Nil

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