

CABINET – 26 JULY 2011**PROCUREMENT OF LONG TERM WASTE TREATMENT FACILITIES****REPORT OF THE DIRECTOR OF ENVIRONMENT AND TRANSPORT****PART A****Purpose of Report**

1. The purpose of this report is to seek Member approval to terminate the long-term waste treatment project following the decision by the Department for Environment, Food and Rural Affairs (DEFRA) in October 2010 to withdraw funding support in the form of Private Finance Initiative (PFI) credits.

Recommendations

2. It is recommended:
 - (a) That approval be given to terminate the current long-term waste treatment procurement project and that the Director of Environment and Transport be authorised to take all necessary action to give effect to this;
 - (b) That it be noted that the County Council is in a position to meet its short to medium term targets for landfill diversion;
 - (c) That the Director of Environment and Transport, in consultation with the Cabinet Lead Member for Waste Management, be authorised to determine the appropriate timeframe and scope of a new procurement process and to proceed with the procurement process to deliver additional residual waste treatment capacity as necessary; and
 - (d) That the Director of Corporate Resources be authorised, in consultation with the Cabinet Lead Member, to arrange the sale of the site at the Interlink Business Park, Bardonia at the appropriate time.

Reason for Recommendations

3. The withdrawal of funding support in the form of PFI credits by DEFRA has had a significant adverse financial impact on the long term waste treatment project. In addition, the Government Review of Waste Policy in England published in June 2011 includes the Government's intention to remove one of the key drivers for the project, namely, the need for Local Authorities to ensure Landfill Allowance Trading Scheme (LATS) compliance beyond 2012/13. However, the current national, regional and Leicestershire waste management strategies together with the European Landfill Directive make it essential that the County Council continues to explore proposals that will deliver alternatives to landfill disposal.

Timetable for Decisions (including Scrutiny)

4. The Scrutiny Commission is due to meet on 7 September 2011 and will be asked to consider this report and the decision of the Cabinet thereon. The views of the Scrutiny Commission will be reported to the Cabinet at its meeting on 13 September.

Policy Framework and Previous Decisions

5. The long-term waste treatment project resulted from implementation of the revised Leicestershire Municipal Waste Management Strategy (LMWMS) adopted in 2006 by all the partnership Local Authorities including the County Council.
6. Having approved the submission of an Expression of Interest (EoI) to DEFRA in July 2007, the Cabinet subsequently approved the submission of an Outline Business Case (OBC) to DEFRA in April 2008, resulting in the award of PFI credits to support the procurement of new waste treatment facilities.
7. In October 2008, the Cabinet approved the commencement of the procurement process and the project evaluation methodology and in June 2010 the Cabinet approved the short listing of the Osiris consortium and Veolia as the final two bidders.

Scrutiny Panel on the Procurement of Waste Facilities

8. A scrutiny review panel was established in 2007 to consider the issues facing the County Council in terms of the rising cost of landfill and the issue of waste disposal in the long term including an analysis of different technologies. The Panel's recommendations were welcomed by the Cabinet and taken into account in developing the Outline Business Case submitted to DEFRA.
9. The Panel was reconvened in 2008 to examine the work undertaken by the Project Team to effectively and appropriately reduce the number of bidders through the Pre-Qualification and ISOS stages of the procurement process. The Panel's recommendations were welcomed by the Cabinet and taken into account in developing the project evaluation criteria. The Panel was reconvened for a second time in 2010 with a specific brief to 'scrutinise the process and methodology used to assess the potential bids against the criteria previously agreed by the County Council'. The Panel concluded that it was broadly satisfied with the procedures and mechanisms in place in the procurement process and that these were robust and adhered strictly to the criteria laid down for assessing the potential bids.

Resource Implications

10. The withdrawal of the £86.6m PFI credits has the impact of reducing the County Council's income over the 25-year contract period by £6.4m per annum. This is equivalent to the net cost to the County Council of the waste treatment contract increasing by more than 25%.

11. Various options to reduce the cost of the project following loss of the PFI credits have been considered. However, these options invariably resulted in greater risk being taken by the County Council and were unable to fully compensate for the loss in PFI credits. Hence the outcome was that continuing the procurement was no longer viable.
12. Over the course of the procurement the County Council has incurred £1.5m of external costs. This expenditure has been recognised in the accounts in the year that it was incurred, so the cessation of the procurement will not adversely impact the current financial year. External expenditure since the withdrawal of PFI credits has been minimal.
13. The tender documentation was issued to bidders expressly on the basis that all bid costs were to be borne by the bidders.
14. The expectation is that Government policy will be to continue to increase the cost of landfill when compared to other forms of treatment. The County Council will manage this increasing cost through the procurement of new or existing waste treatment capacity in the region. The potential removal of the LATS scheme after 2012/13 will have the impact of reducing the financial risk of this approach.
15. The resource implications section of this report has been written in conjunction with the Director of Corporate Resources.

Circulation under the Local Issues Alert Procedure

This report is being circulated to all Members of the County Council under the Members Information Service.

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PART B

Background

16. The need for procurement of new long term residual waste treatment facilities was set down in the LMWMS in 2006 which was adopted by all the partnership Local Authorities including the County Council. The main aims of the procurement project were to reduce reliance on landfill, meet and exceed the County Council's LATS obligations and manage the county's waste in a more sustainable and environmentally acceptable way for the people of Leicestershire, ensuring that the County Council met and exceeded its statutory targets for landfill diversion from 2015 onwards. The project commenced in early 2007.
17. Funding support in the form of a provisional award of £86.6m PFI credits was secured in October 2008 following the submission of a successful bid to DEFRA.
18. The procurement process commenced in October 2008 and involved a number of tender stages to reduce an initial list of fourteen companies to the final short list of two bidders that was approved by the Cabinet in June 2010. The proposals put forward by the Osiris consortium (comprising Shanks Waste Management Ltd, Costain Engineering and Construction Ltd and John Laing Investments Ltd) and Veolia the two short listed bidders were as follows:
 - The Osiris consortium proposed a Mechanical Treatment Facility (MTF) to produce a Refuse Derived Fuel (RDF) for gasification. The facilities would be located at the County Council-owned Bardon site.
 - Veolia ES Aurora Ltd proposed an Energy-from-Waste facility. Again the facility would be located at the County Council-owned Bardon site.
19. Competitive dialogue meetings were held with each bidder up to October 2010 when formal notification regarding withdrawal of PFI credits was received from DEFRA. Subsequently, meetings took place with each bidder and revised financial proposals were received.
20. Following the establishment of the Coalition Government, the Secretary of State for DEFRA announced in June 2010 that the Government would undertake a full review of waste policy in England, including the Waste Strategy for England 2007. The Review of Waste Policy in England was published on 14th June 2011.

Withdrawal of PFI Credits

21. In early October 2010 and immediately prior to the Comprehensive Spending Review (CSR) announcement, the long term procurement project was subject to an independent review carried out by DEFRA. The DEFRA review team concluded that there was widespread buy-in to the project and engagement and management of stakeholders was generally excellent. In addition it found that the project was in a strong position in respect of sites and planning and whilst there was a considerable amount of work facing the project team, it was

able to conclude a successful procurement. At no time in the months leading up to the CSR had DEFRA given any indication that the project was at risk from having the PFI credits withdrawn.

22. On 20 October 2010, as part of the CSR announcement, DEFRA withdrew the allocation of PFI credits from seven waste projects across the UK on the basis that these projects would not be needed in order to meet the UK's 2020 landfill diversion targets set by the European Union. The Leicestershire waste treatment project was one of those seven.
23. The basis of the evaluation of projects and whether they continued to receive funding support in the form of PFI credits was:
 - the amount of biodegradable residual waste diverted from landfill in relation to the PFI credits granted. This was the most highly weighted of the criteria.
 - the likelihood of new facilities being delivered taking into account the procurement status and planning consideration of projects
 - the timing of new facilities becoming operational
24. In assessing the evaluation process criteria since provided by DEFRA it is evident that there were three main factors that contributed to the loss of Leicestershire's PFI credits:
 - Recycling and composting performance – in 2009/10 Leicestershire was the highest performing county in the country in terms of recycling and composting performance and is aspiring to reach 58% by 2017. The consequence of this being that the county has a lower proportion of its total municipal waste that requires diverting from landfill compared to other counties.
 - Size of facility – the Leicestershire project sought to procure new facilities that would treat only the county's municipal waste. Other projects that had accepted the principle of procuring over-sized facilities to treat waste from outside their area scored more highly in the assessment.
 - Value of credits – Leicestershire was set to receive 50% of the capital value of its project in PFI credits, whilst other projects that were taken forward are receiving a smaller financial contribution.

Financial Position

25. Throughout the long-term waste treatment project, financial modelling was undertaken that compared the future cost of residual waste treatment with PFI funding support against the alternatives of landfill disposal and treatment using facilities that already exist locally. The analysis consistently showed that with the support from PFI credits over the 25-year contract period the procurement project would provide the best financial option for the County Council both in terms of total expenditure and the accompanying reduction in terms of financial uncertainty.
26. However, the loss of the £86.6m PFI credits, which would have been paid to the County Council in the form of an annuity as an income of £6.4m per

annum, or £162m over the life of the PFI contract, was equivalent to the net cost of the waste treatment contract increasing by more than 25%.

27. Various options were explored to reduce the costs of the contract to the County Council within the constraints of the procurement. These options were compared to cost of treatment at the known and proposed treatment facilities in the region. When taking into account the inflexibility of a 25 year contract and the continuing uncertainty in the economic environment it was concluded that proceeding with the PFI would not be the best option for the County Council.

Government Review of Waste Policy 2011

28. DEFRA announced in June 2010 that the Government would undertake a full review of waste policy in England, including the Waste Strategy for England 2007. The Review of Waste Policy in England was published on 14 June 2011. The policy covers both municipal waste collected by Local Authorities and commercial and industrial waste produced by businesses.

The key outcomes of the review that may have implications for the County Council can be summarised as follows:

- The removal of the Landfill Allowance Trading Scheme (LATS) at the end of 2012/13 scheme year, leaving landfill tax as the key driver for diverting waste from landfill.
- A commitment to meet the EU revised Waste Framework Directive target to recycle 50% of waste from households by 2020.
- Encouragement for Local Authorities to make it easier for small and medium size enterprises (SMEs) to recycle. This includes encouragement for Local Authorities to consider adapting Recycling and Household Waste Sites to accept business waste / recycling at an affordable cost for business users.
- A commitment to consult on introducing restrictions on the landfilling of wood waste (with further consultations on textiles and biodegradable waste planned for the future).
- A further consultation with Local Authorities on the future of Joint Municipal Waste Management Strategies (JMWMS), including the possible removal of the statutory duty to produce JMWMS.
- Encouragement for Councils to provide weekly collections of 'smelly' waste, including technical support and advice on collection and treatment options.
- Support for rewarding or recognising householders for 'doing the right thing' in relation to waste reduction and recycling, including the launch of limited funding to explore different approaches.
- Support for anaerobic digestion as a means of dealing with food waste, including the launch of an anaerobic digestion strategy and action plan.

Key Issues for Future Waste Treatment Strategy

29. The cessation of the long term waste treatment project and the Government Review of Waste Policy gives rise to a number of implications and uncertainties that the County Council will need to address in considering options for the future treatment of the county's residual municipal waste. These may be summarised as follows:
- Future growth in waste arisings
 - EU Landfill Directive and Landfill Allowance Trading Scheme (LATS)
 - Future availability of treatment capacity
 - Landfill tax and the rising cost of waste treatment
 - Potential landfill bans on wood, textiles and other biodegradable materials

Future Growth in Waste Arisings

30. Since 2006/07, the total municipal solid waste (MSW) in Leicestershire has been decreasing on average by approximately 2.2% per annum. The decline in waste is attributed to a combination of the economic downturn and the success of the waste prevention and re-use plan that has been implemented in Leicestershire since 2007.
31. However, it is expected that the current decline in waste arisings is unlikely to continue in the long term and that there could be a return to waste growth in the future linked to economic recovery. This was the basis on which the long term waste treatment project modelling was predicated.

EU Landfill Directive and Landfill Allowance Trading Scheme (LATS)

32. The EU Landfill Directive imposed landfill reduction targets on Member States. The UK government subsequently transposed this into the Waste Emissions Trading Act (2003) (WET) and introduced the Landfill Allowance Trading Scheme (LATS). The LATS regime commenced in 2005 and imposed yearly landfill tonnage allowances on all waste disposal authorities. Any authority which exceeded its allowance and had not purchased sufficient allowances under the LATS legislation could be fined £150/tonne for every tonne over the allowance.
33. Since the introduction of LATS in 2005/06 the County Council has consistently met its target for diverting the requisite tonnage of biodegradable waste away from landfill and is forecast to meet its obligations up to and including 2012/13. The following table sets out the County Council's performance to date and forecast to 2012/13.

Scheme Year	Target Year	LATS Allowance (Tonnes)	Actual BMW landfill (Tonnes)	Forecast BMW landfill (Tonnes)	Annual Balance
2005/06		185,075	145,478		+39597
2006/07		177,250	140,472		+36778
2007/08		166,816	126,964		+39852
2008/09		153,773	108,436		+45337
2009/10	2009/10	138,123	100,637		+37486
2010/11		122,748		87,199	+35549
2011/12		107,374		79,300	+28074
2012/13	2012/13	92,000		78,800	+13200
2019/20	2019/20	64,375		-	-

The Government Review of Waste Policy in England has announced an intention to remove the need for LATS compliance beyond 2012/13 but the threat that individual authorities could share a part of any fine that arises as a result of the UK as a whole failing to meet its EU landfill diversion target in 2020 remains.

34. The Leicestershire Waste Partnership achieved a rate of 52.6% recycling and composting in 2009/10, making Leicestershire the highest performing county in England. It has an ambitious target to achieve 58% by 2017. The County Council has existing contracts to deliver residual waste to the new Mechanical Biological Treatment (MBT) facility at Cotesbach and to Coventry Energy from Waste (EfW) facility, both of which contribute to landfill diversion performance. However, if current trends are reversed and there is a return to waste growth in the coming years then it is likely that the County Council will need to procure additional treatment capacity prior to that date in order to ensure compliance with its 2019/2020 landfill diversion target.

Availability of Waste Treatment Capacity

35. The termination of the long-term procurement project will lead to the loss of guaranteed future waste treatment capacity that would have been provided by a dedicated facility within the county.
36. Although it is estimated by DEFRA that by 2020 some spare waste treatment capacity will be available nationally, this may not be spread evenly across the UK. Planned new facilities may not be delivered on time and waste growth forecasts may prove inaccurate leading to a possible shortage of spare capacity. It is important therefore that the County Council seeks to secure local waste treatment capacity to remove this uncertainty and the associated financial risk.

Landfill Tax and Waste Disposal Costs

37. The most significant driver in reducing the amount of waste disposed of in landfill sites is the annual rise in landfill tax. The current rate is £56/tonne in 2011/12, and this will increase by £8/tonne/year in subsequent years up to a rate of £80/tonne in 2014/15. The Government has yet to announce the rate of increase which will be applied beyond 2014/15.
38. A key feature of the long term waste treatment project was that it provided the County Council with a high degree of certainty regarding the cost of waste treatment for a period of twenty five years. The overall cost associated with future waste treatment and disposal is unpredictable and will be significantly affected by the Government's approach in respect of the level of landfill tax beyond 2014/15. Indications are that Government will continue to raise the level of landfill tax to encourage more recycling and to ensure that landfill disposal costs remain higher than other forms of treatment.

Potential Future Landfill Bans

39. In the Government Review of Waste Policy 2011 there is a commitment to consult on introducing restrictions on the disposal of wood waste in landfill with further consultations on textiles and biodegradable waste planned for the future.
40. Leicestershire currently has arrangements in place to separate wood waste and textiles to prevent any significant quantities of these waste types from being disposed of in landfill. The impact of a future ban on all biodegradable waste from landfill is difficult to determine at this stage given the lack of guidance on how it would be introduced. The proposed consultation process should allow the County Council to assess properly the impact of any proposals and it is anticipated that prior to any ban there would be a sufficient lead-in time for local authorities to procure alternative treatment capacity if necessary.

Alternative Procurement Strategy

41. If it is agreed that the current long-term waste treatment project should be abandoned due to the loss of PFI funding support, the Authority will need to explore an alternative procurement strategy. The County Council is currently in a position to meet its short to medium term targets for landfill diversion and therefore there is no necessity to commence another procurement process straightaway. However, this position may well change. In the medium term leading up to the 2020 landfill diversion target, the County Council will need to plan well in advance for procurement of alternative forms of treatment as uncertainties and risks regarding future changes in waste growth, availability of treatment capacity, increasing landfill tax and the rising cost of treatment will need to be managed. Further reports will be submitted to the Cabinet as necessary.

Bardon Site

42. In June 2008, Cabinet approved the purchase of land at the Interlink Business Park, Bardon in relation to the long-term waste treatment project, to allow the

site together with the Council owned site at Whetstone to be offered to organisations bidding for the contract. It was a mandatory requirement for the waste PFI project that the County Council had at least two sites in its ownership/control which would be available to bidders to use as a potential location for their waste facility. The cessation of the project will lead to the Bardon site becoming surplus to requirements and it is proposed that the Director of Corporate Resources be authorised, in consultation with the Cabinet Lead Member, to arrange the sale of the site at an appropriate time. The County Council will retain the site at Whetstone and seek to upgrade the existing recycling and household waste site and waste transfer station. There are no plans at present for new treatment facilities at this site.

Equal Opportunities Implications

43. There are no discernible equal opportunities implications arising from the proposed termination of the procurement project. The procurement process required an assessment of the approach to equal opportunities which formed part of the evaluation process to determine suitability of the bidders' proposals.

Background Papers

Leicestershire Municipal Waste Management Strategy 2006

Expression of Interest to DEFRA – September 2007

Outline Business Case to DEFRA – April 2008

Report to Cabinet – Procurement of Long Term Waste Management Treatment Facilities – 24 July 2007

Report to the Environment Scrutiny Committee - Procurement of Long Term Waste Management Treatment Facilities – 6 September 2007

Report to Cabinet - Waste Prevention and Re-use Plan – 11 September 2007

Report to Cabinet – Award of Contract for Interim Residual Waste Treatment – 18 December 2007

Report to Cabinet – Scrutiny Review Panel – Procurement of Waste Treatment Facilities – 3 March 2008.

Report to Cabinet – Procurement of Long Term Waste Management Treatment Facilities – 8 April 2008

Report to the Environment Scrutiny Committee - Procurement of Long Term Waste Management Treatment Facilities - Project Evaluation Criteria – 4 September 2008

Report to Cabinet – Procurement of Long Term Waste Management Treatment Facilities – 1 October 2008

Report to Cabinet – Procurement of Long Term Waste Management Treatment Facilities – 15 June 2010

Report to Scrutiny Commission - Procurement of Long Term Waste Treatment Facilities - Progress and Involvement of Scrutiny – 28 October 2009.

Report to the Scrutiny Commission June 2010 – Final Report of the Scrutiny Review Panel on the process and methodology used in assessing bids.