

AGENDA ITEM

REPORT TO CABINET

17 OCTOBER 2019

**REPORT OF CORPORATE
MANAGEMENT TEAM**

CABINET DECISION

Environment and Transport - Lead Cabinet Member – Councillor Mike Smith

TEES VALLEY FUTURE WASTE

SUMMARY

The Joint Waste Management strategy (“**JWMS**”) for Tees Valley was updated in 2018/19 to extend its validity from 2020 to 2035. It was adopted by all the Tees Valley Local Authorities in January 2019 following a period of public consultation. The aims and objectives of the JWMS include waste generation, reuse and recycling, waste recovery and landfill diversions; job creation and overall positive impact on the circular economy.

Stockton, Hartlepool, Middlesbrough and Redcar and Cleveland Authorities as the successor waste disposal authorities to Cleveland County Council operate residual waste disposal services under a single contract that they inherited from Cleveland. That contract that is due to expire in March 2025. Darlington has its own waste treatment and disposal contract which is due to expire at the same time.

There is a recognition within the JWMS of the ongoing benefits of the Tees Valley waste disposal authorities working together. This report introduces an Outline Business Case (“**OBC**”) which has been developed to address the aims and objectives of the JWMS specifically for the future treatment of municipal residual waste (waste remaining after recycled material has been removed) collected by all the Tees Valley Authorities.

It is proposed to formalise the existing partnership working by entering into an Inter-Authority Agreement (“**IAA**”) that sets out in detail the terms of the joint working arrangements for the project. The IAA proposes appointing Hartlepool Borough Council as Lead Authority with responsibility for carrying out the procurement milestones.

REASON FOR RECOMMENDATIONS/DECISIONS

To ensure progress towards the aims and objectives of the Joint Waste Management Strategy and to secure continuation of the treatment of residual waste from 2025 by enabling Stockton to participate in the joint procurement of the wider Tees Valley residual waste treatment.

Entering into the IAA sets down the parameters for the procurement, ensuring that risks are managed and shared, with no individual authority able to withdraw unilaterally without compensating the remaining authorities for a relevant share of procurement and other costs.

RECOMMENDATIONS

It is recommended that:-

- (a) Cabinet agree the Outline Business Case (Annex 4 Exempt) for the future treatment of municipal residual waste and note the intention of the other four Tees Valley authorities to similarly agree the OBC.
- (b) Cabinet approve the Council entering into the Inter-Authority Agreement (IAA) (Annex 2) between the five Tees Valley Authorities in respect of Tees Valley Municipal Residual Waste Treatment project substantially on the terms annexed and to delegate approval of minor amendments to the IAA to the Director of HR, Legal and Communications and Director of Community Services.
- (c) Cabinet note the Terms of Reference for the Project Board (Annex 3).
- (d) Cabinet note the financial commitment to Stockton's share of the procurement and project costs of £1m and subject to approval by full Council as part of the 2020/21 MTFP agree to release funding to be supported through borrowing. Cabinet approve the Council entering into a loan agreement with the Combined Authority in respect of the £1m procurement costs. The final details of the agreement to be delegated to the Director of Finance and Business Services in consultation with the Director of Community Services and the Director of HR, Legal and Communications
- (e) Authorise the Director of Community Services, in consultation with the Director of Finance and Business Services, Director of HR, Legal and Communications and the Cabinet Member for Environment and Transport to accept any minor or inconsequential changes to the Outline Business Case, the Inter Authority Agreement and Terms of Reference of the Project Board if required.

BACKGROUND

1. The Tees Valley Local Authorities excluding Darlington currently have a single contract for the treatment of residual municipal waste which runs until 2025. Darlington have a separate contract and that also expires in 2025. A requirement to identify a new Tees Valley solution from 2025 has therefore been identified and this report details progress on a proposed joint procurement and sets out how the authorities will work together to maximise competition for a Tees Valley solution and how the project will be funded over the immediate and the longer term.
2. Within the north-east region with the exception of Darlington, the incumbent contractor has over time established an effective monopoly on residual waste treatment contracts. The result is that without intervention to secure competition there is limited opportunity for other contractors to offer a residual waste treatment capacity. Consequently, for the Tees Valley authorities faced with going to the market, in order to ensure genuine competition it is apparent that the only realistic option would be to offer the market a site with a planning permission for a new residual waste treatment plant. Only by taking this approach will the authorities be able to promote a more level playing field that will increase competition and drive a value for money solution. This rationale is borne out by feedback from contractors at a Market Awareness day, held on 29th January 2019.
3. It is estimated that by 2025 around 200,000tpa of residual waste will require treatment in the Tees Valley, which is expected to increase to around 210,000tpa by 2050 as a result of housing and population growth. Government policy is expected to widen the definition of municipal waste to include similar commercial and industrial waste, effectively increasing the tonnage of material requiring treatment. This provides the Authorities an opportunity to attract income from third parties by treating additional waste through spare capacity and,

thereby offsetting the gate fee. This opportunity was also confirmed during the Market Awareness day which was well attended by those organisations interested in this project.

Residual Waste Reference Case

4. Obtaining planning before procurement removes a significant risk which might otherwise reduce the number of bidders willing to participate or be priced into the contract. It also means that any perceived “monopoly” advantage that the incumbent contractor has is mitigated. The procurement will use an output specification with evaluation based around criteria developed collectively by the Tees Valley Authorities. This means that any technology that is compliant with the criteria will be considered. The project will seek to use any electricity or heat produced by the facility locally.
5. The Procurement of the solution will be governed through an Inter-Authority Agreement (IAA) between the five Tees Valley authorities. The agreement sets out the terms of joint working arrangements for the Project, the procurement milestones, and the appointment of Hartlepool Borough Council as the lead authority in carrying out the key procurement milestones.
6. To support the delivery of the project and enable the inward investment of energy from waste facilities to Tees Valley it is proposed that the Combined Authority provide support to enable procurement of the project. As this is a complex project there is a significant funding requirement of up to £5m to cover the costs of the procurement, obtaining planning permission on the reference site, project management and external legal, financial and technical advice. The current timetable contemplated in the OBC aims to complete the procurement process during the summer of 2021, with construction of the facility completed by autumn 2024. This is to enable operational commencement by April 2025. The funding arrangements for the £5m procurement costs are detailed in the Financial Implications section of this report.
7. The IAA deals with the governance and co-operation of the Tees Valley Authorities during the procurement phase. Once a contractor is identified and the final contract is agreed, the authorities will need to enter into a Second Inter Authority Agreement setting out their respective rights and responsibilities with in the operational phase. This second agreement will include the matters set out in the heads of terms.

Options Appraisal

8. Four options for residual waste treatment were identified in the Strategic Outline Case and taken forward as part of an options appraisal (in the JWMS) with a number of waste collection and recycling options. The highest scoring option was the new build Energy Recovery Facility (“ERF”), with Combined Heat and Power and high-performance recycling systems. The new build ERF will be taken forward as the Reference Case. However, the procurement will be designed so that it does not preclude the possibility of alternative technologies being proposed, as long as they can demonstrate similar levels of performance and reliability and meet the requirements of the output specification

Project Team and Governance

9. It is intended that participating Authorities will work together under the proposed Inter-Authority Agreement which binds the parties together in a binding agreement. This was a key issue raised by a number of the organisations at the Market Awareness day. Representatives from each Council will form the project delivery team which will be supported by technical, legal and financial advisers. This team will report into the Tees Valley Chief Executive’s. The Combined Authority will be part of the Project Team. Further reports to Cabinet will be provided at key points during the project.

COMMUNITY IMPACT IMPLICATIONS

10. All residents and businesses will benefit from a sustainable waste disposal strategy.

CORPORATE PARENTING IMPLICATIONS

11. Not applicable

FINANCIAL IMPLICATIONS

12. The basic principles of the payment mechanism have been developed and are set out within the OBC and will be finalised as part of the procurement strategy with a view to promoting value for money.
13. The costs, budget and finance section of the OBC sets out the cost of the procurement to the Authorities, demonstrates the Value for Money for the Reference Project (based on the Treasury's Value for Money Assessment Guidance) and the affordability of the Reference Project whilst providing the respective Council's budgetary commitment to the affordability implications as far as is foreseeable.
14. A budget of up to £5m is proposed to be set aside to cover all the costs associated with the procurement project. These funds are subject to approval by the Tees Valley Combined Authority Cabinet and if approved, will be used to provide project management and external advice in the areas of legal, financial and technical during procurement.
15. It is proposed that the Combined Authority provides a loan facility of up to £5m for the project. Interest will be included at cost based on the Public Works Loan Board rate. The repayment term will be for a 25 year period commencing the first day of operation, with annual repayments made by the five Tees Valley authorities based on a loan agreement with each authority for their respective share of these costs.

LEGAL IMPLICATIONS

16. The Council has the legal powers to enter into the Inter Authority Agreement and to implement the project pursuant to powers conferred upon it by sections 51 and 55 of the Environmental Protection Act 1990, section 19 of the Local Government Act 2000 and Regulation 7 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000.
17. As a best value authority the Council is under a duty to obtain best value and secure efficient use of resources. The IAA requires that the services obtained by the relevant authorities on behalf of the Tees Valley (i.e. up to the expenditure of £5m) will be subject to approval the Project Board (including the Stockton representative) and in accordance with the relevant authorities' procurement rules, Public Contracts Regulations 2015 and good industry practice.
18. It is proposed to developed a contract based on H M Treasury's Standardisation of Project Finance Initiative Contracts (SOPC4) as revised by PF2 and the Waste Infrastructure Delivery Programme (developed by DEFRA). The benefit of this contract are that it is known to the market and allocates the main risk of construction and commissioning to the contractor before any payment is made by Tees Valley. It then provides for life cycle maintenance for the full duration of the contract; this means that at the end of the proposed 25 year contract the Authorities' are handed back a fully operational asset. The proposed procurement mechanism is Competitive Dialogue.

RISK ASSESSMENT

19. The five Tees Valley Local Authorities have agreed and implemented a risk management strategy to identify the key risks and ensure a consistent approach to both strategic and operation risk across the project. These are set out in detail within the OBC.
20. The current waste disposal contract has already been extended and a further extension of the contract without competition could place the Authorities at the risk of legal challenge that could potentially delay the project. Additionally, the facility will be over 30 years old by 2025 raising significant risk of unpredictable maintenance costs and downtime.

WARDS AFFECTED AND CONSULTATION WITH WARD/COUNCILLORS

21. All Wards affected -

ANNEXES

Annex 1 - Project Board, Terms of Reference
Annex 2 - Inter-Authority Agreement (IAA)
Annex 3 - Additional Financial Implications (Exempt)
Annex 4 - Outline Business Case (Exempt)

BACKGROUND PAPERS

Supporting Appendices to the Outline Business Case (Exempt)

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