

**AGENDA ITEM**

**REPORT TO CABINET**

**17 JULY 2020**

**REPORT OF CORPORATE  
MANAGEMENT TEAM**

**CABINET DECISION**

**Environment and Transport - Lead Cabinet Member – Councillor Mike Smith**

**TEES VALLEY FUTURE WASTE – ENERGY RECOVERY FACILITY (ERF)**

**SUMMARY**

1. This report details the next stages of the Tees Valley Energy Recovery Facility (ERF) project and seeks approval from cabinet on a number of recommendations.
2. The previously approved Inter-Authority Agreement (IAA) which included the five Tees Valley Councils (Stockton, Darlington, Hartlepool, Middlesbrough and Redcar and Cleveland) has now been updated to include Durham County Council and Newcastle City Council.
3. The target date for completion of the procurement process is December 2021. This will enable the successful contractor to accept and manage all contract waste from April 2025.

**REASON FOR RECOMMENDATIONS/DECISIONS**

To progress future waste services; as well as progress towards the future waste strategy.

**RECOMMENDATIONS**

1. Cabinet approve the entering into of an Inter-Authority Agreement (IAA), between the five Tees Valley authorities, Durham County Council and Newcastle County Council in respect of the Tees Valley Energy Recovery Facility (ERF) on the terms set out in the appended draft agreement (Appendix 2), to delegate all functions and decision making powers to the persons or bodies as set out in that agreement, and delegate approval of amendments to the Inter-Authority Agreement to Director of HR, Legal and Communications and the Director of Community Services.
2. Approve issuing of the Official Journal of the European Union (OJEU) notice and commence the formal procurement of the project.

**DETAIL**

1. The Tees Valley Authorities, Durham County Council and Newcastle City Council (together "the Councils") have joined together to create an opportunity for a contractor to design, build, operate and finance a new Energy Recovery Facility (ERF) to be located in the Tees Valley.
2. The ERF will be designed to have a minimum 40-year lifespan and the entity appointed following the conclusion of the procurement process ("Contractor") will have a minimum 29

year contract to build and operate the ERF (4 years build and 25 year operating), with the potential of a further 11 year extension.

3. It will be a source of renewable electricity (up to 49.9MW) and heat, equivalent to powering over 20,000 homes. The development will create over 300 jobs during the construction phase and over 40 permanent positions and will contribute to the local circular economy. All residues from the process (metals and ash) will be recycled or recovered.
4. The target date for completion of the procurement is December 2021 and Services are expected to commence in April 2025. The Contractor will be required to accept and manage all Contract Waste from 1 April 2025 even if the ERF has not completed its Acceptance Tests. (Contract Waste will not be available to the Contractor prior to 1 April 2025).
5. Hartlepool Borough Council acts as the lead authority for formal administration, for example in publishing the OJEU notices and applying for a National Grid connection.

#### Inter-Authority Agreement

6. Governance arrangements are being drawn up to create a single governing project board on behalf of the Councils with clear defined powers and voting structures. The final arrangements will be concluded prior to the formal commencement of the procurement process (nominally comprising of the publication of the OJEU notice) and set down in an amended First IAA which covers the seven Councils.
7. Key principles/changes which feature in the amended IAA are:
  - the inclusion of Durham County Council and Newcastle City Council;
  - a Council cannot withdraw from the procurement process without compensating the other remaining Council; and
  - a Council cannot withdraw from the eventual contract without compensating the remaining Councils.
  - The proportion of procurement costs that each Authority is responsible for is based on tonnages and this will be further reconciled prior to commencement of the contracting arrangements. This will be included in the IAA final amendments prior to final signature in line with recommendation 2 of this report.

#### Procurement

8. Due to the value of the contract arising from this procurement it is necessary to utilise a Public Contract Regulations (PCR) 2015 compliant process. The route selected is Competitive Dialogue which allows for a two stage process: the Selection Questionnaire (SQ) stage which will be used to select three (or four) tenderers; and the Dialogue stage which will be used to determine the required solution and allow for final tenders.
9. The formal procurement for the Tees Valley ERF Project is currently due to commence in summer 2020 with the issue of the OJEU Notice.
10. The timeline for the procurement process to be concluded is currently December 2021 (which is liable to change).

#### Contract Management

11. At the same time that the project contract is entered into with the Contractor, a second IAA will be entered into in order to govern the management of the contract.

12. It is intended that the Councils will enter into the eventual contract through a limited company via a Special Purpose Vehicle (SPV) owned by the seven Councils. The second IAA will effectively become a shareholders' agreement for the limited company.

13. The Finance Directors from all seven Authorities have agreed with the principle of the recommendation to use an SPV. However, this is subject to review and confirmation of any accounting or tax implications of the proposed arrangements

#### **COMMUNITY IMPACT IMPLICATIONS**

14. All residents and businesses will benefit from a deliverable waste disposal strategy. The future ERF will deliver social value and investment into the local economy, employment and training opportunities and regeneration.

#### **CORPORATE PARENTING IMPLICATIONS**

15. Not applicable

#### **FINANCIAL IMPLICATIONS**

16. This project will have capital and revenue implications for the authority as outlined in the Outline Business Case (OBC) report (approved Nov 2019 by Cabinet).

#### **LEGAL IMPLICATIONS**

17. It is intended to use a contract originally based on H M Treasury's Standardisation of Project Finance Initiative Contracts (SOPC4) and the Waste Infrastructure Delivery Programme (developed by DEFRA). This allocates the main risk of construction and commissioning to the developer before any payment is made by the authorities. It then provides for life cycle maintenance for the full duration of the contract. The proposed procurement mechanism is Competitive Dialogue.

#### **RISK ASSESSMENT**

18. See **Appendix 1**.

#### **WARDS AFFECTED AND CONSULTATION WITH WARD/COUNCILLORS**

19. All Wards affected.

#### **BACKGROUND PAPERS**

IAA (Confidential)

HOT (Confidential)

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