

COUNTY COUNCIL

24 SEPTEMBER 2014

LONG TERM WASTE SERVICE CONTRACT

MEMBERS FAQs

- 1. What is the cost and benefit of the Mechanical Treatment (MT) and Anaerobic Digestion (AD) parts of the proposal at AWRP, and what would be the impact of taking out these components on the overall Waste PPP Project both financially and operationally?**

The inclusion of the MT and AD do add net cost to the Waste PPP Project. It is estimated that they add in £52m over the life of the Contract (in net present value ("NPV") terms) although the MT facility does also provide reception facilities which would have to be built even if there was an Energy from Waste ("EfW") only plant.

However, inclusion of the mechanical treatment and anaerobic digestion components provides benefits compared to a solution based just on EfW incineration. In particular, the components provide:

- flexibility to deal with future changes in waste, recycling or collection practices by being able to target different materials, or process separately collected food waste*
- improved environmental performance including the ability for the County Council and City of York Council to deliver their Joint Municipal Waste Strategy targets for recycling*
- more efficient electricity generation and generation of 'renewable' electricity from biogas – with potential to use as vehicle fuel and/or direct injection into National Grid in due course*

In addition, the MT and AC components were included within the proposal from AmeyCespa in order to address the Councils' original requirements, as set out at the beginning of the procurement process, which had a weighting of 60% quality / environment and 40% cost for the purposes of final tender scoring. Accordingly, the removal of these components would constitute a material change to the Contract with AmeyCespa to the extent that the Council would almost certainly be in breach of the EU procurement regulations if it were to agree to such a change. These components cannot therefore be removed from the existing Contract. The only way to secure an outcome where the MT and AD components did not feature at AWRP would be to abandon the existing Contract and conduct a new procurement exercise with the risks / benefits that would entail. . The removal of the MT and AD components would result in a scheme which would require a fresh planning consent and renegotiation of the property agreements which secure access to the land.

2. Has consideration been given to taking out the Energy from Waste incinerator from the proposal and sending refuse derived fuel to other plants in the region or abroad?

As discussed in response to Q1, this option is not deliverable within the existing Contract with AmeyCespa. The production of a refuse derived fuel at Allerton Park, or use of other 'spare' treatment capacity in the UK or abroad is not an option before the Council. If Members wish to explore this option then the Council would need to terminate the Contract for the current proposal being considered and conduct a new procurement exercise.

The procurement process for the long term waste service contract did not specify the inclusion of any particular technology as it was felt the market was best placed to propose the appropriate solution to meet the Councils' requirements. All of the initial proposed solutions included some form of thermal treatment of waste and all of the final four proposals included Energy from Waste incineration. The proposal from AmeyCespa for the AWRP was the solution that best delivered the requirements of the Councils as set out in the Joint Waste Management Strategy. The inclusion of Energy from Waste in this mix of technologies was the market's response to the Councils' stated needs and objectives of the procurement and represents the optimum outcome.

Market testing has confirmed that, if the Council chooses not to proceed with AWRP, there would be sufficient capacity available in the short to medium term to provide an alternative to landfill. Allerton Park could be a suitable site for alternative waste treatment but any alternative proposal would require a separate planning consent and environmental permit, as well as a new agreement for access to the site.

The Council cannot simply chose to put waste (or fuel) into a particular plant or site and so would have to procure a service through competitive tender, which would necessitate terminating the existing Contract with AmeyCespa.

The prices of any alternative will only be determined through a competitive procurement so any perceived benefit (financial or otherwise) is at risk until that process is concluded. Contracts for disposing of refuse derived fuel normally require the supplier to commit to quality guarantees to ensure the fuel meets the required calorific value and composition. This would be a new and additional risk which would need to be considered.

A requirement to produce fuel is likely to increase transport costs as waste would first need to be processed centrally to produce the fuel, and then transported to the off take contractor. The elements of waste not suitable for fuel will also require disposal at additional cost, which depending on the specification for the fuel, can be considerable. These additional costs are likely to result in a solution more expensive than is currently being considered.

3. The value for money assessment is based on the cost of landfill as a proxy for an alternative. Why have you used landfill as a proxy and what if this assumption turns out to be wrong?

Landfill is used as a proxy in place of any certainty on the cost of a long term alternative. This does not mean that landfill is assumed to be the long term alternative, but that the cost of the future alternative is likely to be comparable with landfill. This is based largely on information from a recent soft market testing exercise and the current shortfall in waste treatment capacity in England compared to demand.

The soft market testing exercise involved speaking to 10 neighbouring local authorities and 19 waste contractors (local and national) to assess interest in providing an alternative solution both in the short and long term. The process confirmed the potential for other alternative treatment options but indicative prices (including for export) were largely benchmarked against landfill cost and landfill tax. Prices were typically quoted as being “competitive with landfill” but prices were also typically subject to indexation and/or inflation. Those requiring a fuel (either for export or processing in the UK) would also typically require some form of waste composition guarantee (e.g. calorific value, particle size, moisture content). The production of a fuel also produces a residue which needs further disposal – either to landfill or alternative treatment.

The consensus from the soft market testing exercise was that landfill tax would increase at least with inflation, with some thinking it would increase by one further iteration of £8/tonne (hence why that sensitivity is included within the report considered by the Executive on 9 September 2014).

The use of landfill prices (assuming no further increases in landfill tax in real terms) is therefore considered to be an appropriate and reasonable proxy for the cost of an alternative treatment proposal because:

- *landfill (including landfill tax) was generally provided as the benchmark for pricing of future alternative disposal options*
- *the costs of landfill used assume no further increases in landfill tax in real terms*
- *export is unlikely to be a long term option.*
- *current landfill costs (excluding landfill tax) in Yorkshire and the North East are amongst the lowest in England*
- *landfill requires no pre-treatment or processing of waste (as AWRP)*
- *transport costs are likely to be no more (or possibly lower) than for other treatment options (i.e. the market proxy assumes local landfill capacity will be exhausted before waste is transported to landfill sites outside the County. The distance to these landfill sites is similar to that for likely alternative treatment sites)*
- *waste to landfill requires no guarantees on waste composition or calorific value (as AWRP).*

The market proxy is attempting to identify a price for a long term alternative treatment option that would provide similar levels of guarantee and performance to AWRP. Current spot market gate fees may in some cases be lower than landfill but are not comparable to AWRP and therefore are not considered suitable as a market proxy because they do not offer the same protection, performance guarantees or risk profile that would be required in a long term alternative.

AWRP was compared directly with other market alternatives on a like for like basis in 2010 and was shown then to be the most economically advantageous tender when compared to other treatment solutions.

The decision the Council has to make now is to proceed with this Contract or start again. It is impossible to say with certainty what the cost of an alternative would be if the current Contract was terminated and a new procurement exercise conducted, but a comparison to landfill costs is presented in the report as being appropriate and reasonable.

The sensitivity of the use of landfill costs as the proxy for an alternative has been tested with a 10% reduction in the disposal costs applied in 2024/25. The result is that the Waste PPP Project retains a positive value for money for both Councils of £103m over the life of the Contract or £10m in NPV terms.

4. How certain are we that the technologies proposed are future proof and appropriate for the next 25 years

The technologies proposed by AmeyCespa have been demonstrated to be proven, robust and reliable for use on municipal waste by reference to working plant in the EU. They have been shown to work and deliver the performance required individually and together.

The technology incorporates modern and up to date equipment and will undergo regular maintenance and replacement of components throughout the life of the Contract to take advantage of technological advances in order to make the plant more effective and efficient.

The MT provides future proofing for changes in residual waste composition and changes to recycling requirements by providing the opportunity to re-configure the sorting equipment and target different or new materials. The AD is also proposed initially to treat organic waste separated from residual waste but could be adjusted to deal with separately collected kitchen waste if the collection authorities decided to or were required to collect this waste separately.

AWRP represents a mix of technologies that give added comfort and flexibility in being able to deal with changes in waste composition, increases in recycling or changes in legislation.

5. What are the alternatives solutions available to for dealing with our waste if this does not proceed

The short term alternative if AWRP does not proceed will be to continue to send waste to landfill (in part at least) as landfill currently provides a cost effective method of municipal waste disposal in North Yorkshire. The alternatives would include the potential for production of a refuse derived fuel for export, or use of limited 'spare' capacity in existing treatment facilities on or outside the North Yorkshire boundary.

Longer term options will depend on the development of revised strategic objectives and priorities to determine the relative future importance of factors such as:

- *price;*
- *appetite for increased recycling and/or green credentials;*
- *desire to be self-sufficient;*
- *geographic constraints; and*
- *appetite for risk (price, technology).*

Any alternative would require a separate competitive procurement exercise to be undertaken and the outcome and price cannot be guaranteed.

6. What reliance is being put on the new arrangements with Yorwaste and what are the risks if the arrangements are not deliverable?

The proposal is to use commercial waste collected by Yorwaste on behalf of the County Council and City of York Council to 'optimise' waste delivered to AWRP and take advantage of relatively low marginal contract rates. This commercial waste is waste which would otherwise have been delivered to AWRP, but instead of being delivered via arrangements with third parties, would be delivered under the Councils' Contract. The financial benefit of these arrangements to the Councils is shown in the table at paragraph 7.13 of the report to the Executive as £37million (nominal) over the life of the Contract and as £14million (NPV) in paragraph 7.19 of the report.

The financial risk attached to this benefit is the ability for the Councils to attract sufficient commercial waste (through the district councils or Yorwaste) to reach the 'optimum' amounts. This will be affected by the market and competition for this waste (including competition from AmeyCespa) but the question is not so much whether the waste will be available, but what price will the Council be able to charge and how sensitive is this to the value for money analysis?

The value for money assessment has a prudent assumption that commercial waste delivered by Yorwaste will attract an income of 90% of the prevailing rate of landfill tax – i.e. £72/t in 2014/15. Advice from Yorwaste is that this is at the bottom end of current disposal costs for similar commercial waste.

It is recognised that this approach is relatively new and has a different risk profile to other elements of the Waste PPP Project. That is why the benefit has been identified as a discrete line in the value for money analysis. If the benefit were to be excluded then the Waste PPP Project remains value for money in nominal and NPV terms (see the Tables at paragraphs 7.13 and 7.19 of the Executive report).

7. How is this project value for money when we have lost PFI credits, LATs and other changes?

The loss of PFI credits and the repeal of the LATS regime did reduce the value for money of the Waste PPP Project. However, there have been some favourable changes which have helped to offset some of these factors. The most significant of these changes has been the improvement in funding terms from the market to fund capital and the exchange rate with the Euro (given exposure to European contracts for elements of the plant).

There have also been some more minor improvements possible through improvements in guaranteed levels of income from third parties, including recyclates and energy sales to the National Grid. These guarantees effectively net down the charge to the Councils.

The above changes are reflected in the costs of the Waste PPP Project and the Value for Money assessment is set out in paragraphs 7.12 to 7.22 of the Executive report of 9 September.

8. Other Councils have abandoned their Energy from Waste projects, why is North Yorkshire not doing the same?

The only options available to Members at this moment in time are to proceed with the Waste PPP Project to Financial Close or to terminate the Contract. .

Other Local Authorities have recently made the decision to abandon their procurements of long term service contracts, including Bradford & Calderdale and Norfolk. These decisions were made under different conditions on the basis of local circumstances and should not be interpreted as a precedent for North Yorkshire and York.

Bradford and Calderdale Councils had their Waste Infrastructure Credits withdrawn at the same time as North Yorkshire and York, but had not entered into a contract at that time. It is understood that unlike North Yorkshire and York, the Bradford and Calderdale project did not provide value for money without Waste Infrastructure Credits and the decision was therefore made to abandon the project. Conversely, Merseyside had Waste Infrastructure Credits withdrawn at the same time as North Yorkshire and City of York but have continued to progress with their project.

Norfolk also lost Waste Infrastructure Credits but decided to terminate their contract due to a failure of the contractor to achieve a planning consent.

9. What is the position regarding Parent Company Guarantees or Performance Guarantees?

We would not expect the Council to directly benefit from any form of guarantee or performance security from either the sponsors or the Sub-Contractors (though the Council will benefit from Collateral Warranties from the Sub-Contractors which provide step-in rights and a direct duty of care). This reflects standard practice in the UK PPP market.

However, the Contractor (AmeyCespa SPV) will benefit from the performance security provided by the relevant parent companies in respect of the obligations of the Works and Operating Sub-Contractor. This is likely to take the form of parent company guarantees.

In addition, the Works and Operating Sub-Contractor benefits from the performance security provided by the tier 2 Construction Sub-Contractors, which will take a variety of forms including bonds (or other forms of cash equivalent collateral) and parent company guarantees.

As such, the Waste PPP Project as a whole benefits from a significant performance security package which underpins the Senior Lenders' investment in the Waste PPP Project. The associated documents will be agreed prior to Financial Close and will be reviewed by the Council.

Finally, the sponsors are likely to provide letters of credit (or some other form of security such as an equity guarantee) to AmeyCespa SPV in respect of their obligations to inject junior debt at completion of the Works (as an equity bridge loan covers this investment requirement during the Works Period). These documents are likely to be included within the Project Agreement, though they are not in agreed form as yet.

10. What further financial benefit might there be if the Council was to operate the plant for a further 5 years?

The Contract with AmeyCespa sets out that the AWRP plant should be returned to the Councils at the end of the 25 year period with at least 5 years of operational value remaining. This is addressed in the report that was considered by the Executive on 9 September (paragraph 7.14).

By the end of the 25 year period the capital costs will all have been repaid and so there would be an instant saving in running the plant for years 26 to 30. This has been estimated as being worth £69m to the County Council (or £12m in NPV terms).

In reality the plant will continue to operate and it would be expected that there would be a further positive difference between the costs of operating the plant and the Market Proxy. This has been modelled and paragraph 7.14 of the Executive report identifies that it would result in a further £205m (or £29m in NPV terms) positive Value for Money difference for both Councils (estimated at £163m nominal or £23m NPV for the County Council alone). The report does not however include this additional sum in any Value for Money calculation on the basis that it would be beyond any contractual period and there is therefore a higher degree of uncertainty to include this assessment.

11. Do the recent criticisms of Waste PFI Projects from the Public Accounts Committee ("PAC") apply to the AWRP Project?

The principal criticism levelled by the PAC is that some Waste PFI projects permitted the payment of sums to the private sector partners in circumstances where key assets were not delivered. This criticism is not relevant to the AWRP as, with the exception of certain limited pass through payments (such as rent payable under the site lease), no payments are made to AmeyCespa in respect of waste processing or other services unless and until the plant is capable of receiving and processing waste. The fact that no interim service is being provided by AmeyCespa assists in maintaining this delineation.

The only PAC comment which could be argued to be relevant to this Waste PPP Project is the comment regarding technology changes and waste tonnage movements over the term of a PPP project. However, as confirmed above, the Councils consider that the flexible design of the AWRP plant and the Councils' commercial waste solution relating to Yorwaste provide suitable mitigants to these risks.