



DERBY CITY COUNCIL

**COUNCIL CABINET**  
**21 APRIL 2009**

Joint Report of the Corporate Directors of  
Resources and Environmental Services

**ITEM 20**

**Waste Management Contract - Approval of Commercial and Financial Close**

**SUMMARY**

- 1.1 Arrangements for the negotiation of and signing the Project Agreement between the Derby City Council, Derbyshire County Council and Resource Recovery Solutions (Derbyshire) Ltd (RRS), the company representing the partnership between United Utilities and Interserve, are now approaching a conclusion.
- 1.2 At the time of preparing this report, it is anticipated that signing of the Project Agreement will take place by 1 June 2009. Any changes to these arrangements will be reported to Cabinet at its meeting.
- 1.3 There are a comparatively small number of issues which will need to be resolved with RRS to the Council's satisfaction before the Project Agreement is finally signed. Where appropriate, these are referred to in the report.
- 1.4 The Project Agreement will be subject to satisfactory resolution of any outstanding issues referred to in the report of the officers, who are two of the authorised signatories of the Council, after consultation between Corporate Directors of Environmental Services and Resources with the Cabinet Member for Direct and Internal Services over the final proposed cost.

**RECOMMENDATIONS**

- 2.1 To approve and authorise the signature, sealing, execution and delivery of the Project Agreement between Derby City Council, Derbyshire County Council and RRS relating to the Residual Waste Management Project, including such other legally binding documents as listed below ("the Documents"):
  - Senior Lender's Direct Agreement
  - Sub-Contractor Direct Agreement
  - Independent Certifiers Appointment
  - Admission Agreement.
  - Local Government (Contracts) Act 1997 Certificate for the Project Agreement
  - Local Government (Contracts) Act 1997 Certificate for the Funder's Direct Agreement.

- Such other legally binding documents including consents, waivers, undertakings, notices, letters, certificates and documents to be signed and/or initialled by the Authority, whether pursuant to the terms of the Project Agreement or otherwise (and including, without limitation, any documents referred to in the Project Agreement as 'Agreed Form' documents).
- 2.2 To authorise the Corporate Directors of Environmental Services and Resources in consultation with the Cabinet Member for Direct and Internal Services to clarify and fine tune the provisions of the Documents.
  - 2.3 To authorise the Corporate Directors of Environmental Services and Resources in consultation with the Cabinet Member for Direct and Internal Services to resolve any outstanding issues referred to in this Cabinet report, in order that those issues can be incorporated within the Project Agreement as necessary without a requirement to submit a further report to Council Cabinet. This Authority is subject to the base annual Unitary Charge being within the affordability envelope, varying upwards only by the items noted in the confidential section of the report. Should any issues not be resolved to the satisfaction of these officers and the Cabinet Member for Direct and Internal Services acting on behalf of the Council, arrangements for signing the Project Agreement should not be concluded, and that a further report be presented to Council Cabinet at the earliest possible meeting.
  - 2.4 To authorise the issue of certificates under the Local Government (Contracts) Act 1997 to RRS and the Senior Lender in respect of the Project Agreement and the Senior Lender's Direct Agreement.
  - 2.5 To agree to receive further reports on the implementation and progress of the Project, as undertaken by RRS in conjunction with the Council.
  - 2.6 To delegate decision making powers in relation to the recommendations outlined in paragraphs 2.1 to 2.5 above and the Project generally to the Corporate Directors of Environmental Services and Resources and the Cabinet Member for Direct and Internal Services.

<b>REASON FOR RECOMMENDATION</b>
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- 3.1 Everything possible should be done to minimise the risk of delays in signing of the PA, in order to minimise the Council's costs and help to ensure implementation of the Project in accordance with the Project Plan and Timetable.

## **SUPPORTING INFORMATION**

- 4.1 A contract notice was placed in the Official Journal of the European Union (OJEU) on 19 June 2006 inviting contractors to express an interest in the long term Waste Management Project jointly issued by Derby City Council and Derbyshire County Council. Shanks, United Utilities (UU) and the Waste Recycling Group (WRG) were shortlisted in 2006 to submit priced bids. Shanks were deselected in April 2007. WRG was subsequently taken over by a company called Fomento de Construcciones y Contratas (FCC). Invitations to Submit Final Tenders (ISFT) were offered to the final two companies (UU and WRG) on 14 November 2008 with Final Tenders submitted on 21 November 2008. Selection of preferred bidder was approved by Cabinet on 13 January 2009.
- 4.2 The new contract procured through this project will be effective from 1 April 2010. It will provide for the management and disposal of all residual waste collected by the Waste Collection Authorities (WCAs) and waste delivered to the Household Waste Recycling Centres (HWRCs) by the general public. A key element of the new contract will be the provision of a new treatment facility to enable a significant proportion of this waste to be diverted away from landfill. RRS aim to have submitted a planning application for this plant by the date of this meeting.
- 4.3 County Council Cabinet are considering a similar report at their meeting in Matlock today.

## **OTHER OPTIONS CONSIDERED**

- 5.1 Failure to award a contract would leave the Council exposed to very significant financial risks from Landfill Tax increases and projected LATs deficits.
- 5.2 Failure to award the Contract would not reduce levels of waste going to landfill, nor carbon emissions.
- 5.3 The current proposal, if concluded successfully, is expected to be at a similar cost to the Councils as the PFI option for which an Outline Business Case submission was presented to Government in October 2008 and which will continue to be pursued as a contingency in case of failure of the current procurement.

**For more information contact:** Name Andrew Hopkin, Assistant Director, Local Environment  
Tel 01332 641516 e-mail [andrew.hopkin@derby.gov.uk](mailto:andrew.hopkin@derby.gov.uk)  
or Barry Scotchbrook, Waste Project & Contracts Manager  
Tel 01332 641573 e-mail [barry.scotchbrook@derby.gov.uk](mailto:barry.scotchbrook@derby.gov.uk)  
or Zulfiqar Darr, Assistant Director, Corporate Finance and  
Performance  
Tel 01332 256288 e-mail [zulfiqar.darr@derby.gov.uk](mailto:zulfiqar.darr@derby.gov.uk)

**Background papers:** Waste Management Cabinet Reports  
6 September 2005 – Procurement of Waste Disposal  
20 December 2005 – Funding Strategy for Waste Disposal  
25 April 2006 – Funding and Affordability  
28 November 2006 – Short list of Contractors  
5 June 2007 – Prospective Loan for New Treatment Plant  
30 October 2007 – Prospective Loan for New Treatment Plant  
28 October 2008 – PFI Submission of Outline Business Case  
28 October 2008 – Investing in SPV for Treatment Plant  
16 December 2008 – Inter Authority Agreement  
13 January 2009 – Selection of Preferred Bidder

**List of appendices:** Appendix 1 – Implications

<b>IMPLICATIONS</b>
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**Financial**

1. The Financial implications are included within the Private section of the confidential report which includes commercially sensitive data for the Project.

**Legal**

- 2.1 The City Council will be entering into a long term contract (likely to be until 2037) with a joint venture between United Utilities and Interserve for the disposal of residual waste jointly with the County Council. The management of the contract will be managed under the Inter – Authority Agreement. The Heads of Terms for the Inter-Authority Agreement were approved by Council Cabinet on 16 December 2008.
- 2.2 The Council will be required to issue certificates to the contractor and its funder under the Local Government (Contracts) Act 1997 as to the powers relied upon by the Council. These certificates provide protection to the contractor and the funder in the event of a successful challenge that the Council has acted beyond its legal powers. The Council will be required to compensate the parties in accordance with the contractual provisions should such a situation arise. Regulations under the Act require the certificate to be signed by a Chief Officer or Deputy Chief Officer and copies must be served on the Council's Monitoring Officer and external auditors. It is intended that these certificates will be signed by the Corporate Director of Resources.
- 2.3 The procurement has been carried out in accordance with EU procurement requirements.

**Personnel**

- 3.1 Although there will be no impact on Council staffing levels, a successful project will create at least 30 permanent jobs in the City. In addition there will be jobs during the construction phase.

**Equalities impact**

- 4.1 None

**Corporate Priorities**

5. The Waste Management Project will help to reduce landfill and help Derby towards a better environment. The cost will increase from current levels and comparisons with 'business as usual' given in the confidential part of the report show it will therefore contribute to better value for money.