

## BRIEFING NOTE

# Residual Waste Treatment Facility Project – Lessons Learnt



### Purpose

It was resolved at Scrutiny Management Committee on 22 February 2018 that the Cabinet member for Resources and Innovation be encouraged to request officer colleagues to undertake a lessons learned exercise on the contract and its operation.

This report brings together the “Positives and Examples of Good Practice” and the lessons learned e.g. “Matters to do Differently Next Time”.

### Background

At a Delegated Decision meeting held on 22 February 2018 approval was given for the Council to proceed and to vary the contract for the Residual Waste Treatment Facility. The Cabinet member for Resources and Innovation authorised the Corporate Director Place, in consultation with the Corporate Director Resources and Commercial Development, to agree, finalise and enter into a Deed of Variation and any other necessary formal documents to effect the agreed position.

On 14 March MKC and AmeyCespa (MK) SPV entered into a deed of contract variation which secured the commencement of the services at the Residual Waste Treatment Facility and triggered the payment of the £129,162,409.59 capital sum, with the provision of a £10.524m retention bond.

The Cabinet are scheduled to meet on 5 June 2018. Item 9 (“References from Other Bodies”) on the agenda for the aforementioned meeting includes a referral from Budget Scrutiny Committee.

The Budget Scrutiny Committee met on 13 March 2018 and resolved to support the Scrutiny Management Committee’s resolution that the Cabinet Member for Resources and Innovation be encouraged to request officer colleagues to undertake a “lessons learned” exercise on how the Residual Waste Treatment Facility contract was planned, developed and operated.

### Residual Waste Treatment Facility Project - Lessons Learned

In the table below, the lessons learned have been considered in relation to future major infrastructure projects e.g. procurement of an anaerobic digestion facility or similar.

| Positives and Examples of Good Practice      |  | Application to the future Major Infrastructure Projects         |
|--|--|---|
| No ISOS and streamlined Competitive Dialogue | This was actually a lesson learnt from the predecessor project: Project Reduce. An ISOS stage simply added to a “phoney war” and prolonged the process. When the project was reincarnated as the RWTF, a streamlined process was used which resulted in OJEU to Award in 24 months.                | Base the strategic procurement plan on same structure           |
| Planning                                     | Although planning was largely a contractor risk, in fact a good deal of work with stakeholders, Members and public was done initially by the Council and subsequently by the Council and Bidders prior to award which de-risked planning and allowed a swifter time frame and more confident bids. | Consider land assembly and planning packs to provide to Bidders |

| Positives and Examples of Good Practice                          |  | Application to the future Major Infrastructure Projects   |
|--|--|---|
| Ground Surveys   | The Council carried out a ground condition and site survey at its own cost but to a specification agreed by the final tenderers jointly. This allowed final bids to be submitted on a certain and unqualified basis  | Budget to carry out ground surveys during the procurement (they will be required ultimately) and include this strategy in the ISDS                    |
| Team appointed from outset and budgeted                          | The Council invested in the procurement by appointing a team of advisers to work together from the outset with the project director and project manager fully resourced. This made a huge difference to the quality the documentation, the dynamics of the dialogue team and ultimately the outcome for the Council.               | Assemble team from early days so that their input can shape the procurement before positions are set in stone or steps taken that are hard to unravel |
| Payment of the capital sum                                       | The contract and finance agreements ensured the Council was not liable to pay capital sum or financial investment until after the facility was built and proven. These provisions held strong when tested.   | If the Council is investing, make sure that the investment is protected   |
| Flexibility of OJEU to include project development and expansion | The OJEU and the contract documentation contained measures to allow the project to evolve and expand. For example it facilitates: <ul style="list-style-type: none"> <li>Waste being sourced from other Councils with an income to the Council</li> <li>The provision of power to the Council or a joint energy project</li> </ul> | Consider future developments and scope and include in the OJEU even if they may not be used.  |

| Matters to do differently next time                           |   | Application to the future Major Infrastructure Projects   |
|---|---|---|
| Binary nature of acceptance / non acceptance by longstop date | The acceptance tests were set with a high bar – and that was definitely the correct approach. However that meant if they were not passed by a longstop date, draconian measures were available to the Council. This protected the Council but did not allow the parties much space to develop a “less than perfect” solution. | Consider an “interim” measure, possibly a more developed form of retention (a “permanent retention” and move into service phase)            |
| Government incentives   | This has affected projects nationally: the removal of LECs and other Government renewable incentives is considered by the Contractors to be a change in law and   | Set out each Government incentive assumed separately and legislate for what happens if it is removed. Make anything else a Contractor risk. |
| Supplier protection   | When a key subcontractor went into administration, a number of suppliers had not been paid. They turned to the Council for assistance but of course the Council is not their employer. It was not congenial for the Council to watch UK companies suffer without any ability to step in.                                      | Consider fair payment policy or project bank accounts to ensure payments flow to subcontractors.  |
| Secure delay damages  | This was not possible because the Contractor was suffering so much loss already for delay, bidders would not also accept LDs. It is possible however that this could have been secured as a contractual position earlier if introduced earlier and in the procurement and possibly a different approach taken.                | Determine early whether delay damages are important and if so how they should be calibrated.  |
| Agree terms with neighbouring Councils                        | The Contract and OJEU facilitated the use of the contract by other Councils. However it has proven harder to agree the terms with those other Councils and the Contractor and the contract could have been more developed in this respect.  | Consider including the more developed framework and call of contract in the ISDS  |

| Matters to do differently next time |  | Application to the future Major Infrastructure Projects  |
|-------------------------------------|--|--|
| Dry run the testing regime          | Partly because the facility was not working, and the Contractor was therefore keen to find a solution, there was a debate about how the tests should be run and interpreted. | Include “step” or shadow testing part way through to flush out if there is any disagreement about how the tests are applied or interpreted |

### Next Steps

The Environment and Waste Team are embarking on several major projects as part of the emerging Environmental Services Programme. The programme will consider the procurement of major capital asset and the above lessons learned will form part of the options appraisal process. Consideration should also be given to sharing the lessons learned through the Portfolio Office e.g. via the Project Managers Network or similar alternative.

### Glossary

|      |   |   |
|------|---|---|
| ISDS | Invitation to Submit Detailed Solutions | Stage which typically follows the ISOS stage in the Competitive Dialogue Procedure designed for particularly complex procurements   |
| ISOS | Invitation to Submit Outline Solutions  | Stage which typically precedes the ISDS stage in the Competitive Dialogue Procedure designed for particularly complex procurements  |
| LDs  | Liquidated Damages                      | Contracts generally include a clause making provision for the contractor to pay liquidated damages (LD, sometimes referred to as liquidated and ascertained damages - LADs) ). In construction contracts, liquidated damages usually relate to the contractor failing to achieve completion by the completion date set out in the contract. |
| LECs | Levy Exemption Certificates             | LECs were an electronic certificate that was issued by Ofgem to be used by a licensed electricity supplier as evidence of its supply of electricity from a renewable source. Levy exemption certificates were used to claim an exemption from the climate change levy but are no longer issued.   |
| OJEU | Online Journal of the European Union    | The Official Journal of the European Union is the official gazette of record for the European Union.  |
| RWTF | Residual Waste Treatment Facility       | Name given to the procurement project and facility and now referred to as the Milton Keynes Waste Recovery Park (MKWRP).  |