

Wards Affected:

All Wards

ITEM 12**DELEGATED DECISION****13 JANUARY 2015****RESIDUAL WASTE TREATMENT FACILITY – SPARE CAPACITY**

Responsible Cabinet Member: Councillor Legg, Cabinet Member for Public Realm

Report Sponsor: Mike Hainge, Service Director, Public Realm

Author and contact: Andy Hudson, Head of Environment and Waste, Tel: 01908 252577

Executive Summary:

Following a full Cabinet meeting held on 17 October 2012 and a delegated decision taken by the Chief Executive on 14 May 2013 the Council, on 26 June 2013, entered into a Project Agreement with AmeyCespa for the design, build, finance (during construction) and operation of its residual waste treatment facility, which is currently under construction at its Dickens Road, Old Wolverton site (the "Facility"). The Facility has spare capacity, which the Council could make available to a neighbouring Local Authority as envisaged by the Official Journal of the European Union (OJEU) notice. This report recommends, amongst other things, that the framework arrangement envisaged by that notice and discussed with AmeyCespa is now concluded to enable neighbouring Local Authorities to deliver their residual waste to the Facility for treatment.

1. Recommendation(s)

- 1.1 That the public and press be excluded from the meeting by virtue of Paragraph 3 (Information Relating to the Financial or Business Affairs of the Authority) of Part 1 of Schedule 12A of the Local Government Act 1972 during consideration of the Annex to this report.
- 1.2 That Milton Keynes Council completes the framework arrangement envisaged in the original OJEU notice to enable any neighbouring Local Authority (as defined in the OJEU), to benefit in the spare capacity that exists in the Facility.
- 1.3 That the Chief Executive, in consultation with the Cabinet member responsible for Public Realm and the Corporate Director Resources (the Section 151 Officer) be authorised, to approve the final form of framework contract (and associated documents) and to enter into that contract under Common Seal (attested by the Interim Service Director [Law and Governance], or a person duly authorised by him) with AmeyCespa.
- 1.4 That the Chief Executive, in consultation with the Cabinet member responsible for Public Realm and the Corporate Director Resources (the Section 151 Officer) be authorised, to approve the final form of joining contract (and associated documents) and to enter into that contract under Common Seal (attested by the Interim Service Director [Law and Governance], or a person duly authorised by him) with Central

Bedfordshire Council ("CBC"), or any other neighbouring Local Authority.

2. Issues

- 2.1 The Facility can treat at least 132,000 tonnes of residual waste, which over the fifteen year operational period means that the Council's waste will account for on average 50% of the Facility's overall capacity. There is therefore spare capacity to be utilised to the council's benefit.
- 2.2 A notice was placed in "OJEU" on 24 June 2011 inviting interested parties to provide the Council with a solution for the treatment of its residual waste (black bag waste). The OJEU notice made it clear that as part of its procurement it might include a separate framework agreement that would enable neighbouring Local Authorities (within a thirty mile radius of Milton Keynes) to benefit from the Facility's spare capacity. It stated that this limited category of Local Authority may be admitted to the framework agreement (by entering into a joining agreement with the Council) and entering into call-off contracts with the chosen Contractor upon terms laid down in the framework.
- 2.3 The Council has been in discussion with neighbouring Local Authorities about the Facility's spare capacity.
- 2.4 Further background to this report relating to the commercial terms agreed with AmeyCespa are considered in more detail in the Annex to this report, which is not for publication by virtue of Paragraph 3 (Information Relating to the Financial or Business Affairs of the Authority) of Part 1 of Schedule 12A of Section 100B of the Local Government Act 1972.

Central Bedfordshire Council (CBC)

- 2.5 CBC qualifies as one of the Council's neighbouring Local Authorities pursuant to the criteria set out in the OJEU. CBC has itself been involved in two unsuccessful procurements to design, build, finance and operate its own residual waste treatment facility. CBC took the decision to end its most recent four year procurement in December 2013 citing affordability as the main reason for abandonment.
- 2.6 The Council has been in discussion with CBC about the possibility of CBC bringing its residual waste to the Facility on or around the Facility's planned service commencement date of September 2016. These discussions have progressed extremely well and CBC's Community Services Director has been granted delegated authority to enter into the various contracts required to commit CBC's residual waste to the Facility.
- 2.7 Further information on the commercial terms to be entered into between CBC and AmeyCespa under the call-off arrangements as well as the risks and benefits to the Council are considered in the Annex to this report, which is not for publication by virtue of Paragraph 3 (Information Relating to the Financial or Business Affairs of the Authority) of Part 1 of Schedule 12A of Section 100B of the Local Government Act 1972.
- 2.8 The Council and CBC would like to have all arrangements completed and in place by 1st April 2015. This timetable is considered to be achievable given that much of the discussions between the Council and AmeyCespa on how

the framework arrangements would operate took place during the preferred bidder stage.

3. Implications

3.1 Policy

- (a) The Milton Keynes Zero Waste Strategy (as updated in 2011 and 2013) sets out the requirement for the development of the residual waste treatment facility and the key policies, principles and targets for waste management.

3.2 Resources and Risk

- (a) Contractual risks are considered in the confidential annex which are not for publication by virtue of Paragraph 3 (Information Relating to the Financial or Business Affairs of the Authority) of Part 1 of Schedule 12A of Section 100B of the Local Government Act 1972.
- (b) The majority of the upsides in the contract with AmeyCespa only come to fruition if there is sufficient waste being processed through the Facility. By securing waste from neighbouring local authorities it significantly mitigates the risk of not realising the opportunity to generate income to its full potential.
- (c) There will be a requirement for legal and commercial advice in drawing up the framework, assisting with the terms and conditions and the service agreement between AmeyCespa and the Council. The costs of this will be met by the existing project revenue budget.

N	Capital	Y	Revenue	N	Accommodation
N	IT	N	Medium Term Plan	N	Asset Management

3.3 Carbon and Energy Management

- (a) Sustainable waste management practices play a key part in carbon reduction and Energy Management. The development of residual waste treatment facilities will have significant carbon reduction and renewable energy benefits as well as managing natural resources more effectively.
- (b) Contracting with neighbouring local authorities which fall within the Council's 30 mile proximity principle creates a carbon saving by treating waste close to the source in accordance with relevant waste legislation.

3.4 Legal

- (a) Entering in to the Framework envisaged by the original OJEU allows neighbouring authorities to agree call-off terms with AmeyCespa. The terms of the draft call-off will be essentially the same as the terms already concluded save in respect of those elements which would not be relevant to another Authority. In practice this will mean stripping out a number of the clauses and schedules which are not applicable to the contract e.g. financing, planning and permitting and works phase conditions. When calling off the other Authority cannot materially depart

from the terms of the draft call off based on the Project Agreement between the Council and AmeyCespa.

3.5 Other Implications

- (a) As well as the financial benefits to the Council this arrangement is an exemplary example of how public funds can be efficiently deployed to benefit neighbouring Local Authorities as well as this Council.

N	Equalities/Diversity	Y	Sustainability	N	Human Rights
N	E-Government	Y	Stakeholders	N	Crime and Disorder

Background Papers:

Milton Keynes Zero Waste Strategy as refreshed.

Milton Keynes Waste Development Plan Document 2007-2026 (adopted February 2008)

Report to Cabinet entitled "Residual Waste Treatment Facility Project" on 14 June 2011

Report to Cabinet entitled "Residual Waste Treatment Project – Preferred Bidder and Delegated Decision To Award Contract" on 17 October 2012

Delegated Decision Report entitled "Residual Waste Treatment Facility – Contract Award" on 14 May 2013

Annex : Confidential Annex