

**PFI WASTE MANAGEMENT UPDATE
CONTRACT GOVERNANCE ISSUES
(Report by Director of Operational Services)**

1. INTRODUCTION

- 1.1 Cabinet at their meeting on 12 February 2004 received a report on the progress of the proposed PFI procurement of waste collection and disposal services.
- 1.2 This report updates Cabinet on progress made on identifying possible future governance arrangements following the procurement of waste services supported by PFI credits.

2. BACKGROUND

- 2.1 Previously it was reported to Cabinet that the following governance models were to be explored further:
- A 'Joint Committee' of participating councils with a lead council (the County Council) entering into the contractual arrangement for the service. Management would be delivered by a joint officer team.
 - A 'Lead Authority' (the County Council) responsible for the contract with the service provider and all management responsibilities. The relation between the Lead Authority and the other councils would be governed by a contractual arrangement. This is similar to our highways agency, but in reverse.
 - A 'Local Authority Company' which would be a legal entity in its own right. Participating councils would have a seat(s) on the board of the company.
 - A 'Waste Management Authority' to which the participating councils would delegate their waste functions and the management of their existing operations.
 - Two 'Linked Contracts' with a single contractor but enabling Peterborough City to have a separate contract from a second joint County Council/District Council contract.
- 2.2 The Outline Business Case indicates a preference for either the Lead Authority model or a Local Authority Company. In the former this would involve a tri-partite agreement between the County Council, Peterborough City Council and the contractor; with separate subsidiary, legally binding agreements between the County Council and the districts.

3. CURRENT POSITION

- 3.1 Little further work has been completed on these models which assumed that a majority of waste collection authorities would be involved in a joint procurement of collection and disposal services.

- 3.2 More recently, the lack of certainty regarding having a net financial benefit following tendering has made it more difficult for collection authorities to determine whether they wish to take part in the procurement process either on a sub-contract or integrated basis. In the light of this the county council –
- is concerned that waste collection authorities' decisions may not be available until September 2004; and
 - is expressing a desire to narrow the tendering options before proceeding further with the preparation of contract documentation which is a pressing task.
- 3.3 They have therefore requested comments on a two-fold approach which is designed to provide any potential contractors with greater certainty about the waste streams arriving for ultimate disposal.
- 3.4 Firstly the county council are proposing a consortium which would have the following key features:
- Services are integrated
 - DSO(s) could work as subcontractors for the Private Sector Partner (the Contractor)
 - The contract would be jointly managed using one of the models outlined in section 2 above. Huntingdonshire's future collection decisions would therefore be taken by a consortium of authorities.
 - Waste Collection Authorities (WCAs) in the consortium would receive the benefit of PFI credits. They would pay a share of the unitary charge and there would probably be other forms of financial adjustment between the Waste Disposal Authority (WDA) and WCA to supersede recycling credits: an open book approach would be implicit (the participants could form a Special Purpose Vehicle (SPV) with a single account).
- 3.5 Any WCAs not in the consortium would be expected to enter into a partnership agreement with the following features:
- The Joint Strategy guides policy and programmes
 - CCC has a legally binding Service Level Agreement (SLA) with each of the WCAs not in the consortium
 - These WCAs deliver their own collection services
 - The SLAs would govern which materials are collected at kerbside and forecast tonnages etc.
 - SLAs could be backed by a revised recycling credit scheme or a cost sharing scheme (as per Lancs CC)
 - Some form of fall back or sanction if a WCA departed from the SLA (e.g. as envisaged in the WET Act)
 - Agreement to an open book approach
 - WCAs might qualify for performance reward grant
- 3.6 Since the county council proposals were received a number of meetings have taken involving the various officer sub-groups and these have resulted in the county council agreeing to consider the following issues:
- 3.6.1 Can a WCA take part in the procurement process and then withdraw if the final financial and service package is not attractive? The county

view seems unclear as different interpretations have emerged from different county officers. If there is no option for withdrawal it is extremely unlikely that WCAs will join the procurement phase.

- 3.6.2 Why does a sub-contracting WCA need to be in the proposed consortium for governance, as opposed to financial purposes? If this were not required then a sub-contracting WCA could negotiate a partnership agreement with the county council rather than having to be in the consortium and therefore lose autonomy over its service to a consortium decision.
- 3.6.3 The withdrawal of the WCAs from the procurement phase would simplify the tender process and possibly lead to more competitive prices for disposal. The alternative partnership approach would therefore become critical to maintaining eligibility for PFI. It would thus seem appropriate for the county council to find a mechanism to effectively pass on the WCAs' share of the PFI credits, as their share of the government funding, for creating an acceptable partnership arrangement. This would also mean that there would be less likelihood of any greater saving from taking part in procurement for those WCAs who were interested in sub-contracting rather than full integration.
- 3.6.4 It has been suggested in government consultation that the performance reward scheme planned for WCAs in future years will not be available to those taking part in PFI schemes. Clarity is needed on whether this is still likely to be the intention and whether partnership, as opposed to sub-contract or integration of collection arrangements, would equally rule out their availability.
- 3.6.5 The county council cannot require a WCA to enter into a legally binding partnership agreement. They are obliged to pay recycling credits and can also issue "directions" as long as they meet any resulting costs. HDC would need to be confident that the joint agreement was advantageous before entering into it.

4. **CONCLUSION**


- 4.1 It is not yet clear how quickly the county council will be able to reach a view on the issues raised in paragraph 3.6 but a fast response is critical to keeping the procurement phase on target. If further information is available in time it will be tabled at the meeting.
- 4.2 It would not be appropriate for Cabinet to make decisions on whether Huntingdonshire should take part in the procurement phase until some, at least, of the answers are available.
- 4.3 In the meantime Cabinet may like to consider the key information which will inform the decision and, given that an early indication of the Council's intention on joining the procurement phase is requested for the CCA Waste Forum meeting on the 28 April, what line the Council's representative should take. In particular, Cabinet may like to consider if they are prepared to relinquish direct control of the collection service or not.

5. **RECOMMENDATIONS**

- 5.1 That Cabinet give an indication of their position given the current information.

Background papers:

Outline Business Case: Integrated Waste Management Project –
Cambridgeshire and Peterborough Waste Partnership (January 2004)

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Waste PFI Procurement - Savings/Costs

More chance of

A share of PFI credits
Collaboration/integration and innovation on collection service with potential savings
No recycling reward grant (subject to the outcome of Government consultation)
Need to employ our own or share cost of a Districts' consultant

Definitely

Contribution to procurement costs (£40k)
Cost of producing a specification
Staff working on PFI not able to work on other priorities (opportunity cost)

But

The County Council are now proposing that those authorities participating in the final contract (sub-contract or integration), will lose autonomy on collection decisions. Decisions will be made by consortium on which HDC would have representation, but probably no veto.

The above summary will need updating in the light of the county council's decisions on the issues raised in paragraph 3.6 above.