

**WASTE PFI – GOVERNANCE AND PROCUREMENT ISSUES****(Report by Head of Environment & Transport )****1. INTRODUCTION**

- 1.1 The Cabinet at their meeting on 30 January 2003 approved a Memorandum of Understanding which formalised the relationship between the waste collection authorities (WCA – the Districts and City Councils) and the waste disposal authorities (WDA - Cambridgeshire County Council and Peterborough City Council). The Memorandum established arrangements for the WCAs and the WDA to work together to deliver a Joint Municipal Waste Strategy to achieve demanding national and European recycling and waste disposal targets up until 2030.
- 1.2 Subsequently the Cabinet have received a number of reports (13 November 2003, 12 February 2004, 22 April 2004) which have detailed the evolution of plans to seek government funding, through the Private Finance Initiative (PFI), to support the delivery of the Joint Strategy. At their meeting on 22 April 2004 Cabinet resolved to defer consideration of the District Council's involvement until more information was available (Minute 189).
- 1.3 This report provides Cabinet with an update on the current position and identifies some of the issues which will need to be addressed in the coming months, and which will be the subject of reports to future meetings of Cabinet.
- 1.4 All councils at the next meeting of the Cambridgeshire Councils' Association Waste Forum, later in September, will be asked to endorse a Statement of Understanding which takes the principles of the Memorandum of Understanding and makes them specific to the relationship between the WCAs/WDAs in the run up to any PFI contract being implemented. This report also invites Cabinet to authorise the signing of the Statement of Understanding.

**2. PFI PROCESS UPDATE**

- 2.1 The District Council (together with Cambridge City Council, South Cambridgeshire and Fenland District Councils) have been unable to commit to the inclusion of their waste collection services within the proposed PFI contract. It has not been possible to demonstrate that there is any service quality or financial advantage to including WCA services within the PFI contract.
- 2.2 The WDAs, however, are fully committed to the PFI approach for securing disposal arrangements and their application currently is with Department for the Environment and Rural Affairs (DEFRA). It is anticipated that a decision on the possible grant of some £40 millions of PFI credits will be made towards the end of September.

- 2.3 Subject to the credits being secured the WDAs will embark on the process of inviting tenders for a 25-year contract for the provision of waste processing facilities for Cambridgeshire and Peterborough. The tendering procedure will involve detailed negotiations with prospective bidders in an attempt to reduce areas of uncertainty, to identify the various risks associated with the project and to clarify who (the contractor or WDA) will carry those risks.
- 2.4 Any lack of certainty over the quantity of waste and the manner in which it is delivered for final processing would be a significant contractual risk. These are matters that are substantially in the control of WCAs. The County Council are seeking to reduce this risk by encouraging Districts/City Councils to adopt a Statement of Understanding that further emphasises the partnership between the WCAs and the WDA. The reason for, and implications of, the Statement of Understanding is explored further in Section 3 of this report.
- 2.5 Concurrently with entering into a contract for waste processing with the successful bidder the County Council will seek to enter into a 'partnering agreement' with each WCA. This will happen towards the end of 2005/06.
- 2.6 Whilst the Statement of Understanding will not be legally enforceable this will not be the case with the 'partnering agreement'. Through the partnering agreement the WCAs will commit themselves to delivering waste in a defined manner and in specified quantities to the processing facility.
- 2.7 For example, a WCA having agreed in the partnering agreement to deliver paper as part of co-mingled loads for recycling could not unilaterally decide to collect paper separately and sell it independently because there was a sudden upturn in the price of paper for recycling. This would breach both the 'partnering agreement' and potentially cause a claim from the County Council's contractor for loss of income for material not delivered for processing.
- 2.8 It will be important, therefore, for the District Council to have formed a clear view of how it proposes to deal with the various waste streams that it collects (e.g. garden waste, arisings from street cleansing, abandoned vehicles) before entering into the partnering agreement. The decision will be based on financial and operational considerations and will be the subject of a report to a future meeting of the Cabinet.
- 2.9 The decision about what we do with the waste we collect may be influenced by the future of recycling credits. This is the arrangement which provides WCAs with an income equivalent, as a minimum, to the landfill tax that would have been paid by the WDA had the waste been landfilled. The Government has indicated that it will be undertaking a review of these credits and the County Council already has flagged its wish to proceed with a local renegotiation of the credit arrangement. This again will be the subject of a report to a future meeting of the Cabinet.

### **3. STATEMENT OF UNDERSTANDING**

- 3.1 In order for the County Council to meet waste recycling and landfill targets they need to construct facilities for the processing, treatment and/or disposal of waste. The facilities will represent a significant capital investment by the Government (in the form of PFI credits) together with the private sector funders of the project and the County Council (via the Unitary Charge i.e. payments to the contractor).
- 3.2 Unless the Government, banks and contractors are satisfied that their investment is secure they will not enter into a contract and any PFI credits will be withdrawn. As the County Council will control the land and assets provided, to ensure continuity of service should the contractor fail, they cannot be used for security for the funders.
- 3.3 The income from the project is the only security and the funders and the Government (because of the credits) will expect the project to be watertight and will try to reduce risk as far as possible. One of the biggest risks is demand risk – i.e. how can the contractor and its funders be sure that there will be enough tonnes of waste (the basis on which they will receive payment) to cover the debt, costs and return.
- 3.4 Potential contractors must be able to satisfy themselves of the tonnages likely to be generated. There are a number of factors that can influence this but the biggest of these obviously are the waste collection methods. In simple terms, bidders need to know the extent to which the collection services will provide waste to any plant before the contract is signed in 2005/06.
- 3.5 A partnering agreement will capture what is eventually agreed and will confirm that the County Council through the PFI contract will make certain facilities available and the collection authorities will feed them in the agreed manner. It will also contain a degree of flexibility for all parties but crucially it cannot be agreed now because we do not know what Bidders will offer us and the costs and compensation have not been calculated. What will need to be done over the next few months is agree the structure and philosophy of that document (ie the Heads of Terms)
- 3.6 However, potential bidders will ask very early on in the process for comfort that the collection authorities will collect in such a way as to feed their plant. They need something which gives a flavour of the partnering agreement which will eventually be entered. The Statement of Understanding is intended to provide this but will not be legally binding. It does not commit any Council to anything.
- 3.7 The inclusion of the Statement of Understanding in the County Council's tender pack will encourage bidders. It will demonstrate the strength of the partnership and the commitment of the WCAs to the process. Attracting a strong field of bidders will help to ensure that the people of Cambridgeshire are provided with cost effective waste treatment arrangements. The continued use of landfill is not an option because of potential penalties from Government in years to come.
- 3.8 The draft Statement of Understanding is reproduced at Annex A. It provides a framework for the collaboration of the WCAs and WDAs up to

the time of the award of any contract for waste processing and the completion of the legally binding partnering agreement.

- 3.9 It is proposed that WCAs and WDAs will sign the Statement of Understanding at the meeting of the CCA Waste Forum in September.

#### **4. VIEWS SOUGHT/RECOMMENDATIONS**

- 4.1 Cabinet are invited to note that reports will be brought to future meetings with regard to :-

- (a) how the District Council proposes to deal with the material it collects from the various waste streams; and
- (b) the implications of any changes to the scheme of recycling credits.

- 4.2 Cabinet are recommended to:-

- (a) note that it has not been possible to justify the inclusion of the District Council's waste collection services within the proposed PFI arrangement; and
- (b) authorise Director of Operational Services, following consultation with the Leader of the Council on any textual changes, to sign the Statement of Understanding on behalf of the District Council.

#### **BACKGROUND INFORMATION:**

**Cambridgeshire & Peterborough Joint Waste Partnership (RECAP)  
Integrated Waste Management PFI Project**

## **ANNEX A**

### **Waste Management PFI**

**This Statement of Understanding** is made between the following Councils:

- (1) Cambridgeshire County Council ("the County");
- (2) Peterborough City Council ("the City");
- (3) Cambridge City Council;
- (4) East Cambridgeshire District Council;
- (5) Fenland District Council;
- (6) Huntingdonshire District Council; and
- (7) South Cambridgeshire District Council ("the Districts")

such Councils together referred to in this Statement of Understanding as the Partnership.

#### **Background**

- A. Cambridgeshire County Council is a Waste Disposal Authority and the Districts are Waste Collection Authorities for the purposes of the Environmental Protection Act 1990 (the EPA). Peterborough City Council has unitary status and accordingly is a Waste Disposal and Collection Authority;
- B. The National Waste Strategy 2000 issued by the Secretary of State pursuant to the EPA requires Local Authorities to achieve certain statutory recycling and recovery targets;
- C. The 1999 Landfill Directive (99/31/EC) requires all Local Authorities to divert waste from landfill;
- D. The Partnership have formally confirmed their support for and commitment to working together to deliver a long term waste strategy that will achieve such targets for recycling, recovery and diversion from landfill;
- E. The City and the County are in the process of jointly procuring through the government's Private Finance Initiative ("PFI") waste management services to include the design, construction, financing and operation of recycling, composting and recovery facilities for the benefit of the Partnership;
- F. The Partnership has established a Project Team to manage the PFI procurement.

#### **This Statement of Understanding**

Accordingly this Statement of Understanding is made by the Partnership to explain the individual roles of the Councils in the PFI procurement and the objectives of the Partnership.

For the avoidance of doubt this Statement of Understanding is not intended (nor shall be deemed) to have any legally binding, contractual or enforceable effect nor is intended to create any legal partnership between the members of the Partnership. Further this Statement of Understanding shall not be taken as a tool for interpreting whether any future act or decision of the Parties (either alone or in conjunction with each other) is reasonable.

1. This Statement of Understanding augments and is supplemental to the Memorandum of Understanding attached at Schedule One which remains relevant and pertinent. The Partnership acknowledges that by working together the Councils will be better placed to secure recycling, treatment and disposal arrangements to meet their individual targets and Best Value performance targets and achieve Best Value and value for money for the tax payers of Cambridgeshire and Peterborough.

## 2. **PFI Procurement**

2.1. The City and the County have been awarded [*£40million*] in provisional PFI credits by DEFRA. The City and the County are leading the PFI procurement process and intend to enter into a long term arrangement with the successful bidder (“the PFI Contract”) for waste management services.

2.2. The City and the County have agreed to a joint procurement of the PFI contract with a view to entering into the PFI Contract in 2006.

2.3. The Partnership has agreed the procurement strategy and intends to work together throughout the procurement process.

2.4. A description of the lines of communication, the arrangements for working together and the decision making process during the procurement is attached at Schedule Two

2.5. Evaluation of bids and all decisions relating to shortlisting, selection of the Preferred Bidder and the award of the contract will be carried out and made by the County and the City but in doing so they shall consider the reasonable comments of the Districts.

2.6. Copies of the Bidders’ tenders and BAFOs shall be given to the Districts for this purpose and the Districts shall have the same duty of commercial confidentiality in respect of the tenders and BAFOs and as will the County and City.

2.7. The Bidders will be given access to visit and discuss matters with the Districts but the Districts agree not to meet any Bidder, discuss any matter relating to the procurement with a Bidder, provide information to a Bidder or communicate with a Bidder without a member of the Project Team being present. In any event all contact between the Districts and Bidders shall be subject to the same procedures relating to probity and ensuring fair competition as the County and the City implement and as are applicable to the procurement as a whole.

## 3. **Partnering Agreement**

3.1. The Districts will not be a party to the PFI Contract but rather intend to enter into a partnering agreement with the County

- 3.2. The Districts and the County intend to work together in good faith to agree the terms of the partnering agreement.
- 3.3. The Districts and the County intend to enter into the agreed partnering agreement at the same time as the City and the County enter into the PFI Contract.

#### 4. **Mechanics of Reaching Agreement**

- 4.1. The Partnership has set up a Steering Group for the purposes of delivering the procurement, supported by three panels (these being operational, financial and legal comprising the operational, financial and legal representatives of the Partnership councils). The Steering Group and panels will meet regularly throughout the procurement and will contribute to the development of the specification, the ITN and the evaluation criteria.
- 4.2. On receipt of the BAFOs the Steering Group and panels shall devise and agree an action plan for ensuring the partnering agreement is fully drafted and agreed by preferred bidder stage. The action plan shall take into account the County and Districts' democratic cycle and the decision making procedure each will follow to ensure that the partnering agreement is agreed and signed simultaneously with the PFI Contract.
- 4.3. The action plan shall be revised and reviewed periodically and as necessary to take into account issues, concerns and the timetable relating to the PFI procurement.
- 4.4. The Districts and the County shall work together reasonably, amicably and expediently towards agreeing the partnering agreement and ensuring it is executed so as not to frustrate or delay the PFI Contract.
- 4.5. If any of the Parties experience difficulties in entering the partnering agreement the Parties shall meet to revisit the action plan and strategy but for the avoidance of doubt failure to reach agreement shall not prevent the County and City from entering into the PFI Contract nor prevent the other Parties from entering into the partnering agreement.

Signed on [        ] September 2004 as a true and genuine understanding by:

Cambridgeshire County Council

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Peterborough City Council

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Cambridge City Council

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East Cambridgeshire District Council

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Fenland District Council

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Huntingdonshire District Council

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South Cambridgeshire District Council

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**Schedule One**

**Memorandum of Understanding**

**Schedule Two**  
**Decision Making Process**

