

Report of Deputy Chief Officer

Report to James Rogers, Director Communities & Environment

Date: 18th March 2020

Subject: Variation of Waste PFI Contract in relation to recycling performance and other matters.

Are specific electoral wards affected?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, name(s) of ward(s):	
Has consultation been carried out?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Will the decision be open for call-in?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If relevant, access to information procedure rule number: 10.4(3)	
Appendix number: 1	

Summary

1. Main issues

- This report provides a history of the recycling performance for the Recycling & Energy Recovery Facility (**RERF**) operated by Veolia, and highlights issues that have impacted negatively on this key performance target since full service commencement.
- The report outlines measures implemented to try resolve the problems and outlines a technical and financial proposal for the future recycling performance.
- The report provides details of the proposed contract variation, retrospective financial settlement for historic underperformance and a mechanism for any future performance failure in this regard for the next 7 contract years.
- The report also notes other contractual issues being settled at this time.

2. Best Council Plan Implications (click [here](#) for the latest version of the Best Council Plan)

- The issues being discussed within this report have specific implications with regard to the Council's environmental performance and the aspirations stated within our

environmental policy where we are aiming for improved environmental protection. The following are all relevant contributors to meeting the needs of this Council policy:

- i. Preventing pollution and minimising our environmental impact
- ii. Taking steps to reduce carbon emissions
- iii. Improving our resilience to current and future climate change

3. Resource Implications

- If this variation is approved the Council will receive significant financial compensation for historical recycling performance failures and looking forward compensation for the duration of the proposed variation.
- The variation is subject to approval by DEFRA. If approved the Council will be required to undertake additional waste flow modelling work to support a 5 year plan demonstrating how future city-wide recycling targets will be met. This 5 year plan will be supported by more detailed annual plans. This work is likely to require engagement of specific technical advisors to complete.
- Resource will be required to deliver the proposals detailed in the aforementioned plans. Failure to achieve the city-wide recycling targets will result in a reduction in the Waste Infrastructure Grant (**WIG**) which will be linked to actual recycling performance and therefore will be variable.

4. Recommendations

The Director of Communities and Environment is recommended to:

- note the content of this report and
- approve the implementation of the contract variation, subject to DEFRA approval.

1. Purpose of this report

- 1.1 This report seeks to provide details of the historic recycling performance problems and mitigations at the RERF operated by Veolia. It seeks approval to agree the proposed contract variation as described within the body of this report and in the confidential Appendix 1 to the report. It also addresses other contractual issues being settled at this time.

2. Background information

- 2.1 This contract was awarded in 2012 and became operational in 2015. It provides a treatment solution for all of the city's kerbside residual waste. The RERF provides a two stage process, a Mechanical Pre-treatment facility followed by an energy from waste incineration process to treat all remaining waste.

- 2.2 The materials extracted by the MPT are:

- metals - which have been consistent throughout and have a secure market;
- paper and card – which has been of poor quality/high contamination.

- Plastics – which again has been of poor quality/high contamination.

2.3 In addition to the above materials that contribute to the Council's NI192 Recycling Targets, further materials are recycled or otherwise beneficially used ensuring a landfill diversion rate consistently in excess of 99% since the commencement of this contract (significantly in excess of the 96.5% key target). Furthermore the facility has exported 11.6MWh per year of electricity to the national grid and is providing heat to the Council's District Heating Scheme, with a maximum capacity of 13MWh.

3. Main issues

3.1 The Veolia contract has been very successful and effective in most respects, except for recycling, where there have been on-going issues with NI192 recycling performance since the contract commenced. The annual Key Target is 10% and performance is detailed below in table 1.

Table 1

Contract Year	Recycling Rate
2016/17	1.6%
2017/18	3.6%
2018/19	2.14%

- 3.2 Failure to achieve the Key Target in any year gives rise to a right for the Council to issue a Performance Warning Notice, and may ultimately give rise to termination rights for Contractor Default.
- 3.3 In the contract year 2016/17 a variation was approved by Defra whereby the Council negotiated a financial settlement in return for not issuing the contractor with a Performance Warning Notice for the failure of the Recycling Rate Key Target.
- 3.4 Following this, Veolia has replaced a significant key part of the front end Mechanical Pre-Treatment (MPT) equipment that had been failing, improved access to allow more effective cleaning of the equipment, increase the numbers of shifts from 2 to 3 per day which allowed extended hours of both cleaning and operations and a Veolia affiliate built a paper pulping facility on a site to the rear of the RERF, leased to them for this purpose by the Council, in order to deal with these materials.
- 3.5 However, as can be seen from Table 1, these measures have failed to materially improve the recycling position. In view of the recycling under-performance, the parties began discussions on these matters in order to explore a potential way forward in order that the recyclate may be captured by alternative means.
- 3.6 In addition to the recycling under-performance, the parties are seeking to settle other contractual issues relating to inaccurate ANPR camera readings at the RERF, failure to accredit the RERF for heat related government subsidies and delays in construction of the connection to the Council's district heating scheme.

4. Wider Contract Benefits

- 4.1 Landfill diversion is significantly above the contractual target of 96.5% with performance being 99.74% in 2016/17, 99.76% in 2017/18 and 99.73% in 2018/19.
- 4.2 From a waste operations perspective, the facility provides our refuse collection service an efficient, modern, high quality and safe facility at which to tip, consistently achieving vehicle turnaround times well within the contractual target.
- 4.3 The RERF provides a dedicated modern education / visitor centre with views in to elements of the process. Tours of the RERF are hosted from here for both community groups and schools. These are tailored depending on the need and ages of the attendees and are run jointly by both Veolia and the Council such that wider recycling and environmental messages can also be communicated. This service is proving immensely successful, with the facility almost constantly fully booked Monday to Friday, and with regular themed Saturday tours being held in addition. This ensures a suitable tour can be provided for each audience for example families, adults, school & community groups etc.
- 4.4 The Council is in the process of developing a new operational waste management depot facility, which will consolidate its three current sites into one. This will be located directly behind the RERF, providing service efficiencies.
- 4.5 The Council is also exploring the potential with Veolia of a private wire to supply electricity to the new depot, to both the building and ancillary services, including charging of the current fleet of electric vans. In the longer term, our aim is to operate a range of electric RCVs on suitable routes, which we again hope will be charged by electricity generated at the RERF from the Council's residual waste. These plans are currently in the early stages and would require Defra approval.
- 4.6 In addition, the Council has a separate project to deliver a district heating network (DHN), using heat from the facility. The project will be in two phases. Phase 1 is now complete. Approximately 8km of pipework has been installed, which has linked the RERF to the city centre, as well as a range of high-rise social housing. The Cross Green energy centre, located on a site behind the RERF and which transfers the heat from the RERF to the district heating network is now completed and receiving heat.
- 4.7 Phase 1 of the network supplies heat to nearly 2,000 council-owned multi-storey flats, and in so doing will contribute to addressing fuel poverty by reducing vulnerable residents' fuel bills by c.10%. It will also improve comfort levels and provides more controllable heating for vulnerable tenants in the Council-owned flats. The housing connections also provide an 'anchor load' for the DHN, as together they require a significant volume of the heat that will be supplied through the network. There are numerous socio-economic benefits associated with the network and its future expansion, including contributions to employment, improvement to air quality, economic and housing growth, and this has been a significant example of exploiting the flexibility and future potential built into the original RERF contract.
- 4.8 There are plans for a series of further phases, the next being phase 2 which will connect the network to the core of the city centre. This will enable connection to a number of key new developments in the city, and is also a strategic means to reach other parts of Leeds city centre. It is anticipated that, subject to funding, construction of phase 2 will begin in summer 2019, and be completed by summer

2020. There is also another branch of the network planned to the east of the South Bank area of the City, utilising an already DH-enabled river crossing.

5. Proposed variation

5.1 Full details of the variation are detailed in the confidential Appendix 1 to this report.

The key elements include:

- Payment of a compensatory sum to the Council for Veolia's failure to meet recycling targets in 2017/18 and 2018/19, in consideration of waiving previous PWNS;
- Mothballing elements of the MPT, such that metals become the only material extracted going forwards for 7 Contract Years;
- Payment of a compensatory sum to the Council for a temporary reduction in the Target Recycling Rate during the MPT mothball period to 2%;
- Increased recycling deductions should Veolia fail the revised recycling target;
- Ancillary amendments to the Third Party income sharing mechanism and guaranteed minimum tonnage during the mothball period;
- Review of the ANPR process; and
- compensation for missed heat related subsidies and delays in construction of the connection to the Council's district heating scheme.

5.2 The decision to enter in to this variation is subject to receiving DEFRA & Ministerial approvals. Officers from DEFRA have been fully involved throughout the discussions and are recommending to the minister that the variation is supported.

5.3 In terms of the use of any compensation due to the Council in relation to the recycling elements of the variation, the Council would look to ring-fence this to invest in its Waste Management service. Some of that investment would be used to improve the current service infrastructure for a growing city, targeting improved recycling rates and helping maintain a free garden waste collection service.

5.4 However, in light of the huge implications for local authorities of the Resources and Waste Strategy published in December and the ongoing Government consultations, the Council will review its position in terms of any further specific use such that it can be deployed in support of an integrated, ambitious and future-proofed strategy for minimising environmental impact and maximising resource efficiency in relation to waste.

5.5 With regard to the district heating related compensation, this has already been accounted for as part of the decision making process in relation to supporting the continued development of the district heating network.

6. Corporate considerations

6.1 Consultation and engagement

- 6.1.1 Consultation has taken place with external advisors, WIDP and DEFRA, together with colleagues in Procurement and Commercial Services, Financial Services, SEAQ, and the Executive Member.

6.2 Equality and diversity / cohesion and integration

- 6.2.1 An Equality Impact Assessment for the award of the original contract was undertaken. This variation will not present any additional equality issues.

6.3 Council policies and the Best Council Plan

Climate Emergency

- 6.3.1 This contract was awarded in 2012 and became operational in 2015. It provides a treatment solution for all of the city's kerbside residual waste. The contract was comprehensively evaluated during procurement with environmental benefits being a key consideration. This technical solution provides 62,000 tonne reduction of carbon equivalents per contract year compared to the previous method used for the treatment of the city's residual waste. The reduction in recycling will reduce these carbon savings under the RERF contract, however the delivery of the Council's district heating network which uses the heat produced at the RERF produces significant benefit.
- 6.3.2 Any additional services undertaken by the Council to capture the missing recyclates by another method will help mitigate the impacts mentioned at 6.3.1.
- 6.3.3 This demonstrates efforts made to combat the climate change emergency situation which has been declared in Leeds and contributes towards the Council's aspirations of becoming a carbon neutral city by 2030.

6.4 Resources, procurement and value for money

- 6.4.1 By implementing this variation the Council will receive significant financial compensation. However it is expected that DEFRA will require that plans are developed to demonstrate how the Council will capture the missing recyclable material and if we fail to meet the revised targets there will be a corresponding reduction to the WIG. This approach is consistent with what they have applied to other authorities where recycling targets are being failed.

6.5 Legal implications, access to information, and call-in

- 6.5.1 As a Key Decision this Delegated Decision Report is subject to call in.
- 6.5.2 Note that by virtue of Access to Information Rules 10.4.(3), the Appendices attached to this report are restricted as confidential. This is on the basis that they contain information relating to the financial or business affairs of any particular person (including the authority holding that information) which, if disclosed to the public, would, or would be likely to prejudice the commercial interests of that person or of the Council. It is considered that the public interest in maintaining this information as exempt outweighs the public interest in disclosing the information at this time.
- 6.5.3 The proposed variation accords with public procurement requirements in respect of contract modifications, and in particular could not have been foreseen by the

Council, does not change the overall nature of the contract, does not increase the contract price, and is not substantial.

6.6 Risk management

- 6.6.1 The RERF has not delivered the volume of recycling that the contract anticipates. This variation provides for an adequate compensatory payment to the Council in order that it is able to take back control of its recycling strategy in order to seek to achieve the Council's city-wide recycling targets.

7. Conclusions

- 7.1.1 This contract is considered to be successful in aspects other than recycling. By approving this variation the Council will secure significant compensation which can be utilised to invest in its Waste Management Service. Some of that investment would be used to improve the current service infrastructure for a growing city, targeting improved recycling rates and helping maintain a free garden waste collection service. This variation also provides the opportunity to settle other contractual issues.

8. Recommendations

- 8.1 The Director of Communities & Environment is recommended to:

- Note the content of this report
- Approve the implementation of the contract variation, subject to DEFRA approval.

9. Background documents¹

- 9.1 None.

¹ The background documents listed in this section are available to download from the council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.