

AGENDA ITEM NO 6

TITLE: Joint Materials Recycling Facility (MRF) Procurement

Committee: Waste and Environment Sub- Committee

Date: 25th September 2013

Author: Liz Knox Head of Environmental Services

[N102]

1.0 ISSUE

- 1.1 To inform Members of the work being undertaken by Recycling Cambridgeshire and Peterborough (RECAP) partner Councils to approve a Joint Procurement of MRF services for sorting, bulking and onward processing/sale of recyclable materials for all RECAP partners except Cambridgeshire County Council.

2.0 RECOMMENDATION(S)

2.1 Members are recommended to

- 1) Agree that the Council is committed to the procurement and appointment of a Contractor to deliver Joint MRF services for bulking, sorting and onward processing/sale of recyclable materials for all participating RECAP partners, unless all partners agree not to appoint.
- 2) Approve on behalf of the Council the 'RECAP Partnership Charter', as attached at Appendix 2, including approval of the additional Schedule 2 Governance Agreement relating to the operation of the Joint MRF contract, commitment to participation in and commitment of recyclate materials into the joint contract.
- 3) Agree delegation to the appropriate (named) Officer responsible for authorisation of the final Invitation to Tender (ITT), to award the Contract, in consultation with Whole System Approach Project Board (WSAPB) or nominated Partner's officer (as appropriate to the internal decision making process of each Partner)
- 4) Agree that Peterborough City Council will nominate a preferred supplier in collaboration with the participating partners, for the provision of the services of bulking, sorting and onward processing/sale of recyclable materials contract, on behalf on both Peterborough City Council and the RECAP participating partners.
- 5) Note and agree the approach to the Waste Framework Directive compliance regarding source separation of recyclate, as agreed by the RECAP Board on 4th September and as attached at Appendix 3.

3.0 BACKGROUND/OPTIONS

- 3.1 Attached in Appendix 1 is a Joint Materials Recycling Facility (MRF) Procurement Common Paper. This Paper has been agreed by Recycling Cambridgeshire and Peterborough (RECAP) Board for circulation and approval for all of the Partners.
- 3.2 The paper outlines in detail the reasons and advantages to all partners of under taking joint procurement for an MRF contract. It also summarises the main issues, timescales, decisions required, consultation undertaken, anticipated outcomes, options considered and implications. Recommendation from the paper is provided in 2.1 above.
- 3.3 Attached as Appendix 2 to the common paper is a revised “RECAP Partnership Charter”, which sets out the vision and objectives of the partnership; to improve environmental performance; improved value for money; level-up services where differences occur; and improve service performance. East Cambridgeshire DC previously signed the original Charter, collective agreement is now required to the proposed additional Schedule 2 “Governance Agreement” that sets out how RECAP will collaborate in regard to this joint procurement. The revised Charter also needs to be signed by Peterborough City Council.

4.0 ARGUMENTS/CONCLUSIONS

- 4.1 The Council are committed to working with RECAP Partners. This joint MRF Procurement project is a key stream of work identified as part of the Whole System Approach Programme agreed by RECAP in autumn 2012 and endorsed by Cambridgeshire Leaders and Chief Executives as a “flagship collaboration” The programme seeks to develop an optimum waste management system across RECAP in Cambridgeshire and Peterborough through a collaborative approach that:
- Reduces the overall expenditure against the public purse;
 - Increases the overall income to the public purse; whilst
 - Improving services for the customer, which would include levelling up services across Cambridgeshire and Peterborough to achieve consistently high quality services across the partnership area; and
 - Improving environmental performance.
- 4.2 By working collaboratively and procuring jointly, it is assumed that maximising the collective offer of recyclate materials across the RECAP Partnership to the market will represent the most effective and efficient mechanism to achieving the best value in reducing processing costs and maximising materials income to best benefit the public purse.

5.0 FINANCIAL IMPLICATIONS/EQUALITY IMPACT ASSESSMENT

- 5.1 There are no financial implications associated with this paper.

5.2 Equality Impact Assessment (INRA) not required.

6.0 APPENDICES

6.1 Appendix 1 – Joint Materials Recycling Facility (MRF) Procurement Common Paper.

6.2 Appendix 2 – RECAP Partnership Charter.

6.3 Appendix 3 - TEEP

<u>Background Documents</u>	<u>Location</u>	<u>Contact Officer</u>
Attached as appendices		Liz Knox Head of Environmental Services (01353) 616313 E-mail: Liz.Knox@ eastcambs.gov.uk

Appendix 1

Joint Materials Recycling Facility (MRF) Procurement Common Paper for RECAP Partners Decision-Making Processes September 2013

1. PURPOSE:

- 1.1 This paper seeks to inform the consideration of the Recycling Cambridgeshire and Peterborough (RECAP) partner Councils to approve a Joint Procurement of MRF services for bulking, sorting and onward processing/sale of recyclable materials for all RECAP partners, except Cambridgeshire County Council. All Partners will agree entering into the same contract, to commence by June 2014 in order to meet, sequentially, Peterborough City Council's current contract expiry date of June 2014, with all remaining Partners' recycle materials coming into the same joint contract at the following times:
 - Peterborough City Council - June 2014
 - Cambridge City, Huntingdonshire and Fenland District Council - November 2014.
 - South Cambridgeshire - October 2015
 - East Cambridgeshire - May 2016.
- 1.2 Critical to realising the potential benefits to the public purse that are expected from this joint procurement and collective offer of Partners' materials, is the need for Partners to agree, in advance of the actual tender process itself, to present their respective recycle materials to the market jointly and collaboratively, thereby securing greatest influence over securing best value in processing cost and materials income. Withdrawing from the procurement, post tender bidding, would not only potentially negate the process, but also fundamentally prejudice the service continuity position of Partners and risk irrevocably fracturing the Partnership.

RECOMMENDATIONS

The Cabinet Member / Committee is recommended to:

1. Agree that the Council is committed to the procurement and appointment of a Contractor to deliver Joint MRF services for bulking, sorting and onward processing/sale of recyclable materials for all participating RECAP partners, unless all partners agree not to appoint.
2. Approve on behalf of the Council the 'RECAP Partnership Charter', as attached at Appendix 1, including approval of the additional Schedule 2 Governance Agreement relating to the operation of the Joint MRF contract, commitment to participation in and commitment of recycle materials into the joint contract.
3. Agree delegation to the appropriate (named) Officer responsible for authorisation of the final Invitation to Tender (ITT), to award the Contract, in consultation with Members as appropriate.
4. Agree that Peterborough City Council will nominate a preferred supplier in collaboration with the participating partners, for the provision of the services of bulking, sorting and onward processing/sale of recyclable materials contract, on behalf on both Peterborough City Council and the RECAP participating partners.
5. Note and agree the approach to the Waste Framework Directive compliance regarding source separation of recycle, as agreed by the RECAP Board on 4th September and as attached at Appendix 2.

2. SUMMARY OF MAIN ISSUES:

- 2.1 Recycling in Cambridgeshire and Peterborough (RECAP) Waste Partnership is made up of Cambridge City Council, Cambridgeshire County Council, East Cambridgeshire District Council, Fenland District Council, Huntingdonshire District Council, Peterborough City Council, South Cambridgeshire District Council. Cambridgeshire County Council is a member of the Partnership although it will not be party to this joint MRF procurement, as recycle materials received by the County Council are via its Household Waste Recycling centres and already dealt with through the PFI contract.
- 2.2 This Joint MRF Procurement project is a key work stream identified as part of the Whole Systems Approach Programme agreed by RECAP in autumn 2012 and endorsed by Cambridgeshire Leaders and Chief Executives as a 'flagship collaboration'. The programme seeks to develop an optimum waste management system across RECAP in Cambridgeshire and Peterborough through a collaborative approach that:
 - Reduces the overall expenditure against the public purse;
 - Increases the overall income to the public purse; whilst
 - Improving services for the customer, which would include levelling up services across Cambridgeshire and Peterborough to achieve consistently high quality services across the partnership area; and
 - Improving environmental performance.
- 2.3 By working collaboratively and procuring jointly, it is assumed that maximising the collective offer of recycle materials across the RECAP Partnership to the market will represent the most effective and efficient mechanism to achieving the best value in reducing processing costs and maximising materials income to best benefit the public purse.

- 2.4 Individual approaches to the market at sequential expiry of existing MRF contracts is unlikely to represent the strongest and most cost effective influence on the market. Neither would it accord with the Whole Systems Approach and spirit of partnership espoused by RECAP and captured in the existing RECAP Advanced Partnership Working Charter already signed by the Cambridgeshire partners in January 2012 (see Appendix 1) and now to be signed also by Peterborough City Council as part of this process.

3. **TIMESCALE:**

- 3.1 To ensure efficient and effective procurement in line with the agreed Project Initiation Document, agreement to the joint procurement and collective offer of recycle materials into the resultant contract is required from all partners by 11 October 2013, in order to ensure robust procurement and to meet the contract requirements of Peterborough City Council in the first instance and participating RECAP partners as set out at Para 1.1.
- 3.2 Agreement to associated detailed procurement documentation, such as finalised ITT, contract structure and Partnering arrangements, can be effectively achieved by delegation to a Chief Officer, in consultation with Whole System Approach Project Board, ITT to be issued by 25th November 2013 and with award of contract scheduled for March 2014. Agreement to and issue of the ITT is the point at which the participating Partners will be committed to appointment of a Contractor(s), unless the outcome of the procurement process prompts all those Partners to collectively agree not to appoint.

4. **DECISIONS REQUIRED:**

- 4.1 To approve the Joint Procurement of services for bulking, sorting and onward processing/sale of recyclable materials with all RECAP partners, in effect committing offering all the recycle materials of each Partner Council into a common contract(s).
- 4.2 To approve delegation of final approval of detailed procurement documentation, including ITT, to appropriate Chief Officer in consultation with Whole System Approach Project Board, noting that ultimately, final contract award will be subject to the appropriate Constitutional and Member approval compliance of the individual Partner authorities.
- 4.3 To approve the appointment of a preferred bidder by Peterborough City Council, in consultation with and on behalf of the participating RECAP partners, with contract to be awarded to the Most Economically Advantageous Tender.
- 4.4 Approve and sign / reaffirm on behalf of the Council the RECAP Partnership Charter which sets out the Vision and Objectives of the Partnership; to improve environmental performance; improved value for money; level-up services where differences occur; and improve service performance. Cambridgeshire Councils have previously signed the original Charter, but collective agreement is also now required to the proposed additional Schedule 2 'Governance Agreement' that sets out how RECAP will collaborate in regard to this Joint MRF procurement and the operation and management of the resultant contract.

5. **CONSULTATION**

- 5.1 Consultation has been undertaken with a wide spectrum of the companies currently operating in the business of recycling, sorting, bulking and transportation of recyclable materials, with a Soft Market Test process undertaken in August 2013. The soft market test will help inform the nature of the contract, the mix of materials within the recycle basket (including likely impacts on values), the pricing mechanism and also quality requirements.

- 5.2 The project is consultative and collaborative with all of the authorities in the RECAP partnership, with the project being resourced by a Task Group drawn from across all the Partners. Peterborough City Council acts as the project sponsor, with progress and recommendations overseen by the Whole Systems Approach Programme Board (WSAPB) of senior Council Officers responsible for waste management. Section 151 financial officers are also involved in the consideration of the most effective pricing mechanism. The Cambridgeshire Public Sector Board (CPSB) has also been appraised of this project.
- 5.3 The RECAP Board of elected Members monitors the Whole Systems Approach work streams, of which Joint MRF Procurement is one, and is expected to have approved this common paper and supporting documents (see 7.1) at its meeting on 4th September 2013.
- 5.4 The Waste and Resources Action Programme (WRAP), a government funded advisory body, has also been consulted and involved in developing this approach to the marketplace, including provision of industry intelligence and project peer review.

6. ANTICIPATED OUTCOMES

- 6.1 To generate greater revenue for the partnership as a whole, by seeking to reduce processing costs and maximise materials values.
- 6.2 To develop, as far as possible, service consistency/harmonisation, therefore achieving the minimum amount of variation in all aspects of the tender - notably materials, operational processes, procedures and management requirements - and thereby service efficiencies.
- 6.3 To develop an approach to the market place that achieves the best value from materials for the Partnership as a whole, effectively responding to logistical factors and the requirements of the market place (e.g. not assuming the appointment of one single contractor will guarantee best value).
- 6.4 To effectively manage the financial risks of market volatility, developing pricing mechanisms that provide financial security in seeking to mitigate risk, whilst also allowing scope to derive benefits from the potential uplift in material values across the contract period.
- 6.5 To ensure the joint procurement contributes to and supports the development of an optimum waste management system through a whole systems approach across the Partnership.

REASONS FOR RECOMMENDATIONS & RELEVANT BACKGROUND INFORMATION

- 7.1 With the increased value of recyclable materials as a resource, local authorities were previously incurring costs for services to bulk, sort and process such materials are now, at this time, receiving an income - although it should be noted that the market for recyclable materials fluctuates and incomes consequently volatile. Joint working in this area has been shown to potentially increase financial benefits to local authorities, for example, by increasing the quantity of recyclable material presented to the market place and therefore its potential value. It can also remove duplication of effort depending on the partnership approach and benefits can be derived from combining learning and expertise.

Supporting documents

- RECAP Partnership Charter and MRF Governance Agreement Schedule 2 (Appx 1)
- WFD-TEEP report (Appx 2)
- Joint MRF Project Initiation Document

- 7.2 The MRF procurement is not necessarily expected to change service design or collection systems, but rather intended to maximise existing volumes/materials with more into existing bins if operationally and financially practicable and partners 'levelling up' recyclate type. It is understood that it is the options for Optimum Service Design (OSD), a separate Whole Systems Approach workstream, that will fully consider the implications of operational changes to collections services and thereby, potentially offers the more holistic work stream through which to properly consider the Waste Framework Directive requirements for how recyclable waste streams are collected by 2015 - source separated or comingled. The WFD/TEEP paper (Appendix 2) sets out how RECAP intends to address and broadly comply with these matters. The MRF procurement will focus on quality and '*necessity*' issues, with OSD addressing '*practicable*' considerations. This approach has been agreed by the WSA Programme Board (1 August) and is expected to be agreed by the RECAP Board on 4th September.
- 7.3 Best practice and challenging economic circumstances encourages Councils to work together to achieve the best outcomes for the residents and communities they serve. Reaffirmation of the RECAP Charter and its Guiding Principles (see Appendix 1) helps refresh the spirit of partnership and the collaborative ethos by which Partners would engage in the collaborative procurement and ongoing management of the resultant contract and partnership/contractor relationships.
- 7.4 Procuring collectively also further strengthens the RECAP Partnership ethos of collaborative working, achieving more together than we can deliver individually, for the overall best benefit to the public purse and the consistency of service to residents, helping meet the RECAP Vision of:

'Working ever closer together to deliver the best most cost effective waste services for the benefit of all local communities in Cambridgeshire and Peterborough'

ALTERNATIVE OPTIONS CONSIDERED

- 8.1 The following options were considered as part of the project initiation.

Option	Description	Initial Assessment
1	Do nothing - Delay procurement at this time by investigating and assessing opportunities for partners to utilise existing contract arrangements within the partnership, or utilising extensions, procuring jointly at a later date.	<ul style="list-style-type: none"> East Cambridgeshire have recently utilised the existing South Cambridgeshire contract, however, this contract would not allow for further excessive additional volumes of material without creating a significant change to the contract requiring re-tender. Cambridge City/Huntingdon/Fenland District Council contracts do not allow for additional partners without creating a significant change to contract requiring re-tender. Peterborough would be required to procure individually. Partners could be financially disadvantaged utilising extensions and missing the potential benefits from re-tendering at this stage.
2	Utilise PFI contract arrangements.	<ul style="list-style-type: none"> Initial discussion with legal team at Cambridgeshire County Council indicates this would potentially mean a significant change to

		<p>the contract, leading to significant legal costs and even re-tender.</p> <ul style="list-style-type: none"> • May not generate competition and therefore achieve financial benefit. • Could reduce resource/time involved in tendering but revisions to the contact could counter this.
3	Jointly procure the design and build of a MRF, primarily dedicated to the partnerships use.	<ul style="list-style-type: none"> • Is counter to conclusions to recent market testing by Peterborough. • Lengthy process which would require interim contract arrangements. • Capital investment required. • Is being undertaken by a group of authorities in the South West although DCLG funding received for this.

IMPLICATIONS

- 9.1 Following the completion of the procurement, the prevailing market conditions might lead to a lower price being received for the recyclable materials than is presently received by the individual partners. By procuring collectively and taking advantage of the large tonnage of material available to the Partnership as a collective, we aim to mitigate risks arising from market conditions. It is unlikely that Partners procuring individually or in smaller collectives would exert the same influence over and therefore any greater value from the market.
- 9.2 A pricing mechanism that seeks to minimise processing cost, maximise materials income and manage risk e.g. frequency of review, will be developed in conjunction with Section 151 Officers. That model will be agreed as offering the best balance between cost certainty and informed appetite for risk that secures best flexibility to market volatility in mitigating exposure and maximising materials income. Should the market may be at a, comparative, low point when the procurement completes, by building flexibility into the payment mechanism and acting collaboratively, these risks can be mitigated to a greater or lesser extent.
- 9.3 The collaborative procurement seeks to jointly offer all existing recyclate across the Partnership as currently collected, i.e. largely comingled but also recognising the separate paper collection within South Cambs. The contract(s) will need to be both flexible to make provision for future collection/disposal service changes that may stem from Optimum Service Design and also be structured to ensure that existing and future materials streams continue to attract maximum value. No partners would be expected to retain recyclate materials for alternate treatment outside the joint procurement process.

BACKGROUND DOCUMENTS:

As 7.1 above and Appendices 1-2.

@ 30 August 2013

Appendix 2

RECAP 'Advanced Partnership Working' Charter

Version: 1.2

Date: October 2013

Circulation:

Endorsed by	Date
Cambridge City Council	tbc
Cambridgeshire County Council	tbc
East Cambridgeshire District Council	tbc
Fenland District Council	tbc
Huntingdonshire District Council	tbc
Peterborough City Council	tbc
South Cambridgeshire District Council	tbc

Purpose

This Partnership Charter was developed by the RECAP Board initially in October 2011 and encapsulates the RECAP approach to advanced partnership working. The Board had directed that the Partnership be more ambitious in its collaborative working and bolder in its decision-making, with the expectation of tangible delivery with pace and purpose. Developments had to respect individual Council positions and differences - avoiding an 'all or nothing' approach in the progression of opportunities. Subsequently, Schedules have been added to capture the collaborations taking place across the advance partnership Whole Systems Approach work streams and within the spirit and principles of the Charter

RECAP Partners

Cambridge City Council
Cambridgeshire County Council
East Cambridgeshire District Council
Fenland District Council
Huntingdonshire District Council
Peterborough City Council
South Cambridgeshire District Council

RECAP Board Members

Cllr Jean Swanson
Cllr Matthew Shuter
Cllr Kevin Ellis (Chair)
Cllr Pete Murphy
Cllr Darren Tysoe
Cllr Gavin Elsey
Cllr Mick Martin

Vision

In October 2011 RECAP agreed the following outline vision for advanced partnership working, now with the addition of Peterborough City Council:

‘Working ever closer together to deliver the best most cost effective waste services for the benefit of all local communities in Cambridgeshire and Peterborough’.

Objectives

Advanced Partnership Working in RECAP will seek to deliver:

- **Increased best value for money.** Achieving sustained value for money, not at the expense of customer service and satisfaction.
- **Increased service improvement.** Improving services for local areas based on what local communities say and need.
- **Improved environmental performance.** Reducing the carbon impact of service delivery and waste management.
- **Leveling-up of services.** Achieving consistently high quality services across the partnership area.

Guiding Principles

Advanced Partnership Working guiding principles, underpinning the achievement of the Vision and Objectives are:

- **Strong leadership and clear governance**
- **Commitment to the partnership**
- **Good communications and continuous dialogue**
- **Build trust through openness, honesty and transparency**
- **Learn from each other**
- **Treat each other as equals with respect**
- **Willingness to compromise**
- **Seek a benefit to all partners to their mutual advantage**
- **Deal with issues promptly and effectively**
- **Deliver through clear and agreed project management methodology**
- **Contribute to joint ventures in a fair and equitable way**
- **Make decisions at the appropriate level**

Schedule 1

WHOLE SYSTEMS APPROACH

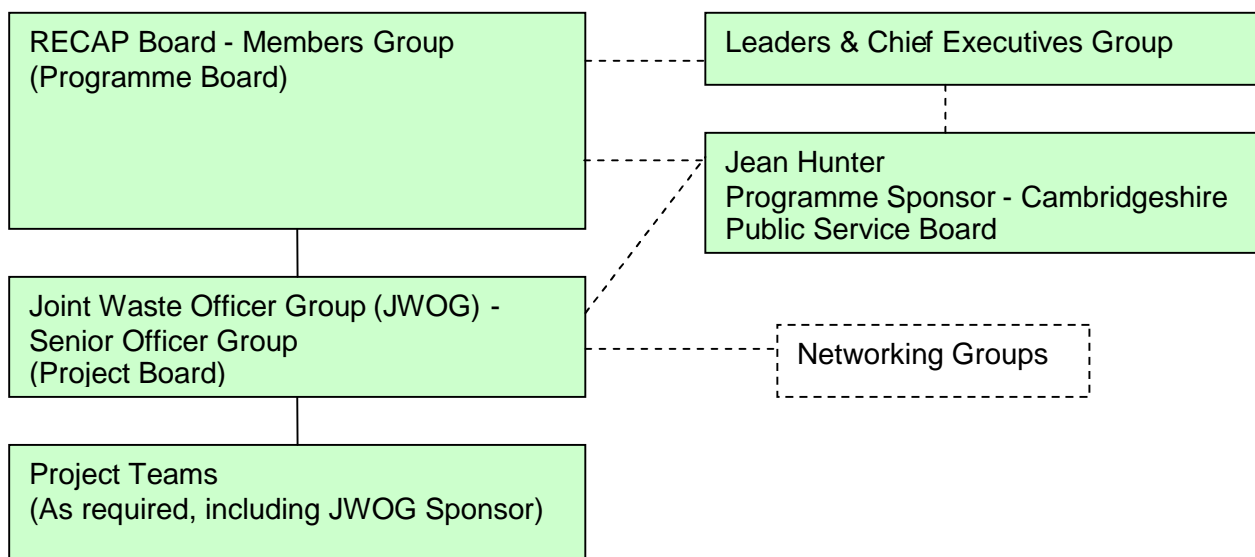
Scope of Activities

Advanced partnership working activities will extend to all waste related service delivery across the disposal and collection RECAP partners.

Governance

The following governance arrangements have been set up to oversee the RECAP advanced partnership working Whole Systems Approach development:

Organogram



Roles and responsibilities

Programme Sponsor

- Promotes visibility of work.
- Ensures clear communication and engagement with the Cambridgeshire Public Service Board.
- Provides briefings and ensures engagement with the Leaders' & Chief Executives' meeting.
- Oversees project deliverables.

Programme Board

- Oversees the development of a partnership work programme on behalf of their respective authorities.
- Approves and commissions all work on behalf of their respective authorities in accordance with internal decision-making processes.
- Sets all tolerances e.g. resources and timescales.
- Responsible for relevant communications to stakeholders as per communications plan.

- All papers for meetings of the Board will be made accessible to the public with an annual meeting of the Board to be held in public.

Project Board

- Facilitates decision-making by the Programme Board and respective authorities on the development of a partnership work programme.
- Accountable to the Programme Board for the delivery of the advanced partnership working programme.
- Appoints and directs resource to deliver work programme, providing a sponsor for each project from the Project Board to sit on the Project Team.
- Provides direction and Mentorship to Networking Groups

Project Teams

- Appointed as required Project Board as task and finish groups with roles and skills required by the project.
- Delivers project in accordance with direction from the Project Board.
- Includes an appointed Sponsor from the Project Board.

Ends

SCHEDULE 2

Joint MRF Procurement

for the operation of a joint contract for bulking, sorting and onward processing/sale of recyclable materials.

GOVERNANCE AGREEMENT

October 2013

Applicability: To all RECAP partners, with the exception of Cambridgeshire County Council

Term: Effective from October 2013

Objective: To generate maximum value from recyclate which is dependent on all collected recyclate materials being presented collectively by the participating Partners working collaboratively together and in compliance with the detailed terms of the related Contract(s).

Governance:

RECAP acts collaboratively as the collective governance mechanism and point of contact for procurement and contract management purposes on behalf of its constituent contract Partners as set out in the agreed PID of 7 June 2013.

Organogram – to be inserted once agreed by JWOOG (to detail strategic and operational contract management and monitoring arrangements)

Basis of Collaboration

The Partners declare that :-

- (a) they are independent Contracting Authorities;
- (b) they have, as they each deemed necessary obtained independent legal advice; prior to entry into the consortium;
- (c) they enter into the Joint MRF Collaboration at their own risk.

Principles of Collaboration

The Partners agree to operate the contract in accordance with the 'Objectives' and the 'Guiding Principles' of the RECAP Charter in their collaboration with each other.

In addition:

1. The Partners hereby commit to exclusively utilising the applicable contract(s) (for the duration, excluding any agreement to extend) for the bulking, processing and sale of their recyclable materials, either commingled or source separated and no Partner will retain any of these materials in pursuit of alternative selling opportunities.

2. Any Partner leaving the contract agrees to be liable for any costs arising directly from their early termination as incurred by the Partners remaining in the consortium and any costs incurred related to the management of such a change (for clarity, such costs including reductions in income per tonne from the sale of materials that stem directly from the decision to leave until the end of fixed contract period)

Relationship Management:

The Partners agree to act collaboratively as RECAP and not independently in initiating any action against the Contractor employed under the terms of the Joint MRF Contract.

The Partners agree that once the MRF Consortium contract has been awarded, all partners are committed to participation in and to the detailed terms of that Contract, for the duration of the Contract (excluding any agreement to extend), thereby ensuring that all savings and efficiencies identified and projected prior to the start of the collaborative contract are achieved.

Partners have the right to opt out or terminate their involvement in the Contract if a Contractor is in serious or material breach as defined within the termination provisions of the Contract.

Contract Management:

Strategic contract management duties will be overseen by JWOOG on behalf of all Partners to simplify the relationship with the Contractor.

JWOOG will designate 'Point of Contact' officers from within the RECAP partner authorities resources to assist in any specialist areas required to manage the contract for the collective benefit of all Partners (*detail to be captured by organogram evolving from ITT*).

Partner authorities will manage day to day service and operational issues directly with the contractor, however, recurring issues across the partners should be highlighted to JWOOG for direction and resolution.

Dispute Resolution

In the case of a disagreement between Partners and/or the Contractor engaged in the Joint MRF contract, reasonable endeavours will be made by JWOOG to settle the disagreement swiftly, in line with the detailed provisions of Contract and overall spirit of the Charter.

Status:

Nothing in this Agreement is intended to, or shall be deemed to, establish any Partnership or joint venture among the Partners, constitute any Partner as the agent of the other Partners, nor authorise any of the Partners singularly to make or enter into any commitments for or on behalf of the other Partners.

Associated Documents:

Overall arrangements for the joint MRF procurement and contract operation are as set out in:

- PID dated 7 June 2013
- ITT dated 25 November 2013
- Contract(s) dated ...tbc...

The approach to Waste Framework Directive compliance and the issue of TEEP are as set out in the agreed 4 September 2013 RECAP Board paper.

Ends

Appendix 3

Compliance with the Waste Framework Directive and Waste Regulations 2011- Recyclate Materials Streams Collections (TEEP)

Whole Systems Approach (WSA) Programme Board

1 August 2013

Purpose:

1. To agree a common RECAP approach to the WFD/ Waste Regulations requirements relating to collection of recyclate materials streams from 2015, so as to inform the progress of the Optimum Service Design (OSD) and Joint MRF Procurement workstreams of the WSA programme.

Issue:

2. As the RECAP WSA is currently considering both new MRF contract provision and also OSD options that will span across the effective 2015 date, there is a need to consider how the WFD & Waste Regulations impact and influence these work streams.
3. WSAPB has previously advised (26 June) that the MRF procurement is not necessarily expected to change service design or collection systems, but rather intended to maximise existing volumes/materials with more into existing bins if operationally and financially practicable and partners 'levelling up' recyclate type. It is understood that it is the options for OSD that will fully consider the implications of operational changes to collections services and thereby, potentially offers the more holistic work stream through which to properly consider the Directive and Regulation requirements.
4. Consequently, the issue for WSAPB to resolve is to determine:
 - how to best consider compliance with the WFD/Waste Regulation requirements
 - determine how to assess and balance the considerations under TEEP, and
 - agree why this is the common adopted approach of RECAP.

Summary:

5. From 1st January 2015 every waste collection authority must, when making arrangements for the collection of waste paper, metal, plastic or glass, ensure that those arrangements **are by way of separate collection**, wherever separate collection:
 - (a) is **necessary** to ensure that waste undergoes recovery operations... and to facilitate or improve recovery; and
 - (b) is technically, environmentally and economically **practicable** (TEEP)
6. There is no statutory guidance to authorities (or to the Environment Agency which will enforce these duties) on assessing these obligations and what the requirement to collect separately particularly means. A recent Judicial Review seems to support comingled collections (subject to the above considerations) but identified glass as a material for particular thought. DEFRA advise that it is planning to consult on guidance on "TEEP" in the autumn and that in the interim, Authorities will need to take their own legal advice as appropriate on the applicability of those duties, and their effect on contracts entered into before, and continuing after, that date (1 Jan 2015).

7. As part of assessing how these legal duties apply to them, it will be for local authorities to weigh up the evidence of what is necessary and practicable. The High Court ruling against a challenge to the Regulations (effectively around whether comingled recycle collections were permissible) made it clear that whether separate collection is technically, environmentally and economically practicable depends upon a balancing exercise that is both sophisticated and context-specific.

Context:

8. The Waste (England and Wales) Regulations 2011 as amended by the Waste (England and Wales) (Amendment) Regulations 2012 on the separate collection of recycling, transpose the revised Waste Framework Directive 2008/98/EC and came into force on 1 October 2012.
9. Regulation 13 sets out duties for the separate collection of waste paper, plastic, metal and glass for recycling by 1 January 2015. This obligation is qualified, by “*practicability*” and “*necessity*” and the improvement of quality of recycle for end use, i.e. separate collection is required if it is technically, environmentally and economically practicable (TEEP) and necessary to facilitate or improve recovery (meeting appropriate quality standards).
10. WFD Article 3 defines “separate collection” as *the collection where a waste stream is kept separately by type and nature so as to facilitate a specific treatment.*
11. WFD Article 11 says - *Member States shall take measures to promote high quality recycling and, to this end, shall set up separate collections of waste where technically, environmentally and economically practicable and appropriate to meet the necessary quality standards for the relevant recycling sectors.*
12. European Commission guidance on the WFD seeks to define TEEP, stating:
 - “‘Technically practicable’ means that the separate collection may be implemented through a system which has been technically developed and proven to function in practice.
 - “‘Environmentally practicable’ should be understood such that the added value of ecological benefits justify possible negative environmental effects of the separate collection (e.g. additional emissions from transport).
 - “‘Economically practicable’ refers to a separate collection which does not cause excessive costs in comparison with the treatment of a non-separated waste stream, considering the added value of recovery and recycling and the principle of proportionality.”
13. A Judicial Review launched by the Campaign for Real Recycling challenged the transposition into the Regulations of the requirements of the Directive on the separate collection of recycling and was dismissed 6 March 2013. Mr Justice Higinbottom’s ruling included the judgements that:
 - *The phrase “technically, environmentally and economically practicable” is used in the Directive as a term of art, importing the principle of proportionality and demanding a sophisticated context-driven exercise of judgment, balancing (amongst other things) the positive and negative environmental and economic effects of separate collection.*

- *It was and is open to the United Kingdom to fulfil its obligations under the Directive by the system created by the 2011 Regulations, which allows a local authority to determine within its area whether separate collection is technically, environmentally and economically practicable; enforced by the Environment Agency.*
- *It appears to be common ground that, whilst glass is a well-recognised potential contaminant, metal and plastic can be separated at a stage later than kerb-side without any significant contamination or other relevant disadvantage.*

14. The key issues in the JR outcome and Higginbottom's specific comments suggest the assumptions that:

- Whilst kerbside sort could be considered the de minimus stance, comingled recyclate collection is permissible, provided Authorities have assessed (*a sophisticated context-driven exercise of judgment*) that kerbside sort is either:
 - not necessary to ensure appropriate quality of material for its intended end use (i.e. it is a matter for the MRF supplier technologies and onward materials markets)
 - not practicable in regard to TEEP ('economically' likely to be best practicable test given cost of separate/separated collections, especially in rural areas but may be different in urban parts)
- Glass is identified as a particular material that can contaminate and thereby negatively impact upon the quality of other recyclate and consequently may specifically warrant separate sort and collection at kerbside (subject to quality requirements and TEEP as above).

15. In a wider sense and in the absence of further case law or DEFRA guidance, it may also be appropriate to assume on the basis of logic and professional/industry deliberation to date, that the key focus of considerations are:

- The general objective of improving the **quality** of recyclate materials for the appropriate end use, ideally a 'closed loop' system.
- Whether it is therefore **necessary** to kerbside sort - dependant upon the MRF supplier technologies and known end markets
- The **practicalities** of kerbside sort (TEEP) and the balance and sophistication of those judgements, including whether they apply homogenously across entire council areas i.e. rural -v-urban

Consequently, the emerging key linkage is the flow between how materials are collected, how they are processed and for what intended re-use, requiring a mature relationship between collection authority and MRF supplier and the initial key test being that of necessity i.e. if it is proven not necessary to kerbside sort then the TEEP consideration need not apply.

Considerations and Risks:

16. The Regulations came into force 1 October 2012 so the legislative requirements are known and therefore a technical requirement for compliance exists. The effective date for separate

collection of recyclate (paper, metal, plastic or glass) in compliance with the Regulations is 1 January 2015. The contract deriving from the joint MRF procurement will span this period, as will any adopted OSD, so again, there is a technical requirement for compliance. Therefore, RECAP will need to show how it has considered and dealt with the obligations.

17. In terms of risk of challenge, whether from the Environment Agency as enforcing authority or from any further Judicial Review, whilst there is of course a technical risk, the practical risk is less easy to quantify. As RECAP currently operates a long established comingled recyclate service, except for East Cambs that currently kerbside sorts but is moving to a system to match and converge with RECAP partners, there is potentially less risk of challenge than for those Authorities considering a move away from separate collections to comingled, perhaps as a result of austerity/efficiency measures. However, the fact that RECAP is letting a new MRF contract and also considering OSD options may heighten the risk of scrutiny of those new arrangements. Any such risks can be mitigated if RECAP is able to demonstrate how it has paid due regard to the legislative obligations.
18. Glass being identified by Mr Justice Higinbottom as a specific recyclate material impacting on quality of recyclate, suggests particular attention needs to be given to the assessment of separate glass collections. The picture nationally is varied, with some authorities, such as Dorset already separating glass but also experiencing difficulties regarding Health & Safety of operatives and noise issues. More locally, Suffolk already collects glass separately, through bring banks and Household Recycling Centres, but has included comingled glass as one of its four mix options in its current MRF ITT. Industry experience also suggests that separate glass collections, where the material is not mixed with either other recyclate or residual waste (thereby shielded) has high attrition rates on freighter assets. Interestingly, the CIWM recently highlighted a report by consultancy WYG Group into national kerbside recycling performance for 2011/12 that demonstrates the top recycling Authorities have fully comingled services, including glass, whilst the worst performers are separated kerbside sort systems.
19. Given that RECAP, as of September, will all operate comingled recyclate collections, including glass, there also needs to be consideration as to how the public may react to changes in collection systems and what actions the public are expected to undertake, particularly if multiple changes are sought. Indeed, in terms of actual practicality, there is some question whether any specific material (such as glass) could ever be successfully removed from an existing waste stream in totality, even though alternately capturing the majority may be a sufficient and worthwhile objective. Additionally, consideration of kerbside sort implications and particularly the separation of any one key material (certainly a weighty material such as glass), potentially impacts across the other waste collection streams, particularly residual and fleet management/asset regimes - a matter better considered holistically by the OSD deliberations rather than MRF procurement.
20. It would seem simpler to allow the MRF joint procurement arrangements to progress largely on the basis of status quo systems, with any major changes in either material type, sorting requirements or receptacles left for a single holistic change resulting from OSD - which could then be communicated, implemented and monitored with more consistency and clarity across the whole partnership. It may also have less potential political impact than multiple sequential changes if system change was driven by both MRF and OSD outcomes. The exception would be unless the MRF soft market test identifies any recyclate basket mix issues that prompt value realignment of any material(s) i.e. significant value income offsetting collection cost if a material(s) was separated from the mix.
21. Should this be the preferred approach, of course the MRF procurement will need to make proper reference to this process. In that regard, the ITT and any contract will need to

articulate, recognise and make provision for any implications of OSD upon how materials might be presented in the future, including importantly, the ability to renegotiate materials basket values at that future time. It is not untypical for contracts to have provision for future service change scenarios.

22. A further MRF consideration is of course remembering the fundamental intent of the objectives, to ensure appropriate quality recycle. It is the 'necessary' provision that is the initial judgement to be made, i.e. if there is no necessity to kerbside sort to achieve the material quality required for end use - because the MRF technologies can sort and separate sufficiently and/or the materials end markets are contract tied or require the material as already supplied – then there is no legislative requirement for TEEP (see Para 15 above). That is not to say that collection authorities should not play their part in consistently driving up the quality of material supply and how materials are presented, but that then creates further complexities and opportunities in working constructively with a MRF supplier to ensure quality through the emerging MRF Code of Practice and ongoing development of national End of Waste Criteria for the recycle types. In that regard, the MRF procurement soft market test and evaluation of bids could and should adequately explore, test and weight the quality requirements of potential suppliers.
23. In effect, compliance with WFD / Waste Regulations would be deemed by RECAP to be a considered and reasoned two stage process - the MRF procurement initially levelling-up and jointly presenting a collective and consistent volume/type of material to the market and then; OSD securing the most efficient (saving) and value creating (income) collection systems that ensures the recycle stream is captured in the most practicable way to ensure appropriate quality for maximised end use – indeed, exactly as required by the legislation, remaining agile to future statutory guidance when available, whilst also mitigating the risk of any challenge.
24. An alternative would be to abort the current joint MRF procurement, pending the outcome of OSD. However, given the above reasoning, that seems an unnecessary and draconian action that would have its own attendant risks and disadvantages. It would defer or prevent one of the key objectives of the WSA in securing assumed maximum value for a collective whole partnership offer of combined recycle volume; fail to achieve the convergence of contracts and ease of future procurements (perhaps on an even bigger geographical scale) and importantly; would leave a number of partners out of contract in 2014 and potentially irrevocably fracture the RECAP partnership approach.

Recommendation:

25. It is recommended that the two stage approach as set out at Para 23 above is adopted as the RECAP position on WFD / Waste Regulations compliance, for the reasons identified in Paras 21-24 - requiring the MRF procurement process to test material quality requirements with suppliers and the OSD options to test the TEEP considerations of potential kerbside sort.