



National Audit Office

Report

by the Comptroller
and Auditor General

Department for Environment, Food & Rural Affairs

Oversight of three PFI waste projects

Summary

Background

1 In 1999, the European Union (EU) issued a directive which set targets for reducing the amount of biodegradable municipal waste (hereafter referred to as waste) sent to landfill in the UK. The government has divided the UK target into individual targets for England, Wales, Scotland and Northern Ireland. The Department for Environment, Food & Rural Affairs (the Department) has overall responsibility for ensuring that England diverts sufficient waste from landfill to enable the UK to meet these targets. Prior to 2001, responsibility for this policy objective rested with the then Department for the Environment, Transport and the Regions.

2 Local authorities have statutory responsibility for municipal waste disposal. In July 2006, the Department established the Waste Infrastructure Delivery Programme (the Programme) to encourage and accelerate the development of local authority waste infrastructure by providing support, guidance and funding to local authorities undertaking waste projects through Private Finance Initiative (PFI) contracts.¹ We describe the Programme in more detail at Appendix Four.

3 Through the Programme, the Department is overseeing the allocation of £1.7 billion of 'Waste Infrastructure Credits' (credits) to 28 local authorities in England with a PFI waste project. These credits are the Department's commitment to pay a fixed amount of money to a local authority over the life of the PFI contract. In effect, the Department partially funds the project, which reduces the amount that a local authority itself has to pay its contractor. However, once paid, the Department's funding is not ring-fenced, so a local authority does not have to spend the money on its waste contract.

4 As local authorities are responsible for disposing of local waste and are the signatories to the PFI contracts part-funded by the programme, they are responsible for ensuring that their waste contracts represent value for money. The Department, in providing central government funding to the local authorities, is responsible for ensuring that the money it pays over is spent in accordance with the terms and conditions of the funding agreement it has with the local authority. It is also responsible for ensuring that its provision of funds to local authorities represents value for money. The Department has chosen to discharge these responsibilities by overseeing its allocation of funds, which includes scrutinising local authorities' plans, and offering local authorities support and guidance.

¹ The Department also provides guidance to local authorities undertaking Public Private Partnership (PPP) projects that are solely funded by the local authorities.

Scope of our work

5 Over the last 18 months, we have received a large amount of correspondence from members of the public relating to three local authority PFI waste contracts (the contracts) within the Programme, and we decided to investigate the Department's oversight of these particular contracts. The three contracts are:

- Surrey County Council's (Surrey's) integrated waste management services' contract under which the 'Charlton Lane Eco Park' project near Shepperton is proposed;
- Herefordshire Council and Worcestershire County Council's (Herefordshire and Worcestershire's) joint integrated waste management services contract under which the 'EnviRecover' project in Hartlebury, Worcestershire is proposed; and
- Norfolk County Council's (Norfolk's) residual waste treatment contract under which the 'Willows Power and Recycling Centre' project near King's Lynn was proposed.²

6 The correspondence covered a wide range of issues associated with waste infrastructure projects, including project governance, planning, environmental concerns, financial and commercial considerations and technical challenges. Some of these issues, such as the nature of the Department's support for, and challenge to, local authorities, were common to the correspondence for all three projects. In the case of Norfolk, there were particular concerns associated with planning permission and the impact of the Department's decision to withdraw funding support. In the case of Surrey and Herefordshire and Worcestershire, correspondents raised issues such as the nature of the funding agreements between the Department and the local authorities, and the former's decisions to change its funding support.

7 It was clear from the correspondence we received that there was a lack of clarity over both the facts and figures relating to these three projects and the roles and responsibilities of the parties involved. This report is therefore divided into two parts. In Part One, we set out the principal roles of the Department, local authorities, and other central government departments in relation to these three contracts. In Part Two, we examine those issues over which the Department has direct influence or involvement, specifically:

- the support and guidance the Department has offered to the local authorities; and
- how the Department has monitored the local authorities' progress and managed changes to its funding allocations to them.

² Residual waste is what is left over after all possible recycling has been done and is the waste which would, without further treatment, go to landfill.

Limitations on scope

8 It is important to note that we have not sought to conclude on the value for money of the three contracts, nor have we audited each local authority's implementation of its project; these matters are for local authorities' external auditors to consider in the first instance. In addition, some other issues raised in the correspondence, such as the potential environmental impact of different waste disposal technologies, fall outside our remit.

9 This report does not examine the value for money of the Programme overall; we reported in 2009 on the Department's progress in implementing the Programme, and on its work to reduce the reliance on landfill in England. The UK met the 2010 EU target for reducing the amount of waste going to landfill, and the Department believes it is on track to meet the 2020 target. This report relates to three contracts which have not yet delivered all of their planned waste infrastructure and those contracts may not therefore be representative of the 28 PFI projects that make up the overall programme. Details of our audit approach are set out at Appendix One.

Key findings

10 Our key findings on the Department's oversight of the three projects we looked at are as follows:

- a** The three projects we looked at have all experienced significant delays resulting from a range of problems, such as difficulties in obtaining planning permission, opposition from local groups, complex commercial considerations and uncertainties over technology (paragraphs 1.9 to 1.23).
- b** The Department is prohibited from intervening in the quasi-judicial central planning process that is overseen by the Department for Communities and Local Government. However, the Department for Environment, Food & Rural Affairs has nonetheless attempted to mitigate the risk of planning delays by providing guidance to local authorities on planning issues (paragraphs 1.8 and 2.4 to 2.5).
- c** On the nature of the funding agreements between the Department and the local authorities:
 - In the case of Surrey and Herefordshire and Worcestershire, the funding agreements inherited by the Department required grant payments to start as soon as the contractors began to provide services under the contracts, irrespective of whether all of the planned infrastructure had been delivered. This made it difficult for the Department to withdraw or amend its financial support for these contracts even when significant infrastructure had not been delivered as planned. Until 2012-13, the Department paid each of the planned grant payments for these two contracts in full (paragraphs 2.21 to 2.23).

- The Department's funding agreement with Norfolk included stricter terms and conditions than earlier agreements. Norfolk's breach of one of these terms caused the Department to review its allocation of credits to the Norfolk project. The Department subsequently revoked its funding allocation because ministers judged it sufficiently likely that the 2020 target for diverting waste from landfill could be met without any contribution from the Norfolk project (paragraph 2.24).
- d The Department put in place a system of active support and guidance for the local authorities, which is good compared to the activities of other departments across government that support PFI contracts (paragraphs 2.2 to 2.9).
- e On sharing information, the Department has acted on our previous recommendations and compiled a range of information, including benchmarked costs of waste infrastructure, to help local authorities plan projects and evaluate different types of bids (paragraphs 2.10 to 2.14).
- f The Department's scrutiny has improved the local authorities' contracts although in some cases this scrutiny took a long time, reflecting the quality and complexity of local authorities' proposals and external factors such as an alleged breach of procurement rules (paragraphs 2.15 to 2.20).
- g The Department's negotiations with Surrey to re-profile its funding support means Surrey's cash flow in the three years 2013-14 to 2015-16 is expected to be lower than it would have been under the original agreement, although the total amount the Department will pay over the full term of the agreement remains unchanged.³ In 2011-12, Surrey established a sinking fund into which it deposited a proportion of the waste grant it had received. Surrey intends to use the fund to manage the temporary cash flow impact of the re-profiling of its grant (paragraphs 2.29 to 2.31).
- h Herefordshire and Worcestershire's negotiations with the Department over their proposal to vary their contract led them to conclude that the best solution was to deliver their remaining infrastructure without funding support from the Department. The local authorities believe that by borrowing capital themselves rather than using private finance, as originally anticipated, they will generate sufficient savings to offset the majority of the £30 million reduction in the Department's funding (paragraphs 2.32 to 2.35).
- i In April 2014, Norfolk decided to terminate its contract with Cory Wheelabrator, at an estimated cost of £33.7 million, as a result of the failure to secure planning permission and the reduction in value for money caused by delays. Norfolk has stated that the Department's withdrawal of its funding support was also a factor in its assessment of the savings to Norfolk taxpayers from the project (paragraphs 2.36 to 2.44).

³ Provided that the planned waste infrastructure is built, the project continues to meet the terms and conditions of the original award, and the contract remains in line with the Treasury's principles of 'PFI' support.