

**WRITTEN QUESTION TO THE MINISTER FOR TRANSPORT AND TECHNICAL SERVICES BY  
THE DEPUTY OF ST. MARY**

**ANSWER TO BE TABLED ON TUESDAY 20th JANUARY 2009**

**Question**

Given that any cancellation costs would be contested and determined at arbitration, would the Minister advise the Assembly what the Transport and Technical Services Department estimates the cost to the Island would be if the contract for the new Energy from Waste Plant at La Collette was cancelled, set out and justified under as many clear headings as are necessary for the estimate to be verifiable by peer review, and outline the variations in potential liability to the States, if any, should the date of cancellation be taken to be 16th February 2009, or an earlier or later date?

**Answer**

In the absence of a default or Insolvency of the Contractor, the Engineering Procurement and Construction Contract allows for termination for convenience by the Purchaser.

Where the Contract has been terminated for convenience the following sums are payable:

- (a) the amount (if any) due to the Contractor under the Contract for the Works carried out prior to the receipt by the Contractor of the Termination Order;
- (b) the amount due to any third party in respect of which the Contractor has (prior to the receipt by him of the Termination Order) properly and irrevocably entered into a commitment relating directly to the Contract; and
- (c) the amount of any additional Cost properly incurred by the Contractor for any work in connection with the termination authorised by the Project Manager, plus Profit thereon;

less any sums that have already been paid to the Contractor.

The sums referred to in (a) - (c) are assessed by the appointed Project Manager following receipt from the Contractor of any supporting information required by the Project Manager. If the Contractor disputes the Project Manager's assessment then the dispute is referred to the disputes mechanism under the contract. This sets out the following mechanism for this type of dispute:

- (a) in the first instance disputes are referred to the Project Manager;
- (b) if the parties have failed to resolve the dispute through negotiation they can agree to refer the dispute to mediation;
- (c) if the parties have failed to negotiate and either do not agree to mediate or are unhappy with the mediator's decision, then the dispute is referred to the Technology and Construction Courts in England (which have exclusive jurisdiction in relation to this type of dispute).

The estimated cost of terminating the Engineering Procurement and Construction Contract prior to 16 February 2009 is £45.9 Million. The cost already expended under the Contract would be included in this sum.

It should be noted that if terminated, the Contractor would have delivered almost nothing of any value to Jersey, so this amount would have to be written off.

Details of the Technical adviser's calculation of this sum are available if required for peer review but are subject to commercial confidentiality under the contract.

In addition to costs for termination of the EPC Contract, TTSD would also incur termination costs for the termination of the Technical Consultants Appointment, Enabling Works contracts and the JEC Agreement.

In the event of a challenge by the Contractor of the evaluation of the termination costs (which is considered to be

very likely) there would also be additional management, project manager and legal costs in dealing with the dispute. From previous major contractual disputes, this form of dispute resolution can take months or years to resolve. Whilst it is not possible to put a price on this work, it is likely that the total cost for termination would be in excess of £50 million

This sum does not consider the cost in terms of having to redevelop the solid waste strategy and procure another plant to replace the Bellozanne incinerator.

It is likely that the State of Jersey's reputation would be seriously damaged by any appearance in the Technology and Construction Courts in England.

Any termination at this stage will push subsequent tender prices up, or may simply restrict the number organisations willing to engage in major contracts, and not just for waste. On this basis it is likely be difficult or very expensive to procure an alternative waste management facility - irrespective of the technology selected.

Termination of the contract now will result in having to keep the existing Bellozanne incinerator running for several years as a new waste strategy will have to be developed and debated by the States. This would then have to be followed by a technology selection and tender process before any construction commenced.

The impact of keeping the existing plant operating will result in further untreated emissions and the significant risk of failures of the plant that will put the Island in a vulnerable position in terms of treating its putrescible waste.