

North Yorkshire County Council

Business and Environmental Services

Executive Members

7 December 2018

Collaboration Agreement with Leeds City Council

Report of the Assistant Director – Strategic Resources

Appendix B of this report contains information of the type defined in paragraph 3 of Part 1 of Schedule 12A Local Government Act 1972 (as amended).

1.0 Purpose Of Report

- 1.1 To update the Corporate Director Business and Environmental Services (BES), Assistant Director Transport, Waste and Countryside Services (TWACS) and BES Executive Members on the proposed Collaboration Agreement with Leeds City Council, in particular a framework for the collection and disposal of waste from their corporate estate; and the subsequent assignment of the contract to Yorwaste.
- 1.2 Seek respective decisions from the Corporate Director BES and the Assistant Director TWACS in consultation with BES Exec Members to proceed with the agreement and assignment to Yorwaste.

2.0 Background

Services Contract

- 2.1 On 18 March 2014, the County Council Executive agreed
- The principle of awarding relevant contracts for future waste services to Yorwaste Ltd without competitive procurement, where the conditions for the Teckal exemption are satisfied.
 - To delegate authority to the Corporate Director (BES) to determine which future waste service contracts are to be awarded to Yorwaste Ltd.
- 2.1.1 To be able to use the Teckal exemption, Yorwaste Ltd has to satisfy three tests:
- The first is that the owning authorities must exercise the same level of control over the company as they do over their own departments. This is achieved by the North Yorkshire County Council (“NYCC”) and City of York Council (“CYC”) being the only 2 shareholders in the company and collectively having more than 50% of the voting members on the board,
 - The second is that a minimum of 80% of the turnover of the company must be generated from work delivered to its shareholders (the 80:20 rule)
 - The third is that there is no direct private capital participation in the company.
- 2.1.2 On 18 September 2015, NYCC and Yorwaste Ltd entered into a contract (“the Services Contract”) for the provision of waste management services utilising Teckal exemption. CYC and Yorwaste Ltd entered into separate services contracts at the same time. The individual services being provided are detailed in a series of schedules to the Services Contract (“Schedule”), each Schedule setting out the specification in relation to each service. The addition or removal of services is practically achieved by adding or removing Schedule(s).

2.2 In June 2018, Leeds City Council (LCC) gave an early indication of an intended procurement for a series of waste collection and disposal lots which would come into effect from April 2019. North Yorkshire County Council (NYCC) approached LCC in respect of one lot that could be fulfilled through NYCC/Yorwaste, namely the collection and disposal of waste from their corporate estate. Currently that lot is being fulfilled by Associated Waste Management (AWM), a company based in the Leeds area.

3.0 Benefits

3.1 The detailed proposal is in Appendix B

Benefits to NYCC include:

3.1 The certainty and control that go with delivering services through a company owned by the Council.

3.1.1 Provides an example of partnership working when in conversation with other potential local authorities.

3.1.2 Further opportunities of working in partnership with LCC. Currently already provide an outlet for disposal of green waste through SJB, however potential for more.

Benefits to LCC include:

3.2 Reduced procurement costs.

3.2.1 Better value for money on the costs of collection and disposal for this service.

3.2.2 Provides an example of partnership working when in conversation with other potential local authorities. And further opportunity of working with NYCC.

4.0 Risks

4.1 Through the Teckal exemption, NYCC are only able to pass the benefit of the contract to Yorwaste and retain the overall accountability. So whilst Yorwaste will be responsible for the day-to-day management of the service, the Collaboration Agreement is between LCC & NYCC.

5.0 Legal Implications

5.1 Yorwaste Ltd has been reorganised into a 'Teckal' company meaning that contracts are permitted to be directly awarded to it by its owning Authorities where the conditions for the Teckal exemption are satisfied. The award of the additional services to Yorwaste Ltd are therefore in accordance with Regulation 12 of the Public Contract Regulations 2015 (the "2015 Regulations").

5.2 There is a potential conflict of interest in relation to the fact that the Corporate Director (BES) is also on the board of directors of Yorwaste Ltd. For this reason, decisions made in relation to Yorwaste Ltd were delegated to the Assistant Director, Transport, Waste and Countryside Services on 26 July 2011.

5.3 Advice has been received from Procurement & Contract Management Services and Legal Services on the correct approvals mechanisms required under the Council's Contract Procedure Rules. A procurement Gateway 3 report was signed on 11 September 2015 to record the decision to award the Services Contract.

- Procurement & Contract Management team advice reads as follows:
This proposal requires a Gate 4(a) Contract Extension / Variation report under the Council's Contract Procedure Rules. Once the Gate 4(a) has been confirmed and agreed, the variation to the Services Contract will be done by completing a formal Contract Variation document, with a copy of the approved Exec Report attached as an Appendix. Once signed, the Contracts Register will be updated and a copy of the Contract Variation document will be lodged in the Archives
- Legal & Democratic Services advice reads as follows:
Contract variations are dealt with in Rule 18 of the Council's Contract Procedure Rules which requires contracts to be varied in accordance with the terms of that contract. Any variations of a contract with a value in excess of the EU Threshold (currently £181,302 for goods and services) may be varied or extended in accordance with the terms of that contract or as outlined in Regulation 72 of the 2015 Regulations. Approval must be sought in accordance with Rule 17.1 of the Council's Contract Procedure Rules.

This requirement has been fulfilled as legal advice has been taken from Legal & Democratic Services on all changes to the Schedules to the Services Contract described above. Legal & Democratic Services will produce the Variation Agreement which will formalise the variation.

This variation will require a Gate 4(a) Contract Extension / Variation report under the Council's Contract Procedure Rules.

6.0 Equalities Implications

- 6.1 There are no impacts on any of the protected characteristics for equalities as a result of the matters discussed in this report. An Equalities Impact Assessment screening form is attached at Annex A.

7.0 Summary

- 7.1 On 18 March 2014 the Council's Executive agreed the principle of awarding relevant contracts for future waste services to Yorwaste Ltd without competitive procurement, where the conditions for the Teckal exemption are satisfied.
- 7.2 On 18 September 2015 the Council and Yorwaste Ltd entered into the Services Contract for the provision of waste management services, for a 10 year period with two 5 year extensions, following a period of work undertaken to ensure that the company met the conditions of the Teckal Exemption.
- 7.3 This report and decision is to incorporate waste management services into the Services Contract to enable LCC to access the Services Contract using a collaboration agreement, as agreed in principle by the Executive.

8.0 Recommendation

- 8.1 Decision for the Corporate Director BES in consultation with BES Exec Members.
- Agree to Collaboration Agreement with Leeds City Council, in particular a framework for the collection and disposal of waste from their corporate estate.
- 8.2 Decision for Assistant Director TWACS in consultation with BES Exec Members.
- Agree to assign the contract to Yorwaste through the Teckal exemption.

Michael Leah
Assistant Director Strategic Resources

Author of Report: Michael Leah

Background Documents: None

Initial equality impact assessment screening form (As of October 2015 this form replaces 'Record of decision not to carry out an EIA') This form records an equality screening process to determine the relevance of equality to a proposal, and a decision whether or not a full EIA would be appropriate or proportionate.			
Directorate	BES		
Service area	Waste Management		
Proposal being screened	Changes to Yorwaste Services Contract		
Officer(s) carrying out screening	Michael Leah		
What are you proposing to do?	To obtain approval to vary the Yorwaste Services Contract to add, where required, new Schedules to deliver dry mixed recyclates reception, transport and processing services to Leeds City Council		
Why are you proposing this? What are the desired outcomes?	The decision to migrate waste management services to Yorwaste Ltd using an exemption from procurement regulations was agreed by Executive in March 2014. These are the next parts in delivering this change.		
Does the proposal involve a significant commitment or removal of resources? Please give details.	No		
Is there likely to be an adverse impact on people with any of the following protected characteristics as defined by the Equality Act 2010, or NYCC's additional agreed characteristics? As part of this assessment, please consider the following questions: <ul style="list-style-type: none"> To what extent is this service used by particular groups of people with protected characteristics? Does the proposal relate to functions that previous consultation has identified as important? Do different groups have different needs or experiences in the area the proposal relates to? If for any characteristic it is considered that there is likely to be a significant adverse impact or you have ticked 'Don't know/no info available', then a full EIA should be carried out where this is proportionate. You are advised to speak to your Equality rep for advice if you are in any doubt.			
Protected characteristic	Yes	No	Don't know/No info available
Age		✓	
Disability		✓	
Sex (Gender)		✓	
Race		✓	
Sexual orientation		✓	
Gender reassignment		✓	
Religion or belief		✓	
Pregnancy or maternity		✓	
Marriage or civil partnership		✓	
NYCC additional characteristic			
People in rural areas		✓	
People on a low income		✓	
Carer (unpaid family or friend)		✓	
Does the proposal relate to an area where there are known inequalities/probable impacts (e.g. disabled people's access to public transport)? Please give details.	No		

Appendix A

<p>Will the proposal have a significant effect on how other organisations operate? (e.g. partners, funding criteria, etc.). Do any of these organisations support people with protected characteristics? Please explain why you have reached this conclusion.</p>	<p>No</p> <p>The services to be delivered under this proposal will not change at point of use.</p>			
<p>Decision (Please tick one option)</p>	<p>EIA not relevant or proportionate:</p>	<p><input checked="" type="checkbox"/></p>	<p>Continue to full EIA:</p>	
<p>Reason for decision</p>	<p>The decision is being taken to complete a contract award process.</p>			
<p>Signed (Assistant Director or equivalent)</p>	<p><i>David Bowe</i></p>			
<p>Date</p>	<p><i>01/12/2018</i></p>			