

North Yorkshire County Council

Business and Environmental Services

Executive Members

11 December 2019

Waste Management Collaboration Agreement - Harrogate Borough Council

Report of Head of Service – Waste Management

1.0 Purpose of Report:

- 1.1 To report to Executive Members and the Assistant Director Transport, Waste and Countryside Services (AD TWACS) of requests from Harrogate Borough Council (“HBC”) to access services delivered by Yorwaste Ltd to NYCC through a Collaboration Agreement approach.
- 1.2 To inform Executive Members and the Assistant Director Transport, Waste and Countryside Services of the benefits afforded to all parties by using the Collaboration Agreement approach.
- 1.3 To seek the necessary approvals to allow HBC to participate in the Collaboration Agreement approach, access services delivered by Yorwaste Ltd to NYCC and to sign a revised Collaboration Agreement adding HBC as a party.

2.0 Background

2.1 Services Contract

2.1.1 On 18 March 2014, the County 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;
- Where the conditions of the Teckal exemption are satisfied, to authorise the Corporate Director for Business and Environmental Services (“CDBES”) to enter into appropriate agreements with third parties for the provision of waste services (where the Council is the service provider and Yorwaste Ltd deliver those services to third parties as subcontractor).

There is a potential conflict of interest in relation to the fact that the Corporate Director of Business and Environmental Services (BES) is also a Director of Yorwaste Ltd. For this reason, any Council decisions made in relation to Yorwaste Ltd have been delegated to the Assistant Director, Transport, Waste and Countryside Services.

2.1.2 To be able to use the Teckal exemption, Yorwaste Ltd has to satisfy 3 tests:

- The first is that the Contracting Authorities who are the shareholders of the company must exercise the same level of control over the company as they do over their own departments. North Yorkshire County Council (“NYCC”) and City of York Council (“CYC”) are the shareholders of the company and collectively have 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); and
- The third is that there is no direct private capital participation in the company.

2.1.3 On 18 September 2015, NYCC and Yorwaste Ltd entered into a contract (“the Services Contract”) for the provision of waste management services utilising the Teckal exemption. CYC and Yorwaste Ltd entered into a separate services contract 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 varying the agreement to add or remove Schedule(s).

2.2 Collaboration Agreements

2.2.1 The seven borough and district councils in North Yorkshire have statutory waste management duties in their role as Waste Collection Authorities (“WCAs”). One of those duties is to collect waste for recycling. In terms of WCA duties, composting is classed as a recycling service.

2.2.2 Traditionally, WCAs collect materials from residents of their area through kerbside and bring bank collection services. They then make their own arrangements with contractors to receive and process the materials to form a usable product.

2.2.3 HBC has asked to make future arrangements by way of a collaboration agreement that will allow them to deliver their green waste composting service, bring banks and dry mixed recyclates (including bulking and haulage) via the Services Contract. A further decision is required to vary the Services Contract to accommodate this request, and this is covered under a separate report to this meeting of BES Executive Members.

3.0 Benefits of the services being delivered under a Collaboration Agreement

3.1 Benefits to NYCC include:

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

3.1.2 Contributions to NYCC contract management overheads;

3.1.3 Better access to data and information provided under the Services Contract through the Management Information System

3.1.4 Increasing the 80% public sector work enabling Yorwaste to increase the 20% share of the business

3.2 Benefits to HBC include:

3.2.1 Access to composting facilities provided by Yorwaste Ltd at Harewood Whin, or provided by sub-contractors in the area;

3.2.2 Using the collaboration approach means that the wider recycling industry will be able to tender for work as it decouples the transfer and haulage operation from processing of materials;

3.2.3 No requirement to carry out a procurement exercise; and

3.2.4 Better flexibility on changes to their service.

3.3 Benefits to Yorwaste Ltd include:

3.3.1 Reduces the risk of losing work to sector competition; and

3.3.2 Longer term guarantee of material streams to allow longer term strategic investments in infrastructure to be considered.

4.0 Legal Implications

4.1 Relying on what is known as the Hamburg principle, as codified in Regulation 12 of the 2015 Regulations, HBC can enter into a collaboration agreement with NYCC for the delivery of the service. Yorwaste Ltd is a 'Teckal' company meaning that contracts are permitted to be directly awarded to it without the need for a procurement exercise by its owning Authorities. The award of the additional services by NYCC on behalf of HBC to Yorwaste Ltd are therefore in accordance with Regulation 12 of the Public Contracts 2015 (the "2015 Regulations").

4.2 Technically, signing a Collaboration Agreement does not commit any of the signatories ("Partner Organisations") to services being delivered. For this reason this decision is not a Key Decision under the Council's Constitution.

4.3 HBC need to secure their own approvals to sign the Collaboration Agreement.

4.4 The existing Collaboration Agreement is signed by North Yorkshire County Council, City of York Council, Yorwaste Ltd, Hambleton District Council, Craven District Council and Ryedale District Council. It is anticipated that Richmondshire District Council will enter into the Collaboration Agreement in the near future. The practical process is to add HBC to the existing Collaboration as a New Partner Organisation. As a result, Legal and Democratic Services has confirmed that all Partner Organisations will need to sign a re-issued Collaboration Agreement with HBC added as a New Partner Organisation. Therefore this report is seeking approval for NYCC to revise the Collaboration Agreement and enter into a new Collaboration Agreement to include HBC. This is subject to all existing Partners confirming they are willing to accept the addition of HBC as a New Partner Organisation.

5.0 Financial Implications

5.1 There are no external costs in signing a Collaboration Agreement. Internal resources are limited to officer time only.

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 Appendix 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;
- Where the conditions of the Teckal exemption are satisfied, to authorise the CDBES to enter into appropriate agreements with third parties for the provision of waste services (where the Council is the service provider and Yorwaste Ltd deliver those services to third parties as subcontractor).

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 for the AD TWACS to approve the addition of HBC to the Collaboration Agreement subject to HBC seeking their own approvals and all other existing Partner Organisations accepting their inclusion.

8.0 Recommendations

- 8.1 That BES Executive Members and AD TWACS note the contents of the report.
- 8.2 That the AD TWACS, in consultation with Bes Executive Members, approves the addition of HBC to the existing Collaboration Agreement subject to confirmations that they have their own necessary approvals to sign.
- 8.3 That the CDBES, in consultation with BES Executive Members approves North Yorkshire County Council to enter into the re-issued Collaboration Agreement subject to confirmations of the agreement of all existing Partners that they accept the addition of the New Partner Organisations.

IAN KELLY
Acting Head of Waste

Author of Report: Lisa Cooper

Background Documents: Executive Report – 18 March 2014 – Item 06 – Yorwaste Ltd

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	Addition of Harrogate Borough Council to the existing Collaboration Agreement which related to the provision of waste management services		
Officer(s) carrying out screening	Lisa Cooper		
What are you proposing to do?	Sign a Collaboration Agreement		
Why are you proposing this? What are the desired outcomes?	To allow Harrogate Borough Council to have access to the waste management Services Contract between North Yorkshire County Council and Yorwaste Ltd.		
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		<input type="checkbox"/>	
Disability		<input type="checkbox"/>	
Sex (Gender)		<input type="checkbox"/>	
Race		<input type="checkbox"/>	
Sexual orientation		<input type="checkbox"/>	
Gender reassignment		<input type="checkbox"/>	
Religion or belief		<input type="checkbox"/>	
Pregnancy or maternity		<input type="checkbox"/>	
Marriage or civil partnership		<input type="checkbox"/>	
NYCC additional characteristic			
People in rural areas		<input type="checkbox"/>	
People on a low income		<input type="checkbox"/>	
Carer (unpaid family or friend)		<input type="checkbox"/>	
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		
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?	No Signing a collaboration simply grants access to the NYCC/Yorwaste Services Contract. Individual services accessed in this way will be subject to individual EIA screening.		

Appendix A

Please explain why you have reached this conclusion.			
Decision (Please tick one option)	EIA not relevant or proportionate: <input type="checkbox"/>		Continue to full EIA:
Reason for decision	To facilitate partnership working with District Council partners in relation to waste management.		
Signed (Assistant Director or equivalent)	<i>Ian Kelly</i>		
Date	<i>03/12/2019</i>		