

North Yorkshire County Council
Business and Environmental Services

Executive Members

11 December 2019

**Changes to Services to be delivered by Yorwaste Ltd
using the 'Teckal' Procurement Exemption**

Report of the 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) of proposed changes to services to be delivered by Yorwaste Ltd through a directly awarded contract using the 'Teckal' procurement exemption.
- 1.2 To inform Executive Members and the Assistant Director (Transport, Waste and Countryside Services) of the mechanisms by which those changes are to be implemented.
- 1.3 To seek the necessary approvals to implement the changes and vary the services contract with Yorwaste Ltd.

2.0 Background

This report is subject to BES Executive Members and the Assistant Director Transport, Waste and Countryside Services first approving the recommendations in the report of Head of Service Waste Management for Waste Management Collaboration Agreement, Harrogate Borough Council.

2.1 Services Contract

2.1.1 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.

2.1.2 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 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 varying the agreement to add or remove Schedule(s).
- 2.1.4 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 were delegated to the Assistant Director, Transport, Waste and Countryside Services on 26 July 2011.
- 2.2 Contract Schedules
- 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 the WCAs duty, 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 Harrogate Borough Council (“HBC”) has asked to make future arrangements for processing green waste, bring banks and dry mixed recyclates (“DMR”) by way of a Collaboration Agreement that will allow NYCC to place their services through the Services Contract between NYCC and Yorwaste.
- 2.2.4 HBC will need to enter into a Collaboration Agreement with NYCC, CYC, and other partner organisations to enable this approach, and that process is covered in a separate report to this Executive Members Meeting.
- 2.2.5 The Services Contract would require development of bespoke schedules for green waste, bring banks and DMR to deliver the services required by HBC.

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 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 Contract Regulations 2015 (the "2015 Regulations").
- 4.2 In accordance with 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. This variation to the Services Contract will require a Gate 4(a) Contract Extension / Variation report under the Council's Contract Procedure Rules.

5.0 Financial Implications

- 5.1 There are no procurement costs using the proposed approach.
- 5.2 Charging will be directly between Yorwaste Ltd and either HBC so there will be no direct impact on NYCC.
- 5.3 Yorwaste Ltd are currently required under the Services Contract to show value for money in all services that they currently deliver on behalf of the Council. All three parties will monitor the new Schedules against a range of agreed performance indicators to ensure value for money is being delivered.

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.
- 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 HBC to access the Services Contract using a collaboration agreement, as agreed in principle by the Executive.

8.0 Recommendations

- 8.1 This recommendations in this report are subject to BES Executive Members and the Assistant Director Transport, Waste and Countryside Services approving the recommendations in the BES Executive Members report for the Waste Management Collaboration Agreement, Harrogate Borough Council.
- 8.2 That BES Executive Members and the Assistant Director (TWACS) note the contents of the report.
- 8.3 That the Assistant Director (TWACS) makes the following decision in consultation with BES Executive Members, that decision being delegated by the Corporate Director (BES) due to a potential conflict of interest as described in paragraph 2.1d of the report:
- Addition of three new Schedules to the Services Contract between NYCC and Yorwaste Ltd to deliver bring banks, green waste, and dry mixed recyclates reception, transport and processing services to HBC.
- 8.4 Implementation of the decision is subject to the necessary Gate 4a document being completed as described in paragraph 4 of the report.

IAN KELLY
Acting Head of Waste

Author of Report: Lisa Cooper

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	Lisa Cooper		
What are you proposing to do?	To obtain approval to vary the Yorwaste Services Contract to add, where required, new Schedules to the to deliver bring banks and dry mixed recyclables reception, transport and processing services to Harrogate Borough 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		<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.).	No		

Appendix A

<p>Do any of these organisations support people with protected characteristics? Please explain why you have reached this conclusion.</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: <input 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>Ian Kelly</i></p>		
<p>Date</p>	<p><i>03/12/2019</i></p>		