

# North Yorkshire County Council

## Business and Environmental Services

### Executive Members

17 August 2018

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

### Report of the Waste Services Manager

#### 1.0 Purpose of Report:

- 1.1 To report to the Assistant Director Transport, Waste and Countryside Services (TWACS) and Business and Environmental Services (BES) Executive Members and 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 the Assistant Director TWACS and BES Executive Members and of the mechanisms by which those changes are to be implemented.
- 1.3 To seek the necessary approvals to implement the changes.

#### 2.0 Background

##### 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 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.

###### 2.1.3 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 adding or removing Schedule(s).

##### 2.2 Recycling and Composting

- 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 Hambleton District Council (“HDC”) has asked to make future arrangements for processing green waste and dry mixed recyclates (“DMR”) by way of a Collaboration Agreement that will allow them access to the Services Contract between NYCC and Yorwaste.
- 2.2.4 Richmondshire District Council (“RDC”) has asked to make future arrangements for processing dry mixed recyclates (“DMR”) by way of a Collaboration Agreement that will allow them access to the Services Contract between NYCC and Yorwaste.
- 2.2.5 Both Councils will need to sign a Collaboration Agreement to enable this approach, and that process is covered in a separate report to this Executive Members Meeting.
- 2.2.6 The Services Contract has an existing green waste Schedule that will accommodate the request from HDC, so no changes are required in respect of this request.
- 2.2.7 The Services Contract has an existing DMR Schedule which was developed with Craven District Council and Yorwaste Ltd in 2017/8. However, because of different DMR collection systems employed by the 3 WCAs, this does not exactly deliver the service requested by HDC or RDC. Officers have explored whether the existing DMR Schedule can be varied to accommodate all 3 WCAs, but this is not practicable. For this reason the Services Contract will need the addition of two new Schedules, one each for HDC and RDC, to accommodate their different collection arrangements.

### **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 more accurate and timely data received from Yorwaste Ltd, as opposed to the current mechanism where it is received monthly in arrears as part of a recycling credit claim
- 3.1.4 potentially the inclusion of recycling credit payments to HDC for approx. 86% of the waste HDC claims for, resulting in a reduction in administration costs.
- 3.1.5 potentially the inclusion of recycling credit payments to RDC for approx. 97% of the waste RDC claims for, resulting in a reduction in administration costs.

#### 3.2 Benefits to HDC and RDC include:

- 3.2.1 Certainty of delivery points for recyclable material at Harewood Whin, Tancred and Thirsk Waste Transfer Stations (“WTSs”) for HDC, and Tancred WTS for RDC.
- 3.2.2 Access to composting facilities provided by Yorwaste Ltd at Harewood Whin and Tancred, or provided by sub-contractors in the area (HDC only).

3.2.3 To date, Yorwaste Ltd has been the only contractor with outlets in the geographical area and this has resulted in very poor competition for materials collected by HDC and RDC. 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

3.2.4 Reduced procurement costs

3.2.5 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.

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 has been reorganised into a 'Teckal' company meaning that contracts are permitted to be directly awarded to it by its owning Authorities. 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").

4.2 Legal implications of using the Collaboration Agreement approach are included in a separate report to this meeting.

4.3 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.

4.4 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. A copy is attached for information.

- 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.

4.4.1 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.

4.4.2 This variation will require a Gate 4(a) Contract Extension / Variation report under the Councils 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 HDC or RDC, 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 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 HDC and RDC to access the Services Contract using a collaboration agreement, as agreed in principle by the Executive.

## **8.0 Recommendations**

8.1 That BES Executive Members and the Assistant Director (TWACS) note the contents of the report.

8.2 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 4.3 of the report:

- Addition of two new Schedules to the Yorwaste Services Contract to deliver dry mixed recyclates reception, transport and processing services to Hambleton District Council and Richmondshire District Council.
- Implementation of the decision is subject to the necessary Gate 4a document being completed as described in paragraph 4.4 of the report.

Tony Norris  
Waste Services Manager

Author of Report: Tony Norris

Background Documents: Gateway 3 Document

<b>Initial equality impact assessment screening form</b> (As of October 2015 this form replaces 'Record of decision not to carry out an EIA') <b>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.</b>			
<b>Directorate</b>	BES		
<b>Service area</b>	Waste Management		
<b>Proposal being screened</b>	Changes to Yorwaste Services Contract		
<b>Officer(s) carrying out screening</b>	<b>Tony Norris</b>		
<b>What are you proposing to do?</b>	To obtain approval to vary the Yorwaste Services Contract to add, where required, new Schedules to the to deliver dry mixed recyclates reception, transport and processing services to Hambleton District Council and Richmondshire District Council		
<b>Why are you proposing this? What are the desired outcomes?</b>	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.		
<b>Does the proposal involve a significant commitment or removal of resources?</b> Please give details.	No		
<b>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?</b> As part of this assessment, please consider the following questions: <ul style="list-style-type: none"> <li>To what extent is this service used by particular groups of people with protected characteristics?</li> <li>Does the proposal relate to functions that previous consultation has identified as important?</li> <li>Do different groups have different needs or experiences in the area the proposal relates to?</li> </ul> <b>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 <a href="#">Equality rep</a> for advice if you are in any doubt.</b>			
<b>Protected characteristic</b>	<b>Yes</b>	<b>No</b>	<b>Don't know/No info available</b>
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"/>	
<b>NYCC additional characteristic</b>			
People in rural areas		<input type="checkbox"/>	
People on a low income		<input type="checkbox"/>	
Carer (unpaid family or friend)		<input type="checkbox"/>	
<b>Does the proposal relate to an area where there are known inequalities/probable impacts</b> (e.g. disabled people's access to public transport)? Please give details.	No		

<p><b>Will the proposal have a significant effect on how other organisations operate? (e.g. partners, funding criteria, etc.).</b>  <b>Do any of these organisations support people with protected characteristics?</b>  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><b>Decision (Please tick one option)</b></p>	<p>EIA not relevant or proportionate:</p>	<input type="checkbox"/>	<p>Continue to full EIA:</p>
<p><b>Reason for decision</b></p>	<p>The decision is being taken to complete a contract award process.</p>		
<p><b>Signed (Assistant Director or equivalent)</b></p>	<p>Ian Fielding</p>		
<p><b>Date</b></p>	<p>3 August 2018</p>		