

North Yorkshire County Council

Business and Environmental Services

Executive Members

17 August 2018

Waste Management Collaboration Agreement - Hambleton and Richmondshire District Councils

Report of the Assistant Director – Transport, Waste and Countryside Services

1.0 Purpose of Report:

- 1.1 To report to the Corporate Director Business and Environmental Services (BES) and BES Executive Members of requests from Hambleton District Council (“HDC”) and Richmondshire District Council (“RDC”) to access services delivered by Yorwaste Ltd to North Yorkshire county Council (NYCC) through a Collaboration Agreement approach.
- 1.2 To inform the Corporate Director BES and BES Executive Members and of the benefits afforded to all parties by using the Collaboration Agreement approach.
- 1.3 To seek the necessary approvals to allow HDC and RDC to sign the Collaboration Agreement, and to sign a re-issued Collaboration Agreement

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).

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 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 adding or removing 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 HDC has asked to make future arrangements by way of a collaboration agreement that will allow them to deliver their green waste composting service via the Services Contract. This service can be delivered under an existing Schedule to the Services Contract.

2.2.4 HDC has also asked to make future arrangements by way of a collaboration agreement that will allow them to deliver their dry recyclates bulking, haulage and processing services 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.

2.2.5 RDC has asked to make future arrangements by way of a collaboration agreement that will allow them to deliver their dry recyclates bulking, haulage and processing services 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.

2.2.6 RDC has not asked to include delivery of their green waste composting service via the Services Contract. The reason for this is that they have confirmed that from 1 April 2019 they will deliver their kerbside collected green waste to NYCC and the responsibility for processing the material will transfer to NYCC.

3.0 Benefits of the services being delivered under a Collaboration Agreement

3.1 Benefits to NYCC include:

- the certainty and control that go with delivering services through a company owned by the Council.
- contributions to NYCC contract management overheads
- 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
- 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.
- 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 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 HDC and RDC 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, Craven District Council and Ryedale District Council. The practical process is to add HDC and RDC 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 HDC and RDC added as New Partner Organisations, so this report is seeking approval for NYCC to confirm subject to all existing Partners confirming they are willing to accept the addition of one or both New Partner Organisations.
- 4.5 HDC and RDC have confirmed they are not seeking any variation to the existing Collaboration Agreement

- 4.6 Advice has been received from Procurement and Contract Management Services and Legal Services on the correct approvals mechanisms required under the Council's Contract Procedure Rules.
- Procurement & Contract Management team advice reads as follows:
This report reflects service area contract management activities – the procurement risk is on the New Partner Organisations and in adherence to their own contract procedures.
 - 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. Under Rule 18.3, 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
- 4.7 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.
- 4.8 This 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 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 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.
 - 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 CDBES to approve the addition of Hambleton District Council and Richmondshire District Council to the existing Collaboration Agreement subject to HDC and RDC having their own, necessary, approvals and all other existing Partner Organisations accepting their inclusion.

8.0 Recommendations

- 8.1 That BES Executive Members and CDBES note the contents of the report.
- 8.2 That the CDBES approves the addition of Hambleton District Council and Richmondshire District Council to the existing Collaboration Agreement subject to confirmations that they have their own necessary approvals to sign.
- 8.3 That the CDBES takes the decision for North Yorkshire County Council to sign 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 FIELDING

Assistant Director – Transport, Waste and Countryside Services

Author of Report: Tony Norris

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 Hambleton District Council and Richmondshire District Council to the existing Collaboration Agreement which related to the provision of waste management services		
Officer(s) carrying out screening	Tony Norris		
What are you proposing to do?	Sign a Collaboration Agreement		
Why are you proposing this? What are the desired outcomes?	To allow Hambleton District Council and Richmondshire District 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? Please explain why you have reached this conclusion.	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.
Decision (Please tick one option)	EIA not relevant or proportionate: <input type="checkbox"/> Continue to full EIA: <input type="checkbox"/>
Reason for decision	To facilitate partnership working with District Council partners in relation to waste management.
Signed (Assistant Director or equivalent)	Ian Fielding
Date	3 August 2018