

North Yorkshire Council

Environment Directorate

22 February 2024

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

Report of the Head of Service - Waste

This report contains information of the type defined in paragraph 3 or Part 1 of Schedule 12A Local Government Act 1972) as amended

1.0	PURPOSE OF REPORT
1.1	To inform the Executive Member for Managing our Environment and the Assistant Director Environmental Services and Climate Change of proposed changes to services to be delivered by Yorwaste Limited through a directly awarded contract using the 'Teckal' procurement exemption.
1.2	To inform Executive Members and the Assistant Director Environmental Services and Climate Change 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 Limited.

2.0 BACKGROUND

- 2.1 On 18 March 2014, the North Yorkshire County Council (NYCC) Executive agreed:
- The principle of awarding relevant contracts for future waste services to Yorwaste Limited (Yorwaste) 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.
- 2.2 To be able to use the Teckal exemption, Yorwaste has to satisfy the following requirements (in accordance with the Public Contracts Regulations 2015 (PCRs) regulation 12):
- 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 (known as the Control test). The North Yorkshire Council (NYC or the Council) and City of York Council (CYC) are the shareholders of the company and collectively have more than 50% of the voting directors on the board; and
 - A minimum of 80% of the turnover of the company must be generated from work delivered to its shareholders (the 80:20 rule or the functional test).
- 2.3 On 18 September 2015, NYCC and Yorwaste entered into a contract (the Services Contract) for the provision of waste management services utilising the Teckal exemption. CYC and Yorwaste 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).

- 2.4 A collaboration agreement was entered into between NYCC, CYC and Yorwaste on 18 September 2015 (the Collaboration Agreement). This provides the mechanism for collaboration in respect of waste activities across North Yorkshire and beyond. Additional Contracting Authorities wishing to join the collaboration are able to accede to the Collaboration Agreement using the process set out within the agreement. The service is then provided by the Teckal compliant company via either of the Authorities through the collaboration. Additional Contracting Authorities were some of the former district and borough councils, although this did not include Scarborough Borough Council and Selby District Council. Ryedale District Council signed a collaboration agreement on 06 December 2017 to allow Yorwaste to accept, transport and process their DMR. They did not collaborate for the acceptance and processing of garden waste.
- 2.5 With the formation of The North Yorkshire Council on 01 April 2023, the new North Yorkshire Council is able to directly provide services in its administrative area through the Services Contract between the Council and Yorwaste, and so Collaboration Agreements are no longer required for the former district and borough areas.
- 2.6 There is a potential conflict of interest in relation to the fact that the Corporate Director of Environment is also a Director of Yorwaste. For this reason, any Council decisions made in relation to Yorwaste were delegated to the Assistant Director of Environmental Services and Climate Change on 06 December 2023.

3.0 CURRENT ARRANGEMENTS AND PROPOSAL FOR VARIATION

- 3.1 The Council, as a Unitary Authority, has a duty under the Environmental Protection Act 1990 to arrange for the collection and disposal of household waste. This includes arrangements for the processing of garden waste and dry mixed recyclables (DMR).
- 3.2 Ryedale, Scarborough and Selby localities currently have contracts with Yorwaste for the acceptance and processing of garden waste. The Ryedale contract ended on 30 November 2023 when garden waste collections ceased over the winter period. Scarborough ends on 30 June 2024 and Selby contract ends on 30 November 2024. The new contract will start 01 July 2024, with the exception of Selby which will start 01 December 2024. Temporary provision is being put in place for Ryedale between 01 March and 30 June 2024.
- 3.3 Scarborough deliver a fully co-mingled recycling service, with paper and card, cans, plastics and glass being collected fortnightly in a 240l wheeled bin. Scarborough entered into a contract with Eren (previously Shotton Mill) for the recycling of dry mixed recycle (DMR) on 01 July 2014. This contract is due to expire 30 June 2024. There is an option for one extension of 10 years. Eren have subcontracted the waste transfer facility provision to Yorwaste, who provide Seamer Carr and Whitby waste transfer stations (WTS).
- 3.4 It is proposed that once the existing contracts have ended, these services will become part of the Services Contract between Yorwaste and the Council through the addition of new schedules. New schedules for the acceptance and processing of garden waste from Ryedale, Scarborough and Selby localities are in draft. A schedule for the acceptance and processing of DMR from Scarborough locality is also in draft. New schedules are being added, rather than existing schedules for garden waste and DMR being amended due to different collection arrangements across the localities.
- 3.5 The current processing points for garden waste rounds are within a short drive time of the kerbside collection rounds. Additional resource would be required such as vehicles and staff if garden waste was delivered to alternative processing points.

- 3.6 Yorwaste are unable to process fully co-mingled DMR inhouse so a procurement exercise will be undertaken for the haulage and processing of the DMR. This will be a sub-contract arrangement between Yorwaste and the relevant provider. The contract will be for 2 years, with two 1-year extensions.
- 3.7 Benefits to the Council of the service being delivered by Yorwaste include:
- The certainty and control that go with delivering services through a company owned by the Council.
 - No requirement for the Council to carry out a procurement exercise and avoids the cost that goes with that.
 - The householder will not see any change in the collection of their recycling materials, but if the Council does decide to change collection methodology in future to support countywide harmonisation of services and to achieve the aims of Simpler Recycling, then a contract with Yorwaste provides better flexibility on changes to service.
 - Contributes to contract management overheads.
 - Increases the 80% public sector work enabling Yorwaste to increase the 20% commercial share of the business.

4.0 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 There are areas that require alternative provision therefore a procurement exercise is being undertaken for provision of garden waste processing in Ryedale, Scarborough and Selby to cover the geographical areas of the localities which deliver to alternative facilities (areas that cannot be delivered to Yorwaste facilities). It was decided to not include the geographical areas that Yorwaste cover, as market research has identified there are no alternative garden waste processing points in the vicinity, therefore these areas can clearly be covered through the Teckal Services Contract.
- 4.2 Utilising the Teckal compliant Services Contract also removes the cost and time attached to the complex procurement of multiple services, when similar arrangements are already provided to the Council by the Teckal company.

5.0 FINANCIAL IMPLICATIONS

- 5.1 The garden waste tonnage collected may fluctuate depending on the weather, however total cost of the service estimated using tonnage averages for the previous 4 years show there is sufficient budget available.
- 5.2 There has not yet been a full year of garden waste charging for Selby district. Until the number of subscriptions is known for 24/25 it is difficult to accurately determine tonnages. There is the possibility that tonnages will decrease in 24/25.
- 5.3 The procurement for the processing and haulage of Scarborough DMR has not yet been tendered so the cost per tonne of the haulage and processing of the material, and the rebate value per tonne from the sale of materials is currently unknown until a procurement has been completed by Yorwaste. There is an expectation that the overall cost per tonne for the Scarborough DMR will increase compared to previous years. This is due to the decrease in price per tonne for the sale of materials. Recycling markets are being impacted by the additional fuel cost to transport material around the Cape of Good Hope, due to the Suez Canal issue. The decrease in crude oil prices has reduced the requirement for the recycling of plastics. There is no expectation that prices will increase in the near future.
- 5.4 There are no procurement costs for the Council attached to using the proposed approach.

- 5.5 Yorwaste Limited are required under the Services Contract to show value for money in all services that they currently deliver on behalf of the Council. Both parties will monitor the new Schedules against a range of agreed performance indicators to ensure value for money is being delivered.
- 5.6 Further financial information is available in Appendix A, however as this is commercially sensitive it is treated as confidential for the purposes of this report. There is currently an existing budget pressure, but this isn't as an impact of the proposal within this report.

6.0 LEGAL IMPLICATIONS

- 6.1 As described in paragraph 2.2 above, Yorwaste is a 'Teckal' company meaning that contracts are permitted to be directly awarded to it without the need for a procurement exercise by either of its owning Authorities. The award of these additional services by NYC to Yorwaste is therefore compliant with Regulation 12 of the PCRs.
- 6.2 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 to Yorwaste.
- 6.3 This variation to the Services Contract will require a Gateway 4(a) Contract Extension / Variation report under the Council's Contract Procedure Rules. Procurement resource has been requested to produce a Gateway 4(a) report.
- 6.4 Legal Services will assist with the preparation of the documentation required to vary the Services Contract, as necessary. The variation will need to be executed by both Yorwaste and the Council and comply with the change control procedures set out in the Services Contract.

7.0 EQUALITIES IMPLICATIONS

- 7.1 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 B.

8.0 CLIMATE CHANGE IMPLICATIONS

- 8.1 A climate change impact assessment has been completed, attached as Appendix C.

9.0 REASONS FOR RECOMMENDATIONS

- 9.1 In order to ensure that service delivery is not interrupted it is essential that garden waste processing facilities are in place for Ryedale, Scarborough and Selby at the end of the current contracts. A DMR contract for the transport and processing of DMR is also required.
- 9.2 It has been determined that provision of those services by Yorwaste Limited through the Teckal compliant Services Contract provides best value to the Council.
- 9.3 The recommendations allow for the variation of the Teckal compliant Services Contract.

10.0 RECOMMENDATIONS

- 10.1 It is recommended that the Executive Member for Managing our Environment and the Assistant Director Environmental Services and Climate Change note the contents of the report.
- 10.2 It is recommended that the Assistant Director Environmental Services and Climate Change, in consultation with the Executive Member for Managing our Environment, agrees to vary the Services Contract between NYC and Yorwaste Limited to provide garden waste processing for Ryedale, Scarborough and Selby, and DMR arrangements for Scarborough as detailed in this report.

APPENDICES:

Appendix A – Finance information – CONFIDENTIAL
Appendix B – Equalities Impact Assessment screening form
Appendix C – Climate Change Impact Assessment

BACKGROUND DOCUMENTS:

None

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Note: Members are invited to contact the author in advance of the meeting with any detailed queries or questions.