

North Yorkshire County Council
Business and Environmental Services

Executive Members

12 November 2021

Changes to Services 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 the Executive Member for Open to Business and the Assistant Director (Travel, Environmental & Countryside Services) a proposed additional service to be delivered by Yorwaste Ltd through a directly awarded contract using the 'Teckal' procurement exemption.
- 1.2 To seek the necessary approvals to implement the change and vary the Services Contract with Yorwaste Ltd.

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 of Business and Environmental Services (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 three tests pursuant to paragraph 12(4) of the Public Contract Regulations 2015 (PCR 2015):

- 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 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 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, Travel, Environmental and Countryside Services on 26 July 2011.

2.2 Contract Schedules

2.2.1 NYCC has responsibility for some historical Closed Landfill Sites (CLS), which are sites that were not subject to regulation or permit falling under the Landfill Directive 1999 as their closure predated the implementation of the Directive Regulations. These sites may be subject to controls under Part 2A of the Environmental Protection Act 1990, which relate to contaminated land. NYCC seeks to minimise its risk where the land has the potential to cause significant harm or pollution by continuing to undertake monitoring.

In addition, there is a requirement to monitor other CLS which fall within the regulatory regime under the Landfill Directive 1999 and which are subject to and held under the terms of Environment Agency permits.

2.2.2 The management and monitoring of the CLS is currently split between three organisations:

- NYCC Waste Management currently undertake the 'management' of the CLS
- WSP undertake the 'routine monitoring' on behalf of NYCC
- Yorwaste Ltd are also assisting NYCC with a discrete piece of specialist work to manage one of the CLS.

2.2.3 NYCC would like Yorwaste Ltd to undertake both the management and monitoring (and continue with the specialist work) of the CLS in the future, as there are benefits they could bring when delivering this service.

2.2.4 The existing Services Contract between NYCC and Yorwaste Ltd can be varied pursuant to clause 16 and schedule 7 of the Services Contract and a new CLS Schedule added. Both NYCC and Yorwaste Ltd would like the new arrangement to start on the 01 January 2022.

3.0 Benefits of the services being delivered by Yorwaste Ltd

3.1 Benefits to NYCC include:

- There would be a holistic approach to CLS management as opposed to the current arrangement, which is split across three organisations;
- Yorwaste have existing specialist staff undertaking CLS management and monitoring work at Yorwaste Ltd landfill sites, who have the correct skills and experience. NYCC staff do not have a dedicated resource to undertake this work;
- Routine repair and maintenance work that is currently slow to be progressed will be undertaken by Yorwaste Ltd in a timely and cost effective manner;
- NYCC would get better value for money; and
- Yorwaste Ltd are a local company so they can react and travel to sites quickly.

4.0 Risk Management

4.1 Yorwaste Ltd have set out how they will provide the service in a diligent and professional manner, by addressing the following:

- Staff qualifications, training and experience
- Specialist equipment and software used to deliver the service
- Details of the equipment servicing and calibration
- Details of the national guidance/ relevant industry standards used to determine monitoring parameters, frequencies and interpretation of results
- Monitoring procedures, methodologies, and risk assessments
- Details of the accredited laboratory used for ground water and surface water sampling analysis
- Technically Competent Manager (TCM) evidence

- Copies of all correspondence with Environment Agency (EA) Compliance Assessment Reports & details of any EA meetings
- Environmental Management System / BSI ISO 14001 accreditation and results of annual BSI audits.

4.2 NYCC will undertake annual audits to confirm Yorwaste Ltd are delivering the service in a diligent and competent manner to agreed national and relevant industry standards, to minimise the risk to the Authority to an acceptable level.

4.3 NYCC has Public Liability cover for injury and damage to third parties should NYCC be negligent, including sudden and unforeseeable pollution. NYCC also have financial loss insurance for third parties in respect of NYCC's statutory duty and responsibilities under the Official's Indemnity policy. NYCC's insurers would take a 'dim view' if a claim was brought under the OI policy because Yorwaste did not have Professional Indemnity (PI) cover in place. Yorwaste was provided with a quote for PI insurance for financial loss that would exclude NYCC as Shareholders, but would cover Third Parties. This option was unaffordable. NYCC could also suffer its own financial loss if an incident affected the value of NYCC property. In reality however, the likelihood of Yorwaste Ltd getting the management and monitoring wrong and being negligent is low.

5.0 Legal Implications

5.1 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 variation of the Services Contract to include a new CLS Schedule are therefore in accordance with Regulation 12(4) and (5) of the PCR 2015.

5.2 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 requires a Gateway 4(a) Contract Extension / Variation report under the Council's Contract Procedure Rules. The Procurement Assurance Board approved the Gateway 4(a) Contract Variation report on 20 October 2021.

6.0 Financial Implications

6.1 There are no procurement costs using the proposed approach.

6.2 NYCC would get better value for money overall. There will be two types of charges:

- Annual charge of £55,538 that will cover management and routine monitoring. It has been calculated that if WSP were asked to undertake all of the above work the annual charge would be £63,738, thus demonstrating the value for money by using Yorwaste. The costs will continue to be funded from the Closed Landfill Site budget.
- Pass Through Costs for items such as repair and maintenance work and project work. This is subject to approval by the NYCC Waste Management Service before proceeding with the work. This will ensure works are completed in a timely and cost effective manner.

6.3 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. Both NYCC and Yorwaste Ltd will monitor the new Schedule against a range of agreed performance indicators to ensure value for money is being delivered.

6.4 There is an insurance risk highlighted in section 4.3 of this report. The financial implications of this are NYCC could suffer its own financial loss if an incident affected the value of NYCC property. In reality however, the likelihood of Yorwaste Ltd getting the management and monitoring wrong and being negligent, which would result in an incident, is low. NYCC

would retain overall liability for the closed landfill sites irrespective of the contractor undertaking environmental management and monitoring.

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 Annex A.

8.0 Climate Change Implications

8.1 There are no climate change implications.

9.0 Summary

9.1 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.

9.2 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.

9.3 This report and decision is to vary the Services Contract to include a new Schedule for the Management and Monitoring of the Closed Landfill Sites.

10.0 Recommendations

10.1 The BES Executive Member for Open to Business and the Assistant Director (Travel, Environmental & Countryside Services) note the contents of the report.

10.2 The Assistant Director (Travel, Environmental and Countryside Services) makes the following decision in consultation with the BES Executive Member for Open to Business, that decision being delegated by the Corporate Director (BES) due to a potential conflict of interest as described in paragraph 2.1.4 of the report:

- i. Addition of a new Schedule to the Services Contract between NYCC and Yorwaste Ltd to deliver the Management and Monitoring of the Closed Landfill Sites

PETER JEFFREYS
Head of Service, Waste

Author of Report: Suzanne Williamson

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	Suzanne Williamson
What are you proposing to do?	To obtain approval to vary the Yorwaste Services Contract to add a new Schedule to deliver the Management and Monitoring of the Closed Landfill Sites
Why are you proposing this? What are the desired outcomes?	To provide a holistic approach to the Management and Monitoring of the Closed Landfill Sites.
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		✓	
Disability		✓	
Sex (Gender)		✓	
Race		✓	
Sexual orientation		✓	
Gender reassignment		✓	
Religion or belief		✓	
Pregnancy or maternity		✓	
Marriage or civil partnership		✓	
NYCC additional characteristic			
People in rural areas		✓	
People on a low income		✓	
Carer (unpaid family or friend)		✓	

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

Do any of these organisations support people with protected characteristics? Please explain why you have reached this conclusion.	
Decision (Please tick one option)	EIA not relevant or proportionate: <input checked="" type="checkbox"/> Continue to full EIA: <input type="checkbox"/>
Reason for decision	Variation of the Services Contract does not have adverse impacts on people with protected characteristics.
Signed (Assistant Director or equivalent)	Michael Leah Assistant Director Travel, Environmental and Countryside Services
Date	1 October 2021