Obtaining information about the North Yorkshire County Council and City of York Waste Treatment project
This leaflet explains your rights to get information about our waste treatment project, and the Council’s approach to dealing with requests for information. It also gives you information about the project and the way it is being managed.

The Council’s approach to information requests

Your right to information

You can access information held by North Yorkshire County Council (NYCC) through:

- Voluntary Disclosure by NYCC
- The Freedom of Information Act 2000
- The Environmental Information Regulations 2004
- The Audit Commission Act 1998

Voluntary disclosure

Background information on the development of our waste management strategy has already been posted on the web. This is available on the Municipal Waste Strategy page on the North Yorkshire County Council website at http://www.northyorks.gov.uk/index.aspx?articleid=3074. Other information about the project can be found at AmeyCespa’s project website: http://www.allerton-waste-recovery-park.co.uk/

We will continue to publish as much information as possible, including contract documents, which will be posted within four weeks of contracts being signed. Confidential information will not be included.

The Freedom of Information Act 2000 (FOIA)

Under the FOIA you are entitled to certain recorded information from us and similar bodies, but there are some important protections, known as exemptions, built into the FOIA. For example, if the cost of complying with a request for information would exceed £450 (18 hours of staff time), we do not have to provide the information. We can also refuse a request under an exemption, for example, if disclosure of the requested information would prejudice anyone’s commercial interests. However we must also sometimes consider whether the public interest favours disclosing information even if an exemption applies. Additionally under the FOIA we don’t have to disclose information covered by the Environmental Information Regulations 2004 (see below). Under the FOIA we must respond to you within 20 working days, providing you with the information you have requested or explaining why we can’t.

You will find a copy of the Act at www.legislation.gov.uk and a copy of the regulations setting out the £450 threshold. The reference for the Act is (Statutory Instrument 3244 of 2004) and can be found on the same site.

Environmental Information Regulations 2004 (EIR)

These regulations require local authorities like us to make recorded environmental information available on request and to proactively publish environmental information.

As with the FOIA, there are some important protections built into the EIR, known as exceptions. However we always have to consider the public interest, which under the EIR presumes that most information will be disclosed. We are not allowed to claim an exception in relation to information on emissions.
Under the EIR we must respond to you within 20 working days, providing you with the information you have requested or explaining why we can't. However, we are allowed a further 20 working days if a request is particularly complex.

You will find a copy of the Act at www.legislation.gov.uk

The Audit Commission Act 1998 and Audit Regulations 2003

These Acts give the local electors and other interested parties a limited right to access the Councils’ accounts and other related documents. This right allows local members of the public to view and make copies of these documents for a period of 20 working days before a date notified by the District Auditor.

Once again, you can get a copy of the Act from www.legislation.gov.uk

How the project has been managed

Background to the Private Finance Initiative (PFI)

The decision to select AmeyCespa as the preferred bidder to become the County Council’s private sector waste management partner is the result of a process that started several years ago with the arrival of the Waste and Emissions Trading Act 2003 (“WET Act”). A copy of the WET Act can be found at www.legislation.gov.uk.

The WET Act introduced the concept of local authorities being responsible for reducing the amount of bio-degradable waste being sent to landfill and made two tier authorities responsible for having a municipal waste management strategy. In 2002 City of York Council (“York”) and NYCC drew up a joint municipal waste management strategy, acting together with the borough and district councils responsible for collecting waste. That strategy was originally called “Let’s Talk Rubbish”.

“Let’s Talk Rubbish” committed both York and NYCC to increasing the volume of waste recycled and to reducing the quantity of waste being sent to landfill. As part of the development of the strategy we undertook public consultation and used the results of that consultation to inform not only the strategy but also a decision as to what might be the best practicable environmental option (“BPEO”) for future management of waste. The BPEO prompted the revision of the waste strategy resulting in the publication of “Let’s Talk Less Rubbish” in June 2006. A copy of the strategy can be found at http://www.letstalklessrubbish.com/strategy.

The BPEO analysis undertaken during 2003-05 made it clear that we would need to invest in capital infrastructure to manage future waste and to comply with the obligations under the WET Act. To get central government assistance towards the cost of that infrastructure we jointly applied to the Department of Environment, Food and Rural Affairs (“DEFRA”) for Credits under the government’s Private Finance Initiative (PFI) and were awarded PFI Credits of £65million. As part of our application for PFI Credits, we had to submit an Outline Business Case (“OBC”) supporting our claim for the Credits. A copy of the OBC and supporting documents (including the BPEO) can also be found at http://www.letstalklessrubbish.com/strategy.

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1 The main tool used by the WET Act to enforce compliance was a system of tradable landfill allowances whereby waste disposal authorities who sent waste to landfill in excess of their quota were liable to fines. The coalition government has announced the ending of that system (known as LATS) on the grounds that “landfill tax now provides more of an incentive for local authorities to reduce the waste they send to landfill”. The abolition of LATS does not affect the County Council’s other obligations under the WET Act.
In accepting PFI Credits we committed ourselves to procuring the required infrastructure within the rules of the Government’s Private Finance Initiative. Those rules require that not only must an OBC be submitted to the relevant government department before the start of the procurement, but also that a Final Business Case (“FBC”) be submitted before the identification of the selected private sector partner.

For reasons we explain below, elements of the Final Business Case are confidential. We have posted a slightly redacted version of the FBC at http://www.northyorks.gov.uk/index.aspx?articleid=3074

In December 2010 Members of North Yorkshire County Council and City of York Council agreed to award a contract to AmeyCespa for the management of waste in York and North Yorkshire for the next 25 years. AmeyCespa has submitted a planning application for the Allerton Waste Recovery Park. They are also applying for an operating permit from the Environment Agency. If these applications are successful the plant will be operational in 2015/16.

The law governing the procurement of the project

When a public body such as NYCC wants to award a large contract, it may only do so by following the requirements of the Public Contracts Regulations 2006 (“The Regulations”). The purpose of the Regulations is to ensure that large procurements are run in a fair, transparent and competitive way. Information on the regulations can be found at the Cabinet Office web site Procurement regulations for public sector contracts | Business Link. The text of the regulations can be found at www.legislation.gov.uk

The regulations require that a large contract may only be awarded following one of four procurement procedures. The advice given to us was that for a complex contract, such as the waste management one, the procedure known as the Competitive Dialogue should be followed. That procedure is the one normally used for PFI projects.

There are three particularly relevant aspects of the Competitive Dialogue procedure:

1. When using the Competitive Dialogue procedure, the procuring authority may not specify the technology (the Regulations use the term “solution”) to be selected.

2. The authority may only award the contract under competition to the bidder (the Regulations use the term “participant”) whose solution it has evaluated (using evaluation criteria that were specified at the beginning of the procurement) as offering the “most economically advantageous tender”, which is measured using a price: quality ratio.

3. To ensure that the procurement is genuinely competitive, the Regulations impose an express obligation of confidentiality on the procuring authority. That obligation is set out at Regulation 43 which provides:

   “…a contracting authority shall not disclose information forwarded to it by [a participant] which the [participant] has reasonably designated as confidential”.

To make sure that the Competitive Dialogue involved a genuine interchange of ideas between us and the participants, solutions and all aspects of the Competitive Dialogue were treated as confidential.
Publicising the PFI contract

At the same time as making the application for PFI Credits we were making waste management contractors aware of the PFI procurement. This was to make sure that when the contract came to be advertised, there would be strong interest from that community. A high level of interest was important to make sure that as wide a range of participants (offering a varied range of technologies) as practicable would want to participate in the procurement. This was to make sure that the procurement would be genuinely competitive and would offer value for money. An advertisement – Prior Information Notice (“PIN”) was published in the Official Journal of the European Union on 8 July 2006 Ref: 2006/S 128-136792.


The procurement process

The procurement began with the publication of the OJEU Advert in September 2007. Initially, all respondents had to complete a Preliminary Qualifying Questionnaire (PQQ) to show that they were entitled to participate. We didn’t exclude any respondents at this stage, and all were invited to submit outline proposals. There was no limit on the number of solutions each participant could propose.

We received outline solutions from ten participants in December 2007 and evaluated these solutions against the criteria we had sent out to all respondents. Then, in January 2008, we drew up a list of four participants.

We asked each of these participants to develop their solutions in more detail and they submitted these at the end of May 2008. Our advisors carried out further detailed analysis on these solutions against the original criteria and as a result, in early September 2008, we asked two participants – AmeyCespa and Earth Tech Skanska - to go forward to the final stages of procurement.

In autumn 2009 we invited the two finalists to submit their final tenders and our advisors reviewed them against the same set of criteria. AmeyCespa's proposal was assessed as the most economically advantageous tender. We also worked closely with the Waste Infrastructure Delivery Programme (WIDP), an agency of DEFRA, to make sure that we carried out the procurement in accordance with WIDP’s requirements. That engagement involved a number of legal, commercial and financial reviews, including an overall value for money review conducted on behalf of the incoming coalition Government when it took office.

Our Final Business Case (FBC) was approved at the end of June 2010, and we declared AmeyCespa the Preferred Bidder. The terms of the Contract have now been finalised.

The contract is in accordance with the terms of the Government’s regulation “Standardisation of Contracts 4th edition” (SOPC4) available at HM Treasury website.

More information

We hope this leaflet has helped you to understand your rights to information about our waste treatment project, and has given you some background to the project and the way it is being managed. If you would like more information in relation to the project please contact the Waste PFI Project team:
If you would like more information in relation to FOIA and/or EIR requests in general please contact NYCC's Data Management team:

E-mail: datamanagement.officer@northyorks.gov.uk Telephone: 01609 533219