

Title - Approval of an extension to a vehicle lease agreement and spend of associated vehicle lease, maintenance and operational costs for 2023/24 stemming from a full Council 2018 acceptance from Derby City Council of the Delegation of its Commercial Waste Collection Functions.

Legal Advice

This decision concerns approval of a 12-month extension to an existing Vehicle Lease Agreement together with approval for the spend of associated vehicle lease, maintenance and operational costs for 2023/24 stemming from the continuation of the full Council 2018 acceptance (Minute 84) of Derby City Council (DCC) 's delegation of its Commercial Waste Collection Functions to Nottingham City Council (NCC).

In reliance upon section 101 of the Local Government Act 1972, which empowers a local authority to arrange for the discharge of any of its functions by another local authority, DCC delegated statutory duties/ functions including those under section 45 (1) (b) and Section 52(9) of the Environmental Protection Act 1990 (as amended) ("the EPA 1990") to NCC on the 24th January 2018. On the 5th March 2018, NCC accepted the delegation of this executive function is by its full Council as set out in its Constitution. This was formalised under a Deed of Delegation completed on the 29th March 2018 ("the Deed") relying upon:

- Local Authority (Goods and Services) Act 1970
- Localism Act 2011 - Section 1
- Local Government Act 1972, ss 101 and s111-113;
- Local Government Act 2000 ss9EA and 19-20; and Local Authorities (Arrangement of the Discharge of Functions Regulations (2012).

The decision was taken to propose a delegation rather than for DCC to procure services from NCC which would have obliged DCC to undertake a competitive tender.

NCC will be limited to recovering a reasonable charge for the collection and disposal of the waste (45 (4) of the EPA 1990) under this legislation.

The Deed remains extant and continues until either NCC or DCC terminates it upon 12 months' advance notice of 31st March in any calendar year.

Under the Deed the parties agreed to complete a Vehicle Leasing Agreement (VLA) (also dated the 29th March 2018); a Transfer Agreement and Lease Agreement (LA), to facilitate the delivery of the functions in practice. Unless the Deed has been terminated beforehand the VLA will expire on the 01.04.2023. The VLA concerns the lease and vehicle maintenance payments/charges (these include fleet maintenance, servicing and repairs, fuel provision) for 5 waste collection vehicles from Derby City Council. The VLA can be extended in writing under its terms, by agreement.

The LA dated 18th March 2018 and commenced on the 1st April 2018, is for a period of 10 years governing the use of and payment for (rent of £17,500 and services charges of £17,500 per annum, reviewed as per the LA schedules) office space on Derby City Council premises from which NCC can manage delivery of the delegated functions in practice.

Notwithstanding, the value of the services to be provided for under the LA and an extended VLA for 12 months' totals £352,834, as the arrangements concern provision of services under the Local Authority (Goods and Services) Act 1970 i.e. under which only local authorities can supply services to each other) and a formal delegation of function, the Public Contract Regulations 2015 (on a narrow

interpretation) are not interpreted as applying here. The Council is not perceived as an economic operator offering the provision of Commercial Waste Service on the wider open market when acting under a delegation and the LGA (Good and Services) Act 1990. The Council has not been "chosen" by the other authority (as required within the definition of a "procurement" for the purposes of application of the PCR 2015), but has instead provided a service by means of a complete delegation of function.

When the delegation is revoked NCC does not have power to operate in Derby providing a commercial service to customers. If NCC wishes to continue to provide a commercial waste service outside of the Nottingham area it must do so through a local authority trading company in accordance with the Localism Act 2011.

Whilst best value for 12 months is said to be achieved through the proposal, we'd recommend a review of future similar proposals to assess the best value duty under Local Government Act 1999 and as appropriate, a "refresh" of relevant contracts.

Richard Bines - Solicitor – Contracts and Commercial Team – Legal Services - 28.03.2023