

Report of: Executive Member for Environment and Transport

Meeting of:	Date	Ward(s)
Executive	8 December 2016	All

Non-exempt

SUBJECT: Procurement Strategy for the Provision of Enforcement Agency services to collect on-street Penalty Charge Notice (PCN) debts
1. Synopsis

- 1.1 This report seeks pre-tender approval for the procurement strategy in respect of the Provision of Enforcement Agency services to collect on-street Penalty Charge Notice (PCN) debts, in accordance with Rule 2.5 of the Council's Procurement Rules.
- 1.2 The contract will seek to employ three Enforcement Agent suppliers, to perform debt collection services for debts that are created by the non-payment of on-street Penalty Charge Notices. The recovery of such debts is established in law, and is enacted by the service of court-issued warrants, obtained after all statutory Council-led attempts at debt recovery have been exhausted. As a concession agreement, the contract will be at no cost to the Council.

2. Recommendations

- 2.1 To approve the procurement strategy for the Provision of Enforcement Agency services to collect on-street Penalty Charge Notice (PCN) debts as outlined in this report.
- 2.2 To delegate authority to award the contract to the Corporate Director of Environment and Regeneration, in consultation with the Executive Member for Environment and Transport.

3. Background

- 3.1 The Traffic and Parking Service seeks to employ three enforcement agencies to collect registered debts created as a result of non-payment of Penalty Charge Notices issued as a result of drivers contravening local parking regulations. The Council does not carry out such activities in-house and the nature of such debt collection is one where nationwide coverage is necessary. Collection of such debts is crucial to the

integrity and fairness of the Parking Service. There is an expectation that the Council will attempt to recover debts to which they are legally entitled, and any failure to do so would be unfair to those who discharge their liabilities and pay for such PCNs at earlier stages of the recovery process. The contract will reduce the number of enforcement agencies from the existing four to three and is part of an effort to incentivise and improve recoverability rates by issuing greater levels of work to the better performing agencies, over and above a set minimum allocation of work. The contract will be for a period of four years.

- 3.2 The contract will be awarded at zero cost to the Council. It is based on national guidelines whereby the enforcement agency will recover the debts due and transfer these to the Council. The costs of enforcement action are covered by the statutory fees that the agencies are entitled to claim over and above the debts due to the Council. The Council can expect to issue approximately 25,000 warrants in a year and as the average debt is £203, the potential value of all debts registered would be around £5m per annum (or £20m over 4 years). However, the reality of debt recovery work is that recovery rates are low, and annual income to the Council would be in the region of £760k per annum (or £3.04m over 4 years). Any associated costs (such as the £8 registration fee per case) are currently managed within the parking account, where income exceeds such direct expenditure. Effective debt recovery is improved by councils registering and transferring such debts to the Enforcement Agencies as swiftly as possible

3.3 **Timetable**

The current contract expires at the end of December and a waiver is being sought to cover the period until the new contract can start..

After inviting expressions of interest, the appraisal of submissions is intended for March 2017, with the aim being to begin a new contract by May 2017.

3.4 **Options appraisal**

The preferred contract route is one of competitive tender. Consideration was given to using existing framework agreements, such as that run by Yorkshire Purchasing Organisation, but market testing indicated that such frameworks did not offer the flexibility that the Council requires. There is little to be gained from seeking a collaborated contract, as financial saving cannot realised because fees are statutory across all contracting authorities.

The ultimate benefit of a single competitive tender approach is that it will allow the Council to use a specification that is specific to our needs, and creates a performance monitoring regime that suits the business need.

- 3.5 The Council will seek to employ contractors that can show that they carry out their functions efficiently and in a manner that demonstrates effective recovery of monies due to the Council. We will expect them to do so in a manner that is in keeping with environmental sustainability by the intelligent use of media and resources to trace debtors before personal visits are necessary and before their own fees increase. As part of the quality assessment, we would also expect all contractors to fully outline their policies in respect of establishing and managing debtor vulnerability. That assessment will also take into consideration any innovations that the contractors propose for continuous improvement throughout the contract period.

As a contact condition, we will expect all staff employed by the contractor to be at or above the London Living Wage

3.6 **Evaluation**

The tender will be conducted in one stage, known as the Open Procedure as the tender is 'open' to all organisations who expression their interest in the tender. The Open Procedure includes minimum requirements which the organisation must achieve before their evaluation Award Criteria is considered.

The minimum standards that the Parking Service will set will include suitable experience of managing

similar sized contracts for other London parking authorities, and the financial stability of the organisation. Given there is no cost to the Council the award of contract will be based 100% quality.

The breakdown of those criteria will be:

Proposed approach to maximising recovery performance: 50%

Public accessibility and customer service standards: 30%

National coverage of debt recovery: 20%

3.7 Business Risks

In setting award criteria where income maximisation is considered, the Council expects interested parties to propose projects and schemes to maximise income collection, without increasing the risks associated with managing vulnerable customers. Any agency appointed will be expected to be capable of fully utilising a variety of tracing methods to locate debtors who may have moved address.

It is worth noting that during the period of the last contract, changes were made to the legal guidelines that enforcement agencies are expected to follow. These included the introduction of a transparent fee structure, the use of which has significantly reduced the risk of complaints and the number of complaints received by the Council.

3.8 The Employment Relations Act 1999 (Blacklist) Regulations 2010 explicitly prohibit the compilation, use, sale or supply of blacklists containing details of trade union members and their activities. Following a motion to full Council on 26 March 2013, all tenderers will be required to sign the Council's anti-blacklisting declaration. Where an organisation is unable to declare that they have never blacklisted, they will be required to evidence that they have 'self-cleansed'. The Council will not award a contract to organisations found guilty of blacklisting unless they have demonstrated 'self-cleansing' and taken adequate measures to remedy past actions and prevent re-occurrences.

3.9 The following relevant information is required to be specifically approved by the Executive in accordance with rule 2.6 of the Procurement Rules:

Relevant information	Information/section in report
1 Nature of the Service	Enforcement Agent services are essential to the complete recovery process related to on-street parking Penalty Charge Notices. See paragraph 3.1
2 Estimated value	The estimated value in terms of collected debt to the council per annum is approximately £750k (or £3m over the lifetime of a 4 year contract). The agreement is proposed to run for a period of 4 years, with no added option for any extension of time. See paragraph 3.2
3 Timetable	The Council will seek to invite expressions of interest by way of advert and will begin the appraisal of submissions by March 2017. The aim will be to begin a new contract by May 2017 See paragraph 3.3
4 Options appraisal for tender procedure including consideration of collaboration opportunities	The preferred contract route is by open tender. See paragraph 3.4
5 Consideration of: Social benefit clauses; London Living Wage;	The contractor will be expected to demonstrate sustainable operational effectiveness and also demonstrate suitable consideration as to the management of vulnerable

Best value; TUPE, pensions and other staffing implications	customers. LLW will apply. See paragraph 3.5
6 Evaluation criteria	The contract will be awarded entirely on the basis of the quality brought to the contract and the quality of service that is provided to customers. See paragraph 3.6
7 Any business risks associated with entering the contract	There is little risk to the Council in undertaking this contract exercise. The bigger risk is that of not using the services required and the impact that would have on reputation and income. See paragraph 3.7
8 Any other relevant financial, legal or other considerations.	See paragraphs 4.1 and 4.2

4. Implications

4.1 Financial implications:

The enforcement agency contract is awarded at zero cost to the Council with income recovered through the process exceeding any costs associated with the contract. Transactions arising from the contract are accounted for within the parking account.

4.2 Legal Implications:

The Council's power to issue on-street Penalty Charge Notices are set out in Part 6 of the Traffic Management Act 2004 and the regulations to bring Part 6 into effect. The Council may appoint enforcement agents to perform debt collection services under section 111 of the Local Government Act 1972. The statutory fees that bailiffs can charge are set out in the Taking Control of Goods (Fees) Regulations 2014 No.1.

It is proposed that this contract is procured as a concession contract. The procurement of concession contracts are governed by the Concession Contracts Regulations (2016/273) ("CCR"). A Service Concession for purposes of the CCR means a contract for pecuniary interest where the concessionaire is entrusted with the responsibility for the provision and the management of services the consideration of which consists either solely in the right to exploit the services that are the subject of the contract or in that right together with payment; and the award of the contract involves the transfer to the concessionaire of an operating risk in exploiting the services (Regulation 3). The Council's pecuniary interest lies in the fact that it is seeking to procure enforcement agency services at zero cost to the Council by funding this service from the statutory fees that the agencies are entitled to claim over and above the debts due to the Council. Operating risk in exploiting the service is also being fully transferred to the concessionaire. Therefore this contract falls under the definition of a Service Concession within the CCR.

The value of the proposed concession contract has been estimated to be £3.04m for the contract term of 4 years. This is below the threshold of £4,104,394.00 for the full application of the CCR and therefore is unlikely to require advertisement in the Official Journal of the European Union (Regulation 9). However the procurement procedure adopted ought to comply with the general principles of treating economic operators equally and without discrimination and acting in a transparent and proportionate manner (Regulation 8).

The Council's Procurement Rules requires concession contracts with a value over £164,176.00 to be subject to a minimum of five written competitive tenders (Rule 1.8). Given the value of this concession contract it is likely to be a Key Decision but it is one that may be made under delegated authority by the Corporate Director for Environment and Regeneration since the council's Procurement Rules do not reserve the award of the contract to the Executive.

On completion of the procurement process the contract may be awarded to the highest scoring tenderer.

4.3 Environmental Implications

The enforcement agencies will have some environmental impact associated with their work, including travel which has aspects such as vehicular emissions and congestion, and office usage which includes energy use, paper use waste generation etc.

4.4 Resident Impact Assessment:

The Council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The Council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The Council must have due regard to the need to tackle prejudice and promote understanding.

A Resident Impact Assessment was carried out on 18th October 2016, and the summary is given below.

Whilst the recovery of debts is an activity that affects all socio-ethnic groups, the appointed contractors are obligated to consider cases of vulnerability and hardship. Complaints regarding unethical or unscrupulous behaviour by the contractor will be properly investigated and the contractor penalised if such claims are upheld.

5. Conclusion and reasons for recommendations

- 5.1 The use of Enforcement Agents is essential to comply with best practice in regards to recovery of unpaid Council parking debt.

Appendices – none

Background papers – none

Final report clearance

Signed by:



29.11.16

**Executive Member for Environment and
Transport**

Date

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