

MUNICIPAL YEAR 2019/2020 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

OPERATIONAL DECISION OF:

Director of Environment & Operational Services - Place

Agenda – Part: 1 KD Num: 4948

Subject: Award a Further Extension and Variation to the Litter Enforcement Contract

Wards: All

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1. EXECUTIVE SUMMARY

- 1.1 Enfield Council delivers a uniformed litter enforcement service through the services of a contractor who provides a visible deterrent towards littering and dog fouling. Enforcement is through the issue Fixed Penalty Notices (FPN), and prosecution where the penalty is unpaid.
- 1.2 This report sets out the details of the proposed further extension to the Litter Enforcement contract for a 10-month period.
- 1.3 The report summarises the contract variation and outlines the financial implications for the Council

2. RECOMMENDATIONS

It is recommended that the Director of Environment & Operational Services:

- 2.1 Agrees to award a further extension of the contract for a 10-month period from 1 September 2019 to 3 July 2020 inclusive.
- 2.2 Agrees to a variation of the payment structure of the contract from an hourly rate to payment per FPN paid rate (**see Part 2**).
- 2.3 Agrees the contractor manages all FPN payments by alleged offenders on behalf of the Council.
- 2.4 **See Part 2**

3. BACKGROUND

- 3.1.1 Since 2009, Enfield Council has delivered a uniformed litter warden service through the services of a contractor who provides a visible deterrent towards littering and dog fouling with enforcement provision through the issue Fixed Penalty Notices (FPN) and prosecution where the penalty is unpaid.
- 3.1.2 The current contract commenced on 1 September 2015 and was extended and varied by Deed of Extension dated 12 September 2017 to 31 August 2018 and further extended by letter for a further 12 months 31 August 2019. The contractor, Local Authority Support Ltd, is paid an hourly rate to deliver the service (**see Part 2**). On average, 5230 FPNs for littering, flytipping, dog fouling and spitting offences are issued annually (but predominantly for littering). The full amount of a paid FPN is retained by the Council. Over the last three full financial years the average payment rate of FPNs was 58.6%.
- 3.1.3 The contractor also provides a service out of office hours as required. The service operates during evening hours as instructed by the Council, and is focused on patrolling fly tipping hotspot areas. Fixed penalty notices are issued, on the spot wherever possible, for both fly tipping and littering offences, witnessed or identified by the enforcement officers.
- 3.1.4 The current service consists of 1 x Team Leader, 1 x Senior Enforcement Officer, 4 X Enforcement Officer and 1 x Administrator (Support Worker) working as follows:
- 1 Team Leader @ 45 hours/week
 - 1 Senior Enforcement Officer @ 40 hours/week
 - 4 Enforcement Officers @ 40 hours/week
 - 1 imbedded Support Worker @ 36 hours/week
- A total of 14,612 hours/year.
- 3.1.5 FPN payments rates have been high enough to fund the contracted service (**see Part 2**).
- 3.1.6 The primary objective of the service is to provide high calibre, knowledgeable and customer friendly Enforcement Officers to patrol locations as required by the Council to detect and enforce non-compliance with regards to littering legislation and reduce the increasingly high volumes of littering.
- 3.1.7 The long-term objective of the service is to bring about an improvement to the borough's street scene through a reduction in the amount of litter; fly tipping; dog fouling and spitting incidents.
- 3.1.8 The Litter Enforcement contract is due to expire on 31 August 2019 and to continue to provide a litter enforcement service beyond this date a procurement process was initiated to tender for a new contract.

3.1.9 On 13 March 2019 the Procurement and Commissioning Board made directions that any future contract should be part of a ‘super’ contract tender where similar enforcement services are potentially aligned under one contract. This other service being Parking Enforcement which is due for renewal on 4 July 2020. This means that to continue to provide a litter enforcement service up to 4 July 2020 a contract needs to be procured for 10 months from 1 September 2019.

3.2 Contract Extension

- 3.2.1 It is proposed that the current provider’s contract be extended until the end of 3 July 2020.
- 3.2.2 The current provider’s service has proven reliable and the extension would be a cost-effective continuation of services while procuring a service to commence under a new contract in July 2020.

3.3 Variation

- 3.3.1. Consultants Ernst & Young LLP, engaged by the Council to identify efficiencies in current contracts, has reviewed the Litter Enforcement contract. The review identified a newer business model recently being adopted by Councils. In this newer model, the Council only pays the contractor for its services where an FPN is paid by the alleged offender. The enforcement services are paid for by the contractor receiving a percentage of the paid FPN amount with the remainder of the payment received by the Council. The contractor has provided a quote for provision of like services, with enhanced resources under this payment mechanism (**see Part 2**). This payment mechanism also removes all risk to the Council where an alleged offender fails to pay an FPN. Under the current payment structure that risk lies with the Council. There is also the potential to receive increased FPN receipts (the amount received by the Council in paid FPNs) under this new payment structure.
- 3.3.2 Under current arrangements the Council manages all payments made by alleged offenders. The contractor has agreed to manage all FPN payments relieving the Council of this function. The contractor has secure payment systems to perform this function and will be accessible by the Council for monitoring purposes. All FPN payments will be paid to the Council by the contractor on a monthly basis, and then the agreed proportion of the FPN payment will be paid to the contractor.
- 3.3.3 Within the current contract, the contractor is not permitted to incentivise employees to issue fixed penalty notices. The contractor is committed to paying its staff with no competence allowance or bonus. This remains unchanged, along with the key performance indicators which make it clear that continuous improvement and environmental outcomes are the key priority for the Council.

4. ALTERNATIVE OPTIONS CONSIDERED

Not to provide the service

- 4.1 This is not a viable option as the Council has a duty under Section 89 of the Environmental Protection Act 1990 to, so far as is practicable, keep the land and highways clear of litter and refuse. Furthermore, we are unable to provide the extent of the contracted out service within existing staff resources.

Extend the current contract on current terms

- 4.2 This would be a continuation of the current service but without the opportunity to make changes to introduce the newer payment structure and reduce the financial risk of the contract for the Council.

Tender for a new contract

- 4.3 This is not considered a viable option and is unlikely to attract bidders at a cost-effective price given the 10-month contract period being offered.

5. REASONS FOR RECOMMENDATIONS

- 5.1 Extending (and varying) the current contract is a cost-effective method of maintaining seamless enforcement services until a new contract is in place for July 2020.
- 5.2 The varied contract reduces financial risks to the Council should an FPN not be paid but maintains the key performance indicators supporting continuous improvement and environmental outcomes.
- 5.3 Management of FPN payments passes to the contractor which is a cost saving to the Council in managing such processes.

6. COMMENTS FROM OTHER DEPARTMENTS

Financial Implications

- 6.1 FPN payments rates under this contract have been high enough to fund the contracted service. (**see Part 2**). There is always a potential financial risk that the Council would be unable to cover the cost of the service should the payment rate fall. Under the proposed variation to the contract, this risk is reduced as the contractor will only receive payment once the FPN is paid. There is also potential under the varied contract for the Council to reduce costs from the handling of FPN payments. (**see Part 2**).

6.2 Legal Implications

- 6.2.1 The Council has a duty under section 89 of the Environmental Protection Act 1990 to, so far as is practicable, keep the land and highways clear of litter and refuse.
- 6.2.2 Section 111 of the Local Government Act 1972 gives the Council power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. The Council also has a general power of competence in s.1 (1) of the Localism Act 2011 to do anything that individuals generally may do, provided it is not prohibited by legislation. The recommendations set out in this report are consistent with these powers.
- 6.2.3 The Council must comply with all requirements of its Constitution, Contract Procedure Rules ("CPRs") and, as the Contract Value exceeds the EU threshold, the Public Contracts Regulations 2015 ("Regulations"). The CPRs permit extensions to contracts where, among other conditions, the terms of the contract allow for such an extension, the extension would not breach the Regulations and the appropriate authority is in place in accordance with the Council's scheme of delegation.
- 6.2.4 The Contract provides for 2 further extensions of 12 months each and the contract has already been extended pursuant to this option.
- 6.2.5 Any further modification or extension must fall within one of the cases within Regulation 72 PCR 2015 otherwise it will be at risk of challenge. It is arguable that the proposed further extension will fall within Regulation 72 (1) (B).
- 6.2.6 The Council must comply with its obligations of obtaining Best Value, under the Local Government (Best Value Principles) Act 1999. The Council must keep a clear audit trail of its decision to further extend the contract period to demonstrate that Best Value has been, and will continue to be, obtained for the Council.
- 6.2.7 The document implementing the further extension must be in a form approved by the Director of Law and Governance.

6.4 Property Implications

- 6.3 There are no additional property implications as the service provision remains unchanged for both the Council and the contractor. The contractor currently occupies two desk spaces in the civic centre.

6.4 Procurement Implications

- 6.4.1 Any procurement must be undertaken in accordance with the Council's Contract Procedure Rules (CPR's) and the Public Contracts Regulations (2015).

- 6.4.2 The award of the contract, including evidence of authority to award, promoting to the Council's Contract Register, and the uploading of executed contracts must be undertaken on the London Tenders Portal including future management of the contract.
- 6.4.3 All awarded projects must be promoted to Contracts Finder to comply with the Government's transparency requirements.
- 6.4.4 This contract came to the P&C board for re-procurement, but it was agreed that this should be extended so that the provision could be included in a larger procurement around 'enforcement' in general.
- 6.4.5 This contract was part of the Contract Review process and this also agreed with the strategic approach to extend for a short term, to bring in line with the larger procurement.

7. KEY RISKS

- 7.1 No significant risks have been identified as the provision of litter, flytipping, dog fouling and spitting enforcement under this contract requires no direct investment by the Council and should continue operate on a cost-neutral basis as it has done previously. The variation of the contract to the newer payment structure will actually reduce the financial risk to the Council further as the contractor is only receives payment of a proportion of the FPN when it is paid.
- 7.2 Should the contractor cease to provide the contracted service for any reason, the impact may prevent the reduction of litter, flytipping, dog fouling, spitting and waste offences and be detrimental to the overall appearance of the street environment.

8. IMPACT ON COUNCIL PRIORITIES – CREATING A LIFETIME OF OPPORTUNITIES IN ENFIELD

8.1 Good homes in well-connected neighbourhoods

Adopting a balanced and proportionate approach in tackling waste crime gives environmental benefits. The option of issuing FPNs to tackle waste crime adds to the range of enforcement options available to the Council thereby improving the quality of the public realm by helping to reduce and prevent the environment being defaced by unlawful deposits of waste thereby supporting this Council priority.

8.2 Sustain strong and healthy communities

The provision of environmental enforcement options contributes positively towards creating a cleaner, greener environment and improving quality of life and community safety.

8.3 Build our local economy to create a thriving place

The provision of environmental enforcement options contributes positively towards creating and environment to those who wish to invest in the economy of the borough by creating an attractive place to live and work.

9. EQUALITIES IMPACT IMPLICATIONS

Corporate advice has been sought in regard to equalities and an agreement has been reached that an equalities impact assessment is neither relevant nor proportionate for the approval of this report.

However, it should be noted that the any contracts awarded should include a duty on the successful applicant to assist us with meeting our obligations under the Equalities Act 2010.

10. PERFORMANCE AND DATA IMPLICATIONS

There are no new performance and data implications as there is no change to the enforcement services being provided.

11. HEALTH AND SAFETY IMPLICATIONS

There are no new health and safety implications as there is no change to the enforcement services being provided. This is a fully contracted out service and so the employer is responsibility for the health and safety of their employees. The Council continues to have responsibility, so far as is reasonably practicable, to provide a safety workplace as the contractor's staff occupy desk space in the civic centre.

12. HR IMPLICATIONS

There are no new HR implications as there is no change to the enforcement services being provided. This is a fully contracted out service and so the employer is responsibility for managing their staff.

13. PUBLIC HEALTH IMPLICATIONS

There are no negative impacts associated with the extension or variation of this service.

The proposed service will continue to have a positive impact upon the health and well-being of the public in Enfield by reducing the amount of spitting, dog fouling and waste on the streets which is detrimental to health and the environment and residents' health and quality of life.

The successor Joint Health and Wellbeing Strategy 2019-2024, which is currently under development, notes that relatively simple positive changes to the local environment can greatly encourage increased physical activity.

Background Papers

Nil