

London Borough of Enfield
[Operational Decision]

Subject: Variation and Extension of the Contract for the Provision of Enforcement and Debt Collection Services

Cabinet Member: Finance and Procurement Cllr Mary Maguire

Executive Director: Resources Fay Hammond

Key Decision: no. KD 5415

Purpose of Report

1. This report seeks approval to amend and extend the existing contracts for the provision of enforcement and debt collection services. This is not a new procurement exercise. It seeks to extend and vary the current contracts in accordance with their terms so that all three current suppliers can carry out the enforcement and debt collection in relation to Council tax, business rates and housing benefit overpayments and rent arrears, in order to maximise the recovery of the increased level of debt that has arisen due to the pandemic.

Proposal(s)

2. To extend the enforcement and debt collection services contracts (concessionary agreement) Lot 1 (council tax and business rate and sundries) with Newlyn PLC and Lot 2 (on street and off-street parking debts) with Marston Holdings Limited and CDER Group (formerly Phoenix Commercial Collections Ltd) until September 30th 2023.

3. To vary the above mentioned Lot 2 contracts in relation to on street and off street parking debts to enable Marston Holdings and CDER Group (formerly Phoenix Commercial Collections Ltd) to carry out the provision of enforcement and debt collection services for Council tax, business rates, housing benefit overpayment and former tenant arrears debts.

4. To vary the Lot 1 contract with Newlyn PLC in relation to Council tax, business rates and housing benefit overpayments and former tenant arrears to reflect the changes proposed above and to confirm the reduction of the level of work to be allocated to this supplier.

Reason for Proposal(s)

5. This is to put measures in place as quickly as possible to support the Council to recover more debt by allocating the Lot 1 services (enforcement and debt collection services for Council tax, business rates, housing benefit overpayment and former tenant arrears debts) to three agents rather than only one agent in order to better support increased level of debt recovery required arising from the unprecedented levels of debt from the pandemic and mitigate any capacity risks, e.g. availability of sufficient enforcement agents.

Relevance to the Council Plan

6. Maximising income and revenue collection and mitigate risk arising from debt recovery by a single provider and the unprecedented large volumes of debt arising from the pandemic.

Background

7. The enforcement and debt collection services contracts were awarded via call-offs under the Framework Agreement established by Rotherham Metropolitan Borough Council known as RMBC 16-046 Enforcement and Debt Collection Service Framework. They were entered into for a maximum 4 years which commenced on 1 October 2019 and will end on 30th September 2023, based on year by year extensions.

The Council entered into four concessionary services agreements as follows:

1. Contract with Newlyn for Lot 1 Enforcement Services (Council Tax and Business Rates)
2. Contract with Newlyn for Lot 2 Enforcement Services (Parking)
3. Contact with Marston Holdings for Lot 2 Enforcement Services (Parking)
4. Contract with Phoenix for Lot 2 Enforcement Services (Parking)

It is essential for us to use more than just one enforcement agent to maximise collection and ensure there is competition between the agents to improve performance, and to implement this change as quickly as possible. This is an interim measure until the Council plans its long-term debt collection and enforcement procurement strategy.

Main Considerations for the Council

8. The risk to debt recovery is considerably high if we do not have more than one enforcement agent. Therefore, having more than one agent will ensure we have provision to recycle cases where initial attempts have failed.

Benefits will be to maximise collection by having competition to ensure the best performance.

The council is already aware of the good performance in place of the existing 3 contractors in Lot 2, so therefore the risk of future performance issues is low. Performance will continue to be monitored and managed for the existing duration of the contract.

Safeguarding Implications

9. N/A

10. N/A

11. N/A

12. N/A

13. N/A

14. N/A

15. N/A

16. N/A

Public Health Implications

17.N/A- Already considered in the original procurement exercise

Equalities Impact of the Proposal

18. We have noticed that debt and debt collection will have a significant negative impact on the following protected characteristic groups: people with disabilities, young people, people from Black, Asian and Ethnic Minorities, females, and people who identify as LGBT+. These vulnerable groups have an increased likelihood to be unemployed, paid low salaries, in insecure employment and to deal with pre-existing mental health conditions.

To mitigate the negative impacts, we have committed to support vulnerable groups through improved access to affordable credit and improved money management, Breathing Space legislation and the council tax and benefit helpline. In addition, in line with our Debt and Income Strategy, we will use data to identify the residents that can't pay as opposed to those that won't pay, to ensure those that 'can't pay' are supported to improve their situations.

Environmental and Climate Change Considerations

19. N/A- Already considered in the original procurement exercise

Risks that may arise if the proposed decision and related work is not taken

20. Research over the years has shown that most authorities have more than one contractor to ensure competition and maximise collection.

We do not have any means to recycle cases and this scheme will only be possible if we extend to the 3 contractors.

Extending to 3 contractors will ensure we mitigate any capacity risks to running this service by only one contractor, e.g. availability of enforcement agents.

Our recovery and collection of the unprecedented levels of debt will be slowed down.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

21. Legal advice has been taken and the enforcement agent, Newlyn, has been kept informed.

The 3 contractors' performance will be monitored and managed during the remaining duration of the contract.

This is an interim measure only until the contract ends within 20 months (latest end date Sept '23)

Financial Implications

22. The award of the enforcement agent contracts is on a "nil commission basis". As such there will be no financial implications to the Council. Any costs raised by the enforcement agents are recoverable directly from the customer, at a nil cost to the Council.

Legal Implications

23. Section 111 of the Local Government Act 1972 gives a local authority power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. The matters outlined in this Report are incidental to the functions of the Council's departments and are intended to help ensure an effective service.

23.1 The Council also has a general power of competence under section 1(1) of the Localism Act 2011 which states that a local authority has the power to do anything an individual generally may do, provided it is not prohibited by legislation.

23.2. Under the Council's Contract Procedure Rules, a contract can be extended where the contract provides in writing for an extension and the following conditions are met:

- The extension is for substantially the same works, supplies and/or services provided in the original contract;
- The financial terms for the extension are as agreed in the original contract;
- The length of the extension is no longer than that permitted by the original contract;
- Such extension would not breach the Public Contract Regulations 2015; and

- The appropriate authority/approval is in place in accordance with the Scheme of Delegation.

23.3. The Council must comply with its obligations relating to obtaining best value under the Local Government (Best Value Principles) Act 1999.

23.4 The documentation needed in order to implement the proposed extensions and variations must be in a form approved by Legal Services on behalf of the Director of Law and Governance.

Workforce Implications

24.N/A

Property Implications

25. N/A

Other Implications

26. Procurement

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

The award of the contract, including evidence of authority to award, promoting to the Councils Contract Register, and the uploading of executed contracts must be undertaken on the London Tenders Portal including future management of the contract.

All awarded projects must be promoted to Contracts Finder to comply with the Government's transparency requirements.

Where a contract has not been procured via the LTP, then the signed contract, call off agreement and supporting DAR etc, must be sent to procurement.support@enfield.gov.uk who will create a record in the LTP and promote to contract finder to ensure the Council meets its transparency obligations.

The CPR's state that contracts over £100,000 must have a nominated contract owner in the LTP, and for contracts over £500,000 there must be evidence of contract management, including, operations, commercial, financial checks (supplier resilience) and regular risk assessment uploaded into the LTP.

That the approval for the extension was presented to the Resources & CEX Procurement Board on December 8th, 2021, where the approach was agreed, that the contract could be extended to provide immediate need to clear debt collection backlog.

This extension would also provide time for a new procurement to take place to replace all the collections contracts as they are nearing the end of their term. This would be a more strategic approach to collection for the Council.

27. N/A

Options Considered

28. Carrying out another mini competition under an existing framework is an option considered, but would take time, and resources within the service are limited at this time to focus on this around other key year-end priorities and business grants. There is a pressing and immediate need to clear debt collection backlog exacerbated by the pandemic, and this is considered to be the most efficient interim approach to move forward. The existing providers are performing well and the potential for new providers to be awarded new contracts under a fresh procurement would involve a period of bedding in and a less certain standard of performance.

To continue with just one provider for the Lot 1 Services – doing nothing is not a preferred option as there is no competition regarding performance and no means to recycle cases that are returned to us and it will not be possible to mitigate any capacity risks of availability of enforcement agents to recover the significant increase in debt.

Conclusions

29. The recommendation is to vary and extend our existing enforcement and debt collection services contracts with Newlyn, Marston Holdings and CDER group to assist the council's recovery of Council tax, business rates, housing benefit overpayments and former tenant arrears debt, which has become necessary due to the unprecedented level of debt arising from the pandemic.

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Appendices

Appendix 1 Part 2 Confidential Appendix

Background Papers

The following documents have been relied on in the preparation of this report:

Previous Concessionary services agreement award for the provision of Enforcement Agent services report from 2019.