

Cabinet – 18 December 2019

Contract for Environmental Enforcement Services

Portfolio: Councillor Butler, Clean and Green

Related portfolios:

Service: Clean and Green

Wards: All

Key decision: Yes

Forward plan: Yes

1. Aim

- 1.1 A new contract is required to ensure the Council has in place appropriate arrangements to reduce littering and other environmental crimes in the borough by providing enforcement action and education.

2. Summary

Background

- 2.1 Littering, and other environmental offences such as fly tipping, dog fouling, graffiti and fly posting, blight our communities, impose avoidable costs on the public purse and draw money away from other key priorities such as social care and education.
- 2.2 The Environmental Enforcement Services contract is required to ensure that the Council has appropriate arrangements in place for the provision of enforcement against, and education about, environmental crime.
- 2.3 In March 2019 Cabinet were informed of the need to re-tender Walsall Council's contract for Environmental Enforcement Services, along with changes to the set fixed penalty levels for environmental offences and the opportunity to extend the range of offences covered by the contract.
- 2.4 Following approval by Cabinet to retender the contract the specification has been revised, with additional offences included, and, with support of Corporate Procurement, the contract has been re-procured.
- 2.5 This is a key decision because it exceeds the threshold for "significant" expenditure and affects all wards.

- 2.6 This report should be read in conjunction with the Contract for Environmental Enforcement Services – Private Session report, to be considered by Cabinet on this Agenda.

3. Recommendations

- 3.1 Following consideration of the confidential information in the private session of the Agenda, it is recommended;
- 3.2 That Cabinet approve the award of contract for the provision Environmental Enforcement Services to L A Support Limited with the contract to commence on 1 February 2020 for an initial period of two years and an option to extend for up to a further year. L A Support Limited are part of the Kingdom Services Group Limited,
- 3.3 That Cabinet delegate authority to the Executive Director of Economy and Environment, in conjunction with the Portfolio Holder for Clean and Green to enter into contract with the successful bidder by using the most appropriate procedures and, to authorise the sealing of deeds and/or signing of contracts and any other related documents for the provision of such services.
- 3.4 That Cabinet delegate authority to the Executive Director of Economy and Environment, in consultation with the Portfolio Holder for Clean and Green, to authorise any variations to the contract or other related documents for such services should this be required throughout the duration of the contract.

4. Report detail – know

Legislative Drivers

- 4.1 Various legislation is used to enforce against environmental crime, including:
- Environmental Protection Act 1990
 - Environmental Offences (Fixed Penalties) (England) Regulations
 - Anti-Social Behavior Act 2003
- 4.2 Government guidance on the use of Fixed Penalty Notices (FPNs) is clear that they should only be issued when it is in the public interest to do so, and when it is proportionate to do so. Under no circumstances should councils view the use of fixed penalties as a means to generate income. Any income that is generated should be reinvested in appropriate environmental and enforcement services.
- 4.3 The guidance also says that education and information campaigns should be delivered so people are aware of the penalty levels, and the correct procedures, for example, how to dispose of rubbish, the availability of waste amenity sites, householder and commercial duty of care responsibilities etc. so they can avoid falling foul of the legislation.

Revision of Specification

- 4.4 The current Environmental Enforcement Services contract allows FPN's to be issued for the following offences:
- Littering;
 - Minor fly tipping;
 - Dog fouling.
- 4.5 The expiry of the existing contract period presented the opportunity to extend the range of offences included within the scope of the services.
- 4.6 In order to allow time for the development of a new specification including a wider range of offences, and completion of the procurement process, the current contract has been extended and now expires on 31 January 2020.
- 4.7 The revised specification includes the issuing of FPN's for the following offences:
- Littering;
 - Minor fly tipping;
 - Dog fouling;
 - Littering from vehicles;
 - Commercial Waste Duty of Care offences (failure to produce a Waste Transfer Note / Waste Carriers Licence);
 - Household Waste Duty of Care offences;
 - Fly posting.
- 4.8 The payment for the contract is based upon an hourly rate for staff costs and the contractor will not receive a proportion of the FPN's issued so ensuring there are no incentives to issue a high numbers of low quality Fixed Penalty Notices.

Award of Contract

- 4.9 The re-tendering procurement process commenced in late 2018 and a contract notice was placed by the Council's Procurement team in the Official Journal of the European Union (OJEU) on the 20 August 2019.
- 4.10 The bids were evaluated using the evaluation methodology criteria, as published in the Invitation to Tender, and as set out below:
- Non-Price Criteria (Quality) 70%
 - Price 30%.
- 4.11 Following evaluation of the tender submissions, the highest scoring bid and therefore the overall Most Economically Advantageous Tender (MEAT) was received from LA Support Limited.

Council Corporate Plan priorities

- 4.12 Procuring these services will contribute to delivering the following priorities as stated within the Corporate Plan 2018-21:
- Internal focus – All Council services are efficient and effective, modernising our services to meet the ever changing environment and behaviours, with enforcement against environmental crime being delivered in the most economically advantageous way, providing value for money and being a resilient council;
 - Communities - are prospering and resilient with all housing needs met in safe and healthy places that build a strong sense of belonging and cohesion with proportionate environmental enforcement and education helping to create cleaner, safer neighbourhoods that people can be proud of.

Risk management

- 4.13 Environmental enforcement and education is essential to help improve cleanliness and reduce the number of incidents of littering, fly tipping and dog fouling.
- 4.14 There is a risk of adverse publicity about issuing FPNs, particularly if they are issued inappropriately or to the elderly and vulnerable. This can be managed by a clear communication and education plan which outlines why FPNs are used and that any income generated is reinvested within environmental services. Robust internal procedures and contract monitoring will ensure notices are used proportionately.

Financial implications

- 4.15 If the contract is awarded to L A Support Limited there will be an increase in the Council's annual costs for operating the Environmental Enforcement Contract. The current annual expenditure budget of £146,000 will need to be increased to reflect the new contract costs.
- 4.16 The revenue received from paid FPN's is expected to cover the expenditure incurred and the contract should operate on a cost neutral basis. In addition the contract is budgeted to achieve a small income target of circa £10,000 per annum. Budgeted income will need to be increased correspondingly to reflect this.
- 4.17 As the new contract will commence on 1 February 2020 there will be a small in year effect for 2019/20. The increase in expenditure incurred during this financial year will be off-set by the income received from paid FPNs.

Legal implications

- 4.18 The incumbent contractor, Kingdom Services Group, has worked with Legal Services during the term of the current contract to introduce the use of the Single Justice Procedure (SJP) to simplify the prosecution process for unpaid FPNs and this procedure will continue under the new contract. Under the SJP cases are dealt with:
- By one magistrate (the single justice) who has a trained legal adviser with them;
 - Outside a courtroom. Most cases are heard in an office inside the court building;
 - On paper only;
 - In private. Prosecutors, defence lawyers, police officers, witness and defendants are not allowed to be there.
 - Without a fixed hearing date. Unlike traditional court hearings the single justice does not give a specific time or date when the case will be considered.

This enables a more fluid process in dealing with unpaid FPNs, allows greater volumes of cases to be taken through the courts.

- 4.19 Increasing the range of offences included in the contract may have resource implications for Legal Services. Commercial Waste Duty of Care offences (failure to produce a Waste Transfer Note / Waste Carriers Licence) may not be dealt with via the SJP. The SJP procedure can only be used for offences that can be dealt with by the magistrate's court whereas these offences may result in prosecution under Section 34 of the Environmental Protection Act 1980 at Crown Court. It is not anticipated there will be large volumes of such cases.
- 4.20 The Council will enter into a contract with the successful bidder in a form approved by Legal Services.

Procurement Implications/Social Value

- 4.21 Tendering has been undertaken with support and advice of the Council's Legal and Procurement Teams.
- 4.22 The procurement and award processes are in accordance with the Council's Contract Rules.
- 4.23 The anticipated value of the service provision was above the current EU procurement thresholds, and the service provision was tendered in accordance with Public Contract Regulations 2015.

- 4.24 L A Support has pledged to provide Social Value by:
- The promotion of healthy workplaces / outdoor spaces;
 - Running community education projects, where Officers engage with the community promoting clean community outdoor spaces/educating on the consequences of environmental offences;
 - Creating good educational / training apprenticeship / work placement opportunities and looking to develop relationships with academic institutions in the Borough, such as Walsall College;
 - Making a recently developed educational resource available to all schools within Walsall;
 - Creating more local, sustainable employment opportunities;
 - Supporting local volunteer groups;
 - Award sponsorship;
 - Introducing a 'Bin it to Win it' initiative;
 - Implementing a 'Smoking Cessation' scheme in Walsall, aimed at residents witnessed dropping cigarette ends.

Property implications

- 4.25 None

Health and wellbeing implications

- 4.26 There are no direct health and wellbeing implications arising from this report. The service is considered to make a positive impact on general health and wellbeing by improving the quality of the environment within which our residents live.

Staffing Implications

- 4.27 TUPE regulations apply to this contract however, as the winning bidder is the incumbent contractor, transfer of the staff is not necessary.
- 4.28 TUPE Regulations may apply at the end of the proposed new contract term.

Reducing Inequalities

- 4.29 It is considered that an Equalities Impact Assessment is not required.

Consultation

- 4.30 As part of the procurement process a pre-market engagement consultation with potential suppliers was undertaken to determine the most appropriate type of contract to suit Walsall's needs. As a result of the feedback received from potential suppliers the new contract will continue to operate on an hourly rate basis.

5. Decide

- 5.1 Use of a third party to undertake enforcement of minor environmental crimes brings knowledge and experience of the issues to Walsall. The winning bidder works with several other councils, including neighbouring authorities, allowing the sharing of best practice.
- 5.2 Deployment of a contractor to enforce against minor crimes allows internal resources to be targeted at reducing or preventing larger scale criminal activities such as organised fly tipping.

6. Respond

- 6.1 After consideration by Cabinet of this report, the approved recommendations will be implemented with further briefings provided to the Portfolio Holder and Corporate Management Team at appropriate timescales if necessary.

7. Review

- 7.1 There will be regular updates from Clean and Green services on contract performance and financial monitoring with Corporate Finance, the Portfolio Holder and Directorate Management Team as appropriate.

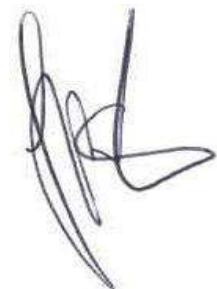
Background Documents

Cabinet Report March 2019 - Environmental Enforcement and Amendments to Penalty Notice Levels

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9 December 2019

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