

CABINET MEMBER DELEGATED DECISION 22 JULY 2020

Report title: Provision of Enforcement Agent Services

Wards: All

Portfolio: Deputy Leader of the Council (Sustainable Transport, Environment and Clean Air):
Councillor Claire Holland

Report Authorised by: Bayo Dosunmu: Strategic Director for Resident Services

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Report summary

This report sets out the tender and evaluation process and seeks approval for the award of contracts for the provision of Enforcement Agent Services. The Council currently has four contracts with Enforcement Agents for the collection of debt for unpaid Parking related debt. The contracts for these services expire in October 2020. It is proposed that two new Enforcement Agent contracts are awarded to Marston Holdings Ltd and Phoenix Commercial Collections with Equita Ltd acting as a reserve for a three (3) year period, running from 13 October 2020 to 12 October 2023. Both Marston Holdings and Phoenix Commercial Collections are industry leaders for debt enforcement and incumbents to this contract.

Finance summary

Although the Council will incur no costs during the term of the contract, due to the legislation in place regarding the collection of fees and charges, the value of this contract has been estimated based on revenue collection. The value is therefore estimated at £3.971m of revenue collection over 3 years.

Recommendations

1. To approve the award of Enforcement Agent contracts to Marston Holdings Ltd and Phoenix Commercial Collections with Equita Ltd acting as a reserve for a three (3) year period, running from 13 October 2020 to 12 October 2023.

Reasons for Exemption from disclosure

The accompanying part II report is exempt from disclosure by virtue of the following Paragraphs of schedule 12A to the Local Government Act 1972:

Paragraph Three: Information relating to the financial or business affairs of a particular person (including the authority holding that information).

1. CONTEXT

- 1.1 This is a Gateway 3 Procurement Award report.
- 1.2 Parking Services are responsible for the enforcement of all parking and traffic contraventions on the roads within Lambeth and do so through the issue of Penalty Charge Notices (PCNs). Once a PCN is issued there is a statutory process which is followed and if the PCN is not paid it is eventually registered at the Traffic Enforcement Centre (TEC) as a debt and a warrant is issued for its recovery. 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. Before a debt is passed to an Enforcement Agent to collect, owners of vehicles have a number of opportunities to settle the debt and the issuing of a warrant is the last resort.
- 1.3 The enforcement of warrants is carried out in accordance with the Taking Control of Goods (Fees) Regulations. These regulations set out the statutory fees Enforcement Agents can charge for the collection of the debt. All fees are payable by the debtor and therefore the Council makes no contract payments to Enforcement Agents.
- 1.4 The proposed new contracts are awards using the Yorkshire Purchasing Organisation (YPO) Enforcement Agency Services Dynamic Purchasing System (DPS) Framework. The YPO is the UK's largest public sector buying organisation, it provides procurement solutions for public sector organisations and covers a wide range of services
- 1.5 The OJEU compliant DPS framework provides a multi-supplier solution for the provision of a range of Enforcement Agent services. The Framework Agreement started on the 01 April 2019 and expires on 31 March 2024 under OJEU award notice 2019/S 030-067351. The maximum value of the framework is £450m. The Framework allows Contracting Authorities to specify a term of contract which best suits their requirement however it is recommended call off periods last no longer than four years.

2. PROPOSAL AND REASONS

- 2.1 It is proposed to award Enforcement Agent contracts to Marston Holdings Ltd and Phoenix Commercial Collections with Equita Ltd acting as a reserve for the period 13 October 2020 to 12 October 2023
- 2.2 Full details of the evaluation are detailed in the Part II report.
- 2.3 As framework providers on the YPO - Enforcement Agency Services Dynamic Purchasing System (DPS), there are Mandatory Requirements the suppliers must make available to all Contracting Authorities under the Framework Agreement, these are:
 - Enforcement ability;
 - Fraud Prevention;
 - Security;
 - Customer Service and Account Management;
 - Transition and Implementation;
 - Continuous Improvement: Delivering Efficiencies and Increasing Performance;
 - Invoicing and Payment Online Management;
 - Contracting Authority Management Information;
 - Reporting to the Authority;
 - Vulnerable Debtor Policy.

Procurement Route

- 2.4 Gateway 2 Procurement Strategy Report was approved on the 13 January 2019.
- 2.5 The procurement route was issued via the Yorkshire Purchasing Organisation (YPO) Enforcement Agency Services Dynamic Purchasing System (DPS), an established Framework which provides a multi-supplier solution for the provision of a range of Enforcement Agent services. The Framework currently has 19 suppliers.
- 2.6 The OJEU Reference number for the YPO Framework Award is 2019/S 030-067351.
- 2.7 All aspects of the procurement were carried out using the Council's secure procurement route via the EU-Supply portal.
- 2.8 Further competition Tender invitations were issued to all 19 suppliers on the DPS.
- 2.9 The Further Competition documents were released via the EU-Supply tendering portal on 4 February 2020 with a return date of 17 March 2020.
- 2.10 Five tender submissions were received by the closing date of 17 March 2020.
- 2.11 In line with the DPS requirements, the evaluation criteria was based on 100% Quality.
- 2.12 The evaluation was carried out by a panel consisting of three officers from the Parking and Enforcement team who assessed each response separately and then met to agree a consensus score with the Procurement lead, during a virtual moderation meeting online.
- 2.13 The evaluation was based on the following criteria and weightings;

Table 1: Evaluation Breakdown

| | Method Statement | | Sub Criteria | Sub-Weighting % | Weighting % |
|--------------|---|----|---|-----------------|-------------|
| MS 1 | Service Delivery & Capability | 1a | Proposal & Experience | 50% | 60% |
| | | 1b | Capability & Resources | 20% | |
| | | 1c | Customer Service Standards | 10% | |
| | | 1d | Disaster Recovery and Business Continuity | 10% | |
| | | 1e | Project Management, KPIs and Performance | 10% | |
| MS 2 | Service Improvements | 2a | Service Development | 50% | 20% |
| | | 2b | Innovation | 50% | |
| MS 3 | Responsible Procurement and Social Value | | | | 10% |
| MS 4 | Vulnerable Debtors | | | | 10% |
| Total | | | | | 100% |

2.14 The following represents the final outturn of moderated scores against each supplier:

Table 2: Awarded scores

| Bidder Name | Total | Rank |
|--------------------------------|--------------|-------------|
| Equita Ltd | 84 | 3 |
| Tenderer B | 66.8 | 5 |
| Marston Holdings Ltd | 98 | 1 |
| Tenderer D | 79.2 | 4 |
| Phoenix Commercial Collections | 92 | 2 |

2.15 For reasons of confidentiality, detailed analysis of the tenders submitted, the breakdown of the quality assessment and the awarded scores are detailed in the Part II report.

2.16 Feedback will be provided to the unsuccessful bidders.

2.17 Based on the evaluation, the recommended suppliers are Marston Holdings Ltd and Phoenix Commercial Collections with Equita Ltd acting as a reserve. The rationale for a reserve supplier is in case there's an increase in volume and we need more capacity, in case there's a performance issue, in case one goes out of business etc. The Terms and Conditions allow for a supplier to be swapped in or out at any time during the contract period.

Contract Management

2.18 The contracts will be managed by the Supplier Relationship Team who are responsible for the day to day management of all parking service contracts including stakeholder management, contract monitoring and KPI analysis.

2.19 All Service level Agreements (SLAs) that are agreed upon within the kick-off meeting will be managed throughout the contract period.

3. FINANCE

3.1 Although the Council will incur no costs during the term of the contract, due to the legislation in place regarding the collection of fees and charges, the value of this contract has been estimated based on the revenue collection. The value is therefore estimated at £3,971,299.38 of revenue collection over three years.

4. LEGAL AND DEMOCRACY

4.1 The authority to approve the recommendation of this report is delegated to the Deputy Leader of the Council with the portfolio for Environment and Clean Air.

4.2 The Road Traffic Regulation Act 1984 confers power on a local authority to designate parking places on the highway, to charge for use of them, and to issue parking permits for a charge. Part 6 of the Traffic Management Act 2004 provides for the civil enforcement of parking contraventions.

4.3 The Yorkshire Purchasing Organisation (YPO) is a central purchasing body and its framework was procured in compliance with the Public Contracts Regulations. Calling-off the Council's contract requirement from the YPO's Dynamic Purchasing System (DPS) agreement complies with its Contract Standing Orders and with the Regulations.

- 4.4 The enforcement process for Enforcement Agents is governed by the Taking Control of Good (Fees) Regulations 2014 made under the Tribunals, Courts and Enforcement Act 2007. The contract is in substance a services concession contract as the suppliers' revenue under the contract comes solely from the fixed fees.
- 4.5 This proposed key decision was entered in the Forward Plan on 16 December 2019 and the necessary 28 clear days' notice has been given. In addition, the Council's Constitution requires the report to be published on the website for five clear days before the proposed decision is approved by the Cabinet Member. Any representations received during this period must be considered by the decision-maker before the decision is taken. A further period of five clear days - the call-in period – must then elapse before the decision is enacted. If the decision is called-in during this period, it cannot be enacted until the call-in has been considered and resolved.

5. CONSULTATION AND CO-PRODUCTION

- 5.1 In making decisions and co-producing services, engagement is key. This section enables the consultation that has been undertaken to be highlighted. Include a summary of the views received from external and/or internal consultation.

Table 3

| Stakeholders | Interest | Action |
|--------------------------------------|---|--|
| Procurement Officer | All stages from pre-business case to approval of contract. | <ol style="list-style-type: none"> 1. Conduct pre-procurement engagement. 2. Consult on each stage of procurement (GW1, GW2, GW3). 3. Consult on development of tender documentation. 4. Consult on the use of the e-procurement portal. 5. Consult on execution of contract. |
| Cabinet Member (TBC) | GW2 and GW3 | <ol style="list-style-type: none"> 1. Consulted on GW2 and GW3 stage of procurement. |
| Project Sponsor (Strategic Director) | Successful delivery of contract arrangements and securing Cabinet Member agreement. | <ol style="list-style-type: none"> 1. Met and discussed approach to Cabinet Member. 2. Kept Strategic Director updated on procurement. |
| Client Departments | Specification and Performance Management | <ol style="list-style-type: none"> 1. Evaluated what works well and what does not and what improvements can be made. 2. Developed requirements using feedback on from users of the service. |
| Management Team | Quality of contract Strategic Objectives | <ol style="list-style-type: none"> 1. Consulted on quality KPI's for proposed contract. |

6. RISK MANAGEMENT

- 6.1 The main risks that impede on the successful delivery of this procurement and contract are:

Table 4 – Risk Register

| Item | Risk | Likelihood | Impact | Score | Control Measures |
|-------------|--|-------------------|---------------|--------------|---|
| 1 | Risk to service provision if no Enforcement Agents in place | 4 | 8 | 32 | Adjustments will be made to budgets which surplus parking revenue supports |
| 2 | The new contract takes longer than anticipated to install and implement if awarded to a new supplier | 3 | 4 | 12 | The existing contract will be extended to continue service delivery in the event of any delays. |
| 3 | Impact of service delivery if implementation of new contract unsuccessful | 2 | 4 | 8 | Any implementation requirements will be project managed using relevant methodology. Contingency plans are also in place to ensure continuous service delivery. |
| 4 | Legal challenge from suppliers not on the framework | 1 | 2 | 2 | The Framework has been checked to ensure the leading Enforcement Agent suppliers are included |
| 5 | Brexit | 3 | 2 | 6 | As part of the specification all tenders were required to submit a written statement outlining the impact that Brexit will have on their current operation and the impact this will have on their future ability to deliver the services outlined in the specification for this contract. |
| 6 | Outstanding warrants won't be collected | 1 | 4 | 4 | The current contract has provision for incumbent suppliers to continue to collect any outstanding warrants they may have. Warrants can be taken back from bailiffs and reallocated if necessary |
| 7 | Covid 19 | 4 | 8 | 32 | Due to Covid 19 all EAs are following social distancing rules and have amended their enforcement plans accordingly |
| 8 | Supplier are unable to fulfil contract due to financial reasons | 2 | 4 | 8 | Due diligence has been carried out on the successful suppliers via a D & B (Dun & Bradstreet) credit & financial check, results have been detailed in part 2 of this report |

Key

| | | | | | | | | |
|-------------------|-------------|---|---------|---|-------------|---|---------------|---|
| Likelihood | Very Likely | 4 | Likely | 3 | Unlikely | 2 | Very Unlikely | 1 |
| Impact | Major | 8 | Serious | 4 | Significant | 2 | Minor | 1 |

7. EQUALITIES IMPACT ASSESSMENT

7.1 A new Equalities Impact Assessment has been carried out and authorised. Under Regulation 11 and Regulation 12 of the Taking Control of Goods (Fees) Regulations 2014 are of importance and were put in place to provide protection for individuals who may be vulnerable. Regulation 12 protects vulnerable debtors who may have been unable in the early stages to seek advice (from the local authority, magistrates court, debt counsellor/debt charity etc) about the debt. If a bailiff makes a personal visit and identifies the debtor as 'vulnerable', they should give that person a chance to seek advice before enforcement action is taken. A copy of the EIA can be found as Appendix 1.

8. COMMUNITY SAFETY

8.1 The enforcement process for Enforcement Agents is governed by the Taking Control of Goods (Fees) Regulations 2014 made under the Tribunals, Courts and Enforcement Act 2007. Enforcement of parking restrictions aims to reduce the number of illegally parked vehicles. This, in turn, will reduce traffic congestion, improve road safety, and improve accessibility for all road users, including Blue Badge holders.

9. ORGANISATIONAL IMPLICATIONS

Environmental

9.1 All bidders were asked to supply information relating to their environmental sustainability plans and carbon neutrality.

Health

9.2 Not Applicable

Corporate Parenting

9.3 Not applicable.

Staffing and accommodation

9.4 There are no TUPE implications for these proposed contracts and the Council has received written notification from all current suppliers that this is the case.

Responsible Procurement

9.5 The Service Providers will be encouraged to assist the Council in securing economic, social and environmental improvements during the term of this contract.

Good Quality Jobs with Fair Pay and Decent Working Conditions

9.6 The requirement for the London Living Wage (as accredited with the Living-Wage Foundation) for directly employed and sub-contractors will be in the terms and conditions of the proposed contract. The Modern Slavery Act (2015) applies to this procurement. The provisions will be made in the terms and conditions of the contract. The terms and conditions include provisions for the provider to allow employees the freedom to join a trade union and not be treated unfairly for belonging to one.

Quality Apprenticeships, targeted Employment for Lambeth residents and Lambeth Priority Group

- 9.7 The proposed contracts will lend themselves to 'Quality Apprenticeships/Trainee Positions, Targeted Employment and Lambeth Priority Group and this will be achieved through the terms and conditions and method statements.

Reduce Emissions: Lambeth Council has a commitment to being Zero Carbon by 2030

- 9.8 Parking Services is committed to reducing emission levels across all the services it delivers. A number of incentives are under way which have delivered on this commitment, including removing pay and display machines to move to digital payment methods therefore removing the need for cash collection on street. The service is working with all contractors to look at ways of reducing the use of vehicles. With regards to Enforcement Agents, tenders were required to outline how they will work with Lambeth to reduce vehicle emissions, whether this is using electric vehicles where possible or by ensuring the number of visits is reduced by grouping warrants together in specific locations.

Single Use Plastics

- 9.9 The proposed contracts for works and goods will lend itself to reducing packaging and plastics through the terms and conditions and method statement.

Positive Health and Wellbeing

- 9.10 The proposed contracts have providers with more than 250 staff and therefore subject to the London Healthy Workplace Charter or equivalent, signing of the Time for Change Employers Pledge and Suicide Prevention Strategies all of which have been incorporated in the terms and conditions.

Other Offers (Innovation)

- 9.11 The proposed suppliers have provided innovative proposals through a method statement question during the procurement process.

10. TIMETABLE FOR IMPLEMENTATION

- 10.1 The table below details the stages and deadlines for implementing the recommendations:

| Activity | Proposed Date |
|--|----------------------|
| Date published on Forward Plan | 16 Dec 2019 |
| Publication on Decisions online | 14 July 2020 |
| Cabinet Member Decision | 22 July 2020 |
| End of Call-in Period (key decisions only) | 29 July 2020 |
| Contract award | 30 July 2020 |
| Contract commencement | 6 August 2020 |

AUDIT TRAIL

Consultation

| Name and Position/Title | Lambeth Directorate | Date Sent | Date Received | Comments in paragraph: |
|---|--|-----------|---------------|--------------------------------|
| Councillor Jack Hopkins | Leader of the Council | 09/07/20 | 09/07/20 | |
| Councillor Claire Holland | Deputy Leader (Sustainable Transport, Environment and Clean Air) | 01/07/20 | 01/07/20 | |
| Bayo Dosunmu, Strategic Director | Resident Services | 16/06/20 | 17/06/20 | |
| Raj Mistry, Director | Resident Services | 09/06/20 | 09/06/20 | |
| Neil Fenton, Assistant Director Parking & Enforcement | Resident Services | 02.06.20 | 09.06.20 | |
| Derek Roopnarine | Finance and Investment | 11.05.20 | 14.05.20 | 3 |
| Andrew Ramsden | Finance and Investment | 11.05.20 | 14.05.20 | 3 |
| David Thomas, Legal | Legal and Governance | 11.05.20 | 13.05.20 | 4 |
| Maria Burton, Democratic Services | Legal and Governance | 11.05.20 | 13.05.20 | 4 |
| Sophie Eveso, Senior Procurement Officer | Finance and Investment | 23/04/20 | 29/04/20 | Initial consultation on report |
| Kevin Edger, Procurement Category Manager | Finance and Investment | 22.05.20 | 29.05.20 | All |

REPORT HISTORY

| | |
|---|--|
| Original discussion with Cabinet Member | 13/01/20 |
| Report deadline | N/A |
| Date final report sent | N/A |
| Part II Exempt from Disclosure/confidential accompanying report? | Yes |
| Key decision report | Yes |
| Date first appeared on forward plan | 16.12.19 |
| Key decision reasons | 2. Expenditure, income or savings in excess of £500,000, and 3. Meets community impact test. |
| Background information | Previous Specification X:\DES\DES-PARKING\General\Street_Operations\Supplier_Relationship\Enforcement Agents\Bailiffs Procurement Taking Control of Goods (Fees) Regulations http://www.legislation.gov.uk/uksi/2014/1/contents/made Road Traffic Regulation Act 1984 https://www.legislation.gov.uk/ukpga/1984/27/contents Traffic Management Act 2004 |

| | |
|-------------------|---|
| | http://www.legislation.gov.uk/ukpga/2004/18/contents Taking Control of Good (Fees) Regulations 2014 http://www.legislation.gov.uk/uksi/2014/1/introduction/made Tribunals, Courts and Enforcement Act 2007 https://www.legislation.gov.uk/ukpga/2007/15/contents The Modern Slavery Act (2015) https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted |
| Appendices | Appendix A – Equalities Impact Assessment |

APPROVAL BY CABINET MEMBER OR OFFICER IN ACCORDANCE WITH SCHEME OF DELEGATION

I confirm I have consulted Finance, Legal, Democratic Services and the Procurement Board, and taken account of their advice and comments in completing the report for approval:

Signature: _____ **Date:** _____

Post: Jonathan Pook,
Head of Parking & Enforcement Services

I approve the above recommendations:

Signature: _____ **Date:** _____

Post: Bayo Dosunmu,
Strategic Director for Resident Services

I confirm I have consulted the relevant Cabinet Members, including the Leader of the Council (if required), and approve the above recommendations:

Signature: _____ **Date:** _____

Post: Councillor Claire Holland,
Deputy Leader (Sustainable Transport, Environment and Clean Air)

Any declarations of interest (or exemptions granted): None

Any conflicts of interest: None

Any dispensations: None