

Report for: **Cabinet**

Date of Meeting:	16 February 2023
Subject:	Environmental Enforcement: Procurement of a Tri Borough Contract
Key Decision:	Yes – all wards effected
Responsible Officer:	Dipti Patel - Corporate Director, Place; Cathy Knubley - Director of Environmental Services
Portfolio Holder:	Councillor Anjana Patel - Portfolio Holder for Environment & Community Safety
Exempt:	No
Decision subject to Call-in:	Yes
Wards affected:	All Wards
Enclosures:	None

Section 1 – Summary and Recommendation

This report seeks approval to procure a multi-borough contract for third party on-street enforcement in relation to low level environmental issues.

This is a tri-Borough Ealing-led collaborative procurement in which Harrow and Hounslow Councils are participating. There is a possibility other Boroughs may join during the term of the contract.

Harrow, Hounslow and Ealing councils would join together to deliver a more efficient service, widening the scope of environmental enforcement activity, sharing overhead costs, expertise and allowing greater flexibility.

Recommendations:

Cabinet is requested to:

1. Grant approval to procure a tri-Borough third party on-street enforcement contract.
2. Delegate authority to the Corporate Director, Place, following consultation with the Portfolio Holder for Environment & Community Safety to review and agree the suite of tender documentation.
3. Delegate authority to the Corporate Director, Place, following consultation with the Portfolio Holder for Environment & Community Safety and the Portfolio Holder for Finance and Human Resources, to finalise the award of the contract, including finalisation of the contract documentation and entering into the contract.
4. Delegate authority to the Corporate Director, Place, following consultation with the Portfolio Holder for Environment & Community Safety and the Portfolio Holder for Finance and Human Resources to extend and/or vary the current memorandum of understanding with the collaborating Boroughs, or enter into a new memorandum of understanding or similar arrangement with the collaborating Boroughs.

Reason: (for recommendations) Following a successful five-year tri-Borough contract, Harrow wishes to continue its active enforcement of these issues which affect the quality of life of its residents and visitors.

Harrow wishes to continue to participate in this collaborative procurement, that will deliver improved, beneficial contract performance and benefit local environmental and social economic outcomes.

It will provide a consistent approach across the three neighbouring boroughs and allow better collaboration around such matters.

Section 2 – Report

2.1 Introduction.

- 2.1.1 In Feb 2019 Harrow Council entered into a tri-borough service Contract to build on the work of the Licensing and Enforcement service by providing additional capacity to issue Fixed Penalty Notices (FPNs) in the borough in relation to littering enforcement and public spaces protection orders (covering dog fouling, street drinking, spitting, etc) to achieve zero tolerance.
- 2.1.2 The services delivered provide economically sustainable, cost effective and flexible environmental enforcement support to the Council whilst strengthening partnerships with participating boroughs.
- 2.1.3 The Contract was for three years with the option to extend for two additional individual years, the Council extended for these additional years with the contact due to end 31 January 2024.
- 2.1.4 This report seeks permission to continue with a collaborative tri-Borough procurement, and to give the Director of Place delegated approval to award the final contact.
- 2.1.5 The collaborative procurement will deliver better terms than would otherwise be achieved if Harrow were to procure non-collaboratively.
- 2.1.6 By joining together with Ealing and Hounslow, Harrow benefits from:
- Single contract economies of scale that have been achieved through the sharing of legal and procurement services;
 - A common approach in messaging and collective action to enforce across a wider area;
 - Greater operational, staffing and management versatility created through the operation of the contract across three boroughs.
- 2.1.7 Soft market testing in relation to the re-procurement of the contract has commenced.
- 2.1.8 The scope of services includes authority to issue fixed penalty notices for offences under
- Environmental Protection Act 1990;
 - Clean Neighbourhoods and Environment Act 2005;
 - Anti-Social Behaviour Act 2003;
 - Refuse Disposal (Amenity) Act 1978
 - Anti-social Behaviour, Crime and Policing Act 2014;
 - Highways Act 1980
 - London Local Authorities and Transport for London Act 2003
 - Town and Country Planning Act 1990

- 2.1.9 There will be a requirement for the successful bidder to carry out some peripheral activity such as security work. For these activities there would be a reimbursement mechanism per hour or per day as appropriate.
- 2.1.10 Tenders are due to be received and evaluated in October 2023, with contract go live date set for 25th January 2024.

2.2 Options considered

- 2.2.1 This report is seeking permission to commence a Tri Borough procurement.
- 2.2.2 Other options considered but not recommended at this time include procuring a Harrow specific enforcement contract. This is not recommended as it is likely that more favourable terms can be negotiated by having a geographically larger contract. Also, as Ealing lead on the procurement, costs can be saved in relation to the legal and procurement services provided.
- 2.2.3 A further option considered but not recommended at this time is to bring the service in house. This is not recommended currently as the current and proposed contracts are set up at no cost to Harrow Council. Currently, the provider serves the FPN and retains a percentage of each paid FPN; the balance is then reinvested by Harrow Council into enforcement services in Harrow. The costs of recruitment, overheads and staffing costs all sit with the contact provider.
- 2.2.4 As this is a new procurement and will be a competitive market process, the potential providers may offer different contract terms in relation to revenue. The process will ensure that the best value possible is being provided to Harrow Council.

2.3 Performance Issues

- 2.3.1 The new contact will have KPIs agreed and a performance management process to ensure that the provider delivers the agreed aims.

2.4 Environmental Implications

- 2.4.1 A positive impact on littering and the environment is expected from the contract.
- 2.4.2 Littering and fly tipping are an increasing blight on the streets and town centres of Harrow. Increased enforcement against this sort of environmental crime will help to prevent it from happening in the first place, making the public spaces cleaner and more enjoyable to all users.
- 2.4.3 There are no sustainability impacts arising from the proposed activity.

2.5 Data Protection Implications

2.5.1 The contract will cover data protection and ensure that the services are delivered in compliance with data protection legislation.

2.6 Risk Management Implications

2.6.1 Risks included on corporate or directorate risk register? **No**
 Separate risk register in place? **No**

2.6.2 The relevant risks contained in the register are attached/summarised below. **n/a**

2.6.3 The following key risks should be taken into account when agreeing the recommendations in this report:

Risk Description	Mitigations	RAG Status
<p>A less efficient service develops, leading to a narrowing of the scope of environmental enforcement activity, or to overheads and expertise and greater flexibility not being shared, and to the foreseen benefits not materializing.</p>	<ul style="list-style-type: none"> ▪ The contract will be closely managed on a weekly basis to enable us to track performance and respond quickly to issues. ▪ Harrow staff on the contract remain focused on Harrow borough priorities in this area and are not distracted by other boroughs e.g. numbers of FPNs issued ▪ A tri-borough contract enables a comparison of the service that is being delivered in other boroughs giving us an effective and live benchmark for performance of the service. 	<p>Green</p>
<p>Financial risk: Low-level on-street enforcement is not carried out on a cost neutral basis.</p>	<ul style="list-style-type: none"> ▪ The contract will be financially monitored, and any emerging financial risks will be escalated with appropriate remedial action taken. 	<p>Green</p>
<p>Adverse publicity risk: Criticism from the media due to the alleged misconduct of some on street enforcement officers and their overly officious issue of FPNs.</p>	<ul style="list-style-type: none"> ▪ The contract will be closely managed by the Licensing and Enforcement service who will oversee the contract delivery and investigate any complaints made to ensure that the 	<p>Green</p>

Risk Description	Mitigations	RAG Status
	enforcement officers conduct themselves in an appropriate manner.	
Bidders do not demonstrate that they have robust processes and procedures in place to ensure they have correctly secured all evidence required to ensure a realistic chance of prosecution	<ul style="list-style-type: none"> ▪ We will have access to all of the borough's system records from the contractor relating to Harrow, e.g. body-cam footage and correspondence and can check and review this to ensure procedures are appropriate and robust. ▪ As part of the contract, we will have standard operating procedures against which we can review and evaluate issues and behavior on FPNs to ensure these have been appropriately undertaken and are robust and in line with procedures. 	Green

2.7 Procurement Implications

- 2.7.1 This joint procurement process will be led and conducted by Ealing Council with participation and input from Harrow and Hounslow. PCR (Public Contracts Regulations) regulation 38 permits two or more contracting authorities to procure jointly.
- 2.7.2 A tri-borough working group has been formed to develop the tender and ensure the contract meets the needs of each Authority. Each Authority will participate and score in the evaluation process to reach a consensus on contract award.
- 2.7.3 It is planned to publish the tender late February / March 2023 (subject to approvals). At the time of writing, tender documentation is in development and not available for inclusion in this report. Therefore, the new working model of having all tender documents ready and cleared with the Portfolio Holder before Cabinet approval is not feasible due to the authorisation requirement prior to tender publish.
- 2.7.4 Respective Councils' climate change and social value requirements will be considered and incorporated into the final tender pack.

- 2.7.5 The Contract is a services contract, and its value shall be calculated as the total turnover for the Contractor over the duration of the Contract (including any extensions), considering amongst other things, the revenue from the payment of fees and fines under the Contract.
- 2.7.6 The tender will be conducted using the Competitive Procedure with Negotiation (CPN) (or such other appropriate procurement process) dependent on Market Engagement findings. Procurement and award will be in compliance with the Council's Contract Procedure Rules.
- 2.7.7 An official notice will be published on Find a Tender (FTS) in full compliance with the Public Contract Regulations 2015 (PCR's). Subsequent award to the Most Economically Advantageous Tender will be published on Contracts Finder.
- 2.7.8 If an acceptable tender is received, authority is delegated to the Corporate Director Place to award the contract. Award will be for an initial term of 3 years with 2 individual one-year subsequent extension periods available to the Councils (3+1+1) or such other period up to a total of 5 years as determined by the tri-borough working group.
- 2.7.9 In line with procurement best practice a market engagement exercise has been undertaken to maximise interest in the opportunity and seek feedback on the proposed delivery method and terms from prospective tenderers. Market feedback will be incorporated into the tender documentation to deliver best value for respective Authorities.
- 2.7.10 The following is explored with potential suppliers:
- Payment mechanism for the contract
 - Affordability thresholds
 - Procurement route
 - Contract structure
 - Risk partition
 - Performance monitoring and enhancement
 - Optimal contract term
 - Expansion of client base

2.8 Legal Implications

- 2.8.1 Sections 87 and 88 of the Environmental Protection Act 1990 provide for local authorities to issue Fixed Penalty Notices for a littering offence.
- 2.8.2 To serve any FPN's there must be suitable and adequate evidence to substantiate the necessary standard of proof obtained by the enforcement officer which can lead to a criminal prosecution in the magistrate's court if the fixed penalty notice is not paid.

- 2.8.3 The bidders will need to demonstrate that they have robust processes and procedures in place to ensure that they have correctly secured all evidence that is needed for a realistic chance of prosecution.
- 2.8.4 Although this is a collaborative procurement with Ealing and Hounslow, and Ealing is the 'lead' borough, Harrow Council's Contract Procedure Rules apply in so far as they are consistent with the requirements of the other collaborating boroughs.
- 2.8.5 It is anticipated that the collaborating Boroughs will enter into a memorandum of understanding or similar vehicle to record the arrangements between the parties for this joint approach to environmental enforcement, including governance arrangements, and to cover the allocation of roles and risks between them.
- 2.8.6 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply to this re-procurement. Very broadly, if:
- (a) the activities that are being carried out, on the Council's behalf, under the current arrangements are sufficiently similar to the activities that will be carried out, on the Council's behalf, under the new arrangements; and
 - (b) the current provider(s) has an organised team of employees whose main purpose is to perform the Harrow work
- then it is possible that employees of the existing contractor(s) may have the right to be transferred to the new contractor(s), on the same terms and conditions and with their employment rights preserved. There are certain conditions to be fulfilled and there are some exceptions. The Council will comply with its obligations under TUPE.

2.9 Financial Implications

- 2.9.1 The use of Fixed Penalty Notices (FPNs) for environmental enforcement is not intended as an additional source of income for local authorities. The aim is to provide a cost neutral service that supplements and strengthens in house resource effectiveness.
- 2.9.2 Any income generated from fines will initially be used to fund the cost of the proposed contract.
- 2.9.3 The payment mechanism under the current contract is that the contractor will only charge the Council for FPNs that are paid, the financial risk rests with the contractor and therefore the arrangement will be at no cost to the Council as a minimum. It is expected there will be a similar mechanism with any new partner awarded a contract further to the re-procurement.
- 2.9.4 The financial viability of the proposals submitted by bidders will be reviewed by finance officers of the participating Councils as part of due diligence.

2.9.5 Any operating surplus from this enforcement contract may be reinvested in the wider Licensing and Enforcement service to ensure that the service can continue to provide excellence in relation to enforcement matters.

2.9.6 In general, as the success of the FPN contract is advertised, the public will become more compliant and fewer offences will be committed leading to less FPN's being issued.

2.10. Equalities implications / Public Sector Equality Duty

2.10.1 The bidders will demonstrate in their bid submission that their approach to Environmental Enforcement does not disproportionately impact upon any protected characteristic group.

2.11 Council Priorities

2.11.1 A well procured and well managed contract will support the corporate priority of a "Clean and Safe Borough" by taking robust enforcement to protected against anti-social behaviours such as fly tipping and littering.

Section 3 - Statutory Officer Clearance

Statutory Officer: Dawn Calvert

Signed on by the Chief Financial Officer

Date: 30/01/2023

Statutory Officer: Melissa Trichard

Signed on behalf of the Monitoring Officer

Date: 06/02/2023

Chief Officer: Dipti Patel

Signed off by the Corporate Director

Date: 06/02/2023

Head of Procurement: Nimesh Mehta

Signed by the Head of Procurement

Date: 01/02/2023

Head of Internal Audit: Neale Burn

Signed on behalf of the Head of Internal Audit

Date:06/02/2023

Has the Portfolio Holder(s) been consulted? Yes

Mandatory Checks

Ward Councillors notified: NO, as it impacts on all Wards

EqIA carried out: Yes, this has been carried out by Ealing Council.

Section 4 - Contact Details and Background Papers

Contact: Emma Phasey, Head of Licensing and Enforcement,
Emma.Phasey@Harrow.gov.uk

Background Papers: None

Call-in waived by the Chair of Overview and Scrutiny Committee - NO