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Report of: Head of Service, City Centre Cleansing, Enforcement and Parking

Report to: Chief Officer, Environmental Services

Date: 19th March, 2019

Subject: Waiver of CPRs 9.1 and 9.2 to award an interim contract for the issuing of Fixed Penalty Notices (FPNs) in relation to environmental enforcement work

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s): Little London & Woodhouse and Hunslet and Riverside		
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:10.4 (3) Appendix number:1 and 2		

Summary:

1. The awarding of an interim contract to 3GS for the issuing of Fixed Penalty Notices (FPNs) in relation to environmental enforcement work for a period of up to 12 months is now considered critical. The publication of this key decision took place on 4th February, 2019 and has now expired. No major issues or challenges were raised during the publication period.
2. The contract for the issuing of FPNs in relation to environmental enforcement work, predominantly in the city centre, was awarded to 3GS in December 2014. The contract term was for 2 years starting on the 26th January 2015 with extension options of a further 2x12 months. The contract has been extended for 2 months after the expiry of the main contract from 26th January, 2019 to 25th March, 2019 to reflect recent emerging demands and renewed requirements for this sort of provision. The performance of 3GS in delivering the contract has been good overall. Over 12,000 FPN's have been issued since the formal award of contract and an excellent payment rate of 80% has been achieved. As well as issuing FPNs, 3GS provide a highly visible uniformed presence in the city centre.

3. The undertaking of the work within this contract is required to provide a visible patrolling presence in the city centre and surrounding areas to meet current and emerging priorities related to perceptions of safety and ensure key environmental enforcement work is sustained.
4. In the city centre, a number of new services have been deployed to address the changing challenges the city centre faces in relation to general street use, begging and anti-social behaviour. It will take a further year to review, specify, procure and award a new contract.
5. Whilst not it's intention nor primary function, the issuing of FPNs under the previous contract has also generated a small amount of income to the Council which has been re-invested into council services over the contract term. Details of the projected income forecasts for the interim contract are considered exempt under access to information rules 10.4 (3) and are provided in Appendix 1 & 2.

Recommendations:

The Chief Officer for Environmental Services is recommended to note the content of this report and (i) waive CPRs 9.1 and 9.2 and (ii) approve the appointment of 3GS (Red Snapper Group) for a period of up to 12 months from 8th April 2019.

1. Purpose of this report:

- 1.1 This report seeks to obtain approval from the Chief Officer for Communities and Environmental Action to award an interim contract to 3GS for the issuing of FPNs in relation to environmental enforcement work delivered by 3GS for a further period of up to 12months.

2. Main Issues:

- 2.1 The city centre of Leeds is in many ways the 'shop window' to the city and is often the first and lasting impression that people have of Leeds. The city centre is a major cultural hub with many leisure and visitor attractions. Keeping the city centre clean and welcoming is a priority for both the City Council and also key stakeholders such as city centre business operators.
- 2.2 Councils have powers to tackle littering by the use of FPNs which are issued to people who drop litter. The imposition of an FPN is an alternative to court action and involves the resolution of the issue upon payment of a standard fee. A range of field-based Council staff have had the power to issue FPNs for many years.
- 2.3 3GS have been our external supplier for issuing FPNs for littering in the city centre since January 2015. Their involvement has been highly effective in increasing the number of FPNs issued since the contract was awarded in Dec 2014.
- 2.4 The Service and its key partners are keen to ensure some continuation of the patrolling and visible presence offered by the current contract whilst a review of the current service is undertaken to take account of other city centre initiatives in order for a new contract to be re-specified and procured. An interim contract will in particular provide much-needed street-level vigilance and reassurance given the public safety perception challenges in relation to street users and related anti-social behaviour.
- 2.5 The undertaking of the work within this contract is required to provide a visible patrolling presence in the city centre and surrounding areas to meet current and emerging priorities related to perceptions of safety and to ensure key environmental enforcement work is sustained.
- 2.6 In the city centre, a number of new services have now been deployed to address the changing challenges the city centre faces in relation to homelessness, begging and anti-social behaviour. It will take a year to review, re-specify, procure and award a new contract.
- 2.7 Recent feedback and assessment of risks have identified the need to continue with some form of patrolling and an FPN issuing service in the interim period whilst a new service is procured.

3. Proposed Interim Contract:

- 3.1 Since the current contract has been running it has succeeded in its two main aims, with there being a clear sense from city centre stakeholders that the streets are cleaner and that there is a greater awareness amongst the public of what to do with litter and the consequences of littering.

- 3.2 Having consulted with service managers, finance, legal and procurement services, it is felt that it would be best to retain the services of the current contractor in the interim period pending the procurement of a new contract in order to provide a cost-effective, reliable and continuing service. There are few providers of such services with good reputations currently on the market. 3GS is experienced in providing these sorts of services in Leeds.
- 3.3 We have negotiated and agreed new delivery/ operational arrangements and terms with 3GS for the interim contract to reflect our current and emerging priorities in the city centre. These represent good value to LCC given our needs. Details of the terms agreed are considered exempt under access to information rules 10.4 (3) and are summarised at Appendix 1.
- 3.4 The interim contract service specification to be delivered by 3GS is different to the previous specification and will cover a number of new functions including:
- ✓ Uniformed patrols in the city centre and other identified areas,
 - ✓ Close working with city-centre partners,
 - ✓ Provision of education and advice to a range of city centre and street-users,
 - ✓ Issuing of FPNs for littering and dog fouling,
 - ✓ Initiation and completion of legal proceedings for cases where the offer of settlement by way of FPN is not accepted, and,
 - ✓ Flexible deployment in locations determined by the Council of 3GS staff for both FPN issuing and ambassadorial patrolling and visibility purposes.

4. Corporate Considerations

4.1 Consultation and Engagement:

- 4.1.1 Key partners and stakeholders, including the Leeds BID, WYP, Safer Leeds, and key elected members have been consulted on this proposal and are supportive.

4.2 Council policies and City Priorities:

- 4.2.1 It is paramount that procurements are undertaken with a view to ensuring openness, transparency and fairness. As such all appropriate governance arrangements have been considered.
- 4.2.3 The awarding of this contract for the issuing of FPNs in the city centre supports a wide range of activities employed to keep the city centre clean, safe and litter-free. It supports our wider ambition to be the best city and the best Council, and is consistent with the aspirations of this vision.

4.3 Resources and value for money:

- 4.3.1 The approach taken is one whereby the service provided is at nil cost to the Council. Under the proposed model, 3GS will carry the risk of non- payment of FPNs. LCC is not liable in any way for reimbursing 3GS for unpaid FPNs.
- 4.3.2 The model agreed with 3GS allows for a payment to the Council for every FPN issued. Financial information considered exempt under access to information rules 10.4 (3) is provided at Appendix 1 and Appendix 2.

4.4 Legal Implications, Access to Information and Call In

- 4.4.3 Officers from the Procurement and Commercial Service have been consulted and assisted with this process.
- 4.4.4 The service is of a type that falls within the remit of section 7 of the Public Contracts Regulations 2015 ("PCR"). The threshold for the application of these regulations is £615,278 so the PCR do not apply.
- 4.4.5 While there is no overriding reason why this direct appointment can't be made, awarding the contract directly to 3GS in this way could leave the Council open to a potential claim from other providers to whom this contract could be of interest. In terms of transparency, it should be noted that it is a requirement of European case law that contracts of this value are subjected to a degree of advertising. It is up to the Council to decide what degree of advertising is appropriate. In particular, consideration should be given to the subject-matter of the contract, the estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices, etc.) and the geographical location of the place of performance. This has been considered, and given the nature of the services provided, and the existing arrangements that the supplier has in place and the duration of the interim contract it is considered that other suppliers would not be interested in bidding for this work.
- 4.4.6 There is a risk of an ombudsman investigation arising from a complaint that the Council has not followed reasonable procedures, resulting in a loss of opportunity. Obviously, the complainant would have to establish maladministration. It is not considered that such an investigation would necessarily result in a finding of maladministration however such investigations are by their nature more subjective than legal proceedings.
- 4.4.7 Whilst making the decision, the Chief Officer (Environmental Services) should acknowledge the risks identified above.
- 4.4.8 This is a Key Decision and as such is eligible for call in.
- 4.4.9 The contents of appendix 1 and 2 are considered to be confidential under access to information rule 10.4 (3). The release of the information would be likely to prejudice the business affairs of both the council and the supplier. There is a public interest in ensuring that public bodies obtain value for money for the services that they procure and that services are delivered efficiently. That level of openness is provided in this report. Disclosing the detailed financial arrangements set out in appendix 1 and 2 risks undermining the council's negotiating position on future procurements and disclosing the supplier's key commercial positions. Suppliers need to be confident that their key and unique commercial positions will not be disclosed to competitors as a result of working with the council. If they do not have that confidence it could greatly reduce their willingness to work with the council and could undermine public procurement. The public interest in maintaining the information as confidential therefore outweighs the public interest in disclosure.

4.5 Risk Management

- 4.5.1 In the original procurement exercise two potential risks were identified which are still relevant. Firstly, that the scheme is not able to operate on a self-financing basis i.e. no cost to the Council. Secondly, that the large-scale issuing of FPN's and subsequent prosecution for non- payment might generate significant adverse reaction.

- 4.5.2 Whilst these risks will be kept under review, they have not materialised over the last 4 years of this contract.

5 Conclusions

- 5.1 The awarding of this interim contract to 3GS will contribute to work to tackle current perceptions connected the environment and activities of street-users and will ensure the continuation and retention of a patrolling presence and visibility of patrolling staff in the city centre.
- 5.2 As a city, we continue to develop our response to the emerging priorities in the city centre and need time to understand our needs in order to specify a bespoke service. The aim is to award a new contract following a full procurement exercise in March 2020.
- 5.3 The performance of 3GS in delivering the contract to date has been satisfactory and continues to provide value for money.
- 5.4 The awarding of an interim contract to 3GS is a cost-effective, good value and viable way of ensuring continued environmental enforcement and a patrolling presence in the city centre.

6 Recommendations

- 6.1 The Chief Officer for Environmental Services is recommended to note the content of this report and (i) waive CPRs 9.1 and 9.2 and (ii) approve the appointment of 3GS (Red Snapper Group) for a period of up to 12 months from 8th April 2019.

7 Background documents

- 7.1 In compiling this report no additional background papers were used.