



Report of: Head of Service, Environmental Action

Report to: Chief Officer, Environmental Services

Date: 21st October 2020

Subject: Waiver of CPR 8 and request to vary the end date of the current contractual arrangements with 3GS UK Limited in line with CPR 21 (for the issuing of Fixed Penalty Notices (FPN's) in relation to the City Centre Environmental Enforcement contract for 2 x 6 months from 01/12/2020.

Are specific electoral wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, name(s) of ward(s): Little London & Woodhouse and Hunslet & Riverside		
Has consultation been carried out?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Will the decision be open for call-in?	<input type="checkbox"/> Yes	<input checked="" 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: Appendix number: 2 & 3		

Purpose of this report

This report seeks to obtain approval from the Chief Officer, Environmental Services to vary the end date of the existing contractual arrangement for the issuing of Fixed Penalty Notices (FPN's) in relation to city centre environmental enforcement work delivered by 3GS UK Limited by a further 2 x 6 months. In particular this report ensures that the requirement of CPR 21 is adhered to along with the waiver of CPR 8.

Summary

1. Main issues

- Seeking approval to waiver CPR 8 and to request to vary the end date of current contractual arrangements with 3GS UK Limited in line with CPR 21 for the issuing of Fixed Penalty Notices (FPN's) in relation to the City Centre Environmental Enforcement contract for 2 x 6 months from 01/12/2020.

2. Best Council Plan Implications (click [here](#) for the latest version of the Best Council Plan)

- 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.
- The current contract for the issuing of FPN's in the city centre supports the city's immediate priority to tackling the impact of COVID in a supporting and engaging way to ensure public safety as well as a wide range of activities deployed 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.

3. Resource Implications

- It is not considered a viable or plausible option to procure or specify a new contract or enter into a procurement exercise given the volatility and uncertainty of the market for this work at this time. Procuring and accurately specifying a new contract at this time poses high risks to consistency, continuity and reliability at a time when these are essential aspects of street-based public-facing services in the city centre.
- Having consulted with key stakeholders, it is felt that it would be best to retain the services of 3GS in the wake of COVID in order to provide a cost-effective, reliable and continuing service pending a decision on full procurement during the spring/summer of 2021 once service need in light of COVID has been established and the viability of the contract model in the new COVID context has been determined.
- The approach taken is one whereby the service provided is at nil direct cost to the Council. Under the model, 3GS will carry the risk of non-payment of FPNs. The Council is not liable in any way for reimbursing 3GS for unpaid FPNs.
- The model agreed with 3GS allows for a payment to the Council when FPN's are paid - details for which are considered exempt under access to information rules 10.4 (3) is provided at Appendix 3.

Recommendations

The Chief Officer for Environmental Services is recommended to:

note the content of this report and (i) waive CPR 8 and approve the use of CPR 21 to vary the end date of the existing contract and (ii) approve the appointment of 3GS UK Limited for the issuing of Fixed Penalty Notices (FPN's) in relation to the city centre environmental enforcement work for a period of 2 x 6 months from 01/12/2020. Details of net value of this contract are based on income and are considered exempt under access to information rules 10.4 (3) is provided at Appendix 2.

1. Background information

- 1.1 The variation to the end date for existing contract to 3GS for issuing of (FPN's) in relation to city centre environmental enforcement work for a period of 2 x 6 months is considered critical.
- 1.2 The Council has an existing contract for the issuing of FPN's in relation to environmental enforcement work predominantly in the city centre with 3GS UK Limited. The performance of 3GS in delivering the contract has been good overall. Over 3000 FPN's were issued over the 12 month period between April 2019 and April 2020 (at which point the service was suspended due to Covid restrictions) and

a payment rate of 76.5% was achieved. Since resumption of the service on 01/08/20 a total of 534 FPN's have been issued with a payment rate of 78.6%.

- 1.3 Whilst not its primary function, the issuing of FPN's under the contract has also generated income for the Council. During the period April 2019 to April 2020 an income of £36,170 was received by the Council. Further financial details are considered exempt under access to information rules 10.4 (3) and are provided at Appendix 2.
- 1.4 Details of the proposed payment arrangements and terms are considered exempt under access to information rules 10.4 (3) and are provided at Appendix 3.

2. Main issues

- 2.1 The city centre of Leeds is a key economic driver for the Leeds city region and the North of England as a major retail, commercial, cultural, educational and administrative hub with many leisure and visitor attractions. Keeping the city centre safe, clean and welcoming is a key priority for both the city council and its key stakeholders such as city centre business and commercial operators. Recent challenges posed by COVID have highlighted the importance of perceptions and confidence in the safety and cleanliness of the city centre and the important role this contract plays in this regard.
- 2.2 Councils have powers to tackle littering by the use of FPNs which are issued to people who drop litter (within an agreed framework and with some exceptions for specific circumstances). The imposition of an FPN is an alternative to court action and involves the resolution of the issue upon payment of a set fine. A range of field-based council staff also have the power to issue FPNs. In addition to issuing FPN's 3GS provide a highly visible uniformed presence in the city centre, this is particularly important at this time to provide reassurance, vigilance and advice and guidance to the public in the wake of the Coronavirus pandemic.
- 2.3 The original contract for this work was awarded to 3GS for the period 26/01/2015 – 25/01/2017 with 2 x 12 months extensions (taking it to 25/01/2019). Further provision was agreed at this time via a waiver and a new interim contract was then agreed for the period 01/08/2019 – 31/07/2020. This was to allow for the emerging impact of the new Street Support Team in the city centre and how the needs and context in the city centre were rapidly changing at that time with homeless and organised crime being rapidly evolving factors. The remaining 4 months of the current contract were paused due to COVID and the contract end date was changed to 30/11/2020 via a variation.
- 2.4 The undertaking of the work within this contract is considered critical to provide visible patrolling presence in the city centre and surrounding areas to meet current and emerging priorities related to public and business confidence. This is related to perceptions of COVID related public health and safety and ensuring key environmental enforcement work is sustained. The contract also fulfils a much-needed reassurance, advice and guidance function due to COVID restrictions in operation across the city centre.
- 2.5 A full procurement exercise was due to take place over the spring/ summer of 2020 culminating in a new contract being awarded however this work was suspended due to the Coronavirus pandemic.
- 2.6 Having consulted with the Council's procurement team and key partners, it is no longer considered a viable or plausible option to procure or specify a new contract

given the volatility of the market for this work at this time, as well as the critical need for consistency, working knowledge and experience of operating in Leeds city centre, and, continuity and reliability in the contract delivery at a time of heightened concerns for city centre users and stakeholders. In the city centre a number of new services have recently been deployed to address the severe, urgent and changing challenges the city centre faces in relation to homelessness, begging, organised crime and anti-social behaviour. Added to this is the urgency related to emerging and changing needs in relation to managing the impacts of COVID through a contract of this type. Procuring and accurately specifying a new contract at this time poses high risks to consistency, continuity and reliability at a time when these are essential aspects of street-based public-facing services in the city centre.

- 2.7 Whilst not its primary function the issuing of FPN's under the contract has also generated some income to the Council. During the period April 2019 to April 2020 an income of £36,170 was received by the Council. Further financial details are considered exempt under access to information rules 10.4 (3) and are provided at Appendix 2.

Proposed Variation to End Date:

- 2.8 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. The provider, 3GS, has also managed to sustain its operation on the income derived from FPN fines, whilst generating a small surplus income for the Council which is reinvested into services.
- 2.9 Having consulted with service managers, colleagues in finance, legal and procurement and 3GS it is felt that it would be best to retain the services of 3GS in the wake of COVID in order to provide a cost-effective, reliable and continuing service pending full procurement during the spring/ summer of 2021 once service need in light of COVID has been established and the viability of the contract model in the new COVID context has been determined. A variation of 2 x 6 months will allow time for an informed decision to be made on the viability of this model going forwards (due to the changing impact COVID has had on footfall in the city centre which is critical to the business model for the contract) and a relevant specification to be determined and procured against. The provision of 2 x 6 months will allow for the first 6 months to assess the continued viability of the service given the changes in the City Centre and the provision of a further 6 months should there be a continued requirement in order to conduct the new procurement exercise.
- 2.10 We have negotiated and agreed the same delivery and operational arrangements and terms with 3GS for the varied period to reflect our current and emerging priorities in the city centre. These represent good value to the Council given our needs. Details of the terms agreed are considered exempt under access to information rules 10.4 (3) and are provided in Appendix 3.
- 2.11 The service specification being delivered by 3GS will cover a number of key areas including:
- Uniformed patrols in the city centre and other identified areas,
 - Close working with city-centre partners,
 - Provision of education and advice,
 - 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 (which will be particularly important in light of COVID needs for city centre partners).

3. Corporate considerations

3.1 Consultation and engagement

- 3.1.1 Key partners and stakeholders including the Leeds BID, Safer Leeds and city centre management have been consulted on this proposal and are supportive.

3.2 Equality and diversity / cohesion and integration

- 3.2.1 Equality, diversity, cohesion and integration have been considered throughout the development, implementation and review of the contract and its performance.
- 3.2.2 Performance on equality and diversity is discussed as part of the contract management meetings to ensure due attention is being given in the delivery of this service to the councils stated ambitions in this regard and that contract and council staff are trained and developed to the highest of standards.

3.3 Council policies and the Best Council Plan

- 3.3.1 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.
- 3.3.2 The contract for the issuing of FPN's in the city centre supports the cities immediate priority to tackling the impact of COVID in a supporting and engaging way to ensure public safety as well as a wide range of activities deployed 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.

3.4 Climate Emergency

- 3.4.1 The outcomes of the contract support the cities ambitions to reduce risk to climate change. In particular, the contract encourages and promotes climate friendly disposal of unwanted items. The city centre has an extensive network of recycling-on-the go facilities.

3.5 Resources, procurement and value for money

- 3.5.1 The approach taken is one whereby the service provided is at nil direct cost to the Council. Under the model, 3GS will carry the risk of non- payment of FPNs. The Council is not liable in any way for reimbursing 3GS for unpaid FPNs.
- 3.5.2 The model agreed with 3GS allows for a payment to the Council when FPN's are paid. During the period April 2019 to April 2020 an income of £36,170 was received

by the Council. Further financial details are considered exempt under access to information rules 10.4 (3) and are provided at Appendix 2.

3.6 Legal implications, access to information, and call-in

- 3.6.1 Officers from Housing and Resources PACS have been consulted throughout the contract extension discussions.
- 3.6.2 The contract was previously advertised as an Annex B and there was no threshold to advertise through OJEU under annex B. The EU regulations have changed and the service now falls under Light Touch Regime (Investigation and Security Services) the threshold to advertise through OJEU is £615,278 (which this is below)
- 3.6.3 Legal officers have been consulted and it is understood that the reason for this variation to the contract end date is:
 - a. the need for consistency, continuity and reliability at a time of heightened fear and concerns amongst city centre users and stakeholders in relation to public health and environmental cleanness in the city centre, and
 - b. the uncertainty of viably re-procuring a critical contract at this time due to COVID.
- 3.6.4 Legal advice highlights that there is a risk of challenge should a potential competitor aggregate the length of time 3GS have held the contract. However the unique and extraordinary circumstances requiring this variation give the Council little alternative but to proceed as recommended, and there is no certainty that an aggregation argument would be successful. Whilst making the decision, the Chief Officer (Environmental Services) should acknowledge the risk identified above.
- 3.6.5 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. Supplier's 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.

3.7 Risk management

- 3.7.1 In the original procurement exercise 2 potential risks were identified. Firstly, that the scheme is not able to operate on a self-financing basis i.e. no direct cost to the Council. Secondly that the large scale issue of FPN's and subsequent prosecution for non- payment might generate significant adverse reaction.
- 3.7.2 Whilst these risks will be kept under review they have not materialised over the last 5 years of this contract.

4. Conclusions

- 4.1 Varying the end date of the current contractual arrangement is critical in tacking fearful perceptions of public safety and health in relation to COVID, homelessness, the environment and street-users and organised crime. Ensuring the continuation and retention of a reliable, experienced and familiar patrolling presence with visibility in the city centre is key.
- 4.2 As a city, we are still responding to the emerging priorities and uncertainties in the city centre arising from COVID and therefore more time would be required to understand our needs and specify a bespoke service in an informed way - we aim to have made a decision on the on-going viability of the contract model by April, 2021.
- 4.3 The performance of 3GS in delivering the contract to date has been good and continues to provide value for money.
- 4.4 Varying the end date of the contract with 3GS is a cost-effective, good value and viable way of ensuring environmental enforcement and reassurance patrolling presence in the city centre in the wake of COVID.

5. Recommendations

- 5.1 The Chief Officer for Environmental Services is recommended to:
note the content of this report and (i) waive CPR 8 and approve the use of CPR 21 to vary the end date of the existing contract and (ii) approve the appointment of 3GS UK Limited for the issuing of Fixed Penalty Notices (FPN's) in relation to the city centre environmental enforcement work for a period of 2 x 6 months from 01/12/2020. Details of net value of this contract are based on income and is considered exempt under access to information rules 10.4 (3) is provided at Appendix 2.

6. Background documents¹

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

7. Appendices

- 7.1 Appendices 2 and 3 are considered exempt under access to information rules 10.4 (3)

¹ The background documents listed in this section are available to download from the council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

What is your reason for waiving CPRs?

There is a genuine, unforeseeable emergency meaning there is no time to go through a procurement process e.g. to deal with the consequences of extreme weather.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
To purchase supplies or services on particularly advantageous terms due to liquidation/administration.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Requirement to put a contract in place with a current provider whilst a review of the services is completed.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Ran out of time to undertake a new procurement exercise	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>Other (please provide summary here)</p> <p>It is felt that it would be best to retain the services of 3GS in the wake of Coronavirus in order to provide a cost-effective, reliable and continuing service pending full procurement during the spring/summer of 2021 once service need in light of COVID has been established and the viability of the contract model in the new COVID context has been determined.</p>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No