

	<p style="text-align: center;"><b>Executive</b> 16<sup>th</sup> February 2009</p> <p style="text-align: center;"><b>Report from the Director of Environment and Culture</b></p>
<p style="text-align: right;">Wards Affected: ALL</p>	
<p><b>Authority to award contract for provision for bailiff services for parking enforcement</b></p>	

Forward Plan Ref: E&C-08/09-028

Appendix 1 - Not for publication (below the line)

This part of this Report is not for publication as it contains the following categories of exempt information as specified in paragraph 3 Schedule 12A of the Local Government Act 1972, namely:

“Information relating to the financial or business affairs of any particular person (including the authority holding that information)”

## 1.0 Summary

1.1 This report relates to the enforcement and collection of unpaid Penalty Charge Notices (PCNs) by bailiffs. The report summarises the process undertaken in tendering this contract and, following the completion of the evaluation of the tenders, requests approval from the Executive for the award of two contracts to two suppliers in respect of Enforcement and Collection of PCN's, contracts to commence on 1 April 2009, as required by Contract Standing Orders 88 and 89.

## 2.0 Recommendations

2.1 That Members award two contracts for the provision of Bailiff Services for unpaid Penalty Charge Notices, one to Newlyn PLC and one to TASK Enforcement Limited with both contracts to run from 1<sup>st</sup> April 2009 until 31<sup>st</sup> March 2011, with an option to extend the contracts for up to a further two years.

### **3.0 Detail**

#### ***Background***

- 3.1 This Report concerns a service for pursuing unpaid debts resulting from the issue of PCNs once the Council has exhausted its own processes. Under the Traffic Management Act 2004 if the recipient of a PCN fails to pay or make valid representations resulting in cancellation of the PCN it will proceed to a stage where the Council obtains a "Warrant of Execution" by application to the Traffic Enforcement Centre at Northampton County Court. Once a warrant has been issued, the Council has the legal authority to refer the case to a bailiff company for the purposes of pursuing the said debt.
- 3.2 The service for which approval is being sought is commonly known as the 'Bailiff Service' and is intended to recover debt due to the Council as well as recovering the bailiff's own costs. In 2007-08, 21,000 warrants worth £2,717,000 were passed to the Council's two existing bailiffs, £1,854,000 to Collect Services and £863,000 to Rundles, both Bailiff companies achieved a recovery rate of 9.2%.
- 3.3 As a first step the bailiffs write to the debtor after verification of details asking for the debt to be paid. Failing that the bailiffs are allowed a maximum of 3 visits for which statutory charges can be made. Bailiffs may make more visits if required to make contact with the debtor.
- 3.4 The next stage is a legal process whereby certificated bailiffs can, after firstly attempting to seek payment at their visits, take possession of the debtor's goods for sale at an auction and use any proceeds from the sale towards settlement of the bill but only two or three per cent of the cases result in goods actually being removed. Removal of property is seen as a last resort in cases where the debtor has exhausted all other avenues and/or is deemed to be a persistent evader. There are statutory restrictions and restrictions set out in the Council's Code of Practice on the types of goods which may be removed. For example cooking appliances, refrigerators and medical equipment are amongst the goods which cannot be removed.
- 3.5 Legislation requires that only certificated bailiffs are used. Bailiff firms are required to act within the Code of Practice of the Certified Bailiffs Association of England and Wales. They will also be required to act according to a code of conduct imposed by the Council.
- 3.6 The annual total value of the bailiff fees based on collection rates is estimated to be £300k. The fees that bailiff firms can charge are largely controlled by legislation. There are some fees which are not expressly set by legislation, though the legislation requires that these be reasonable. The Specification set out what fees the Council regards as reasonable where the fees are not legislatively set. These were based on current industry standards and other London Borough's practices. Organisations submitting tenders were asked to confirm they would charge only the legislatively set fees and, where the fees are not legislatively set, only the fees specified by the Council.
- 3.7 At present the borough's unpaid PCNs are collected by two bailiff firms, Collect Services and Rundle and Co, however the services are not currently commissioned on a tendered basis.

- 3.8 At the moment the work is divided equally between the two bailiff firms, Collect Services and Rundle and Co as far as possible. To maintain an even workload between them the work is allocated on a top-up basis to each firm, depending how many cases are still outstanding. The arrangement is working well. It is proposed to continue to use two firms to equally share the work load and to encourage competition. Two is considered to be the optimum number of firms to provide scope for firms to earn the level of fees that would attract them to bid. There is also a risk that if more firms were involved in the delivery of the service, their attention and quality of service after contract may deteriorate if the earning potential is lowered by spreading the work too thinly.

### ***Tender Process***

- 3.9 Members approved a two stage tender process at the May 2008 Executive meeting. Adverts were placed in the trade journal 'Civil Enforcement News' and the Harrow Observer in July. This contract is a concession contract, there is no charge to the Council for this service but rather the Bailiffs earn their money by recovering fees and charges in line with the Code of Conduct and not by charging the Council. As such the evaluation of the tenders was based solely on the quality and performance of the proposed services. Services Concession contracts are an exemption under regulation 6 of the Public Contracts Regulations. As such this procurement exercise was not subject to the Public Contracts Regulations and there was no requirement to advertise in the Official Journal of the European Community.
- 3.10 Fourteen Pre Qualification Questionnaires were returned before the deadline of 16:00 on 26 August 2008 with a further questionnaire submitted but not evaluated after this time. An evaluation exercise of the PQQ responses was carried out by Central Finance and Central Procurement.
- 3.11 Following the evaluation of the PQQ responses received seven companies were invited to tender on 20 October including the two incumbent suppliers, seven tenders were returned on 26 November.
- 3.12 The Contract Specification was designed to address issues such as:
- the recording of evidence and 'proof of posting' for all letters sent to debtors
  - the requirement to prove that a visit to the debtors' premises has actually been made, including retrospective evidence that each recorded visit has been made
  - the compliance with the Scale of Fees & Charges laid down by the Lord Chancellors' Office
  - the percentage of warrants on which full or part payment is received (excluding the bailiff's statutory fees) in relation to the number of instructions from the Council to execute warrants
  - the percentage of monies recovered and paid to the Council in relation to the total amount of debt passed to the bailiffs by way of instruction to execute warrants
  - the percentage of charges levied and recovered by the bailiffs in respect of associated warrants
  - the time taken to recover debt owed to the Council
  - the number, type and severity of service complaints

- environmental performance
- equalities & diversity performance
- health & safety performance

3.13 Tenderers were advised that two contracts would be awarded on the basis of the most economically advantageous tenders, to be assessed on the basis of the evaluation criteria approved by the Executive see paragraph 3.16 below)

3.15 Tenders were evaluated by a three member panel consisting of two members of the Parking Team and a representative from Revenues and Benefits. After the initial evaluation of the received tenders, bidders were invited to make a 15 minute presentation of their bid with a question and answer session afterwards.

3.16 The Panel met again after the presentations to discuss and individually score the bids on the following evaluation criteria (as approved by the May Executive meeting):-

- Proven ability to meet the requirements of the service specification 10%
- Approach to the delivery of the service 30%
- Approach to ensuring standards are maintained 15%
- The ability to fulfil the Council's customer relation requirements 15%
- The ability to meet and exceed the Council's performance measures 15%
- Track record elsewhere in achieving good collection rates 15%

3.17 After the evaluation and discussions were completed, the marks given by the individual members of the evaluation panel were added together, converted to percentages and the seven tenders were scored as follows:-

Supplier One	92%
Supplier Two	75%
Supplier Three	82%
Supplier Four	95%
Supplier Five	42%
Supplier Six	89%
Supplier Seven	65%

3.18 A break down of percentage scores received for each evaluation criteria is set out in Appendix Two. Supplier Four scored highest overall, dropping just 75 marks across the three members of the evaluation panel. Supplier one came second in the evaluation process, again scoring highly across all six aspects of the criteria.

3.19 Suppliers Two, Three and Six were generally very similar in terms of scoring, Supplier Two lost marks on Track record elsewhere, Supplier Three fell short on their Approach to Delivery of Service and Supplier Six generally scored lower across the board.

- 3.20 The remaining two submissions scored lower in all sections, in particular Approach to Delivery of Service and Approach to maintaining Standards.
- 3.21 Following the evaluation, clarification was sought from all tenderers on two issues, firstly to confirm that payment for debts could be made via debit or credit card without the Bailiff Company passing any additional handling charges to the debtor, secondly that all monies collected will first be used to pay the Council debt prior to the fees and charges of the bailiff. Written confirmation of adherence to both these aspects of the specification was received from all seven bidders.

#### **4.0 Financial Implications**

- 4.1 The Council's Contract Standing Orders state that contracts for supplies and services exceeding £500k or works contracts exceeding £1million shall be referred to the Executive for approval of the award of the contract. In this case the potential charges imposed by the Bailiffs would be £300,000 per annum or potentially £1.2 million over the maximum four years of the contract
- 4.2 There will be no additional cost to administer the service as a dedicated resource already exists within the Parking Team, however it is anticipated that collection rates may see improvement.

#### **5.0 Legal Implications**

- 5.1 Legal powers to enforce debts are provided for in the Road Traffic Regulation Act 1984 and the Road Traffic Act 1991 (both as amended).
- 5.2 This contract is a services concession contract under the Public Contracts Regulations 2006 ("the EU Regulations"). As such this procurement process is not subject to the EU Regulations. This is because there is a specific exemption in the EU Regulations for service concession contracts. Service concession contracts are defined within the regulations as a contract under which the consideration given by the contracting authority consists of or includes the right to exploit the service or services to be provided under the contract. This is the case for Bailiffs because they get paid by the debtor only when a successful recovery of debt is made.
- 5.3 The estimated total value of the contracts over their lifetimes is in excess of £500,000. As such the procurement and award of the contracts is subject to the Council's Contract Standing Orders and Financial Regulations in respect of high value contracts.
- 5.4 As these contracts will be high value contracts under the Council's Contract Standing Orders Executive approval to the award of the contracts is required.
- 5.5 Members should note that one of the evaluation criteria was "Track record elsewhere in achieving good collection rates". Normally information relating to organisations experience is obtained at the PQQ stage and not the evaluation stage. In this case the matters considered at evaluation stage were limited to the collection rates obtained rather than a general assessment of previous experience.
- 5.6 As this procurement process is not subject to the EU Regulations there is no requirement that a standstill period be observed before the contract is awarded. The contract can accordingly commence as soon as possible after Executive approval is granted to the award of the contracts.

5.7 In considering the recommendations in this report Members need to be satisfied that award of the contract to suppliers 4 and 1 will result in the award to those tenderers submitting the most economically advantageous tenders, and that these contract awards will deliver best value for the Council.

## **6.0 Diversity Implications**

6.1 There are no diversity issues resulting from this tender process. The Bailiff Code of Conduct governs the actions for vulnerable sections of the community and additionally the Bailiff is required to refer any contentious issues or vulnerable cases back to the Council for the Council to decide whether to continue enforcing the debt.

## **7.0 Staffing/Accommodation Implications (if appropriate)**

7.1 This services are currently provided by external contractors and there are no implications for Council staff arising from the tendering of the services.

## **8.0 Sustainability Issues**

8.1 There are no sustainability issues arising from this contract.

## **9.0 Background Papers**

9.1 The Council's Invitation to Tender

9.2 The Codes of Practice

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