

	<p style="text-align: center;"><b>Executive</b> 12 December 2011</p> <p style="text-align: center;"><b>Report from the Director of Environment and Neighbourhood Services</b></p>
<p style="text-align: right;">Wards Affected: ALL</p>	
<p><b>Parking Contracts Extension</b></p>	

**Appendix 1 and 2 to this report are not for publication**

## **1.0 Summary**

- 1.1 This report sets out current plans for re-tendering of Brent's contracts for parking enforcement and notice processing. In light of concerns about the timing of the new contracts in relation to the 2012 Olympic Games, and fresh opportunities for collaboration in retendering which have arisen, recommends that the existing contracts be extended for a twelve month period.

## **2.0 Recommendations**

- 2.1 That the Executive note the concerns about the existing tendering timetable set out in paragraphs 3.3 and 3.4 and the potential for securing a better outcome through collaboration with West London Alliance partners set out in paragraphs 3.5 to 3.7.
- 2.2 That the Executive note the legal advice about the risks associated with extending the existing contract set out in paragraphs 5.1 to 5.7.
- 2.3 That the Executive agree the extension of the parking enforcement and notice processing contracts with APCOA for a period of twelve months and that authority be delegated to the Director of Environment & Neighbourhood Services in consultation with the Director of Finance & Corporate Services and the Director of Legal and Procurement to agree the final terms of the extension.

- 2.4 That the Executive agree in principle the revised approach to tendering the contracts collaboratively set out in paragraph 3.9 and 3.11.

### **3. Detail**

#### **Present Plans for Re-tendering Brent's Parking Contracts**

- 3.1 Following approval from The Executive on 18<sup>th</sup> July 2011, arrangements are presently being made to let parking services via two contracts, for a four year period (with an option to extend for up to a further four years) in two lots:
- a) *On street enforcement* operation, including moving traffic contraventions, bus lane, fixed and mobile CCTV enforcement as well as off street car park enforcement.
  - b) A "back office" *notice processing* function to include including provision of a management information system, statutory documents processing, permit administration system etc.

Two aspects are being tendered as discretionary options:

- c) *vehicle removal and car pound operation* – the costs of such an operation are high, and as the majority of London authorities do not remove any vehicles, we are more closely examining the obligations, economics and practicalities of removals; and
  - d) *processing of fixed penalty notices*(FPN) not related to parking enforcement, to bring efficiencies of scale to other non-parking types of FPN across the Council, such as for dumped waste etc.
- 3.2 The OJEU notice was published on 5<sup>th</sup> September 2011 and invitation to tender is planned for December 2011. The decision to award the contracts is planned for the 12 March 2012 Executive meeting, with the new contracts starting on 4 July 2012.

#### **Risks Associated with the 2012 Olympics and the Contract Start Up**

- 3.3 Detailed consideration of the risks associated with the planned process has identified a particular problem around the start-up period. The contracts are planned to commence on 4 July 2012, just three weeks before the start of the Olympic competition. Any failure in the parking service at this period could cause reputational damage to the borough. Issues are arising now which require joint planning with the contractor for the effective operation of the parking service during the Olympic period. These issues include securing sufficient trained Civil Enforcement Officers, planning deployment of people and other resources, and mitigating the risk of loss of staff to other Boroughs during the expected period of intense competition for experienced staff. Leaving this planning until the appointment of the new contractor in March 2012 will not be acceptable.

- 3.4 An option to mitigate this risk is to consider a further short extension to the contract period to beyond the closing date for the Olympics and Paralympics. The contract was for an initial five year term and the option for a two year extension has already been exercised. , Our contractor for enforcement and for notice processing, APCOA, has raised with us the desirability of an extension to secure stability through this critical period.

### **Opportunities for Collaborative Procurement**

- 3.5 Recent discussions with officers from other boroughs within the West London Alliance (WLA) have identified that Ealing and Hounslow both plan to put out to tender their notice processing services in the near future. Both boroughs presently provide this service in house and believe that substantial efficiencies could be obtained through out sourcing, and that a back office service such as this is a natural candidate for collaboration. In addition, Hillingdon and Kensington & Chelsea have parking enforcement contracts expiring in July and August 2013 respectively. Hillingdon have expressed interest and Kensington & Chelsea may be interested in collaboration.
- 3.6 The draft timetable for such a joint procurement would require that the formal procurement process begin in April 2012 with contract award in December 2012 ready for a start in June or July 2013.
- 3.7 The opportunities for Brent arising from such a collaborative procurement could be considerable. The notice processing service is essentially a back office service provided through a call centre. Economies of scale, were this service to be provided to a common specification from a single location, can be expected to generate savings in shared management, accommodation, ICT Systems procurement and configuration and a range of other areas. The enforcement contract has a number of fixed cost areas such as the provision and staffing of a car pound and the overall management of the contract which could be shared. In addition, competition for such a substantial contract can be expected to be keener than for a single borough contract. Officers consider that the Council should seek to participate in the proposed collaboration in respect of both notice processing and enforcement.

### **Optimum Extension Period**

- 3.8 Any contract extension to avoid the clash between the contract start date and the 2012 Olympic period would need to be at least six months to ensure that no contract award decision is made until after the end of the Olympic period. A six month extension would mean that the last month of the mobilisation period would be over the Christmas 2012 period which would create operational difficulties for a new contractor in securing the ICT and other resources needed. A minimum extension period of eight months is therefore indicated. Discussions have identified that the preferred extension period to

allow a joint procurement process to take place would be 12 months. A 12 month extension is considered optimal in addressing both concerns.

- 3.9 The Executive is recommended to agree that a twelve month extension be agreed to the APCOA contracts and that, in principle, Brent should tender its requirements for parking services in collaboration with West London partners. A further report would be brought to the Executive when the detail of the proposed tender process is available.
- 3.10 Negotiation with APCOA has led to broad agreement on the terms on which such an extension could be agreed with some issues to be resolved. The broad terms of the proposed agreement are set out in Appendix 1. Members are recommended to delegate authority to agree the final terms of the award of the extension to the Director of Environment & Neighbourhood Services in consultation with the Director of Finance & Corporate Services and the Director of Legal and Procurement.
- 3.11 If the contract extension is approved and implemented, then the current OJEU notice and tender process would be aborted and interested bidders that submitted a Pre-Qualification Questionnaire would be notified accordingly. Thereafter, it is envisaged that a fresh collaborative procurement process would commence for whatever collective requirements have been established.
- 3.12 In considering whether to recommend such an extension officers have had regard to the risks of challenge under EU law. The further extension of the contract is not considered to introduce conditions which, had they been part of the original award procedure, would have allowed for the admission of different tenders or acceptance of a tender other than the one accepted. The longer contract period would not have been material to the decision of potential contractors as to whether to bid and would not have changed the balance of competition within that bidding process. Although the extension would extend the scope of the contract to cover services not initially covered (ie those for the further twelve month period) this is not considered to be a considerable increase, and is driven by circumstances which could not have been anticipated when the contract was let (ie the 2012 Olympic Games). Finally, the approach adopted in the negotiation of terms for the extension will ensure that the economic balance of the contract does not change in favour of the contractor.

#### **4.0 Financial Implications**

- 4.1 The costs of the procurement process are being met from within existing resources. It is believed that the costs of the proposed collaborative procurement process will be less for the Borough and can, similarly, be met from existing resources.

- 4.2 It is anticipated that the eventual cost of the collaboratively tendered service should be significantly lower than that presently budgeted for the reasons set out in paragraph 3.7 above.
- 4.3 Subject to achieving a satisfactory conclusion to the negotiations presently underway with APCOA it is anticipated that significant savings against the present budget for 2012-13 can be achieved.

## **5.0 Legal Implications**

- 5.1 Under UK law the proposed extension to the two parking contracts is treated as a contract variation, which the parties are free to agree. However, under EU law, a contract extension can be treated as a new contract if it consists of the agreement of terms which are “materially different” from the contract originally tendered.
- 5.2 The parking services (IT notice processing and parking enforcement) fall under Part A and B of the Public Contract Regulations 2006 (as amended) respectively (“the EU Regulations”). Further, the contracts were both tendered in accordance with the requirements of Part A services and were both advertised in the OJEU, therefore, subject to the full application of the EU Regulations at the time. an advert has been placed in the OJEU on 5<sup>th</sup> September 2011, inviting interested organisations to express an interest and complete a pre-qualification questionnaire. A local authority has a broad discretion to abandon an initial procurement process and to commence a second one where applicable (case of *APCOA Parking (UK) Ltd v. Westminster City Council* [2010]). Officers must consider the general principles of EU Law, which are applicable to any decision to terminate a process, taking into account proportionality.
- 5.3 Under Brent’s Constitution, Executive approval is required for the extensions.
- 5.4 Members are referred to Appendix 2 for further Legal Implications.

## **6.0 Diversity Implications**

- 6.1 The proposal to extend the existing parking services contracts has been screened for any potential adverse impacts on groups sharing a protected characteristic and no such impacts are believed to exist.

### **Contact Officer(s)**

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**Background Papers : None**

