



Haringey Council

Agenda item:

[No.]

Procurement Committee

On 19 February 2009

Report Title: The award of the Nuisance Vehicle contract

Report authorised by Niall Bolger, Director of Urban Environment

Niall Bolger 9th February 2009

Contact Officer : Ann Cunningham, Head of Parking Services 020 8489 1355

Wards(s) affected: All

Report for: Non – Key decision

1. Purpose of the report

1.1 To report back to Procurement Committee on the restrictions to change the core period (5 years) of the proposed contract for the removal and disposal of Nuisance Vehicles.

2. Introduction by Cabinet Member (if necessary)

Having revisited Legal and Procurement advice, we believe the contract is now a more robust and workable. Awarding the contract for 5 years with strengthened contract conditions now strengthens this contract.

3. State link(s) with Council Plan Priorities and actions and /or other Strategies:

3.1 Not applicable

4. Recommendations

- 4.1 That Members agree to confirm the award of the contract to Ontime, for five years and with strengthened contract conditions.
- 4.2 That Members agree to the extension of the existing contract for two months until the end of

May to allow adequate lead time for the new contract.

5. Reason for recommendation(s)

5.1 A report was presented to Cabinet Procurement Committee on 25th November 2008 seeking approval to award a 5 year contract for the removal and disposal of nuisance vehicles, [including the provision of a vehicle pound, pound management service and supply of operators and drivers for the Mobile CCTV Smart cars].

5.2 Procurement Committee Resolution was

1. That in accordance with Contract Standing orders 11.03 approval be granted to the award of a contract to Ontime for the removal and disposal of nuisance vehicles, including the provision of a vehicle pound, pound management services and the supply of operators and drivers for the Mobile CCTV Smart cars on the terms and conditions set out in the Appendix to the interleaved report.

2. That with regards to the duration of the contract and having regard to the concerns expressed, officers negotiate with Ontime on the basis of a three year contract with an extension for a further two years with strengthened break clauses relating to satisfactory performance and the continuing availability of an appropriate site'.

3. That Members of the Committee be advised of the outcome of the contract drafting/ agreement referred to in 2 above.

5.3 Subsequent to the meeting, Legal and Corporate Procurement services reviewed the tender documentation and agreed that such a fundamental change of contract would be in breach of EC Directives and liable to legal challenge by the successful bidder and potentially by unsuccessful bidders.

5.4 The contract documents already contain clauses to deal with performance issues, and termination. There is a break clause that allows for termination on 6 months' notice. However, in view of Members concerns it is proposed to add a strengthened break provision as detailed in Appendix 1 to this report.

6. Other options considered

6.5 The alternative would be to run the procurement competition again. It is doubtful that this would produce a different winning bidder and would very likely result in a higher priced contract due to the shortened duration. Rerunning the procurement would also incur a further cost to the Council and would present an additional difficulty that the current contracts expire at the end of March 2009.

6.6 The £420,000 savings from the new contract budgeted for 2009/10 depends on this contract being implemented from April 2009. Should a decision be made to re- run the procurement and advertise a contract for a shorter period, it must be noted that those savings will not be achieved in 2009/10.

7. Summary

- 7.1 The main reason that Committee were minded to award a 3 +2 year contract was in relation to the lease on the Vehicle Pound, which is in the Heartlands redevelopment area and may be due for renewal after 3 years. The tender submitted by Ontime suggested that they could secure a lease of this site for the 5 year period, and they had an additional site in the borough that they would relocate to should the redevelopment commence earlier.
- 7.2 Another lesser reason was in relation to the performance of the contract. This contract already contains express provisions allowing termination of the contract for persistent defaults in performance. (Defined as 3 defaults of which notice is given.)
- 7.3 A requirement of the proposed Nuisance Vehicle contract is that a Vehicle Pound must be provided within the borough by the contractor.
- 7.4 In the light of the legal implications set out in Appendix 1 of changing the core period of the contract (e.g. from 5 years to 3 years), it is proposed to strengthen the contract conditions to emphasise that failure by Ontime to demonstrate well in advance of the expiry of its current 3 year lease of vehicle pound premises that it has continuing rights to use a Vehicle Pound within the Borough for the remainder of the contract term would be a ground allowing the Council to terminate the contract with immediate effect.
- 7.5 The recent procurement process generated very little interest from the market and only one supplier actually submitted a bid for the contract. It is felt that a possible reason for this lack of interest was the need for bidders to have access to a suitable Vehicle Pound within the borough.
- 7.6 Given the poor return to the recent procurement, it may be appropriate to look at shaping the market during the next 4-5 years. However, it is difficult to predict what the council's requirements will be at that stage, as the parking industry is rapidly changing [recent changes to legislation limited clamping and removal powers].
- 7.7 One way that competition could be increased would be for the Council to consider acquiring a suitable site and to develop this into a Council owned facility that, as a condition of any future contract, would be leased to winning bidders from which they would then operate.
- 7.8 This would have the effect of opening up the market and generate more competition.
- 7.9 The alternative would be to allow bidders to use Vehicle Pounds outside of the borough; but clearly the council would need to consider the overall distance that motorists would need to travel in order to recover their vehicle, to avoid criticism.
- 7.10 There is no provision in the Council capital programme for acquiring a site for a pound and this would be subject to a Cabinet decision in the next budget round.
- 7.11 Due to the lead in time for implementation of this contract, it is likely that the existing contract would need to be extended to enable the service to implement this contract. The existing contract may have to be extended by at least two months as the service has a duty

to remove and dispose of abandoned vehicles.

8. Chief Financial Officer Comments

8.1 The base cost of the lowest (and only tender) is £1.033m per annum. However, the potential total cost of the contract is £1.136m if performance on key indicators is exceeded and a 10% bonus is payable. The current budget provision for this service is £1.370m, giving a saving of £0.234m, if the recommendation of this report is approved. This is a pre-agreed saving from the budget setting process for 2008/09 to 2010/11 to be achieved in 2009/10.

8.2 The report refers to an option for the Council to consider the acquisition of a suitable site for development into a Council owned vehicle pound. There is currently no provision for this in the Council's proposed capital programme for 2009/10 to 2011/12.

9. Head of Legal Services Comments

9.1 This report is recommending that Members vary an aspect of their earlier decision to award the nuisance vehicles contract by confirming the 5 year contract duration advertised in the tender process instead of a reduced contract period.

9.2 The legal implications of reducing the contract period are set out in Appendix 1, paragraph 3.

9.3 The Head of Legal Services confirms that there are no legal reasons preventing Members from approving the recommendation in paragraph 4.1.

10. Head of Procurement Comments

10.1 The Head of Procurement agrees the content of this report and confirms that for the Council to seek a change of the core contract period from 5 years to 3 years would constitute a breach of Public Contract Regulations.

10.2 The proposed contract has been further strengthened to emphasis that failure to provide a suitable vehicle pound within the Borough would constitute a material breach of contract and thus liable to termination by the Council.

10.3 The current landscape has proved difficult in attracting a reasonable number of bidders (that being a minimum of 3), largely due to the need for bidders to have access to a vehicle pound in the Borough.

11. Equalities & Community Cohesion Comments

11.1 There are no equality & community cohesion issues arising from this report.

12. Consultation

12.1 Not applicable

13. Service Financial Comments

13.1 The full potential cost of the contract is £1.136m, which represents a saving of £234k against the identified budget. In addition the service expects to generate additional income of £185k, representing total annual saving of £420k. Those savings are built into the parking budget for 2009/10.

13.2 Should members chose to re-run the procurement, it should be noted that the savings of £420k will not be achieved in 2009/10 leaving a budget shortfall. There will also be additional costs associated with the re-tendering exercise.

14. Use of appendices /Tables and photograph.

Appendix 1

15. Local Government (Access to Information) Act 1985

15.1 Report to Cabinet Procurement Committee on 25th November 2008 'award of nuisance vehicle contract'.