

Report to:	Cabinet	Date of Meeting:	6 th September 2018
Subject:	Procurement Process for the Provision of Enforcement Agent Services		
Report of:	Head of Corporate Resources	Wards Affected:	(All Wards);
Portfolio:	Cabinet Member - Regulatory, Compliance and Corporate Services		
Is this a Key Decision:	Yes	Included in Forward Plan:	Yes
Exempt / Confidential Report:	No		

Summary:

The Council has used for many years the services of external Enforcement Agent Companies as a last resort to recover various debts it is owed, such as for Council Tax, Business Rates, Housing Benefit overpayments and other income from fees and charges including penalty charge notices for parking fines etc.

Most people pay the Council on time but some simply try to delay payment as long as possible. However, the Council recognises that many people and businesses in our community are facing challenges in the current economic climate, particularly in the light of the Government's welfare reform changes and to help mitigate a number of support procedures have been put within the debt collection process.

Before a debt is passed to an Enforcement Agent company to collect, the Council makes every attempt to engage with the debtor to offer help and assistance at each stage in the collection and recovery process and, where possible, supporting them to make affordable arrangements based on their individual circumstances together with providing information about voluntary sector or business advice organisations that can give further practical support with debt and welfare advice. Regrettably for some, the refusal to engage with us or to seek independent advice can leave the Council with no alternative but to pass the debt to an Enforcement Agent company once a Liability Order has been obtained from the local Magistrates Courts.

The Council complies with all relevant Government legislation that governs the collection of debt and applies best practice to Council Tax debt collection, as recommended by the Local Government Association. The Council has recently entered partnership working arrangements with Sefton Citizens' Advice and our Enforcement Agents to ensure that people with Council tax arrears are treated fairly.

The existing contract under the Rotherham Enforcement and Debt Collection Services Framework is due to expire on the 31st March 2019. Therefore, to ensure enforcement action can continue a procurement process for Enforcement Agent services is required.

The report seeks approval of Cabinet for officers to begin the process of a mini competition under the Rotherham Enforcement and Debt Collection Service Framework.

Recommendation(s):

- (1) That Cabinet approve the procurement process of a mini competition under the EU procurement regime compliant Rotherham Enforcement and Debt Collection Services Framework.
- (2) That Cabinet delegates to Head of Corporate Resources the decision on which Enforcement Agent companies will be awarded the contract for enforcement and debt collection services and the contract for warrants of arrest without bail.
- (3) To authorise the Monitoring Officer to draw up the appropriate contracts to run for a period of 3 years with an option to extend for one year.

Reasons for the Recommendation(s):

Existing contracts are due to expire 31st March 2019. Enforcement Agents are a vital additional resource for the collection of unpaid debt due to the Council.

Alternative Options Considered and Rejected:

1. The option of not appointing a contractor was considered but dismissed. This was because the authority cannot risk not collecting a sizeable percentage of its annual income without the support of Enforcement Agents.
2. The Council could conduct an EU procurement regime compliant exercise, approaching the whole market directly. This option however would require a much longer timescale as the tender opportunity would need to be advertised in the Official Journal of the European Union (OJEU). Further, the volume of bids submitted is unpredictable and so in addition to managing a longer advertising period, officers could easily find that evaluation of bids also takes a much longer period. This could prove problematic as the existing contracts expire on 31/03/2019 and would be an inefficient use of Council's resources. Therefore, this option has been rejected.
3. Contracts can also be awarded under a concession agreement with direct awards to successful bidders. However, there is a limit to the value of the contracts that can be awarded as a concession based on the value over the lifetime of the contracts. It has been assessed that the potential value of the contracts would exceed the OJEU threshold. A tender process would still be required by way of advertisement via OJEU that would open the process to unlimited competition and would be an inefficient use of Council's resources. This is also likely to extend the timescale to procure services which could negatively impact on the collections process.

What will it cost and how will it be financed?

(A) Revenue Costs

Enforcement Agent costs under current legislation are charged to the debtor and therefore are not a direct cost to the Council.

Warrant of arrest costs are payable to the Enforcement Agent company by the Council and can only be passed on to the debtor in the event of a suspended prison sentence being ordered in the Magistrates' Courts, as part of the Council's application for reasonable costs. Any such charges not recovered from the debtor are met from the Council's existing cost budgets.

(B) Capital Costs

N/A

Implications of the Proposals:

Resource Implications (Financial, IT, Staffing and Assets): None
<p>Legal Implications: The Council's Contract Procedure Rules provide that the Council may enter existing public-sector framework agreements where it is evident that such frameworks represent the optimum solution to the Council in terms of service and cost.</p> <p>The enforcement process for Enforcement Agents is governed by the Taking Control of Good (Fees) Regulations 2014.</p>
<p>Equality Implications:</p> <p>The equality implications have been identified and mitigated.</p>

Contribution to the Council's Core Purpose:

Protect the most vulnerable: Where a debtor falls into one of the vulnerability categories detailed in the Council's Code of Practice, the Enforcement Agent company must report this back to the Council.
Facilitate confident and resilient communities: Not applicable
Commission, broker and provide core services: Not applicable
Place – leadership and influencer: Not applicable
Drivers of change and reform: Not applicable
Facilitate sustainable economic prosperity: Not applicable
Greater income for social investment: Not applicable

Cleaner Greener: Not applicable

What consultations have taken place on the proposals and when?

(A) Internal Consultations

The Head of Corporate Resources (FD 5251/18) and Head of Regulation and Compliance (LD 4475/18) have been consulted and any comments have been incorporated into the report.

(B) External Consultations

Not applicable

Implementation Date for the Decision

Following the expiry of the “call-in” period for the Minutes of the Cabinet Meeting

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Appendices: None

Background Papers:

There are no background papers available for inspection.

1. Introduction/Background

- 1.1 An Enforcement Agent service provision is an integral part of the overall collection process for Council Tax, Non-Domestic Rates, Sundry Debtors, Housing Benefit Overpayments, Parking Fines and Business Improvement District Levy arrears and contributes greatly to income collection levels for the Council.
- 1.2 Following approval by Cabinet on 12th September 2013 a mini competition tender was carried out under the Rotherham Council EU Compliant accessible framework for Enforcement and Debt Collection Services.

2 Enforcement awards:

- 2.1 Following the approval by Cabinet committee on the 12th September 2013 to delegate to the Head of Corporate Finance and ICT the decision on which Enforcement Agent companies were to be awarded contracts, the approval was made on the 6 March 2014 by the Head of Finance and ICT following the procurement process.

2.2 The awards covered the period from the 1st April 2014 – 31st March 2017, with an option to extend for 2 individual one year periods subject to satisfactory performance. The awards went to the following bidders:

Jacobs Prime contractor award : Lots 1, 2, 4 and 6

Bristow & Sutor Prime contractor award : Lots 1, 2 and 5

Newlyn Prime contractor award : Lot 3 and 4
Reserve contractor award : Lots 1, 2 and 5

Rosendale's Prime contractor award : Lots 2 and 5
Reserve contractor award : Lot 6

Equita Prime contractor award : Lot 3
Reserve Contractor award : Lot 4

Phoenix No award proposed as overall scoring achieved was significantly low

2.3 Since November 2014 there has been an additional requirement to collect arrears accrued in respect on non-paid Business Improvement District levies. This area of enforcement was not included in the tender document, however under section 18, variation of services of the contract - allowed for this work to be undertaken and subsequently the Enforcement Agents companies were notified of the contract variation.

3 **Sefton Code of Practice for Enforcement Agent Companies**

3.1 On 13 August 2018 the Council's Code of Practice for our Enforcement Agent Services in Sefton, which covers required performance expectations and customer service standards, was reviewed to ensure that it was meeting its objectives, particularly about the requirements to deal with and assess vulnerability. The Code has been revised and in all cases where exceptional financial difficulty is identified the Enforcement Agent company or Sefton Council will offer a 28 day hold or "breathing space" on enforcement action if debtors can demonstrate that they are currently seeking debt advice from an accredited advice provider.

4. **Performance Management**

4.1 The current contractual arrangements are working well. The commencement of the new contracts coincided with the introduction of the Taking Control of Goods (Fees) Regulations 2014 (TCOG) that govern the way Enforcement Agents can operate. The transition to the new regulations has taken place smoothly without any loss of performance. The new regulations have resulted in more debts being collected without the need for Enforcement Agents to call at the homes or businesses of debtors. This has had the positive effect of reducing the number of complaints. In addition, the new regulations determine the level of costs that can be added at each stage, also reducing the number of complaints.

- 4.2 The Council has established close working practices with each firm. Regular individual liaison meetings, attended by representatives from the Enforcement Agent Company are held to monitor performance and to discuss any issues that may be arising to further improve working practices. This can include the conduct and behaviour of an Enforcement Agent if any complaints / issues have been raised with the Council.
- 4.4 The Enforcement Agent Companies have performed competently and, through effective monitoring, the Council is confident that our residents are being treated fairly by the arrangements in place.

5 Enforcement Agent Legislation

5.1 Council Tax and Business Rates

At the time of the previous procurement process for the existing contracts the Ministry of Justice was in the process of enacting new legislation placing new obligations on the Enforcement Agents. The Taking Control of Goods Regulations 2013 came into effect on 1st April 2014. The regulations introduced a compliance stage whereby the Enforcement Agents became obliged to issue a notice to the debtor giving a minimum of 14 days to settle or arrange to pay the debt. The regulations also introduced changes to the fees paid to Enforcement Agents. Prior to the new regulations Enforcement Agents were free to determine their own fees in addition to any statutory fees. The new regulations simplified the fee structure by introducing a £75 fee at the compliance stage, and an additional fee of £235 if the case progressed to enforcement stage. The new regulations and fee structure were introduced to encourage greater efforts to collect debts at the compliance stage and reduce the number of calls to debtor's homes. The Ministry of Justice is currently reviewing the impact of the regulations before determining whether further amendments to the regulations and/or fees is required. A date has not been set for the completion of that review.

5.2 Civil Parking Enforcement

Parking Services issue Penalty Charge Notices for contraventions of Parking Regulations, using powers contained within the following regulations:

- The Traffic Management Act 2004

6 Procurement - use of an existing framework

- 6.1 It is proposed that the procurement process will include a mini competition exercise conducted under the Rotherham Council EU Compliant framework for enforcement and debt collection services. This is an existing, and proven framework that many Council's have used to procure Enforcement Agent services.

- 6.2 The mini competition will be managed by Sefton Council's Procurement Unit and will be published solely to the 10 Rotherham Council framework providers, and managed electronically within the North-West Opportunities Portal, 'The Chest' to ensure auditability.
- 6.3 Rotherham MBC undertook the OJEU exercise for debt collection and bailiff services. The framework complies with the Council's Constitution (chapter 11) contract procedure rules. Any Council in the Municipal Journal can access the Rotherham framework agreement and hold a mini competition of the Enforcement Agent companies who were selected for the framework agreement.
- 6.4 The Enforcement Agent Company must hold corporate membership of the Civil Enforcement Association. This includes guidelines under which their members operate.
- 6.5 The Rotherham framework procurement process undertaken was extensive including interviews with the providers. The following 10 service providers are available through the Rotherham framework:
- Bristow and Sutor
 - Dukes Bailiffs Ltd.
 - Jacobs Certificated Bailiffs
 - Phoenix Commercial Collections
 - Equita Ltd
 - Newlyn PLC
 - Marston Holdings (Rossendale's / Swift)
 - JBW Group Ltd
 - Ross & Roberts Ltd
 - Rundle & Co Ltd
- 6.6 The evaluation process by the working group will determine if all 10 companies are selected for interview.
- 6.7 The contract will be for a 3-year period in the first instance, with an option of up to a one year extension, in accordance with the tender specification which includes satisfactory performance.

7. **Award Criteria**

- 7.1 The contract will be awarded utilising a weighted scoring system of:

Price value - 30%

- Including commission charged on debt collection, cost of executing a warrant

of arrest and details of any other fees to be charged to the Council or debtor – not including statutory costs incurred by debtor.

- Collection performance – including evidence of current and past collection performance for existing contracts.

Quality of Service (includes interview) – 70%.

The interview process will explore how the Enforcement Agent Companies differentiate between those who ‘won’t pay’ and those who ‘can’t pay’. Also, the advice and guidance they give to vulnerable persons.

- Experience, quality and expertise
- Administration – including timescales for handling cases, turnaround time for queries and amendments and transparency of information.
- Complaint handling – including those complaints upheld, procedures in place to monitor outcomes and evidence of actions taken from that process.
- Innovation
- Enforcement Agent coverage
- Software systems and access

7.2 The procurement process will be completed by February 2019, with the contract to be awarded in March 2019, with a start date of 1 April 2019