

Cabinet 19 December 2017	 TOWER HAMLETS
Report of: Tom McCourt, Strategic Director - Place	Classification: Unrestricted
Removal of Nuisance & Illegally Parked Vehicles	

Lead Member	Councillor Amina Ali, Cabinet Member for Environment
Originating Officer(s)	Michael Darby – Head of Parking & Mobility Services
Wards affected	All wards
Key Decision?	No
Community Plan Theme	Tower Hamlets Partnership

Executive Summary

The Council currently holds a three-lot contract with NSL Services Ltd for the removal of vehicles on the highway, the removal of abandoned vehicles and enforcement of parking restrictions on land managed by Tower Hamlets Homes. Permission is sought for an eight-month extension for this contract and retrospective permission to include the tendering out of parking enforcement on housing land in the new contract.

Decision 1: Extension of the current contract

The Council currently holds a three-lot contract with NSL Services Ltd for the following:

Lot 1: Nuisance Vehicles

This relates to vehicles removed under the Traffic Management Act 2004 for parking in contravention of parking restrictions. The contract is for:

- the physical removal of vehicles from the highway;
- storage at the Council's car pound at Commercial Road; and either:
- the restoration of vehicles to their owners on payment of the required outstanding charges; or
- the disposal of vehicles that are not claimed.

Lot 2: Abandoned Vehicles

This relates to vehicles removed under the Refuse Disposal (Amenity) Act 1978 for being abandoned. The contract is for:

- the physical removal of vehicles from the highway or any other land in the open air;
- storage at the Council's car pound at Commercial Road; and either:
- the restoration of vehicles to their owners on payment of the required outstanding charges; or

- the disposal of vehicles that are not claimed.

Lot 3: Parking Enforcement on Land Managed by Tower Hamlets Homes

This relates to the enforcement of parking restrictions on land managed by Tower Hamlets Homes under contract law and involves:

- issuing parking charge notices to vehicles parked contrary to the restrictions; and
- responses to representations against those parking charges.

The Council in partnership with Tower Hamlets Homes is jointly procuring a new Parking Enforcement and Vehicle Removal contract to replace the current contract. Cabinet gave approval to put this contract out to competition on 4th October 2016 but the paper did not include a request for enforcement on land managed by Tower Hamlets Homes to be procured. Retrospective permission is therefore sought to allow the tendering out of this enforcement.

Decision Requested

Permission is sought for an eight-month extension for this contract. This eight-month extension will allow sufficient time for the full tender to be advertised on OJEU and the assessment and award of the new contract for the removal of nuisance vehicles.

Decision 2: Permission to Tender for Parking Enforcement on Land Managed by Tower Hamlets Homes

The Council in partnership with Tower Hamlets Homes is jointly procuring a Parking Enforcement and Vehicle Removal contract to replace the current contract described in Decision 1 above. The new contract consists of the following:

Lot 1: Nuisance and Abandoned Vehicles

This is an amalgamation of Lots 1 and 2 of the current contract described in Decision 1 above.

Lot 2: Parking Enforcement on Land Managed by Tower Hamlets Homes

Following the amalgamation above, Lot 2 for this contract solely consists of Lot 3 of the current contract described in Decision 1 above.

It should also be noted that it is proposed to enforce on land managed by Tower Hamlets Homes under Traffic Management Orders made by LBTH. This will allow penalty notices to be pursued under the Traffic Management Act 2004 as the government's view is that enforcement on land owned by a local authority should be conducted in this manner. As a result of this view, the government has restricted access to the DVLA database and penalty notices on THH land cannot be enforced effectively. Furthermore, enforcement under the Traffic Management Act 2004 will allow the removal of vehicles from THH land.

Decision Requested

On the 19th September 2016, a Tollgate 1 was presented to The Competitions Board which gave approval to proceed to Cabinet. Cabinet gave approval to put this contract out to competition on 4th October 2016 but the paper did not include a request for Lot 2 (Parking Enforcement on Land Managed by Tower Hamlets

Homes) to be procured and omitted the associated value of £378,000 per annum. Retrospective permission is therefore sought to include this cost element and allow the tendering out of parking enforcement on housing land (i.e. Lot 2 of this contract).

Recommendations:

The Cabinet is recommended to:

1. Extend the current contract for eight months in order to allow sufficient time for the full tender to be advertised on OJEU and the assessment and award of the new contract for the removal of nuisance vehicles.
2. Give retrospective permission to include the tendering out of parking enforcement on housing land in the new contract. This is retrospective approval for Lot 2 of this contract for THH.

1. REASONS FOR THE DECISIONS

- 1.1. These proposals are being made in order to ensure that the Service's operational capabilities are in line with the Mayor's manifesto commitments, the Council's transport policies and government guidance.
- 1.2. Consistent parking enforcement operations maintain a balance between public safety, controlling the level of demand for parking, promoting more sustainable methods of travel and meeting residents and business aspirations for ease of vehicular parking.

2. ALTERNATIVE OPTIONS

- 2.1 Without these contracts in place the Service may be unable to ensure that the Mayor's and the Council's priorities are effectively delivered.

3. DETAILS OF REPORT

- 3.1. The removal and disposal of nuisance vehicles (i.e. vehicles parked in contravention of parking restrictions and abandoned vehicles) supports the Council's strategy for maintaining a cleaner, safer environment for residents and visitors and assists in supporting the cross-cutting social, economic and environmental change necessary to improve the lives of local people by protecting against vehicle exhausts fumes and noise.
- 3.2. The service is a tool for enhancing our deterrence strategy, improving safety and reducing parking stress that minimizes the impact of vehicle fumes and noise by deterring drivers from making unnecessary journeys and effectively rationing the use of scarce parking spaces.

- 3.3. Under the Traffic Management Act 2004 the Council enforces parking restrictions, part of which involves the removal of vehicles deemed to be parked dangerously or obstructively. Similarly, under the Refuse Disposal (Amenity) Act 1978 the Council has a duty to remove vehicles that are deemed to be abandoned. These removals require the supply of removal vehicles and the facilities for the owner of such vehicles to reclaim them and the facilities to dispose of vehicles that are not reclaimed.
- 3.4. The current pound has allocated 55 spaces for the removal of nuisance vehicles and 12 spaces for abandoned vehicles. A total of 2,523 removals were carried out in 2015/16. A snapshot of removals from (September 2016) indicated that of 222 removals, 47% of the vehicles were registered outside the borough. Having no removal service would further increase the non-compliance and result in the numbers of vehicles which would be classed as persistent evaders. In addition having a removal service acts as a buffer for reducing the number of vehicles with no registered keepers and as such has a direct correlation to prevention of crime and anti-social behaviour.
- 3.5. The removal service is also involved with events in the borough such as Mela, the Lovebox Festival, fireworks displays etc.
- 3.6. Tower Hamlets Homes are currently in contract with NSL to deliver parking enforcement services on all council housing land. This includes the following services that cover estate land surrounding 23,000 Council properties:
 - Enforce unauthorised parking in all estate land
 - Issue PCN's and take forward cases of non- payment through the DVLA
 - Deal with Parking appeals using the POPLA process.
 - Report and notify the Council about abandoned vehicles
 - Provide data relating to contract activities
 - Take all resident enquiries relating to Parking.
- 3.7. Although there are current enforcement difficulties caused by the Governments position on the use of contract law, the withdrawal of services on the estates has the potential to cause a significant increase in unauthorised parking given the numbers of people visiting the Borough.
- 3.8. For Council services (i.e. those currently performed by Parking & Mobility Services, the term of this contract ended on 31 May 2017 and an extension was sought and agreed until 31 August 2017.
- 3.9. As above, the Council and THH extended contracts for 3 months from 31 May 2017 to 31 August 2017. LBTH costs were 135k and THH was 96k.
- 3.10. Following discussions with Legal, and Procurement it was agreed that a new temporary contract for 2 months could be approved with the current contractor though the Record of Corporate Directors Actions (RCDA) for Tower Hamlets and THH. This approached was used as any further extension to the existing contracts would have exceeded the £164k threshold.

- 3.11. The procurement for a new contract is underway however unfortunately there were delays in progressing the contract due to difficulties with the terms and conditions from Tower Hamlets Homes and Legal Services which have led to unavoidable and unforeseeable delays. These delays have led to this course of action being taken.
- 3.12. The contract for the removal of nuisance vehicles and off-street parking enforcement will allow the Council to fulfill its obligations of removing vehicles parked in contravention of parking regulations and / or are considered abandoned and dangerous.
- 3.13. This project once successfully implemented should lead to improved recovery and deterrence.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 This report seeks two decisions to be made by Cabinet. The first is to extend the temporary contract with NSL for a further period of 8 months. The second decision sought is for the inclusion of Lot 3 as part of the joint procurement process for the new contract.
- 4.2 Cabinet on the 4th October 2016 approved the procurement for a new contract for the removal of nuisance vehicles and pound provision (CLC5135), for both Lot 1 and 2, at the value of £460,000, expiry date 31st May 2017. However, Lot 3 Parking Enforcement on Land Managed by Tower Hamlets Homes funded through the Housing Revenue Account (HRA) with a value of £378,000 per annum was omitted from the decision. The Cabinet decision agenda item '5.9 **Contracts Forward Plan - Quarter 3 (2016-2017)**' gave approval that 'all other contracts be approved to proceed to contract award after tender'.
- 4.3 The delay in the procurement process (as explained above) for the new contract has required a decision to be taken under the Record of Corporate Director Decisions. This was signed off by the Corporate Director of Place to extend the contract for a period of 3 months from the 1st June 2017 to the 31st August 2017. At a cost to the Council of up to £135,000 for Lots 1 and 2, and for Tower Hamlets Homes Lot 3 was £96,000. Subsequent action has been to put in place a new temporary contract to continue the services of NSL Services Ltd.
- 4.4 The report recommends that the contract is approved for a further period of eight months to allow sufficient time for the full tender process to be undertaken. There are sufficient budgeted resources within both the Parking budget and HRA to meet the cost of the contract.

5. LEGAL COMMENTS

- 5.1 Local authorities are responsible for managing all on-street and some off-street parking, whether directly or indirectly. This is pursuant to powers

contained in the Road Traffic Regulation Act 1984 (RTRA). The Road Traffic Act 1991 made it mandatory for London boroughs and optional for other local authorities to take on the civil enforcement of non-endorsable parking contraventions.

- 5.2 The legal framework for enforcement authorities in England is set out in the Traffic Management Act 2004 and the Council should have a clear parking policy which it is obliged to follow. The legislation referred to in this paragraph and the one above provides both the duties and the powers in respect of the Council relating to parking enforcement. The Council is also entitled to enter into contracts for the exercise of its duties in accordance with S.111 of the Local Government Act 1972.
 - 5.3 The Public Contracts Regulations 2015 and the Council's Best Value Duty in accordance with section 3 of the Local Government Act 1999 generally oblige the Council to go out to tender when seeking offers to provide services of the type described in this report.
 - 5.4 Whilst retendering a service will always be the most appropriate way to demonstrate Best Value, Regulation 72 of the Public Contracts Regulations 2015 allows the Council to extend an existing contract in scope even though the extension was not included in the original procurement. This is where a change in supplier:
 - 5.4.1 cannot be made for economic or technical reasons and
 - 5.4.2 would cause significant inconvenience or substantial duplication of costs for the Council
- This is on the proviso that the value of any such extension does not exceed 50 percent of the value of the original contract.
- 5.5 Consideration was given to the procurement of a short term interim contract. However, in the event that a new supplier won the competitive exercise there would be the requirement for the transfer of existing employees and considerable transfer of information. Therefore, a short term contract was considered uneconomic and would have exposed the delivery of this strategically important service to the Council at considerable risk.
 - 5.6 It is also notable that when including the cost of the original extension the overall value of extension is not greater than 50% of the original contract value and therefore this extension does not amount to the award of a new contract and accordingly the Council is not legally obliged to tender.
 - 5.7 The Council is also on the verge of releasing a full European advert to tender for a replacement contract so is demonstrably acting out of necessity rather than in a manner intended to subvert competition.
 - 5.8 Tower Hamlets Homes Limited manages areas of the Council's land in respect of which these services are required. However, as regards

enforcement Tower Hamlets Homes is only acting as part of the Council's overall arrangement for traffic enforcement in accordance with the legislation and whilst Tower Hamlets Homes will be a party to the contract it will be acting on behalf of the Council for the purposes of enforcement. Therefore, it is appropriate that both parts of these services are tendered together.

- 5.9 It therefore follows given the legislation referred to above that the new contract is about to be tendered in Europe.
- 5.10 The Council is subject to the public sector equalities duty under the Equalities Act 2010, which requires the Council when exercising its functions to have 'due regard' to the need to eliminate discrimination (both direct and indirect discrimination), harassment and victimisation and other conduct prohibited under the Act, and to advance equality of opportunity and foster good relations between those who share a 'protected characteristic' and those who do not share that protected characteristic. The Council should perform a proportionate equality analysis before proceeding with the actions referred to in this report.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 The Process may encourage local businesses to tender for the contract and may assist in the employment of local people from the community.
- 6.2 The parking enforcement element will assist in providing a fair and consistent parking approach to support equal access and equalities and diversity for all road users including disabled drivers in the borough.
- 6.3 The contract should not be seen from financial cost / benefit analysis only but also on the social benefits of this service, the value and support it provides to other areas of Parking Services. The cost of this service should also be taken in context of the statutory requirement on Parking Services, and the needs of the service as an integral part of the council's parking enforcement strategy for carrying out our responsibilities under the Traffic Management Act 2004, the Refuse Disposal Amenity Act 1978 and other related regulations.
- 6.4 An EQIA will be conducted as part of this procurement process to identify issues and ensure that these are addressed.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The procurement of this service will meet the needs of the Best Value implications.
- 7.2 The tender will be evaluated on the provision of quality and 'value for money', consistent with current costs obtainable in similar contracts in London. The necessity of this contract is based on the need to maintain optimum compliance.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 This contract will allow the Council to remove vehicles deemed to be parked dangerously or obstructively as well as remove vehicles that are deemed to be abandoned all of which have a direct correlation to both the prevention of crime and anti-social behaviour as well as implications on air quality.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 There is a reputational risk to the Council not fulfilling its statutory obligations under the Traffic Management Act 2004, the Refuse Disposal Amenity Act 1978 and other related regulations.
- 9.2 In addition, there is further risk of non-compliance of illegally parked vehicles on THH land in addition to the removal of nuisance vehicles on the public highway.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 Antisocial behaviour can have a lasting impact on neighbourhoods and communities as it often leads to an increase in crime, particularly violence and criminal damage. Abandoned vehicles have a direct correlation to both the prevention of crime and anti-social behaviour.

11. SAFEGUARDING IMPLICATIONS

- 11.1 N/a

Linked Reports, Appendices and Background Documents

Linked Report

- NONE.

Appendices

- NONE.

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- NONE

Officer contact details for documents:

N/A