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| REPORT TO: | CORPORATE & COMMUNITY COMMITTEE |
| DATE: | 6 TH JULY 2021 |
| SUBJECT: | CONTRACT ARRANGEMENTS - FLY TIPPING ENFORCEMENT |
| KEY DECISION: | NOT APPLICABLE |
| PORTFOLIO HOLDER: | NOT APPLICABLE - TO BE PRESENTED BY THE CHAIRMAN |
| REPORT AUTHOR: | ASSISTANT DIRECTORS |
| WARD(S) AFFECTED: | ALL |
| EXEMPT REPORT? | NO |

SUMMARY

This report provides the Committee with the background and chronology of the procurement and contract arrangements that have been put in place with a third party contractor to provide an overt surveillance capability that targets fly-tipping and littering offences in our area.

RECOMMENDATIONS

That the Committee consider the report and make any recommendations it considers necessary.

REASONS FOR RECOMMENDATIONS

The Committee has asked for this report.

OTHER OPTIONS CONSIDERED

None.

REPORT

1 INTRODUCTION

- 1.1 On 3 June 2021, the Chairman of the Corporate and Community Overview and Scrutiny Committee called an extraordinary meeting of the Committee to consider the background and chronology of the procurement and contract arrangements that have been put in place with a third party contractor to provide an overt surveillance capability that targets fly-tipping and littering offences in our area; sections 2 and 3 provide this information.

2 BACKGROUND

- 2.1 At its meeting on 21 February 2018, Cabinet approved the adoption of HM Government's Litter Strategy for England. This strategy introduced new powers for councils to issue fixed penalty notices for 'small-scale fly-tipping offences'. The Government strategy itself reported the Council's own Fly Swat Team as an example of national good practice, which secured low cost provisions for dealing effectively with fly tipping.
- 1.2 At the same meeting, Cabinet also approved an extension to the contract with the then provider of enforcement services, 3GS, to enable the Council to progress its overt surveillance capability to target fly tipping and littering offences in hot spot areas. The overt surveillance capability at that time was provided to 3GS by Optimal Risk Group Ltd. Cabinet approved the model of service delivery as a 'no cost to the Council' model.

2.0 PROCUREMENT OF THE CURRENT CONTRACT

- 2.1 Procurement advice received in November 2018 confirmed that such a nil cost pilot contract for environmental crime enforcement fell under *The Concession Contract Regulations 2016*. Concession contracts at that time had a threshold for an UE tender of £4,551,433. The current pilot contract for one-year fell very significantly under the prevailing threshold value such that there remained no requirement for formal competition.
- 2.2 Based on the advice received, in early 2019, what turned out to be a lengthy period of negotiation was commenced with Optimal Risk Group Ltd for the provision and management of such an overt surveillance enforcement service. A contract was eventually entered into in August 2020 that expires 24 August 2021.
- 2.3 As expected by Cabinet, the current pilot contract was entered into in order to assess the longer-term feasibility and effectiveness of a 'no cost', overt surveillance offer to the Council. For clarity, the Council does not 'pay' the contractor directly under this pilot, rather, the contractor retains the money it receives through its issue of Fixed Penalty Notices.

- 2.4 Post contract award, Optimal Risk Group Ltd reviewed its business model which resulted in a new company, Enfortis Ltd, being established to focus specifically on enforcement activity for local authorities. Legal advice was secured by officers regarding use of Enfortis Ltd that resulted in the novation of the contract to the company on 17 March 2021.
- 2.5 Responses to a series of questions posed by the Chairman are included at Appendix A as requested.

CONCLUSION

The current contract was originally entered into with Optimal Risk Ltd as expected by Cabinet and novated in March 2021 as set out at section 2.5.

FINANCIAL IMPLICATIONS

There are no financial implications associated with considering this report.

LEGAL IMPLICATIONS

The current Concession Contract was entered into following procurement advice and subsequently novated following legal advice.

CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

None identified in relation to this report.

EQUALITY AND SAFEGUARDING IMPLICATIONS

None identified in relation to this report.

OTHER IMPLICATIONS

None identified in relation to this report.

CONSULTATION

This report was approved for publication by the Senior Leadership Team (SLT) on 28 June 2021.

APPENDICES

Appendices are listed below and attached to the back of the report: -

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| APPENDIX A | Replies to Chairman's questions |
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BACKGROUND PAPERS

Background papers used in the production of this report are listed below: -

| Document title | Where the document can be viewed |
|---|--|
| Cabinet 21 February 2018 | www.mybostonuk.com |
| Environmental Crime Enforcement – 3GS and Associated services | |
| Minutes of the above | www.mybostonuk.com |

CHRONOLOGICAL HISTORY OF THIS REPORT

A report on this item has not been previously considered by a Council body.

REPORT APPROVAL

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| Report author: | Assistant Directors |
| Signed off by: | Senior Leadership Team |
| Approved for publication: | Councillor Jonathan Noble |

Corporate & Community Overview and Scrutiny Committee

Questions list

1. It is stated in an article in the Boston Standard dated 9th June 2021, written by Damien Holmes, that an offender's details will be held by the Council for a period of six years. Please confirm whether that statement is correct?

Our document retention policy requires the retention of data relating to the issue of a Fixed Penalty Notice for six years and for a case sent to Court for prosecution, 10 years

2. How many fines have been issued?

Enfortis have issued 568 Fixed Penalty Notices (FPN's) to 20th June 2021

3. How many people have received fines?

568

4. What is the age distribution of those who have received fines?

This information is not held.

5. How many people have refused to pay the fines?

The Council has not been informed that any recipient of a FPN has refused to pay to date.

6. How many Court cases are in progress?

No cases are currently being prepared for Court.

7. How many people who are economically disadvantaged have received fines (this category includes people on benefits or in receipt of pensions.)

This information is not held.

8. How many people have paid under protest?

This information is not held.

9. Given the size of the fines and the potential impact upon vulnerable families, what assessment has been made of the ability of disadvantaged families to pay the fines and potential impact upon the welfare of those families?

There is no up front assessment process associated with the issue of a FPN.

10. How many of the people who have received fines are first offenders?

This information is not held.

11. How many people who have received fines have a history of receiving penalties for previous offences of this nature?

This information is not held.

12. An article in the Boston Standard dated 9th June 2021, written by Damien Holmes, quotes Michelle Sacks (Joint Deputy Chief Executive – place) as reporting that fridge freezers have been left around at “recycling bring sites” (it is implied in the article that the sites in question are those at Tesco and ASDA). How many fridge freezers have been discarded at the “recycling bring sites” at ASDA and Tesco?

According to our records, since 01 January 2021, 3 x fridge / freezers have been deposited at ASDA. No fridges or freezers have been deposited at Tesco.

13. What assessment has there been made of the potential damage to the reputation of the Council by this enforcement policy to curb incorrect disposal of unwanted items?

The Council has received many complaints about the blight that fly tipping causes all over the Borough and has been regularly criticised for perceived inaction hence its arrangement with Enfortis. Fly tipping is a serious matter in the Borough to which the Council has responded to the concerns of its residents; there are always differences of opinion and whilst some may consider the approach ‘damaging’, others will consider it robust and overdue.

14. Under DEFRA’s code of practice for litter and refuse (Sept 2019) Part1A (Effective enforcement), local authorities are encouraged to seek independent quality assurance of their environmental offences enforcement processes.

Section 11 N.1 of Part 1A Effective enforcement Code of practice for litter and refuse - encourages local authorities to seek independent quality assurance of their environmental offences enforcement processes; Boston Borough Council is a member of the Lincolnshire Environmental Crime Partnership who regularly review best practice in environmental crime enforcement; the Partnership were advised of the Council’s model and supported this enforcement process.