

Report to Cabinet

15 March 2023

Subject:	Parking Enforcement Contract Exemption
Cabinet Member:	Cabinet Member for Environment Services Councillor Zahoor Ahmed
Director:	Director of Borough Economy Alice Davey Director of Finance Simone Hines
Key Decision:	Yes Affects Communities Borough Wide. Incurs more than £1m of expenditure and income generation
Contact Officer:	Procurement Manager, Fiona McLaughlin. fiona.mclaughlin@sandwell.gov.uk Assistant Director, Highways, Robin Weare. robin.weare@sandwell.gov.uk Legal Services Manager, Projects, Mark Bodley mark.bodley@sandwell.gov.uk

1 Recommendations

- 1.1 That the Director of Borough Economy be authorised to extend the contract to APCOA for a period until 30 June 2023 at a value of £994,510 to deliver Parking Enforcement Services representing an increase of £34,561 (3.6%) on the value for 2021/22 of £959,949.
- 1.2 That the Director of Borough Economy be authorised to extend the contract to APCOA for a period from 1 July 2023 until 29th February 2024 at a value of £704,613 to deliver Parking Enforcement Services, equivalent to an increase of £6.3% on the value for the equivalent period in 2022/23.
- 1.3 That the Director of Borough Economy, in consultation with the Director of Finance, be authorised to extend, in the event of process delays, the contract to APCOA for a period from 1st March 2024 until 30th June 2024 at a value of £349,644 to deliver Parking Enforcement Services.



- 1.4 That approval be given to the procurement of a new four-year parking enforcement contract with provision for two, one-year extensions to include transferring the following staff from APCOA to the Council for the future in-house delivery of these services, at an annual value of approximately £200,000 and would reduce the scope of the new contract accordingly.

Service	Staff Transfer Numbers
First Line Notice Processing Officers	2
Notice Processing Supervisor	1
Bus Lane Enforcement officer (3 days per wk)	1
TRO Officer, Surveyor	1
Representation and Appeals Officer	1
Operations Supervisor	1


- 1.5 That any necessary exemptions be made under the Council's Contract Procedure Rules, the exception that we will use is a VEAT Notice to mitigate any risk to enable the course of action referred to in 1.1, 1.2 and 1.3 above to proceed.
- 1.6 That any necessary exemptions be made to Council Policy or approved processes to enable the course of action referred to in 1.4.
- 1.7 That the Director of Law and Governance be authorised to take any necessary actions to bring the proposals referred to in 1.1 – 1.6 into effect.








2 Reasons for Recommendations

- 2.1 The efforts to properly procure new parking enforcement contract, with available internal resources and external commissions, over the last year have been unsuccessful. The scope of the contract requirements have been changing and are dependent on the balance between in-house and contract provision, the current best practice use of new technology, the adoption of new enforcement powers, confirmation of the approval of revised parking charges and the post pandemic stabilisation of parking demand. These factors were unforeseen at the outset.
- 2.2 The recommendations set out the approvals necessary to provide sufficient time to commission external subject matter expertise and capacity to develop the options and carry out potential procurement activity if required.
- 2.3 The proposed transfer of staff from APCOA to the Council comprises the five staff that have been working from the Ground Floor office for a number of years. The transfer will provide for continuity of the service with efficient staff experienced in the statutory processes and Council procedures for dealing with penalty charge appeals, operating the camera enforcement car, dealing with obstructions on the footway and surveying/drafting Traffic Regulation Orders. This would remove the potential risk of losing these staff on contract transfer with the associated impact on efficiency and income. It would also reduce the scope of the services for procurement.
- 2.4 Consideration was also given to the transfer of 15 Civil Enforcement Officers from APCOA to the Council. However, this is not recommended due to the high turnover rate of these officers. The Council must adhere to lengthy recruitment processes when staff leave. Conversely the contractor can recruit more rapidly and also has access to other contract resources in neighbouring authorities. The primary consideration is ensuring appropriately resourced enforcement activity for road safety, effective parking enforcement and mitigating the risk of impact to the income needed to operate the service.

3 How does this deliver objectives of the Corporate Plan

	People live well and age well: The effective management of Parking and Traffic contribute to safe and efficient roads for
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	local people and visitors, and to the health benefits of sustainable active travel.
	Strong resilient communities: Successful communities need access to jobs, services and facilities to enable them to remain healthy and vibrant. Appropriate parking provision and the management of traffic on the highway network are an important enabler of this.
	Quality homes in thriving neighbourhoods: Both new and existing residential developments rely on good quality access and links to shops, services and leisure facilities in order for them to be successful. Balancing the demand and supply of on street and off street parking provision facilitates this.
	A strong and inclusive economy: The provision of a high quality, well managed highway network and car parks will reduce journey times and improve journey reliability for Sandwell business who rely on it to connect to their suppliers and customers.
	A connected and accessible Sandwell: The provision of a high quality, well managed highway network and parking is vital to enable Sandwell residents to access jobs, education and services both within and beyond the Borough's boundaries.
	People live well and age well: The effective management of Parking and Traffic contribute to safe and efficient roads for local people and visitors, and to the health benefits of sustainable active travel.

4 Context and Key Issues

- 4.1 The Parking Enforcement contract was awarded to APCOA Parking (UK) Ltd for the period 1st July 2014 to 30 June 2019 with the option to extend for 12 months at a time, up to a further three years, until 30 June 2022.
- 4.2 The Council and Service Provider agreed to extend the Parking Services contract for the period 1st July 2021 to 30th June 2022 for the annual value of £959,949.
- 4.3 The value of the contract including the approved extensions is approximately £7,600,000 between July 2014 and July 2022. The programme is to have a new provider in place by May 2024, please see Procurement Timeline below for further details.



- 4.4 The efforts to properly procure new parking enforcement contract, with available internal resources and external commissions, over the last year have been unsuccessful. The scope of the contract requirements have been changing and are dependent on the balance between in-house and contract provision, the current best practice use of new technology, the adoption of new enforcement powers, confirmation of the approval of revised parking charges and the post pandemic stabilisation of parking demand. These factors were unforeseen at the outset.
- 4.5 In Summer of 2022, Cabinet approved proposals to increase parking charges, subject to public consultation over the Autumn. The final decision on parking charges could influence the scope of the services required under the parking enforcement contract if the Council can no longer afford to operate as many car parks.
- 4.6 It was also apparent that inflation would significantly increase contract rates. Contract price inflation indicated that the new tender prices would increase by around 10 to 15%. The existing contractor APCOA was asked, if requested, would they be prepared to agree an extension of their existing contract by 12 months and if so, to confirm any changes to prices
- 4.7 APCOA offered to extend the existing contract for 12 months from 1 July 2022 until 30 June 2023 through a Change Control Note and schedule, for the value of £987,113 an increase of £27,164 (3.5%) on the 2021/22 annual value of £959,949. It is estimated that retendering could £100,000 to £150,000 for the same level of service due to the inflation being experienced with new contract prices.
- 4.8 The offer from APCOA represents good value for money while a new contract is drafted and procured. The offer includes a saving compared to 2021/22 prices of £11,259 through a service adjustment that does not alter the overall nature of the contract.

4.9 **Legal and Statutory Implications**

The modification of a contract, procured pursuant to the Public Contracts Regulations 2015, is permitted in certain circumstances, as set out in Regulation 72.



Regulation 72 states that Contracts may be modified without a new procurement procedure in accordance with this Part, and Regs 72(1)(b) & (c) sets out cases in which modification is permitted.

Reg 72(1)(b) states that that Contracts may be modified without a new procurement procedure where additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement, where a change of contractor cannot be made for economic or technical reasons or would cause significant inconvenience or substantial duplication of costs for the contracting authority provided that any increase in price does not exceed 50% of the value of the original contract

Reg 72(1)(c) states that that Contracts may be modified without a new procurement procedure where all of the following conditions are fulfilled:
the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;
the modification does not alter the overall nature of the contract;
any increase in price does not exceed 50% of the value of the original contract or framework agreement.

Reg 72(1)(e) states that modifications are only permitted where the modifications, irrespective of their value, are not substantial which is defined as the modification renders the contract or the framework agreement materially different in character from the one initially concluded;
the modification introduces conditions which, had they been part of the initial procurement procedure, would have
allowed for the admission of other candidates than those initially selected,
allowed for the acceptance of a tender other than that originally accepted,
or attracted additional participants in the procurement procedure;
the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;
the modification extends the scope of the contract or framework agreement considerably; a new contractor replaces the one to which the contracting authority had initially awarded the contract in cases other than those provided for in Reg 72(1)(d)

The evaluation team, and the Procurement Services Manager have confirmed that the modification set out within this report is permitted under the Public Contracts Regulations 2015.



4.10 A detailed project plan has been prepared for the procurement and restructuring process and this is set out in Appendix A.

4.11 APCOA have now confirmed the annual increase in prices due to the revised rates for the National Living Wage (NLW) announced by Government in the Autumn Statement of November 2022. This uplift shown in the table below would apply from April 2023.

4.12 APCOA have been contacted to secure quotations for a further annual extension of contract. Further quotations have been received and are summarised as follows.

Year	Quotation	Annually	Annual Increase	
1 July 2021 to 30 Jun 2022	Original	£959,949	-	-
1 July 2022 to 30 Jun 2023	Extension 1 yr.	£987,113	£27,164	3.6 %
	NWL	£994,510	£7,397	
1 July 2023 to 30 Jun 2024	Extension 1 yr.	£1,051,819	£57,309	5.7%
1 July 2023 to 29 Feb 2024	Extension 8 mths	£704,613	Annual Equivalent	6.0%
1 Mar 2024 to 30 Jun 2024	Extension 4 mths	£349,644		

The rate of increase being experienced in other Highway contracts is in typically the range 10% to 15%.

5 Alternative Options

5.1 No suitable Frameworks have been available and there has not been a positive response to the ITT for Consultancy Services that were sent out December 2021 to January 2022.

6 Implications

Resources:	Financial Implications. The value of the contract is met from parking charges and parking enforcement fines. The restructuring and careful drafting of the new parking enforcement contract is necessary maintain the balance between income and costs for parking and traffic related services. The Project Plan in Appendix A sets out the process for the TUPE transfer of some contract staff to the Council.
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	Provision for the increased cost of a new contract has been made within the parking account
Legal and Governance:	The original contract was let in compliance with the Public Procurement Regulations 2015 and following the advice provided by Legal Services in respect of the use of Regulation 72 that permits a contract to be modified where all of the conditions have been met, then the request to extend the contract in accordance with Contract Procedure Rule 15 is warranted. Legal implications including regulations/law under which proposals are required/permitted and constitutional provisions are set out in 4.18
Risk:	The Project Plan in Appendix A and the timescales set out in the recommendations seek to mitigate the financial risks associated with the procurement of a new contractor.
Equality:	Parking enforcement and traffic related services are based on legal Traffic Regulation Orders that have been subject to statutory public consultation and separate democratic approval. These services apply equitably to all road users with concessions for blue badge holders and an extensive appeal process with exemptions and special circumstances.
Health and Wellbeing:	The enforcement of parking and traffic management mitigates safety risks for road and car park users, encourages the use of sustainable travel alternatives and reduces peak time congestion with the health benefits associated with active travel and improved air quality.
Social Value:	The enforcement of parking and traffic management services provide better access to town centres, reduced congestion, more ordered parking and facilities that support residents, business and commerce particularly in town centres
Climate Change:	The enforcement of parking and traffic management services support sustainable travel, active travel, reduced congestion, reduced carbon emissions, improved air quality and support the objectives of managing climate change.

7. Procurement Timetable

Procurement For Consultancy Services for Parking Enforcement Contract	Anticipated Date
Stage 1: Invitation to Tender	
Issue ITT	01/04/2023
Clarification Period	6th March to 17th April 2023



Submission of Tender Bids Deadline	26/04/2023
Evaluation of Tenders	w/c 29/04/2023
Notification of Intention to Award	06/05/2023
Stage 2: Contract Commencement and Signing	
Signing of Contracts	w/c 13/05/2023
Commencement of Contract	20 th May to 28 th June 2023

Procurement For New Parking Enforcement Contract	Anticipated Date
Stage 1: Invitation to Tender	
Issue ITT	11/09/2023
Clarification Period	12 th September to 20 th October 2023
Submission of Tender Bids Deadline	31 st October 2023
Evaluation of Tenders	6 th November to 24 th November 2023
Notification of Intention to Award	4 th December 2023
Mandatory 10-day Standstill Period	5 th December to 14 th December 2023
Stage 2: Contract Commencement and Signing	
Signing of Contracts	w/c 18 th December 2023
Mobilisation Period	19 th December 2023 to 18 th April 2023
Commencement of Contract	1 st May 2024
Stage 3: Contract Management	
Contract Review Meetings	Every 3 months as a minimum

8. Background Papers

Quotations from APCOA,

