

To: All Councillors

Our Ref CS/KK
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Date 19 August 2016

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Dear Councillor

I hereby give you notice to attend the following meeting:

SPECIAL COUNCIL MEETING

Date: Wednesday 31 August 2016
Time: 4.30 pm
Venue: Council Chamber, Council Offices, Williton

Please note that this meeting may be recorded. At the start of the meeting the Chairman will confirm if all or part of the meeting is being recorded.

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Therefore unless you advise otherwise, by entering the Council Chamber and speaking during Public Participation you are consenting to being recorded and to the possible use of the sound recording for access via the website or for training purposes. If you have any queries regarding this please contact Committee Services on 01984 635307.

Yours sincerely



BRUCE LANG
Proper Officer

SPECIAL MEETING

WEST SOMERSET DISTRICT COUNCIL

AGENDA

Wednesday 31 August 2016 at 4.30 pm

1. Apologies for Absence

2. Declarations of Interest

To receive and record any declarations of interest in respect of any matters included on the agenda for consideration at this meeting.

3. Public Participation

The Chairman to advise Council of any items on which members of the public have requested to speak and advise the members of the public present of the details of the Council's public participation scheme.

4. Street and Public Toilet Cleaning Retendering

To consider Report No. WSC 96/16 to be presented by Councillor M Dewdney, Lead Member for Environment – **SEE ATTACHED.**

The purpose of the report is to identify the process used to bring a compliant procurement activity to a position where a new contract to deliver street and toilet cleaning for West Somerset Council can be awarded.

The report makes reference to a **confidential** appendix and should Council wish to discuss this part of the report it will be necessary to consider excluding the press and public in accordance with Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

Report Number: WSC 96/16

West Somerset Council

Full Council – 31st August 2016

Street and Public Toilet Cleaning Retendering

This matter is the responsibility of Cllr Dewdney Lead Member for Environment

Report Author: Chris Hall – Assistant Director, Operational Delivery

1 Executive Summary / Purpose of the Report

- 1.1 This report identifies the process used to bring a compliant procurement activity to a position where a new contract to deliver street and toilet cleaning for West Somerset Council can be awarded.
- 1.2 When setting the Budget for 2016/17 in February 2016, Members approved a target budget saving of £39,000 in full year, with half of this saving – £19,500 – included in 2016/17 reflecting the expectation the new contract would be in place midway through the financial year. If Members approve the recommendations the new contract price would deliver a saving against the current cost of the service, but this would not fully meet the approved budget savings and therefore result in a budget shortfall of £3,900 in 2016/17 and £22,860 in a full year from 2017/18 onwards.

2 Recommendations

- 2.1 It is recommended that Council supports the contract award to The Landscape Group with effect from 1st December 2016.
- 2.2 It is recommended that Council approves a supplementary budget allocation from General Reserves of £3,900 in 2016/17, and supports an increase within the Medium Term Financial Plan estimates for 2017/18 of £22,860.

3 Risk Assessment

- 3.1 Taunton Deane Borough Council Members will be making a decision on the combined contract delivery on 22nd August and an update will be provided to WSC Members. As TDBC only approved the principle of a joint tender exercise there is a chance that they may not go on to approve the outsourcing of this service and choose to continue to deliver the function in-house.
- 3.2 Bidders were asked to bid with this in mind and prices were submitted for the individual Councils so that both could clearly see the cost of their service if they were going it alone and the combined benefit of a single delivery over the two areas.

- 3.3 In preparing the tender for publication great effort is taken to ensure that all aspects of the work are included in the tender but there remains and inherent risk that an element of the service is not adequately specified or is missed. To mitigate this we have used a range of officers across the One Team to pull information together, we have also used the procurement team's ability to look at other Councils' tenders and compare this with our own, and as a final mitigation we have asked bidders to provide a contract price for additional works should these be necessary.
- 3.4 Affordability – when placing a tender in the open market there is a hope of producing efficiencies against the current arrangements, however there is always a risk that bidders will not be able to improve on the current arrangements and there is a possibility of price increases. Bidders have identified that costs will increase, this will however allow us to budget for the next 8 years on a known cost.

Risk Matrix

Description	Likelihood	Impact	Overall
TDBC do not support outsourcing their function	3	4	12
<i>WSC have a price for their aspect of the service only and could award a contract on this basis</i>	3	2	6
The procurement process and award are challenged	3	4	12
<i>Depending on the nature of the challenge this may cause a delay to the contract go live</i>	2	3	6
In the event of a WSC only provision bidders may challenge the overall value of the contract	3	4	12
<i>Bidders were made aware that TDBC have not approved an outsource and that this would require a separate member decision, preferred bidder will not increase cost if only WSC contract is awarded.</i>	2	3	6
Specification does not meet the needs of the council	3	4	12
<i>Officers from across the One Team have worked on the tender and believe if fulfils our requirements as far as is reasonably practical</i>	2	3	6
The tender process returns bids that are unaffordable against the budget	3	3	9
<i>The tender bids do identify a slight increase in cost.</i>	2	3	6

4 Background and Full details of the Report

- 4.1 West Somerset Council currently have their street and toilet cleaning services in an outsource contract with Veolia. This contract has been extended a number of times and is now outside of the permitted extension schedule.
- 4.2 This means that the contract is no longer compliant with financial regulations. A report was taken to Full Council on 22nd July 2015 requesting the current extension which would complete on 30th September 2016. A subsequent Lead Member decision has extended this by a further 2 months to give officers the time necessary to answer all the

questions raised by the bidders.

- 4.3 The Member discussion on the report of 22nd July gave clear instruction to officers that a procurement of a new contract was required, additionally Environment Policy Advisory Group (EPAG) and the Lead Member gave a steer that WSC wanted to continue to deliver the contract through an outsource provider.
- 4.4 In following a procurement activity WSC are required to accept the best value bid as identified through the evaluation process. Failing to do so and select an alternative supplier or attempt to extend the existing contract further would be a breach in our financial regulations and would almost certainly lead to a challenge from the unsuccessful bidders.
- 4.5 JMASS has been successful in joining up a number of services across the two Councils and delivering a single approach to service delivery. Street and toilet cleaning were not joined up at an operational level during this process due to the differing methods of delivery. An opportunity to tender for a single service on the expiry of the current WSC and this was supported by the Lead member at WSC and TDBC.
- 4.6 On 17th September 2015 TDBC's Corporate Scrutiny Committee heard the case for a joint tender exercise. There were no recommendations to outsource the service at this time as clarity on the benefits of doing so were not known at that stage.
- 4.7 Following the Scrutiny report in TDBC and the 12 month extension in WSC a procurement activity started and a tender for a single service to cover both WSC and TDBC was published. This procurement activity was undertaken by Southwest One on behalf of both Councils. WSC committed a financial contribution to the cost of this tender exercise in the report to Full Council on 22nd July 2015, this will be due on completion of the procurement activity.
- 4.8 The contract that was put out to market covers all of the current functions with some additional support functions such as fleet and waste management.
- 4.9 There were a number of requests or decisions made by Members during the procurement activity and these have fed into the tender requirements. Examples of these being the request to make the contract accessible to our Town and Parish Councils should they wish to buy services at the tendered rate, and the decision by WSC to no longer financially support the provision of public toilets from April 2017 onwards.
- 4.10 A number of assumptions also had to be made during this time by officers supported by the Lead Member, these were predominantly operational decisions that make lines of responsibility clearer under a new contract. Examples of these being to place the responsibility for the waste transfer station and fleet requirements within the contract rather than them remaining as a WSC function.
- 4.11 During the tender exercise numerous questions were raised by potential bidders and it was clear that the original timeline could not be met without placing service deliver at risk. To mitigate this a Member decision was published during June 2016 extending the current contract deadline by a further 2 months. Bidders raised in excess of 200 questions and clarifications which had to be responded to.
- 4.12 The tender exercise led to five bids being received on 15th July and an evaluation process being conducted on 21st and 22nd July. Each bid was scored and the successful bidder has been identified through this evaluation process.

- 4.13 The current arrangements cease at the end of the contract period, now November 2016, and should not be extended further. The current service provider did submit a tender bid for the work but this has been unsuccessful following the evaluation process.

New Service

- 4.14 The question of performance standards versus costs was one debated by EPAG and Informal Cabinet. The results reported by the Lead Member were that WSC needed to identify savings and that a reduction in standard was an acceptable means of doing so. The tender required that the contractor deliver on the basis of an output specification, this means they deliver on the end result not on a specified level of input. The evidence provided within the bids suggests that there would be little or no reduction in service standards. The new contractor is also required to TUPE transfer in-scope employees from Veolia providing a further level of service consistency.
- 4.15 The output was set as compliance with the Code of Practice (COP) on Litter and Detritus, and whilst this is not primary legislation compliance with the Code will evidence our compliance with The Environmental Protection Act 1990.
- 4.16 The contractors have bid on this basis and drawn up a programme of works based around the output. It is likely that there will be some changes to the existing schedules and frequencies which is legitimate but the output will be legally compliant. We provided the bidders with as much information as we could on the current arrangements in order to limit the immediate changes and they have provided us with information regarding their approach to contract delivery.
- 4.17 The client arrangements for the contract will continue to be managed through the One Team by the Open Spaces Manager. There will be no change in the way that the public will report concerns but there will be more ownership from the contractor in terms of customer responses which will speed up the process.
- 4.18 The contract sets out the need to be able to make variations and the winning bidder's submission acknowledges this and commits to work with officers to enhance services and identify efficiencies. This gives WSC the opportunity to discuss changes and places some responsibility on the contractor to be proactive in identifying opportunities.
- 4.19 Whilst the new contract is proposed to be for the two council areas it will continue to be predominantly delivered out of the Brunel Way depot in Minehead and the current employees are subject to TUPE transfer which protects their employment terms and conditions. This also provides a level of service continuity for the residents and visitors to West Somerset.

5 The Landscape Group

- 5.1 The Landscape Group's submission scored the highest against the set criteria across the evaluation panel members on the basis of a joint service delivery. This placed them first for both the financial and quality assessments, and makes them the preferred bidder for both WSC and TDBC.
- 5.2 The Landscape Group is the current contractor delivering services to Mendip District Council, within their submission they also provided the detail of a number of other contracts they are currently delivering, evidencing their experience.
- 5.3 They are recommended to Members as the preferred bidder on the basis of their bid

being the least cost to the authority in either scenario of a standalone service or joint delivery with TDBC.

- 5.4 The bid for WSC element of the service remained the same in the event that TDBC do not support outsourcing their elements of the service, all but one other bidder increased their costs if both Councils did not buy into their services.

6 Links to Corporate Aims / Priorities

- 6.1 Street cleansing is a statutory function of the District Council, and it is performed in accordance with the Environmental Protection Act 1990. This new contract will ensure that WSC meets with the requirements of The Act.

7 Finance / Resource Implications

- 7.1 The budget for the provision of public toilets is not considered in this report as the ongoing service does not cover this. This is a change from the scrutiny report where a comparison was drawn. The new service will continue to support the cleaning of public conveniences but only up until 31st March 2017. The executive summary identifies a comparison of the new contract price against 2016/17 budgets and draws Members attention to a shortfall between current approved budget provision and the costs of the new contract.
- 7.2 When making cost comparisons all elements of cost have been considered and not just the contract price. There are costs associated with vehicle maintenance that WSC pay for outside of the contract that will be within the scope and cost of the service delivered under the new contract. This minimises risk to WSC. WSC will no longer be required to fund capital requests for vehicle replacements during the life of the contract. Whilst the Council does not specifically set aside a vehicle replacement fund it would have needed to fund the replacement of vehicles in due course, thus the new contract avoids the need for additional capital investment.
- 7.3 The financial contribution to the cost of the procurement exercise is supported by the £12,000 set aside in an earmarked reserve for this purpose.
- 7.4 The 2016/17 and draft 2017/18 budget for Street Cleaning are set out in the table below, together with the projected costs based on the new contract commencing from December 2016. The table shows that there is a projected budget shortfall in both financial years which is primarily because the budgeted savings target for the new service contract has not been met in full. However this cost comparison does not reflect the avoided vehicle replacement cost which is not included in the Council's budget provision.
- 7.5 The confidential appendix identifies the comparison of the budget versus new contract costs.
- 7.6 As summarised in the Recommendations in this report, the budget shortfall in 2016/17 is proposed to be funded by a Supplementary Estimate from General Reserves, and the shortfall in 2017/18 will be added to the MTFP budget estimates.
- 7.7 The MTFP was reported to Scrutiny Committee on 16 June 2016 and showed an estimated Budget Gap of £119,619. This gap will be increased to £142,479 when the above shortfall is added to the MTFP, increasing the requirement to make savings in other service areas. These figures do not include savings from the Transformation

Business Case being considered at Full Council on 7 September. Table of costs – See confidential appendix

- 7.8 The contract requires that an inflationary rate is paid, this rate is to be agreed annually with the client but will not exceed that of the consumer price index (CPI).
- 7.9 The driving factor in evaluating tenders was price and the assessments were made on the agreed proportion of points available for cost and quality. The contract price carried 60% of the total score with the remaining 40% being assessed against quality. It is important to remember that the assessment is between the submitted bids and not against the current arrangements.
- 7.10 Section 16 of this report sets out details of asset implications related to this service. The Council owns three vehicles that are used to deliver the service by the current contractor. The table below sets out the asset, the net asset value in the Statement of Accounts as at 31/03/2016, depreciation per annum and estimated remaining useful life in years.

Council owned street cleaning assets

Asset	Net Asset Value as at 31/03/2016 £	Depreciation per Year	Remaining Useful Life
Johnston Mechanical Sweeper RX59 FVK	0	0	0 years
Johnston Mechanical Sweeper GX61 AEO	18,667	9,333	2 years
DAF trucks Mechanical Sweeper RK15 FCD	90,000	15,000	6 years
TOTAL	108,667	24,933	

- 7.11 If the assets are sold, the capital receipt under current legislation could be used for revenue purposes. Members will be aware from the Transformation Business Case to be considered at Full Council on 7 September includes plans for funding the costs of transformation and this includes a capital income target, which the potential sale of these assets could help towards achieving.
- 7.12 Entering into the contract means the Council avoids the future cost of replacing the vehicles.

8 Legal Implications

- 8.1 The procurement activity has brought before councillors a contract that is compliant in terms of the process that has been undertaken.
- 8.2 Members should satisfy themselves that the contract is affordable over its lifetime, or that there is sufficient opportunity to vary it to meet with the changing financial picture of the Authority.
- 8.3 The contract is a legal document and gives a variety of means of measuring the performance and ensuring compliance.
- 8.4 A lease for the depot at Brunel Way is required to be offered to the new contractor, this is covered in section 16.

9 Environmental Impact Implications

- 9.1 The Environmental Protection Act 1990 sets out the standards that the district Council must adhere to. This is interpreted in the Code of Practice on Litter and Detritus and was previously measure by national indicator NI195. Although the data is no longer collated nationally the standards remain the same.
- 9.2 There are a number of ways to deliver these standards and traditionally WSC's contract has adopted a preventative style, removing the litter before it reached the intervention points. This new contract would deliver along the same lines with a preventative maintenance plan being agreed.

10 Next Steps

- 10.1 The Procurement Team have informed all bidders of their status. We are currently in the mandatory stand still period before an award can be made. During this time unsuccessful bidders have the opportunity to challenge the process.
- 10.2 Once this period has passed and Members have approved it, the contract award will be made and we will work with the Landscape Group to understand and support their implementation plan.
- 10.3 Contract go live for WSC will be 1st December 2016.

11 Safeguarding and/or Community Safety Implications

- 11.1 There are no implications identified. The proposed contractor will continue to act on reports of antisocial behaviour incidents such as fly tipping and graffiti through the delivery of the contract.

12 Equality and Diversity Implications

- 12.1 There are no implications identified.

13 Social Value Implications

- 13.1 The Council has discharged its responsibilities in terms of social value by including appropriate questions within the tender exercise.
- 13.2 The Landscape Group scored highly within this area and made specific commitments to offer 6 work placements each year and 2 apprenticeship split across the two contracts (TDBC/WSC). This commitment was on the basis of being awarded both contracts.

14 Partnership Implications

- 14.1 There are no new partnership implications as a result of the recommendations in this report. Somerset Waste Partnership continue to be the Waste Collection Authority and Somerset County Council the Waste Disposal Authority.

15 Health and Wellbeing Implications

- 15.1 There are no specific health and wellbeing implications as a result of this report. Should Members support the recommendations at Full Council then a new contract will ensure the standards of service delivery for a number of years to come.

16 Assets and Asset Management Implications

- 16.1 There are a number of assets that are owned by this Council and used in the delivery of the current contract. The tender was put to market on the basis that the contractor would supply all of the necessary assets for the delivery, this includes items such as vehicles, small equipment and materials. The advantage of this is that the contractor will only buy or lease what is absolutely necessary and the cost of this is passed to us through the contract. This cost is part of their competitive bid and gives some assurance to this Council that they are providing best value.
- 16.2 In terms of accommodation WSC are making the current depot available to the new contract on the same general terms. The lease will be updated to reflect the new contract length. Some specific amendments have been included and they cover the need for the contractor to manage the waste transfer station facility. This is currently managed through the One Team but would come at a cost in terms of licence holders. Again placing this responsibility with the contractor removes liabilities for WSC and gives total responsibility for waste management and disposal to the contractor.
- 16.3 The lease for the use of the depot will be based on a peppercorn rent. Whilst a market rent could be charged is it reasonable to assume that his cost would eventually be charged back to WSC as the client offsetting any rental income gain.
- 16.4 Where the Council owns assets that will not be required in the future we have a number of choices to consider. Throughout the bidder discussions we have drawn contractors attention to these assets and making them available for the contractor's use, either on a short term basis to maintain service continuity, or longer term to make use of an asset that the Council would otherwise need to dispose of.
- 16.5 The expectation is that should the contractor use WSC assets then they will pay a reasonable charge for doing so, either by invoice or by an auditable reduction in the contract price.
- 16.6 Should the contractor opt to take the vehicles for the substantial life of the assets WSC would establish a finance lease. This would remove the value from the balance sheet and generate a capital receipt for the Council.
- 16.7 Where the assets are not required by the contractor and there is no other reasonable Council use they will be sold, removing the value from the balance sheet and generating a capital receipt for the Council.

17 Consultation Implications

- 17.1 Over the years various discussions and negotiations have taken place with Town and Parish Councils. These have often led to small-scale changes in the scheduling or frequency of certain cleaning activities within those locations.
- 17.2 In preparation for the tender exercise a letter was sent to all Town and Parish Councils to ask for their support in identifying areas of reduction. A number of responses have been received and we will work with the successful contractor to deliver these changes.
- 17.3 The Town and Parish Councils will also be able to access the services of this contract should they wish to at their own cost.

18 Scrutiny committee comments

- 18.1 The report was considered by the Scrutiny Committee on 4 August 2016, which supported the recommendations. In reaching this resolution a number of questions were asked, seeking clarity on areas Members felt were key to understanding the new contract, as summarised below.
- 18.2 Is there a reduction in service quality as a result of the contract change? The contract is based on an output specification that meets with the relevant legislation. The overall cleanliness is not considered to be detrimentally impacted by a change in contractor however it will be for the new contractor to determine the frequency of cleaning maintenance schedules to comply with the code of practice.
- 18.3 How will Town and Parish Councils know they can utilise the services of the new contract? The Lead Member was able to confirm that he had been speaking to the Town and Parish councils and he let them know that this was available to them. Furthermore we would ask WSC Members to help spread the message about this being an option.
- 18.4 Some clarity was sought as to the nature of the contracted service. It was clarified to the Committee that the contract is a fixed price for a contracted level of service, but should Town or Parish councils wish to access and pay for further services then this would be available to them. The costs of any extras could not be discussed with the contractor until after the standstill period had passed.
- 18.5 Who set the zoning? The client officers from the One Team have provided available information on zoning, litter bin locations, and information regarding current maintenance frequencies. Zoning definitions are set in the Code of Practice.
- 18.6 Challenges were raised as to why WSC replaced the road sweepers when they did, if a new contract would be forthcoming. Confirmation was provided that the road sweepers were late in their replacement in accordance with the contract, this meant that WSC are having to pay for the vehicle maintenance which should have been at the contractor's cost, we were also suffering frequent breakdowns and loss of service as a result, and it placed the current contractor in a strong position to evidence WSC's failure to adhere to the contract at a time when we were taking a firmer stance with their contract compliance. The vehicles are capital assets held on the Council's balance sheet and are being depreciated in line with normal accounting practice and they still have a value to WSC if they need to be sold.
- 18.7 A further question was raised regarding the decision made on capital purchases versus the opportunity to hire in vehicles in the short term. It was confirmed that this was a consideration when preparing the capital bid but was determined to be a less beneficial option due to the costs of hire for short length leases, with no asset value at the end of the period.
- 18.8 The committee heard how in the event of a new council being formed we would seek a novation of the contract (an agreed transfer of the same contract into the new council name). We would not consider it appropriate to terminate the contract and there should be no need for this to take place, as such no inclusion of termination cost risk has been included.
- 18.9 Have TDBC discussed this since September? There has been no report to a Committee of TDBC since September 2015, however updates on progress have been provided to the Portfolio Holder.
- 18.10 Clarification was provided that the bid evaluation was for the combined service and

therefore TDBC have the same preferred bidder.

18.11 Several questions were raised regarding specific geographical areas of the authority and the level of service that these areas would receive, it was again confirmed that the contract is based on an output specification and not one based upon an input frequency.

18.12 When will we know about the contractor wanting the assets? Discussion on assets will be held following the standstill period and when Council approvals are in place.

Democratic Path:

- **Scrutiny – Yes**
- **Cabinet – No**
- **Full Council – Yes**

Reporting Frequency : Once only

List of Appendices (delete if not applicable)

Appendix 1	Key Performance Indicators (KPI's)
Appendix 2	Confidential appendix – table of costs

Contact Officers

Name	Chris Hall	Name	
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Risk Scoring Matrix

Likelihood	5	Almost Certain	Low (5)	Medium (10)	High (15)	Very High (20)	Very High (25)
	4	Likely	Low (4)	Medium (8)	Medium (12)	High (16)	Very High (20)
	3	Possible	Low (3)	Low (6)	Medium (9)	Medium (12)	High (15)
	2	Unlikely	Low (2)	Low (4)	Low (6)	Medium (8)	Medium (10)
	1	Rare	Low (1)	Low (2)	Low (3)	Low (4)	Low (5)
			1	2	3	4	5
			Negligible	Minor	Moderate	Major	Catastrophic
			Impact				

Likelihood of risk occurring	Indicator	Description (chance of occurrence)
1. Very Unlikely	May occur in exceptional circumstances	< 10%
2. Slight	Is unlikely to, but could occur at some time	10 – 25%
3. Feasible	Fairly likely to occur at same time	25 – 50%
4. Likely	Likely to occur within the next 1-2 years, or occurs occasionally	50 – 75%
5. Very Likely	Regular occurrence (daily / weekly / monthly)	> 75%

Appendix 1 PROPOSED OPERATIONAL KEY INDICATORS - STREET CLEANSING Operational (Reported to Operational Group)

No	Description	Criteria	Accounting Frequency	Acceptable Performance
1	Completion of Non-Programmed work to standard and timeframe (C2.7) (C2.8)	% of works completed within agreed timeframe	Quarterly	100% of work completed within timeframe.
2	Leaf fall (C15)	Additional Cleansing effected and completed within specified timeframe	At end of season.	No more than 2 weeks delay in completion of Cleansing Programme
3	Toilets (C12/C13)	Availability and fitness for use	Weekly	100%
4	Removed			
5	Fly tipping (C17)	Clearance within 3 working days	Quarterly	95%
6	Complaints	% valid but not satisfactorily resolved within agreed time period	Monthly	0 not resolved within agreed timeframe
7	Monthly Statement (B10)	Production of monthly statement to defined standard	Monthly	Invoice for all work within 1 calendar month – 100%
8	Removal of Graffiti (C12)	Removed (a) within 24hrs if offensive etc (b) within 48hrs (other)	Monthly	(a) 100% (b) 98 %
9	Litter bins (C20)	Availability for use i.e. not overflowing	Monthly	98%
10	Shopping trolleys (C22)	Number of shopping trolleys reported to supermarket/removed by contractor	Monthly	All trolleys not collected after 14 days to be collected within 5 working days.
11	Dead Animals (C16)	Number of animals collected/number of pets returned to owner	Quarterly	Availability of current and accurate register.
12	Community Support / Special events (C40) Support for SME's	Level and form of assistance given	Annually	Evidence of contribution to be reported.
13	Service Response Times (C7.2)	(a) urgent matters 2 working days (b) non urgent matters 5 working days	Monthly	(a) 100% (b) 90%