

	<p>Environment Committee</p> <p>4 June 2019</p>
<p>Title</p>	<p>Advertising Contract Renewal – Reprovision of the existing Bus Shelter Assets</p>
<p>Report of</p>	<p>Chairman of the Environment Committee</p>
<p>Wards</p>	<p>All</p>
<p>Status</p>	<p>Public (with separate exempt report)</p>
<p>Urgent</p>	<p>No</p>
<p>Key</p>	<p>No</p>
<p>Enclosures</p>	<p>Appendix 1 – Equalities Impact Assessment</p>
<p>Officer Contact Details</p>	<p>Jamie Cooke, Assistant Director Transport and Highways, Jamie.cooke@barnet.gov.uk, 0208 359 2275</p> <p>Paul Bragg Head of Network Infrastructure, paul.bragg@barnet.gov.uk, 0208 359 7305</p>

Summary

This report identifies the outcome of the tender for the re-provision of the Bus Shelter and Free-Standing advertising in Town Centres. The report seeks to obtain a decision on the options that have been presented and in particular to agree on the number of bus shelters to be re-provided under the new contract.

Officers Recommendations

1. That Committee agrees the preferred option to replace all existing bus shelters and for these to be supplied, installed and maintained under a new advertising contract with the preferred bidder.

2. That Committee agrees that the Executive Director for Environment is authorised to conclude the contract with the preferred bidder.

1. WHY THIS REPORT IS NEEDED

- 1.1 JC Decaux have, since 1991/2, held the street advertising contract for the London Borough of Barnet. The contract, generally, provides for installation, advertising, management and maintenance of a variety of different sizes and types of advertising panels on standalone panels, columns and bus shelters throughout the Borough.
- 1.2 The existing contract which is provided by JC Decaux (JCD), is due to end on 27th October 2019. In accordance with the requirements of the contract, the authority has served notice to terminate the contract, on expiry, to JC Decaux.
- 1.3 In order to ensure that the existing provision continues, a competitive market competition has been conducted as agreed at Environment Committee in September 2018.
- 1.4 In addition, at the September Environment Committee it was agreed that a further report would be presented to this Committee once the bids had been received and evaluated and to review and decide on the options presented and in particular to determine the number of Bus Shelters to be re-provided.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The existing contract includes the provision of the following Advertising Assets:
 - 88 Bus Shelters incorporating adverts and 35 without adverts
 - 52 Free Standing Units (FSU) 6 sheet panels
 - 9 Decorative Columns (FSU) with 6 sheet panels
- 2.2 The current contract identifies that all assets included in the contract are owned by JC Decaux and that JC Decaux are required to remove them, within six months of the expiry of the contract, including making good and fully reinstating pavement areas they have been installed in.
- 2.3 This therefore means that all existing Bus Shelters will be removed and will no longer be available for use within a period of six months from the end of October 2019.
- 2.4 In respect to the existing Bus Shelters provision it is recognised that the existing provider has been unable to continue to provide advertising on each of these assets throughout the current contract term and as such the cost of continuing to provide all 123 shelters was likely to be detrimental to the income that could be generated if there was no rationalisation of the number of bus shelters to be re-provided in a new contract. The soft market testing conducted prior to

tendering also indicated that the bus shelter estate was too large in the borough to be fully utilised for advertising.

2.5 With this in mind, the new contract specification has requested that bidders provide a number of options as follows:

- The continued re-provision of all 123 existing bus shelters (with or without advertising)
- The re-provision of a reduced number of 90 Bus Shelters (to align approximately with the current number that include advertising)
- The re-provision of a significantly reduced number of 60 Bus Shelters (to align with the number that was indicated during soft market testing as providing the best balance between retained provision and income return)
- Variants that would entail the re-provision of the bidders chosen number of Bus Shelters that would provide the best commercial return for both the bidder and the Council.

2.6 The tenders have been returned and evaluated and it is now necessary to take a decision on the preferred option to be implemented.

2.7 There have been two bids received with one bidder offering a bid for all of the specified options and also providing a number of variant bids for the Council to consider. The other bidder has only provided one option which is not fully in accordance with the specification of requirements and as such has been considered as a variant bid.

2.8 Based on the range of options that have been evaluated, it is clear that the Council has the opportunity to opt for an option that maximises income or an option that maximises the re-provision of bus shelters. The specification option identified to slightly reduce bus shelters to 90 units does not provide the middle ground balance of shelters and income that may have been expected, especially when compared against the option to re-provide all of the shelters.

2.9 A full breakdown of the options including the bids received against these options and the recommended option is identified in the exempt paper.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

Do Nothing

- 3.1 This option is not appropriate as the existing Bus Shelter provision will be removed following expiry of the existing contract later this year and the loss of this amenity would be very unpopular and could disproportionately impact the elderly and disabled and other potentially vulnerable groups.

Maximising Income Option

- 3.2 Choosing an alternative option that maximises income for the Council. This would involve reducing the Bus Shelter provision from the current 123 shelters to 60 shelters, in order to achieve an additional £80,000 per annum of income.

Continue existing Contract with an Extension

- 3.3 An extension provision was not accommodated within the existing contract and therefore could only be considered if agreed by both parties. However, this would not provide the best use of Council Assets and would not be maximising the benefits that can be derived from a new arrangement as has been demonstrated from the competitive tender exercise.

4. POST DECISION IMPLEMENTATION

- 4.1 Once the preferred option has been established by the Committee's decision officers will immediately commence the actions required to award the new contract to the preferred bidder and to commence discussions to confirm the preferred option.
- 4.2 Following agreement of the preferred option commence with planning the decommissioning of existing and the mobilisation of the installation of the new assets.
- 4.3 As the existing contract does not expire until 27 October 2019 it is anticipated that the timescale for achieving the transition between the existing and new contract with all existing assets removed and all new assets commissioned and installed will be approximately 6 months from the expiry of the existing contract.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The Council wants to create successful places, achieve great outcomes, deliver quality services and develop resilient communities. However, it faces an increasingly difficult financial challenge, with funding decreasing, demand increasing and uncertainty about how services will be funded in the future.
- 5.1.2 To ensure the council has a plan that reflects local priorities, as well as a financial strategy that will support a financially sustainable position, the development of the proposed Corporate Plan and MTFS have been aligned to cover the next five years (2019/20 to 2023/24). This will help to ensure we

have a medium-term plan setting out how we will allocate our limited resources in line with what we want to achieve for the borough.

- 5.1.3 To support delivery of the outcomes in the proposed Corporate Plan, Barnet 2024, each Theme Committee is responsible for delivering any corporate priorities that fall within its remit, as well as any additional priorities that relate to matters the Committee is responsible for under its Terms of Reference. These priorities inform an annual Theme Committee delivery plan which will set out the key activities, performance indicators/targets, and risks in relation to the corporate and committee priorities. The award of a new advertising contract is included as one of the projects within the Theme Committee's delivery plan which will assist in delivering savings/income over the next 5-year period.
- 5.1.4 The scale of the ongoing financial challenges means the way we deliver our services will need to change and there will be some difficult choices to make to ensure that savings are achieved, but not at the expense of delivering quality services and protecting our most vulnerable residents.
- 5.1.5 This Project supports the council's corporate priorities as expressed through the Proposed Corporate Plan for 2019-24 which sets out the vision and strategy for the next five years based on the core principles of fairness, responsibility and opportunity, to make sure Barnet is:
- A pleasant, well maintained borough that we protect and invest in
 - Our residents live happy, healthy, independent lives with the most vulnerable protected
 - Safe and strong communities where people get along well

5.2 **Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

- 5.2.1 The costs related to the removal of the existing Assets (Bus Shelters and Free- Standing Units) will be borne in full by the incumbent contractor, in accordance with the current contracts terms and conditions. This includes the reinstatement of the public highway.
- 5.2.2 The bids received includes that all costs incurred in obtaining necessary permissions, supplying, installing and maintaining the new Bus Shelter and Free-Standing assets will be borne by the Contractor. This includes the risk related to dealing with accident and vandalism damage through the contract period. Therefore, the sustainability of the new assets is fully covered by these provisions contained within the new contract.
- 5.2.3 This means that the Council will not incur any costs associated with the removal and re-provision of the Bus Shelter and Free-Standing Advertising units and will receive an annual income as indicated in the Exempt report.
- 5.2.4 The council will achieve Value for Money having conducted a competitive market competition and fully evaluated the options proposed and following

agreement that the recommended option provides the most advantageous solution for the Council.

5.2.5 There are no staffing, IT or Property implications of this decision.

5.3 **Social Value**

5.3.1 The Bus Shelter and Free-Standing Adverts will provide the opportunity for the Council to utilise the space for displaying Council messages, including identifying and encouraging attendance/participation at Council meetings and Consultations.

5.4 **Legal and Constitutional References**

5.4.1 Council Constitution, Article 7 – the terms of reference of the Environment Committee include: Responsibility for all borough wide or cross-constituency matters relating to the street scene including, parking, road safety, lighting, street cleaning, transport, waste, highways, refuse, recycling, allotments, parks, trees, crematoria and mortuary, trading standards and Environmental Health.

5.4.2 In the previous report approved by the Environment Committee in September 2018, it was agreed that the outcome of the tender process would be reported to this Committee and in particular to enable Committee to decide on the options in respect to Bus Shelter re-provision.

5.4.3 Part VIIA (in particular section 115B (1) (b) (ii)) of the Highways Act 1980 (“the Act”), the Council has the power to place objects or structures on, in or over certain types of highway for the purpose of enhancing the amenity of the highway and its immediate surroundings or of providing a service for the benefit of the public or a section of the public and this is the primary motivation for the decision to use its powers under this section to provide bus shelters and advertising. The council is also able to grant permission to another person to do so under Section 115E of the Act.

5.4.4 Under s.115B and s. 115E of the Act if the Council proposes to place an object on a highway for a purpose which will result in the production of income and intends to grant a third-party permission to do this, it must first obtain the consent of the frontage with an interest, assuming that these exist. This consent must cover the placing of the object, the purpose of which it is placed and the proposed grant of permission.

5.4.3 Section 115E of the Highway Act 1980 permits the Council to grant permission to use existing objects or structures on, in or over a highway covered by this Part of the Act, for the purpose of advertising and for a purpose which will result in the production of income.

5.4.4 In accordance with s. 115F of the Act, the Council may grant permission on such conditions as it sees fit, including conditions requiring the payment of reasonable charges. As the Council is the owner of the subsoil of the proposed sites, there is no statutory restriction on the amount of the

reasonable charge. The conditions can include an indemnity against any claim in respect of injury, damage or loss arising out of the granting of the permission, but this would not extend to matters where they are attributable to the negligence of the Council.

- 5.4.5 Under s. 115G, before granting permission under s. 115E the council must first publish a notice giving details of the proposal and a period of time to make representations. Any representations made must be considered prior to the granting of permissions.
- 5.4.6 Prior to granting permission, the Council must consult any authority other than themselves who are the highway authority for the highway (s. 115H (1) (b) (i)). This means that should the Council propose to grant a permission related to land where they are not the highway authority, such as land that is maintained by Transport for London, its consent will need to be obtained before any permission may be granted. Such consent must not be unreasonably withheld but may be given subject to any reasonable conditions, including a specified time period or payment of a fee to the relevant highway authority.
- 5.4.7 The procurement was conducted as a land deal outside of the Public Procurement Regulations 2015 (PCR) under Regulation 10 of the PCR as the arrangement is for the acquisition or rental, by financial means, of land, or other immovable property, and which concerns interests in and rights over them. However, the procurement process has been conducted transparently, fairly and in a non-discriminatory and proportionate way.

5.5 Risk Management

- 5.5.1 There is a risk that reducing the number of Bus Shelters would be very unpopular with those individuals who utilise this amenity on a regular basis and could disproportionately impact the elderly and disabled and other potentially vulnerable groups. By agreeing the proposed recommendation this important amenity will be retained fully and as such this risk will be fully mitigated.
- 5.5.2 The risks in the maintenance of the new assets will be fully accommodated by the new provider, including where assets are damaged/vandalised and need to be urgently rectified to safeguard the public highway for all highway users.
- 5.5.3 There is a risk that there will be an adverse impact in mobilising the new contract as the new assets can only be installed once the existing assets have been removed. As the existing contract allows a period of six months for existing equipment to be removed this impact could be for an undesirable extended period. To mitigate this risk, it will be necessary for the de-commissioning and mobilisation to be co-ordinated by all parties involved in carrying out these tasks. The Council will assign a Project Manager to assist in ensuring co-operation and co-ordination by those involved.

5.6 Equalities and Diversity

5.6.1 The Equality Act 2010 requires all Public bodies and all other organisations exercising public functions on its behalf to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; advance equality of opportunity between those with a protected characteristic and those without; promote good relations between those with a protected characteristic and those without. The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation. It also covers marriage and civil partnership with regard to eliminating discrimination.

5.6.2 An Equalities Impact Assessment has been undertaken and this has indicated a detrimental impact on some of the protected characteristics (age, disability, and pregnancy and maternity) should the recommended option not be approved. This relates to the loss of seating and shelter should any existing shelters not be re-provided. The EIA is attached at Appendix 1.

5.7 Corporate Parenting

5.7.1 Not applicable in the context of this report.

5.8 Consultation and Engagement

5.8.1 This report is focussed on whether to fully re-provide an existing provision or to opt for an alternative option which would reduce the current amenity provided on the public highway. Where it is proposed to opt for a significant change it would be appropriate to conduct a consultation exercise to seek views prior to taking any decision. However, should the recommended option be approved the existing provisions would be retained and therefore a consultation exercise would not be required.

5.8.2 It will be necessary to seek necessary approvals and consents to place the proposed assets on the highway and this will include obtaining planning approvals, highway approvals, and engaging with frontages that may be impacted by these proposals.

5.9 Insight

5.9.1 The Council has sought to consider a range of options and as part of this process to re-procure the Bus Shelter and Free-Standing Advert provision has carried out Soft Market testing, considered and produced an Equalities Impact Assessment and has been provided with support from a specialist advertising consultant.

6. BACKGROUND PAPERS

- 6.1 The existing Contract, which is contained within various agreements and supplemental agreements made and added to since 1991.
- 6.2 The Council, through HBPL, has issued a termination notice to the incumbent service provider, in accordance with the requirements of the Contract.
- 6.3 The contract specification, tenders returned by the two bidders and the evaluation of these tenders.