

Decision Maker: **Executive**

For Pre-Decision Scrutiny by Environment PDS Committee on:

Date: **24 November 2015**

Decision Type: Non-Urgent Executive Non-Key

Title: **STREET ADVERTISING SITE CONTRACT GATE REPORT**

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Chief Officer: Nigel Davies, Executive Director of Environment & Community Services

Wards: Borough-wide

1. Reason for report

Two advertising contracts, both of which generate income for the Council, will expire in July 2016. One contract concerns advertising at bus stops and the Council has been notified by Transport for London (TfL) that it will not involve the Council in any future contractual arrangements. The second contract, with Clear Channel, concerns free-standing poster sites and it is the Council's intention to tender this activity as a concession contract. The anticipated contract value (if let for another fifteen year term) is approximately £1.3m and, in accordance with the Council's Contract Procedure Rules, the Executive's approval is sought.

2. **RECOMMENDATIONS**

That the Executive:

- 2.1 **agrees the proposed tender activity in respect of the existing (free-standing) advertising sites, so the new arrangements can commence on expiry of the current contract**
- 2.2 **agrees that officers separately tender a contract to identify and develop additional new income generating advertising options / sites**
- 2.3 **notes TfL's position regarding expiry of the bus shelter advertising contract and supports the officers in seeking Counsel's opinion in challenging TfL's position.**

Corporate Policy

1. Policy Status: Existing Policy: Carbon Management Programme
 2. BBB Priority: Excellent Council:
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Financial

1. Cost of proposal: Estimated Income: £1.3m
 2. Ongoing costs: Potential income of £89k p.a
 3. Budget head/performance centre: Traffic / Street Lighting
 4. Total current budget for this head: £179k
 5. Source of funding: Contract income within the existing revenue budget for 2015/16
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Staff

1. Number of staff (current and additional):
 2. If from existing staff resources, number of staff hours: 0.1fte
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Legal

1. Legal Requirement: None:
 2. Call-in: Applicable:
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected)
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments:

3. COMMENTARY

Background

- 3.1 The Council has two main income generating contracts in place whereby an advertising provider pays the Council a fee based on the number of sites.
- 3.2 In 2001, the Council entered into two 15-year contracts with the More Group, both of which expire in July 2016.
- 3.3 The first of these is a tri-partite agreement with the third party being London Buses. This authorised More Group (which became Adshel and is now Clear Channel) to sell advertising on bus shelters. The Council received income from both Transport for London (London Buses) and Clear Channel in respect of this contract, with the payment based on the number of bus shelters having advertising. This sum has increased over time with inflation and in 2014/15, the Council received approximately £88k. The Council has been given notice by TfL of its intention to terminate this contract on expiry. The Council has since learnt that TfL has let an advertising contract, including advertising on bus shelters, to JC Decaux and this arrangement excludes the Council. Therefore the Council will no longer receive an income from this contract. TfL has been asked to explain its position and they have cited legal advice indicating they do not require the Council's consent as the Highway Authority as they can exercise similar powers regarding bus shelters through their Transport Authority status. The Council is seeking legal advice concerning this, which has delayed re-letting these contracts.
- 3.4 The second contract is exclusively between the LB Bromley and Clear Channel, with payments received by the Council in respect of advertising on free standing units, with payment based on the numbers of units. In 2014/15, the Council received some £89k in total (based on 23 units). Examples may be seen in Bromley High Street with some units subsequently installed on lamp columns in Sevenoaks Way. Clear Channel has advised that the lamp column advertising will not be able to continue indefinitely as the units were prototypes and replacement parts are no longer manufactured. Clear Channel has also indicated that there may be alternative solutions which could be considered on a longer term basis.
- 3.5 Proposal Summary
- Two contracts are proposed:
- re-tendering the 'free-standing' advertising contract and
 - developing new advertising opportunities
- 3.6 Free-standing advertising contract: An initial 10 year agreement with an option to extend for 5 additional years would give the same contract length as the existing contracts. A new long-term contract would also encourage the successful contractor to invest in state of the art technology in the knowledge that returns could be generated over time, with digital display advertising both becoming more popular and commercially lucrative.
- 3.7 The income associated with the new free-standing site contract may differ from the current income – depending on the value of the tenders. It also should be noted that this value may be reduced in the first year if a new contractor is awarded the contract, given the time needed to replace infrastructure – reducing 2016/17 income. Similarly, income would be reduced by approximately half if the lamp column mounted advertising ceases. Equally, additional sites may be identified later in the contract term, which would increase the contract's total value. This uncertainty will be reflected in the 2016/17 draft budget.

- 3.8 New advertising opportunities contract: A five agreement with an option to extend for five years to identify and implement new sites not covered by the free-standing contract. In practice this could involve an individual, advertising agency, or company identifying new opportunities and bringing them to fruition.

4. POLICY IMPLICATIONS

- 4.1 This report accords with the Building a Better Bromley's 'Excellent Council' ambition in relation to 'scrutinising everything we do and how we do it to provide efficient services' and 'continue a financial strategy that focuses on stewardship and sustainability
- 4.2 The advertising supplier would be expected to ensure that all advertising complied with guidelines laid down by the Advertising Standards Authority and the Council's own guidelines.

5. FINANCIAL IMPLICATIONS

- 5.1 The Council's two main existing advertising income contracts will expire in July 2016.
- 5.2 It is unlikely that the TfL Bus Shelter contract will be renewed on expiry as TfL has given formal notice, subject to the outcome of legal advice. This will result in a loss of income of £65k in 2016/17 and £90k from 2017/18 thereafter. Officers are currently in the process of identifying savings to offset this potential shortfall of income in future years, in order to balance the budget.
- 5.3 This report recommends that the existing free-standing site contract will be retendered for a further 15 year term. The current income associated with this contract is £89k p.a. creating a total estimated contract value of £1.3m based on current activity and numbers of existing sites.
- 5.4 The report also recommends that a second contract is tendered to identify and develop additional income generating opportunities from new advertising options /sites. At this moment in time it is not possible to quantify what, if any additional income might result from this tendering exercise. The results of this procurement will be reported back to Members in 2016.

6. LEGAL IMPLICATIONS

- 6.1 Transport for London has notified the Council in writing the current Bus Shelter advertising contract will terminate on expiry. The Council is considering its options, including obtaining Counsel's opinion on this issue.
- 6.2 Consideration is also being given to the permissions required in respect of bus shelter advertising, including the Council's Highway Authority role
- 6.3 Advertising in an 'outside' public place requires planning consent and it will be the responsibility of the advertising provider to secure planning permission and any variations which may be required and ensure public safety in terms of the infrastructure.

7. PROCUREMENT IMPLICATIONS

- 7.1 Procurement's advice has been sought in respect of the most suitable tendering arrangements and this is set out in Contracting Proposals and Procurement Strategy section below.
- 7.2 The procurement process has been made more complex due to the uncertainty caused by TfL's decision to terminate the bus shelter contract on expiry and the Council's need to consider its options and take advice on the legality and consequences of TfL's position.

8. STAKEHOLDER CONSULTATIONS

- 8.1 Stakeholder consultation has not been considered necessary since there is no change on the current arrangements. In the event of additional advertising sites being identified, which require planning consent, then the public's views would be sought at that stage.

9. MARKET CONSIDERATIONS

- 9.1 Traditionally, advertising companies have been interested in sites where there is high footfall, with main roads, High Streets and transport interchanges being typical examples. Some companies also look for a 'high quality' environment. In more recent years, other smaller advertising companies have entered the market and have sought to sell advertising in more unusual places, including private forecourts and motorway service stations and other areas where there is a recognised footfall. This has presented opportunities for some other property or vehicle fleet owners.
- 9.2 There are a limited number of companies active in this sector and officers have identified a number of potential tenderers.
- 9.3 Any new contract should seek to encourage suppliers to work to maximise potential advertising revenue, by working with the Council to develop new advertising sites, utilising digital format where possible, whilst also allowing the Council to continue to use the channels to promote its own services where possible.
- 9.4 The free-standing contract is likely to attract tenders – including Clear Channel which the Council has a good working relationship – because it's an established market with already identified sites in place.
- 9.5 It's less clear how the new advertising opportunities contract tenders will be structured (because this is a non-mainstream market) and it is not clear how many suppliers may be interested.

10. OUTLINE CONTRACTING PROPOSALS & PROCUREMENT STRATEGY

- 10.1 It is proposed that both contracts will be tendered as a 'concession contract'. A concession contract is an agreement whereby a supplier has rights to exploit works or services, advertising in this case, benefitting both the contracting authority and the supplier.
- 10.2 The EU regulations on awarding concession contracts are anticipated to change, with new regulations to come into effect by April 2016. Given the timescales involved, it is the Council's intention to tender in conformity with the 2006 regulations. The general provisions of the 2006 regulations will be reflected in the 2016 regulations and are also part of the Council's own procurement rules.
- 10.3 Both contracts will be tendered to ensure the Council receives best value from any new arrangement and will be evaluated in line with the Council's Contract Procedure Rules and in particular a 60/40 price/quality split to allow the sites to ensure that sites are well maintained and complement the StreetScene.

11. SUSTAINABILITY / IMPACT ASSESSMENTS

- 11.1 This decision has been judged to have no or a very small impact on local people and communities. In the event of an advertising proposal requiring Planning consent, then these issues would be addressed, as appropriate, as part of that process.

Non-Applicable Sections:	Personnel Implications Customer Profile Service Profile / Data Analysis
Background Documents: (Access via Contact Officer)	