

Report No.

London Borough of Bromley

PART 1 - PUBLIC

Decision Maker: Executive
Following Pre-Decision Scrutiny by ECS PDS 25th January 2023

Date: 8th February 2023

Decision Type: Non-Urgent Executive Key

Title: JCDecaux Contract Extension

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Chief Officer: Director of Environment and Public Protection

Ward: All

1. REASON FOR REPORT

- 1.1 This report sets out the details of the Council's current contract with JCDecaux to install digital information screens in the borough, subject to Planning Approval.
 - 1.2 A proposal is presented to activate the contract's clause to extend the contract with JCDecaux by a further five years and seek a Variation Change Control to reflect the location and volume of digital information screens being proposed by JCDecaux, which the Executive is then asked to approve.
 - 1.3 Financially sensitive information relating to the existing contract and proposed contract extension is set out in the corresponding Part 2 Report.
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2. RECOMMENDATION(S)

- 2.1 ECS PDS Members are requested to note and provide comment on the proposal to:

extend the existing concession contract with JCDecaux by five years through the extension clause set out in the original contract, with revised contract values set out in the corresponding Part 2 report.

seek a Variation Change Control to the existing concession contract with JCDecaux to reflect the location and volume of digital information screens being proposed in the borough, which are all subject to Planning Approval

2.2 The Executive is requested to agree in principle to:

An extension to the existing concession contract with JCDecaux by five years to 2032 through the extension clause set out in the original contract, with revised contract values set out in the corresponding Part 2 report.

A Variation Change Control for a Change Notice to the existing concession reflect the location and volume of digital information screen locations being proposed in the borough, subject to each location receiving Planning Approval.

Impact on Vulnerable Adults and Children

1. Summary of Impact: Digital information screens are used by the Council to provide useful information to residents, including to vulnerable adults and children where appropriate, for instance through fostering campaigns that are displayed on the screens. If further screen locations as expected if this report is agreed, then such messaging would have a wider audience.

Transformation Policy

1. Policy Status: Existing Policy
2. Making Bromley Even Better Priority
 - (3) For people to make their homes in Bromley and for business, enterprise and the third sector to prosper.
 - (5) To manage our resources well, providing value for money, and efficient and effective services for Bromley's residents.

Financial

1. Cost of proposal: Estimated income set out in Part 2 Report:
2. Ongoing costs: Recurring Cost
3. Budget head/performance centre: Advertising income
4. Total current budget for this head: £ Cr £36k
5. Source of funding: Existing revenue budget 2022/23

Personnel

1. Number of staff (current and additional): 0.2 FTE
2. If from existing staff resources, number of staff hours:

Legal

1. Legal Requirement: Non-Statutory - Government Guidance
2. Call-in: Applicable:

Procurement

1. Summary of Procurement Implications: See corresponding Part 2 Report.

Property

1. Summary of Property Implications:
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Carbon Reduction and Social Value

1. Summary of Carbon Reduction/Sustainability Implications:
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Customer Impact

1. Estimated number of users or customers (current and projected): Boroughwide, particularly focussed on those who visit, work or live within the borough's town centre, notably Bromley and Orpington Town Centre.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes
2. Summary of Ward Councillors comments:

Ward Councillors for town centre locations were asked for comment on the proposals.

Ward Councillors for West Wickham noted no objections to new screens on Bromley owned roads but highlighted that the main high street in West Wickham is a TFL road.

A Ward Councillor for Petts Wood and Knoll commented that new screen locations should be in keeping with local neighbourhoods.

A Ward Councillor for Beckenham and Copers Cope expressed concern of potential 'clutter' and siting of new sites but accepted that these concerns could likely be dealt with as part of the Planning process. Environmental concerns about energy consumption and light pollution for new screens were also expressed.

3. COMMENTARY

3.1 Existing Contract

In 2017, following a tender process the Council awarded a Concession Contract to JCDecaux to allow them to install digital information screens across the borough, subject to all locations receiving Planning Approval. The contract is for ten years, with a clause included to allow a possible extension by five years, to be sought if both parties assess that the contract is performing well. The initial tender proposal from JCDecaux was to install 20 digital screens in the borough under the contract, but the contract does not limit the number of screens that can be installed, subject to Planning Approval.

The digital screens installed under this contract are required to be to an agreed specification and size. There is also an agreement in this contract that the Council receive 10% of the display time on any screens installed, a highly valuable communications tool for the Council, as well as an agreed per-screen advertising income.

Since 2018, nine screen locations have been installed across the borough, each with a double-sided screen. Seven of these sites are in Bromley High Street between Bromley South Train Station and the Glades, and two are in Orpington High Street. The disruption caused by COVID-19 has curtailed the installation of further screen locations.

This contract is operating successfully, as the installed screens provide a powerful communications tool for the Council's messaging direct to residents and visitors to the borough, as well as a reliable income stream. JCDecaux are also performing well in terms of maintaining their equipment and the appearance of the screens, which contributes to the attractive street scene in town centre locations.

3.2 Contract Extension

While the existing screens have operated well in Bromley, it was always envisaged that JCDecaux would seek to install more screen locations during the current ten-year contract than have been installed to date. However, because of the COVID-19 pandemic which heavily curtailed high street pedestrian footfall for an extended period, these plans have not come to fruition. As time has progressed, the remaining contract period expiring in 2027 is not sufficiently long for JCDecaux to generate the required returns to make the installation of new screens viable and as such, they are unlikely to seek to install more screens without an extended contract.

The five-year extension to 2032 that is being proposed gives sufficient time for JCDecaux to viably bring forward the further significant investment of new screen locations in the borough. The current proposal would bring the number of screens up to the 20 initially envisaged under the contract, but there remains the possibility of more being installed if this is viable. The benefit to the Council from this prospect of additional screens is more town centre screen locations to display Council messages for residents and visitors and the additional per-screen revenue that would be generated, both for the remainder of the existing contract term and the extended period.

The Executive are asked to agree in principle to this contract extension subject to necessary legal procedures, to come into force for the new financial year 2023/24. Further contract details are set out in the corresponding Part 2 Report.

3.3 Variation Change Control

Under an extended contract, JCDecaux are proposing to expand their network of digital information screens in the borough as part of their planned recovery from COVID-19. JCDecaux are looking at locations in Bromley and Orpington high street, where their current screens are located, but also in

other town centre locations in the borough, with all screen location that come forward requiring Planning Approval through the usual process.

While the proposed new screen locations are subject to change due to a number of factors, including market conditions and feedback from the Council including through the Planning process, the current plans are for JCDecaux to seek eleven new screen locations across the borough. This plan would represent a substantial investment in Bromley and over double the number of screen locations currently in the borough, providing further platforms to display Council messages and generating significant additional income. Details of the proposed screen locations are provided in Part 2.

The existing contract allows for JCDecaux to bring forward proposals for additional screen locations which would be decided through the usual Planning process, but is also formalised as part of the contract through a Change Notice.

In line with internal procedures, the Executive are asked to agree in principle to a Variation Change Control for a Change Notice to the existing concession contract with JCDecaux to reflect the updated plans for the location and volume of screens being proposed in the borough, subject to each location receiving Planning Approval.

Summary of Business Case

- 3.4 The existing contract with JCDecaux has a formal extension option. It is recommended that this option is taken now as this would allow for the additional investment of further screen locations in the borough during the contract term, which would then generate per-screen income to the Council, as well as providing further locations to display Council messages as per the agreement with JCDecaux. It is not recommended that the contract is allowed to expire in 2027 to retender, since this would mean no new screen locations are brought forward during the existing term causing a loss of potential income to the Council. Additionally, from initial market assessments it would not be expected that an alternative provider would generate more income to the Council than JCDecaux, who are one of the market leaders.

Service Profile / Data Analysis / Specification

- 3.5 The Council has contracted for the provision of display units since 2001, having moved from double sided freestanding units housing paper posters to digital information screens under the current contract with JCDecaux in 2017. Nine digital information screen locations are currently installed across Bromley and Orpington high streets. These units have generated significant income to the Council as well as the valuable opportunity to promote key Council messages for residents. The proposed contract extension is expected to lead to more screen locations being installed across the borough, subject to each receiving Planning Approval. This would increase the income received by the Council and the number of locations where Council messaging could be displayed.

Options Appraisal

- 3.6 Option one – take no actions and allow the contract to expire, and then cease hosting digital information screens in the borough. This would prevent any additional income to the Council from new screens for the life of the contract and would then remove the existing income entirely after the contract expires and remove the powerful communications tool to the Council of being able to display its own messaging for residents on these screens in town centre locations.

Option two – take no action and allow the contract to expire, and then retender for the provision of digital information screens in the borough. This would prevent any additional income to the Council from new screens for the life of the contract and any additional gain of locations to display Council messaging to residents, which is a powerful communications tool.

Option three – take no action and then extend the contract when it expires in 2027. This would generate no additional income to the Council from new screens for the life of the contract and would then generate this same level for the remainder of the extended contract period. There would also be no gain to Council communications from additional screen locations.

Option four – extend the contract at this stage as set out in this report. This would generate additional per-screen income to the Council for all new screen locations that receive Planning Approval across the full extended period of the contract. The Council would also benefit from being able to display its messaging to residents at these new locations. This option maximises the potential for this contract.

Preferred Option

- 3.7 Option four – to extend the contract at this stage as set out in this report, is the preferred option as it maximises the potential for the contract by generating additional per-screen income to the Council for all new screen locations that receive Planning Approval and improves Council communications through use of these new screen for messaging to residents. All of the other options restrict Council income during the contract period to its current level.

4. MARKET CONSIDERATIONS

- 4.1 The market for digital display units of this nature continues to have few suppliers, with JCDecaux one of the most prominent, if not the market leader. The bid JC Decaux made in the tender process in 2017 was highly competitive.

5. SOCIAL VALUE, CARBON REDUCTION AND LOCAL / NATIONAL PRIORITIES

- 5.1 It is possible for local business to benefit from this contract by being able to purchase advertising space on all existing and possible new high street screen locations to attract the custom of residents.

6. STAKEHOLDER ENGAGEMENT

- 6.1 Planning Approval is required for each new screen location, providing an opportunity for residents and others to comment on the individual proposals for specific new screen locations.
- 6.2 It should be noted that this proposal supports the Council's ability to engage with stakeholders and will continue to be used to encourage responses to the various consultations that the Council undertakes.

7. PROCUREMENT AND PROJECT TIMESCALES AND GOVERNANCE ARRANGEMENTS

- 7.1 **Estimated Value of Proposed Action:**

The estimated contract value and income to the Council are set out in the corresponding Part 2 report.

7.2 **Other Associated Costs:** The limited staff costs associated with co-ordinating the Council's advertising activity shall be met from within existing staff costs and the cost of production of Council digital ads shall be met from the relevant service revenue budget.

7.3 **Proposed Contract Period:** The extended contract, if agree, will run until 31st March 2032.

9. TRANSFORMATION/POLICY IMPLICATIONS

9.1 The contractual arrangements support the Council's stated ambition to manage our resources well, providing value for money, and efficient and effective services for Bromley's residents as set out in the Making Bromley Even Better Corporate Strategy.

12. PROCUREMENT CONSIDERATIONS

12.1 See corresponding Part 2 Report for details.

13. FINANCIAL CONSIDERATIONS

13.1 The recommended Option is number four, to extend the contract with JCDecaux until 31st March 2032. This means that the existing contract will be extended by 5 additional years.

13.2 Part 2 Report will detail the contract value and the generated income to the Council. Any associated costs will be met within the existing revenue budgets in R57187 TP Traffic.

15. LEGAL CONSIDERATIONS

15.1 The Report is seeking authority from the Executive to

- i) extend the existing concession contract with JCDecaux by five years through the extension clause set out in the original contract, with revised contract values set out in the corresponding Part 2 report.
- ii) seek a Variation Change Control to the existing concession contract with JCDecaux to reflect the location and volume of digital information screens being proposed in the borough, subject to planning approval.

15.2 The Council entered into a contract with JCDecaux for the supply and maintenance of freestanding council information display units which granted a concession right to display advertising content (Concession Contract) .The Concession Contract is for a term of 10 years from the 1st April 2017 with an option given to agree an extension of 5 years. The Concession Contract allows the Provider to bring forward proposals for additional screen locations subject to the planning process and formalised through a Change Notice.

15.3 The Concession Contract was procured with reference to the then new Concession Contracts Regulations 2016 (the Regulations). The Regulations provide a number of cases where a modification to a contract during its term can be carried out without the need to follow a new procurement exercise.

- 15.4 Regulation 43 (1) (a) allows where modifications, irrespective of their monetary value, have been provided for in the initial concession documents in clear, precise and unequivocal review clauses, provided they (i) state the scope and nature of possible modifications or options as well as the conditions under which they may be used, and (ii) do not provide for modifications or options that would alter the overall nature of the concession contract. It would appear that the proposed extension sought would fall within this case.
- 15.5 Regulation 43 (1) (c) provides that where all of the following conditions are fulfilled: (i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen; (ii) the modification does not alter the overall nature of the concession contract, (iii) any increase in value does not exceed 50% of the value of the original concession contract. It would appear that the proposed changes to i) contract values and prices (set out in the Exempt Report) ii) the locations and volume of the digital screens fall within this case for the reasons more fully set out elsewhere in this report and the accompanying Exempt Report. It is also arguable that most of these changes fall within the allowed modifications under Regulation 43 (1) (a) above. Subject to Members agreeing, Officers are satisfied that there is sufficient justification in taking this course as a result of the effect of the Covid pandemic; in that all operators within this field would have been equally affected and as such would not agree to an extension to contracts without similar amendments and changes to the extended contract in light of having experienced the pandemic. The values of the current contract and value of the modifications are set out in the Exempt Report. Where a contract has been modified under paragraph (1) (c), Regulation 43 (3) provides that a notice shall be published to that effect under the Regulations. There is also the advantage of being able to demonstrate complete transparency in publishing the modifications.
- 15.6 The Council has the power to exploit its assets within the confines of its general functions including through its general power of competence under section 1 of the Localism Act 2011, where a council can do anything that an individual can do lawfully. In this regard the application of planning and highways law must be adhered to. Furthermore, the Council must only take decisions rationally, in accordance with the law, after having taken into account all relevant considerations and disregarding those that are irrelevant. The Council is also subject to a fiduciary duty to carry out its activities and use its resources prudently, in the best interests of its charge and rate payers.
- 15.7 The Procurement comments to this report set out the position under the Council's Contract Procedure Rules including necessary authorisation by the Executive following Agreement by the Portfolio Holder, the Chief Officer, the Assistant Director Governance & Contracts, the Director of Corporate Services and the Director of Finance.

16. WARD COUNCILLOR VIEWS

16.1 Ward Councillors for town centre locations were asked for comment on the proposals.

Ward Councillors for West Wickham noted no objections to new screens on Bromley owned roads but highlighted that the main high street in West Wickham is a TFL road.

A Ward Councillor for Petts Wood and Knoll commented that new screen locations should be in keeping with local neighbourhoods.

A Ward Councillor for Beckenham and Copers Cope expressed concern of potential 'clutter' and siting of new sites but accepted that these concerns could likely be dealt with as part of the Planning

process. Environmental concerns about energy consumption and light pollution for new screens were also expressed.

Non-Applicable Headings:	8 – Impact Assessments. 10 – IT and GDPR Implications. 11 – Strategic Property Implications. 14 – Personnel Implications.
Background Documents: (Access via Contact Officer)	[Title of document and date]