
Decision Maker: **PORTFOLIO HOLDER FOR SUSTAINABILITY, GREEN SERVICES & OPEN SPACES**

For Pre-Decision Scrutiny by the Environment & Community Services PDS Committee

Date: 29 June 2023

Decision Type: Non-Urgent Executive Non-Key

Title: **CONTRACT EXTENSION FOR BROMLEY MARKET STALL ASSEMBLY**

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Chief Officer: Colin Brand, Director of Environment & Public Protection

Ward: Bromley Town

1. REASON FOR REPORT

- 1.1 In December 2021, the Portfolio Holder approved award of contract for the provision of Market Stall Assembly to MarketForce Services Limited. The contract was for a two year term, with the option to extend for a further two years, at an estimated annual value of £109k (estimated whole life value of £436k). The initial term is due to end in December 2023. This report seeks Approval to apply the two-year extension option.

2. RECOMMENDATION(S)

- 2.1 Members of the Environment & Community Services PDS Committee are asked to note and provide comment on the proposal for the award of the two year extension of the Market Stall Assembly Contract, to the Portfolio Holder for consideration.
- 2.2 That the Portfolio Holder approves the two-year extension option for the Bromley Market Stall Assembly Contract. The extension will be for the period January 2024 to December 2025 at an estimated value of £218k (based on estimated annual value of £109k).

Impact on Vulnerable Adults and Children

1. Summary of Impact: N/A
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Corporate Policy

1. Policy Status: Existing Policy
 2. Making Bromley Even Better Priority: (5) To manage our resources well, providing value for money, and efficient and effective services for Bromley's residents.
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Financial

1. Cost of proposal: Estimated Cost: up to £218k over two years
 2. Ongoing costs: Recurring Cost £109k
 3. Budget head/performance centre: Bromley Charter Market R65901
 4. Total current budget for this head: £112k
 5. Source of funding: Existing revenue budget 2023/24
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Personnel

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

1. Legal Requirement: Non-Statutory - Government Guidance:
 2. Call-in: Applicable Not Applicable: Further Details
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Procurement

1. Summary of Procurement Implications: Extension of existing contract
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Property

1. Summary of Property Implications: Not Applicable
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Carbon Reduction and Social Value

1. Summary of Carbon Reduction/Sustainability Implications: Not Applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Any Bromley Market user
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Ward Councillor Views

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

3. COMMENTARY

- 3.1 The Bromley Charter Market is a weekly market held in Bromley Town Centre. The market stalls and associated infrastructure are provided by Bromley Council as part of the offering to Traders. The stalls are set-up on every Thursday morning and taken down every Saturday evening by a contractor.
- 3.2 The current service provider acting on behalf of the Council is an SME; MarketForce Services Ltd. They have delivered this service for a number of years. Their current contract comes to an end on 31st December 2023. There is a two-year extension option on that contract.
- 3.3 The contract was previously put out to tender in 2021 but received a poor response with only two alternative tenders received, neither of which were assessed to be suitable.
- 3.4 Bromley are now seeking to engage the two-year extension option within the current contract to extend the contract to 31st December 2025.

Summary of Business Case

- 3.5 The current provider is MarketForce Services Ltd; they have delivered this service for a number of years and have a strong knowledge of the market, the infrastructure and service requirements.
- 3.6 The service has been subject to a significant period of adjustment in the past 48 months due to Highway Works on the High Street, the Covid-19 pandemic and current cost of living challenges. The current provider has and continues to work with LBB to adapt and adjust to those challenges.
- 3.7 With the changes to market location since 2018 and in the interest of ensuring value for money, the Market Stall Assembly contract was put out to tender in 2021 to engage with the open market and understand the future options available.
- 3.8 The tendered contract was divided into two Lots; Lot 1 for the stall assembly and take down and additional attendance; Lot 2 for light maintenance and cleansing of the stalls.
- 3.9 Given the specific nature and anti-social hours of the required work a large response was not expected but the response to the tender was poor. Only two bids were submitted: The first bid was priced significantly higher than there is budget for and the provider had limited relevant experience. The second bid was submitted by a newly formed company who was not able to demonstrate suitable relevant experience.
- 3.10 The current provider did not submit a bid in 2021 having missed the deadline and a poor IT literacy to engage with the Procurement Portal. However, the incumbent was interested in continuing to provide the service under LOT 1 and a direct award was made. IT literacy has no bearing on the ability of the service provider to deliver the required service.
- 3.11 There have been no issues with the current provider and the market has always been set-up, taken down and given additional attendance at all and any required times. The service provider has also demonstrated a commitment to the delivery of the service providing additional support to the market and traders while Bromley is in the process of recruiting to the vacated Market Supervisor Post.

Service Profile / Data Analysis

- 3.12 The market is held weekly all year round. The stalls are set-up early on a Thursday morning ready for 6am and are taken-down on a Saturday evening from 6pm.
- 3.13 There are a maximum of 46 stall pitch locations in the High Street, however there are only 38 pitches which can be used operationally on a regular basis. Numbers each week depend on the trader bookings, typically 35 stall locations are utilised weekly. The varying numbers of bookings is not a function of the market stall assembly service provider, it is however managed by the Council's Business Support & Market Manager.
- 3.14 Stalls are not erected if they cannot be filled that week with paying traders. The weekly cost with the Service Provider is based on the number of stalls erected.
- 3.15 New traders are first accommodated within existing spaces and any future growth of the market in terms of additional stall sites would only be where trader demand ensures a site could be filled, which would provide the additional income to meet that additional set-up requirement.
- 3.16 Set-up also entails the provision of supporting infrastructure such as tables and electricity connection to the stalls – dependent on the trader requirements.

Options Appraisal

- 3.17 Do not extend the contract and return to the open-market - it is not expected that returning to the open market would generate a different response to that in 2021.
- 3.18 Bring in house - not a viable option as it would require a restructuring of the service.
- 3.19 Approve the contract extension – this would ensure continuity of ongoing service, with a service provider with known experience of the required tasks and no historic performance issues.

Preferred Option

- 3.20 Approve the contract extension.
- 3.21 This option will allow the service to continue uninterrupted. The open-market has been tested fairly recently and found to have no current suitable alternative providers. The service provider has a strong previous performance with no issues, and have demonstrated they have the relevant experience to deliver the service to the required standard consistently, week in and week out.
- 3.22 The extension is for two-years allowing for an opportunity to test the open-market again and ensure continued value for money from the contract as part of the re-tendering activity required for a new contract for 01st January 2026 onwards.

4. MARKET CONSIDERATIONS

- 4.1 The market was tested as part of the tender process in 2021 and shown there is little interest on the open-market.
- 4.2 The contract extension is for two-years. This would give the opportunity to return to and test the market again in the near future while ensuring the current continuity of service.

5. SOCIAL VALUE AND LOCAL / NATIONAL PRIORITIES

- 5.1 The current provider is an SME based within Bromley meeting the desire to engage with local small and medium enterprises.

6. STAKEHOLDER ENGAGEMENT

- 6.1 Given that the contract extension does not contain any fundamental changes to the service, formal stakeholder engagement is not necessary. The key stakeholders, the LBB Market Team and the Market Traders, have a priority that the stalls and market equipment continue to be set and up and ready for them to commence trading upon arrival.

7. PROCUREMENT AND PROJECT TIMESCALES AND GOVERNANCE ARRANGEMENTS

- 7.1 **Estimated Value of Proposed Action:** £436k (£218k contract term + £218k extension term)

- 7.2 **Other Associated Costs:** N/A

- 7.3 **Proposed Contract Period:** Two years (01st January 2022 to 31st December 2023) with a two year extension option (01st January 2024 to 31st December 2025), totalling a maximum of 4 years

- 7.4 A two-year term with a two-year extension option would give an estimated whole life value of £436k (£218k + £218k). The contract costs are based on both the LOT1 and LOT2 components and potential full stall capacity each week. However as the service provider engages in the LOT2 component on an ad hoc basis, and payment for LOT 1 is based on actual stalls set-up not all stalls which could be set up, contract spend against that possible whole life total will not be met, however it is outlined here for full awareness.

- 7.5 The prices for the third and fourth years of the contract will be subject to a percentage increase based on the Non-Seasonally Adjusted Weekly Wage Index – Public Sector Excluding Bonus and Financial Services (KA5P) indices for the preceding December.

- 7.6 There is a current annual budget for the LOT 1 component is £93.3k held against cost code R65901~64331~000000.

- 7.7 There is a current annual budget for the LOT 2 component is £19.6k held against cost code R65901~64117~000000.

8. IMPACT ASSESSMENTS

- 8.1 As part of the market engagement in 2021, it was the intention to encourage local SMEs in participating in the tendering process. The requirement to set-up the stalls is business-critical for the Markets Service where delay or failure to undertake the works have an immediate impact on the market traders, local businesses and cause reputational damage to LBB.

- 8.2 To that end, it would be the preferred position of the service that the contract be held by a local SME where not only is there a 'local stake' in the service and the delivery of the service but that

being an SME the contract is a significant component to their business thus one which they are keen to deliver to their utmost, rather than a larger organisation for whom this contract is relatively small in terms of the other business and as a result may not prioritise or provide the level of service desired.

9. POLICY CONSIDERATIONS

- 9.1 As a key aspect of Bromley High Street and part of the town's vibrant local community hub, it will be the continued policy and ambition to continue the historic market as one which complements the local business and serves as a destination for residents and shoppers alike. As such there is a reputational aspect to the service to ensure it is delivered in a timely and professional manner.

10. IT AND GDPR CONSIDERATIONS

- 10.1 There are no IT or GDPR considerations in relation to this contract.

11. STRATEGIC PROPERTY

- 11.1 There are no Strategic Property considerations in relation to this contract.

12. PROCUREMENT RULES

- 12.1 This report seeks permission to use the formal extension (2 years), built into the contract for the Bromley Market Stall Contract Lots 1 and Lots 2 with MarketForce Services Ltd, the value of the proposed extension being an estimated £218,000
- 12.2 The Contract is for a duration of 2 years with an option to extend for a further 2 years period(2+2) at a total value of £436,000 (£281,000 + £218,000)
- 12.3 Following Approval, the extension must be applied via a suitable Change Control Notice, or similar as specified in the Contract.
- 12.4 The Councils specific requirement for seeking permissions to use a formal extension are covered in 23.6 of the Contract Procedure Rules with the need to obtain the formal agreement of Assistant Director Governance & Contracts, the Director or Corporate Services, the Directors of Finance and the Approval of the Portfolio Holder.
- 12.5 The actions identified in this report are provided for within the Councils Contact Procedure Rules, and the proposed actions can be completed in compliance with their content 2.1

13. FINANCIAL CONSIDERATIONS

- 13.1 The proposed option is to approve the contract extension with the current provider, MarketForce Services Ltd for two years with the option to extend for two additional years.
- 13.2 The estimated whole contract value for four years is £436k (£218k + £218k). The estimated annual costs is £109k. The costs will be met from the revenue budgets in the Bromley Charter Market Cost Centre R65901.

13.3 The existing controllable budgets in 2023-2024 are £120k (£99k+21k).

14. PERSONNEL CONSIDERATIONS

14.1 There are no personal, TUPE or Pension considerations in relation to this contract.

14.2 The Gov.uk questionnaire has been completed to confirm that Off-payroll working rules (IR35) do not apply to this contract.

15. LEGAL CONSIDERATIONS

15.1 This award report demonstrates a procurement procedure that complies with relevant law (the Public Contracts Regulations 2015) and the Council's Contract Procedure Rules in relation to this proposed extension.

15.2 This Report seeks approval for a two Year extension option of the Bromley Market Stall Assembly Contract. The Proposed Contract is for a duration of two years, commencing from 01.01.22 to 31.12.23, with a two year extension option (i.e. from 01.01.24 to 31.12.25) totalling a maximum of four years. The current Contract is to extend to 31.12.25 and currently ends on 31.12.23. The estimated annual value of the Contract is £109k. The estimated whole life value amounts to £436k, with an extension term of £218k.

15.3 This Report also asks Members of the Environment & Community Services PDS Committee to note and provide comment on the proposal for the award of the two year extension of the Market Stall Assembly Contract, to the Portfolio Holder for consideration. The Portfolio Holder is asked to approve the two-year extension option in the Bromley Market Stall Assembly Contract

15.4 This report also indicates that the Council has an existing contractual right to extend this contract in the manner described.

15.5 Furthermore, Under the Council's Contract Procedure Rules (CPR), the Councils requirement for authorisation of a formal extension to a Contract, is in accordance to CPR 23.6 and 13.1 and where applicable the Public Procurement Regulations 2015 (the Regulations).

15.6 Generally-speaking, (after relevant internal approvals), Officers must comply with any and all formal requirements in the contract regarding the exercise of these extension rights. They may wish to consult with colleagues in Legal Services if they have questions or otherwise require help on this issue or if they require any assistance with the formalities to exercise this right to extend (e.g. change of control notice requirements etc) but this should not be difficult.

15.7 The Contract can be awarded in accordance with the Council's Contract Procedure Rules and the Public Procurement Regulations 2015.

Non-Applicable Sections:	[List non-applicable sections here]
Background Documents: (Access via Contact Officer)	[Title of document and date]