

Subject:	Bus & taxi shelter, cleaning & maintenance contract & advertising concession
Date of Meeting:	24th January 2019
Report of:	Executive Director, Economy Environment & Culture
Contact Officer: Name:	Owen McElroy
Email:	owen.mcelroy@brighton-hove.gov.uk
Ward(s) affected:	(All Wards);

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 This report seeks committee approval for officers to commence a new procurement process to grant a bus & taxi shelters cleaning, maintenance and advertising concession agreement (the “concession agreement”).
- 1.2 The proposed methodology is that of competitive dialogue with potential bidders.
- 1.3 The competitive dialogue procedure was introduced into the public contracts regulations to provide an improved method for awarding complex contracts, e.g. for highly complex and risky projects where bidders will have a major role in defining the solution.
- 1.4 The concession agreement will replace the current two-year contract with Clear Channel, which expires on 5 September 2020.

2. RECOMMENDATIONS:

- 2.1 That the Policy, Resources & Growth Committee:
 - 2.1.1 approves the procurement of a cleaning, maintenance and advertising concession agreement for a term of 12 years with the option to extend for up to a further 3 years;
 - 2.1.2 grants delegated authority to the Executive Director for Economy, Environment & Culture to carry out the procurement of the cleaning, maintenance and advertising concession agreement referred to in 2.1.1 above including the award and letting of the concession agreement.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 On the 16 January 2014 Policy & Resources Committee approved the procurement of a cleaning & maintenance contract & concession agreement with a term of 10 years from 6th September 2014 to 5th September 2024 and the

option to extend by a further three years to 5th September 2027 and granted delegated authority to the Director of Environment, Development & Housing to take this forward.

- 3.2 There followed three unsuccessful procurement attempts using a one stage Invitation to tender process, each resulting in the receipt of only non-compliant bids. The main issue was that the Council realised that it was imperative to gain ownership of all the shelters in the portfolio as this was acting as a barrier for other providers in their bidding, due to the capital investment being too great and therefore unattractive to bidders. Having discussed the situation with other local authorities, it was clear that many other councils were in a similar position to Brighton & Hove with ownership being a major issue in achieving a favourable outcome. Therefore in 2016 council officers negotiated with the incumbent, Clear Channel UK (“CCUK”), to gain ownership of the shelters for a nominal sum, in return for them retaining all of the income for a fixed period. On the third occasion, in early 2018, there were greater incentives to bidders such as extending the length of the contract, reducing capital investment and the minimum requirement for annual fixed income, removing the requirement for additional income from new shelters installed and slightly reducing some performance targets. Two tenders were received, neither of which was compliant. In correspondence received from potential bidders, various reasons were given, similar to previous procurements, as to why they did not or could not issue compliant bids, such as an overestimation of the advertising income that the concessionee could expect compared to the level of capital expenditure requested and the annual concession fee.
- 3.3 To avoid going “out of contract”, a two year temporary concession contract was negotiated with CCUK which commenced on 6th September 2018 and expires on 5th September 2020. Under this contract CCUK continue to clean and maintain the shelters and pay BHCC an annual concession fee. They have converted a number of city-centre advertising sites from paper to digital based and are providing 5 new non-advertising shelters per annum in locations approved by Environment Transport & Sustainability Committee.
- 3.4 The advantage of using a competitive dialogue process is that there would be a two stage process. At the first stage weak or non-compliant tenders can be ruled out and a shortlist of viable tenders established. There is then a second stage where the parties can ‘clarify, specify and fine tune’ the specification. This is an opportunity to identify common areas of specification and create a level playing field between bidders. It would also reduce the number of areas where officers use guesswork to base their assumptions which underpin the tender specifications e.g. the potential scope for extending the number of digital advertising panels could be clarified with all potential bidders and from this officers could estimate the potential income that could be generated by contractors. The result should be that evaluation and scoring of shortlisted tenders can be limited to a focused number of areas which enable easier differentiation between tenders.

Scope, specification, required service level, and expected value of the contract

- 3.5 As of 1st January 2019 there are 223 paper based advertising shelters, 23 digital advertising shelters & 251 non advertising shelters, making a total of 494

shelters. There are also 5 taxi shelters that will be included in the contract. The Council own all of these shelters. The contract will cover all of these shelters. The only shelters in the city not included are the four art deco heritage shelters in the Old Steine outside the Royal Pavilion and the four wooden tram shelters around the city, e.g. in Ditchling Road and Queens Park Road, which are subject to separate arrangements. The art deco shelters and tram shelters are all listed structures. Day to day maintenance of the art deco shelters is carried out by Property & Design, with cleaning of graffiti by City Clean. Any wholesale refurbishment or replacement would come under City Transport. Responsibility for day to day maintenance and cleaning of the tram shelters comes under Property & Design with refurbishment/replacement costs the responsibility of City Transport.

- 3.6 The successful contractor will be required to provide a full package of services that will include supplying and installing additional bus shelter sites, replacing and refurbishing bus shelters, maintaining & repairing bus & taxi shelter sites, cleaning of bus shelter sites and advertising on bus shelter sites.
- 3.7 It is proposed that the successful contractor will be required, subject to any required consents and permissions, to install up to 20 additional Digital panels in place of paper based panels. These panels will remain the property of the contractor for the period of the contract.
- 3.8 It is proposed to include in the contract service level obligations and requirements for regular management information & reports. The service level obligations will cover the following (non-exhaustive) items: removal of dangerous structures, glazing repairs/removal of broken glass, lighting maintenance, annual safety inspections, structural relocation or removal and assessment of emergency damage. Compliance can be monitored and enforced through a mixture of performance targets and additional concession fees as appropriate.
- 3.9 It is proposed that the invitation to tender specification (ITT) will require the potential contractors to explain how they could add social value, sustainability and environmental benefits e.g. green roofs, recycled materials, air filters, solar power etc. and technological innovation, e.g. bluetooth connectivity, and that this would form part of the scoring and evaluation of the tenders.
- 3.10 The Council will retain ownership of the existing shelters throughout the length of the contract.
- 3.11 The expected gross value of the contract to the contractor (over 15 years unadjusted for inflation) will be the gross income from advertising estimated at about £26m, minus the capital expenditure to be invested by the contractor.
- 3.12 It is the level of capital expenditure required from the contractor which justifies the proposed length of the contract as the contractor needs to generate sufficient income over the term in order to cover this and make an operating profit.
- 3.13 The capital expenditure takes into account the removal of the existing shelter, installation of a new shelter and any necessary groundworks

3.14 An example would be:

- a) Replace 20 non digital i.e. printed paper based advertising shelters with new digital shelters at a cost of £50K each = £1m
- b) Replace 100 existing paper based shelters at a cost of 19K each = £1.9m
- c) Replace 100 non advertising shelters at a cost of £15K each = £1.5m
- d) in the first two years the combined total of a + b + c would be estimated to cost about £4.4m.

3.15 Therefore in this example the gross value of a 12 +3 year contract will be the gross income of £26m minus the capital expenditure = £21.6m. However the net value to the contractor will be the gross value minus the operating costs of providing the maintenance of the bus shelters over the life time of the contract minus the total of all the annual concession fees (see 3.17 below) over the period of the term. Therefore the net value to the contractor is considerably less than the gross value.

3.16 It is proposed that the successful contractor will be required to pay an annual concession fee which will be an income to the Council, adjusted annually by RPI. Payment of this income will be requested quarterly in advance.

3.17 An assessment of the actual capital expenditure required will be made early in 2019 informed by the results of an asset condition survey commissioned by the Council.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

4.1 Do nothing. At the end of the existing short-term contract ask the incumbent to withdraw all advertising cleaning & maintenance and discontinue efforts to procure a replacement contractor. Not recommended as shelters will not be maintained and no income will be received.

4.2 Repeat the previous style of procurement i.e. issue a one stage ITT without a period of competitive dialogue and iteration. Not recommended as this methodology has failed on three previous attempts due to the lack of robust market information on which to base the final tender specification and insufficient pre-engagement with market providers.

4.3 Bring contracts for advertising, cleaning & maintenance “in house” in September 2020. By September 2020 BHCC would need to be in a position to manage the cleaning and maintenance of shelters, to replace shelters following road traffic collisions, including “hit and run” incidents, and commission its own advertising for all 243 sites. It is likely that we will need multiple contracts, and the creation of a dedicated multi-disciplinary team. Not recommended as the multiple contracts would create additional complexity and cost and the creation of a new team would be a considerable financial risk as it would not be known in advance whether the advertising income would cover the cost, whereas the existing model provides an annual income in addition to inclusive cleaning and maintenance.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 Over the last three years, suppliers in the market, consultants and other local authorities of a similar size and makeup have been consulted. Feedback has reinforced the proposal to pursue a competitive dialogue procurement process and has influenced the proposed specification.
- 5.2 Procurement Advisory Board was consulted on 10th December 2018. It was agreed that the Board supported the competitive dialogue procurement process as outlined in this report.
- 5.3 The following issues were raised:

a) Why the two previous firms who had submitted tenders were not compliant? It was explained that the council needed a certain amount of capital investment and the bidders were not prepared to commit to a specific sum. There were only two players in the market place. In hindsight the Council had likely overestimated the capital investment. Once an asset survey has been carried out there would be more information.

b) An option not mentioned in the report was that the council would make the capital investment and hand the management of the contract to the contractor. It was explained that although the council owned the stock, it did not have the money to run the contract. The idea was that the contractor would maintain the stock from advertising revenue

c) A question was raised as to whether the council could buy new shelters if the contract was brought in house. It was explained that this would mean borrowing against a potential income stream and would be seen as a risk.

d) The cost of bringing the contract in-house was something to consider in future budgets.

6. CONCLUSION

- 6.1 Authority is required in order that the Council can offer a viable concession agreement that will provide scope for capital investment in the city's bus & taxi shelter infrastructure and a sustainable income for the next 12-15 years.
- 6.2 The two stage competitive dialogue procurement process would provide a thorough and robust methodology which is more likely to secure viable bids.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 The 2018/19 revenue budget for bus and taxi shelter advertising includes an income target of £0.250m for bus shelter advertising. The budget has also been set based on the assumption that all costs such as cleaning, repairs, maintenance and replacement bus shelters would be paid by the concession holder. If a new contract is not procured, there will be a risk of ongoing budget pressures for the Public Transport service.
- 7.2 The alternative option of bringing the contracts in-house has not been fully costed at this stage.

Finance Officer Consulted: Gemma Jackson Date: 06/12/18

Legal Implications:

- 7.3 The Policy, Resources & Growth Committee is the appropriate decision-making body in respect of the recommendations at paragraph 2 above, given that the value of the contract which is the subject of the proposed tendering exercise is likely to have corporate budgetary implications.
- 7.4 Further, the Council's Contract Standing Orders (CSOs) require that before expressions of interest can be invited from potential bidders for a contract valued at £500,000 or more, approval must be obtained from the relevant committee, which in this instance is the Policy, Resources & Growth Committee due to the value involved.
- 7.5 The procurement of the new contract must comply with all relevant European and UK public procurement legislation as well as the Council's CSOs. The value of the proposed contract means that the Concession Contracts Regulations 2016 will apply in full to the procurement. The opportunity will need to be advertised in the OJEU. Tenders will be scored on the criteria of quality and price as part of the evaluation process.
- 7.6 The new contract should contain robust transitional arrangements to avoid any unnecessary costs to the Council and disruption to the public at the end of the contract period.

Lawyer Consulted:

Name: David Fairfield

Date: 03/01/2019

7.2 Equalities Implications:

All bus shelters will be designed to a specification that benefits all users.

7.3 Sustainability Implications:

Sustainability will be a scored requirement in the tender process.

Any Other Significant Implications:

- 7.4 None identified directly in relation to this report

SUPPORTING DOCUMENTATION

Appendices:

None

Documents in Members' Rooms

None

Background Documents

1. Policy, Resources & Growth Committee report Bus & taxi Shelters Concession Agreement – authority to procure 16 January 2014.

