

EXEMPT OR CONFIDENTIAL REPORT

The following paragraph of [Part 4b Section 10 of the constitution](#) applies in respect of information given in **Appendix 1, Appendix 2 and Appendix 3** of this report and it is therefore exempt from publication.

Members and officers are advised not to disclose the contents of this report:

Committee: Cabinet

Date: 11th November 2019

Agenda Item:

Wards: All

Subject: Award of concession contract for the provision of Bus Shelters, Free Standing Units and Associated 6 Sheet Advertising within Merton.

Lead officer: Chris Lee – Director of Environment and Regeneration

Lead member: Councillor Martin Whelton – Cabinet Member for Regeneration, Housing and Transport

Contact officer: Sue Keay

REASON FOR EXEMPT

It contains information relating to the financial and business affairs of contractors who have recently participated in a procurement exercise and such information are barred from disclosure because they are commercially sensitive.

Recommendations:

- A. That Cabinet approve the award of this contract to the highest bidder, as outlined in the confidential Appendix 1 for an initial term of 10 years, commencing on 1st January 2020, with the option to extend for a further 5 years at the Council's discretion.
 - B. That Cabinet grant delegated authority to the Director of Environment and Regeneration after consultation with the Cabinet member for Regeneration, Housing and Transport to approve the additional 5 year extension.
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Important notice: It should be noted that the names of any of the bidders, including the Preferred Bidder, are confidential at this point and should not be disclosed publicly even after Cabinet resolution on 11th November 2019 and any subsequent call-in period. In line with the Public Contract Regulations 2015 and the Concession Contracts Regulations 2016, all bidders need to be made aware of the intention award at exactly the same time (i.e. via a standstill letter via the E-Tendering

portal). Disclosing the names of any of the bidders, including the Preferred Bidder, prior to the notification going out simultaneously via E-Tendering opens up the council to a potential legal challenge for failure to follow due process.

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. The Council's contract with the current supplier for the provision of bus shelters, free standing units (FSUs) and associated 6 sheet advertising expires on 31st December 2019. This is a concession contract whereby the Council receives maintenance, installation and management of the physical bus shelters and Free Standing Units, free advertising space and income from the provider derived from their advertising revenues.
- 1.2. Financial details of the Council's current contract can be found in the confidential Appendix 2.
- 1.3. Within the current contract the Council benefits from free advertising space on one side of each FSU for its own publicity and campaigns.
- 1.4. The existing contract has been in place since 1999. During the contract term the income has increased annually above the RPI and there have been variations which have extended the contract and upgraded a number of paper screens to digital in key locations. Each variation increased the Council's income.
- 1.5. Future Merton has carried out a procurement exercise, approved by Procurement Board in June 2019 to re-tender the contract. Soft market testing was undertaken prior to this procurement process which demonstrated an appetite to bid from the 2 major players in the industry.
- 1.6. Fortuna Associates were commissioned (through a procurement exercise at the end of 2018) to advise and prepare the tender documents. The terms and conditions were prepared by SLLP.
- 1.7. Due to the expected value of the contract, the tender process was carried out as an OJEU and the invitation to tender was placed on the London Tenders Portal on 1st August 2019.
- 1.8. The evaluation process took place in September 2019 with a recommendation to award the new contract to the most economically advantageous bidder.

2 DETAILS

- 2.1. There are currently 135 bus shelters in Merton and 39 Free Standing Units that are part of this contract (on major roads Transport for London also has its own bus shelters). The Council sought to procure a media provider who would deliver an enhanced provision of the bus shelters improving amenity benefit to residents, at the same time as maximising the income to the Council from advertising. Under the new contract the cost of the business rates would be met by the new provider.
- 2.2. The tender invited bidders to answer 6 questions around quality to:

- a) establish the bidders' experience in providing and maintaining bus shelters and operating such a contract and,
- b) assess their ability to be innovative and creative in accelerating the process to deliver the maximum income through continuous improvement whilst supporting local social value.

2.3. The quality questions represented 30% of the evaluation. A minimum score was set on quality to ensure that a very high price but very low quality tender could not automatically win. The pricing represented 70% and each bidder was asked to provide various pricing elements to allow the Council to determine the most financially advantageous offer.

2.4. The tender evaluation was carried out by a panel of officers from Future Merton and a representative from Fortuna Associates, the company who were procured by the Council to advise on the tender process. The panel met on 24th September 2019 to discuss individual scores and comments for each question in order to arrive at an agreed, moderated score.

2.5. The respective scores of the bidders are below:

Supplier	Price Score 70%	Quality Score 30%	Total Score
Bidder 1	65%	30%	95%
Bidder 2	24%	26%	50%

2.6. Officers therefore recommend the award of the contract to the highest scoring tenderer.

2.7. Under the new contract the provider has committed to upgrading all 135 bus shelters within the first year of the contract and has set out an extensive program for the conversion of a number of advertising screens to digital. Details of the new offer are in confidential Appendix 3.

2.8. The provider has outlined their environmental and sustainability objectives which focus on efficient waste management, improvements in energy efficiency and reducing water usage. The new digital screens provide a 50-70% reduction in electricity consumption compared to tradition lighting and the modern panels are made of materials that are easier to recycle.

2.9. Social value benefits include supporting local employment with a commitment to working in partnership with the Council to support existing initiatives around apprenticeships and work placements.

2.10. The provider will be expected to comply with the Council's advertising policy which includes detailed guidance on what constitutes unhealthy food. The policy will mirror the advertising policy of TfL and other London Boroughs.

2.11. The arrangement of free advertising for the Council will continue under the new contract. The Council will benefit from high quality digital advertising as opposed to the current backlit poster panels.

2.12. The provider has also committed to an additional ten or more digital displays from year 5 of the contract, subject to planning.

3 ALTERNATIVE OPTIONS

- 3.1. There are no realistic alternative options. If we had not carried out the procurement exercise, the current contract would have expired with no guarantee of bus shelter provision or maintenance across Merton, reputational risk to the council, potential loss of income from the provider and possible loss of Council advertising space.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. As part of the procurement process, an OJEU notice was published on 1st August 2019 with relevant Invitation to Tender Document published on the same date with a return deadline date of 17th September 2019

5 TIMETABLE

- 5.1. Should councillors resolve the recommendation in this report, following the call in and standstill periods, the award letter will be sent to the successful bidders in early December 2019.
- 5.2. The successful bidder has set out a detailed mobilisation plan which will be implemented from the contract start date of 1st January 2020.
- 5.3. The contract will run for an initial term of 10 years and the Council can consider an extension for an additional 5 years. This length of contract is industry standard due the high level capex investment required by the provider for the installation of bus shelters and advertising street furniture.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. Details of the financial value of the new contract and the expecting savings to the Council is in confidential Appendix 1.
- 6.2. In addition to the income offered in the tenders, the new provider will be liable for paying the business rates, currently £84k per annum.
- 6.3. Due to an initial mobilisation period at the start of the new contract, which will involve a phased installation of the new digital conversions, the Council is expected to realise the full annual savings of the new contract during financial year 2021-22.
- 6.4. The new contract includes an overage payment to the Council of a further percentage of the provider's advertising revenue sales in Merton.
- 6.5. After 5 years the rent the Council receives per panel will increase by the RPI plus an additional percentage offered by the bidders.
- 6.6. The cost of procuring the contract was £9,500 for specialist industry advice and recommendations for the tender requirements. The staff time required during the procurement was allocated from existing resources.
- 6.7. It is anticipated that no additional resource is required for the implementation and future management of the contract.

- 6.8. The street furniture property (bus shelters and free standing units) will remain under the ownership of the provider who will be responsible for all future cleaning and maintenance during the contract period. Residents and other bus stop users and the council will continue to benefit from maintained bus shelters and may benefit from +10 additional bus shelters in the next 5-10 years, subject to planning.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. Public contracts must be advertised in the Official Journal of the European Union where the price is above the relevant threshold. The conduct of the bid process must also be undertaken in accordance with the Public Contracts Regulations 2015 (PCR) and in the case of public concession contracts in accordance with the Concession Contracts Regulations 2016 (CCR).
- 7.2. This report describes a procurement process undertaken in accordance with the above requirements which is understood to take the form of a concession as defined in the CCR. As such upon notification of award of contract the Council is required to observe the mandatory ten day standstill period as required by the CCR prior to entering into the concession contract.
- 7.3. The Council is also required to draw up a report under regulation 32 and 33 of the CCR and make notification of contract award.
- 7.4. Officers and Members should note that the names of any of the bidders, including the Preferred Bidder, should not be disclosed publicly even after Cabinet resolution on 11th November 2019 and any subsequent call-in period. In line with the CCR, all bidders need to be made aware of the intention award at exactly the same time (i.e. via a standstill letter via the E-Tendering portal).
- 7.5. The Council expects the provider to ensure compliance with national advertising standards as well as planning and highways consents.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. The upgraded bus shelters will provide a more modern, cleaner amenity for the public with improved seating and design considerations for people with disabilities.
- 8.2. There are no human rights, equalities and community cohesion impacts connected with the decision to award the contract to the Preferred Bidder.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. An enhanced bus shelter provision will create a safer, better lit environment for bus users.
- 9.2. There are no crime and disorder implications connected with the decision to award the contract to the Preferred Bidder.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. Modern bus shelters have higher standards of design making them more robust and resistant to vandalism. These improvements will minimise injury risks to the public
- 10.2. Insurance levels set out in the contract requirements have been assessed by the Council's Risk and Insurance team and have been deemed to be of an acceptable level.
- 10.3. The winning bidder's insurers have taken the necessary steps required to ensure they will be compliant with UK law post Brexit.

11 APPENDICES

- 11.1. Appendix 1 (Exempt): Quality and price breakdown, details of financial offer
- 11.2. Appendix 2 (Exempt): Current contract details
- 11.3. Appendix 3 (Exempt): New contract offer from successful bidder

12 BACKGROUND PAPERS