

TITLE OF REPORT

External Advertising Contract Extension - CPIC Report

BUSINESS CASE

Key Decision No: NH R61

CPIC (2021/22)	MEETING	DATE	CLASSIFICATION:
		19th July 2021	Open

If exempt, the reason will be listed in the main body of this report.

WARD(S) AFFECTED

All Wards

CABINET MEMBER

Cllr Kennedy

KEY DECISION

Yes

REASON

The decision will result in the Council retaining income levels, and continued use and operation of outdoor information sites, and public toilets.

GROUP DIRECTOR

Ian Williams, Acting Chief Executive

1. CABINET MEMBER'S INTRODUCTION

- 1.1. Pavement based advertising hoardings are an important channel for the Council to communicate vital public service information to residents, especially those who are digitally excluded or otherwise hard to engage. They are a high impact, low cost, channel that has been particularly effective during the Covid crisis. As well as these clear community benefits, the hoardings have the potential to raise considerable revenue for the Council at a time when resources are severely impacted.
- 1.2. However, at the same time we have a duty to make our public realm as navigable as possible for all our citizens, including those with mobility issues, and whilst no complaints about the siting of the existing hoardings have been made by residents, it is important that we consider this issue so that we can realise these benefits whilst minimising any potential impact.
- 1.3. This paper asks for an extension of the current outdoor advertising contract to allow all these considerations to be explored in full, whilst protecting the Council's financial position, as well as its ability to communicate effectively with residents over the next 12 months as we move through the Covid crisis and its aftermath.

2. GROUP DIRECTOR'S INTRODUCTION

- 2.1. The Council currently has an advertising contract with a provider, one of the larger suppliers in the outdoor advertising market. The contract originally dates back to 1997. The original contract was a very poor one, though similar to ones signed by many other local authorities at the time, which was disadvantageous to the Council, bringing in little revenue, and with provisions that made it difficult to exit.
- 2.2. In 2013 the Council was able to renegotiate the contract for the remainder of its lifespan, following an investigation by the Office of Fair Trading into the outdoor advertising market, and then again in 2017 as a result of an approach by the supplier to digitise a small number of the sites in Shoreditch. The result was an improved contract with a shorter term expiring on August 21st 2021, backdated business rates to the Council, and higher income to the Council.
- 2.3. Although the issues with the original contract meant that some Members and officers have been keen to terminate it for many years, the benefits of this kind of outdoor advertising for the Council cannot be overlooked, including substantial revenue, and access to a powerful low cost public communications mechanism. This latter has become even more crucial since the High Court decision around frequency of publication of Hackney Today has further restricted our non digital communications reach.
- 2.4. The combination of Covid 19 and the cyberattack have delayed proper consideration of the nature and scope of the re-procurement of this contract.

This paper asks CPIC to extend the current contract in order to allow for that proper consideration whilst not losing any of the revenue that the current contract realises.

3. RECOMMENDATION(S)

Cabinet Procurement and Insourcing Committee is recommended to approve the extension of the existing Concessions contract for 12 months and a further 6 months (subject to Director's approval without going to CPIC or HPB).

4. RELATED DECISIONS

- 4.1. Should this approval be granted, work will be carried out with internal stakeholders (Planning, Hygiene Services and Procurement), and a full Business Case will be presented to seek approval to re-tender the Council's External Advertising contract.

5. OPTIONS APPRAISAL AND BUSINESS CASE (REASONS FOR DECISION)

- 5.1. This paper seeks approval to extend the current concession contract for 12 months and a further 6 months (subject to Director's approval without going to CPIC or HPB). The paper provides relevant information from consultations undertaken over the last 18 months with internal and external stakeholders, which:
 - 5.1.1. Highlight the importance of the Out of Home (OOH) channel as part of the Council's communication mix, specifically focussing on emergency and service change information.
 - 5.1.2. Provide an overview of the revenue generated by this contract, how the market sector has changed, and why adopting a collaborative approach with our internal stakeholders provides a well balanced and economically sustainable outcome for the Council.
- 5.2. Hackney Council entered into an agreement with a provider (or "Supplier") on 17/01/1997, for the above services for a duration of 20 years from the Completion Date, as defined in the contract, on a no cost basis to the Council. Through this contract there are currently 49 paper based sites, and 7 digital boards, (all double-sided apart from one digital board) owned by the provider throughout Hackney, which can be seen in the 'map and road name' spreadsheet in the appendices to this report. The physical assets are owned by the provider and are all located on street pavements in Hackney. The Council manages this concession contract which effectively allows the authority to lease space to a supplier for outdoor advertising and communications.

5.3. Included in the contract was provision to provide automatic public conveniences, or superloos. Two units are currently in use and are located in the Dalston area and continue to be operational, which the supplier currently maintains. Included as part of the contract, the Council has been able to utilise the 'b' side of all boards, apart from one digital instalment that is single-sided, to communicate important service information, and relevant event based communications in these out of home settings. The use of these site spaces by the Council has developed into an important part of the Council's overall communication mix.

5.4. Over the lifetime of the contract the Council has generated approximately £700 - £900K, with up to 50% of the income being realised over the last five years, after the third variation in 2017 where we converted a small portion of the units to digital in the Shoreditch area. Should the extension be approved, income will remain at the same as previous years [excl 2020/21].

5.5. In 2019/20 the current contract generated £115,000 of advertising at no cost to the Council. The figures below show the income generated annually between digital and print based units.

- Digital assets (**13 screens at £7,281/screen**) net £95,879 per annum
- Print based (**98 faces at £195.97/faces**) net £19,205 per annum
- Business rates on all units generate a further £20,570 p.a. in income.

5.6. Options

- **Option 1: Do nothing and allow the contract to expire naturally:** This is the current option provided for in the contract. This implies the loss of annual revenue of £115,000 plus the loss of a strategic communications channel to the Council. This option creates further operational and financial risks for the Council due to the two public toilets the contract currently provides. A decision to retain, or lose the toilets all together will need to be made, should we not renew this contract.
- **Option 2: Test the market immediately via an Invitation to Tender (ITT):** This would be desirable in order to improve value for money and social value from this legacy contract, as well as maintain the advertising assets for Council communications and revenue for the Council. However an immediate ITT is not possible due to legislative timeframes of minimum 30 days and especially given all the information needed (i.e. stakeholder jointly agreed specifications, terms and conditions and economic and sustainability potential of sites) in order to evaluate any proposals, before the current contract expires. The complexities and risks inherent in such projects are significant and in a world with Covid and a cyberattack, work has not been able to be done in preparation for an ITT at contract end. In addition, the experience of other Local Authorities and feedback from suppliers recommends that 6 months be factored into any procurement to allow for the replacement of assets if a new supplier is appointed, two

which at least 4 months to run a tendering process, including evaluations and contract execution.

- **Option 3: Recommended: Complete the assessment of the costs, risks and benefits of the two options 1 and 2 above.** This will ensure a sound basis for whatever decision the Council takes going forward. This will also require an extension of the current contract which is due to expire at the end of August 2021. It is estimated that an extension up to 18 months, subject to agreement by the provider, should be sufficient to complete the study and implement any decisions taken. A 12 months and a further 6 months (subject to Director's approval without going to CPIC or HPB) is preferable and will be easier to agree with the incumbent provider and allow sufficient time to present a Business Case in January 2022, with well-investigated and jointly agreed options, for CPIC's consideration. This will ensure a smooth transition to whatever option is decided by CPIC, with minimum adverse impact on staff, the Council and the public.

6. BENEFITS REALISATION / LESSONS LEARNED

- 6.1. Approving the extension will allow the Council to continue to receive monthly income, throughout the extension period.
- 6.2. It importantly allows the Council to continue using the existing infrastructure, and toilet facilities at Dalston, to provide service related and emergency information to our residents through out the extension period
- 6.3. It will provide the necessary time for officers and services to help inform future procurement options for the Council.
- 6.4. **Strategic Context:** This paper seeks approval to extend our current external advertising contract, to
 - 6.4.1. allow the Council to align future procurements with the authority's rebuilding a greener Hackney policies, and public realm strategic approach, planning regulations and Waste and Hygiene maintenance programs
 - 6.4.2. look at options for a digital first approach which will speed up our communications with our residents and businesses. The pandemic has demonstrated the strategic importance of maintaining clear communications through a number of different channels including outdoor media
 - 6.4.3. adopt a robust Planning Performance Agreement (PPA) methodology to assess planning regulations and process and allow the Council to complete a large number of applications within one specified project and timeframe.

6.5. Preferred Option: Option 3:

The preferred option would be for the Council to agree to extend this contract by 12 months, and a further 6 more months if necessary (subject to Director's approval without going to CPIC or HPB). Work will be carried out with internal stakeholders (Planning, Hygiene Services and procurement), and a full Business Case will be presented to seek approval to re-tender the Council's External Advertising contract.

The preferred option provides a balanced and evidence based methodology that officers can follow to provide all the additional information and insight relating to this contract.

6.6. ALTERNATIVE OPTIONS (CONSIDERED AND REJECTED)

Options 1 and 2 described in paragraphs 5.6 above were considered before arriving at this decision to recommend the adoption of Option 3. A decision not to extend the current contract and remove all advertising infrastructure from the given sites will lead to:

- Loss of income including business rates highlighted in paragraph 5.5 above
- Loss of easy to manage, and strategic external communications channel.
- Significant increases in operational and maintenance costs for Hygiene services should want to retain the two toilets.

As explained in paragraph 5.6 (option 2), it is not possible to undertake a procurement exercise immediately. Further consultations and evidence gathering needs to be undertaken to obtain a clearer estimate first the potential, in monetary and sustainability terms, of the Council's estate, secondly the costs, risks and benefits of available procurement strategies and also the costs and benefits of the various remuneration approaches i.e. fixed rental fee or part fixed and part activity-related.

6.7. Success Criteria/Key Drivers/Indicators:

The main driver for this recommendation in Option 3 is the maintenance of service continuity and the minimisation of the impact on the Council and the public that is likely to result from a sudden or unplanned transition from the current situation.

6.8. Whole Life Costing/Budgets:

No significant costs will arise as a result of implementing this decision to extend the current contract. Annual revenue of £115,000 to the Council will be maintained.

6.9. Policy Context:

Council policies and strategies that are relevant to these services include Rebuilding a greener Hackney, Public Realm decluttering approach, and the Sustainable Procurement Strategy. Keeping residents informed and safe during the 2020 pandemic was a clear gold priority. Councils have huge and challenging responsibilities, which require effective communications, and

delivering information in the right channel. The external advertising units provide the Council with infrastructure, which is maintained by a supplier, requires no future capital investment from the Council, and generates good revenue in return.

The recommended extension will allow the relevant stakeholders in this service to ensure that any future decision taken by the Council is based on evidence to best support the Council's strategic goals.

6.10. Consultation/Stakeholders:

Consultations with stakeholders, in particular with planning and members are ongoing in order to agree future requirements for this project. Initial consultations with suppliers and other local authorities have already taken place and have shown that there is a competitive supplier market interested in delivering the potential future re-procurement..

6.11. Risk Assessment/Management:

This report seeks approval to extend the current contract by 12 months and a further 6 months (subject to Director's approval without going to CPIC or HPB). This will allow us to build in a contingency, should we need to, especially given the COVID situation at the moment. All costs associated with the option to re-procure similar contracts during the contract extension period shall be ascertained and reported on in the Business Case to be presented in January 2022 where a decision regarding the future of these arrangements shall be sought.

6.12. End of contract infrastructure removal

All infrastructure is owned by the current supplier, and must be removed, based on the contract terms. Removing or installing large assets or new equipment will be challenging, have a number of processes that need to be followed, and are dependent on Council approval. This could potentially have an impact on income, during the period where the Council changes from one supplier to another. Work carried out during the extension with our current supplier, will therefore also include negotiations around removal and upgrade of assets to inform any future reprocurement.

No risks resulting from the recommended contract extension have been identified.

6.13. Market Testing (Lessons Learnt/Benchmarking Marking):

Market testing activities undertaken in November to December 2020 have highlighted alternative means of generating revenue and sustainability benefits from these services. However, these have to be investigated further. The current recommendation is therefore to extend the current contract in order to allow the commissioning team time to carry out and conclude its investigations and provide appropriate recommendations for the future in January 2022.

6.14. Savings:

No identified savings will arise as a result of this contract extension. It is however hoped that, if agreed, the contract extension will afford stakeholders time to engage with each other and make value-adding proposals to the Council for the future at the end of the extension period. Options 1 and 2 both lead to loss of income, and increase costs to the Council.

7. SUSTAINABILITY ISSUES

- 7.1. The recommended extension of the current contract will not have any significant additional sustainability impacts on the London Borough of Hackney as it will maintain the status quo. It will however enable the Commissioning services to undertake further consultations on the benefits/disbenefits of these types of services, in order to consider the most appropriate ways of improving sustainability outcomes. This approach will feed into recommendations to be submitted to CPIC in January 2022, if this extension is approved.
- 7.2. **Procuring Green**
Consideration is being given at this time to reassess the future physical infrastructure requirements i.e. after the recommended extension period, in terms of the number of sites and other infrastructure specifications. This will be in line with the Council's Public Realm strategy and will result in a more modern, and more sustainable set of infrastructure assets with reduced energy consumption and less paper usage, while potentially delivering more or the same amount of revenue for the Council.
- 7.3. **Procuring for a Better Society**
The ongoing consultations will include a cost-benefits analysis from a Social Value perspective of having these assets on sidewalks. This analysis will inform the recommendations in the proposed business Case to be presented to CPIC in January 2022.
- 7.4. **Procuring Fair Delivery**
The recommended contract extension will also provide the opportunity to review all social and ethical benefits and related costs associated with the provision of these assets. This review will also inform the recommendations in the report to be presented to CPIC in January 2022.
- 7.5. **Equality Impact Assessment and Equality Issues**
An issue which has long been thought to affect this contract is the location of the physical units within the public realm. All units in the current contract are located on pavements throughout the borough including two public toilets. In most cases the pavements are wide enough not to impede accessibility or mobility of any users of these pavements. As part of the work identified to be

carried out during the contract extension, we will follow a Planning Performance Agreement (PPA) methodology supported by accessibility guidance provided by the Council's Policy team. Following this process will ensure the Council can identify sites which may be more at risk of not conforming to planning regulations, and accessibility criteria in the current climate.

All past complaints about these advertising panels have been about content displayed on the units, which follows our planning complaints procedure. The Council will engage further with our policy, communications and planning teams to build a set of specifications and criteria into our KPIs, which will help to inform what type of content is not in line with Council policies, and cannot be displayed. It should be noted that creating 'Black lists', or banning certain brands will have an impact on income potential.

8. PROPOSED PROCUREMENT ARRANGEMENTS

- 8.1. **Procurement Route and EU Implications:** The contract extension recommended under this report is allowable under the Concession Contract Regulations 2016, given that the value of the extension is less than 50% of the contract's value, estimated at £15million over 20 years, so long as this extension is implemented during the life of the contract i.e. before the contract expires on 31/08/2021. Procurement options will be further explored and reported on, in the next CPIC report regarding these services, in January 2022.
- 8.2. **Resources, Project Management and Key Milestones:** The contract extension will require legal input in order to draft the deed of variation, in accordance with the approvals given by CPIC in response to this report. The timetable for formalising the recommended extension i.e. the subject of this report, if approved by CPIC, shall be as set out below:

The table below highlights key milestones to facilitate an extension of our current contract, to enable further internal and external consultation to be completed.

Key Milestones	
Extension Report approval by CPIC	19h July 2021
Drafting of Deed of Extension	19th August 2021
Sealing of Deed of Extension	26th August 2021
Stakeholder consultations complete	December 2021
EMKDN	17th Dec 2021 or 14th Jan 2022
Final Business Case to CPIC for approval	17th Jan. or 14 Feb. 2022
Implementation of CPIC decision	Jan. 2022 to Aug. 2022
End of extension arrangements (subject to approved extensions)	31st August 2022

8.3. Contract Documents: Anticipated contract type

This paper is submitted in conjunction with a legal record of contract variation document, detailing the requirements and works to be completed during the extension period.

8.4. Sub-division of contracts into Lots

N/A

8.5. Contract Management:

Over the extension period the contract will be managed by the Head of Marketing and Commercial Services via quarterly meetings with the supplier where issues and complaints can be raised. The approach to contract management post the extension period, if the services are re-procured, shall also be outlined in the report to CPIC in January 2022. This report seeks approval to extend the current contract by 12 months and a further 6 months (subject to Director's approval without going to CPIC or HPB), from 1/09/2021, in return for an annual payment to the Council of approximately £115,000 over the extension period and £57,000 over the additional 6 months if required. The contract extension is a key decision which affects more than two wards due to the infrastructure sites, being located in most wards across the borough. The extension will also allow the Council to retain the operation and maintenance of the toilets included in this contract, and continue to provide an important communication channel to the Council's residents and businesses.

8.6. Key Performance Indicators:

During the extension period, the management of the contract shall continue as is currently practiced. This includes a monthly supplier meeting covering maintenance and operational concerns, financial monitoring and planning for future reprocurement, plus agreements on end of contract removal or transfer process.

9. COMMENTS OF THE GROUP DIRECTOR FINANCE AND CORPORATE RESOURCES

9.1. This report is seeking approval for an extension to the current Hackney Council concession contract with a provider for the provision and maintenance of Outdoor Advertising Panels and Advertising Services contract by 12 months and a further 6 months (subject to Director's approval without going to CPIC or HPB), from 1/09/2021. The extension will also allow the Council to retain the operation and maintenance of the toilets included in this contract, and continue to provide an important communication channel to the Council's residents and businesses.

9.2. The annual payment to the Council will be approximately £115,000 over the extension period and £57,000 over the additional 6 months if required. The income is already factored into the service base budget to maintain existing services. However, it is worth noting there are risks associated with income

due to clauses in the contract, for example Covid19 pandemic 2020/21 reduced the income to the Council.

10. VAT Implications on Land & Property Transactions

No changes, or additional VAT implications are anticipated from what currently applies as the only change to be implemented is the extension of the duration of the contract by 12 to 18 months.

11. COMMENTS OF THE DIRECTOR, LEGAL & GOVERNANCE SERVICES

- 11.1. This report concerns a contract extension to an existing contract between the Provider and the Council. This report constitutes a key decision within the meaning of Article 13, paragraph 13.5 of the Constitution in that it is likely to have significant effects on communities living or working in an area comprising 2 or more wards, across the Borough. In accordance with paragraph 13.6 of Article 13 of the Constitution, key decisions may be made by Cabinet, as such this report is being presented to Cabinet Procurement and Insourcing Committee in its capacity as a Committee of Cabinet.
- 11.2. Under Regulation 43(1)(b) of the Concession Contracts Regulations 2016, it is permissible to modify a contract within its term where additional works or services by the original concessionaire that have become necessary and were not included in the initial concession contract where a change of concessionaire, cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial concession contract, and would cause significant inconvenience or substantial duplication of costs for the contracting authority or utility, provided, in the case of a concession contract awarded by a contracting authority, that any increase in value does not exceed 50% of the value of the original concession contract.
- 11.3. Under the Concession Contracts Regulations the total value of the contract is calculated with reference to Regulation 9(3), in which the value of a concession contract shall be the total turnover of the concessionaire generated over the duration of the contract, net of value added tax, as estimated by the contracting authority or utility, in consideration for the works and services which are the object of the concession contract and for the supplies incidental to such works and service. The total value of the contract is therefore estimated at £15m for the 20 years. The value of the proposed extension, therefore does not exceed 50% of the value of the original contract.
- 11.4. Additionally, under Regulation 43(1)(e) of the Regulations, modification is permissible where the modification, irrespective of value, is not deemed to be substantial within the meaning of the Regulations. The proposed extension does not render the original concession materially different in character and does not extend the scope of the concession contract.

11.5. Legal Services will assist in the drafting of documentation, as required.

12. COMMENTS OF THE PROCUREMENT CATEGORY LEAD

12.1. This report sets out the recommendation to extend the current contract by 12 months and a further potential further 6 months (subject to Director's approval without going to CPIC or HPB), from 1/09/2021. During this period of extension a full options appraisal will be carried out with with internal stakeholders (Planning, Hygiene Services and procurement), learning from the market engagement exercise and other Councils will be taken into consideration and a full Business Case will be presented to CPIC in January 2022 to seek approval to re-tender the Council's External Advertising contract.

APPENDICES

[Outdoor Advertising Contracts-Record of Contract Variation \(Within CSO4.5\)](#)

[Hackney Asset list \[2020\]](#)

[Print based unit location map](#)

[Digital unit locations map](#)

EXEMPT

There are no exemptions for this report.

CONFIDENTIAL

There are no confidential conditions in this report

BACKGROUND PAPERS

None

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