

 Brent	Decision of Leader of the Council
	Report from the Corporate Director, Communities and Regeneration
Authority to Vary and Extend Contract for Street Furniture with Advertising	

Wards Affected:	ALL
Key or Non-Key Decision:	Non-Key Decision
Open or Part/Fully Exempt:	Part Exempt- Appendix 1 is exempt as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: “information relating to the financial or business affairs of any particular person (including the authority holding that information)”
No. of Appendices:	One Appendix 1(exempt) Additional financial implications
Background Papers:	
Contact Officer(s): (Name, Title, Contact Details)	<p>Saida Ladha Filming and Advertising Officer 020 8937 1097 saida.ladha@brent.gov.uk</p> <p>Rob Mansfield Head of Communications, Conference and Events 07721 232993 rob.mansfield@brent.gov.uk</p>

1.0 Purpose of the Report

- 1.1 This report requests approval to vary and extend a contract in respect of street furniture with advertising with JC Decaux UK Limited in accordance with paragraph 7.1 of Part 3 of the Constitution. The report summarises the reasons for the request to vary and extend.

2.0 Recommendation(s)

That the Leader of the Council:

- 2.1 Approves the variation of the contract for street furniture with advertising with JC Decaux UK Limited as set out in paragraph 3.2.
- 2.2 Approves the extension of the contract detailed in 2.1 above for a period of two years from 31 December 2028 until **31 December 2030**.

3.0 Detail

3.1 The Council entered a contract for street furniture with advertising with JC Decaux UK Limited from 31 December 2020 (the "Contract"). **The current contract with JCDecaux started on 1 January 2020 and is an 8 year contract, with an option to extend by two further years.**

3.2 Officers were looking to add more value to the JC Decaux Contract by replacing existing paper backlit advertising panels with digital panels. Officers have entered discussions with JC Decaux UK Limited (the "Contractor") to vary the Contract and the following variations and extension are recommended:

- a. Install 10 new double sided digital six sheet advertising units to replace existing paper backlit advertising panels, subject to planning permission within the next 18 months.
- b. Pay the council additional minimum income for the 10 new digital six sheet advertising units from installation until the end of contract period.
- c. To exercise the Council's option to extend the term of the current contract for a period of two years.
- d. To cap RPI annual increase at 5% after 10 new digital six sheet advertising units are operational and have a minimum guaranteed cap per digital screen as stated in Appendix 1 (contains exempt information).
- e. In the light of the Covid lockdown, to insert a new lock-down clause.

3.3 Officers recommend the variation and extension as:

3.3.1 Additional 10 new double sided digital six sheet advertising units will increase revenue to the council by just under half the value of the contract, this will provide an increased minimum guaranteed payment to the council regardless of market conditions until 1 January 2030.

- 3.3.2 Digital screens allow the council to use both sides of the advertising panel rather than just one side and allow changeover electronically without the need to pay for printing of posters. This improves the reach of council campaigns while also enabling them to be updated or changed over more swiftly.
- 3.3.3 There will be no requirement for a contractor vehicle and operator to change the 10 printed panels every two weeks and will also reduce council poster printing costs.
- 3.3.4 The council is already using 10 existing digital six sheet advertising units, installed by the contractor in 2020, to promote council messages and where location allows the sites can also promote messages from Highways/Transportation with details of planned works to keep residents informed.
- 3.3.5 Some of the new digital units could be installed with Smart Boxes at no extra cost to the council that monitor air quality, this service will be piloted.
- 3.3.6 The two-year extension that is provided for in the current Contract will allow the contractor to recover capital investment for the additional 10 new double sided digital six sheet advertising units.
- 3.3.7 Under the proposed variation, the Contractor will pay the council additional minimum income for the 10 new digital six sheet advertising units from installation until the end of contract period as set out in Appendix 1. The additional income from digital units will exceed any potential limitation in income through agreeing an RPI cap (requested because of current high inflation rates) and a lock-down clause (requested because of the Covid lockdown).
- 3.4 The contract contains provision allowing for variation of the contract by agreement.
- 3.5 In addition to the proposed variation, Officers also recommend an extension to the term of the Contract. The Contract contains provision permitting extension of the Contract by two years.
- 3.6 The budget for the service area has been reduced with less income achieved in certain areas such as events, therefore additional minimum guaranteed income in the current market conditions for an additional two-year period is very beneficial to the council, together with the ability for the council to use the new digital advertising units for council campaigns/messages.
- 3.7 Under section 3(b) of the table at paragraph 9.5 of Part 3 of the Constitution, Directors may only vary and extend contracts and agreements provided that:
- (a) the extension and variation would not be in breach of Procurement Legislation.

- (b) the extension and variation does not substantially alter the terms and conditions of the contract.
- (c) there is sufficient existing budgetary provision.
- (d) if the extension goes beyond the period of extension provided for in the contract (if any) or is otherwise not in accordance with the extension provisions in the contract:
 - (i) in the case of any contract, agreement, deed or other transaction with a life of not more than one year (including any possible extension provided for in the contract) the extension shall not exceed a period of six months; or
 - (ii) in the case of any contract, agreement, deed or other transaction with a life of more than one year (including any possible extension provided for in the contract) the extension shall not exceed a period of one year.
- (e) provided that in the case of any variation (other than an extension):
 - (i) the total value of the variation is less than £1m; and
 - (ii) if the total value of the variation (and any previous variations agreed under this provision) is more than £50k it is not more than 50% of the original contract value (calculated over the life of the contract including any extensions or possible extensions and adjusted in accordance with any price review mechanism provided for in the contract).
- (f) the relevant cabinet member shall be consulted prior to a decision within (d) (i) or (ii) and (e) (i) and (ii) above and may request that the decision instead be referred to them.

3.8 Addressing the points detailed in paragraph 3.7 above using the same lettering:

- (a) The extension would not be in breach of Procurement Legislation as it is permitted in accordance with the Contract. It is considered that the variation is permitted in accordance with Regulation 43 of the Concession Contracts Regulations 2016.
- (b) the extension does not substantially alter the terms and conditions of the Contract as it is provided for in the Contract. It is not considered that the proposed variation substantially alters the terms and conditions of the Contract either.
- (c) there is sufficient existing budgetary provision.

- (d) Paragraph (d) is not applicable as the extension is in accordance with the existing provisions of the Contract.
- (e) The proposed variation may exceed the delegation levels contained in paragraph (e).
- (f) In view of paragraph (e) above, a Director may not have delegated powers to make the decision and hence there is obligation to consult the relevant cabinet member.

3.9 For the reasons detailed in paragraph 3.8 (e), it is doubtful that the Director has delegated powers to agree the variation but pursuant to paragraph 7.1 of Part 3 of the Constitution, the Leader has powers to agree both variation and extension given neither would breach Procurement Legislation.

4.0 Financial Implications

4.1 The value of the contract and the proposed variation with the extension period of two years is as stated in Appendix 1 (contains exempt information). This would be additional income above the current contractual arrangement.

4.2 There is no cost of this variation and extension, except some Officer time to manage the contract and ensure the 10 new digital units are installed within the agreed timescale of 18 months for the additional minimum guaranteed payment to commence.

4.3 The forecast within this document that “additional income from digital units will exceed any potential limitation in income through agreeing an RPI cap and a lock-down clause” is subject to:

- inflation being similar to that forecast by the Bank Of England, if inflation is significantly higher than currently forecast there is a risk that income will be less than under the current agreement, and
- no major lockdown resulting from another pandemic, if there is a significant lockdown resulting from another pandemic then there is a risk that income will be less than under the current agreement.

4.4 This income is generated by the Communications, Conference and Events Team in Communities and Regeneration. The Conference and Events Team will administer and invoice throughout the contract period.

5.0 Legal Implications

5.1 Officers recommend the variation and extension of the Contract as set out in paragraph 3.2.

5.2 The value of the original contract is such that it is subject to partial application of the Concession Contracts Regulation 2016 (CCR 2015).

- 5.3 The contract contains express provision allowing for the extension as recommended and as such extension is permitted in accordance with the CCR 2016.
- 5.4 With regard to the variation, a contract may only be modified without a new procurement procedure where this is done in accordance with Regulation 43 of the CCR 2016. Regulation 43 sets out various circumstances in which it is possible to vary and extend a contract. It is considered that the Council is able to rely on Regulation 72 of the CCR 2016 in varying the contract.
- 5.5 Pursuant to paragraph 7.1 of Part 3 of the Constitution, the Leader has powers to agree the proposed extension and variation.

6.0 Equality Implications

- 6.1 Pursuant to s149 Equality Act 2010 (the “Public Sector Equality Duty”), the Council must, in the exercise of its functions, have due regard to the need to:
- (a) eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it,
- 6.2 The Public Sector Equality Duty covers the following nine protected characteristics: age, disability, marriage and civil partnership, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 6.3 Having due regard involves the need to enquire into whether and how a proposed decision disproportionately affects people with a protected characteristic and the need to consider taking steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it. This includes removing or minimising disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic.
- 6.4 There is no prescribed manner in which the council must exercise its public sector equality duty but having an adequate evidence base for its decision is necessary.
- 6.5 The proposals in this report have been subject to screening and officers believe that there are no adverse equality implications.

7.0 Consultation with Ward Members and Stakeholders

7.1 Ward Members will be updated through the Members Bulletin when the advertising unit locations have received planning permission and the timeline for installation has been agreed.

7.2 The Highways Team has been consulted regarding the location of digital panel replacements and feel they can be accommodated as in all the proposed locations the existing paper backlit panels have been in place for over 22 years.

8.0 Human Resources/Property Implications (if appropriate)

8.1 This service is currently provided by an external contractor and there are no implications for Council staff arising from varying and extending the contract.

8.2 There are no property / accommodation implications.

9.0 Public Services (Social Value) Act 2012

9.1 The Council is under a duty pursuant to the Public Services (Social Value) Act 2012 (“the Social Value Act”) to consider how services being procured might improve the economic, social and environmental well-being of its area; how, in conducting the procurement process, the Council might act with a view to securing that improvement; and whether the Council should undertake consultation. Whilst this report concerns an extension and variation to the Contract, Officers have nonetheless had regard to considerations contained in the Social Value Act in relation to the extension.

9.2 Existing social value commitments will continue to be delivered by the contractor as part of this Contract.

Report sign off:

Lorna Hughes
Director of Communities