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| <b>Report to:</b>                                   | <b>CABINET</b>  |
| <b>Report of:</b>                                   | <b>ASSISTANT DIRECTOR – CORPORATE STRATEGY</b>  |
| <b>Date of Decision:</b>                            | <b>22<sup>nd</sup> September 2015</b>   |
| <b>SUBJECT:</b>                                     | <b>TENDER STRATEGY– CITY PAVEMENT ADVERTISING CONTRACT – P0258</b>  |
| <b>Key Decision: Yes</b>                            | <b>Relevant Forward Plan Ref: 545082/2015</b>   |
| <b>If not in the Forward Plan: (please "X" box)</b> | Chief Executive approved <input type="checkbox"/><br>O&S Chairman approved <input type="checkbox"/>                       |
| <b>Relevant Cabinet Member(s):</b>                  | <b>Cllr Ian Ward, Deputy Leader<br/>Cllr Stewart Stacey, Cabinet Member, Commissioning, Contracting &amp; Improvement</b> |
| <b>Relevant O&amp;S Chairman:</b>                   | <b>Councillor Waseem Zaffar, Corporate Resources Overview and Scrutiny Committee</b>                                      |
| <b>Wards affected:</b>                              | <b>ALL</b>  |

### 1. Purpose of report:

- 1.1 The Council's contract for city pavement advertising expires in December 2016. This report deals with the tender strategy and proposed procurement process for the replacement of this contract.
- 1.2 The proposed procurement will lead to the award of a contract for 15 years, with no break clauses, which will commence in January 2017.
- 1.3 The Private agenda report contains any confidential market information which could impact on the tender process.

### 2. Decision(s) recommended:

That Cabinet:

- 2.1 Notes the content of the report.

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| <b>Lead Contact Officer(s):</b>               | Stephanie Prutton – Assistant Procurement Manager<br>Corporate Procurement Services<br>Economy Directorate<br>0121 303 0026<br><a href="mailto:Stephanie.Prutton@birmingham.gov.uk">Stephanie.Prutton@birmingham.gov.uk</a> |
| <b>Additional Contact:</b>                    | Amjid Mahroof – Head of Strategic Leadership & Commercial Development   |
| <b>Telephone No:</b><br><b>Email address:</b> | Corporate Strategy Department<br>Economy Directorate<br>0121 303 2725<br><a href="mailto:Amjid.mahroof@birmingham.gov.uk">Amjid.mahroof@birmingham.gov.uk</a>   |

### **3. Consultation**

#### **3.1 Internal**

Officers from Legal and Democratic Services, City Finance and Corporate Procurement Services have been involved in the preparation of this report. Consultation with Planning and Highways has started and will continue throughout the Procurement process concerning the design and location of assets.

Further consultation has been undertaken with Public Health in relation to the Child Obesity Strategy and determining the content and location of advertising in the vicinity of schools and parks. We have concluded that the Council will use nutrient profiling on all of its advertising assets showing food and beverages irrespective of location.

#### **3.2 External**

Market testing has been undertaken with key suppliers in the outdoor advertising market. The outcome of this consultation, which included questions concerning social value, will help inform the scope of the project and elements of the procurement process. This has provided feedback on design, positioning and potential use of the advertising assets. Information from this consultation has been used to inform the Equality Analysis.

### **4. Compliance Issues:**

#### **4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?**

##### **4.1.1 The contracts will support the following objectives of the Council Business Plan 2015+:**

A prosperous city: This contract will generate much needed revenues to help the City Council to carry out its activities in a time of austerity and budget cuts.

Also, by supporting businesses in their marketing initiatives and growth aspirations, this potentially improves the local economy and impacts on local employment.

##### **4.1.2 Birmingham Business Charter for Social Responsibility (BBC4SR)**

The BBC4SR will be a mandatory requirement for tenderers and will form part of the conditions of the future contract. During the evaluation period, an Action Plan will be agreed with the successful tenderer on how the Charter principles will be implemented and monitored during the contract period.

#### **4.2 Financial Implications**

This is an income generating contract for the City Council. Further details are provided in the Private report.

The cost of the procurement process is expected to be approximately £275k, which includes advertisement consent costs for each individual asset from Planning. The costs are spread over the next two years and will be met from additional income that the Commercial Development Team is forecast to earn from its overall advertising income over the next three years. This sum will be split approximately £225k for 2015/16 and

£50k for 2016/17.

#### 4.3 Legal Implications

The Council will enter into this contract under its general power of competence in Section 1 Localism Act 2011.

The Council has power pursuant to section 115E Highways Act 1980 to grant permission for structures to be placed on or over the highway.

The requirements of Standing Order No. 9 in respect of the Council's Equal Opportunities Policy and the Equality Act 2010 will be included in the contract.

There are no TUPE implications for this contract.

#### 4.4 Pre-Procurement Duty under Public Services (Social Value) Act 2012

Consideration of how the provision of city advertising might improve the economic, social and environmental well-being of the City has been carried out through market testing and public consultation on BeHeard. Market testing included consultation to determine how social value could be added as part of the future contract. The results indicate that suppliers would embrace the Birmingham Business Charter for Social Responsibility and support issues such as sustainability and procuring locally and use of the assets to promote Birmingham and the visitor economy. An assessment against Social Value has been incorporated into the development of the tender strategy and evaluation model. The public consultation via BeHeard included questions to assess responses for how this contract could deliver additional social value and assess any potential equality impact. The results of this have also been incorporated into the tender strategy.

#### 4.5 Public Sector Equality Duty

The Equality Analysis did not highlight the need to undertake a Stage 2 assessment. Organisations representing the nine protected characteristics have been invited to respond to the BeHeard consultation and should any equality issue arise, this will be addressed. The design and positioning of advertising assets on the pavement will need to take into account the requirements of people who are visually or mobility impaired. Any potential adverse impact will be evaluated through the advertisement consent from Planning and associated consultation to ensure that the design and positioning of assets do not disadvantage people with disabilities. Standard Council conditions of advertising will be applied to the contract, stipulating that advertisements must not promote or condone violence, hatred or advocate against any organisation, person or group of people, or a protected group.

#### 4.6 The Health and Social Care Act 2012 gave local authorities, a statutory duty to take appropriate steps to improve the health of their local population, the objective being that people are helped to live healthy lifestyles, make healthy choices and reduce health inequalities. Birmingham Public Health introduced a Childhood Obesity Strategy in 2013 which recognised the prevalence of overweight and obese children across Birmingham and the consequences of this – health, social and economic – for those children in later life. The Childhood Obesity Sub-committee of the Health Overview and Scrutiny Committee (HOSC) and the Birmingham Health and Wellbeing Board are driving further work to reduce childhood obesity. In response to this agenda and following consultation with Public Health, the contract will set restrictions on advertising within this contract.

These terms are set out in 5.3 below.

## **5. Relevant background / chronology of key events:**

### **5.1 Service Requirements**

As the current pavement advertising contract with JC Decaux expires in December 2016, the procurement process recommended in this report will seek to replace the current provision of 388 assets with a new, up to date, advertising provision across the city, that is aesthetically consistent, clearly managed and generates income for the City Council. The Commercial Development team has identified that the opportunity to generate income through the use of pavement advertising assets would be maximised through a new contract. This will use some of the existing locations and some new locations with redesigned, modern assets which fit with the Public Realm Strategy.

### **5.2 Market Analysis**

A market testing exercise has been carried out to ensure that the market is aware of the forthcoming procurement, and to seek opinions on the proposed project in terms of likelihood of commercial success, financial model, contract period etc.

Engagement with the market also highlighted that in order to get best value from the contract a contract term without a break clause would be more beneficial in terms of potential income generation.

### **5.3 Advertising Content**

Following consultation with Public Health, it has been agreed that the contract will set out restrictions concerning food and beverage advertising across the Council pavement advertising portfolio. All food and beverage advertising will be required to display nutritional information. The size and format of this information will be determined jointly with Public Health.

#### 5.4 Procurement Approach (duration, route, scope/spec etc)

A Project Initiation Document was developed by the Commercial Development team, in conjunction with officers from Planning, Highways, City Centre Management and Corporate Procurement Services to understand the scope of advertising across the city and the opportunities for inclusion in this procurement. This also identifies stakeholders and sets out the financial costs associated with the procurement and a project plan to take this forward.

The contract will be developed in close association with Planning and be consistent with the Public Realm Strategy and the Public Art Strategy. In conjunction with Planning, a robust asset specification will be produced and included in the tender documentation, so the financial and legal makeup of the contract will be the negotiated elements of the procurement.

The contract will ensure an element of future proofing is included, to take account of changes in the advertising market and changes in technology, as well as any major developments in Birmingham in terms of removing and re-siting assets. The contract will also include the flexibility to identify new opportunities for development and also financial and KPI reviews will be undertaken throughout the contract to ensure that the Council gains the best value from the arrangement.

A 15 year contract term was considered optimal for this opportunity, based on market testing responses, other core city experiences, overall costs of procuring the contract and the ability of the tenderers to make a return on their investments in a reasonable time period. The contract will be managed robustly by the Commercial Development team in partnership with Corporate Procurement Services to ensure that the contract is executed correctly, that the contractor's BBC4SR Action Plan is delivered and that the City maximises the income from this long term arrangement.

The assets included in the current proposal will form the basis of the negotiations with Planning as a precedent has already been set for these locations. Planning consultation is ongoing on each specific site to agree, move or remove the assets. This will define the final portfolio to be submitted to Planning for advertisement consent. It is likely that the number of assets will be reduced to approximately 300 due to planning restrictions. Market research and experience has identified that there is an optimum number of assets across a network beyond which the contract is devalued and advertising space is difficult to sell due to saturation. The contract will however, provide the opportunity to add additional assets should this be appropriate, subject to consultation and Planning approval.

The most appropriate procurement route for this project is the Competitive Procedure with Negotiation (CPN). This is an updating of the negotiated procurement procedure under the Public Contract Regulations 2015 and allows flexibility for both the contractor and the client.

The procurer can reserve the right to negotiate bids, but the regulations do not mandate negotiations if the procurer considers that it can make an award decision based on the initial bids. This is particularly relevant for this procurement as many elements are set in the specification and the contract terms and conditions so may not need negotiation. However, the council is allowed to negotiate if it deems it necessary, which may be useful for the financial element of the tenders. Also, the CPN route allows the council to reduce the number of bidders during the negotiation stage if this is suitable.

## 5.5 Evaluation

Evaluation of the tenders will be undertaken by officers from the Commercial Development team with support from the Planning and Highways departments, as well as Corporate Procurement Services and Finance. The evaluation model is based on a Revenue/Quality/Social Value weighting of 70%/20%/10%. The evaluation criteria are:

Revenue (70%):

- Guaranteed Lump Sum payable each year (45%)
- Gross Revenue Share % (45%)
- Discounted advertising to the City Council (10%)

Quality (20%):

- Proposed Solution and Method Statements – 30%
- Innovation – 30%
- Contract Management –30%
- Legal Risk – 10%

Social Value (10%):

- Local Employment – 30%
- Buy Birmingham First – 10%
- Partners in Communities – 10%
- Good Employer – 10%
- Green and Sustainable – 30%
- Ethical Procurement – 10%

## 5.6 Risk

The Corporate Procurement Services (CPS) approach is to follow the Council Risk Management Methodology and the Procurement and Contract Management Team will be responsible for local risk management. CPS maintains a risk management register and documentation relevant for each contract. The risk register for the service has been jointly produced and owned by the Commercial Development Team with arrangements being put in place to ensure operational risks are mitigated. Further detail on the key risks is provided in Appendix 2 of the Private report.

## 5.7 Contract Management

The contract will be managed operationally by the Head of Strategic Leadership and Commercial Development, with support from Corporate Procurement Services Contract Management team as appropriate. Draft Key Performance Indicators, performance targets including key milestones and reporting requirements have been developed and will be negotiated during the procurement process and included in the final contract.

A mobilisation plan will also be developed during the negotiation period and will be a contractual requirement of the successful bid.

**6. Evaluation of alternative option(s):**

- 6.1 An alternative option would be not to procure an advertising contract, but this would not bring in much needed income to the city. It is also possible that advertising organisations might approach the Planning Department directly to gain permission to install advertising assets in the city, leading to a cluttered and disjointed approach to advertising and city dressing.
- 6.2 The Open or Restricted procurement routes could be used but these would not permit dialogue with bidders on their proposed solutions, nor on the revenues offered.
- 6.3 There are no frameworks available for this service with the proposed financial model that the Council could access.
- 6.4 The Competitive Dialogue (CD) procurement route could be used but this is not as flexible as the Competitive Procedure with Negotiation (CPN). With Competitive Dialogue, the Council would have to continue with the dialogue phase of the procurement, even if this was not required as initial tenders were satisfactory. The CPN procedure is more flexible because it does not mandate a dialogue period if it is not required.

**7. Reasons for Decisions (s):**

- 7.1 To inform Cabinet about the procurement approach proposed for this contract.

**Signatures**

Cllr Stewart Stacey.....Date:.....  
Cabinet Member for Commissioning, Contracting & Improvement

Cllr Ian Ward .....Date:.....  
Deputy Leader

Paul Dransfield .....Date:.....  
Deputy Chief Executive

**List of Background Documents used to compile this Report:**

1. None

**List of Appendices accompanying this Report (if any):**

None