

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

Environment and Highways Cabinet Board

7 July 2016

Report of the Head of Planning and Public Protection

Nicola Pearce

Matter for Decision

Wards Affected: All

Asset Sponsorship – Consideration of a variation to the Council’s existing Asset Sponsorship contract with Immediate Solutions and the procurement procedures necessary to address the longer term position.

Purpose of the Report

- 1 To consider the need for a variation to the Council’s existing Asset Sponsorship contract with Immediate Solutions and the procurement procedures necessary to address the longer term position.

Executive Summary

- 2 A contract to generate sponsorship revenue from highway roundabouts has been in place between the Council and its partner ‘Immediate Solutions’ since 2011.
- 3 The Council is eager to continue with an asset sponsorship agreement not only to optimise revenue generation in the short and long term to assist the Council in carrying out its functions, but also to continue to provide businesses operating locally the opportunity to promote their identities.
- 4 The implementation of the Public Contract Regulations 2015 provides that the Council is limited in the scope of any arrangement that could be pursued at this time.
- 5 Consequently, this report seeks approval of a variation of the contract with Immediate Solutions to allow the trial of additional pilot schemes; that delegated authority be given to the Head of Planning and Public

Protection to determine what additional assets are to be included in the revised contract; and that a procurement exercise be commenced to run in parallel to obtain a long term partner to begin after the short term extension period has expired.

Background

- 6 A contract (dated 27th November 2011) to generate sponsorship revenue from highway roundabouts has been in place between the Council and its partner 'Immediate Solutions' since 2011. The initial contract was let in June 2012 and the first sponsored sign was erected in August 2012.
- 7 The scheme for the sponsorship of Council assets is essential in the first instance to generate revenue in the short and long term to assist the Council in carrying out its functions and secondly to continue to provide businesses operating locally the opportunity to promote their identities.
- 8 Of particular note is that an annual contribution towards the Council's Forward Financial Plan (FFP) of an additional £3,000, over and above current revenue levels, has been identified (FFP Ref: ENV604). It is crucial therefore that the Council puts arrangements in place to continue the operation of the scheme.

Performance and Current Position

- 9 Since the commencement of the initial contract, the scheme has proved largely successful on most counts. In particular, site occupancy rates have surpassed initial targets and Immediate Solutions have met their contractual requirements.
- 10 In respect of the current position, of the 21 roundabouts included within the scope of the contract, 13 are currently occupied (with 8 of these currently the subject of ongoing discussions / negotiations) the remaining 8 are unoccupied. In terms of revenue, over the 4 financial years the contract has been running, the Council has accrued a total of £96,374.
- 11 The current position for each roundabout is presented in the schedule in **Appendix 1**.

Management of the Contract

- 12 Operation and day to day management of the contract primarily rests with Immediate Solutions, whilst working in partnership with officers of the Planning Policy team.
- 13 Currently all sign production, erection, maintenance, repair and replacement is carried out by Immediate Solutions. The Council identifies and agrees additional sites / assets, approves sponsors and relevant artwork, and the maintenance of the roundabouts themselves remains with the Council's Streetcare Department. Little, if any, amendment to these existing regimes is proposed.
- 14 It will continue to be the responsibility of Immediate Solutions to ensure the exclusions from sponsorship are adhered to. These exclusions from sponsorship are set out in **Appendix 2**.

Future Arrangements

- 15 The Council is eager to continue with an asset sponsorship agreement not only to generate revenue in the short and long term to assist the Council in carrying out its functions, but also to continue to provide businesses operating locally the opportunity to promote their identities.
- 16 The implementation of the Public Contract Regulations 2015 (further detail of which is set out in the Legal Impacts section below), provides that the Council is limited in the scope of any arrangement that could be pursued at this time. In order to obtain a new 'long term' partner, the Council would need to undertake a competitive procurement exercise which could take 3-6 months to resolve.
- 17 Given that the most recent contract with Immediate Solutions was due to expire on 30th June 2016, an urgency action has already been implemented to extend the contract for a short term period of 12 months. This has ensured continuity, that the necessary arrangements are in place for a straightforward transition, and the means to ensure continued generation of revenue in the short term.
- 18 For the longer term arrangement it is contended that whilst this short term extension is in operation, officers will commence a procurement process for a contract to commence in the Summer of 2017.

Additional Assets

- 19 In order to optimise both future sponsorship revenue and the opportunities for local businesses to promote their identities, there is now an opportunity to consider the sponsorship of additional assets, over and above roundabouts, within Neath Port Talbot. The following are examples of assets that have been identified as having the potential to generate such revenue:
- Gateway signs;
 - Lighting columns;
 - Roadside verges (including Parks);
 - Screens in Civic Centres / Libraries;
 - Car parks;
 - Cycle routes.
- 20 Initial discussions have been held with Immediate Solutions concerning this list, with gateway signs, roadside verges and lighting columns being identified as appropriate pilot schemes:
- *Gateway signs* – subject to variables, these assets could potentially generate in the region of £1,000-£1,500 per site/annum;
 - *Roadside verges* – subject to variables, these assets could potentially generate in the region of £1,000 per site/annum;
 - *Lighting columns* – subject to variables, these assets could potentially generate in the region of £500-£600 per column/annum. Whilst these values appear low, Immediate Solutions have advised that usually a large number of columns may be taken together in any one agreement.
- 21 The inclusion of such items in the varied arrangement with Immediate Solutions will allow the Council to see whether such arrangements prove viable for the Council to pursue. They can then be incorporated into any future procurement process that the Council undertakes.
- 22 It is important to highlight however that when moving forward a balance will need to be struck in relation to creating additional revenue whilst protecting vehicle and pedestrian safety and the visual amenity of our assets.

The Way Forward

23 Bearing in mind the procurement parameters, details of which are set out in the Legal Impacts section below, the following approach is considered to be the most appropriate way forward at this stage:

- *Short term* – agreement of a variation to the contract with Immediate Solutions, which would include the trial of additional pilot schemes as appropriate.
- *Long term* – in parallel, commence a procurement exercise to obtain a long term partner with any future contract to commence after the current extended period has expired.

Financial Impact

24 Whilst the decisions will potentially incur additional expenditure in relation to the staff resources needed to facilitate the initial set up of additional assets (refer below), it is anticipated that these costs will be clawed back and ultimately covered in respect of the additional sponsorship revenue generated.

Equality Impact Assessment

25 In order to assist the Council in discharging its Public Sector Equality Duty under the Equality Act 2010, an Equality Impact Assessment (EIA) Screening Exercise has been carried out.

26 Given that the contract stipulates the exclusion of sponsorship which may reasonably be constructed as showing or encouraging any type of prejudice based on race, sexual orientation, disability, religion, gender or age, the Screening Exercise concluded that equality issues are suitably addressed with no requirement to carry out an additional EIA exercise.

Workforce Impacts

27 Based on past experience, it is anticipated that when facilitating the initial set up of additional assets for sponsorship, Council staff input is likely to be high. This takes account of the need for Planning Policy officers to:

- Gain cross-departmental agreement in respect of the number, location and siting of signs;
- Approve sign design templates for the assets as appropriate;

- Arrange pre-application discussions and provide input into the consequent Planning Application process as appropriate;
- Deal with queries and/or complaints as appropriate.

28 Accordingly, if it proves that additional resources are required on a temporary basis to cover the initial set up work, appropriate authorisation will be secured.

Legal Impacts

29 In early 2015, the Public Contract Regulations 2015 (“the Regulations”), which govern the way services, are procured by contracting authorities of which Neath Port Talbot County Borough Council is one, were introduced. They require that agreements of the kind detailed in this report over the value of £164,176 must be advertised in the Official Journal of the European Union (“OJEU”). It is imperative that any long term arrangements for an asset sponsorship arrangement is conducted in accordance with the requirement of the Regulations.

30 However, with regards to the additional elements to be included, the Council must ensure that the value of the varied contract does not exceed the financial threshold detailed above.

31 Even though the requirement to competitively tender the varied contract in Europe is not applicable, the Council is still caught by the general obligations of transparency, equal treatment, non-discrimination and proportionality that derive from the Treaty on the Functioning of the European Union (TFEU) when the contract is of 'certain cross border interest'.

32 What these principles imply in practice is that the contract for this variation should be transparently awarded in a non-discriminatory way. The simplest way to demonstrate compliance would be by going through a procurement exercise compliant with the principles outlined above.

33 In addition, the Council must comply with our own internal Contract Procedure Rules (CPRs) which provide that the Council will, whenever possible, put a contract of this value out to open tender. Rule 2.1 of the CPRs provides that where the value of the contract is over £50,000 tenders shall be invited using whichever of the tender procedures referenced is deemed appropriate.

- 34 Therefore, the Council could potentially be exposed to challenge from aggrieved providers who have not had an opportunity to bid for the varied arrangement. They may wish to challenge this by Judicial Review of the Council's decision.
- 35 The risk of challenge is acknowledged, however it would be contended that the Council must ensure that suitable contractual arrangements can be put in place to generate revenue in the short and long term to assist the Council in carrying out its functions and secondly to continue to provide businesses operating locally the opportunity to promote their identities and it would be contended that such arrangements do represent best value for the Council.
- 36 Attempts will be made to minimise the risk of challenge by ensuring, for example, the limited changes that would be necessary to the existing contract documents would ensure that it does not appear to be a radically different document.
- 37 More significantly, the Council would contend that the risk of challenge is minimised as it is the intention of the Council to embark on a compliant tender exercise to run in tandem with the varied contract. Any organisations who may wish to challenge the variation are more than likely going to be interested in bidding for the longer term arrangement when it is advertised to the market.

Risk Management

- 38 The risk associated with failing to implement the proposed recommendations is that the benefits outlined earlier in this report will not be realised and that the Council will be unable to generate optimum levels of revenue in the short and long term to assist the Council in carrying out its functions and will be unable to continue to provide businesses operating locally the opportunity to promote their identities.

Recommendation

- 39 That having considered the report, it is resolved to make the following recommendations for approval:
1. That rule 2.1 of the Contract Procedure Rules be excluded and that the contract with Immediate Solutions be varied to allow the trial of additional pilot schemes identified in this report.

2. That delegated authority be given to the Head of Planning and Public Protection to determine what additional assets are to be included in the revised contract.
3. To begin a procurement exercise in parallel to obtain a long term partner with any future contract to commence after the current contract term has expired in the Summer of 2017.

Reasons for Proposed Decision

- 40 The recommendations are needed to ensure compliance with the Public Contract Regulations 2015; to generate optimum levels of revenue in the short and long term to assist the Council in carrying out its functions; and to continue to provide businesses operating locally the opportunity to promote their identities.

Implementation of Decision

- 41 The decision is proposed for implementation after the three day call in period.

Appendices

- 42 Appendix 1: Current Position Per Roundabout.
43 Appendix 2: Asset Sponsorship – Exclusions.

List of Background Papers

- 44 Public Contract Regulations 2015.

Officer Contact

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APPENDIX 1

Current Position Per Roundabout

Site Ref	Name / Location	Council Revenue / Annum
1	A48 / Margam Road	£0
2	A4241 Harbourside Road	£0 (Contract recently expired / Negotiations ongoing)
3	A4241 Harbourside Road / Harbour Way	£0 (Contract recently expired / Negotiations ongoing)
4	A4241 Harbour Way / Afan Way	£0
5	A4241 Afan Way / Dalton Road	£1,750
6	A4241 Afan Way / Southdown Road	£0 (Contract recently expired / New Contract pending)
7	A4241 Afan Way / Seaway Parade	£2,700
8	A4241 Seaway Parade / Central Avenue	£3,000
9	A48 Heilbronn Way / Pentyla Baglan Road	£0
10	A465 / A474	£3,000
11	A4230 / Neath Abbey	£0
12	Briton Ferry Road / Eastland Road	£2,000
13	Graig Road / A474	£0
14	A4067 / Tesco	£3,000
15	A4067 / Glanrhyd Industrial Estate	£0
16	A4067 / B4603	£0
17	Glan Yr Avon / B4599	£2,000
18	A421 Harbour Way	£2,750
19	A421 Harbour Way	£4,450
20	A421 Harbour Way	£4,450
21	A421 Harbour Way	£0

Notes:

- *The information in the schedule represents a snapshot in time with the information correct as of the end of May 2016.*
- *Since the commencement of the initial contract, only three roundabouts (Nos. 1, 13 and 15) have yet to generate any revenue.*

APPENDIX 2

Asset Sponsorship – Exclusions

- 2.1 No sponsorship agreement or signs erected as a consequence of an agreement depict any of the following:
1. Sponsorship for contraceptives and associated products and services.
 2. Sponsorship for political parties or where the content is considered to be of a political nature.
 3. Sponsorship on behalf of Trade Unions or Employers Federation.
 4. Sponsorship which may reasonably be constructed as offering or promoting services of a sexual nature.
 5. Sponsorship for religious organisations or where the content is considered to be of a religious nature.
 6. Sponsorship which may reasonably be constructed as showing or encouraging any type of prejudice based on race, sexual orientation, disability, religion, gender or age.
 7. Sponsorship which may reasonably be considered not to comply with the guidelines set down from time to time by the Advertising Standards Authority.
 8. Sponsorship for products of, or organisations dealing in, the tobacco industry.
 9. Such other sponsorship types as the Council reasonably specifies and for which it gives reasonable written notice to the Service Provider that it considers such sponsorship unsuitable.