

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE – 24 AUGUST 2004

BUS SHELTER ADVERTISING CONTRACT – 5 YEARLY REVIEW

Report By Executive Director of Development & Property Services

1. PURPOSE OF REPORT

1.1 The purpose of the report is:

- a) to advise the Committee that J C Decaux, the contractor operating the bus shelter advertising contract has requested a 5-yearly review as provided for in the contract document.
- b) to advise the Committee of the financial, policy and legal implications for the Council of the proposals contained in the review.
- c) to seek Committee authorisation for the Executive Director of Development and Property Services to respond to this request for a review and to enter discussions with J C Decaux.

2. BACKGROUND

- 2.1 At its meeting of 24 November 1998 the Development Services Committee agreed to authorise Glasgow City Council to co-ordinate and issue tender documents for the renewal of the bus shelter advertising contract after Strathclyde Passenger Transport had withdrawn from the tender process.
- 2.2 Tenders were returned to Glasgow City Council on 1 November 1999 and after a legal challenge by one unsuccessful tenderer, J C Decaux were awarded the contract. East Ayrshire Council accepted the offer on 24 February 2000.
- 2.3 Under the Conditions of Contract J C Decaux were required to install and make operative the minimum number of shelters (37) by 31 December 2000.
- 2.4 The shelters were not completely installed until 31 March 2001.
- 2.5 The contract requires the Company (J C Decaux) to submit to the Contract Administrator (Director of Development Services) for approval at the end of each quarter a Schedule of Income payable to East Ayrshire Council.
- 2.6 The advertising bus shelter contract will last for 15 years. A contract review can be held every five years which will provide an opportunity for both parties to the contract to negotiate variations that are deemed to be mutually beneficial, arising from changed circumstances. The annual income rate will be subject to adjustment in accordance with the Retail Price Index after the first full year of operation of the contract.
- 2.7 A recommendation was also made to remit the matter to the Policies and Resources Committee with a recommendation that the additional receipts from the Advertising Bus Shelter Contract should be allocated to the Development Services Committee for the purpose of improving public transport infrastructure and improving safety and security associated for passengers.

3. 5-YEARLY REVIEW

- 3.1 Correspondence has now been received from J C Decaux requesting that the 5-yearly review of the contract be held. The 5th anniversary of the signing of the contract is 24 February 2005.
- 3.2 It should be noted that the complete number of shelters were not installed until 31 March 2001. However, J C Decaux has made full and regular payment in respect of 37 shelters since 1 January 2001.
- 3.3 The letter from J C Decaux suggested a reduction in the annual payment from £5000 to £1000 per shelter (indexed to Retail Price Index). This would effectively translate to £148,000 per annum reduction in income to the Council.
- 3.4 The payment per advertising shelter was based on the "city fee" payment made to Glasgow City Council. J C Decaux now claim that this approach is not sustainable.
- 3.5 A bulletin issued to all tenderers stated "the purpose of the contract review is to allow both parties to negotiate variations to the Contract that are deemed mutually beneficial, for example issues that may have an effect on the financial provision of the contract. This would include discussion of the Income Rate. However, for the avoidance doubt, any amendment to the Contract as a result of the Contract Review would require the agreement of both the parties."
- 3.6 The request for a reduction in payments to the Council has therefore been rejected as it provides no benefit to the Council. However, an offer to review the other aspects of the contract which can yield a mutual benefit such as cleaning and maintenance was made.
- 3.7 Seven other unitary authorities within the Westrains area have had similar correspondence from J C Decaux. Is it understood that the other authorities have all responded in the same vein as this council.
- 3.8 J C Decaux have intimated that they wish to invoke Clause 35 of the Conditions of Contract – Disputes/Arbitration.

4. POLICY IMPLICATIONS

- 4.1 The Councils Local Transport strategy recognises that good transport infrastructure such as bus shelters encourages the travelling public to travel by public transport in line with current government policy of reducing reliance on the motorcar.
- 4.2 If this dispute cannot be resolved, it could lead to the removal of the 37 advertising shelters.

5.0 FINANCIAL IMPLCATIONS

- 5.1 Any reduction in the rate per shelter paid to the Council by J C Decaux will have implications for future budgets.

6.0 LEGAL IMPLICATIONS

- 6.1 After Glasgow City Council awarded the bus shelter advertising contract, one of the unsuccessful tenderers, the More Group (Scotland) Limited, challenged the decision and lodged a petition for Judicial Review at the Court of Session in Edinburgh. The petition alleged that Glasgow City Council had applied the wrong tendering regulations.
- 6.2 More Group (Scotland) Ltd asserted that J C Decaux's bid was commercially unviable and that the annual rental of £5000 could not be sustained.
- 6.2 The More Group had previously supplied shelters to the Councils.
- 6.3 A first hearing of the Judicial Review process took place at the Court of Session on 17 December 1999. The judge ruled that the Petition for Judicial Review was incompetent in the circumstances and dismissed both the request for an interim suspension of the contract award and the continuation of the judicial review.
- 6.4 The acceptance of J C Decaux's request to reduce payments made to the Council could result in further litigation against the Council by the More Group.

7.0 RECOMMENDATIONS

- 7.1 It is recommended that the Committee:-
- i) note the request by J C Decaux for a 5-yearly review of the advertising bus shelter contract; and
 - ii) note the financial, policy and legal implications of any reduction in payment; and
 - iii) authorise the Executive Director of Property and Development Services to enter into discussions with J C Decaux on the review.

James Lavery
Executive Director of Development and Property Services
JTK/HS
2 August 2004

LIST OF BACKGROUND PAPERS

Nil

For further information please contact Keith Orton on 01563 – 555714.

Implementation Officer: Jim Kane – Head of Roads and Transportation