

Cabinet	 TOWER HAMLETS
6 January 2021	
Report of: Corporate Director, Children and Culture	Classification: Part Exempt

Proposal for variation to the AEG Presents contract: “CLC5194 Victoria Park Commercial Concession Tender” and Major Events Policy

Whilst the majority of this report is unrestricted, by virtue of section 100A of the Local Government Act 1972 and paragraph 3 of Schedule 12A of the Local Government Act 1972 paragraphs in Recommendations point 4, 1.4, 5.2 and 6.1 to 6.3 are Exempt as they contain information relating to the financial or business affairs of any particular person (including the authority handling the information). Specifically, these paragraphs give specific financial details regarding the existing contract. The Information is exempt to the extent that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information as it could have an adverse impact on the procurement process.

Lead Member	Councillor Sabina Akhtar, Cabinet Member for Culture, Arts and Brexit
Originating Officer(s)	Judith St John, Divisional Director,
Wards affected	All
Key Decision?	Yes
Forward Plan Notice Published	18.12.20
Reason for Key Decision	Change to major events policy that affects more than two wards.
Strategic Plan Priority / Outcome	11. People say we continuously seek innovation and strive for excellence to embed a culture of sustainable improvement.

Executive Summary

This report sets out the recommended contract management approach for the delivery of the council's Victoria Park Commercial Events Concession Contract in consideration of COVID-19 and the severe impact of the pandemic on the current contract and any subsequent contracts in relation to the live events sector market.

The current concession contract was awarded to AEG Presents in 2017 (commencing on 1 January 2018). The contract is for four years (ending 31 December 2021) with an option to extend the contract by one year (ending 31 December 2022).

The 2020 event programme was cancelled due to COVID-19. Whilst vaccine developments are progressing there is no actual deadline for when the majority of the population will have received the vaccination by. Although the government announced that outdoor events (in Tier 1) could be held for up to 4,000 place from 2 December, there is no indication as to when larger events such as All Points East (capacity 40,000) can resume. It should be noted that the major events contract model would not support a socially distanced event model due to the number of tickets sales required to make the events commercially viable.

31 October 2020 was the contracted date by which both parties were required to confirm if they wished to enter into the optional fifth year (2022). This date has been extended to allow for a review of the contractual terms given the exceptional circumstances resulting from the pandemic that could not have been reasonably foreseen by either party.

AEG Presents has been in consultation with the council to propose variations to the current contract to enable them to be able to take on the commercial risk of the optional fifth year and to agree a payment towards the 2020 event that could not take place due to pandemic. This report outlines the recommendations by council officers to consider these variations to the contract.

In summary AEG Presents are looking for:

- A reduction in fees (please see Point 4 in Recommendations for fees outline);
- The option to extend the contract by a further year to 2023 (in addition to the current optional year) against the loss of opportunity to hold the 2020 event;
- An increased capacity of 10,000 from 39,999 to 49,999 for four of their six major event days to enable them to be more competitive in their ability to secure artists. If agreed, this would be subject to licence.

Amendments to the Major Events Policy (as approved by Cabinet on 9 March 2011 and 10 January 2017 – see linked documents):

As part of the variation request, AEG Presents are seeking an increased capacity from 39,999 to 49,999, which will require an alteration to the council's Major Events Policy.

This report seeks a decision for an amendment to the major events policy to be

made to allow for up to six major event days per calendar year at up to 49,999.

The capacity would be subject to the current contractor, and any subsequent contractor, obtaining a Premises Licence.

Although AEG Presents has not requested for additional event days (currently limited to up to 10 major event days), given the ongoing financial considerations for the council, we propose changing the major events policy to allow for up to 12 major event days as follows:

Six Major Events Days @ a capacity of up to 49,999
Six Major Events Days @ a capacity of up to 39,999

Recommendations:

The Cabinet is recommended to consider the following in relation to the “**CLC5194 Victoria Park Commercial Concession Tender**” and the Major Events Policy:

1. Agree an amendment to the Major Events Policy to allow for six major events at up to 49,999 capacity and six major event days at up to 39,999 capacity per calendar year. Note that for the current contract, AEG Presents are requesting four days at 49,999 (see Point 3 below for more detail).
2. Agree an extension to the current contract from the 31 December 2022 until 31 December 2023. AEG Presents will be required to confirm if they want to take up this extension by 31 October 2021.
3. Subject to licence, agree to the following variation to the capacities for AEG Presents Event Days as follows:
 - i. the four Event Days with a capacity of between 5,000 – 14,999 attendees shall be reduced so that the maximum capacity of each such Event Day shall not exceed 12,499 attendees; these being the free to enter days which have had a much lower average attendance, and
 - ii. the six ticketed Event Days with a capacity of between 15,000 – 39,999 attendees shall be modified so that the capacity of four of the Event Days shall, subject to licence, increase to 49,999 with the remaining two Event Days to remain with a maximum capacity of 39,999 attendees.
4. Agree to the proposed revised baseline fees contained in Appendix 1.1 (commercially sensitive information).
5. Authorise the Divisional Director – Legal Services, after consultation with the Corporate Director for Children and Culture, to execute and enter into all necessary agreements.

1. REASONS FOR THE DECISIONS

- 1.1 Officers recommend that the Cabinet make a decision to accept the variations terms that have been reviewed by AEG Presents' and the council's legal teams and to a variation to the Major Events Policy.

The council needs to secure the best commercial outcome in relation to the Major Events Concession and this includes confirming the optional fifth year of the contract with the incumbent concessionaire.

The optional extension year (year 5), was due to be confirmed by both parties by the 31 October 2020. The impact of the pandemic on the live events sector has been severe and due to the ongoing nature of the pandemic there remains a high level of risk to any promoter delivering a large-scale capacity event in 2021. Therefore, in order for AEG Presents to commit to the commercial risk of the optional fifth year, they have requested variations that officers deem reasonable due to the significant instability to the live events sector.

Should the council not accept the variations and AEG Presents do not take up the optional fifth year, then the council would face going out to tender in early 2021. Given the volatility of the live events sector, coupled with rising levels of unemployment, this would be a high-risk approach for the council to take and would likely result in less advantageous bids than the varied terms being proposed by AEG Presents both in respect of income and community benefits.

In addition, it is anticipated that local authorities will be under greater pressure to generate income with more outdoor venues becoming available as we come out COVID-19 restrictions. This additional competition may lead to us having to lower our expectations in terms of fees and community benefits in order to compete with a wider pool of venues. Even though Victoria Park is a premier site, promoters will be risk adverse and looking for the best financial deal they can secure.

- 1.2 An alteration to the Major Events Policy, permitting up to four event days at 49,999 capacity per calendar year is required to enable AEG Presents to have increased access to a wider range of artists (see point 1.4). This alteration would also enable Victoria Park to remain an attractive venue for any forthcoming tendering, which will be important as the live events sector could take a considerable period of time to recover from the pandemic.
- 1.3 An increased capacity of 39,999 to 49,999 would make the event more viable as AEG Presents could, with increased revenue through ticket sales, look to programme Category A level artists. Versatility of programming is important as there is a high level of competition to book artists by stadium venues for 2021 and 2022 to make up for losses in 2020. Higher level artists would mean a higher probability of good ticket sales that would in turn make AEG Presents a

more viable partner for the council during the current contract and as a strong bidder for any future contracts. In addition, the council would receive additional income from sales above 40,000. It should be noted that officers are confident given AEG Presents' strong track record for planning and delivery that an increased capacity could be managed as to minimise disruption to local residents.

- 1.4 Baseline fees: pending the acceptance of the variation clauses, AEG Presents are offering a payment for 2020. Due to the commercially sensitive nature of this information the payment amount is exempt, please refer to Appendix 1.2 for details.

The Fees for 2021, 2022 and 2023 and any pro rata reduction due to the pandemic making event days non deliverable, are considered to be reasonable given the current marketplace and the need for AEG Presents and the council to share the risk.

2. ALTERNATIVE OPTIONS

- 2.1 Do nothing i.e. not agree to the variations and keep the existing contract terms – this would result in AEG Presents not taking the optional extension year nor would they offer the payment for 2020. The council would then have the following options and associated risks:
 - i. Go to tender in early 2021 at a period when the live events sector has been decimated and the number of viable bidders would be further reduced, and the fees offered lower than those obtainable to us previously.

Furthermore, the terms of the contract would need to be changed to reflect the pandemic and in order to be able to attract any bidders we would need to allow for rollover of the 2021 event should it not go ahead, acceptance that we would not get paid for any cancelled event.

Or

- ii. Not tender in 2021 and book in a range of ad-hoc events with resulting risks of less income being offered by AEG, fewer community benefits and untested providers and event models that could create greater disruption to local residents.

3. DETAILS OF THE REPORT

- 3.1 The current contract with AEG Presents commenced in 2018 for a period of four years, with the option to extend by a fifth year. AEG Presents bid for all of the available major event days and came in with an offer higher than their competitors. In addition, they bought out the four smaller capacity days (up to 14,999) as free to access community days, providing additional benefits and added value to the council and residents.

- 3.2 The reduced fees are higher than those put forward by the nearest bidder at the last tender process and present good value for money with the retention of the four free to access event days (In The Neighbourhood).
- 3.3 When the council went to tender in 2016, the live events sector was buoyant, however due to the pandemic the events sector has been severely impacted. Therefore, there is a significant risk that if AEG Presents do not take up the fifth contractual year that we would be unable to secure a competitive tender moving forwards as other major market players have suffered severe commercial losses in 2020.
- 3.4 Once live events become viable again, there will significant competition by stadium and outdoor event organisers globally to secure a limited pool of artists in a condensed period. Therefore, flexibility is required by AEG Presents in terms of their capacity to attract a wider pool of artists and compete with other events including stadium events. In turn the council will benefit from increased fees and it will support the longer terms stability of the provider.
- 3.5 AEG Presents has performed consistently well and has continued to meet and exceed, in part, the delivery of their contract. They have demonstrated a firm commitment to community engagement through education and training programmes, opportunities for local businesses to trade / supply services, programming of local artists and organisations as well as providing four free to access days that they could have delivered as paid commercial events. In addition, they have proactively addressed resident concerns and complaints are reduced from the previous contract and have demonstrated a strong commitment to sustainability.
- 3.6 Given that the council is looking to increase its commercial income and in light of the fact that the current marketplace and availability of bidders is weak, the contract variations put forward make good financial and commercial sense.
- 3.7 As per 3.6, a change to the Major Events Policy in relation to capacity and number of event days provides the council with a more commercially viable model moving forwards within a sector that requires greater flexibility.
- 3.7 Legal and Procurement consider the changes to be in scope of the EU procurement regulations due to COVID-19.

Under Section 43 of the council can modify a contract whereby:

- (i) the need for modification has been brought about by circumstances which a diligent contracting authority or utility could not have foreseen;
- (ii) the modification does not alter the overall nature of the concession contract.

4. EQUALITIES IMPLICATIONS

- 4.1 Events income contributes significantly to the maintenance and provision of parks and open spaces across the borough and the delivery of free to access community cultural events. Parks and open spaces and events are open to all residents from all backgrounds and protected characteristics. Generating income from a Victoria Park Commercial Event Concession enables the council to continue investing in parks and open spaces and free community events at a time of reducing budgets, thereby benefitting all residents.
- 4.2 Major events have localised, time limited impacts. These are not considered to be affecting any particular protected characteristic disproportionately. Localised impacts are minimised through contractual requirements to continuously improve event management arrangements and by limiting the number of event days in line with the parameters set out in Recommendation 3 of this report.
- 4.3 By agreeing to the variations of the contract, we will secure the ongoing viability of a successful events programme that offers a wide range of benefits to residents including **four free to access community event days** (In the Neighbourhood). Community events contribute to the strategic aims including community cohesion by bringing together people from different backgrounds.

If we go out to tender in 2021 for 2022 and beyond we are unlikely to obtain a bid that offers such a high level of community benefits. Note that we could not stipulate that any future tender replicate the current benefits as it would not be commercially viable in the current climate and lead to less competitive bids (i.e. bidders would reduce their fees schedule to be able to accommodate the community benefits).

5. OTHER STATUTORY IMPLICATIONS

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:
 - Best Value Implications,
 - Consultations,
 - Environmental (including air quality),
 - Risk Management,
 - Crime Reduction,
 - Safeguarding.
- 5.2 For the complete Best Value section please see Appendix 1.3.

In addition to direct income to the council, AEG Presents provide significant economic benefit to the borough. AEG Presents undertook an independent

analysis of the overall economic benefits to Tower Hamlets of running their events. The findings of this analysis are as follows:

- i. The event delivered £3.8 million in economic expenditure benefit to Tower Hamlets and £28.8m in economic expenditure benefits to London.
- ii. This represents an increase of £0.8m in benefit to Tower Hamlet (up by 24%), and £6.2m in benefit to London (up by 27%).

AEG run an annual Business Fair to encourage participate to trade, perform and supply services to the event. Notably they also give free pouring rights to three local brewers, which is a significant benefit to the local economy.

- 5.3 **Environmental:** as the events are held in public open spaces, consideration is given to reduce impact to residents and the park. Measures include effective site planning, ground protection and noise management procedures agreed with Environmental Protection. All plans and documentation are reviewed by agencies including Environmental Protection to ensure that the Council is fulfilling its statutory duties and following best practice.

Events income contributes significantly to the council's budget for maintaining and improving parks and open spaces and the current contract allows for £5,000 environmental impact fee payable by the concessionaire for each event day, which is used to support ongoing improvements to Victoria Park. It is acknowledged that events can have short term impacts on the park in which they take place. These impacts are minimised through contractual arrangements and licensing conditions.

AEG Presents have evidenced a high level of commitment towards sustainability. They have invested in trialling alternative to plastics and in 2020 were due to use 100% compostable paper cups and food ware. Moving forwards, AEG Presents will use 100% HVO Biofuel (following on from 50% in 2019). In 2019, 80% of the food offer was vegetarian and zero waste went to landfill.

- 5.4 **Risk Management:** the recommendations of this report seek to secure a good level of income for 2020, 2021 and 2022 and 2023 (if this year is taken up). This approach will provide a more stable and predictable environment for year on year budgeting and is a much lower risk approach than trying to go to tender in 2021 when the impact of the pandemic is still severe on the live events industry resulting in huge losses.

If we were to go to tender in 2021 there is likely to be a lack of interest from the market and any offers could present less value than the one offered by AEG Presents. The proposed variations would mean that we would not need to go to tender until late 2021 / early 2022 when hopefully some recovery of the sector will have taken place. If the contract rolls over to 2023 this would put us in an even stronger position to be able to secure more advantageous bids for any future tenders.

The other more likely option is that we would not go out to tender for 2022 and book ad-hoc events. This would be of greater risk to the council in terms of us potentially not knowing the event promoter and a loss of the continual improvements that we achieved with AEG Presents in terms of minimising the impact of the major events programme and providing opportunities to local business and residents. A more ad hoc approach to booking events into Victoria Park is considered less likely to secure continuous improvements as promoters would not be in an ongoing contractual relationship with the council.

If we don't come to an agreement with AEG Presents then the council will not receive any payment for 2020. In addition, there is a risk that if we do not come to a reasonable compromise with AEG Presents, that they will be a less viable bidder for any future tenders.

In relation to the 49,999 capacity, this presents a risk in terms of greater impact to residents and the local transport networks as well as the potential for more complaints. However, the planning for such capacity would be robust and the venue is well served by transport links with TfL actively involved in the planning process. Security and stewarding would be increased (particularly externally) as would cleansing and provision of toilets etc to minimise local disruption. AEG Presents operate a proactive resident's hotline to quickly address any resident concerns.

- 5.5 **Crime Reduction:** all major events, commercial and free to access, are subject to multi-agency planning, including the relevant emergency services. In addition to the contractual requirements, the premises licensing process provides for further mitigation through licensing conditions.

AEG Presents have a good track record for a high level of professionalism and All Points East is regarded as a low risk crime event by the MET Police.

Since 2019 they have engaged a specialist Security Manager who has been an interface with the MET Police and Security Contractor. AEG Presents have also committed to increased levels of external security and stewarding each year in relation to concerns and feedback from residents and councillors.

An increase in capacity to 49,999 would be subject to enhanced rigorous review by agencies and AEG Presents would be required to provide increased on-site and off-site security and stewarding.

The current Victoria Park Commercial Events Concession contains provision for continuous improvement to event management arrangements in order to minimise any potential negative impact from major events. This has resulted in a reduction of adverse impacts over the life of the contract. It is proposed that a new concession for Victoria Park builds on these arrangements.

- 5.6 Safeguarding: the licensing and multi-agency planning process means that AEG Presents must provide robust measures to protect children and

vulnerable adults from harm. All plans are reviewed via a multi-agency approach and the organiser has invested in enhanced welfare teams, more training for all staff around safeguarding (provided by the MET Police) and the event is not considered to be a concern in relation to safeguarding.

6. COMMENTS OF THE CHIEF FINANCE OFFICER contain commercially sensitive information and are therefore in Appendix 1.

7. COMMENTS OF LEGAL SERVICES

- 7.1 Appendix 1 contains commercial information relating to the contractor's previous bid position and the current proposal. This constitutes exempt information. The contractor's commercial position in respect of any tendering opportunities either with this Council or another would be significantly prejudiced by the release of such information. This would mean that the Council may be required to pay significant damages to the Contractor which would not be in the public interest. Therefore, following due consideration, the public interest in knowing the information contained in Appendix 1 is outweighed by the public interest in maintaining the exemption.
- 7.2 The UK Government guidance issued on the 7th of May 2020 and the PPN 01/20 encouraged contractual parties to adopt responsible and fair behaviour in performing and enforcing contracts materially impacted by Covid-19. This means that the Council cannot ignore the economic impact that the pandemic had on this Contract and the need to act in a spirit of cooperation to achieve practical, just and equitable contractual outcomes.
- 7.3 The Council has the legal power to undertake the activities identified in this report.
- 7.4 The PPN issued by the UK Government last March, in response to the pandemic, established the commercial actions that local authorities must consider in responding to Covid-19 and one of these include "*extending or modifying contracts during its term*". However, in doing so the Council cannot ignore its obligations under Regulation 43 of the Concession Contracts Regulations 2016.
- 7.5 This means that while the Council can cooperate with the Service Provider to ensure that the impact of Covid-19 on this contract is mitigated as far as possible, it has to ensure that the nature of the contract is not significantly altered in compliance with Regulation 43
- 7.6 The variations to the contract described in this report won't alter the economic balance of the contract as it will leave both parties in a no worse no better position as the parties would have been in had the pandemic not occurred. The variations aim to accommodate only the circumstances caused by Covid-19 and any projection of the future impact of the pandemic. In any event the Council could not have predicted the pandemic and therefore variations to this

Contract are not in breach of Regulation 43 of the Concession Contracts Regulations 2016 as the circumstances of the pandemic were unforeseeable.

- 7.7 The main issue is to ensure that the variations do not create an economic advantage to the Provider and distort the market. However, the variations and a further extension of the contract will give the market the chance to recover from the impact of the pandemic and sufficient time for the Council to prepare a new procurement. Also, an increase in the event capacity will enhance future bidder opportunities and give the incumbent Provider the opportunity to mitigate some of the impact of the pandemic on its assumed financial position. The extension will also give the Provider the opportunity to recover what they have lost for year 2020 in compliance with the principles contained in the PPN 01/20. This shows that there is no intention to distort the market.
- 7.8 This approach will ensure an equitable outcome for contractual parties and allow the market to recover from the significant impacts suffered due to the pandemic in line with the UK Government provisions.
- 7.9 There are no direct legal Equality Act 2010 issues arising from this report.

Linked Reports, Appendices and Background Documents

Linked Report

i. Major Events Policy – agreed by Cabinet on 9 March 2011

[Cabinet documents 9 March 2011](#) – this link contains documents relating to the key decisions taken by Cabinet regarding the council's major events policy, which can be found under the *Commercial Activities in Parks CAB00/101* section.

ii. Victoria Park Commercial Events Concession Contract – agreed by Cabinet on 10 January 2017

[Cabinet documents 10 January 2017](#) – this link contains documents relating to the key decisions taken by Cabinet regarding the Commercial Events in Parks paper to allow for the current Victoria Park Commercial Events Concession Contract.

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

N/A

Officer contact details for documents:

N/A