

<p><b>Cabinet</b></p> <p>7 March 2017</p>	
<p><b>Report of:</b> Debbie Jones, Corporate Director – Children’s Services</p>	<p><b>Classification:</b> Part Exempt (Exempt Appendix)</p>
<p><b>Draped Seated Woman – selection of local hosting partner</b></p>	

<b>Lead Member</b>	<b>Councillor Asma Begum, Cabinet Member for Culture</b>
<b>Originating Officer(s)</b>	Judith St John, Acting Divisional Director – Sport, Leisure, Culture and Youth
<b>Wards affected</b>	All Wards
<b>Key Decision?</b>	Yes
<b>Community Plan Theme</b>	<b>A great place to live</b>

Appendix 1 to this report contains information that is exempt by virtue of section 100A of the Local Government Act 1972 and paragraph 3 of Schedule 12A of the Local Government Act 1972 ( information relating to the financial or business affairs of any particular person including the authority handling the information) The public interest in withholding the information outweighs the public interest in disclosing it because disclosure would reveal market sensitive information that could *undermine the commercial position* of the bidders.

### **Executive Summary**

This report outlines the procurement exercise carried out to secure a local hosting partner for the Henry Moore sculpture “Draped Seated Woman” (locally known as “Old Flo”). Following the Mayor’s decision on 1<sup>st</sup> December 2016, setting the contract strategy, officers led the procurement exercise and bid evaluation in line with the Council’s procurement procedures. This report recommends that the contract to host the sculpture be awarded to the highest scoring bidder.

### **Recommendations:**

The Mayor in Cabinet is recommended to:

1. Agree that the award of the contract to host “Draped Seated Woman” (locally known as “Old Flo”) be awarded to the bidder with the highest score ( see exempt Appendix 1)
2. Delegate to the Corporate Director – Children’s Services and in her absence to the Acting Divisional Director, Sport, Leisure, Culture and Youth authority to enter into a contract with the said highest scoring bidder.

## **1. REASONS FOR THE DECISIONS**

- 1.1 The decision is required in order to implement the Mayor's pledge to return Draped Seated Woman by Henry Moore back to Tower Hamlets. In line with the Mayor's decision taken on 1<sup>st</sup> December 2016, which set the contract approach, officers have now completed a procurement exercise. This report sets out the outcome of the procurement process and recommends to the Mayor that the highest scoring bidder be appointed to host Draped Seated Woman.

## **2. ALTERNATIVE OPTIONS**

- 2.1 The following alternative options are available to the Mayor:
- 2.2 Not to accept the officers' recommendation to appoint the highest scoring bidder and restart the procurement process.
- 2.3 Not to accept the officers' recommendation to appoint the highest scoring bidder and develop alternative options to return Draped Seated Woman to the borough.

## **3. DETAILS OF REPORT**

- 3.1 *Background*
- 3.2 Draped Seated Woman (locally known as "Old Flo") is an important example of the work of Henry Moore. The sculpture was one of eight casts made in 1957/58.
- 3.3 In 1962, the sculpture was purchased by London County Council (LCC) as part of its public art programme which ran from 1948 to 1965 and sought to broaden public engagement with art in the municipal environment. The LCC public art programme was one strand of a post-war movement to deliver social reform through strategic civic schemes. The programme commissioned or procured many sculptures, mosaics and reliefs through the LCC's Public Art Committee.
- 3.4 Following its acquisition, Old Flo was placed on the Stifford Estate in Stepney, built in 1962. Henry Moore is said to have sold the statue below its market value as he wanted to support the siting of it in this context. The Stifford Estate consisted of three 17-storey tower blocks arranged around a large lawn, fronting Jamaica Street just north of Stepney Way. Old Flo was positioned in the northern section of the lawn and was visible from Jamaica Street as well as to residents in all three blocks. The estate was demolished in 1999 – 2000 and the site redeveloped and as a result the original location is no longer publicly accessible.
- 3.5 The statue suffered from damage and vandalism and in advance of demolition of the estate, Tower Hamlets Council entered into a loan agreement with

Yorkshire Sculpture Park (YSP) in November 1997. YSP carried out restoration work and has exhibited and maintained the sculpture in its grounds since then at no cost to the Council.

- 3.6 In 2012 the previous administration resolved to sell Old Flo at auction to release a capital receipt. Shortly after the decision to progress with the sale in late 2012, the London Borough of Bromley claimed ownership of the sculpture. As a consequence the sale did not progress. In November 2015, the High Court ruled that the London Borough of Tower Hamlets was the rightful owner of Old Flo.
- 3.7 As part of his manifesto, Mayor Biggs pledged to reverse the decision of the previous administration to sell Draped Seated Woman and bring the sculpture back to Tower Hamlets. Following the election, he overturned the decision to sell Old Flo and set up a cross-party working group to consider options for returning Old Flo to Tower Hamlets.
- 3.8 In December 2016, the Mayor determined the preferred option for bringing Draped Seated Woman back to Tower Hamlets and tasked officers to run a procurement exercise to select a local hosting organisation.
- 3.9 *The contract approach*
- 3.10 Having considered the options available to him, the Mayor agreed that the most appropriate option, balancing access to the sculpture, security and cost implications at a time of constrained budgets, was to enter into a time-limited loan agreement with a local hosting organisation.
- 3.11 Many local organisations own publicly accessible land which is more secure than Council parks or highways. Such locations present an opportunity for balancing public access to the sculpture whilst providing a high level of protection for a rare and valuable artwork, which is in the custodianship of the Council.
- 3.12 At the time of the proposed sale of the sculpture in 2012, a number of local organisations from the voluntary and private sector came forward offering to host the sculpture. Since the election in 2015, a number of these organisations have renewed their offers. The Mayor recognised that there may be other organisations that may wish to work in partnership with the Council to bring Old Flo back and he therefore agreed that an open and transparent bidding process be initiated, using set criteria.
- 3.13 The Mayor agreed the following outline parameters within which officers carried out a procurement exercise:
  - Duration of loan: The duration of the loan is for a period of five years. This takes into account the complexities of moving a large sculpture and the costs associated with installation and transport. The duration also aligns with the anticipated build programme for the Civic Centre in Whitechapel, allowing the Council to consider whether a location within

the Whitechapel Civic Centre complex may be suitable in the medium term.

- Costs: All costs associated with the hosting of the sculpture would be met by the hosting organisation. The hosting arrangement would result in nil costs to the Council.
- Security, maintenance and insurance: The hosting organisation would be required to meet relevant standards in relation to the security, maintenance and insurance of high value artworks. The costs associated with meeting these standards would be met by the hosting organisation.
- Location: The sculpture must be placed in a publicly accessible outdoor location, which is highly visible to passers-by and allows the sculpture to be viewed in close proximity. The location must be accessible to viewers without the need for pre-booking or payment of an entrance fee.
- Education and outreach programme: The hosting organisation would be required to provide and fund an education and outreach programme aimed at bringing the widest possible section of the community into contact with the sculpture. The programme must be agreed with the Council's Arts & Events service.
- Timing: The relocation of the sculpture should take place in late October. This would allow for the chosen hosting organisation to secure any necessary permissions, including planning permission, and to carry out site preparation work. Furthermore, the timetable would enable YSP to retain the sculpture through to the end of its 40<sup>th</sup> anniversary celebrations, recognising the important role YSP has played in looking after Old Flo.

3.14 The tender opportunity was advertised on the Council's procurement portal from 16<sup>th</sup> December 2016 and the deadline for submission of bids was 6<sup>th</sup> February 2017, 12noon (extended to 5pm). While the contract is nil value, the procurement approach broadly followed that for Level 3 procurement as set out in the Council's procurement procedures. However, as the contract is nil value, the tollgate process, which relates to contracts of values above £250k, was not applied. In light of the complexities of the contractual arrangements and the high profile of the subject of the contract, it was considered appropriate to follow a more rigorous approach than would normally be required if the contract value alone was considered.

3.15 By the deadline, three bids were received. One bid was received after the deadline and did therefore not progress to formal evaluation. One bid received by the deadline failed to provide information in relation to a compliance question. A clarification question was put to the bidder and the bidder supplied the required information by the deadline. Three bids were therefore deemed valid and scored by the evaluation team.

3.16 The evaluation team comprised four council officers and one external subject matter expert.

The evaluation team conducted individual assessments of bids submitted by suppliers. Following individual assessments, evaluators came together to moderate scores, under the guidance of procurement colleagues.

- 3.17 The assessment criteria are based on the quality of the submission only as the contract carries a zero value and as such there is no pricing element to consider. Bidders were required to provide responses and/or evidence for three specific questions relating to compliance. These questions were not scored but failure to provide the required information resulted in the bid being disqualified.
- 3.18 The quality criteria are split into three main subjects:
- Access (50%) – Access includes physical access to the sculpture for residents, the development of an education and outreach programme, as well as the production of communications and marketing programme.
  - Security (30%) – Security relates to the physical security measures put in place to protect the sculpture from theft and/or damage.
  - Maintenance and upkeep (20%) – Maintenance and upkeep includes plans for planned and reactive maintenance as well as the ongoing review of the sculpture’s conservation needs.

Full details of the criteria and weighting can be found in Appendix 2.

3.19 The highest scoring bidder after panel evaluation is listed in Appendix 1.

3.20 The table below sets out the scores for each of the three bidders that progressed to formal evaluation.

<b>Bidder</b>	<b>Total score</b>
Bidder 1	89%
Bidder 2	30%
Bidder 3	90%

3.21 If approved by Cabinet, the contract will be awarded in April/May following conclusion of the standstill period. This will enable the successful bidder to make all necessary arrangements to return Draped Seated Woman to Tower Hamlets by 31<sup>st</sup> October 2017, following the conclusion of the 40<sup>th</sup> anniversary celebrations of Yorkshire Sculpture Park, where the sculpture is currently located.

#### **4. COMMENTS OF THE CHIEF FINANCE OFFICER**

4.1 It is a requirement of the Council’s constitution that “The contracting strategy and/or award of any contract for goods or services with an estimated value exceeding £250,000, shall be approved by Cabinet in accordance with the Procurement Procedures.

- 4.2 The current arrangements for Old Flo have been managed for a number of years through a loan of the sculpture to the Yorkshire Sculpture Park by the Council. The sculpture has been retained at the Park for the period at nil cost to the Council. The report seeks acceptance by Cabinet of the evaluation panel recommendation to award the contract to the highest scoring bidder, implementing the Mayor's pledge to relocate and host the sculpture within Tower Hamlets, at nil cost to the council.
- 4.3 The contract is let in accordance with all relevant procurement procedures for the duration of five years. The period takes account of costs relating to transport, installation and those associated with the hosting of the structure. In setting the period, it also allows for the future relocation of the sculpture within the Civic Centre complex in Whitechapel.
- 4.4 There is no budget provision associated with this sculpture and no budgets for maintaining public art. The parameters agreed by the Mayor are that all costs set out in this report will be borne by the successful hosting organisation including the provision of an education and outreach programme agreed by the Arts and Events Service. Given the need for the Council to deliver significant savings over the Medium Term Financial Strategy period 2017-2020, all costs associated with the relocation and hosting of the Old Flo sculpture will be met by the new contract and not impact on the Council.

## **5. LEGAL COMMENTS**

- 5.1 The proposed contract is a Public Services Concession Agreement. This is because intrinsically the organisation who hosts the sculpture has the opportunity to exploit the sculpture for a commercial advantage.
- 5.2 The law relating to concession agreements is now dictated by the Concession Contracts Regulations 2016. In the main they require the tendering of concessions at a Europe wide level. However, the regulations only apply where the value of the concession (being the potential sum estimated to be achievable by the exploitation) is greater than £4,104,394.
- 5.3 It is difficult to properly estimate the value of the concession here. However, it is unlikely to exceed this sum and therefore the regulations will not directly apply to the tender.
- 5.4 However, the European Law case of *Parking Brixen* shows that even where a procurement is outside the ambit of the appropriate legislation a public authority must still subject such a contract to a "reasonable level of advertising".
- 5.5 It is notable also that the Council had a duty to subject this contract to competition under the general duties described by the Treaty For The Operation Of The European Union. However, also in line with the general principles the measures taken by the Council must be proportionate to the subject matter of the Procurement. The Council's Constitution is silent in

respect to the level of advertising required for concession contracts where the European Law does not directly apply. However, a proportionate approach was determined to be to operate a similar level of advertising as a services contract would require where the value of the services is similar to the estimated value of the concession. Therefore, an open or restricted (2 stage) process similar to a level 3 services procurement was deemed appropriate using the Council's tendering portal. The criteria against which bids were measured (and therefore the winner chosen) were fair and non-discriminatory and applied fairly to all bids in the same way. It is notable that receipt of remuneration by the Council was not part of the evaluation and therefore the evaluation related to quality only. Therefore, the process demonstrated compliance with all relevant legal and governance arrangements which allows the Mayor to make this delegation should he so wish.

## **6. ONE TOWER HAMLETS CONSIDERATIONS**

- 6.1 Draped Seated Woman is currently not accessible to residents of Tower Hamlets unless they travel to YSP to view the sculpture. The proposed relocation therefore broadens the potential audience and makes it accessible to the widest possible range of Tower Hamlets residents.
- 6.2 The contract approach parameters, as set out above, include a number of requirements which are directly designed to address One Tower Hamlets considerations. These include the requirement to provide free of charge access to the sculpture in an easily accessible location, as well as an education and outreach programme to engage harder to reach audiences.

## **7. BEST VALUE (BV) IMPLICATIONS**

- 7.1 The selection of a local hosting partner to implement the Mayor's pledge meets the Council's Best Value Duty. The selection of an external local hosting partner at nil cost to the Council enables a high value artwork to be returned to its home borough. The agreement replaces an existing agreement with Yorkshire Sculpture Park, which similarly does not place any financial obligations on the Council. The proposed agreement therefore adds the benefit of enabling Tower Hamlets residents to access the sculpture more easily.
- 7.2 Selection of a local hosting organisation has been carried out as a procurement exercise in line with the Council's Procurement Procedures and the Constitution. This is in accordance with the procurement element of the Council's Best Value Improvement Plan and ensures compliance with the Secretary of State's Directions.

## **8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 8.1 None.

## **9. RISK MANAGEMENT IMPLICATIONS**

- 9.1 Securing a hosting partner minimises the risk of physical loss or damage to the artwork by requiring any future location to have robust security arrangements and be more overlooked than would be the case in relation to local parks or other Council owned sites with limited surveillance. The approach also minimises the risk of financial loss or exposure to the Council by requiring the hosting organisation to meet any costs associated with hosting the artwork.
- 9.2 As with all procurement exercises, unsuccessful bidders may challenge the outcome. This risk is being mitigated through close working with legal and procurement services throughout the process. A standstill period will apply prior to contract close.

## **10. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 10.1 The contract approach parameters within which officers have carried out the procurement exercise seek to minimise the risk of crime and disorder by placing the sculpture in a secure location.

## **11. SAFEGUARDING IMPLICATIONS**

- 11.1 None.

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### **Linked Reports, Appendices and Background Documents**

#### **Linked Report**

- NONE

#### **Appendices**

- Appendix 1 – exempt paragraphs
- Appendix 2 – evaluation criteria and weighting
- Appendix 3 – Equality Analysis Quality Assurance Checklist

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

- None

#### **Officer contact details for documents:**

- NA