

# Approval to award a new contract under Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015 for the conversion of cameras from Clean Air Zone to Bus Lane Enforcement.

Date: 3 May 2023

Report of: Principal Transport Planner

Report to: Chief Officer, Highways and Transportation

Will the decision be open for call in?  Yes  No

Does the report contain confidential or exempt information?  Yes  No

## Brief summary

- The Leeds Public Transport Investment Programme (LPTIP), the City Square Highway Scheme and other legacy enforcement sites require 25 Bus Priority Enforcement Cameras to meet their objectives
- This Report proposes to re-purpose 25 enforcement cameras originally purchased for the Clean Air Zone for use by the LPTIP and the City Square Highway Scheme.
- The cameras were originally purchased from Siemens Mobility Limited (“Siemens”). Siemens have subsequently sold this part of the business and the new company are called Yunex Limited.

## Recommendations

- a) The Chief Officer, Highways and Transportation is recommended to approve the award of a new contract to Yunex Limited (“Yunex”) under Regulation 32(2)(b)(ii) of the Public Contract Regulations 2015 Negotiated Procedure without prior publication of a Contract Notice for the conversion of Clean Air Zone cameras into bus lane enforcement cameras. The cost for the conversion of the 25 cameras is £221,639. The term of the contract shall be 5<sup>th</sup> June 2023 to 4<sup>th</sup> June 2024.

## What is this report about?

- i. The LPTIP programme requires 15 bus lane enforcement (BLE) cameras to meet the objectives of the schemes within the programme and the City Square Highway Scheme requires four BLE cameras to meet their objectives. In addition, there are six legacy enforcement sites that require BLE cameras. The table below shows where the cameras are to be deployed.

<i>Scheme</i>	<i>Number of BLE cameras</i>	<i>Cost (£)</i>
LPTIP A647	2	17,731
LPTIP A61 South	4	35,462
LPTIP Headrow	2	17,731
LPTIP Corn Exchange	6	53,193
City Square Highway Scheme	4	35,463
LPTIP York St	1	8,866
Legacy BLE enforcement sites	6	53,193
Totals	25	221,639

- ii. The cameras were originally purchased by the Clean Air Zone, so they are available for use by other Council teams, but require a 'conversion package' to be suitable for bus lane enforcement.
- iii. The software is proprietary which means that the only supplier who can convert the cameras to BLE use is Yunex.
- iv. Leeds City Council has already obtained the legal powers to enforce bus gates and bus lanes at specific sites in the schemes listed in the table above. In this report, the term bus lane enforcement (BLE) camera is used to cover cameras used for the enforcement of both bus gates and bus lanes.

### **What impact will this proposal have?**

1. a) The anticipated benefits of using efficient enforcement cameras will maximise the available funding to create improvements to the Leeds transport network.

b) Purchasing new Videalert cameras for BLE operations, instead of converting the Yunex cameras, was considered as an option. It is estimated that the cost of converting the existing Yunex cameras so they can be used for BLE operations will be 56% of the cost of purchasing new Videalert cameras for BLE operations. This means converting the Yunex cameras rather than buying new Videalert cameras represents a substantial saving of public money.

### **How does this proposal impact the three pillars of the Best City Ambition?**

- Health and Wellbeing                       Inclusive Growth                       Zero Carbon

1. The anticipated additional benefits of camera technology will maximise the benefits of the LPTIP funding to create improvements to the Leeds transport network and has the potential to contribute to the vision for Leeds to be the best city in the UK and the Best Council Plan 2020/21 priorities for inclusive growth, sustainable infrastructure and becoming a child-friendly city.

2. The Bus Priority Enforcement cameras form a key element of the Connecting Leeds funded projects and will also contribute to the objectives of the Our Spaces Strategy, HS2 Growth, West Yorkshire Transport Strategy, Leeds Integrated Station Masterplan, City Region Connectivity and Leeds Living. The cameras will maximise the efficiency of the Bus Priority measures of the LPTIP, which will assist in delivering the three key objectives of the Connecting Leeds Transport Strategy namely:

- Tackling Climate Change
- Delivering Inclusive growth
- Improving health and wellbeing

3. The wider goals of the LPTIP programme extend beyond just the transformation of public transport provision provided by walking and cycling infrastructure, new city centre public realm and pedestrianisation will also add to the delivery of clean growth in Leeds.

#### What consultation and engagement has taken place?

Wards affected: N/A

Have ward members been consulted?       Yes                       No

6. The Executive Board Member for Climate Change, Transport and Sustainable Development has been briefed regarding this proposal.

#### What are the resource implications?

7. This report has positive resource implications in that the cameras are already within the ownership of the Council and this report seeks the funding to procure a 'conversion kit' for the CAZ cameras which will be repurposed for use initially by the LPTIP, and subsequent programmes thereafter, subject to additional approvals.

8. Financial approval has already been obtained for the expenditure from the Leeds Public Transport Investment Programme (LPTIP) through a Report to the Chief Officer (Highways and Transportation) on 1 April 2021.

9. The total cost for the conversion of the 25 cameras is £221,639 including one year's annual support and maintenance.

#### What are the key risks and how are they being managed?

10. Awarding contracts directly to suppliers in this way could leave the Council open to a potential claim from other suppliers to whom this contract could be of interest in that it has not been wholly transparent. In terms of transparency, it should be noted that case law suggests that the Council should always consider whether contracts of this value could be of interest to other suppliers, and if it could, the opportunity should be subjected to a degree of advertising. It is up to the Council to decide what degree of advertising is appropriate. In particular, consideration should be given to the subject-matter of the contract, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices, etc.) and the geographical location of the place of performance. In this instance as only one supplier is able to undertake the conversion a direct award was considered best value for money.

#### What are the legal implications?

11. The decision to award a new contract for the conversion of CAZ Cameras into Bus Priority Enforcement Cameras for the period 5th June 2023 to 4th June 2024 at a cost of £221,639 is a Significant Operational Decision and is not subject to call in. There are no grounds for keeping the contents of this report confidential under the Council's Access to Information Rules.

12. Paragraph 1a) and 1b) of this report sets out the technical reasons why competition is absent and the reasons why no reasonable alternative or substitute exists, as required by Regulation 32(2)(b)(ii) of the Public Contracts Regulations 2015 ("PCRs") that the Council would rely on to justify its decision.

13. Notwithstanding the above, there is the potential risk of challenge that there are no real reasons justifying the use of Regulation 32(2)(b)(ii) of the PCRs, and that the Council is simply seeking to circumvent the application of the rules. However, due to the reasons set out in paragraph 1a) and 1b) of this report the risk of such challenge is low.

14. The Council believes that the decision to award a new contract for the conversion of cameras initially intended for the Clean Air Zone to be utilised for Bus Lane Enforcement is permitted pursuant Regulation 32(2)(b)(ii) of the PCRs which states:

*32(1) In the specific cases and circumstances laid down in this regulation, contracting authorities may award public contracts by a negotiated procedure without prior publication.*

(2) *The negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases:*

(b) *Where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:*

(ii) *Competition is absent for technical reasons, ...*

*but only, in the case of paragraph (ii)...where no reasonable alternative or substitute exists, and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;”*

Paragraph 1a) and 1b) of this report sets out the technical reasons why competition is absent and the reasons why no reasonable alternative or substitute exists as required by Regulation 32(2)(b)(ii) of the PCR that the Council would rely on to justify its decision. The software for these cameras is proprietary, meaning that only Yunex, as the original supplier, can carry out the conversion work. This is the technical reason for awarding a new contract to Yunex under Regulation 32(2)(b)(ii) of the PCRs.

15. In addition, these risks can be further mitigated by the publication of a voluntary transparency notice on Find a Tender Service immediately after the decision to award the contract has been taken and then waiting 10 days to see if any challenges are made. If no challenges are made, the chances of a claim for ineffectiveness being brought are significantly reduced and would only be successful if the Council had used the negotiated procedure without publication of a notice incorrectly. Furthermore, publishing such a notice will also start time running for any other potential claim for breach of the PCRs, which must be brought within 30 days of the date that an aggrieved party knew or ought to have known that a breach had occurred.

16. However, it should be noted that voluntary transparency notices themselves can be challenged. Although the UK has now left the European Union, the case of *Italian Interior Ministry v Fastweb SpA (Case C-19/13)* is still persuasive and highlights the limited protection that the voluntary transparency notice route can offer to contracting authorities wishing to make direct awards without following a fully transparent process for above threshold public procurements in accordance with the PCRs. A grey area remains around whether the protection of a voluntary transparency notice will be available where the contracting authority genuinely, but mistakenly, considers it was entitled to award the contract without notice. It shows that the safe harbour will only be 'safe' to the extent that the justification for the direct award is in itself sound and ready to stand up to the increased scrutiny that the publication of the voluntary transparency notice may well invite.

17. These comments should be noted by the Chief Officer, Highways and Transportation in making the final decision and should be satisfied that doing so represents best value for the Council and is in Council's best interests.

## **Options, timescales and measuring success**

### **What other options were considered?**

18. A quote from Videalert for new cameras was obtained, the price was £19,000 per unit which is significantly higher than the £8,865 cost per unit of the solution offered by Yunex. This is because Videalert would need to provide entirely new camera units, whereas the Yunex solution involves converting existing LCC camera assets.

19. Purchasing new Videalert cameras for BLE operations, instead of converting the Yunex cameras, was considered as an option. It is estimated that the cost of converting the existing Yunex cameras so they can be used for BLE operations will be 56% of the cost of purchasing new Videalert cameras for BLE operations. This means converting the Yunex cameras rather than buying new Videalert cameras represents a substantial saving of public money.

### **How will success be measured?**

20. Success will be measured by the effective enforcement of bus lane restrictions at the relevant locations.

### **What is the timetable and who will be responsible for implementation?**

21. The cameras will be installed in phases from June 2023. It is planned that they will all be installed and operational by June 2024. There is a project team in place to oversee the implementation.

### **Appendices**

- None

### **Background papers**

- None