

# GREATER LONDON AUTHORITY

## REQUEST FOR MAYORAL DECISION – MD3200

### Title: Appeals services to the Congestion Charging Scheme – Contract Variation

#### Executive summary:

Since the creation of the Central London Congestion Charging Scheme in February 2003, and through powers provided through the Greater London Authority Act 1999 (the GLA Act), the GLA has been required to provide a road user charging appeals service. It is a legal requirement of the Road User Charging Schemes now in place for the Congestion Charge, Low Emission Zone and Ultra Low Emission Zone (ULEZ) schemes that an independent arbitration and appeals service is provided, so that motorists can appeal against Penalty Charge Notices that have been issued to them.

In October 2016, the Mayor approved (under cover of MD2038) the award of a new contract for a Road User Charging Appeals Service at an estimated value of £5.6m for seven years; and a delegation to the Executive Director of Development, Economy and Environment to execute the contract with the bidder submitting the most economically advantageous tender.

The contract was awarded by the GLA to London Councils for £2,162,390 for an initial five years.

The contract was extended in 2021 for an additional two years, and the contract value increased to £5,040,000. This contract variation was within the limits set out in MD2038 (see Appendix 1).

The total contract value is now required to rise to £9,109,406, to account for increases of both fixed and variable costs. This is an increase of £3,509,406 above the estimated contract value approved via MD2038. Cost reviews are provisioned in the contract, and costs change according to the number of appeals received and processed, with these increases driven largely by the additional appeals following the introduction and expansion of the ULEZ. Transport for London (TfL) meets the contract costs through the income received from the operation of the relevant schemes – that is, charges and penalties. There is therefore no overall financial impact on the GLA as a result of the increase of the contract value.

#### Decision:

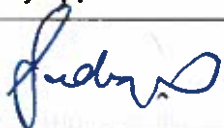
That the Mayor approves the Road User Charging Appeals Service contract extension up to the total value of £9,109,406 to account for increases of both fixed and variable costs.

#### Mayor of London

I confirm that I do not have any disclosable pecuniary interests in the proposed decision and take the decision in compliance with the Code of Conduct for elected Members of the Authority.

The above request has my approval.

Signature:



Date:

4/1/24

## **PART I – NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR**

### **Decision required – supporting report**

#### **1. Introduction and background**

- 1.1. The Congestion Charge scheme became operational in February 2003. The Congestion Charge is a £15 daily charge if you drive within the Congestion Charge zone 7:00-18:00 Monday-Friday and 12:00-18:00 Sat-Sun and bank holidays. There is no charge between Christmas Day and New Year's Day (inclusive). Some drivers pay less if they are eligible for an exemption or discount, or are a resident within the zone.
- 1.2. The Low Emission Zone became operational in February 2008, and the Ultra Low Emission Zone (ULEZ) became operational in April 2019. Both schemes require the payment of a daily £12.50 charge if driving within these zones, in a vehicle that does not meet the required emission standards and is not exempt from the scheme or registered for a 100 per cent (%) discount.
- 1.3. Transport for London (TfL) operates all three schemes. TfL may issue a Penalty Charge Notice (PCN) for any of the schemes if it believes, based on available evidence, that the relevant vehicle: has not paid the relevant charge; is not exempt; or is not registered for a discount. The registered keeper of that vehicle will be issued with a PCN; they can then make a representation to TfL. If this is rejected, they have the right to make an appeal to an independent adjudicator. The GLA is responsible for the adjudication service being in place through powers in the GLA Act 1999.
- 1.4. The provision of the appeals service is in three parts:
  - the provision of adjudication services: this is provided by independent adjudicators, appointed by the Lord Chancellor, who are reimbursed according to the time spent undertaking this work
  - the provision of the necessary computer systems to enable adjudicators to process the appeals: this may be provided by a third-party contractor or in-house
  - the provision of suitable premises and administrative support to adjudicators: this ensures they can carry out their role efficiently and effectively; and that the outcomes of their decisions are correctly processed. Notwithstanding a general shift towards virtual hearings, this will include the provision of office accommodation for the adjudicators and the administrative staff (as required); IT equipment; and paper records that need to be kept.
- 1.5. The GLA Appeals Service contract provides for the systems and services detailed in the second and third items listed at 1.4, above; and for the relevant payroll services required in the first item. The contract was awarded to London Councils in December 2016, for five years, after a competitive tendering process. It was subsequently extended for two years, running up to December 2023.
- 1.6. The contract for the independent appeals service is let by the GLA. In October 2016, the Mayor approved (under cover of MD2038) the award of a new contract for a Road User Charging Appeals Service at an estimated value of £5.6m for seven years; and a delegation to the Executive Director of Development, Economy and Environment to execute the contract, with the bidder submitting the most economically advantageous tender.
- 1.7. Approval is sought for additional budget to increase the contract value to £9,109,406, to account for increases of both fixed and variable costs. Cost reviews are provisioned in the contract, and costs change according to the number of appeals received and processed, and adjudication time. The original contract value did not include any anticipated volumes for the appeals for ULEZ, as when the contract was awarded in 2016, this scheme had not been fully developed or confirmed (the Central London ULEZ was introduced in 2019; it expanded to inner London in 2021, and London-wide in 2023).
- 1.8. Furthermore, the contract allows provision for modification options to be exercised and approval is

sought to modify the contract value of the contract in accordance with the Public Contracts Regulations 2015 (PCR), by applying one of the permitted modification reasons, being Regulation 72 (1) (e) of the PCR. Regulation 72(1)(e) provides that a contract may be modified without a new procurement procedure where the modifications, irrespective of their value, are not substantial within the meaning of paragraph (8). Upon review, it can be concluded that none of the conditions set out in Regulation 72, paragraph (8) have been met, therefore the modification of the contract during its term is not considered to be substantial for the purposes of Regulation 72(1)(e).

## **2. Objectives and expected outcomes**

- 2.1. The current contract includes provisions for regular reviews of contract fixed charges. This variation will cover the increase of such costs, as agreed between the GLA and the service provider, up to the expiry of the contract. The variation will also cover the increase of variable costs due to a higher number of appeals received and processed following the introduction and expansion of the ULEZ.
- 2.2. No further variations will be sought.

## **3. Equality comments**

- 3.1. Under section 149 of the Equality Act 2010 (the Equality Act), the Mayor and the GLA are subject to the public sector equality duty and must have due regard to the need to:
  - eliminate unlawful discrimination, harassment and victimisation
  - advance equality of opportunity between people who share a relevant protected characteristic and those who do not
  - foster good relations between people who share a relevant protected characteristic and those who do not.
- 3.2. The “protected characteristics” are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation and marriage/civil partnership status. The duty involves having appropriate regard to these matters as they apply in the circumstances, including having regard to the need to: remove or minimise any disadvantage suffered by those who share or are connected to a protected characteristic; take steps to meet the different needs of such people; and encourage them to participate in public life or in any other activity where their participation is disproportionately low. This can involve treating people with a protected characteristic more favourably than those without one.
- 3.3. The contract includes all the relevant provisions on equality and diversity. A procurement process was conducted in accordance with responsible procurement practices. The service procurement ensured that members of the public have continued access to an independent tribunal, should they receive a PCN. It is therefore not anticipated that the recommendation in this paper will have any adverse impact on any equality groups within the definition of the Equality Act.
- 3.4. The contract makes provision to ensure the services/contractor comply with all Equality Act provisions; and ensures the tribunal services are accessible to everyone driving within London who may be subject to a PCN.

## **4. Other considerations**

### **Key risks**

- 4.1. Contract performance issues are deemed to have the highest impact to the service delivery, were they to occur. To mitigate this risk, a dedicated Contract Manager is in place to oversee the contract and

manage supplier performance, with set key performance indicators.

#### Links to Mayoral strategies and priorities

- 4.2. The Mayor's Transport Strategy (MTS) recognises that Road User Charging Schemes have a role to play in traffic demand management and in meeting the Mayor's environmental goals.
- 4.3. The provision to operate Road User Charging Schemes is set out in the GLA Act 1999 and confirmed within the MTS. It is a legal requirement for the operation of those schemes that an appeals service be provided.

#### Impact assessments and consultation

- 4.4. There are no direct impact assessment or consultation requirements as a result of this contract variation.

#### Conflicts of interest

- 4.5. Those involved in drafting and clearing this decision are subject to the Road User Charging Schemes that operate in London; and have the same recourse to the independent arbitration and appeals service as other drivers.

### **5. Financial comments**

- 5.1. Approval is requested to increase the value of the Road User Charging Appeal Service contract to £9,109,406. The Mayor approved the award of a contract under cover of MD2038 for an estimated value of £5.6m. Whilst the actual contract value increase is from £5,040,000 to £9,109,406, approval of an increase in contract value of £3,509,406 is now sought, reflecting the difference from the original estimated value of £5.6m.
- 5.2. The contract costs for the appeals service provision are met directly by the GLA. The GLA obtains reimbursement for the cost of this contract from TfL, in accordance with the regulatory framework for the costs of the service. TfL meets these costs through the income received from the operation of the relevant schemes – that is, charges and penalties. There is, therefore, no overall financial impact on the GLA as a result of the increase of the contract value.
- 5.3. The additional expenditure is budgeted for within the Transport, Infrastructure and Connectivity Unit in Good Growth; and is offset by income received from TfL, as set out in paragraph 5.2, above.
- 5.4. The contract value is formed of two elements: fixed charges and variable charges. This is broken down in the table below.

£5,648,000	<b>Fixed charges</b> over seven years (IT systems, administrative, management, accommodation, exit costs)
£3,461,406	<b>Variable charges</b> over seven years (costs for processing appeals received; this is based on the number of appeals already received and processed; and the estimated number of appeals to be received until the contract expiry)

### **6. Legal comments**

- 6.1. Under section 30 of the GLA Act 1999, the Mayor, acting on behalf of the GLA, is entitled to do anything that he considers will further the promotion, within Greater London, of economic development and wealth creation; social development; or the improvement of the environment.
- 6.2. In formulating the proposals in respect of which a decision is sought, officers have complied with the GLA's related statutory duties to:

- pay due regard to the principle that there should be equality of opportunity for all people (further details on equalities are set out in section 3, above) and to the duty, under section 149 of the Equality Act, to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; and to advance equality of opportunity, and foster good relations, between people who share a protected characteristic and those who do not
- consider how the proposals will promote the improvement of health of persons, health inequalities between persons and to contribute towards the achievement of sustainable development in the United Kingdom
- consult with appropriate bodies.

6.3. Officers have indicated that the services required were procured by TfL Procurement fully in accordance with the Public Contracts Regulations 2015 and have determined the detail of the procurement strategy to be adopted in accordance with the GLA's Contracts and Funding Code. Additionally, the officers have indicated above that they have satisfied themselves there are sufficient grounds to rely on Regulation 72(1)(e) of the Public Contracts Regulations 2015 to modify the contract in order to account for the sought increase in contract value.

6.4. No further approval will be required to exercise the extension option or any part thereof.

## 7. Planned delivery approach and next steps

7.1. The project will be delivered according to the timetable outlined below.

Activity	Timeline
Variation of contract	On approval
Confirmation of decision to increase the value of the contract	January 2024

### Appendices and supporting papers:

[MD2038 – Appeals services to the Congestion Charging Scheme \(October 2016\).](#)

**Public access to information**

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FoIA) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will be published either within one working day after it has been approved or on the defer date.

**Part 1 – Deferral**

**Is the publication of Part 1 of this approval to be deferred? NO**

**Part 2 – Sensitive information**

Only the facts or advice that would be exempt from disclosure under the FoIA should be included in the separate Part 2 form, together with the legal rationale for non-publication.

**Is there a part 2 form – NO**

**ORIGINATING OFFICER DECLARATION:**

Drafting officer to confirm the following (✓)

**Drafting officer:**

Catherine Seaborn has drafted this report in accordance with GLA procedures and confirms the following:

✓

**Sponsoring Director:**

Philip Graham has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

**Mayoral Adviser:**

Seb Dance has been consulted about the proposal and agrees the recommendations.

✓

**Advice:**

The Finance and Legal teams have commented on this proposal.

✓

**Corporate Investment Board**


This decision was agreed by the Corporate Investment Board on 8 January 2024.

✓

**INTERIM CHIEF FINANCE OFFICER:**

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

**Signature:**



**Date:**

10/01/2024

**CHIEF OF STAFF:**

I am satisfied that this is an appropriate request to be submitted to the Mayor.

**Signature:**



**Date:**

08/01/2024