

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

DATE: October 29, 2019

TO: Honorable Members of the Los Angeles City Council

Public Works and Gang Reduction Committee
c/o Michael Espinosa, Legislative Assistant

FROM: Adel H. Hagekhalil, P.E. 
Executive Director and General Manager
Bureau of Street Services

SUBJECT: CF 00-1073 S1 CITY COORDINATED STREET FURNITURE PROGRAM

SUMMARY

On October 3, 2018, the Public Works and Gang Reduction Committee directed the Bureau of Street Services (StreetsLA), with the assistance of the CLA and City Attorney, to continue negotiations with OUTFRONT Media/JC Decaux, LLC (OFMJCD) to achieve a City Coordinated Street Furniture Program (Program) that would provide the City with enhanced services and revenues.

Through its ensuing negotiations with OFMJCD, the City pursued a realigned set of terms to:

- 1) Provide an increased number of transit shelters, enhanced amenities, updated designs, and automated public toilets; and
- 2) Limit or eliminate the Program's existing exclusive advertising rights provision;
- 3) Maximize Program revenues;
- 4) Address other noted Program challenges, most notably the existing furniture site approval process.

On May 31, 2019, after lengthy negotiations, OFMJCD presented the City with its best and final proposal for a contract renewal. Unfortunately, the best and final proposal fell short of the set terms and objectives.

RECOMMENDATIONS

That the City Council adopt the following:

- 1) Reject OFMJCD's best and final offer of May 31, 2019, and allow Contract C-102477 for the existing Program to expire at the end of its term on December 31, 2021.

- 2) Provide StreetsLA with the flexibility and authority to negotiate residual value of the existing furniture and/or direct OFMJCD to remove all existing Program furniture and restore the existing sidewalk to pre-Program conditions, if necessary.
- 3) Authorize StreetsLA to proceed with a Request for Proposal (RFP) processes to secure a successor program through the Board of Public Works that will:
 - a) Utilize a Request for Information (RFI) process to inform the RFP by gaining out of home advertising industry comments, suggestions and best practices.
 - b) Explore various business models, including but not limited to turnkey models and options for the City to share a portion or 100% of capital expenditure to maximize revenues to the City.
 - c) At a minimum, provide adequate number of shelters in each Council District to achieve 75% transit ridership coverage with priority given to District with highest needs.
 - d) Eliminate advertising exclusivity.
 - e) Provide expanded advertising opportunities.
- 4) Direct StreetsLA to work with the Department of Convention and Tourism Development (CTD) on expanding public information associated with conventions and tourism.
- 5) Direct StreetsLA to work with the Chief Legislative Analyst (CLA) and City Administrative Officer (CAO) to identify funding alternatives to expedite the installation of non-advertising transit shelters by StreetsLA across the City with a focus on communities with high transit ridership, low tree canopy coverage, and the highest exposure to heat and sun.
- 6) Direct StreetsLA to coordinate placement of the street furniture inventory with other City of Los Angeles Departments, Metro, other municipal transit providers of Los Angeles County, and developments performing street improvements affecting the sidewalk, parkway, or roadway.
- 7) Direct StreetsLA to plan for the effective use of the street furniture program during major events, such as the 2028 Olympics and Paralympics, to maximize the functionality of the street furniture inventory as well as revenues.
- 8) Authorize StreetsLA to replace existing approval process for installing street furniture with a more streamlined process based on approval of development plan one year at a time.

DISCUSSION

In 2000, the City Council directed the CLA, City Attorney, and StreetsLA to develop a comprehensive program that would provide automated public toilets and other street furniture throughout the City (CF 98-1241, 00-1073). On December 21, 2001, the City and Viacom Decaux LLC, now known as OUTFRONT Media/JCDecaux, LLC executed a 20-year Agreement establishing the City's Public-Private Coordinated Street Furniture Program ("Program"). The Program requires OFMJCD to:

- Design, manufacture, and install transit shelters, automated public toilets (APTs), public amenity kiosks (PAKs), and newsstand vending kiosks (VKs) ("street furniture");
- Maintain the street furniture, including litter baskets;
- Obtain all permits required to install street furniture;

- Obtain approvals for each individual street furniture site from Council Offices, eight City Departments, and perform community outreach;
- Remit to the City a Minimum Annual Fee (“MAF”) and/or a share of annual gross revenue receipts known as a Revenue Share or Percentage Fee; and
- Operate an outdoor advertising program within the public right-of-way on behalf of the City to create a fiscally sustainable, self-funded Program.

The full intended benefits of the Program were not realized. A summary of the services and revenues originally contemplated by our existing contract and what the City has received to date is shown below:

Program Amenity	Quantity per Contract	Actual Installed/Received (%)
Automated Public Toilets	150	15 (10%)
New Transit Shelters	1285	657 (51%)
Replacement Transit Shelters	900	54 (6%)
Public Amenity Kiosks	500	197 (39%)
Pillar Kiosks	100	0 (0%)
Newsstand Vending Kiosks	100	6 (6%)
Revenues	\$150 million*	\$84.4 million** (56%)

* Minimum Guarantee Fee over 20-year term

** \$72.4 million in actual revenues received as of 4/11/19 plus projected revenues over 20-year term

*** Over the last three years, only 7 new transit shelters were installed under the contract; none since December 2016

On February 28, 2017, StreetsLA, CLA, City Attorney, and OFMJCD submitted the completed Year Six Review (YSR) of the Program that discussed street furniture quantities and the timeliness of permit issuance, level of service provided by the Contractor, program revenues, program maintenance, and the imposition of any taxes levied against the Program. This review had been postponed to allow the City and OFMJCD to consider pending amendments relevant to matters to be included in the YSR. While the YSR found that OFMJCD was responsive to City and constituent requests for service and meeting its maintenance obligations in accordance with contract standards, it also found that the Program’s site approval process and possessory interest taxes adversely affected the Program overall.

On January 19, 2018, the City Council adopted recommendations relative to the YSR and instructed StreetsLA, with the assistance of the CLA and City Attorney, to negotiate with OFMJCD to extend the term of the current contract and provide enhanced services and City revenues.

On August 31, 2018, StreetsLA submitted its report to the City Council regarding the negotiations with OFMJCD, and on October 3, 2018, the Public Works and Gang Reduction Committee directed StreetsLA, with the assistance of the CLA and City Attorney, to continue negotiations with OFMJCD to achieve a street furniture program that would provide the City with enhanced services and revenues.

On October 30, 2018, the City’s negotiation team presented its goals to OFMJCD for a restated contract that would:

- a. Increase of Minimum Annual Fee;
- b. Increase of Revenue Share (Percentage Fee);
- c. Provide a minimum of 2,130 new transit shelters to increase the City's inventory of shelters to 4,000, focused on areas with highest need;
- d. Provide no less than 50% (1,065) of the new shelters with "Smart" upgrades, including a number of digital, interactive, wayfinding panels;
- e. Replace all shelters older than 10 years old;
- f. Provide option for passive digital advertising panels along major thoroughfares;
- g. Provide 150 Automated Public Toilets (APTs) or Conventional Public Toilets (CPTs);
- h. Provide OFMJCD with the option to include additional Public Amenity Kiosks, Pillar Kiosks, & Vending Kiosks to make program fiscally feasible;
- i. Allow the City to retain the exclusive right to advertise within Public Right-of-Way to itself and may allow other parties to advertise within the Public Right-of-Way;
- j. Allow the City to own all furniture once installed except for APTs;
- k. Provide both parties the ability to terminate the agreement at any time with the condition that the requesting party remits a negotiated termination fee to the other party
- l. Allow furniture site approvals to be done annually over a three (3) year roll-out period for new furniture so the contractor may install new furniture without delay; and
- m. Continue or increase other existing contract terms for maintenance service cleanliness.

From November through December 2018, additional meetings were conducted between the City's negotiating team and OFMJCD to further clarify the City's terms and goals for a restated Program. During that same time, StreetsLA met with most Council Offices and obtained positive feedback on a greatly streamlined furniture approval process that would allow the City Council to approve of an entire year's worth of street furniture in advance which in turn, would provide both the City Council and OFMJCD with assurances that new street furniture would be rolled-out over a three (3) year period.

On January 23, 2019, OFMJCD submitted a proposal that achieved a part of the City's requested terms; OFMJCD was subsequently requested to resubmit a revised proposal. Concurrent with the ongoing negotiations with OFMJCD in January 2019, StreetsLA started the process to retain the services of a consultant that specialized in negotiating similar advertising-based transit furniture programs to further assist the City's negotiation efforts with OFMJCD.

Negotiations continued with OFMJCD through February with OFMJCD submitting revised proposals on February 5, and February 22, 2019. While some progress was made, neither proposal adequately met the City's stated terms.

On March 7, 2019, Gobis & Company (Gobis), an independent outdoor advertising and transit furniture program expert, joined the City's negotiation team. Throughout the previous discussions with OFMJCD, the City presented various scenarios and options for OFMJCD to pursue in developing a proposal that might satisfy the City's stated terms, and Gobis provided further insights and program models that could possibly be pursued after joining the City's negotiation team. Some of the program options discussed and proposed include:

- Sharing in Capital expenditure (CAPEX) costs.
- Extending the contract term.
- Developing alternative structures for a minimum annual fee and shared revenue.

- Eliminating the minimum annual fee and developing a program based upon a shared fee only.
- Expand the advertising model to include untapped local markets.

In May 2019, following an inadequate April 19, proposal from OFMJCD, the City clarified that it desired OFMJCD to develop a best and final offer. A best and final offer was furnished by OFMJCD on May 31, 2019. Both the City's negotiation team and Gobis found OFMJCD's proposal of May 31, 2019, unacceptable.

Based upon the fact that the Los Angeles Metro Area is the second largest advertising market in the nation¹, StreetsLA believes the City should be able to receive more updated service structures and revenues beyond those represented by OFMJCDs best and final offer. Out of Home advertising revenue, of which street furniture is a category, has grown for the last eight years and has the second highest growth rate, second only to digital media. Total out of home revenues for 2018 were \$9.65 billion.² Los Angeles is the second largest Designated Market Area (DMA) in the United States according the media rating service Nielsen³ and the second largest out of home advertising market with more than \$481 million being spent by advertisers on billboards, transit displays and street furniture in 2018.⁴ The value of out of home advertising in Los Angeles was confirmed recently when Netflix purchased 32 billboards in the Los Angeles Market for \$150 million from the Los Angeles based Regency Outdoor Advertising.

Gobis & Co. reviewed the City of Los Angeles' coordinated street furniture program with those of the cities of London, New York, Toronto, and Chicago for the purpose of comparing the performance and characteristics of these peer programs. While Los Angeles' program may not benefit from the levels of density and transit use compared with its peers, it is certainly supported by unique market characteristics, such as film/television production and traffic, as well as tourism and an increasing number of conventions.

The following chart provides a summarized comparison:

PROGRAM	Media Market	Ann. MAF	Contract	Ownership/Maintenance of Structures	Program Elements
City of Los Angeles	2 US	\$7.5M	-20-year term -Contractor builds/operates/sells -Exclusivity on Public ROW	-City owns at end of contract -Contractor maintains	- Shelters, Kiosks, Vend. kiosks -3679 Ad Panels -14 Public Toilets
Transport for London	1 UK/1 EU	£100M	-5-year term w/1-3 year option -Contractor sells/ad rights only -No exclusivity based on contract language	-Agency procures, owns & maintains	-Shelters -4900 Ad Panels

¹ *Out of Home Advertising Association of America May 20, 2019, Special Issue* – LA Metro Area includes Los Angeles County and other local municipalities such as Burbank, Pasadena, West Hollywood, Santa Monica, Long Beach, etc.

² PWC-Markets Chart

³ Nielsen Rankings 2018-2019

⁴ Outdoor Advertising Association of America 2017-2018

PROGRAM	Media Market	Ann. MAF	Contract	Ownership/Maintenance of Structures	Program Elements
City of Toronto	1 Canada	\$21.4M CAD	-20-year term -Contractor builds/operates/sells -Exclusivity as a result of including all program elements	-Contractor owns; assets transfer to City & new contractor at end of term -Contractor maintains	-Shelters, Benches, Trash, Info. Pillars, Pub. Notice Structures., Bike/Parking Stands -25,600 Ad Panels -10 Public Toilets
New York City DOT	1 US	\$42.6M	-20-year term -Contractor builds/operates/sells - No exclusivity after installation of program elements	-City owns at end of contract -Contractor maintains	-3391 Shelters -342 News Stands -30 Public Toilets
City of Chicago	3 US	\$38M*	-10-year term w/2x 5 year options -Contractor builds/operates/sells -Exclusivity on Public ROW	-City owns at end of contract -Contractor maintains	-Shelters, Info. Panels, Dispensing Units, Kiosks -3000 Ad Panels

**Not all peer city contracts are structured exactly like the City of Los Angeles. e.g. Chicago's contract includes digital billboards*

London is the best performing street furniture program in the world as measured by revenue (£100 million annually or \$123 million) and by the intrinsic value that the program delivers to the client agency Transport for London (TFL). The success of the London program is based upon a business model that is much different than the majority of street furniture programs in the world. TFL is involved in every aspect of its program for the design of the street furniture units to their placement and how the advertising space is sold. Most importantly, TFL procures all the street furniture allowing the agency to command 70% of gross revenues.

Toronto's street furniture program is very much a partnership between the client agency, the City of Toronto and its contractor. Toronto has utilized its street furniture assets to support other City initiatives such as bike lanes, closing off streets to vehicular traffic to prioritize streetcar service, and to assist healthy living initiatives.

New York's street furniture contractor was embroiled in numerous lawsuits resulting from the contracting process. The contractor defaulted on the agreement after three years. The current contractor claims to have lost \$420 million since it assumed responsibility for the contract. New York's experience reflects that market conditions and available resources will ultimately determine the feasibility of any negotiated program; a proper understanding and careful consideration of the actual market potential for a given area are critical to developing a successful program.

Chicago's street furniture program faced exclusivity challenges similar to those experienced by the Los Angeles program. The City of Chicago attempted to develop a digital advertising platform for the City supported by digital billboards and panels but was blocked when its street furniture contractor claimed it maintained the exclusive right to advertising in the City's right-of-way. The street furniture agreement was amended to include the digital network, allowing the contractor to share a portion of the digital revenues with another contractor.

MOVING FORWARD

In pursuing contractual negotiations with OFMJCD over multiple years, staff has determined that finding the perfect balance between revenues, services, advertising rights, program term, and avoidance of contractual pitfalls is the key to creating an acceptable program. Compounding the challenge to creating such a program is the fact that advertising-based programs operate in a defined market as evidenced by the noted challenges experienced by New York City's program. According to the Out of Home Advertising Association of America data, street furniture was able to capture only a 5.9% share of all ad revenues nation-wide in 2018 (billboards captured 64.9% of revenues, while transit – bus, rail, air – captured 17.6% of revenues). The total amount of money spent on advertisements within the Los Angeles market area⁵ in 2018 was \$508.82 million which means the monies spent on transit furniture advertisements (at 5.9% of \$508.82 million) amounted to a little more than \$30 million. Since the 5.9% revenue figure is a nation-wide average and not specific to the City of Los Angeles, it may not be an entirely accurate representation of the revenue generating capacity of the City's transit furniture program.

Other factors affecting the overall performance of the existing Program include current contractual provisions, code and site challenges, environmental factors, and advances in technology. Some of the challenging existing contractual provisions include the end of contract terms, language regarding the ownership of the installed furniture, and exclusive advertising rights afforded to OFMJCD. For example, the end of contract terms are not clear on the ownership of the street furniture at contract termination, which could make the transition to the next contractor difficult.

The sole and exclusive right granted to OFMJCD to display advertising within the Public Right-of-Way was originally seen as a necessary provision to ensure OFMJCD was able to generate revenues required to create a successful program and furnish the capital and operational resources needed to support the large quantity of Automated Public Toilets contemplated by the Contract. Over time, that exclusive right became a hindrance to other beneficial proposals or programs that sought advertising revenues to offset program costs, most notably Metro's Bikeshare Program and Department of Convention & Tourism Development's proposal to operate digital information at kiosks. Over time, other cities with similar advertising-based programs have successfully moved away from a singular program with exclusive advertising rights to multiple programs with shared advertising rights; shared advertising rights are now seen as being feasible for multiple programs in the City of Los Angeles.

Examples of code and site challenges that have affected the current Program since its inception include code changes that increased the recommended minimum width of pedestrian access routes, required bus landing areas, maximum sidewalk cross slopes, and a broadened legal definition of activities that necessitate site upgrades affecting where Program furniture may be installed. Transit Operators' ability to relocate, eliminate, add, or change bus stops/routes without regard to site conditions or existing transit improvements furnished by the City affects Program services on a regular basis, as do construction efforts within bus stop zones and bus stops located on narrow sidewalks, medians, or unimproved street edges. The availability of power through existing circuits or conditions favorable to solar power (i.e. locations without buildings, trees or other shade elements) similarly affect locations where Program service structures may be provided.

⁵ "Los Angeles market area" includes Los Angeles County and other cities within the Los Angeles metro area

One of the areas that will be carefully considered is whether the addition of new and essential public toilets should be included as part of any future street furniture contract. Due to the impact on public health and urgent need for such facilities, StreetsLA is considering the separation of the public toilet component away from the Coordinated Street Furniture Program to facilitate deployment, increase the number of companies that will propose on a future Street Furniture Program Request for Proposals, and provide the City with ownership and decision making ability to determine the type, location, and permitting of these toilets

Besides challenging contractual, code, and site factors, there have been many environmental, cultural, and technical changes that have occurred since the inception of the current Program. Increased seasonal temperatures and rapidly changing weather conditions associated with climate change in addition to new mobility systems have created a greater demand for shade and protection from the elements.

Out-of-home advertising and technology have changed dramatically since 2001 when the current street furniture agreement was signed. Just some of the technological changes that have been developed and pursued since the Program's inception include:

- LED lighting
- Bus arrival messaging systems
- Smart phones and tablets
- 3G vs 5G wireless communications
- Numerous helpful smartphone and tablet applications
- WiFi
- Beacon technology
- Interactive digital information and advertising panels
- Ride share, bike share
- First and last mile options for dockless bike and scooters
- Autonomous cars and drones

These advancements point to the need to create flexibility within the context of any long-term agreement that will allow for the adoption and use of future technological advancements that might become available during the program term. Current and future program negotiations are applying these lessons learned to ensure they are addressed in any agreement that might be executed going forward.

As our society, technology, mobility all change, Los Angeles is and will continue to be one of the largest and most lucrative out of home advertising markets in the world. The 2028 Olympics and other large events such as the Super Bowl and World Cup offer pivotal opportunities to utilize street furniture in a supportive way for the hundreds of thousands of visitors who come to our city. The Olympics will also boost out of home advertising revenues significantly based upon the experience of London with its 2012 Summer Olympics.

CONCLUSION

StreetsLA is confident that the adoption of this report's recommendations by the City Council will result in a comprehensive street furniture program that has greater purpose for those who live in,

work in, and visit Los Angeles. The addition of emerging technologies will provide the opportunity to develop higher revenues while eliminating advertising exclusivity and offering a more dynamic platform for transportation, civic, public service, and emergency information. By exploring various business models and through a compatible RFP, StreetsLA intends to expand coverage to serve more transit riders, ensure adequate maintenance, expedite new installations, and plan a managed replacement of old furniture.

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