

REPORT TITLE: PROCUREMENT OF A MARKET MANAGEMENT CONTRACTOR FOR THE WINCHESTER MARKETS

25 MARCH 2019

REPORT OF PORTFOLIO HOLDER: ESTATES, CLLR MILLER

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WARD : WINCHESTER TOWN AND SURROUNDING WARDS

PURPOSE

This report seeks authority to tender for a Market Management Contractor to operate the daily markets and the Sunday markets in Winchester High Street. The contract will be for four years with effect from 01 October 2019 and the estimated value of the contract has determined that it will fall under the Public Contract Regulations therefore a full EU procurement exercise must be undertaken and the opportunity advertised in the Official Journal of the European Union (OJEU).

RECOMMENDATIONS:

It is recommended that:

- 1 The Council proceed with the public tender for the appointment of a Market Management Contractor
- 2 The Evaluation Panel to consider the submitted Tenders shall comprise: the Corporate Head of Asset Management, Senior Estates Surveyor, Programme Lead (Central Winchester) and Finance Business Partner.
- 3 That the highest scoring tenderer as determined by the Evaluation Panel be approved and authorised by the Strategic Director Place, in consultation with Portfolio Holder Estates and The Head of Legal Services.
- 4 The Head of Legal Services (Interim) be authorised to enter into a contract for the services with the successful bidder.

## IMPLICATIONS:

### 1 COUNCIL STRATEGY OUTCOME

- 1.1 Winchester High Streets hosts a daily general market from Wednesday to Saturday and specialist Sunday markets which help support the Council Strategy by promoting a sustainable economy, enable new small scale employment opportunities to be developed, delivers revenue for the Council, and help make Winchester an attractive destination to visit.
- 1.2 The Sunday Art and Antiques & Collectibles Markets relate directly to the Council Strategy by providing residents with the opportunity to become engaged in cultural and creative activities. These markets generally help meet the prosperous economy objectives by helping residents to enhance their skills and ambitions by running a micro business, make the best use of the City Councils estate to support the local economy and help meet the High Quality Environment objectives by reducing greenhouse gas emissions by making products available locally which might otherwise require residents to make a trip to another town or shopping centre.
- 1.3 The Farmers' Market visits the High Street twice a month but is outside of this procurement exercise. Arrangements for the Farmers' Market are negotiated directly with the Council.

### 2 FINANCIAL IMPLICATIONS

- 2.1 The Council may not make a profit making on Street Trading Licences but may make reasonable charges for the operation of the market. The existing contract arrangements make a positive contribution to the general fund as set out in Exempt Appendix A. The procurement exercise will determine the current appetite for market management which may result in a change to the existing financial terms for the provision of the service.
- 2.2 Tenders will be evaluated using the council's standard 60% Cost and 40% Quality.

### 3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 Due to the estimated value of the four-year contract including performance fee the new Contract will fall under the EU Procurement Directive and Public Contract Regulations 2015.

### 4 WORKFORCE IMPLICATIONS

- 4.1 The successful Market Management Contractor has a point of contact in the Estates team for contract management arrangements.

## 5 PROPERTY AND ASSET IMPLICATIONS

- 6 The Council is the Market Authority and is able to regulate the operation of markets in the City Centre. The market adds to the vitality and viability of the City centre retail offer and it is important to ensure that we have an efficient and competent Market Management Contractor in place.

## 7 CONSULTATION AND COMMUNICATION

- 7.1 The proposed specification for the Market shall be considered by a Member Working Group. A meeting is being arranged for the 18 March 2019. Estates shall also be consulting with the Executive Director of the Business Improvement District. In consultation with the Portfolio Holder for Estates, the Corporate Head of Asset Management is authorised to incorporate any meaningful changes which can be accommodated in the proposal.
- 7.2 The existing Market Management Contractor (SMT Management Consultants Limited) is aware of the forthcoming tender exercise and once the procurement is authorised it is intended to formally write to SMT enclosing a standard letter to give to the stallholders advising them of the process.

## 8 ENVIRONMENTAL CONSIDERATIONS

- 8.1 All traders are encouraged to take their own waste, refuse and rubbish with them from the site. For those traders that generate more waste and need to dispose of this on site, the new contract will require recyclable material to be separated and placed in appropriate bins provided. The Council's Health Protection Team will ensure compliance with the robust procedures that are in place in the application process to become an Approved Food Trader on the High Street and Middle Brook Street and that the Market complies with the 'Winchester Markets Trader Guidance.'

## 9 EQUALITY IMPACT ASSESSEMENT

- 9.1 None. However, the Invitation to Tender will stress that the Council is an equal opportunities employer and will expect the successful Tenderer to promote equality, comply fully with all UK equality legislation or European equivalent, have an equalities policy and be an equal opportunities employer at all times during the contract

## 10 DATA PROTECTION IMPACT ASSESSMENT

- 10.1 None

## 11 RISK MANAGEMENT

11.1 The procurement of the street market operator involves the following risks:

<b>Risk</b>	<b>Mitigation</b>	<b>Opportunities</b>
<i>Property</i>		
<i>Community Support</i> There have been previous concerns regarding the layout of the market affecting trade to local shops.	There are no significant changes to the layout and BID have been engaged in development of the specification	Development of Central Winchester potentially enables the market to relocate towards the Broadway. This flexibility has been built into the specification
<i>Timescales</i>		
<i>Project capacity</i>		
insufficient capacity to undertake the procurement	The Council's Interim Head of Procurement is supporting the process along with HCC who currently advertise all of the Council's OJEU tenders..	An opportunity for Estates colleagues to gain the experience of carrying out a tender exercise under the Public Contracts Regulations 2015.
<i>Financial / VfM</i>		
There is a financial risk that the future cost of managing the Winchester Markets will increase.  There is a risk that a new market operator will not be as successful in securing traders for the market, putting the business at risk and reducing the number of visitors to the City.	Careful evaluation of the submitted tenders will mitigate this risk  The tender exercise will examine the track record of the operators in securing traders, the quality and range of the traders offer and their experience in managing and growing a market in a prime retail location.	An opportunity for the Council to test the Market to ensure that the Council does not pay above the market price for the services of a Market Operator.
<i>Legal</i>		
<i>Legal</i> There is a risk that the form of Contract has to be amended.	This is mitigated by the Head of Legal approving the proposed contract.	An opportunity for the Council to identify any problems with existing format of the contract and

<p>There is a risk of a procurement challenge under the Remedies Directive by an unsuccessful bidder</p>	<p>This will be mitigated by the procurement exercise being carried out in an open, fair and transparent manner under guidance by the Interim Head of Procurement with support from the Head of Legal (Interim)</p>	<p>improve. An opportunity for the Council to identify improvement to template procurement documentation and processes.</p>
<p><i>Innovation</i></p>		
<p><i>Reputation</i></p>		
<p>If a new operator wins the tender and subsequently the market operation declines, there is a risk that the Council's reputation will be damaged with the BID and City Centre retailers</p>	<p>The risks are mitigated by ensuring that the tender process requires bidders to demonstrate their past experience of managing and growing a market in a prime location</p>	<p>A new operator could significantly refresh and improve the market, thereby improving the Council's reputation</p>
<p><i>Other</i></p>		
<p>There is a risk that there are a limited number of Market companies to provide a tender</p>	<p>This can be mitigated by carrying out some initial pre-,market engagement and also compliance with procedure giving sufficient notice to submit a tender when issuing advertising the required contract notice in the of Official Journal of European Union (OJEU)</p> <p>A clear and streamlined process will help to encourage bids</p>	
<p>There is a risk that the winning tenderer will not be as successful as the existing supplier..</p>	<p>To mitigate this risk the Tender questions regarding the Quality Criteria will seek examples of recent contracts, their proposals, strategy, social and economic advantages the tenderer might bring to Winchester.</p>	<p>An opportunity to identify what qualities are important to the Council.</p>

<p>If the existing supplier does not prove to be the successful tenderer, there is a risk that the links forged with Retailers, BID Highways and the Fire Service will take time to recreate.</p>	<p>This can be mitigated by allowing time for a planned contact mobilisation ensuring at change over, these links are initiated.</p>	
<p>No stalls will be located in the lower High Street whilst re-paving is carried out. If this is not carried out before 01 October 2019, this information will be included in the tender information pack and may have an effect on the tender.</p>	<p>Mitigate this by advising that spare capacity in Middle Brook Street whilst these works are taking place.</p>	

## 12 SUPPORTING INFORMATION:

12.1 The procurement documentation shall clearly set out what the Council requires for the management of the Market under a new contract which includes the following key points:

- Organising the erection of stalls at agreed locations in the High Street and Middle Brook Street with due regard for pedestrian flow, access to retail shops and access for emergency vehicles.
- Liaising with the retailers and the BID in consideration of their requirement regarding the siting of the stalls.
- Deal with all applications for pitches on the market with the objective of supporting the vitality and viability of Winchester City Centre as a retail location and visitor destination.
- Ensure that stallholders are provided with a 'Winchester Markets Trader Guidance' have completed the 'Application to Trade' form therein and achieve 'Approved Trader' status before being allowed to trade.
- Ensure that Food traders comply with Food safety & Health and Safety legislation and comply with the robust procedures for food traders in the Winchester Markets Trader Guidance providing all necessary certificates and evidence of public liability insurance before being allowed to trade.
- Maintain high quality markets which contain a variety of stalls selling a range of high quality goods and produce and customer focused stallholders which will encourage members of the public to visit the City.
- Ensure that stalls are provided to local traders where possible

- Market Manager on site at all times
- Work with stakeholders to accommodate events with due regard for safety which require access to the High Street and make reasonable adjustments to the operation and layout of the Market as necessary. This may include the early closure of the market, adjustment to the positioning of stalls, marshalling pedestrians through the high Street and up to four closures a year for military events or other parades or events.
- Liaise with the Fire Service and at all times have due regard for Health & Safety, ensuring that a route for emergency vehicles of not less than 4m wide is maintained through the High Street and Middle Brook Street pedestrianised areas and ensure that no stall shall obstruct a means of escape from adjacent premises.
- Be aware that the location of the Market may move from its High Street and Middle Brook Street location to another central location as directed by the Corporate Head of Asset Management.

12.2 It is anticipated that the procurement timetable could be achieved ensuring the successful operator is in place before Christmas 2019.

<b>KEY ACTIONS</b>	<b>DATES</b>
OJEU Contract Notice placed	01 April 2019
Closing date for submission of ITT	31 May 2019
Initial Evaluation of tender submissions	3 June – 14 June 2019
Possible Interviews / presentations	w/c 24 June 2019
Final Evaluation of tender submissions	1 – 5 July 2019
Successful Tenderer confirmed and successful and unsuccessful notifications issued	8 July 2019
Mandatory 10 day 'standstill' period	8 July – 18 July 2019
Contract Awarded	19 July 2019
Mobilisation	August / September
Contract Commencement Date	01 October 2019

12.3 The Market plays a prominent role in the life of Winchester High Street and it is proposed that the Evaluation Panel consists of the Corporate Head of Asset Management, Senior Estates Surveyor, Programme Lead (Central Winchester) and), Finance Business Partner, The Interim Head of Procurement will provide expert Advice.

12.4 The Evaluation Panel will make a recommendation to Strategic Director (Place) who will determine the successful bidder in consultation with Portfolio Holder (Estates) and Head of Legal Services.

### 13 OTHER OPTIONS CONSIDERED AND REJECTED

- 13.1 Prior to 2011 the Market was managed directly by the Council, but this arrangement was unsuccessful.
- 13.2 The alternative to this four-year contract procurement under Public Contract Regulations 2015 is to procure the contract for one year only under the Council's Contract Procedural Rules. Although possible, this was rejected because the estimated value of the contract for one year of £113,000 involves formal Public Invitation to Tender on an annual basis which does not provide continuity for operation of the Market and will provide no economies of scale.

#### BACKGROUND DOCUMENTS:-

##### Previous Committee Reports::

CAB 2799 Winchester Market Update, 29 March 2016

CAB 2310 Winchester Market Update, 11 April 2011

CAB 2274 Winchester Market Update, 07 December 2011

CAB 2100 Management of Winchester Market, 96 February 2011

##### Other Background Documents:-

None

#### APPENDICES:

Appendix A - Financial Information (Exempt Paper)