

Part A

Report to: Cabinet

Date of meeting: Monday, 6 December 2021

Report author: Head of Leisure and Environmental Services

Title: Procurement Exemption - Watford Market Management Contract – Six month extension until April 2023

1.0 Summary

- 1.1 In September 2019 Watford Borough Council (WBC) appointed MAM to manage Watford Market for a three year period, this term expires on 1 October 2022. Therefore, WBC needs to commence pre-procurement planning and initiate the tender process to appoint a suitably qualified and experienced contractor to manage the market service from this date.
- 1.2 In the time since the last Watford Market Management Contract (WMMC) was procured (circa 2014) a number of strategic and operational changes have occurred in the market industry. This coincides with parallel changes to the council's role and long term vision for the borough's wider regeneration ambitions and vision for the high street and town centre. These changes will impact on any review of the new contract and service specification to ensure that the relationship between WBC and the successful contractor helps to deliver the council's vision and priorities.
- 1.3 The future of the Market and strategic direction has yet to be fully debated by Leadership Board and Cllrs, traders and residents and there is a range of issues / improvements that would benefit from this discussion e.g. extended the opening days on a Sunday and Monday, opening in the evening for delivery services.
- 1.4 An options appraisal for the future operating and delivery of the market service has been conducted and a six month contract extension contract has been agreed by Portfolio Holders in October 2021. This extension will allow the council to gain valuable insight into the current local authority market sector, meet with potential management contractors and engage with a range of internal and external stakeholders to agree the future strategic direction of market offer/service.
- 1.5 The importance of the market is an area of focus within the Council's Economic strategy and associated action plan, within which it commits us to seek to diversify the trader mix, establish opportunities for pop-ups and consideration of establishing specialised markets. In turn the importance of markets will be stressed in the Town Centre Strategy – as an attraction in itself and to diversify and strengthen the retail offer in the town. The work on the framework and the planned engagement with

residents and stakeholders will be an opportunity to understand their views on the market and help craft our planned procurement.

2.0 Risks

2.1

Nature of risk	Consequence	Suggested Control Measures	Response (treat, tolerate, terminate or transfer)	Risk Rating (combination of severity and likelihood)
Challenge to the council decision to award the contract without complying with the Public Procurement Regulations	Delay in awarding the contract	<p>WBC to follow the relevant procurement advice and guidance as details in the regulations</p> <p>External independent support to assess and evaluate the tender submissions</p>	Treat	Unlikely (2) x High (3) = rating of 6
Lack of capacity or resources to deliver retender process	Unable to deliver the project to the agreed milestones and timeline	<p>External specialist consultancy advice to support the retender</p> <p>Additional resources required to fund the external consultancy</p> <p>Officer working group has been established to support the retender process</p>	Treat	Unlikely (2) x High (3) = rating of 6

<p>Tender does not attract interest from market place in a post Covid market environment and timing will be key for this procurement</p>	<p>Council unable to appoint a suitable qualified and experienced contractor to operate the market</p>	<p>Risks to be minimised through the chosen procurement route and affordability threshold</p> <p>Results of engagement will help to inform the development of the new service specification and WBC's expectations for the new management contract, in particular the potential for risk share in the early years of the contract</p>	<p>Treat</p>	<p>Unlikely (3) x High (3) = rating of 9</p>
<p>Lack of data and financial information for contractor to inform the retender process</p>	<p>Bidders are unable to provide a detailed tender submission</p>	<p>Council to use the previous management data provided to ensure that all bidders have access to some financial and usage data for the market</p> <p>Council to allow bidders to form a financial base position that takes into account the impact of Covid on the market sector and allows the potential for risk</p>	<p>Treat</p>	<p>Unlikely (2) x High (3) = rating of 6</p>

		share in the early years		
Contractors do not deliver contract and service specification and specialist events programme e.g. market lates	The market service is not available for residents and customers to use	Regular contract monitoring by the council to review the contract and KPI's requirements are being met by the contractor alongside and scrutiny by elected members	Treat	Unlikely (2) x High (3) = rating of 6
The new management contractor goes into administration	As above	As above Regular review of contractors accounts	Tolerate	Unlikely (2) x High (3) = rating of 6
Contractor is taken over by another company during the contract term	Could have no impact on the service Or New company tries to alter the management fee, contract and KPI's which impacts on the service	As above Option to terminate the contract early	Tolerate	Unlikely (2) x High (3) = rating of 6

3.0 Recommendations

- 3.1 That Cabinet notes the Approved Exemption to the Council's Procurement Procedures in relation to the document in Appendix 1.

Further information:

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Report approved by:

Alan Gough, Group Head of Community and Environmental Services

4.0 **Detailed proposal**

4.1 Details of the exemption can be found in Appendix 1.

5.0 **Implications**

5.1 **Financial**

5.1.1 The Shared Director of Finance comments that the additional market costs will be met from existing resources. The income from the market traders will be used to pay the additional six month management fee to the contractor.

5.2 **Legal Issues (Monitoring Officer)**

5.2.1 The Group Head of Democracy and Governance comments that Cabinet must be informed of exemptions to the contract procedure rules if the value exceeds £100,000 which this contract does.

5.3 **Equalities, Human Rights and Data Protection**

5.3.1 An Equality Impact Assessment (EIA) will be undertaken for the new WMMC in 2021/22 to establish whether there are any emerging needs that are not addressed through the contract. If there are emerging needs identified during the period of the contract that are not currently met, consideration will be given as to whether these are a District Council responsibility, align with the council's corporate objectives and whether council funding or grant aid is required in order to commission the service.

5.3.2 The proposal is not expected to have any detrimental effect on human rights issues.

5.3.3 Having had regard to the council's obligations under the General Data Protection Regulation (GDPR) 2018, it is considered that officers are not required to undertake a Data Processing Impact Assessment (DPIA) for this report.

5.4 **Staffing**

5.4.1 No staffing issues relate to this report.

5.5 **Accommodation**

5.5.1 There are no changes identified in this report relating to WBC office/town hall accommodation.

5.6 **Community Safety/Crime and Disorder**

5.6.1 No community safety/crime and disorders relate to this report.

5.7 **Sustainability**

5.7.1 These proposal form part of the councils wider sustainable programme/strategy. The WMMC objectives are to reduce its carbon footprint and increase its recycling of waste from the market.

Appendices

Appendix 1 – Approved Procurement Exemption