

TITLE OF REPORT: REFERRAL FROM CABINET – 8 APRIL 2008 – UPDATE OF MARKET TESTING – COUNCIL’S MARKET OPERATIONS

The following is an extract from the Draft Minutes of the Cabinet meeting held on 8 April 2008.

127. UPDATE ON MARKET TESTING – COUNCIL’S MARKET OPERATIONS

The Portfolio Holder for Leisure & E-Government presented a joint report of the Heads of Leisure & Environmental Services and Financial Services updating Cabinet on the market testing of the Council’s Market Operations, and seeking consideration of an increase in the current budgets for the Council’s Market Operations.

The Portfolio Holder for Leisure & E-Government informed that the Council had undertaken a tender of the Council’s Markets in July 2007, but that unfortunately none of the tenderers achieved the criteria that was set. Therefore, the Council reviewed the process and undertook a second tender in November 2007. Three tenders were received and, of those, two passed the quality evaluation and their financial tenders had been opened.

As only one tender each had been received for Hitchin and Royston markets, the Council’s Contract Procurement Rules state: -

“To ensure adequate competition, there must be at least two satisfactory responses i.e. responses which meet a minimum quality standard under which the Council could award the contract. If the Council receives only one satisfactory response, the officer must obtain an additional quote or tender or obtain an exemption under 6.1G.”

An exemption under 6.1G would require the written approval of the Strategic Director responsible for markets, the Head of Legal and Democratic Services and the Strategic Director of Financial and Regulatory Services.

Cabinet was advised that the Markets Contracts would be for three years with an option to extend for an additional two years. The current contract commencement date was anticipated to be 1 June 2008.

In terms of the financial implications, the 2008/09 budget for the market undertaking was a net cost of £39,450 based on the 2007/08 original deficit budget. However, the income target had since been identified as unachievable and the current projected outturn for 2007/08 was a deficit of £104,000 an increase of £66,000. This was due to falling stall occupancy rates and the current trial rents system at Hitchin Market. If the service was not contracted out it was likely that a permanent base budget adjustment in the region of £68,000 would be required which would make the net cost of service £108,000.

It was noted that currently the markets service did not make a profit, but did contribute to corporate overheads. This contribution would no longer be made once the service had been contracted out, and was estimated to be £115,300 per annum. However, if the service was contracted out, this would free up officer time which could be dedicated to other services and activities. The additional funding requirements for the markets contracts would be £119,000 for 2008/09 (part year) and £125,000 (full year) from 2009/10 onwards.

The Portfolio Holder for Finance supported the comments made by the Portfolio Holder for Leisure & E-Government, but was mindful of expenditure levels indicated by officers should the markets operation be outsourced. He therefore proposed a series of additional recommendations aimed at enabling negotiations to take place with the preferred bidders to explore potential cost reductions on the bids, and for officers to examine the scope for reducing overheads. These additional recommendations were supported by Cabinet.

Cabinet further agreed that all future reports concerning the markets operation should show separately the finances for the Hitchin and Royston markets.

RECOMMENDED TO COUNCIL: That the Council's Markets Budgets be increased provisionally by up to a maximum of an additional £119,000 for 2008/09 and by £125,000 for 2009/10 onwards.

RESOLVED:

- (1) That officers meet with the preferred bidders to explore whether cost reductions on the bids can be secured;
- (2) That officers closely examine the scope for reducing overheads charges to the Market cost centre;
- (3) That, subject to the foregoing, the Portfolio Holders for Leisure and E-Government and Finance determine whether to accept either bids in accordance with their existing delegated authority;
- (4) That officers be requested to report back on the outcome at the next meeting of Cabinet;
- (5) That all future reports concerning the markets operation should show separately the finances for the Hitchin and Royston markets.

REASON FOR DECISION: To allow the Council's Markets to be tendered out to two bidders.

The following is the report considered by Cabinet at its meeting held on 8 April 2008.

TITLE OF REPORT : UPDATE OF MARKET TESTING – COUNCIL'S MARKET OPERATIONS

JOINT REPORT OF THE HEADS OF LEISURE AND ENVIRONMENT SERVICES AND FINANCIAL SERVICES

PORTFOLIO HOLDERS: COUNCILLORS IAN KNIGHTON AND TERRY HONE

1. PURPOSE OF REPORT

- 1.1 To seek approval from Cabinet to increase the current budgets for the Council Markets operation.
- 1.2 To update Cabinet Members on the Market testing for the Councils markets operations.

2. FORWARD PLAN

- 2.1 This Report contains a recommendation on a key decision that was first notified to the public in the Forward Plan on the 1st July 2006.

3. BACKGROUND

- 3.1 Officers presented a report to Cabinet Members on 25th July 2006 providing an options appraisal for the future arrangements of the Council's markets, the committee resolved: -

RESOLVED:

- (1) That the outsourcing of the whole of the market function for Royston and Hitchin be agreed, subject to consultation with the Portfolio Holder for Leisure and E-Government;
- (2) That the development of a specification and timetable for the outsourcing of the markets functions for a period of three to five years be agreed, subject to a further report to Cabinet;

REASON FOR DECISIONS: To improve the vibrancy, vitality and economic viability of the Councils markets.

- 3.2 As part of the July 2006 report, Officers identified a number of reason for undertaking a tendering process for the Council's Markets, the following identifies some of the key reasons.

1. With the continuous decline in our council operated markets this is having an adverse impact on traders which has led to criticism of markets staff, market manager, senior managers and Councillors. This has led to diminishing confidence locally in the existing management arrangements
2. The Councils systems and procedures do not allow for the autonomy flexibility and decisive decision making that is required for the dynamic and ever changing retail economy of markets. The Councils financial regulation and standing orders and the financial risks associated to the markets requires stringent processes and procedures that regularly need to be independently audited.

3. Outsourcing the markets operation should allow a dynamic operator to improve the vitality vibrancy of the markets, whilst at the same time considerably reducing the amount of time spent by the Council on management issues.
4. Recent Council restructuring has resulted in officers having a wider remit of responsibilities. Consequently, increasing operational issues within the markets is having an adverse impact on other service areas.
5. Taking into account the escalating issues within this service area the option to retain the service in-house is considered unsustainable.

4. FUTURE MANAGEMENT ARRANGEMENTS

- 4.1 The Council undertook a tender of the Council's Markets in July 2007, unfortunately none of the tenderers achieved the criteria that was set. Therefore, the Council reviewed the process and undertook a second tender in November 2007. Three tenders were received, of this two passed the quality evaluation and their financial tenders have been opened.
- 4.2 As only one tender each has been received for Hitchin and Royston markets, the Council's Contract Procurement Rules state: -

To ensure adequate competition, there must be at least two satisfactory responses i.e. responses which meet a minimum quality standard under which the Council could award the contract. If the Council receives only one satisfactory response, the officer must obtain an additional quote or tender or obtain an exemption under 6.1G.

- 4.3 An exemption under 6.1G will require the written approval of the Strategic Director responsible for markets, the Head of Legal and Democratic Services and the Strategic Director of Financial and Regulatory Services.
- 4.4 The Markets Contracts will be for three years with an option to extend for an additional two years. The current contract commencement date is the 1st June 08.

5. LEGAL IMPLICATIONS

- 5.1 Under the Council's Terms of Reference Chief Officers can award contracts under their delegated powers where these are within budget. Where the contract value exceeds their allocated budgets authority must be sought to extend the budget so as to award the contract.
- 5.2 Cabinet's role is to keep the budget under review and recommend to Council any alterations to the budget. It is for Council to agree the allocation of financial resources to different services and projects.
- 5.3 If Cabinet does not agree the recommendation the tender process will terminate. The tenderers are bound by the conditions of tender which makes clear that they are responsible for the costs of preparing the tender and that the Council is not bound to accept any tender.

6. FINANCIAL AND HUMAN RESOURCE IMPLICATIONS

- 6.1 As part of the Corporate Business planning process for 2008/09 budget setting, the market operation was highlighted as a high budget risk. A portion

of the Council's reserves has been set aside to cover the risk of keeping the markets in-house, £25,000 (50% of £50,000). This provision falls short of the revised budget required to allow the service to be contracted out and Council approval is needed for the revised budget.

- 6.2 The 2008/09 budget for the market undertaking is a net cost of £39,450 based on the 2007/08 original deficit budget, however the income target has since been identified as unachievable and the current projected outturn for 2007/08 is £104K an increase of £66K. This is due to falling stall occupancy rates and the current trial rents system at Hitchin Market. If the service is not contracted out it is likely that a permanent base budget adjustment in the region of £68K is required which will make the net cost of service £108K.
- 6.3 Currently the markets service, does not make a profit, but does contribute to corporate overheads, this contribution will no longer be made once the service has been contracted out, these are estimated to be £115,300 per annum. However, if the service is contracted out, this will free up officer time which can be dedicated to other services and activities. The additional funding requirements for the markets contracts will be £119K for 2008/09.
- 6.4 The tenders that have been received to operate both markets will cost the Council approximately £50k per annum. Therefore the total cost to the Council for operating the market including the Council corporate overheads is approximately £165k per annum. If the Council do not tender out the market an additional £68k would be required to cover the current loss of income due to the reduction in the market utilisation.
- 6.5 The proposed contract costs, would make the ongoing net cost of service £164K which consists of the contract cost of £49K and the overhead costs of £115K.. This cost is £60K higher than the current estimated 2007/08 cost of service (£104K).
- 6.6 The utilisation of market stalls has decreased by 24% over the last five years, and this has reduced the long-term viability of the markets. If the markets are not contracted out the Council could be at risk of declining market stall income and increasing costs.
- 6.7 Transfer of Undertakings (Protection of Employment) TUPE applies to the existing market's staff employed by the Council so that their employment is protected and they transfer with the contract. However under the TUPE rules staff are currently assigned to the Hitchin Market contract only. This means that any employee(s) taken on by the RTCF to manage the Royston Market may become an employee of the Council when the market contract comes to an end. In other words the employees follow the service whomever provides it.

7. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 7.1 General discussions have been held with Hitchin Market Traders Association and North Hertfordshire District Councillors.

8. RECOMMENDATIONS

- 8.1 For Cabinet to recommend to Council an increase in the Council's Markets budgets by an additional £119,000 for 2008/09 and by £125,000 for 2009/10 onwards.

9. REASONS FOR RECOMMENDATIONS

9.1 To allow the Council's markets to be tendered out to the two bidders.

10. APPENDICES

10.1 None.

11. CONTACT OFFICERS

- 11.1 Steven Crowley
Project Manager
Steve.crowley@north-herts.gov.uk
01462 474211
- 11.2 Lois Stewart
Service Accountant
Lois.stewart@north-herts.gov.uk
01462 474566
- 11.3 Vaughan Watson
Head of Leisure and Environmental Service
Vaughan.watson@north-herts.gov.uk
01462 474641
- 11.4 Kim Sawyer
Corporate Legal Manager
Kim.sawyer@north-herts.gov.uk
01462 474561
- 11.5 Barrie Jones
Head of Financial Services
barrie.jones@north-herts.gov.uk
01462-474243