

CABINET

8 APRIL 2014

GATEWAY 1 PROCUREMENT COMMENCEMENT: BAILIFF SERVICES – REVENUES AND BENEFITS

Portfolio Holder: Councillor Alan Jarrett, Finance and Deputy Leader

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SUMMARY

This report seeks permission to commence the procurement of Bailiff Services – Revenues and Benefits. This Gateway 1 report has been approved for submission to the Cabinet after review and discussion at Business Support Directorate Management Team Meeting on 27 February 2014 and the Procurement Board on 19 March 2014.

Further to this, current contract performance is monitored within the Exempt Appendix.

The Business Support Directorate Management Team has recommended that this project be approved as a Category B, High risk procurement.

The political and/or service sensitivities are potentially significant due to the sensitive nature of the services that will be provided on behalf of the Council.

1. Background Information

1.1 Budget & Policy Framework

- 1.1.1 This procurement is within the Council's budget and policy framework. The statutory duty to enforce monies owed to the Council by debtors is outlined within section 2.2 (Statutory / Legal obligations).

1.2 Service Background Information

- 1.2.1 Medway Council currently collects Council Tax from just over 112,000 households and National Non Domestic Rate (NNDR) from just over 6,000 business properties. The annual amount anticipated to be collected after the deduction of benefits, discounts and exemptions is £210m. In addition, approximately £500,000 of recoverable benefit overpayments are passed to debt agencies each financial year.
- 1.2.2 Whilst the majority of people liable for these charges pay in a timely fashion, there are a significant number who fail to do so. The Council currently employs two firms of bailiffs to encourage payment from those who continue to fail to meet their obligations.
- 1.2.3 The recommended option suggested by this paper will seek tenders on the basis of existing practice but will also seek tenders on any value added services that may have become available since the contract was last let.

1.3 Urgency of Report

- 1.3.1 N/A

1.4 Funding/Engagement From External Sources

- 1.4.1 There is no direct funding from external sources, with the cost of this service to the Council being minimal due to all costs being passed on to those people whom debts are being collected from.
- 1.4.2 Bailiff firms collect any outstanding balances in addition to their fees and subsequently pass on the entirety of the balance on a monthly basis to Medway Council. It is a requirement of this contract that a dedicated Medway Council bank account be maintained for the secure keeping of all monies due to the Council.
- 1.4.3 Following consultation at central government level and further to the Taking Control of Goods Regulations 2013 all fees as of April 2014 will be prescribed and standardised. In light of this, there is little need for an emphasis to be placed on price, allowing the Council to focus on the quality aspect in evaluating all returned tender submissions.

1.5 Parent Company Guarantee/Performance Bond Required

- 1.5.1 The Council may require the parent company, if applicable, of any subsidiary company whose tender is accepted to guarantee the performance of the Agreement by the subsidiary company.
- 1.5.2 The Council retains the option to require the Contractor, at their own expense, to arrange and make known a Bond against failure for the Contract to the satisfaction of the Council for the Contract Period. The Bond will be for a sum equal to 10% of the annual value of the tender

price, exclusive of the Bond. The Bond will be in the form of, or similar to, the draft.

2. Procurement Dependencies and Obligations

2.1 Project Dependency

2.1.1 N/A

2.2 Statutory/Legal Obligations

2.2.1 The legal framework for the enforcement of council tax is provided by the Local Government Finance Act 1992 and the Council Tax (Administration and Enforcement) Regulations 1992 (SI.1992/613).

2.2.2 The legal framework for the enforcement of non-domestic rates is provided by the Local Government Finance Act 1988, the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (SI.1989/1058).

2.2.3 The Taking Control of Goods Regulations 2013 (SI1984/2013) and The Taking Control of Goods (Fees) Regulations 2014 (SI 1/2014) which come into force on 6 April 2014 make changes relating to the actions and fees for bailiffs. Further details are provided at Appendix A.

3. Business Case

3.1 Procurement Project Outputs / Outcomes

As part of the successful delivery of this procurement requirement, the following procurement project outputs / outcomes within the table below have been identified as key and will be monitored as part of the procurement project delivery process.

Outputs / Outcomes	How will success be measured?	Who will measure success of outputs/ outcomes	When will success be measured?
1. Collection Rate: Council tax	Through the recovery of a sufficiently high proportion of outstanding debt	Revenue and benefits contract manager	Monitored monthly; Reviewed with contractor at quarterly meeting
2. Collection Rate: NDR	Through the recovery of a sufficiently high proportion of outstanding debt	Revenue and benefits contract manager	Monitored monthly; Reviewed with contractor at quarterly meeting
3. Collection Rate: HB Overpayments	Through the recovery of a sufficiently high proportion of outstanding debt	Revenue and benefits contract manager	Monitored monthly; Reviewed with contractor at quarterly meeting
4. Official Complaints Upheld	Via the monitoring of complaints received and the following up of these to ensure bailiffs acting as agents of the Council do so in an appropriate manner	Revenue and benefits contract manager	Monitored monthly; Reviewed with contractor at quarterly meeting

3.2 Procurement Project Management

3.2.1 This procurement will be managed by Category Management in consultation with the client department.

3.3 Post Procurement Contract Management

3.3.1 The Revenue and Benefits Contract Manager will carry out regular appraisals on the providers of this service, with additional Gateway 5 reviews taking place on an annual basis as a result of this being a high risk procurement.

3.3.2 Further to this, subject to satisfactory performance, approval will be sought from Cabinet to extend by two years, two years into the contract. This will enable an effective review of suppliers to take place when considering whether to extend this high risk, high profile, potentially politically sensitive contract.

4. Market Conditions and Procurement Approach

4.1 Market Conditions

4.1.1 The client department has advised, based on previous market experience, that there is a buoyant market in relation to bailiff services, with a large number of potential providers within the market. These range from national providers to smaller local firms who are capable of providing this service. As such, it is not envisaged that securing a suitable provision will be a problem.

4.2 Procurement Process Proposed

4.2.1 The proposed procurement process is to undertake a formal tender process in line with EU Procurement Regulations. Due to the likely high number of submissions, a restricted process is proposed whereby between five and six suppliers will be invited to tender following a pre-qualification questionnaire stage.

4.2.2 The justification behind the proposed procurement process is that it will allow for submission of competitive tenders, as described in 4.1 above.

4.2.3 This contract will be split into two lots, based on geographic area, allowing for two suppliers to be awarded contracts. This allows for both a more competitive process as well as the possibility of having an alternative supplier should one be required to pick up slack or fulfil excess requirements.

4.3 Evaluation Criteria

4.3.1 Based on the compulsory pricing structures that will be in place when this new contract is let, the evaluation criteria proposed is 90% quality 10% price. This will ensure a very high level of service can be obtained which is vital as any bailiffs engaged in the collection of revenue will be acting as agents of the Council, which is a potentially sensitive situation.

4.3.2 The 10% price evaluation is based on the fees for assisting with bail, no bail and committal warrants charged to the Council, and while minimal it is important to ensure all cost savings can be achieved wherever possible.

5. RISK MANAGEMENT

5.1 Risk Categorisation

1. Risk Category: Contractual delivery	Likelihood: D	Impact: III
Outline Description: Failure of contractors business		
Plans to Mitigate: All monies collected to be paid into a dedicated Medway Council bank account		
2. Risk Category: Service Delivery	Likelihood: D	Impact: III
Outline Description: Poor collection rates		
Plans to Mitigate: Target setting, performance monitoring and the comparing of relative performance of the bailiff company awarded lot one to that awarded lot two		
3. Risk Category: Reputation / Political	Likelihood: E	Impact: II
Outline Description: Inappropriate behaviour / conduct of bailiffs		
Plans to Mitigate: Code of practice outlining within the tender specification documents in addition to regular review meetings and the monitoring of complaints		
4. Risk Category: Financial	Likelihood: E	Impact: III
Outline Description: Poor collection rates and a lack of incentive to collect added value 'free' debts		
Plans to Mitigate: Target setting, performance monitoring and the comparing of relative performance of the bailiff company awarded lot one to that awarded lot two		

6. Consultation

6.1 Internal (Medway) Stakeholder Consultation

6.1.1 N/A

6.2 External Stakeholder Consultation

6.2.1 Central government has been consulted in relation to the new mandatory pricing structures that are to be introduced from April 2014. This pricing schedule clearly sets out the level of charges that can (and indeed must) be charged by bailiff firms in relation to each element of the service provided.

6.2.2 These costs are not passed on to the Council, but instead are collected directly in addition to the balance due to the Council from debtors.

6.2.3 Appendix B sets out an overview of the new pricing structures, in addition to the Revenue and Benefits Managers comments on them.

6.2.4 The Procurement Board considered this report on 19 March 2014 and supported the recommendation set out below.

7. Service Implications

7.1 Financial Implications

7.1.1 The procurement requirement and its associated delivery (as per the recommendations at Section 10) will be funded from existing revenue budgets.

7.1.2 Further detail is contained within Section 2.1 Finance Analysis of the Exempt Appendix.

7.2 Legal Implications

7.2.1 The legislative provisions relating to the enforcement of these debts are contained within the report. There are no direct legal implications resulting from this procurement.

7.3 TUPE Implications

7.3.1 N/A

7.4 Procurement Implications

7.4.1 Due to the value of this procurement exceeding the EU threshold and the competitive market for this service, Category Management supports the recommendation to formally tender this procurement requirement in line with the EU Procurement Regulations using the Restricted Procedure.

7.5 ICT Implications

7.5.1 There are no ICT implications resulting from this procurement.

8. Other Considerations

8.1 Diversity & Equality

8.1.1 The Equality Act 2010 will be a clause in the general terms and conditions of the contract that the successful contractor/s will be contractually bound to adhere to.

8.2 Social, Economic & Environmental Considerations

8.2.1 The collection of monies owed to the Council through the use of Bailiff Services is an ever contentious subject. Medway Council must ensure that high standards are met by anyone representing the Council on such business in order to minimise potential reputational risk to the Council.

8.2.2 The national standardisation of Bailiff Fees in relation to these services from April 2014 will aid this, as the fees passed on to debtors are often deemed to be a controversial issue.

9. Other Information

9.1 Other Information

9.1.1 This contract falls under a services concession contract as there is no express guarantee of work, or revenue, to the supplier of the service.

9.1.2 A services concession contract is defined as being a contract under which the consideration given by the contracting authority consists of or includes the right to exploit the provision of the services(s) under the contract. A works concession contract has a similar definition.

9.1.3 A contract under which the provider derives the majority of income from payments by the users of the service or work(s), rather than a payment by the contracting authority is a key characteristic of a concession contract. Another defining feature is that the provider has to carry the risks inherent in the provision of the work(s) or service (i.e. the risk of making a loss).

9.1.4 Services concession contracts are expressly excluded from the Directive/Regulations (Reg. 6(2)(m) of the Public Contracts Regulations 2006), although are subject to the application of the Treaty principles, which imply the need for adequate advertising.

9.1.5 Works concession contracts are within the scope of the Directive/Regulations, albeit lightly regulated under Reg. 36 of the Public Contracts Regulations 2006.

10. Recommendation

10.1 The Cabinet is requested to agree to the commencement of the procurement process for bailiff services.

11. Suggested Reasons for Decision

11.1 The recommendation above is provided on the basis of the contract term for the current bailiff contract is due to end on 1 January 2015, and the successful

collection of all monies due to the Council is necessary to ensure cash flow over coming years.

Lead Officer Contact:

Name **Title**
Department **Directorate**
Extension **Email**

BACKGROUND PAPERS

The following documents have been relied upon in the preparation of this report:

Description of Document	Location	Date
None		

Appendix A – New Pricing Structure

The Taking Control of Goods Regulations 2013 (SI 1894/2013)

Following The Tribunals, Courts and Enforcement Act 2007 (Commencement No. 9) Order 2013 which brought into force the provisions of Part 3 and Schedule 12 of the Tribunals Courts and Enforcement Act 2007, the Government laid before Parliament on 30 July 2013 The Taking Control of Goods Regulations 2013. The regulations are due to come into force from 6 April 2014.

The Taking Control of Goods Regulations 2013 will introduce new procedures for the enforcement sector that are aimed at simplifying the enforcement process and include:

- the serving of a notice of enforcement to take legal control of goods
- exempt goods
- days and times when an enforcement agent can take control of goods
- powers of entry
- storing and selling goods subject to legal control

The Taking Control of Goods (Fees) Regulations 2014 (SI 1/2014)

These regulations were laid before Parliament on 9 January 2014 and again come into force from 6 April 2014.

The new fee structure is a radical departure from the previous regime and consists of fixed fees in attempt to provide consistency and transparency. The fees are payable by stage rather than by any particular activity or action.

For council tax & benefit purposes there are 3 fees to consider:

- Compliance fee - £75. This is incurred by the debtor as soon as the bailiff contacts the debtor. This may be in the form of a letter.
- Enforcement fee - £235 and 7.5% of any debt over £1,500. This is incurred by the debtor as soon as the bailiff makes a first attendance at the property.
- Sale fee - £110 and 7.5% of any debt over £1,500. This is incurred by the debtor as soon as the bailiff makes a first attendance at the property for the purpose of removing goods.

Once triggered the fee is due even if all other steps that may be made under a particular stage are not completed.

Disbursements are limited to:

- Storage fees following removal of goods
- Locksmith charges
- Court Fees on Application
- Auctioneer fees
- Exceptional costs following application to court.

Implications – The Debtor

Currently it is fair to say that the majority of cases passed to the bailiffs would result in both a letter being sent and a visit being made. The cost currently incurred by the debtor for two visits is £42.50, significantly less than the new fee of £75.

It is also fair to say that a significant proportion of cases will then have an attendance with a view to removing goods for which the current fee is £120.00 plus a percentage based levy on the debt. For a debt of £2,000 the total fee would be £188, a lot less than the new fee of £235.

Implications – The Authority

The immediate issue surrounds the current contracts with existing suppliers. Although the contract terms and conditions allow for changes in legislation, a variation to contract is being drawn up by the legal section to ensure the changes are taken into account.

The next issue the Council could confront is a delay in the bailiffs taking action in the hope that they can benefit from the new charges. At present the legislation does not provide any guidance regarding the transitional period.

Perhaps the biggest issue, however, will be the size of the new charges and whether or not the use of bailiffs would still be seen as appropriate for smaller debts. This is of particular concern following the introduction of Local Council Tax Support which has seen all households having to contribute towards at least 25% of their council tax bill. Many of the annual bills raised in these cases will be less than the fees the bailiffs will be able to charge, with court costs of £80 already having added to the debtor's initial cost.

The fact that the current contract ends at the beginning of January does enable the Council to make significant changes within the new contract should it wish, although it may be more difficult to make significant variations to the current contract given it has less than a year to run. That may or may not be assisted by the keenness of the current contractors to win a new contract.