

## REPORT TO MANAGEMENT TEAM

12 SEPTEMBER 2012

### MARKET OPERATING CONTRACT

#### Background

The three market operating contracts (Swanley, Sevenoaks Wednesday and Sevenoaks Saturday) were tendered under EU procurement rules with a view to the new contracts commencing on the 1<sup>st</sup> April 2011.

The result of the tender process is shown below:

<b>APPLICANT</b>	<b>SEVENOAKS SATURDAY (Current £13,874)</b>	<b>SEVENOAKS WEDNESDAY (Current £15,224)</b>	<b>SWANLEY (Current £248,900)</b>
Geraud Markets	Did not tender	Did not tender	£218,000
Wendy Fair Ltd	£15,630	£31,256	£265,682
Bray Associates	£3,000	£17,500	£210,000
Apps Court Farm	£7,600	£6,900	£86,444.50
Hughmark Continental	£2,600	£5,200	£220,064
Platt Group	Did not tender	£20,050	Did not tender
Sevenoaks Town Council	Did not tender	Did not tender	Did not tender
Sevenoaks Direct Contracts	Did not tender	Did not tender	Did not tender

The successful bid by Wendy Fair Markets was accepted and the contract commenced on the 1<sup>st</sup> April 2011.

The original tender bids were based on a total market stall frontage of 356 metres. Following the grant of the contract Wendy Fair Markets approached the Council with a request to extend the market frontage to 470 metres and this was agreed on condition that the annual fee increased pro-rata from £265,682 p.a. to £351,432 p.a.

#### Current Position

At the end of July 2012 the Council was informed that Wendy Fair Markets had entered voluntary liquidation and at that time the Council was owed some £72,865 which equates to approximately 2 months rent. Further rent has become due from the 1<sup>st</sup> August in the sum of £37,976. It has been confirmed that there are no monies to meet the creditors demands.

At present the markets are continuing to operate under the control of another company from the Wendy Fair Group (Wendy Fair (Wembley) Ltd) and since liquidation the Council received a rent payments of £18,015 from Wendy Fair (Wembley) Ltd.

Wendy Fair have proposed that the contract to run all 3 markets be transferred to Wendy Fair (Wembley) Ltd.on the following terms:

Sevenoaks Wednesday £31,256 (as original tender)

Sevenoaks Saturday £15,630 (as original tender)

Swanley £265,682 (as original tender based on the 356 metre frontage)

This would create an immediate reduction of income to the Council of some £85,750 p.a.

There are two elements to consider:

1. Maintaining the operation of the market (should any of the markets cease to trade there will be no income to the Council and the time taken to re-establish a market from nothing will take time).
2. Safeguarding the Council's income (it is inevitable, whatever course of action is taken by the Council that the annual income will be less than that budgeted for).

## Proposals

As Wendy Fair Markets Ltd have gone into voluntary liquidation, under the terms of the agreement with them (clause 7.4) we can determine the contract(s) by giving such period of notice as we consider is reasonable. We would suggest 5 days. This is necessary as the liquidator has not disclaimed the contract.

The Council will need to arrange for the temporary running of the markets until they can again go out under the full EU tender regime. It is not considered necessary to go back to the original tender submissions and offer the next in line the opportunity to run the market temporarily, as it is now over a year and half since such tenders were submitted and they are not relevant to the Council's current position.

Wendy Fair (Wembley) Ltd have started running the markets and although this company is from the same group as Wendy Fair Markets Ltd they are a separate legal entity and are currently paying rent that reflects the position prior to the extended stall area at Swanley and effectively above the rate of the next tender down, even if it was relevant.

A company search Wendy Fair (Wembley) Ltd has been requested and we believe that their current trading position is that they are just about breaking even. To ensure continuity of the market operation a temporary permission has been offered to them up to 31/03/2013.

## **Recommendation**

It is proposed that we go out to full tender as no other party is then prejudiced and it preserves an important income stream for the Council and will stop the disbursement of the traders if no one is there to regulate the markets. The temporary contract should be finalised after the expiration period of the Wendy Fair Markets Ltd notice.

It is proposed that another 'Open' tender process is entered into using the EU procedures and the process is effectively started again. It is difficult to ensure the financial viability of any potential contractor given the nature of this sector of business but any assessment of suitability will include a rigorous look at companies trading positions and a vigorous assessment the actual risk on the higher fee tenders.

Jim Latheron & Graham Grove

5 September 2012

