

MAIDSTONE BOROUGH COUNCIL

CABINET MEMBER FOR COMMUNITY SERVICES

REPORT OF THE DIRECTOR OF REGENERATION & COMMUNITIES

Report prepared by John Littlemore
Date Issued: 17 March 2011

1. THE FUTURE PROVISION OF THE CCTV MONITORING SERVICE

1.1 Key Issue for Decision

1.1.1 To consider whether to enter into a local authority shared service partnership with Medway Council or to go to tender for the provision of a CCTV monitoring service.

1.2 Recommendation of the Director of Regeneration & Communities

1.2.1 That the Council uses a tender process, as set out below, to procure a CCTV monitoring service.

1.3 Background

1.3.1 The council provides a network of CCTV cameras, including mobile cameras as part of its contribution to Section 17 of the Crime and Disorder Act 1998, which requires local authorities, plus other agencies, to consider crime and disorder reduction and community safety. The service consists of providing the hardware and the monitoring service that also includes support to the MaidSafe network for retailers in the town centre.

1.3.2 The staff arrangements for the monitoring part of the service have experienced a number of changes. Over the past ten years this has included 3 different contracted suppliers of services to CCTV:

- Guaranteed Security - This Company ceased trading in 2006 and services were then provided by;
- S.T.S (Security Training Services) - This Company ceased trading in 2007.

At this point staff were not being paid (during the lead up to Christmas 2007) and the council took on the responsibility for the staff, who were then employed under M.B.C staff contracts.

- 1.3.3 In 2008 the council went through a tender process that attracted interest from approximately 80 organisations, which was eventually reduced to five companies via the procurement process. Profile Securities Ltd (the council's current supplier) was the successful tenderer. Staff were transferred under the TUPE arrangements to the new contracting company. This contract expires in April 2011 but the council has an option within the contract to extend the arrangement for a further year.
- 1.3.4 During 2010 the council was considering how best to manage various requirements of the service such as ensuring the continuance of a quality service, replacing outdated equipment, future proofing hardware, reducing costs and the unsatisfactory physical working environment of the control centre. Whilst making this assessment the council received a proposal from Medway Council proposing a CCTV monitoring centre delivered from their offices through a partnership arrangement.
- 1.3.5 The term partnership is generally used widely with varying meanings – with the range including Local Strategic Partnership to arrangements similar to professional services' company partnerships. However, in the context of options for the CCTV service a partnership arrangement can be established between councils where the service is being provided by collaboration between two or more public authorities.
- 1.3.6 Relying on interpretation of legislation and case law the essential elements of this are that the authorities are truly acting together in a collaborative way to jointly deliver services that they both have to deliver – this could for example be achieved through establishing a partnership board on which MBC and the other partner(s) will have an equal say - and risk is shared.
- 1.3.7 None of the authorities is able to make a profit out of the transaction (or at least not out of the other authorities); as with other joint arrangements there is a need to establish how costs are allocated so that they are shared on an agreed basis in relation to the service that each party needs.
- 1.3.8 Each of the parties has a real say in the management of the process; this does not preclude one of the Councils taking a lead role e.g. for procuring contracts or employing and managing staff – and the lead role can be different according to the particular activity being undertaken if that is what the partnership agrees.

1.3.9 Due consideration was given to the proposal and in December 2010 the Cabinet Member for Community Services received a report on the future provision of the CCTV monitoring service, which included an outline of the Medway proposal. The Cabinet Member used this opportunity to reiterate his commitment to:

- maintaining the CCTV service and coverage within Maidstone;
- improving the service through up to date technology;
- ensuring dedicated monitors and CCTV operators for the Maidstone CCTV service .

1.3.10 The Cabinet Member's decision directed that officers should investigate further the partnership arrangement proposed by Medway Council and required that a further report be prepared for the Cabinet Member setting out a recommended way forward for the procurement of CCTV services, following consideration of stakeholders' views. In addition, the Cabinet Member asked for an assessment to determine whether the issues listed in paragraph 1.5.6 (of the report dated 10 December 2010) had been resolved satisfactorily. These being;

- the service level agreement properly reflects the shared nature of the partnership arrangement;
- Medway Council's procurement process complies with European Procurement Directives and our own contract procedure rules;
- Maidstone Council officers fully participate in future contract negotiations and appointments;
- Maidstone Council is able to fulfil its partnership role within the governance arrangements of the CCTV Service

1.3.11 Information regarding the council's intentions was published and engagement with stakeholders commenced. Informal discussions also took place between key stakeholders, elected members and officers from the council. The consultation exercise included two site visits to the Medway Control Room followed up by a question & answer session at the Hazlitt Theatre. In response to a suggestion from a stakeholder, a smaller group of stakeholders met to discuss the requirements of a CCTV service from their perspective. Appendix A of this report sets out the requirements that a future provider of the service would need to meet. Appendix B, lists the main areas of concern that were raised during the consultation.

1.4 Reasons for the Recommendation

1.4.1 The proposal to deliver a service through a local government partnership, such as the one envisaged by Medway Council, should not be confused with contractual arrangements that are determined through competitive bidding or tendering.

1.4.2 The distinguishing feature is that local authorities come together to provide a service for their mutual benefit, as opposed to the usual supplier/purchaser arrangement. In a partnership both local authorities have direct involvement in the running of the service usually through a partnership board empowered to take decisions concerning the service and with responsibility for monitoring performance.

1.4.3 This type of partnership is further characterized by:

- any future benefits being shared (costs reductions, service improvements);
- the service being operated at its running cost with no profit margin;
- the equal sharing of responsibility and governance through a partnership board that is regulated by a partnership agreement.

1.4.4 A partnership agreement was drafted by officers that incorporated the requirements of a local authority agreement. Following an exchange of documents between MBC and Medway Council the last document received encompassed some of the assurances that were being asked but fell short on others. The council's Legal advice is that the document returned from Medway Council is not a "partnership agreement" that would satisfy the necessary requirements and therefore a tender process is now required.

1.4.5 The table below relates the advice back to the matters for consideration outstanding from the previous report:

<u>Issue</u>	<u>Response</u>
The service level agreement properly reflects the shared nature of the partnership arrangement	The draft document from Medway refers only to "the Services" which are to be provided by Medway to MBC. "Services" are not defined but there is no suggestion that these cover any activities of Medway. The agreement is consistent with it being just Services being provided to MBC
Medway Council's procurement process complies with European Procurement Directives and our own contract procedure rules	This element is not expressly set out in the draft agreement.
Maidstone Council officers fully participate in future contract	As above

negotiations and appointments	
Maidstone Council is able to fulfil its partnership role within the governance arrangements of the CCTV Service	Whilst the document proposes joint management through a monitoring board this does not go far enough to satisfy the requirements for a true partnership; there is no mention of not-for-profit, nor is there any restriction on Medway commercial activities being carried on as part of the same operation.

1.4.6 Next Steps

1.4.7 Having concluded the Medway Council partnership offer is unable to satisfy requirements with regard to a local authority joint service in full, the next step is to consider what alternative arrangements are open to the council to procure the service, which will meet our requirements for a quality CCTV monitoring that reduces our costs and maintains the involvement of our stakeholders.

1.4.8 Entering into a tendering process will mean that other potential providers for the service are given the chance to bid. There are different forms of contracts that would be open to both public and private providers to bid for the service. This could either be on a commercial service contract or partnering type contract.

1.4.9 A partnership contract has the distinct advantage for the partners by retaining direct control on matters such as how the service is delivered, future development, and the management of issues relating to staff e.g. terms & conditions. For example as a partner we can determine (and carry the cost for) the number of operators and or screens as best meets our requirements.

1.4.10 Conversely whilst a purely contractor provider arrangement might result in a service that is less costly there is less direct control. The arrangement for the running of the service is stipulated in a contract; changes can be made to the contract but there is no direct involvement in the day to day running of the service; there are no guaranteed deliveries of future benefits achieved by the contractor; and the contractor can make a profit that is not necessarily re-invested in the service.

1.4.11 Advice was taken from the council's legal and procurement services in respect of the statutory and regulatory framework that should be complied with when replacing the existing service. The specific advice

is captured in paragraphs on Legal and Procurement in this report. There remains a fine line between what the council is required to do and what is the reasonable expectation of a public body. The essential elements being to create an environment of fair competition and encourage innovation open to organisations from across the UK and Europe.

- 1.4.12 In order to achieve the benefits of the partnership, outlined in paragraph 1.4.9 above, entering in to a partnership contract is suggested. This will achieve the advantages of an open, fair and competitive bidding process for the provision of the service.
- 1.4.13 The process of advertising the tender followed by short listing and interviews will delay the completion of the new contract until April 2012. The timetable for the process is attached as Appendix C to this report. This will require the existing contract to be extended for a further 12 month period. An initial approach has been made to our current provider, Profile Securities Ltd, who is amenable to the extension. The only caveat being the company does not open itself up to additional costs in terms of redundancy etc liabilities. The detail will be addressed by way of correspondence.

1.5 Alternative Action and why not Recommended

- 1.5.1 Whilst the principle behind the partnership offer from Medway Council has certain advantages officers cannot recommend this option as the draft partnership agreement provided by Medway does not fulfil the tests set out in the body of this report. In addition, the process gone through with Medway Council coupled with the engagement with stakeholders has cast doubt with some stakeholders about the transparency, openness and fairness of this route. It would therefore not be in the public interest to recommend accepting the Medway Council proposal.
- 1.5.2 Going through a tendering process should help to ensure best value is achieved. This methodology creates an open and fair mechanism for the provision of the service.
- 1.5.3 The council considered carrying out refurbishment work to the existing control room, which would involve significant capital costs. Whilst these works would help meet the health & safety requirements the current site is not considered to be a long-term viable option. The current staff have indicated their willingness to continue working within the current environment but the existing facilities fall short of the type of environment that the council or any good employer aspires to. For this reason and taking a long-term view refurbishing the current site is not recommended.

1.6 Impact on Corporate Objectives

1.6.1 The preservation of a CCTV service assists the Strategic Plan priority 'For Maidstone to be a decent place to live' and will contribute to Maidstone continues to be a place where people want to live and where the economy is supported through being a safer place to do business.

1.7 Risk Management

1.7.1 The Council is not expressly required to follow a rigid procurement process for this service, either because of the partnership proposal with another local authority or under Public Contract Regulations Services Part B Category 23 'Security Services'. This means this service does not have to be advertised in the Official Journal of the European Union (OJEU); allows some flexibility over the procedures and set timescales; is not subject to the mandatory standstill period.

1.7.2 However, to avoid the risk and expense of judicial review the council will need to ensure that the service is advertised in an appropriate and proportionate manner; the process is fair with effective competition; is procured in the 'spirit of the regulations' & inline with the EU Principles; and includes the submission of a contract award notice.

1.7.3 Moving to a new service brings with it the inherent risk there will possibly be an adverse impact in service delivery either in the short or long term. Stakeholder engagement elicited a number of concerns. These are contained in Appendix B attached to this report. Technical infrastructure is a specialist area and it is proposed to engage the services of an expert to advise on the technical aspects of the service provision.

1.8 Other Implications

1.8.1

1. Financial	X
2. Staffing	X
3. Legal	X
4. Equality Impact Needs Assessment	X
5. Environmental/Sustainable Development	
6. Community Safety	X
7. Human Rights Act	

- 8. Procurement
- 9. Asset Management

X

- 1.8.2 Financial – The tendering of the CCTV service to be provided on a partnership basis will help achieve best value for money. However, such an approach does have additional costs that would not be incurred through a public sector partnership arrangement. Following this route would also mean that the expected revenue savings from this service expected during 2011/12 will not materialise, as it is unlikely the new service could not be completed before April 2012. The anticipated revenue savings were anticipated to be in the region of £50k in 2011/12.
- 1.8.3 As stated in paragraph 1.6.4 it is proposed to engage an independent consultant to advise on the technical aspects of the service requirements that will entail a one-off remuneration likely to be in the region of £5,000.
- 1.8.4 Staffing – As previously noted in the December report with the exception of the CCTV Manager, the staffing of the CCTV service (6 FTE) is provided by an external contractor, Profile Security. On transfer of the service to another organisation the CCTV manager and contracted staff would be under a Transfer of Undertaking Protection of Employment Regulations (TUPE) arrangement.
- 1.8.5 An initial discussion has taken place with staff that would be affected by the proposed change and staff have participated in the various stakeholder events that have been held.
- 1.8.6 Legal – advice concludes the document provided by Medway Council does not meet the "partnership agreement" criteria.
- 1.8.7 Advice concurs with the view given by the Procurement Team that the CCTV service would fall into the Part B services contained in the regulations. However, even where the "formal" OJEU procurement regime does not apply (e.g. because the services are Part B services that do not require an OJEU tendering process), there is a general obligation under the EU treaty to treat all contractors equally.
- 1.8.8 The principle was set out in the Telaustria Case C-324/98 (7 December 2000), and is now enshrined in Regulation 4 of the 2006 regulations. This has been interpreted as imposing a duty to carry out appropriate advertising (so that interested contractors can apply) and to carry out a fair and transparent process.

- 1.8.9 Equality Impact Assessment – An assessment will be carried out as part of the procurement process once it is known what services are proposed and how they will operate.
- 1.8.10 Community Safety – Whilst the provision of a CCTV service is not statutory requirement of a local authority the recommendation in this report will ensure the continuance of a resilient CCTV service and contribute towards the reduction of crime and anti-social behaviour in Maidstone.
- 1.8.11 Procurement – The advice received is that this opportunity would fall under Services Part B Category 23 Security Services. Part B services are subject to a reduced set of regulations, which means that the proposal does not have to be advertised in the Official Journal of the European Union (OJEU); benefits from some flexibility over the Procedures and Set timescales; and is not subject to the 10 Day Mandatory Standstill period.
- 1.8.12 However it remains incumbent on the council to ensure the service is advertised and competed for in an appropriate and proportionate manner. As the CCTV monitoring service is a significant opportunity for a prospective bidder the service should be advertised accordingly to ensure effective competition by issuing a specification that truly reflects the reasonable requirements. It should not contain specifications that limit the opportunity to a single or group of suppliers if the requirements can met in a number of ways; it should also be procured in the 'spirit of the regulations'; and contain a contract award notice.
- 1.8.13 The Negotiated Procedure is not an option and Competitive Dialogue might have been an option in the early stages, but as the council has developed a clear idea of the service requirements this route is not now appropriate.
- 1.8.14 In this instance it would appear that technology could enable any reasonable expectation of this contract to be met by a remote centre. Artificially imposing a geographical limitation could be seen as restrictive and against the EU Principles. Lastly the Council should be tendering to obtain the best solution possible, by allowing innovation.

1.9 Relevant Documents

1.9.1 Appendices

- Appendix A – Sample requirements for the CCTV service suggested by stakeholders
- Appendix B – Stakeholder feedback
- Appendix C – Timetable for tender process

1.9.2 Background Documents

- EU Procedure rules
- Report of the Director of Regeneration & Community December 2010
- CCTV Code of Practice – Information Commissioner

IS THIS A KEY DECISION REPORT?

Yes

No

If yes, when did it first appear in the Forward Plan?

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This is a Key Decision because: The decision affects more than one Ward

Wards/Parishes affected: Town Centre Wards & Parishes with CCTV cover

How to Comment

Should you have any comments on the issue that is being considered please contact either the relevant Officer or the Member of the Executive who will be taking the decision.

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Suggested by stakeholders

A monitoring service that provides 24/7 cover, 365 days of the year

A monitoring service that has 24/7 365 supervision/authorisation

No reduction in operator hours from the current service

Monitoring of urban and rural areas

Able to take on all existing fixed and mobile camera feeds

Includes the Police Airwave and Madsafe radios

Maintain existing links to support the Urban Blue Bus and Street Pastors

Has digital recording equipment and storage

A direct link to Kent Police through the Force Contact and Control Centre (FCC) and to Maidstone Police station

Includes a back up centre in the event of disaster recovery and to ensure business continuity

Is compliant with all relevant standards and legislation (Human Rights Act 1998, Crime and Disorder Act 1998, Criminal Procedures and Investigations Act 1996, Criminal Justice and Public Order Act 1994, Police and Criminal evidence Act 1984, DPA, RIPA, SIA Licensing (or equivalent) and Home office guidance)

A service that is compliant with police and court evidential requirements

An agreed performance recording and reporting method

A service that as a minimum includes the following policies and procedures - training programme for all staff (including cross training), access to control room, evidence handling, equipment operation, camera usage policy, information sharing, staff cover, communication protocols, stakeholder engagement plan (to include regular structured stakeholder meetings)

An agreed future programme of upgrades and planned investment in service

Appendix B

Stakeholder Feedback

	Feedback	Comment
1	There should be a minimum of two operators at any one time covering Maidstone's CCTV	Agreed; this will be incorporated into the specification with scope for the bidder to innovate with alternative proposals
2	No headphones to promote close, flexible contact within the team	Test against industry best practice
3	Immediacy of analog camera-switching versus digital	Advice to be provided from an expert as part of the tender process
4	Maidstone-centric focus	Agreed; test potential bidders through the tender process
5	CCTV cover for volunteers e.g. Urban Blue Bus, Street Pastors	Agreed; incorporate into requirements
6	Retaining 'local knowledge'	This can be achieved through a combination of the transfer of existing staff under TUPE arrangements; regular liaison meetings hosted in an appropriate venue in Maidstone; learnt knowledge; training in conjunction with Maidstone's key stakeholders; and the use of modern technology (which identifies street names etc);
7	Retention of lay-monitors	Agreed
8	Regular meetings for key partners to maintain 'Community of Maidstone' approach	Agreed
9	Vulnerability to attack or disaster	Ensure a robust disaster recovery plan is in place

Appendix C

Timetable for tender process

	Start	End	Length (Days)
Tender process	31/03/11	15/11/11	226
Prepare adverts and PQQ Docs and allow for decision call-in	31/03/11	20/04/11	21
Issue Adverts	21/04/11	21/04/11	1
Issue and return of PQQ	22/04/11	19/05/11	28
Evaluation of PQQ Returns	20/05/11	02/06/11	14
Agree shortlist	03/06/11	03/06/11	1
Prepare ITT Documents	06/06/11	01/07/11	26
Issue ITT Documents	04/07/11	04/07/11	1
ITT Period	05/07/11	08/08/11	35
ITT initial evaluation	09/08/11	29/08/11	21
Selected visits or interviews	30/08/11	12/09/11	14
Final evaluation and tender report	13/09/11	19/09/11	7
Internal tender acceptance	20/09/11	31/10/11	42
Inform bidders of the award	01/11/11	01/11/11	1
Debrief and lead in period	02/11/11	15/11/11	14
Contract Implementation	16/11/11	06/03/12	112
Partnership/contract implementation	16/11/11	06/03/12	112
Total	31/03/11	06/03/12	338