

REPORT TITLE: WINCHESTER SPORT AND LEISURE PARK PROJECT –
PROCUREMENT

13 NOVEMBER 2017

REPORT OF PORTFOLIO HOLDER: HEALTH AND WELLBEING

Contact Officer: Andy Hickman Tel No: 848105 Email
ahickman@winchester.gov.uk

WARD(S): ALL

PURPOSE

The Council has been considering the provision of leisure facilities for the District for several years and in July 2016 determined a facility mix for a potential new Sport and Leisure Centre located at Bar End. In March 2017 the site of the new Sport and Leisure Centre was confirmed as the Garrison Ground following purchase of the land from a third party in December 2016.

This report considers the procurement process required to secure the appointment of the main contractor who will build the new Sport and Leisure Centre once the Outline Business Case has been considered and approved. It also considers the procurement process for a specialist leisure operator to manage the new centre and its associated facilities.

RECOMMENDATIONS:

That Cabinet agree

1. The procurement strategy proposed by MACE for the proposed contractor to build the new Sport and Leisure Centre be approved, including that:
 - A. the procurement of a construction contractor to build the new Sport and Leisure Centre follows a two stage design and build process as set out in Option 2, Section 10.2 of this report.
 - B. the Southern Construction Framework as set out in option c of the report be utilised for this procurement ,

2. That the Corporate Head of Service (Estates) in consultation with the Portfolio Holder for Health and Wellbeing be authorised to appoint a contractor from the the Southern Construction Framework in accordance with the rules of the framework and to then obtain a competitive construction cost which will then be reported back to Cabinet as part of the approval of the Full Business Case.
3. That the procurement route to secure a specialist operator and a traditional management contract as set out in option ii para 11.4 and para 11.6 be approved including that;:
 - A. An open tender route, to include a series of initial selection criteria which bidders will have to meet to progress to the next stage (Option (a) as set out in section 11.9 of this Report), is utilised for the procurement process.
 - B. The Head of Programme in consultation with the Portfolio Holder for Health and Wellbeing be authorised to consider the price/quality split, the specification for the operation of the new Centre and the evaluation criteria, and to report this back to a future meeting of the Cabinet (Leisure Centre) Committee for approval before seeking tenders.
 - C. an Advisory Panel and an Evaluation Board be established in relation to the operator appointment process as set out in paragraph 12 below.

IMPLICATIONS:

1 COUNCIL STRATEGY OUTCOME

- 1.1 The provision of a new major public sport and leisure facility in Winchester has already been identified as a council priority in the interests of public health and happiness. The new Sport and Leisure Centre at the Bar End site helps to deliver this by providing accessible sport and recreation.
- 1.2 The vision for the new Sport and Leisure Centre is a centre which:
- a) Reflects sporting needs and aspirations for the people of our District.
 - b) Is flexible to provide for current and future sporting needs and trends.
 - c) Is deliverable and affordable.
 - d) Is in a park setting providing additional sporting and leisure opportunities.
 - e) Provides an excellent water based offer for community use.
- 1.3 The objectives for the project are:
- a) To provide accessible public sport and leisure facilities to improve the health and happiness of the District's residents.
 - b) To increase participation in sport and active recreation.
 - c) To improve the quality and energy efficiency of Winchester's main leisure facility.
 - d) To provide a Sport and Leisure Centre that is financially sustainable.
- 1.4 The procurement strategies relating to this project are fundamental to achieving a deliverable, sustainable development in accordance with the aspirations of the Council.

2 FINANCIAL IMPLICATIONS

- 2.1 There are no immediate financial implications directly arising from this report. A budget of £770,000 was approved in July 2016 to progress the project up to the end of RIBA Stage 3 and to carry out initial master planning at Bar End and undertake community engagement. The project management costs are currently within the agreed budget. It should be noted, however, that any delays to the project as a result of changes to the facility mix made at a later stage will increase project management and design costs.
- 2.2 It is considered that the two procurement routes outlined below offer the best opportunity to achieve both effective project delivery and value for money. In addition to the advice of Mace and The Sports Consultancy, Hampshire County Council's procurement service has reviewed the approaches set out in this report and endorsed the findings.

- 2.3 The outcome of the procurement exercises will have a bearing on the final financial model and impact on the Council's capital and revenue budgets and these will be reported once the processes are completed.

3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 The procurement of a contractor and operator for the new Sport and Leisure Centre needs to be undertaken in accordance with EU compliant processes under the Public Contract Regulations 2015. The proposed procurement options are within the requirements of these Regulations.
- 3.2 Hampshire County Council procurement service is providing advice on procurement routes and will be supporting the Council in the procurement processes as set out in this report.

4 WORKFORCE IMPLICATIONS

- 4.1 The staffing requirements for this development project are continually reviewed to ensure effective and timely project delivery.
- 4.2 TUPE Regulations and guidelines will be followed in relation to the management contract which will be considered as part of the procurement for an operator.

5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 The existing River Park Leisure Centre (RPLC) needs to be maintained in good order until such time as a new Sport and Leisure Centre can be delivered and opened. Any delays to the timetable for the delivery of a new centre may lead to increased maintenance costs. The Council's estates team is actively monitoring the condition of RPLC and undertaking any required works in the intervening period.

6 CONSULTATION AND COMMUNICATION

- 6.1 A full programme of engagement is being undertaken through the development of this new facility. This is set out in a separate report on the consideration of RIBA Stage 2 proposals on this agenda.
- 6.2 The Overview and Scrutiny Committee considered a Report on this matter at its meeting on 9 October 2017 (Report OS179 refers) and a summary of comments made is provided below:

That the Committee note the progress made to date with the Winchester Sport and Leisure Park Project and provides the following comments to Cabinet:

- (i) That the Committee is content that the procurement of construction contractor proceed as set out in the report

- (ii) That due to the sensitivities of the leisure management contractor procurement, further information be provided before final decisions are made by Cabinet

This report provides further information as to the procurement approach proposed.

7 ENVIRONMENTAL CONSIDERATIONS

- 7.1 One of the key objectives of the project is to deliver an EPC Grade A rating. The project will continue to be assessed against the BREEAM accreditation process.
- 7.2 Parking and transport issues are a key consideration for the project and this is the subject of a specific work stream and engagement with HCC as highways and transport authority.

8 EQUALITY IMPACT ASSESSMENT

- 8.1 This is being undertaken as part of the more detailed design and engagement work.

9 RISK MANAGEMENT

- 9.1 The Project has a separate risk register which is managed by the Project Manager. A report elsewhere on this agenda (CAB2970) focuses on the facility mix for the Sport and Leisure Centre. The facility mix and procurement route need to be agreed now in order to help mitigate the associated risks of project slippage, increased design fees and construction cost inflation. .
- 9.2 Risks relating to the procurement of the construction contractor and the operator have been identified in the risk register. As mitigation to that risk the Council has appointed experienced consultants to provide guidance on the most appropriate procurement strategy for these aspects of the project. It is important that the risk elements of this aspect of the project are continually monitored as the procurement processes progress.

10 SUPPORTING INFORMATION:

Procurement of Construction Contractor

- 10.1 Mace were commissioned, as the Council's appointed project managers and cost consultants, to review the procurement strategies available for the construction of a new Sport and Leisure Centre in order to help the Council determine the procurement and contract strategy. The main objectives of procurement of the construction contractor are to:
 - a) Obtain best value from the market.
 - b) Secure use of high standard of materials and workmanship.

- c) Ensure lowest possible risk to the client
- d) Ensure compliance with legislation and the Council's procurement guidelines

10.2 In support of their work Mace has prepared a procurement report, a copy of which is at Appendix 1. The first consideration is in relation to adopting a construction delivery model. Mace explored three options:

- **Option 1 – Traditional**

The traditional single stage procurement is where the design is fully developed prior to any involvement of the contractor. This route provides a fixed cost against a fully defined scope of works which is then constructed in accordance with the detailed drawing information and specification. The client design team is responsible for the production of the majority of design information and the client holds design responsibility.

- **Option 2 - Design and Build**

Typically design works are developed to RIBA Stages 2 / 3 (concept /developed design) as “Employer’s Requirements” which are issued to a Principal Contractor to develop the design and then construct the works. This provides a fixed cost against a fully defined set of requirements which is then constructed in accordance with the detailed works information and specification. The contractor design team is responsible for the production of the majority of design information and the contractor holds design risk for a number of key items.

- **Option 3 - Construction Management**

Typically design works are developed to RIBA 3 (developed design) and then a number of works contractors are procured to progressively construct the works whilst overseen by a construction manager. This allows the works to progress at a very early stage in accordance with the exact and evolving requirements of the client. The client design team is responsible for the production of the majority of design information and the client holds design responsibility.

10.3. At paragraph 8 on page 15 of Appendix 1 Mace has recommended a Design and Build procurement route. This enables early contractor involvement, reducing the overall programme period and creating a teamwork culture. The contractor will work with the design team to fully understand and remove risks, reducing potential claims. This is preferential for this type of project because it provides a suitable balance of risk and a good delivery programme.

10.4. A design and build project can adopt a single or two stage approach - the table below sets out the key differences with the two approaches:

Single Stage	Two stage
<ul style="list-style-type: none"> Contractors are required to provide a fixed price for all works from the point of award including design and surveys This procurement method involves substantial resource from contractors in tendering Current market conditions suggest that single stage may not result in sufficient interest from the market 	<ul style="list-style-type: none"> Contractors tender Prelims, Overheads and Profits inc fees for the development of the contract price under a preconstruction service agreement. Enables early engagement from the contractor to develop design. Loss of "commercial tension" during second stage.

- 10.5. Given the scale of the new Sport and Leisure Centre and market conditions Mace has recommended a two stage approach. This will allow the contractor to be fully engaged and work with the design team to fully understand and seek to remove risks of the project.
- 10.6. As well as determining the construction delivery model, it is also necessary to consider the most appropriate procurement route in order to appoint a contractor to build a new Sport and Leisure Centre. Having reviewed the potential procurement routes, Mace has identified the following options:
- a) **Option A - Restricted Tender Route**
- Restricted tendering allows interested parties to submit an expression of interest, but only those who score highest in meeting the contracting authority's pre-qualification or selection criteria will be invited to tender. A minimum of five shortlisted suppliers must be invited to tender (unless fewer suitable candidates have applied and these are sufficient to ensure genuine competition). In terms of timescales this route generally will take the longest. No negotiation with bidders is permitted, just a clarification of bids and finalisation of terms.
- b) **Option B - Open Tender Route**
- This involves notifying all suppliers of the tender process by an OJEU notice. This is open to all contractors that and allows maximum competition. A pre-determined programme for the selection and evaluation aspects of the procurement process is established at the outset.
- c) **Option C - Framework Agreement**
- A framework agreement is a contract between a contracting authority (often a purchasing consortium of local authorities) and one or more suppliers, which has been entered into following an EU compliant procurement process, and which remains in force for a specific period.

The framework agreement sets out the process which will be used to “call off” work under the framework agreement during that period. The call –off process requires the scope of the works for a particular call-off to be set out, and the rules in the framework agreement are then followed to determine which supplier on the framework is to be awarded the work, and the price to be paid for that work.

Only suppliers who have entered into the framework agreement are entitled to take part in the call-off process. Usually, the framework agreement allows other contracting authorities (such as the City Council) to use the framework (subject to paying a fee) and call off work. Rates may be fixed on the framework and key performance indicators are often included.

- 10.7. Mace has recommended that the Council utilises the development framework agreement as a procurement strategy. The framework agreement proposed (Southern Construction Framework) includes a pre-prepared list of suppliers who are known in the leisure industry. It allows a quicker procurement route than the open or restricted tender route, whilst at the same time ensuring that the Public Contract Regulations 2015 are complied with, and assisting in meeting the proposed timescales of project delivery. The proposed framework will still allow the Council to achieve best value via competition within the shortlist.

Conclusion

- 10.8. Based upon the Council’s requirements and in accordance with advice from Mace it is recommended that a two stage design and build process be selected as the preferred option, as this will transfer construction risk and provide a defined construction cost. This will mean that the RIBA Stage 4 design will be developed by the Council’s design team but with contractor delivery team support. The Council will retain architects and building service engineers as technical advisors.
- 10.9. It is further recommended that the use of a framework is explored to identify a suitable contractor as this brings the benefits of utilising a procurement framework in place negating the need for a full EU procurement process, hence reducing the time required to secure a contractor.

11. Leisure Management Contract Procurement

- 11.1. The process for the procurement of the Leisure Management Contract will commence once the Outline Business Case for the new Sport and Leisure Centre has been agreed. The Sports Consultancy has been appointed to be the advisor on the procurement of an operator for the new Sport and Leisure Centre. The procurement exercise will also include Winchester Sports Stadium, including the sports stadium (athletic track), all weather pitch and the residual facilities at North Walls Park. The procurement may include the Meadowside Leisure Centre, but other options could be explored for the future management of that centre. The objective of the procurement process is to

secure the most economically advantageous tender from the operator market. The Sports Consultancy Management Options and Procurement Procedure is at Appendix 2.

- 11.3 There are four broad procurement options to be considered but these do not include Design, Build, Finance and Operate which were previously considered in July 2016. This option was discounted as it cannot access Prudential Borrowing rates which is critical to the Project as the majority of it will be funded by borrowing. This type of process would also be led by operators so the Council would potentially lose a degree of control in shaping the process and the quality may be less than the Council is aspiring to as cost and quality are balanced through a more commercial lens. Additionally there are very few operators who could bid for this option so value for money could not be guaranteed.
- 11.4. The options set out below relate specifically to how the centre is operated. The governance arrangements relating to working with the Council's partners will be considered in a future report.

a. Option i – In-house Management of the Leisure Centre

The Sports Consultancy acknowledges that this will provide the Council with total operational control; however, the provision of an in-house service is potentially more expensive. This is due to a number of reasons, the main one being that the Council has no staff in place, and in addition to front line staff would have to buy in senior leisure expertise to support the in-house team. Dependent on the model adopted, the leisure centre would have to bear a proportion of council fixed costs. An in-house team could not seek to benefit from certain tax advantages that are available to other operators. In addition the council would not have the same buying power as those established in the sector. Also this model does not fit well with the Council's agreed approach of borrowing capital in order to build the new Leisure Centre as it will not obtain a guaranteed annual management fee from the operator.

b. Option ii – Outsource to an existing specialist operator

The Sports Consultancy recognises that this option allows the Council the certainty of a contractual annual management fee and the ability to transfer operational and financial risk to a third party. An operator can provide specialist management expertise to the service and this option allows any financial surpluses that may be generated to be ring-fenced and re-invested back into the service. The contract will include a performance monitoring system allowing the Council to retain control over monitoring the quality of service.

The evaluation criteria is key and can include seeking references, site visits of current facilities and performance data across operators

current contracts. Through a new contract, the council can ensure assurances are in place and still allow for control. A new contract will enable the following:

- (i) An open book approach to performance and financial data
- (ii) Key performance indicators on partnership working
- (iii) Rectification of problems
- (iv) Sports promotion and working with sports groups
- (v) Clear accountability

If the new Sport and Leisure Centre needs to spend more on staffing then this will be absorbed by the contractor and the council is immune from additional unexpected costs.

c. Option iii - Create a New Leisure Trust to Operate the Centre

The Council could choose to set up a “Not for Profit Distributing Organisation” to operate the new Sport and Leisure Centre. There are a number of different models available to the Council including social enterprises. The Sports Consultancy concludes that given the small scale of the project there are no economies of scale. The new trust will rely on a single financial covenant and therefore it will be significantly weaker than established operators. Being on such a small scale would mean that the trust would not benefit from economies of scale and the greater purchasing power of the larger organisations. It will therefore potentially pay more for supplies and equipment.

The overhead costs, CX, finance director etc will be apportioned to just one project. This therefore identifies a much bigger cost for the new Sport and Leisure Centre. A further limitation is that if a trust were to obtain charitable status, it could only include 20% representation from the Council. It should also be noted that most commercial operators now have Trust status and the benefits which this brings.

d. Option iv - Set up a Joint Venture to Operate Leisure Centre

This option would involve the Council partnering with a specialist third party operator to deliver management of the leisure facilities. This is reliant on there being a willingness to join a partnership on this basis. The majority of the market has no relevant experience of working with a joint venture structure.

Under this model the council would retain 50% of all the operating risk and responsibilities. So for example if the new Sport and Leisure Centre did not achieve participation rates or income targets then the under performance is shared with the joint venture. The Council would also need to find a willing partner to join the joint venture. Currently there is an unprecedented market for leisure centre contracts; therefore

the operators have a great deal of choice in terms of opportunities to pursue. There is one example of a joint venture in Sunderland, but the majority of the market has no relevant joint venture experience.

- 11.5. The Council has also considered the VAT implications of the proposed options in relation to procurement of the operator. Income on VAT is exempt as long as there is no evidence of commercial influence. The VAT advice confirms that if the Council adds a structure such as a Joint Venture or a Trust the risk of commercial influence becomes greater. If commercial influence is evident then the VAT exemption does not apply.
- 11.6. The Sports Consultancy concludes at paragraph 2.6 of Appendix 2 that the Council should pursue option (ii) and procure on the basis of a traditional management contract. They recognise that the other options are likely to be significantly more expensive and potentially more complex and costly to procure. The traditional leisure management contract has the following advantages:
- a) Likely to attract more interest from the market;
 - b) Allows a competitive tendering process and in turn allows the Council to demonstrate best value;
 - c) Allows the contract to be drafted to protect the Council's and partner's interest;
 - d) Is likely to be the only option to secure the required level of management fee needed to leverage the necessary level of prudential borrowing to fund the Project.
- 11.7. The tables set out at Appendix 3 set out the options to procure an operator. In assessing the options, the table seeks to score the options on various aspects including the following:
- a) Competition
 - b) Project delivery timetable
 - c) Resource required
 - d) Cost Certainty
 - e) Governance
 - f) Market Attractiveness
 - g) Packaging approach
 - h) Risk allocation
 - i) Scope certainty

The table applies a scoring rationale to each of the aspects set out above. Outsourcing to an existing specialist provider scored the highest at 89%.

- 11.8. The Sports Consultancy also considered the appropriate procurement route to secure an operator of the Sport and Leisure Centre and associated facilities. The report at Appendix 2 at paragraph 3 identifies the various procurement routes which include. A Definition of these is set out in Appendix 2.

Option (a)	Open tender route
Option (b)	Restricted tender
Option (c)	Competitive procedure with negotiation
Option (d)	Innovation partnership
Option (e)	Negotiated procedure without prior publication

11.9. The Sports Consultancy advises that any procurement route must secure sufficient competition to maximise the chances of achieving best value and securing a strong management fee. It therefore concludes that the only two suitable options are the open procedure or the restricted procedure. Although set out briefly at 10.6, details of these two approaches are set out below. .

11.10. Restricted tendering allows interested parties to submit an expression of interest, but only those who score highest in meeting the contracting authority's pre-qualification or selection criteria will be invited to tender. A minimum of five shortlisted suppliers must be invited to tender (unless fewer suitable candidates have applied and these are sufficient to ensure genuine competition). In terms of timescales this route generally will take the longest. No negotiation with bidders is permitted, just a clarification of bids and finalisation of terms.

TSC consider this is likely to limit the field of interest. Therefore on balance an open tender process is likely to provide a more competitive field of interest.

11.11. The Restricted Procedure tends to be used when there is likely to be a large number of suppliers bidding for the contract, it takes longer and can be more complicated to manage.

11.12. The Open Procedure tender documentation will include a series of initial selection criteria that any bidder will need to meet. These will cover, amongst other things, providing evidence (including references) of their experience of operating similar public leisure facilities and of their financial strength. This stage ensures that the Council obtains a contractor that has the relevant experience to operate the new Sport and Leisure Centre.

11.13. The main tender documentation would then be split into two broad areas, which would be weighted according to their relative importance to the Council:

- the commercial response
- the technical response

11.14. The commercial section would cover the bidders' financial responses (i.e. business plan and management fee they would offer to the Council), their approaches to sharing any profit in excess of the tendered business plan and their response to the draft legal contract. The technical side of the evaluation would take the form of a series of method statement response. These would cover the key aspects of the service from a quality perspective and could include, for example, approach to programming and pricing, marketing, asset management and maintenance and sports development. Bidders would

provide a response to each of these method statements, which would then be scored by the Council's project team as part of the overall evaluation. Critically, these method statement responses would become a schedule to the legal contract, so the proposals put forward by bidders are binding.

- 11.15. As part of the procurement process an advisory group would be established to provide support and guidance to the evaluation panel. The membership of the advisory panel has yet to be finalised but it will include funding partners, member representation from the Cabinet Committee and expertise on procurement. The panel will work alongside the evaluation board which will comprise of the Project Executive and a Director and will be in attendance at clarification interviews with potential operators, enabling views to be fed into the process.
- 11.16. In conclusion, The Sports Consultancy at paragraph 3.8.3 of Appendix 2 recommend that the Council adopts the open tender route, which requires bidders to pass a series of initial selection criteria, following which and upon meeting the criteria, they will be invited to submit their full tender.

Conclusion

- 11.17. Based upon the Council's requirements and in accordance with advice from the Sports Consultancy it is recommended that a traditional leisure management contract (option ii) is procured, and an open tender procedure is utilised for the appointment of an operator for the new Sport and Leisure Centre and additional facilities.

12. OTHER OPTIONS CONSIDERED AND REJECTED

None that are not set out above.

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

CAB2951(LC) - 17 JULY 2017

CABINET (LEISURE CENTRE) COMMITTEE - 12 June 2017

CAB2910 – 20 March 2017 Bar End Sport and Leisure Park Project Update

PHD Notice 710 September 16 Leisure Centre Replacement Project Management Consultancy Support

CAB2820 – 5 July 2016 Leisure Centre Replacement Project

CAB2798 – 29 March 2016 Leisure Centre Replacement Project

CAB2708 – 9 September 2015 Options for River Park Leisure Centre

Other Background Documents:-

None

APPENDICES:

Appendix 1 – Procurement Report - Mace

Appendix 2 – Management Options and Procurement Procedures - The Sports Consultancy

Appendix 3 – Management Options Appraisal Table

Procurement Report

Winchester Sport and Leisure Centre

for

Winchester City Council

29th September 2017

Project nr: 31257 / 33900

Prepared by: Sean Clarke / Jon Hunt

Approved by: Richard Smith

Signed: Matthew Darby

Contents

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1. Introduction

- 1.1 The purpose of this report is to review the options and make a recommendation on the preferred procurement strategy for the proposed new 50m Swimming Pool and Leisure Centre for Winchester City Council.
- 1.2 The project consists the new construction of a leisure facility, key elements of the facility mix are as follows:
- 50m swimming pool
 - 20m learner pool
 - Splash pool
 - 8nr court sports hall
 - Squash courts
 - Fitness suite and studios
 - Hydrotherapy pool and treatment rooms
 - Café
- 1.3 The aim of the Procurement strategy is to ensure that procurement reflects the Council's core requirements in the delivery of the Sport and Leisure Park in line with the Council's corporate aims and objectives.
- 1.4 The outline timescale currently envisaged is for the building to achieve completion by the end of 2020. The target is to employ a contractor and commence construction in Spring 2019. Key project milestones are detailed below;

Activity	Date
RIBA 3	Oct 17 – Mar 18
Planning determination	Sep 18
RIBA 4	Apr 18 – Jul 18
Review tender / agree contract	Aug 18 – Dec 18
Sign off contract	Jan 19 - Feb 19
Completion	Mar 19 – Oct 20

2. Executive Summary

2.1 The following client considerations were derived from a series of procurement workshops held at WCC offices on 21.06.17, 19.07.17 and 01.08.2017.

The agreed key client considerations in deciding the procurement method for this project are:

- Obtain best price and value from the market
- Lowest possible risk to the Client
- Compliance with WCC and statutory procurement guidelines
- High standard of materials and workmanship via specification / design
- Earliest completion date

2.2 The procurement of a main contractor for the works would be subject to OJEU procurement rules as the value of the project is in excess of the threshold. Winchester City Council confirmed that frameworks are acceptable form of procurement providing that competition is maintained.

2.3 Consideration was given to the three most common forms of procurement within the UK construction market Traditional, Design and Build and Construction Management. The suitability of each route was assessed against the client's requirements, generally in time, cost and quality terms.

2.4 A two stage Design and Build approach meets WCC requirements for a relatively expedient start on site and transferring the design risk from the client to the contract and is therefore most suited to the requirements of this project.

2.5 To secure a more accurate price and retain a greater level of control over the design it is considered that the project should be progressed up to the completion of RIBA 4 by the client prior to transfer of design across to the contractor.

2.6 To maximise the input of the contractor within the design it is considered that the contractor should be appointed as part of the delivery team by the commencement of RIBA 4.

2.7 To limit the Council's procurement risk and to expedite the production of contract and procurement documentation it is considered that the Southern Construction Framework should be utilised. To maintain commercial tension between tenderers it is recommended that the mini competition route is progressed.

2.8 The specific details of the assessment and award criteria are to be developed in detail with the Council in order to ascertain the most appropriate tender documentation.

2.9 The form of works contracts that are considered to be suitable are:

- NEC3 Option A (fixed Price with Activity Schedule)
- NEC3 Option C (Target cost with Activity Schedule)

The above options will be discussed with in detail with the Council in order to ascertain the most appropriate contract route.

2.10 In order to achieve the key considerations identified in 2.1 it will be necessary for the Client to be aware of their obligations in making key decisions regarding design approvals and cabinet sign offs.

3. Key considerations

3.1 The considerations that will determine the choice of procurement route can be summarised under these headings:

- Project type
- Client objectives
- Market conditions
- Quality
- Risk profile
- Programme
- Most commercially advantageous route
- Statutory / public procurement requirements

3.2 Project type

3.2.1 The size of the project is such that it will require the skills and resources of a major contractor with a proven track record of delivering leisure centres with 50m Pools.

3.2.2 Due to the changes in levels on the site, the project will involve an element of cut / fill and retaining walls to suit the final design.

3.2.3 The construction methods involved are generally of a complex nature and will require the contractor to employ and supervise a number of specialist sub-contractors for packages including, but not limited to pool filtration equipment, pool construction, moveable floors and booms. The main contractor is required to have a competent supply chain with the required level of experience.

3.2.4 The location of the project is such that experience of the local construction industry will be a relatively small consideration in the choice of contractor.

3.3 Client objectives

3.3.1 The Client requires the achievement of highest levels of health and safety performance on the project.

3.3.2 To construct a new leisure facility including a 50 metre swimming pool which will form part of a wider sport and leisure strategy for the city.

3.3.3 Adopt a risk averse strategy by transferring design and construction responsibilities to the contract through considered procurement and contract selection.

3.3.4 The Client wishes to retain control over the building design up to technical design stage. This is to ensure the required level of quality is achieved and the contract sum is de-risked where possible

3.3.5 Due to the poor condition of the existing leisure centre, the client requires the new leisure facility to be completed as quickly as is efficient.

3.3.6 The client would like to appoint a contractor with sole contract responsibility for the works. The client has expressed concerns about the administrative and legal restrictions of placing a significant number of trade works packages direct with sub-contractors.

3.4 **Market conditions**

- 3.4.1 The conditions in the construction market have been fairly buoyant over recent years with strong increases year on year and accordingly contractors have been able to be selective in their choice of project. Current market projections continue to show growth in the regions, despite concerns over the impact of the referendum held in Summer 2016 and subsequent political environment.

- 3.4.2 In the current market place most contractors do not generally consider single stage design and build contracts to be appealing due to the high degree of risk which they are expected to adopt. The general preference is a two stage design and build route to enable them to interrogate the design and manage their procurement of the supply chain correctly. The internal costs for a contractor to bid for a two stage tender is significantly less than a single stage process making it more appealing in a busy market.

4. Procurement options

This section explains the main procurement options under consideration and gives the advantages and disadvantages of each.

4.1 Traditional – Single Stage

- 4.1.1 Design is fully developed prior to any involvement of a contractor. This implies that there is an end user whose requirements are fully understood and can be incorporated into the design.
- 4.1.2 Tender documents are produced, possibly including a Bill of Quantities or Schedule of Work / Rates, and used as a basis for a lump sum contract.
- 4.1.3 It is usual for the Traditional route to involve a single stage tender as this method does not normally involve contractor input. It is possible, however, to use a two stage process whilst still retaining full control of the design. This may be used, for example, when an early start is required on part of the works whilst the other sections are still being designed. The second stage pricing would, however, lose the competitive advantages of the single stage process.
- 4.1.4 Advantages:
- High degree of control over quality of materials and workmanship.
 - Cost and time certainty before commitment to build but only if design and contract documents are complete.
 - Clear division of responsibilities.
 - Allows close cost control and valuing of variations.
 - Easy comparison of tenders.
 - Single point of contact (contract)
- 4.1.5 Disadvantages:
- Requires long design period with associated cost of consultant's fees.
 - Client takes the risk of incompleteness of design or documentation.
 - More design decisions are made prior to contractor engagement which increases the cost of amendments required by the contractor / operator (if appointed late).
 - May miss opportunities for improvements or better alternatives from contractor input.
 - Separation of contractor and design teams promotes adversarial culture.
 - Acceptance of lowest bid can encourage contractor claims and the final price is often higher than the tender.

4.2 Design & Build

- 4.2.1 Design & Build is more accurately a type of contract, however, it is commonly referred to as a procurement route and, therefore, needs to be considered here.
- 4.2.2 The Employer's Requirements documentation is prepared by the Client or, more usually, the consultant team. This sets out the requirements in as much or as little detail as is wished to be imposed on the contractor. Normal practice is for the Client's consultants to develop the design and specification of the building to a certain stage where the Client is willing to leave the remaining details to be developed by the contractor.
- 4.2.3 A single or two stage approach may be adopted. It is more common for the single stage method to be restricted to buildings of a reasonably simple nature where the risks to the contractor can be easily defined. Single stage procurement is not considered to be appropriate for a project of this scale and nature.
- 4.2.4 First stage is competitive and contractors are selected on the basis of their ability and understanding of the project together with the pricing of those elements of the works which are normally under the control of the main contractor, e.g. Preliminaries, overheads & profit, programme period, cost of or rates for identifiable sections of work.

4.2.5 In the second stage, following the selection of the contractor, the design team develops and completes the design together with input from the contractor. This input will be significantly greater when a design & build contract is being used.

4.2.6 The pricing process during the second stage will be monitored or controlled by the Client's QS in order to ensure that competitive prices are included for the various work packages and sub-contracted elements leading to the agreement of a lump sum contract.

4.2.7 Single Stage

4.2.7.1.1 Advantages:

- As the contractor is responsible for the design there is a reduction in the perceived adversarial culture over traditional contracts.
- No risk to the Client due to variations arising from design development or refinement of details as these will be the contractor's responsibility.
- Cost certainty for the Client as the only variations he will pay for are changes which he makes himself.
- Contractor should be able to use his knowledge and experience to provide the most efficient solutions to construction details and processes. These savings in time and cost should be passed on to clients in the tendering process.
- Contractor can overlap design details with the construction period to give overall programme reductions.
- Single point of contact (contract)

4.2.7.2 Single Stage Disadvantages:

- Loss of control over design beyond that contained in the Employer's Requirements.
- Possible loss of quality as contractors may take advantage of reduced level of detail in the Employer's Requirements to reduce costs.
- Inadequate in-house expertise of some contractors to carry out necessary co-ordination of design responsibilities.
- Can be difficult to compare tenders due to differing design solutions offered by tenderers.
- Cost control more difficult due to less detailed pricing. Variations tend to cost more due to the lack of a detailed pricing structure.

4.2.8 Two Stage

4.2.8.1 Advantages:

- Enables early contractor involvement to provide 'buildability', value engineering and market knowledge.
- Overall programme period should be reduced due to overlap between design and pricing.
- Contractor involvement improves teamwork culture and joint problem solving.
- Start on site can be made prior to agreement of contract sum and completion of design.
- Contractor can work with the design team in order to fully understand and remove risks.
- Greater understanding of the project and 'buy in' by the contractor leads to reduced risk of claims. This may not offset the higher cost of two stage tendering and less rigorous competition in sub-contract packages, however, it does give greater cost certainty when the contract is agreed.

4.2.8.2 Disadvantages

- Loss of competition although this can be reduced with close control of second stage procurement process.
- Risk of not being able to agree lump sum contract with single contractor.
- Second stage contractor may wish to renegotiate first stage prices.

4.3 Construction Management

4.3.1 Has generally the same features as Management Contracting but the package contracts are placed direct by the Client rather than the contractor. Following the procurement workshop undertaken on 19/07/17 WCC expressed concerns about the administration of entering into a number of individual contracts with trade packages. Through Mace experience it is not uncommon for leisure facilities to contain C.50 trade packages which would all require direct procurement by WCC if a Construction Management approach was adopted.

- 4.3.2 The construction manager may be a consultant or a contractor but will need to be experienced in this form of procurement in order to programme and coordinate the design and construction activities. There are a limited number of consultancies / contractors that offer this route.
- 4.3.3 The construction manager is more likely to be chosen for his skill and experience than on the fee alone although the fee will generally be agreed at the outset based on a lump sum or a percentage of the construction cost.
- 4.3.4 Advantages:
- Works can start on site as soon as the contractor and the design team are satisfied that continuity of works can be maintained.
 - Effective for complex or unusual works where the design needs to be developed over a period of time.
 - Allows greater flexibility in design development during the works without incurring the abortive or delay costs associated with more traditional forms of contract as commitments to sub-contractors are made later.
 - The construction manager is independent of the package contractors and can therefore be an effective member of the Client's team without fear of conflicting interests.
 - It is easier for the Client to obtain recompense from a defaulting package contractor due to the direct contractual relationship with the supply chain
- 4.7.5 Disadvantages:
- No guarantee of final cost or programme period until the last package is let.
 - No incentive to the contractor to reduce costs. This is even greater if the fee is expressed as a percentage rather than a lump sum and can include the use of expensive sub-contractors, over provision of management staff and a lack of proactive design suggestions.
 - Difficult to fix fee if full scope of work is not known at commencement.
 - Professional fees are often higher due to increased site involvement.
 - Requires a professional and commercially aware Client who is able to manage the administration of entering into numerous package contracts.
 - The Client takes the risks associated with the individual package contracts, e.g. consequential loss associated with package contractor default.

5. Forms of Contract

- 5.1 This section sets out the main forms of contract that are suitable for the different procurement routes covered in the Section 4.

Procurement Option	Suitable Form of Contract
Traditional (single or two stage)	JCT Standard Form (with or without quantities). Intermediate and Minor Works editions are suitable for less complex projects. Other forms in regular use are produced by the ICE (civil engineering), FIDIC (international) and GC/Works (UK government) together with forms produced by specialist bodies for works such as demolition.
Design & Build (single or two stage)	JCT With Contractor Design or Major Project Form. Intermediate and Minor Works editions are also available with contractor design options. The NEC forms also provide for contractor design.
Construction Management	JCT Construction Management Agreement for the appointment of the Construction Manager and JCT Construction Management Trade Contract for the appointment of a trade contractor.

6. Procurement route

6.1 OJEU

6.1.1

The main contract will need to be procured in full accordance with OJEU requirements due to its value being far in excess of the OJEU threshold, which is currently at £4,104,394. One route is to utilise a portal system to advertise the tender in an open manner.

6.1.2

Key features as follows:

- Maximum competition from the market as open to all who meet selection criteria
- Open to all contractors who meet the criteria including those that would not normally be considered
- Potential for a significant number of contractors tendering for works
- Pre-determined programme durations
- Number of sub-options (Open, Restricted, Competitive with negotiation)

6.1.3 Restricted

6.1.3.1

Restricted tendering is a two stage process consisting of a standard selection questionnaire which assesses a contractor's suitability for the works. This SSQ stage "prequalifies" the Invitation to Tender stage.

6.1.3.2

The full procurement process needs to be defined on commencement such that there are no significant changes at the invitation to tender stage and there is no need for any negotiations following receipt of the bid.

6.1.3.3

The two stages and minimum duration involved in this process means that the programme is relatively onerously. Each stage could be as short as 30 days (not allowing for special circumstances).

6.1.4 Open

6.1.4.1

Open procurement is a single stage process where the standard selection questionnaire and invitation to tender stages are combined together in one stage. Open procurement is suitable for simple procurement exercises where the requirement is clearly defined and simple. As there is no "pre-qualification" of bidders, anyone can submit a tender and it is possible that a large number of suppliers will bid.

6.1.4.2

As all tendering activities can be completed at once this route is significantly shorter than restricted and can be as low as 30 days.

6.1.4.3

Open procurement is considered a risk to contractors as the tender is relatively resource intensive and contractors are competing against an unknown number of tenderers.

6.2 Framework

6.2.1

A framework agreement will generally facilitate greater flexibility around the services tendered for under the framework. A multi-supplier framework allows the authority to select from a number of suppliers for the requirements thus helping to ensure that each purchase represents best value.

6.2.2

Key features:

- List of organisations that have pre-qualified to be included on the framework
- Already completed an OJEU process
- Selection restricted to the contractors on the list only
- Limited competition due to number of contractors
- Rates may be fixed within framework
- Frameworks included performance KPIs
- Framework has already completed due diligence on financial / commercial bearing (i.e. no requirement for SSQ stage)

6.2.3

The Scape framework could be utilised for the project. It is not considered that Scape would represent best value for money as there is only one contractor for works of this scope and scale (Wates). Scape can be used by Councils when they require the contractor to complete the majority of the works and do not have a large professional team; this is not applicable to this project. It is therefore considered that Scape is not appropriate for this procurement. If clients are not satisfied with the initial return from Scape then there is not alternative as there is only one contractor on the framework.

6.2.4

The Southern Construction Framework (SCF) could be utilised for the project. The SCF allows mini competitions to be between the contractors which are on the framework thus retaining an element of competition to secure better commercial return from the market. If clients are not satisfied with the initial return from the preferred SCF contractor then are other contractors on the framework who have completed the mini competition potentially allowing for a de facto reserve contractor status; this allows for greater commercial keenness from the preferred contractor.

6.2.5

The Pagabo Framework is an alternative framework that could have been utilised on this project. This was not considered appropriate for the range of contractors available do not have extensive leisure experience so WCC would be likely to receive limited competition from suitably qualified contractors when compared to the Southern Construction Framework.

6.3 Summary

6.3.1

OJEU procurement is not considered to be appropriate for this procurement exercise for the following reasons:

- Restricted route does not meet programme constraints
- Open route may result in a lack of interest from the market due to project / tender risk profile
- WCC resourcing / governance processes are challenging in the context of securing sign off of the tender pack by the required deadline
- OJEU procurement is considered to have a number of inherent risks from challenge this is especially relevant to 2 stage tendering)

6.3.2

Framework procurement is considered to be appropriate for this procurement exercise for the following reasons:

- More likely to receive tender returns for the project
- Later date for completion of documents may
- Lower risk from procurement exercise i.e. challenge
- Lower risk of securing a contractor that is unsuitable / undesirable for the scheme

6.3.3

The Southern Construction Framework is a suitable framework to be utilised on this scheme as it has a number of contractors on the scheme thus allowing for competition between framework members.

7. Contractor research

7.1

Winchester is within the South East region of the Southern Construction Framework; the following contractors are on the Southern Construction Framework (South East):

- BAM
- Galliford Try
- Kier
- Mace
- Midas
- Morgan Sindall
- Wates
- Willmott Dixon

7.2

Some brief market research on each contractor indicates that they have the following experience as a minimum (please note this list is not exhaustive and simply demonstrates an extract of relevant experience):

- BAM
 - Dover (SCF) – preferred contractor for a £26m new build leisure centre in Dover inc. 25m pool
 - Huddersfield - £26m new build leisure centre in Huddersfield inc. 25m pool
- Galliford Try
 - Evesham – £10m new build leisure centre in Evesham inc. 25m pool
 - Lancaster Sports Centre - £12.5m new build sports centre for Lancaster University including new build 25m pool
- Kier
 - Chelmsford - preferred contractor for a £20m new build leisure centre in Chelmsford inc. 25m pool
 - Hengrove (50m) - £22m new build leisure centre in Bristol inc. 50m pool
 -
- Mace
 - It is noted that there may be a conflict of interest here, so a letter of self-exclusion can be supplied upon request).
- Midas
 - Unknown
- Morgan Sindall
 - Wigan Life Centre – £68m mixed use leisure scheme in Wigan inc. 25m pool.
 - Basildon Sporting Village - £36m sporting village in Basildon inc. Olympic Pool.
- Wates
 - Dunstable -£20m new build leisure centre in Dunstable inc. 25m pool
 - Ellesmere - £13m new build leisure centre in Ellesmere Port inc. 25m pool
- Willmott Dixon
 - Hart (SCF) - -£23m new build leisure centre in Fleet inc. 25m pool
 - Westminster Lodge-£20m new build leisure centre in St Albans inc. 25m pool
 - Wycombe (50m) -£25m new build leisure centre in Wycombe inc. 50m pool

7.3

It can be reasonably established that a number of contractors above (with exception of Mace/Midas) have experience of delivering new build leisure centres as well as projects of this size and scale.

8. Recommendations

- 8.1.1. This report seeks to establish the most effective procurement strategy to meet the requirements of WCC in procuring a Principal Contractor for the delivery of the new Sport and Leisure Centre at Bar End. In summary of the discussion outlined in the preceding report the following key recommendations can be made:
- 8.1.1.1. The report assessed traditional, design and build, and construction management options available to WCC. It is recommended to proceed with design and build due to the suitable balance of the risk profile to WCC and delivery programme in comparison to the two other options.
 - 8.1.1.2. There are two sub-options within design and build; whether to progress with a single or two stage procurement. It is recommended that a two stage procurement process is progressed to secure market engagement and early contractor involvement within the project.
 - 8.1.1.3. There is a decision to be made as to when the contractor should be appointed and in what capacity. It is recommended that the contractor is appointed at the commencement of RIBA 4 to engage with the client team and progress the design with their supply chain. It is not feasible to engage the contractor at RIBA 3 due to programme constraints.
 - 8.1.1.4. There is a decision to be made as to when the design responsibility transfers to the contractor. It is recommended that the contractor be appointed as a part of the project team under the client whilst the client retains ultimate control over the design throughout RIBA 4. The design responsibility is to transfer upon completion of RIBA 4.
 - 8.1.1.5. The contractor can be procured via an OJEU process or via a Framework. It is recommended that a framework route be progressed to limit WCC's risk of challenge, mitigate programme risk, and maintain likelihood of contractor engagement.
 - 8.1.1.6. There are a number of frameworks which WCC could utilise to procure a contractor. It is recommended that the Southern Construction Framework is utilised to maintain competition via a framework when compared to other frameworks identified within this report.

WINCHESTER CITY COUNCIL

Winchester Sport & Leisure Centre

Management Options and Procurement Procedures

29 September 2017



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APPENDIX A: Table. Joint Venture v Traditional Leisure Management Contract

1 INTRODUCTION

1.1 Background

- 1.1.1 Winchester City Council (“the Council”) is currently assessing the business case to replace the River Park Leisure Centre with a new facility (Winchester Sport & Leisure Centre, or “WSLC”) at Bar End.
- 1.1.2 The precise facility mix will be agreed by Cabinet on 18 October and will inform the outline business case. In the meantime, this paper sets out an assessment of the management options the Council is considering and also recommends the most appropriate procurement process to deliver the preferred option.
- 1.1.3 River Park Leisure Centre has been operated under a traditional leisure management agreement by Places for People (formerly DC Leisure Centre) since April 2001. The management contract also includes Meadowside Leisure Centre, and is due to expire in March 2023.

2 MANAGEMENT OPTIONS

2.1 Context

- 2.1.1 The management options available to Council were originally set out in the report “Redevelopment of River Park Leisure Centre – Options Appraisal”, dated May 2015. This paper builds on the background information presented in that report.
- 2.1.2 Whilst the options appraisal listed 16 available options for consideration (as set out in table 3.2), these can be sensibly grouped into 4 main categories:
 - 1. In-house
 - 2. Outsource to existing specialist operator
 - 3. Set up a new leisure trust
 - 4. Set up a joint venture

2.2 In-house management

- 2.2.1 This would involve the Council managing the leisure services directly and requires transferring all Winchester leisure staff currently employed by Places for People to the Council under their existing employment terms and conditions.
- 2.2.2 Whilst the Council gains total operational and strategic control of the service, this option is likely to be significantly more expensive from an operational perspective for a number of reasons:
 - 1. There are no tax advantages available by operating the service in-house.
 - 2. Transferring the existing leisure staff from Places for People to the Council could significantly increase staffing costs if salaries need to be brought in line with other Council staff.
 - 3. The Council may also need to employ additional staff to support the leisure service within, for example, marketing, IT, human resources, finance, and legal functions (the Council’s current operator will currently provide these functions from its own head office as part of the outsourced service).
 - 4. The Council is not a specialist and the organisation has no demonstrable

experience of operating leisure centres.

5. The operating models of specialist leisure operators typically allow them to achieve charitable relief on business rates (albeit, this advantage will be removed when all responsibility for business rates is transferred from central to local government by 2022).

- 2.2.3 Not only will the service be more expensive to operate via the in-house model, the Council will have to assume all risks and responsibilities of operating the service. Given that successful delivery of the new leisure centre is dependent on the ability of the Council to raise prudential borrowing by leveraging contracted operational savings, pursuing this option materially jeopardises the project, as financing the capital build will not be possible.

2.3 Outsource to an existing specialist operator

- 2.3.1 Regardless of the type of specialist operator, or their formal legal structure, this option allows the Council to benefit from the certainty of a contracted annual management fee and the ability to transfer operational and financial risk to a third party. Given the reliance on the Council's ability to raise prudential borrowing, these contracted savings are a prerequisite to source the capital funding needed to finance the construction of the new leisure centre.

- 2.3.2 The operator market is largely split into two categories: (1) Not for Profit Distributing Organisation ("NPDO's") and (2) private operators utilising a trust operating model to allow it to benefit from tax and rate relief, (the financial advantages of which it will pass on to the Council through the management fee). Operators in both categories demonstrate a strong track record of delivering leisure services on behalf of local authorities and offer the benefit of significant scale and strength of financial covenant; this provides local authorities with the peace of mind that, in the event the operator fails to achieve its financial targets for a particular contract, it has many other contracts underpinning its business.

- 2.3.3 The operator is able to bring significant specialist management expertise to the service and the option allows financial surpluses to be ringfenced and reinvested back into the service.

- 2.3.4 The operating contract is for a fixed term, typically between 7 to 15 years (depending on the age and condition of the facilities in the portfolio). The services are delivered under a Services Specification and Performance Monitoring System, allowing the Council to retain control over the scope and quality of the service. Responsibilities for asset management are set out clearly in an Asset Management Responsibilities Matrix. The contract documentation also allows the Council to insist on controls over user prices and usage of the facilities by specified clubs and groups. Usage by the University of Winchester and the Pinder Trust – both of whom are expected to contribute capital to the project in return for discounted and/or exclusive usage of parts of the new facility – can therefore be enshrined in the contract documentation.

- 2.3.5 The Council could also form a Leisure Partnership Board to oversee the agreement with the operator. The constitution of the Board (in terms of membership, responsibilities) can be included in the agreement with the leisure operator at the outset of the contract. This could allow the Council's consortium of funders (University of Winchester and the Pinder Trust) influence over the service throughout the term of the agreement.

2.4 Set up a new leisure trust

- 2.4.1 The Council could instead choose to set up its own NPDO to operate its portfolio. There are a number of different social enterprise models available to the Council to choose from, all of which have subtle differences. These are listed in the May 2015 options appraisal and not covered here.
- 2.4.2 Whilst from a legal and regulatory perspective a new trust would share similarities with established trusts, there are some important considerations the Council will need to be aware of when considering the suitability of this option:
1. The new trust will rely on a single contract and its financial covenant will therefore be significantly weaker than the established operators. If it fails to achieve its financial targets agreed at the outset of the contract, it has nothing to fall back on, other than the Council. Effective transfer of risk from the Council will therefore be very limited.
 2. Given the small scale of the operation it will not benefit from the economies of scale and greater purchasing power enjoyed by the larger organisations. It will therefore pay more for supplies and equipment such as fitness stations, energy, asset maintenance, and IT equipment.
 3. The cost of its head office (chief executive, finance director, etc) will be apportioned to just one contract, whereas an established operator can spread theirs over multiple contracts.
 4. It will be difficult to identify operational underperformance if the trust does not have the benefit of compare against benchmarks of other similar facilities and contracts.
 5. Whilst the influence of the Council is greater over its newly established trust than it would be over an independent operator this influence is nevertheless limited to a 20% representation on the board (in order to maintain its independence and achieve charitable status). Moreover, a Council's influence over its trust tends to diminish as the organisation matures and the relationship can deteriorate over time. Indeed, there are some very recent examples of where a Council has chosen to put its leisure contract out to tender after having originally established their own trust to deliver the service, and those incumbent trusts have failed to secure the new contract.
- 2.4.3 The Council should also be aware that if it does decide to set up its own trust it will do so without the benefit of comparing what proposals could be offered by the operator market. It will therefore effectively negotiate the commercial proposals in a competitive vacuum and will have no way of ensuring it is achieving best value. Given the reliance on prudential borrowing to fund the majority of the capital costs, the Council needs to secure a competitive management fee from the operator; it is very unlikely to achieve this by setting up its own trust.

2.5 Set up a joint venture (“JV”)

- 2.5.1 This option involves the Council partnering with a specialist third party operator, delivering Winchester's leisure management services as a 50:50 venture.
- 2.5.2 Appendix A sets out the key differences between a JV and a traditional leisure management contract.
- 2.5.3 This option - whereby the Council will retain 50% of all operating risks and responsibilities- is reliant on finding a willing (and qualified) partner to join the JV.

As there is an unprecedented number of local authority leisure management contracts being procured in the market currently, operators have a great deal of choice in terms of opportunities to pursue; they tend to bid competitively for sensibly structured traditional contracts and are likely to avoid those that appear to be unnecessarily complicated and expensive to bid. There is only one example of a leisure JV we are aware of (Sunderland City Council) and the majority of the market therefore has no relevant experience and are therefore very unlikely to be interested in the opportunity.

2.5.4 Moreover, the Council will need to commit to significant external advisory costs (predominantly legal advice) with very little likelihood of achieving best value. The Council should set aside a budget of around £250,000; the bidders would also be required to commit to similar fees which would be priced into the JV costs.

2.5.5 Again, given the imperative to achieve contracted saving to leverage the necessary quantum of prudential borrowing, this option is considered to be unsuitable.

2.6 Preferred management option

2.6.1 There is an inextricable link between the cost of operating the new leisure centre and securing sufficient capital to finance its delivery. In the absence of achieving significant contracted operational savings, the new leisure centre is likely to be undeliverable.

2.6.2 We can therefore dismiss the options of in-house management and setting up a new trust. The operating models are likely to be significantly more expensive than the traditional outsourcing option. Similarly, the JV option is likely to be very complex and costly to procure and there are inherent risks of failing to find an experienced operator able to offer best value to the Council.

2.6.3 Pursuing the procurement of a traditional leisure management contract is therefore the recommended option for the following reasons:

1. This is a tried and tested approach and is likely to attract the most interest from the market.
2. It allows the Council to follow a competitive tendering procedure, and thereby help demonstrate that it has achieved best value.
3. Any concerns regarding Council control and protecting the interests of the Council, the University and the Pinder Trust can be addressed by including appropriate protections in the leisure management contract.
4. It is likely to be the only option to secure the required level of management fee needed to leverage the necessary level of prudential borrowing to fund the build project.

2.6.4 The typical term for a management contract of this nature is currently around 12 years. It is recommended that the Council enters into a contract for this period, with the contract comprising the new Winchester Sports & Leisure Centre and the adjacent Winchester Sports Stadium (including the athletics track and all weather pitch), as well as the residual facilities at North Walls Park.

2.6.5 The principal parties to the leisure contract will be the operator and the Council.

3 PROCUREMENT PROCEDURES

3.1 Overview

3.1.1 Under the 2015 UK Public Procurement Guidelines, there are six procurement procedures the Council can choose from in awarding its contract. Whilst there is a case to be made that a leisure contract falls under the simplified Light Touch Regime – under which there is no requirement to use the standard procurement procedures – in practice, there is no benefit to the Council deviating materially from the traditional routes.

3.1.2 The six procedures are as follows:

1. Open
2. Restricted
3. Competitive Dialogue
4. Competitive Procedure with Negotiation
5. Innovation Partnership
6. Negotiated Procedure Without Prior Publication

3.2 Open Procedure

3.2.1 The Open Procedure is the most commonly used as it invites an unlimited amount of offers and therefore allows unlimited competition. The potential disadvantage is that, as there is no maximum number of participants, there is a potentially greater administrative burden of evaluating many bids.

3.3 Restricted Procedure

3.3.1 The Restricted Procedure tends to be used when there is a need to prequalify suppliers and there is evidence that there is likely to be a large number of suppliers bidding for the contract. The disadvantage of this process is that it takes longer than the Open Procedure and can be more complicated to manage.

3.4 Competitive Procedure with Negotiation

3.4.1 The Competitive Dialogue and Competitive Procedure with Negotiation can only be used in the following circumstances:

- a. The contracting authority's needs cannot be met without adaption of readily available solutions.
- b. The contract includes design or innovative solutions.
- c. The technical specifications cannot be established with sufficient precision.
- d. A contract cannot be awarded without prior negotiation because of associated complexity and risks.
- e. In response to an Open or Restricted Procedure where only irregular or unacceptable tenders were received.

3.5 Innovation Partnership

3.5.1 Innovation Partnership is a hybrid of the Competitive Procedure with Negotiation and Competitive Dialogue and must only be used where there is a need for the development of an innovative product or service and the subsequent purchase of

these cannot be met by solutions already available on the market.

3.6 Negotiated Procedure Without Prior Publication

- 3.6.1 The Negotiated Procedure Without Prior Publication can only be used in very limited and narrowly defined circumstances, usually when no tenders (or no suitable tenders) have been submitted in response to an Open or Restricted Procedure

3.7 Leisure Operator Market Context

- 3.7.1 The local authority leisure operator market is in the midst of its busiest period in a generation; a combination of new contracts coming to the market and retendering of existing contracts means that there is an unprecedented range of opportunities for operators to tender.

- 3.7.2 In choosing the most appropriate procurement procedure, the Council therefore needs to take into consideration the impact it is likely to have on the relative attractiveness of the opportunity from the operators' perspective. There are numerous recent examples where bidders have chosen not to tender because they considered a Council's chosen procurement procedure to be too onerous and time consuming (typically Competitive Dialogue and Competitive Procedure with Negotiation). This has left those Councils exposed and potentially unable to demonstrate best value.

3.8 Recommendation

- 3.8.1 It is imperative that the Council's choice of procedure encourages sufficient competition to maximise its chances of achieving best value. Securing a strong management fee is essential to the affordability of the capital build.

- 3.8.2 Local authority leisure management outsourcing is an established market offering ready solutions tailored to Councils' individual specifications. The only two procedures that are therefore appropriate for consideration are (1) Open, and (2) Restricted.

- 3.8.3 Our recommendation is to follow the Open Procedure but require bidders to pass a series of initial selection criteria, responses for which they will submit with their full tender (thus ensuring that we only consider tenders from operators with sufficient experience, scale and strength of financial covenant). This process helps avoid the potential pitfall of the Restricted Procedure whereby bidders withdraw from the process after they have been shortlisted, leaving the Council with fewer than optimum number of bidders.

3.9 Timescales

- 3.9.1 When the Council has confirmed the facility mix and specification of the new leisure centre, it is appropriate to commence the procurement process for the leisure management contract. Assuming adequate and sensible levels of delegated authority granted to the project team, a new operator should be appointed within 7-8 months:

Nov–Dec 2017: Drafting of procurement documentation
Jan 2018: Issue OJEU notice to market
Apr 2018: Receipt of Tenders from operator market

May 2018: Evaluation and clarification of tenders
June 2018: Operator mobilisation
June/July 2018: Start of contract

Appendix A

Traditional Contract versus Joint Venture

The following table sets out the key differences between the traditional Leisure Management Contract and the alternative Joint Venture option.

	Item / Risk	Leisure Management Contract	Joint Venture
1	Operating risk	The local authority (LA) passes demand risk of the leisure operation to a third party and in many cases is rewarded via surplus share and or a management payment (particularly in the case of a brand new facility). Operators will be incentivised to increase participation and follow a commercial approach to achieve increased revenue (within the constraints of the service specification). If the operator fails to achieve the financial business plan on which it based its proposal, then there is no impact on the LA.	If the JV is to be 50/50 between the LA and the Leisure Operator Partner (LOP) then a full transfer of risk is not achieved by the LA as it will retain a proportion of the demand risk (by definition 50%). If the JV fails to achieve the financial business plan agreed at the outset of the contract, then the LA shares in the downside.
2	Impact on market appetite for the contract	We expect the leisure operator market appetite to be very strong for a new facility in an excellent catchment such as Winchester. Given that the LA will be reliant on raising prudential borrowing to afford the capital scheme, it will need to secure a contracted improvement in the management fee compared to River Park. A well-procured and sensible structured contract should encourage plenty of competition and put the LA in an ideal position to achieve best value.	There is an unprecedented number of local authority leisure management contracts being procured in the market. The Winchester opportunity will therefore be competing against other, more straightforward, contracts. Operators have a great deal of choice and will only bid for those that they consider to be sensibly structured and avoid those that appear to be unnecessarily complicated and costly (i.e. a JV). The only similar example of a leisure JV having been procured was by Sunderland City Council. Many operators have no experience of operating JV's and are therefore likely to decline to bid.

	Item / Risk	Leisure Management Contract	Joint Venture
3	Set up costs	There is a tried and tested method of procuring a leisure management contract, using standard procurement documentation recognised by the leisure operator market. External advisory fees are therefore limited to around £60,000, including legal fees, and can be fixed at the outset.	External advisory fees required to set up a JV are likely to be around £250,000 on the Council's side alone (excluding internal officer time). In addition, the LOP will need to commission their own legal advice which will be priced into the contract
4	Control of core / key prices within the service	LA does not have to relinquish control of the service. Officers and members retain control of policy decisions in terms of core / key prices. The management contract does allow the operator freedom within the thresholds set by the LA at the outset.	In a JV, the LA must share the risk of pricing policy decisions. So, if the LOP proposes an increase in pricing for the "good of the business", the LA has a responsibility to approve the proposed uplift.
5	Liability	LA is able to pass or share the risk of liabilities within the service.	In a JV, 50% of all liabilities would be retained by the LA.
6	Repairs & Maintenance	Repairs and maintenance risk is passed to the operator for works (and costs) such as dilapidations, on-going maintenance and reactive maintenance. For a new facility, the LA will be able to pass over the majority of responsibilities to the operator.	In a JV, the LA will retain responsibilities or at least 50% of them.
7	Facility Ownership	Facility ownership is retained by the LA. A lease or licence to operate is passed to operator.	Facility ownership retained by LA and JV would retain lease / licence to operate
8	TUPE	TUPE transfer from LA to Operator via the management contract. All staffing responsibilities are passed to the operator. All historic staffing / HR problems retained by LA.	LA still partly responsible for staff under JV. Historical staffing / HR problems have to be retained by LA, paid up and or shared. This can be complex when sharing responsibilities with a new partner.
9	Pensions	Pension scheme is typically closed at the point of transfer. The LA retains historic risk of underfunded scheme but passes risk / shares risk with operator going forward via the management contract. Often pension risk can be capped so it can be priced and budgeted for accordingly by the operator.	Pension scheme remains open post transfer and exposes JV and therefore the LA to historic and future liability.
10	Account Management	Management of accounts passed to leisure operator	Management of JV accounts to be shared by both parties. This could add a cost and could add extra layers of unnecessary procedures

	Item / Risk	Leisure Management Contract	Joint Venture
11	Change of law	Changes of law – certain risks can be passed to operator. In particular NNDR as per the point above	In a JV, all change of law risks are shared
12	Recruitment of staff	Responsibility passed entirely to operator	In a JV, the LA would now retain / share the responsibility to recruit people and perhaps have to retain LA governance / procedures. There is also the risk that staff remuneration will need to be brought in line with the Council pay grades, which could significantly increase the cost of service.
13	Decision making and governance	Within the constraints of the service specification, the LA will have the flexibility to make operational decisions quickly and efficiently without requiring ongoing sign-off from the LA.	In a JV, the Council still have to follow their governance and decision making processes, which is likely to require additional management resource and cause unnecessary delays and disruption to the service, to the detriment of the users.
14	Service Outcomes	In a management contract, the LA dictates its outcomes through a specification which the operator is obliged to deliver. If the Operator fails then the Council has rights under the contract to seek recompense / default	In a JV, the LA retains a share of responsibility for setting the outcomes but also achieving them.
15	Termination	A management contract can be terminated if operator fails to meet performance requirements	A joint venture would be much more complicated, time-consuming and costly to terminate / dissolve for both parties
16	Contract Monitoring	A management contract will be monitored on a quarterly basis with meetings between operator and the LA. Action plans and rectification can be discussed and a partnership ethos can be found.	In a JV, contract monitoring will not be impartial and therefore the JV would be self-regulating.
17	Board Structure	The operator would manage the contract without the need for additional board structure. Many contracts have a Partnership Board, the structure of which is specified by the Council at the outset.	In a JV, a new board has to be appointed with an equal representation from each organisation. Voting rights and meeting structures must be agreed. This can add layers of governance that are not necessarily required. This can also often become overly political too.

Delivery Option Selection - Winchester Sport and Leisure Park (Project # 31257) - Management Options (Operator).

Option 1:	In-house Management	
Option 2:	Outsource to an existing specialist operator	
Option 3:	Set up a new leisure trust	
Option 4:	Set up a joint venture ("JV")	
Option 5:	-	
Option 6:	-	

Scoring Method

Meets criteria as follows:

Score	Score Category	Description
1	Negative	Option has a negative impact on the required criteria
2	Poor	Option doesn't meet any of the required criteria
3	Neutral	Option has an equal balance of Pros and Cons
4	Good	Option has many more Pros than Cons
5	Optimum	Option fulfils the majority of the required criteria

Scoring Criteria

Key Criteria	Description	Substantiation
Competition	The degree to which each of the options will achieve meaningful competition and/or allow leverage through negotiation to arrive at a competitive solution.	Option 1 would involve the Council transferring all current staff to the Council under their existing employment terms and conditions. Whilst this therefore negates direct competition early on, the Council may well (with time) need to tender for services which the incumbent staff are not currently responsible. Option 2 would introduce competition early on through an Open Procedure OJEU tender, particularly so if the procurement includes the Construction package as an accompanying lot, as efficiencies could be achieved across the programme. Whilst Options 3 and 4 would also foster competition early on, they would be far more complex in nature and would therefore only attract a select few specialists, with (most likely) existing experience already.
Project delivery timetable	The degree to which each of the options allows the project timescales to be met without putting on undue negative pressures on cost, risk transfer, quality, safety etc.	Options 1, 3 and 4 will take some time to establish as the Council has no demonstrable experience of operating leisure centres themselves, or indeed via a leisure trust or joint venture. Option 2 however would allow the Council to procure an Operator to deliver the services under an operating contract over a fixed term, typically between 7 to 15 years (depending on the age and condition of the facilities in the portfolio), via an Open Procedure OJEU Procurement with which the Council and prospective Bidders are well familiar. The formation of a leisure trust or a joint venture could also delay the project significantly as such Legal arrangements are often complicated in nature and require much consultation between stakeholders to establish.
Resources Required	The degree of resource (human, financial) required to manage each option.	The Council is not a specialist and the organisation has no demonstrable experience of operating leisure centres. Option 1 will require the transferring of existing leisure staff to the Council under their existing employment terms and conditions and there is a reasonable likelihood that the Council may also need to employ additional staff to support the leisure service within (e.g. marketing, IT, human resources, finance, and legal functions). Similarly, the Council is not currently equipped to pursue Options 3 and 4 without committing to significant external advisory costs (predominantly legal advice) with very little likelihood of achieving best value. Option 2 however requires an Open Procedure OJEU Procurement, which the Council is far more familiar with and suitably resourced for, particularly now so with the help of the HCC Procurement function.

Weighting	Option 1	Option 2	Option 3	Option 4	Option 5	Option 6
10%	2	5	4	4	-	-
10%	1	5	3	2	-	-
20%	1	5	2	2	-	-

<p>Cost Certainty</p>	<p>The degree to which each of the options could be subjected to contract variations and additional costs.</p>	<p>The Council is not a specialist and the organisation has no demonstrable experience of operating leisure centres. Option 1 therefore would not offer much cost certainty, particularly surrounding the cost of resources and the lengthy project timescales to develop an in-house capability. The costs associated with TUPE could also increase significantly if salaries need to be brought in line with other Council staff at a later stage, as would the cost of additional staff to support the leisure service within. Furthermore, there are no tax advantages available by operating the service in-house. Option 2 however offers a high much higher degree of cost certainty as Bidders would tender for a prescribed service that would benefit from such support services/functions provided by their own head office as part of the outsourced service. In addition, the operating models of specialist leisure operators typically allow them to achieve charitable relief on business rates (albeit, this advantage will be removed when all responsibility for business rates is transferred from central to local government by 2022). Regardless of the type of specialist operator, or their formal legal structure, Option 2 allows the Council to benefit from the certainty of a contracted annual management fee thereby contributing to the overall project funding needed to finance the construction of the new leisure centre. Option 3 would allow (1) Not for Profit Distributing Organisation ("NPDO's") and (2) private operators to utilise a trust operating model to benefit from tax and rate relief, (the financial advantages of which it will pass on to the Council through the management fee). Both categories offer the benefit of significant scale and strength of financial covenant; which would protect the Council in the event the operator failing to achieve its financial targets for a particular contract, it has many other contracts underpinning its business. Similarly, the operator is able to bring significant specialist management expertise to the service and the option allows financial surpluses to be ring-fenced and reinvested back into the service. The new trust will however rely on a single contract and its financial covenant will therefore be significantly weaker than the established operators. Given the small scale of the operation it will not benefit from the economies of scale and greater purchasing power enjoyed by the larger organisations. It will therefore pay more for supplies and equipment such as fitness stations, energy, asset maintenance, and IT equipment, and the cost of its head office (chief executive, finance director, etc.) will be apportioned to just one contract, whereas an established operator can spread theirs over multiple contracts. Given the reliance on prudential borrowing to fund the majority of the capital costs, the Council needs to secure a competitive management fee from the operator; it is very unlikely to achieve this by setting up its own trust. Moreover, the Council will need to commit to significant external</p>	<p>20%</p>	<p>2</p>	<p>4</p>	<p>3</p>	<p>3</p>	<p>-</p>	<p>-</p>
<p>Governance</p>	<p>The degree to which each of the options meets the requirements of HCC governance, and the complexity / time to achieve sign-off.</p>	<p>Options 1, 3 and 4 would require significant substantiation through a detailed Business Case that could take months to generate, and which could require further input from consultants. Under the Council's CSOs (Contract Standing Orders), approval to spend would be required prior to proceeding with Option 1, 3 or 4 as costs would be incurred almost immediately. Option 2 however is more commonplace and would therefore be of lesser concern to stakeholders / signatories, and (under the CSOs) procurement could commence prior to achieving approval; which could be incorporated into the procurement schedule to ensure these are sought later on in the process, once the costs have been fully established through the procurement exercise.</p>	<p>10%</p>	<p>2</p>	<p>5</p>	<p>2</p>	<p>2</p>	<p>-</p>	<p>-</p>
<p>Market Attractiveness</p>	<p>The degree to which each of the options are familiar to the supply chain, as well as the cost (time and resources) they would need to attribute to them.</p>	<p>Option 1 would only apply for services which the incumbent staff are not currently responsible, and could include services that would be of interest to SMEs (Small to Medium Enterprises). Option 2 however would be of much interest to the Market, where specialist operators already exist. Whilst Options 3 and 4 would also be of interest to some operators, the complexity of the arrangements would only attract a few of the larger specialists, who operate in this environment already.</p>	<p>5%</p>	<p>2</p>	<p>5</p>	<p>3</p>	<p>3</p>	<p>-</p>	<p>-</p>
<p>Packaging approach - Lots</p>	<p>The degree to which each of the options can accommodate lotting, without introducing unacceptable risk interfaces.</p>	<p>Not applicable to this optioneering exercise.</p>	<p>0%</p>	<p>-</p>	<p>-</p>	<p>-</p>	<p>-</p>	<p>-</p>	<p>-</p>
<p>Risk Allocation</p>	<p>The degree to which risk is transferred to those best placed to manage it out, for each of the options.</p>	<p>The Council is not a specialist and the organisation has no demonstrable experience of operating leisure centres. Option 1 would therefore result in the Council having to assume all risks and responsibilities of operating the service. Options 2, 3 and 4 would however allow the Council to transfer operational and financial risk to a third party. The Council could also form a Leisure Partnership Board to oversee the agreement with the operator, which would give the Council's consortium of funders (University of Winchester and the Pinder Trust) influence over the service throughout the term of the agreement. Option 3 would rely on a single contract with a financial covenant that is significantly weaker than the established operators which would prevent the Council from being able to transfer risk to a specialist service provider.</p>	<p>15%</p>	<p>1</p>	<p>4</p>	<p>4</p>	<p>3</p>	<p>-</p>	<p>-</p>

Scope Certainty	The degree of scope certainty at contract award.	The Council is not a specialist and the organisation has no demonstrable experience of operating leisure centres. Option 1 therefore would not offer much scope certainty, particularly due to the uncertainty surrounding resources and the lengthy project timescales to develop an in-house capability, as well as the precise scope of the TUPE undertaking. Option 2 however offers a high much higher degree of scope certainty, albeit that under the new PCR2015 regulations the tender documents would need to be fully developed prior to launching the tender (i.e. the Contract Notice). As such , but there will always be some risk associated to under developed or incorrect specifications that could prove costly later on. Because Options 3 and 4 all involve a significantly higher degree of direct engagement with Bidders they all offer the opportunity to develop the scope with the them prior to executing the leisure trust or joint venture, albeit these are procedures more suitable to high value contracts (circa £100m plus).
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10%	3	3	3	3	-	-
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Total scores:

100%	1.65	4.45	2.95	2.7	-	-
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Maximum Score:

100%	5	5	5	5	-	-
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i.e. %:

100%	33%	89%	59%	54%	-	-
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Ranking:

	4	1	2	3	-	-
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NB: This reflects the Council's current opinion.