

REPORT TITLE: WINCHESTER SPORT AND LEISURE CENTRE –  
PROCUREMENT OF A CENTRE OPERATOR

6 JUNE 2018

REPORT OF PORTFOLIO HOLDER: HEALTH & WELLBEING – CLLR GRIFFITHS

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WARD(S): ALL

PURPOSE

To update members on how an operator will be selected for the management contract for the new Winchester Sport and Leisure Centre and how the contract will be specified by the Council.

The objective of this procurement process is to secure an excellent operator with a successful record of running leisure centres.

The report seeks authority to commence the procurement of an operator for the proposed new Winchester Sport and Leisure Centre. Agreement is sought for the associated tender documentation, in line with the procurement strategy agreed in November 2017 and with the recommendations set out in this Report.

RECOMMENDATIONS:

That Cabinet

1. Approves the principles of the procurement with the proposed inclusion of a negotiation element and authorises the commencement of the procurement process for an Operator to manage the new Sport and Leisure Centre.
2. That the contract term be a period of 15 years with an option to extend for a period or a further 5 years at the Council's sole discretion but in line with the performance management requirements.
3. Approves the Services Specification and delegates to the Head of Programme in consultation with the Portfolio Holder for Health and Wellbeing the authority

to make any required further minor amendments and any such further changes to the Specification as may reasonably be deemed necessary in the event of the Council exercising its rights to negotiate on the tenders received.

4. That delegation is given to the Head of Programme in consultation with the Portfolio Holder for Health and Wellbeing to complete the required tendering documentation including the draft contract.
5. Agree that Meadowside Leisure Centre shall not be included in the contract for the operator of the new Sport and Leisure Centre.
6. Agree that the all weather football pitch and tennis courts at North Walls Recreation Ground are not included as part of the new operator contract.
7. Approves the evaluation weighting of a 60% overall score for commercial aspects and 40% for quality aspects and the evaluation criteria and weightings as outlined in this report.
8. Authorises the use of Hampshire County Council's electronic procurement portal for the procurement.
9. That the Head of Programme, in consultation with the Portfolio Holder for Health and Wellbeing, be authorised to publish a notice in OJEU via Hampshire County Council's electronic procurement portal seeking tenders from suitably qualified and experienced organisations.
10. Authorises the Evaluation Panel with advice from the Joint Advisory Board to undertake the selection process and gives delegated authority to the Head of Programme as the lead officer of the Evaluation Panel to recommend an Operator in accordance with the procurement process and associated evaluation criteria. Such recommendation to be brought back to a future meeting of the Cabinet (Leisure Centre ) Committee for a formal decision with regard to the award of the contract.

## IMPLICATIONS:

### 1 COUNCIL STRATEGY OUTCOME

- 1.1 This project supports the Health and Happiness outcome of Council Strategy through the provision of new facilities to meet the needs of a broad cross section of our communities for now and in the future.

### 2 FINANCIAL IMPLICATIONS

- 2.1 The outcome of this procurement exercise will have a significant impact on the final financial model for the new Sport and Leisure Centre and will impact on the Council's capital and revenue budgets. Through the procurement, the Council will require a management fee to be paid to the Council from the Operator. This will be established through the tendering exercise and is based upon a model whereby the Operator has full responsibility for the running, management, maintenance and repair of the Centre and in return receives all income but from that income guarantees a set, annual management fee to the Council.

- 2.2 The management fee achieved through the tendering process will be a key input to the Full Business Case for the proposed Sport and Leisure Centre. This will be reported on once this process is complete. Soft market testing was undertaken in April 2018 to help to inform this process and the Council received a very good response from potential operators. The feedback gave a range of indicative annual management fees based on the information available to them at that time. The ultimate fee received following the formal tendering exercise will determine whether the Council can achieve a cost neutral project. This supports the need for the Council to be cautious about offering discounts and other concessions to clubs at this stage.

- 2.3 As set out in this report it is recommended that the procurement route be adjusted to allow the Council scope for some negotiation once tenders have been received (should they require it). This will suit some of the bidders, who have stated a preference for negotiation, as set out in their responses to the Soft Market Testing, whilst also allowing the Council scope to refine the financial offers received in consultation with all bidders should there be an affordability gap on the project. Details of the results of this soft market exercise and how information provided has been considered are set out in Exempt Appendix 4 of this report.

### 3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 The procurement of the Operator needs to be undertaken in accordance with EU compliant processes under the Public Contracts Regulations 2015. The procurement route is within the requirements of these regulations.
- 3.2 The procurement route agreed by Cabinet in November 2017 was to follow the Open Procedure. However upon receiving further legal advice it is recommended that the contract falls within Schedule 3 of the Public Contracts

Regulations 2015 and is therefore governed by Regulations 74 to 76 of the Regulations. These give the Council the scope to have more flexibility in the procurement procedure, if needed. It is recommended, therefore, that the procurement route is varied so as to be conducted in accordance with those Regulations, thus giving added resilience to the process by reserving the right to hold negotiations with bidders, if that is in the Council's best interest

- 3.3 Tenders will therefore be required to be submitted in final form, capable of evaluation and acceptance, and will be evaluated against the published award criteria. The default option would be that the Contract be awarded on the basis of the most economically advantageous tender initially submitted. However, if at that stage, it was considered that the bids did not adequately meet its aspirations, there would be an option to allow negotiation, rather than having to recommence the procurement.
- 3.4 It is important to clarify that any negotiation process takes place with all bidders and as such all bidders have an equal chance to take part in the negotiation and all receive and the same information. This negotiation and clarification process will be undertaken via the Hampshire County Council procurement portal, A flow chart showing the approved route and the suggested route is attached at Appendix 3

#### 4 WORKFORCE IMPLICATIONS

- 4.1 The staffing requirements for this project are continually being reviewed to ensure effective and timely project delivery.
- 4.2 TUPE Regulations and guidelines will be followed in relation to this contract which will be considered as part of the procurement process. This requires the current operator to identify all staff who currently work at River Park and Meadowside Leisure Centres to be identified in accordance with the Regulations. This information will then be provided as part of the tendering documentation so that bidders are aware of the staff which they will be required to transfer to the new centre. It should be noted that the University of Winchester staff who currently work at the Sports Stadium will also transfer to the new Operator of the Sport and Leisure Park
- 4.3 Meadowside Leisure Centre is currently managed as part of the overall Places for People Contract which covers both River Park and Meadowside leisure centres. It is proposed that the future management of Meadowside Leisure Centre is considered separately to the tendering for the operator for the proposed Sport and Leisure Centre.

#### 5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 The Specification to be included in the management contract is appended to this report as Exempt Appendix 1 and sets out the obligations of the Operator in respect of the maintenance and operation of the new building. This has been subject to input from the Contract Advisory Panel including expertise from St Albans Council who has recently been through this process, specialist

legal advisors, Hampshire County Council, the University of Winchester and the Sports Consultancy who have managed many successful procurement processes of this kind. The Sustainability Advisory Panel has also made suggestions for aspects to be included within the specification in relation to energy management. The Council's design team have also provided input in relation to cleaning and management of the centre and in relation to care, management and use of the Centre's mechanical and electrical systems and equipment.

## 6 CONSULTATION AND COMMUNICATION

- 6.1 The engagement, listening and learning process to support the development of this project has been extensive and has allowed the project team to capture aspects of leisure centre management that are important to key groups and partners.
- 6.2 The establishment of the Contract Management Advisory Panel has helped ensure that evaluation criteria and supporting requirements of the tendering process for the management of the new centre have been thoroughly reviewed so that the new leisure centre operates efficiently and effectively.
- 6.3 A period of soft market testing and an awareness day with potential operators has informed the detail of the tender documents and process.

## 7 ENVIRONMENTAL CONSIDERATIONS

- 7.1 The operator will be expected to operate the facilities in an environmentally sensitive and suitable manner, to reduce energy consumption, minimise chemical usage and recycle appropriate non-hazardous waste. These aspects are considered in the Contract Specification as appended to this report. It should be noted that these aspects will be in the operator's interest as they will be paying the energy bills.

## 8 EQUALITY IMPACT ASSESSMENT

- 8.1 The facilities and services provided by the operator must comply with the legislation relating to the Equality Act 2010.
- 8.2 An equality impact assessment is being undertaken as part of the detailed design and engagement work for this project.

## 9 DATA PROTECTION IMPACT ASSESSMENT

- 9.1 The operator will be required to work with the Council to agree a protocol on the sharing of data in line with the EU General Data Protection Regulation. This has been set out in the Specification.

## 10 RISK MANAGEMENT

- 10.1 This project has a separate risk register which is managed by the Head of Programme.
- 10.2 The procurement of an operator is an important aspect of the future success of this project and was fully considered in November 2017 as part of the overall procurement strategy.
- 10.3 The main risk consideration for this project is achieving a satisfactory Full Business Case which is affordable for the Council.
- 10.4 Further to discussion with both the Council's external lawyers, The Sports Consultancy and Hampshire County Council procurement officers it is proposed that the original procurement strategy of following a fully Open Procurement route should be adjusted to permit the Council an element of negotiation on the tenders received at the Council's sole discretion should the Council consider this to be necessary, and without the Council being under any obligation to negotiate. Such negotiation could cover changes in service levels in order to improve the management fee or transference of risk under the contract. This will not fundamentally alter the process or the timescales already agreed and will be in full accordance with the Regulations and hence will not be putting the Council at risk of a legal challenge.

## 11 SUPPORTING INFORMATION:

- 11.1 The procurement strategy for the appointment of an operator for the proposed Sport and Leisure Centre was agreed by Cabinet in November 2017. It was agreed that a traditional management contract is procured and that an open tender procedure is utilised to secure sufficient competition, maximise the chances of achieving best value and securing a strong management fee. This route is a single stage process which requires the bidder to pass a series of initial selection criteria as part of the tender process following which their tenders will be evaluated.
- 11.2 Subsequent to this and after further discussions with both the Council's external legal advisors, The Sports Consultancy and Hampshire County Council's Procurement Advisor it is now considered that the Council's interests may be better protected if the Council introduced some flexibility into the procurement process to provide the Council with an element of negotiation with eligible tenderers once their tenders have been submitted. Under the open procedure there is little scope to enter into discussions with bidders to try and improve their bids. The change to the process would not mean that there would have to be any negotiation, the Council would simply be reserving this right. Any negotiation would need to be relevant to the award criteria which could not be changed nor would there be any change to the fundamental requirements of the process. The Council would still be adopting a single stage process as with the open procedure, reserving the right to negotiate on the tenders received should this be deemed necessary. It is

difficult to anticipate what aspects of the tenders may require some negotiation until the bids have been submitted and assessed and paragraph 11.4 below sets out some aspects where this might be required. It should be noted that this might not be required at all.

- 11.3 The Council is entitled to adopt an approach as suggested above by virtue of the fact that the contract falls under Schedule 3 of the Regulations which permits some relaxation of the rules. Under this Schedule the Council is entitled to establish its own process provided that it complies with the principles of equal treatment, non-discrimination and transparency.
- 11.4 The Council's external legal advisors have suggested that there may be a need for negotiation with bidders to achieve the optimal position for the Council in relation to the management fee, risk allocation and the service specification and have accordingly suggested that this eventuality is reflected in the procurement route.
- 11.5 Preparation for this procurement exercise has been supported by the Contract Management Advisory Panel which includes elected Members (Cllrs Burns and Weir), the University of Winchester, The Pinder Trust, Hampshire County Council and St Albans City and District Council. St Albans City and District Council has kindly offered to help having recently successfully been through similar processes. This panel has helped to give confidence and reassurance that the evaluation and specification that the Council will be using in the procurement are robust and are based on tried and tested knowledge and experience. This will help to achieve the outcomes that the Council and community wish to see achieved in the running and operation of a New Sport and Leisure Centre.
- 11.6 In November 2017 The Sports Consultancy were commissioned to provide consultancy services for the procurement of an Operator for a new leisure management contract relating to the operation of the new Winchester Sport and Leisure Centre.
- 11.7 The Council also has an agreement with Hampshire County Council's Strategic Procurement Service to provide support for this project. The process will be advertised using Hampshire County Council's In-Tend eProcurement tool. This ensures that there is a clear audit trail of documentation provided to bidders, clarifications are sought and confirmation is obtained. It is also a secure system that will ensure confidentiality is maintained throughout the process.
- 11.8 As well as the Winchester Sport and Leisure Centre, the procurement exercise will include the Winchester Sports Stadium (Athletics Track and Artificial Turf Pitch). The residual facilities at North Walls Recreation Ground (Tennis Courts and Artificial Turf Pitch) and Meadowside Leisure Centre are not included in this procurement and more appropriate management options for these facilities are currently under consideration.

- 11.9 The contract documentation for the operator procurement has been compiled using the industry standard Sport England Procurement Toolkit and some of HCC's standard tender documentation.
- 11.10 The services specification sets out the Council's requirement for the delivery of the services and standards of performance that the operator shall meet in a fully comprehensive range of areas. These include:
- I. Council outcomes
  - II. Quality management accreditation
  - III. Customer service
  - IV. Catering and vending
  - V. Event management
  - VI. Sports Development & Health and Wellbeing
  - VII. Marketing and publicity
  - VIII. Incident reporting
  - IX. Pricing requirements
  - X. Opening hours
  - XI. Activity programming
  - XII. Cleaning
  - XIII. Environmental and energy management
  - XIV. Maintenance of buildings, plant and equipment
  - XV. Grounds maintenance
  - XVI. Equipment
  - XVII. Access
  - XVIII. Legislation and policy
  - XIX. Water
  - XX. Drainage
  - XXI. Ventilation
  - XXII. Heating



- XXIII. Lighting
- XXIV. Pool water quality
- XXV. CCTV and security
- XXVI. IT systems and data protection
- XXVII. Staffing
- XXVIII. Health and safety management
- XXIX. Business record and general reporting
- XXX. Operating performance and financial reporting

11.11 This specification will be supplemented by a Performance Monitoring System which will form part of the contract. This will provide the Council with a framework for recording, rectifying and addressing poor performance and if necessary, for terminating the contract for breach of performance standards by the operator.

11.12 Bidders will be required to submit their technical/ quality and commercial proposals as specified in the Invitation to Tender. The combined weighting of the technical/ quality component of their bids will be 40%, with the remaining 60% attributable to the commercial/ financial criteria.

11.13 Bidders will be required to submit their responses to the following technical requirements:

- I. Programme and Pricing
- II. Marketing and Customer care
- III. Asset Management, Cleaning and Environmental Sustainability in the specification
- IV. Sports Development and Health and Wellbeing Outcomes
- V. Staffing
- VI. Financial Reporting and Information Sharing
- VII. Catering
- VIII. Contract Mobilisation

11.14 The precise sub-weighting of this element has been considered by the Contract Management Advisory Panel. This has been informed by a Relative Importance Assessment of the eight technical criteria by members of this panel. The overall Evaluation Criteria is set out in Exempt Appendix 2

- 11.15 The bidder commercial proposals will be evaluated across three components.
- i. Proposed Management Fee (annual average over life of the contract)
  - ii. Legal Agreement mark up and approach to risk
  - iii. Proposals for sharing any surpluses with the Council over and above projected financial performance
- 11.16 Bidders will be required to complete a detailed financial template, together with supporting commentary to explain assumptions underpinning this proposal.
- 11.17 The Contract Management Advisory Panel has reviewed the procurement documentation.

#### Discounts and Protected Community Use

- 11.18 It is very important that clubs and community groups, where the majority of members are from within the District, are supported and given priority. As such bidders will be required to prioritise local clubs when considering matters such as protected use and discounts. This has been set out in the specification and is reflected in the tender evaluation process.
- 11.19 A further important consideration for this procurement is whether the Council sets certain discounts and protects usage at set times for low income and vulnerable groups. Such discounts and protected uses are included in the existing contract. It is intended that such discounts and protected uses will be considered once the operator is appointed. The Council will support local clubs in this process by working in collaboration with them and the appointed operator. Some concessions will be specified within the tender for low income and vulnerable groups as a requirement of the operator.
- 11.20 The University of Winchester in return for its financial contribution requires some protected uses and an element of free and /or discounted use which has been agreed as part of a funding agreement. These will be included in the tendering documentation so that bidders can account for them in their tenders.

## 12 OTHER OPTIONS CONSIDERED AND REJECTED

- 12.1 Four procurement options were considered in November 2017 in relation to how the new facility will be operated, together with the VAT implications for each option.

### BACKGROUND DOCUMENTS:-

#### Previous Committee Reports:-

CAB2972 – 13 November 2017 Sport and Leisure Park Project - Procurement

Other Background Documents:- None

APPENDICES:

Exempt Appendix 1 - Draft Specification

Exempt Appendix 2 - Evaluation Criteria

Appendix 3 – Flow chart – Procurement Routes

Exempt Appendix 4 - Soft Market testing

Appendix 3

Flow Chart of Procurement Routes

**AGREED ROUTE**

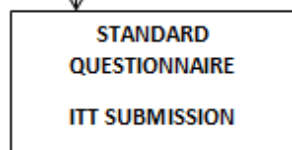
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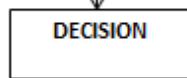
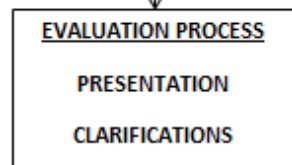
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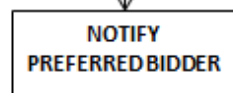
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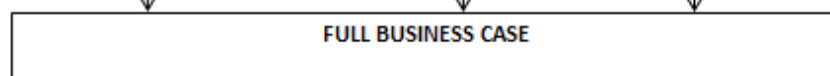
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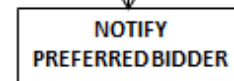
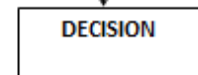
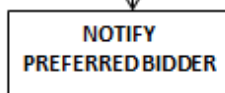
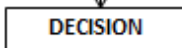
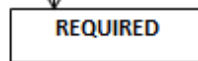
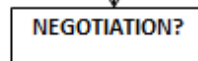
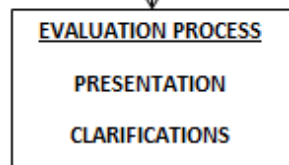
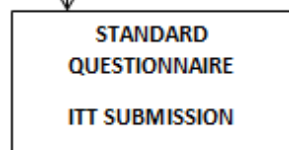
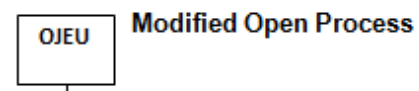
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**SUGGESTED ROUTE**

WITH NEGOTIATION



FULL BUSINESS CASE