

REPORT TITLE: WINCHESTER SPORT AND LEISURE CENTRE – OPERATOR  
PROCUREMENT

14 JANUARY 2019

REPORT OF PORTFOLIO HOLDER: CLLR LISA GRIFFITHS - HEALTH AND  
WELLBEING

Contact Officer: Andy Hickman Tel No: 01962 848105 Email  
[ahickman@winchester.gov.uk](mailto:ahickman@winchester.gov.uk)

WARD(S): ALL

PURPOSE

To report the results of the leisure management contract procurement process for the appointment of an Operator to manage the new Winchester Sport and Leisure Centre on behalf of the Council for a period of 15 years (with the option of a 5 year extension at the sole discretion of the Council).

The procurement of an operator is a crucial aspect of the future success of the new Sport and Leisure Centre and is one of the key elements of achieving a satisfactory Business Case for the project.

RECOMMENDATIONS:

1. Endorse the evaluation process which supports the appointment of the preferred Operator (Bidder B) as the preferred Leisure Centre Operator.
2. Approve the Council entering into a management agreement (subject to the required standstill period and the approval of a satisfactory Business Case for this project in February 2019,) with Bidder B to manage the new Winchester Sport and Leisure Centre on behalf of the Council for a period of 15 years from its opening and with the option (at the sole discretion of the Council and subject to satisfactory performance) to extend the contract for a further period of 5 years.)

3. Note that there were no response(s) to the advertisements under s123 (2A) of the Local Government Act 1972 for the disposal of part of the open space at the Garrison Ground by way of a lease to the Operator of the new Sport and Leisure Centre
4. Authorise the Head of Asset Management to agree terms in respect of any necessary leasehold arrangements detailed below and subject to approval of the Full Business Case to enter into the leasehold arrangements as required.
  - (a) with the University of Winchester in respect of the Sports Stadium and Artificial Grass Pitch
  - (b) with the preferred Operator (subject to a satisfactory business case having been first approved) in respect of the new Leisure Centre and the Sports Stadium and Track and Artificial Grass Pitch.
  - (c) with the University of Winchester to vary the University's existing lease from the Council of a strip of land between numbers 69 and 71 Milland Road Winchester which serves as the vehicular and one of the pedestrian accesses to the Stadium.
  - (d) to enter into such collateral warranties for the benefit of the preferred Operator as may be required by the Operator from any consultants and the contractor and which relate to the construction of the new Sport and Leisure Centre.

IMPLICATIONS:1 COUNCIL STRATEGY OUTCOME

1.1 This project supports the Health and Happiness outcome of the 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.

1.2 The Vision for the Sport and Leisure centre is a centre that :

- Reflects sporting needs and aspirations for the people of our district
- Is flexible to provide for current and future sporting needs and trends
- Is deliverable and affordable
- Is in a park setting providing additional sporting and leisure opportunities
- Provides an excellent water based offer for community use

1.3 The objectives for this project are:

- To provide accessible public sport and leisure facilities to improve the health and happiness of the District's residents
- To increase participation in sport and active recreation
- To improve the quality and energy efficiency of Winchester's main leisure facility
- To provide a Sport and Leisure Centre that is financially sustainable

2 FINANCIAL IMPLICATIONS

2.1 The outcome of this procurement process is a key element in the overall financial business case for the new Winchester Sport and Leisure Centre. The fee received from the preferred operator will be one of the key factors to determine whether the Council can achieve a satisfactory full business case.

3 LEGAL AND PROCUREMENT IMPLICATIONS

3.1 The procurement strategy for the operator procurement was agreed by Cabinet on 13 November 2017. More detailed aspects of the process, evaluation and assessment were agreed by Cabinet on 6 June 2018.

3.2 The procurement of the leisure centre operator has been undertaken in accordance with EU compliant processes under the Public Contracts Regulations 2015.

3.3 Tenders were required to be submitted (on 9 November) in a final form, capable of evaluation and acceptance and were evaluated against the approved award criteria as approved by Cabinet on 6 June 2018. Tenders are required to reflect Health and Safety legislative duties in all aspects of their operation. They are also required to reflect the asset management requirements in terms of ongoing maintenance and renewal of the property

and equipment and to provide financial and performance reporting. These requirements are set out in the Specification for the management of the new centre which were agreed by Cabinet in June 2018.

- 3.4 There was an ongoing process of clarifications requested by bidders during the tender process through the Hampshire County Council procurement portal. This was supplemented by two face-to-face clarification sessions, plus separate session with the Council's sports development team, the University of Winchester and the Pinder Trust (all overseen by the Council). In addition, there was an ongoing process of written clarifications (nine sets in total) provided to all bidders through the portal.
- 3.5 It should be noted that the Council will notify bidders of the outcome of the evaluation of tenders and commence the legal standstill period as required under the Public Contracts Regulations 2015, following consideration by this Committee. This is needed before any contract may be concluded and formal appointment will be subject to approval of the Full Business Case. Names of bidders cannot therefore be made public until this process has been completed.

#### 4 WORKFORCE IMPLICATIONS

- 4.1 The staffing implications for this project are continually being reviewed to ensure effective and timely project delivery.
- 4.2 TUPE regulations and guidelines have been followed in relation to this procurement and the required form of contract. A TUPE list covering all staff who would transfer to the new operator was provided to all bidders. This ensured that they were all aware of the staffing implications arising from this procurement.

#### 5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 The contract and specification set out the obligations of the Operator in respect to the maintenance and operation of facilities to be included in the contract. The maintenance obligations are enshrined in the Asset Management Responsibilities. These documents will form a schedule to the new contract.
- 5.2 The operator was also required to provide (and cost for) a proportion of the new centre's fixtures, fittings and equipment according to a schedule provided during the Invitation to Tender phase.

#### 6 LEASES

- 6.1 It will be necessary for the Council to grant a lease to the preferred Operator of the New Leisure Centre on completion of construction of the New Leisure Centre for the term of the management agreement between the Council and the preferred Operator.

- 6.2 The Council will also need to enter into leasehold arrangements with the University in respect of the Sports Stadium and Track and the Artificial Pitch which forms part of King George V Playing Fields to enable the Council in turn to grant under- leases of these facilities to an operator.
- 6.3 The Council may also need to vary its existing lease to the University of the access between numbers 69 and 71 Milland Road to reserve rights of access over this land to the new Sport and Leisure Centre for the Council and an Operator.

## 7 CONSULTATION AND COMMUNICATION

- 7.1 The engagement, listening and learning process to support the development of this project has been extensive and has allowed the project team to capture the aspects of leisure centre operation that are important to key groups and partners.
- 7.2 The establishment and input from a Contract Management Advisory Panel has helped to ensure that the evaluation criteria and the requirements of the tendering process have been thoroughly reviewed to ensure that the new centre will operate efficiently and effectively.
- 7.3 A period of Soft Market Testing which commenced in April 2018 and an Awareness day with potential operators has informed the detail of the tender process and the associated documentation.
- 7.4 In order to enter into a long term lease with an Operator a process under s123 (2A) of the Local Government Act 1972 for the disposal of part of the open space at the Garrison Ground requires that Notices are advertised allowing for comments to be submitted to the Council. This was formally advertised during November 2018 and no responses were received as the result of the advertisements.

## 8 ENVIRONMENTAL CONSIDERATIONS

- 8.1 The operator will be expected to manage the Centre in an environmentally sensitive and sustainable manner to reduce energy consumption, minimise chemical usage and will be required to recycle non hazardous waste. This has been reflected in the specification.
- 8.2 Once an operator is appointed it will be important to work with them to formulate energy management best practices and performance indicators.

## 9 EQUALITY IMPACT ASSESSEMENT

- 9.1 The facilities and services provided by the Operator must comply with the legislation relating to the Equality Act 2010.
- 9.2 An equalities impact assessment is an ongoing process undertaken as part of the detailed design and engagement work of this project.

9.3 The contract specification requires the Operator to report against a series of indicators, including visits from those from a range of target groups.

## 10 DATA PROTECTION IMPACT ASSESSMENT

10.1 The operator will be required to work with the Council to agree a protocol regarding the sharing of data in line with the EU General Data Protection Regulation and the Data Protection Act 2018. This has been set out in the contract specification.

## 11 RISK MANAGEMENT

11.1 This project has a separate risk register which is managed by the Programme Lead. See Appendix 1.

11.2 The procurement of an operator is an important aspect of the future success of this project and was fully considered at Cabinet in November 2017 and June 2018 as part of the formulation and agreement of the overall procurement strategy.

11.3 The main risk for this project at this stage is achieving a satisfactory Full Business Case which is affordable to the Council.

## 12 SUPPORTING INFORMATION:

### Background

12.1 Cabinet agreed the strategy for the procurement of an operator for the proposed new Sport and Leisure Centre in November 2017. Then on 6 June 2018, Cabinet agreed a report setting out how an operator will be selected for the management of the new Winchester Sport and Leisure Centre including details of the evaluation process and specification. It was agreed that the Council would follow a single stage process for this procurement using an open type procedure. The services fall within Schedule 3 of the Public Contracts Regulations 2015 which allow for more flexibility.

12.2 The Sports Consultancy has been appointed to be the Council's advisor on the procurement of an operator for the new Sport and Leisure Centre. An external legal advisor has also been appointed and Hampshire County Council's procurement team is assisting and advising with the procurement.

12.3 The management fee achieved through this tendering process is a key determinant to achieving an acceptable business case for the new Sport and Leisure Centre.

12.4 The Council have allowed for 'Income Benchmarking' to offer bidders a degree of protection against being committed to paying a certain management fee over the life of the contract if factors occur such as economic or legislative impacts which are outside of their control. It should be emphasised that this benchmarking provision is part of the Sport England template leisure

management contract (which is the basis for the contract here) and reflects the current market position. Allowing this within the contract ensured that bidders remained interested in the opportunity and that the Council could achieve the required level of management fee.

12.5 The controls in place for this process include:

- The process can only be implemented 5 years into the contract
- The operator cannot call for this process as a result of their net income being down due to poor performance
- It can only be triggered if the operator income is down by an agreed proportion of their profit as part of their bid e.g. 50%
- The operator has an obligation to mitigate any loss or decline in income prior to a benchmarking exercise
- A third party can be appointed if the Council and operator cannot agree to the management fee adjustment
- There is a process of dispute resolution if no agreement can be reached

12.6 Bidders were informed that sport and Leisure Centre users who pay for activities will not be charged for car parking. A management system which allows for this will be implemented by the Council. .

12.7 Tender Evaluation

12.8 On 6 June 2018 Cabinet approved the tender evaluation as follows (see also Appendix 2 and Exempt Appendix 3):

- the commercial response 60%
- the technical response 40%

12.9 The commercial response cover the bidders' financial submissions including their business plan and management fee (50%) as well as approaches to sharing any profit (5%) and their response to the draft legal contract (5%).

12.10 The technical side of the evaluation is a series of method statement responses covering key aspects of the service from a quality perspective. These include:

- i. Programming and Pricing (7%)
- ii. Asset Management and Cleaning (7%)
- iii. Sports Development, Health and Wellbeing and Outreach Work (4%)
- iv. Marketing, Customer Care and CRM (6%)
- v. Staffing (7%)

- vi. Financial Management, Reporting and IT Systems (5%)
- vii. Catering (3%)
- viii. Contract Mobilisation (1%)

- 12.11 These method statements were agreed with the project team and Advisory Panel at the outset and were also weighted based on a relative importance assessment exercise undertaken by each member of the team.
- 12.12 Bidders provided a response to each of these in the form of method statements, which were then assessed as part of the overall evaluation.
- 12.13 The tendering process commenced on 6 August 2018 with the publishing of the OJEU Notice. Two bidder clarification days were organised in August and September which were attended by 6 operators.
- 12.14 Bids were submitted on 9 November 2018
- 12.15 Selection Questionnaire analysis was undertaken by Finance officers with all submissions being compliant.
- 12.16 A detailed technical assessment of the documentation was undertaken by Council officers with specialist expertise including legal advice and The Sports Consultancy input and focused on each of the method statements.
- 12.17 The moderation process was overseen by the Hampshire County Council's Procurement Service to ensure that an impartial and objective approach to agreeing the final scores was achieved.
- 12.18 Details of the evaluation criteria are shown in Appendix 2 and details of the scoring are shown in Appendix 3 and summarised in the table below:

<b>Operator</b>	<b>Overall Score (Percentage points)</b>
Bidder A	73.3 %
Bidder B	90.0%

### 13 OTHER OPTIONS CONSIDERED AND REJECTED

- 13.1 Procurement options were considered by Cabinet 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:-

CAB3031 – 6<sup>th</sup> June 2018 Winchester Sport and Leisure Centre – Procurement of a Centre Operator

CAB2972 – 13<sup>th</sup> November 2017 Sport and Leisure Park Project - Procurement

Other Background Documents:-

None

APPENDICES:

Appendix 1 - Winchester Sport and Leisure Centre Project - Risk Matrix

Appendix 2 - Technical Evaluation Criteria

Exempt Appendix 3 – Operator Evaluation Report