

TITLE OF REPORT: PERFORMANCE BOND FOR LEISURE CONTRACTS

REPORT OF THE HEAD OF LEISURE AND ENVIRONMENTAL SERVICES
EXECUTIVE MEMBER: COUNCILLOR JANE GRAY

1. SUMMARY

- 1.1 North Hertfordshire District Council currently has three contracts with Stevenage Leisure Limited (“SLL”) for the management of Letchworth, Hitchin and Royston Leisure Centres. Contracts for Hitchin and Royston Leisure Centres expire on 31st March 2024 and the contract for Letchworth Leisure Centre expires on 31st March 2019. However as a result of current capital works, the contract for Letchworth Leisure Centre will be extended until 31st March 2024.
- 1.2 The Council is satisfied with the performance of SLL and the contracts enable the Council to provide the community with good quality leisure facilities.
- 1.3 The Council is constantly engaging with SLL, and reviewing market information, with a view to seeking continuous improvement and achieving value for money. The Council has on several occasions identified opportunities to secure continuous improvement using capital expenditure to fund development and refurbishment works.
- 1.4 The removal of the requirement for a performance bond will release a meaningful amount of cash for SLL. This, in turn, could be used to fund further improvements to the leisure facilities and also reduce costs as the cost of maintaining the performance bond for the duration of the contracts will no longer be required.
- 1.5 SLL has given the Council its commitment that if the Council agrees to removing the bond from the Leisure Contracts it will also absorb the additional costs for the introduction of the National Living Wage within their contract sum, for now and any future increases due to the National Living Wage.

2. RECOMMENDATIONS

Cabinet is requested:-

- 2.1 To agree to the removal of the performance bond in respect of the leisure management contracts for Letchworth, Hitchin and Royston.
- 2.2 To authorise the Council’s Contracts and Procurement Solicitor to undertake the required contract variations.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To release money set aside in SLL’s banking facility to cover the requirement to have a performance bond in order to increase SLL’s potential to fund further improvements to the leisure facilities they operate in the future.

- 3.2 To remove the cost of maintaining the performance bond over the duration of the contracts.
- 3.3 To protect the Council from any increase costs that may result from the introduction of the National Living Wage.
- 3.4 To have parity with other contracts, The Performance bond for the Grounds Maintenance contract was removed earlier this year as part of the contract review.
- 3.4 To reflect one of the principal aims of the Council's Medium Term Financial Strategy which is to "*optimise income generation and efficiency savings wherever possible and keep down costs in order to minimise the impact on essential services.*"
- 3.5 To reflect the Council's corporate objective to "*ensure that the Council delivers cost effective and necessary services to our residents that are responsive to developing need and financial constraints*"
- 3.6 Cabinet's authority to proceed with the contract variation is required under rule 28.8 of the Contract Procurement Rules.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 No alternative options have been considered.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 Consultation has taken place with the Executive Member for Leisure and SLL.
- 5.2 As the contract variation will not impact on the provision of services to the community and consultation is therefore considered unnecessary.

6. FORWARD PLAN

- 6.1 This item is not a key decision and therefore has not been notified to the forward plan.

7. BACKGROUND

- 7.1 The management contracts between the Council and SLL require the performance bond to be in place throughout the duration of the contracts. Performance bonds have been traditionally requested on high value contracts to provide limited protection in the event that the contractor breaches the contract. The protection is usually limited to a maximum of 10% of the contract value.
- 7.2 Officers have had discussions with SLL on the benefits and implications of removing the performance bond and officers have also undertaken some research to inform whether performance bonds are generally still a requirement for leisure management contracts. This has demonstrated one nearby authority (Central Bedfordshire) does not require a performance bond. The risks and benefits are identified in section 8.
- 7.3 SLL has advised that its bank treats the bond amount like an overdraft facility which ties up £574k of capital. This, in turn, means that SLL can't use that level of funding for anything else, such as spending on capital projects. By removing the performance bond, SLL will be in a better position to use its banking facility for improvements to the leisure facilities.

- 7.4 The cost of maintaining the performance bond is circa £12k per annum and the proposal from SLL is to reduce the contract price by 10k per annum if Cabinet agrees to the removal of the bond.
- 7.5 The Council anticipates further opportunities in the future to work in collaboration with SLL to develop further proposals to improve the leisure facilities and no doubt freeing up SLL's banking facility will provide SLL with more flexibility.
- 7.6 SLL has given the Council its commitment that if the Council agrees to removing the bond from the three Leisure Contracts, it will absorb any additional costs relating to the introduction of the National Living Wage within their contract sum. Please refer to appendix 1 – letter from SLL.
- 7.7 The Council previously agreed earlier this year to remove a performance bond from the Grounds Maintenance Contract as part of a review and to make financial savings for the Council

8. ACTUAL RISK AND BENEFITS OF THE BOND

- 8.1 SLL is an established operator in the leisure industry, particularly in Hertfordshire and Central Bedfordshire and the demand for the use of leisure facilities is relatively stable. Given SLL's market share within this area and its sound financial standing, officers consider that SLL currently presents a very low risk to the Council. It must also be borne in mind that the performance bond will only cover a limited amount of costs and/or losses for breach of contract and thus leaving the Council to meet any additional costs and losses above the limit.
- 8.2 The bond is drafted as a guarantee bond which is industry standard. Guarantee bonds offer the insurer the opportunity to dispute any alleged breach of contract and, in these circumstances, the insurer does not have to make payment under the bond until any dispute is resolved and that the Council is able to prove additional costs or losses. Therefore, in practice, it can be costly and time consuming to enforce the bond.
- 8.3 In practice, in the event that SLL is in breach of contract which would result in losses or additional costs to the Council, the Council will take immediate measures to mitigate against such costs or losses in order to safeguard a significant income stream for the Council. This would help ensure that the Council avoids additional costs or losses rather than rely on the bond to cover only a limited amount of actual and proven losses or additional costs.

9. LEGAL IMPLICATIONS

- 9.1 Rule 28 of the Contract Procurement Rules sets out the criteria for approving contract variations and the proposed variation does not fall within any criteria. Rule 28.8 confirms that "*Any other variation must be agreed by Cabinet or be formally authorised under another delegated authority.*"
- 9.2 In accordance with rule 28.3 of the Contract Procurement Rules, all contract variations must be in writing and conform to the appropriate Financial Regulations.
- 9.3 The National Living Wage (Amendment) Regulations 2016 came into effect on 1st April 2016 and requires persons over 25 to be paid £7.20 per hour. There is a target to

increase this rate to £9 per hour by 2020 and employers would be expected to act prudently and budget for this increase.

10. FINANCIAL IMPLICATIONS

- 10.1 The Council is advised by SLL that removal of the performance bond would potentially release £574k of SLL's banking facility which would strengthen their financial position, this would also reduced the risk of them failing financially as a company.
- 10.2 The cost to maintain the performance bond would be removed resulting in a reduction in the contract price of circa £10k per annum. SLL currently pay the Council a management fee and the Council would secure an increase of circa 10k per annum to the management fee.
- 10.3 In conclusion, officers consider that it is not cost effective to maintain the performance bond, particularly in the light of financial pressures the Council is facing.

11. RISK IMPLICATIONS

- 11.1 An explanation of the risks are set out in section 8 of this report and in summary Officers consider that the actual risk to the Council in removing the performance bond is low for the following reasons.
- It appears unlikely that SLL will be in breach of contract
 - The bond will only cover a limited amount of any actual and proven losses or additional costs
 - There would be actual costs and delays associated with enforcing the bond
 - Due to the level of income that the Council receives from it leisure centres, it is very likely that the Council will take pre-emptive action to prevent additional costs or losses resulting from any breach of contract. This would negate reliance on the performance bond.
 - The underwriter of the performance bond would expect SLL to defend any allegation of breach of contract thus resulting in delays and potentially a successful defence.
- 11.2 Removing the performance bond would generate a revenue saving for the Council and free up additional capital for SLL. This would improve SLL's financial standing which would, in turn, lessen any financial risks to the Council.

12. EQUALITIES IMPLICATIONS

- 12.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty, described in 12.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.
- 12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give **due regard** to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.3 There is no proposal to change the services provided under the leisure contracts and, as such, there are no equalities implications.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 As the recommendations made in this report do not constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 does not need to be applied.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 There are no human resources implications.

15. APPENDICES

- 15.1 Appendix 1 - SLL letter regarding National Living Wage.

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

None.