

***PART 1 – PUBLIC DOCUMENT**

TITLE OF REPORT: LEISURE MANAGEMENT CONTRACT PROCUREMENT

REPORT OF: THE SERVICE DIRECTOR - PLACE

EXECUTIVE MEMBER: ENVIRONMENT & LEISURE: CLLR STEVE JARVIS

COUNCIL PRIORITY: A BRIGHTER FUTURE TOGETHER

1. EXECUTIVE SUMMARY

1.1 This report seeks the authority to proceed with a Competitive Procedure with Negotiation (CPN) procurement for the Leisure Management contracts which are due to expire in March 2024.

2. RECOMMENDATIONS

2.1 To approve a Competitive Procedure with Negotiation (CPN) procedure for the procurement of the Leisure Management contract.

2.2 To approve the delegation of powers to the Director of Place in consultation with project board, in relation to decisions associated with the development of the procurement strategy.

2.3. To approve letting a 10-year contract with an option to extend by up to 5 years.

2.4 To approve combining the existing three contracts into a single contract, using the nationally recognised Sport England contract format, in order to secure economies of scale and to attract the most interest from the operator market.

2.5 To continue with the principle of the existing contractual shared risk approach to utilities and maintenance.

3. REASONS FOR RECOMMENDATIONS

3.1 Our leisure management contracts expire on 31 March 2024. These recommendations ensure the procurement will be managed effectively to ensure the successful ongoing provision of leisure services in North Herts. The procurement offers an opportunity to review the existing specification and provide a clear policy position on its approach to the future delivery of sport, leisure, physical activity and wellbeing services across the district.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1. Other procurement options to Competitive Procedure with Negotiation have been considered, such as competitive dialogue and restrictive tenders, however CPN is the most common procedure used for leisure procurements, allows us some flexibility to test scenarios through the use of variant bids and also is achievable within our timeframes.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1. On 1 February 2023, an Active North Herts online survey to residents, schools and sports groups was launched for a period of three weeks. The survey asked people to share information on their sport/physical activity facilities, and the types of opportunities and challenges they experience for children and young people to be active.
- 5.2. The findings will provide a better understanding of the barriers faced by people who wish to be more active and the opportunities to overcome these and help develop the new Active North Herts Strategy. A stakeholder workshop was also held on 3 March with cross party councillors and other partners. The strategic outcomes from the strategy will in turn help inform the procurement objectives and specification.
- 5.3. A project board has been established for consultation on the design of the specification and procurement strategy.

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key Executive decision that was first notified to the public in the Forward Plan on 13 February 2023.

7. BACKGROUND

- 7.1. The Council's current leisure management contracts are made up of three contracts.
- Hitchin - Hitchin Swimming Centre including the Outdoor Pool and Archers Fitness
 - Letchworth - North Herts Leisure Centre, Letchworth Outdoor Pool and Fearnhill Sports Centre
 - Royston - Royston Leisure Centre
- 7.2. Leisure continues to make a positive recovery from the Covid-19 pandemic with activity exceeding recovery forecasts. Current usage data shows that across all three North Herts sites, casual swimming, Aqua Ed, sports halls and clubs are above pre-pandemic levels. However, fitness memberships are slightly behind pre-pandemic levels and overall revenue generated from the leisure centres remains below that achieved prior to the pandemic.
- 7.3. The current leisure contracts are operated by Stevenage Leisure Limited (SLL) and are due to expire on 31 March 2024 and therefore need to be procured.

7.4. The proposed timeline for the procurement of the contract arrangement is shown below.

Workstream	Date
Procurement Strategy	By mid March
Develop Tender Documents	By mid April
Contract Notice	w/c 24 April
Selection Questionnaire Submissions	w/c 22 May
Initial Tender Submissions	w/c 28 August
Negotiation with Bidders	w/c 25 Sept
Revised Tender Submissions	w/c 20 Nov
Evaluation	December
Contract Award	Mid Jan
Mobilisation	Mid Jan – Mar
Contract Start	1 April 24

7.5. The Council is developing a new Active North Herts Strategy which will provide the Council and its stakeholder partners with a clear policy position on its approach to the future delivery of sport, leisure, physical activity and wellbeing services across the district. The outputs from this strategy will feed into the procurement and help define the strategic direction for the service moving forwards. As mentioned in 5.1 and 5.2 above.

7.6. A project was initiated using the council's project management processes and a project board has been set up to oversee the management of the project and consider decisions related to the procurement strategy. The project board includes senior officers and the Executive Member for Environment and Leisure, Cllr Steve Jarvis and Cllr Ian Albert, Executive Member for Finance and IT. The Service Director – Place will act as Project Executive and therefore it is recommended that decisions related to the procurement strategy and service specification be delegated to the Service Director Place, in consultation with the project board.

8. RELEVANT CONSIDERATIONS

8.1 Leisure management contracts are typically 10+ years with the option to extend for a further five years. Longer term contracts can generate a better management fee as operators see the opportunity to grow income streams over a longer period.

8.2 In order to secure economies of scale and to attract the most interest from the operator market, it is proposed to use the nationally recognised Sport England contract format to combine these into a single contract document.

8.3 CPN is recommended for the procurement because it will provide:

- A clearly defined scope of services
- A clearly defined services specification, with some aspects for negotiation
- Flexibility to test different scenarios through variant bids before specifying its final requirements
- Sufficient time within the programme

CPN is the most commonly used procedure for procuring new leisure contracts and is therefore a familiar and favoured route for operators.

8.4 The existing contract takes a shared risk approach to the costs of utilities. The Contractor is responsible for all energy consumption. However, in the event that utility base rates increase greater than inflation, in any single year, the Council will amend the management fee to address this. Due to the volatility of the energy market, contractors are reluctant to adopt a full risk approach to energy costs and may unfavourably price our contract, or not bid on this basis. Therefore, it is recommended to continue with a shared risk approach. Potential options on how this will be calculated will be investigated for the new contract. This may need to include a payment back to the Council if utility rates go down.

8.5 The existing contract takes a shared risk approach to the cost of maintenance. The Contractor is liable for the maintenance, repair, replacement or refurbishment, of any single item of equipment up to the value of £7,000. The Council is responsible for any costs in excess of the limit stated. It is recommended that this shared approach to risk is continued for the new contract, however options for how this will be calculated will be considered as part of the development of the procurement documentation.

9. LEGAL IMPLICATIONS

9.1. Cabinet TOR states at 5.6.36 that Cabinet may exercise the following function by resolution; *“To determine those procurement matters reserved to Cabinet by the Contract Procurement Rules.”* The Contract Procurement Rules state at 12.4 that *“the approval of Cabinet must be obtained in advance if this method is selected.”*

9.2. The proposed Leisure Centre contract falls within the definition of a ‘public services contract’ under the Public Contracts Regulations 2015 (‘PCR 2015’) and is above the procurement threshold for services. As such, the procurement is subject to the full application of the procurement rules under PCR 2015.

9.3 It is proposed to use the Competitive Procedure with Negotiation (CPN) for the procurement of the Leisure Centre Contract. The CPN is a specific legislative procurement route set out in the PCR 2015 which allows contracting authorities to negotiate with bidders on various aspects of the procurement.

9.4 Use of this procedure is restricted to the circumstances set out in the PCR 2015, namely:

- Where needs cannot be met without adaptation of readily available solutions;
- Where the works, services or supplies include design or innovative solutions;

- Where the contract cannot be awarded without prior negotiation because of the nature of the requirement, the complexity of its legal and financial make-up or because of its risks;
- Where the technical specifications cannot be established with sufficient precision with reference to particular standards; and
- In the case of where only unacceptable/irregular tenders have been submitted in an open or restricted procedure.

9.5 In order to use the CPN procedure for the procurement of the Leisure Centre Contract, the Council must establish that the procurement of the services falls within one of the grounds above. The justification for use of the CPN procedure is set out in paragraphs 8.1 – 8.5 of this report.

10. FINANCIAL IMPLICATIONS

10.1. Prior to Covid, the Council was receiving an annual management fee from SLL circa £800K. Due to recovery of leisure services not being at pre-pandemic levels and a significant increase in utility costs, there is a risk that the management fee will not meet pre covid levels. Potential options for capital investment in the leisure portfolio which in turn increase the revenue to the council will be tested during the procurement process. This risk has been highlighted in the Council's Medium Term Financial Strategy and Budget reports.

10.2. The Council's capital programme includes significant investment in our leisure facilities. An early part of the contract process is to carry out a condition survey on the leisure centres. This may identify further capital works that are required.

11. RISK IMPLICATIONS

11.1 There is a risk that if the existing three contracts are not merged into one using the Sport England template, that the contract is not considered favourable by the market.

11.2 There is a risk that due to volatility in energy markets that the council will be faced with significant financial liabilities, due to the shared risk approach to utilities. However, this will in part be mitigated by plans to install solar PV and solar thermal technology at the leisure facilities.

11.3 A risk log will be maintained as part of the project management process.

12. EQUALITIES IMPLICATIONS

12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their 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.

12.2 There are no direct equality implications from this decision. The Sport England standard contract sets out very clear Equality requirements (schedule 20) which are based on the requirements of the Equality Act 2010.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 As the recommendations in the report relate to a contract above the WTO GPA threshold, Social Value will be included by an evaluation model allocating a percentage weighting for social value. This will result in a sufficiently high consideration of social value at tendering. The percentage weighting will be 10%
- 13.2 The Social Value Portal may be used to qualify and quantify the social value benefits for this procurement if it has been implemented and correlates with the procurement timetable. If it has not, social value considerations will still be incorporated with reference to strategic themes, measures and outcomes, proportionate to this Leisure Management procurement.

14. ENVIRONMENTAL IMPLICATIONS

- 14.1. There are no known environmental impacts or requirements that apply to this report.

15. HUMAN RESOURCE IMPLICATIONS

- 15.1 A procurement of this size will have considerable resource implications across a range of teams. Meetings and evaluation periods will be planned into diaries well in advance to ensure resource can be appropriately managed, Consultants and specialist lawyers have also been commissioned to assist with the procurement process.
- 15.2 Should TUPE (Transfer of Undertakings Protection of Employment) apply, the TUPE process will be managed in line with current legislation. If other HR issues arise these will be managed under North Herts Councils policies and procedures.

16. APPENDICES

- 16.1 None

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18. BACKGROUND PAPERS

18.1 None