

**Overview & Scrutiny
5 December 2023**

PART 1 – PUBLIC DOCUMENT

TITLE OF REPORT: LEISURE MANAGEMENT CONTRACT AWARD

REPORT OF: THE SERVICE DIRECTOR - PLACE

EXECUTIVE MEMBER: ENVIRONMENT & LEISURE: CLLR STEVE JARVIS

COUNCIL PRIORITY: PEOPLE FIRST

1. EXECUTIVE SUMMARY

- 1.1 This report seeks approval to award the Leisure and Active Communities Contract, due to commence on 1 April 2024.

2. RECOMMENDATIONS

- 2.1 That Cabinet agree to award the Leisure and Active Communities Contract to the successful bidder highlighted in the Part 2 report. Subject to Standstill period.

3. REASONS FOR RECOMMENDATIONS

- 3.1 Our leisure management contracts expire on 31 March 2024. The recommendation ensures the procurement can be undertaken and completed within the project timescales, enabling the successful ongoing provision of leisure services in North Herts.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 None

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 A project board was established for consultation on the leisure management procurement project, which included 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 is Project Executive.

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 October 2023.

7. BACKGROUND

- 7.1. In March 2022, the Council appointed leisure consultants The Sport, Leisure and Culture Consultancy (SLC) to carry out a bespoke diagnostic review, based on Sport England's

Strategic Outcomes Planning Guidance, to support the Council's immediate strategic needs. As a result of the review, a Procurement Strategy was developed to support the leisure procurement project and a new Active North Herts Strategy developed that provides the Council and its stakeholder partners a clear policy position on its approach to the future delivery of sport, leisure, physical activity and wellbeing services across the district. SLC were also commissioned to support the procurement process as project coordinators and legal advisors Trowers and Hamlin were appointed for the procurement.

- 7.2. On 14 March 2023, Cabinet approved the following recommendations to ensure the procurement was managed effectively and ensure the successful ongoing provision of leisure services in North Herts.

14 LEISURE MANAGEMENT CONTRACT UPDATE

RESOLVED: *That Cabinet approved:*

- (1) *A Competitive Procedure with Negotiation (CPN) procedure for the procurement of the Leisure Management contract.*
- (2) *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.*
- (3) *The letting of a 10-year contract with an option to extend by up to 5 years.*
- (4) *The combining of 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.*
- (5) *To continue with the principle of the existing contractual shared risk approach to utilities and maintenance.*

REASONS FOR DECISIONS: *the leisure management contract. 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 sports, leisure, physical activity and wellbeing across the district.*

- 7.3. The development of the Leisure and Active Communities Contract utilises the industry standard Sport England's template for a Leisure Operating Contract. Within the Contract sits the Service Specifications, which provide details of the Council's requirements and performance standards in respect of the various elements of the services. The Specifications are largely output based, therefore the Council will be adopting a Performance Monitoring System to ensure that the service outcomes it requires are met and adhered to, and that continuous improvement is achieved throughout the Contract period. This will ensure that a high quality service is being delivered and also enables the Council to demonstrate the measurable contribution the service is having to the Active North Herts Strategy.

8. RELEVANT CONSIDERATIONS

- 8.1 The procurement process consisted of the following stages; Contract Notice and Standard Selection Questionnaire (SSQ), Invitation to Submit Initial Tender and negotiation, Invitation to Submit Revised Tender followed by Contract Award. A timeline for the procurement of the contract arrangement is shown below.

Workstream	Date
Procurement Strategy	mid March 23
Develop Tender Documents	mid April 23
Contract Notice	w/c 24 April 23
Selection Questionnaire Submissions	w/c 22 May 23
Initial Tender Submissions	17 August 23
Negotiation with Bidders	19 September 23/ 21 September 23
Revised Tender Submissions	8 November 23
Evaluation	w/c 9 November 23
Contract Award	12 December 23
Mobilisation	Jan-March 23
Contract Start	1 April 24

- 8.2 The Council invited expressions of interest through a SSQ from organisations wishing to enter a contract with the Council for the provision of leisure services. This stage was designed as an initial assessment to identify and shortlist suitable potential candidates.
- 8.3 Five leisure organisations expressed an interest in the Leisure Contract at the SSQ stage. Following assessment, the lowest two scoring contractors were excluded, therefore three contractors were taken through to Invitation to Submit Initial Tender stage.
- 8.4 Invitation to Submit Initial Tender (ISIT): This stage applied to Candidates who were shortlisted from the SSQ phase. Bidders were required to provide a Base bid and Mandatory Variants, which provided the Council with information and pricing relating to alternative approaches to the Base Bid requirements.
- 8.5 One of the three bidders who were invited to submit an initial tender subsequently withdrew from the process, advising they did not have capacity within the timescales to submit a tender.
- 8.6 The ISIT submissions were received on 17 August 2023. Two bids were received, and these were assessed on three elements: Quality (45%), Price (45%) and Social Value

(10%). Following evaluation, the Council held dialogue sessions with bidders which informed the Council's requirements for the revised tenders. The areas for dialogue with bidders included:

- Capital investment proposals.
- Letchworth Outdoor Pool.
- Active Communities Programme.
- Energy saving investment.
- Utilities benchmarking mechanism.
- Financial submissions.
- Management fee profiling.
- General points of clarification.

8.7 Following evaluation of the ISIT submissions and the bidder meetings, both bidders were invited through to the revised tender stage.

8.8 Invitation to Submit Revised Tender (ISRT): Following dialogue meetings, bidders were invited to submit revised tenders in response to the Council's agreed requirements, which included delivery of the Council funded health & fitness extension at Royston Leisure Centre.

8.9 The ISRT submissions were received on 8 November 2023. The following table sets out the evaluation criteria and weighting at this stage;

Evaluation Area	% weighting
Price	45%
Quality	45%
Social Value	10%

8.10 **Quality**

The evaluation panel for the quality method statements were Sarah Kingsley (Service Director - Place), Louise Randall (Leisure Manager), Toby Kingsbury and Gaby Sims (SLC). In addition, the Asset Management method statement was also evaluated by the Council's Building and Facilities Manager, Michael Clarke.

The moderation meeting was held on 17 November 2023, led by the Council's procurement officer, Rizwan Sarwar.

In their scored method statements questions, the bidders were asked to provide responses to the following areas:

Evaluation Area	% Weighting
Active North Herts Strategy	7%
Service Quality	7%
Programme Development and Innovation	6%
Active Communities Programme	6%
Sustainability	5%
Asset Management	4%
Marketing and Pricing	3%
Staffing, Training and Development	3%

Letchworth Outdoor Pool	2%
Performance Monitoring	2%

8.11 Price

The bidders' financial submissions were evaluated by Ian Couper (Service Director – Resources) and Antonio Ciampa (Accountancy Manager).

8.12 Social Value

The Social Value Portal was used to measure and evaluate bidders' social value submissions.

8.13 Following evaluation, a preferred bidder has been identified as the most economically advantageous Tender for the Council in line with the evaluation criteria set out in the Tender documentation.

8.14 Following a Cabinet decision to award the contract, a contract award notification letter will be issued to all bidders and a mandatory ten-day (calendar days) standstill period will be observed. The unsuccessful bidder will be offered feedback detailing why their bid was unsuccessful. This will be followed by a contract mobilisation period to establish and embed the new Contracts, prior to a Contract go live date on 1 April 2024.

9. LEGAL IMPLICATIONS

9.1. Cabinet TOR at 5.7.15 states that Cabinet may exercise the following function by resolution; *“To oversee the provision of all the Council’s services other than those functions reserved to the Council.”*

9.2. Local authorities have power to provide recreational facilities such as sports centres and sports staff (but not a duty) pursuant to S.19 of the Local Government (Miscellaneous Provisions) Act 1976. 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. This report is recommending the appointment of the successful tenderer following a procurement exercise under a Competitive Procedure with Negotiation.

10. FINANCIAL IMPLICATIONS

10.1. See Part 2 Report.

10.2. In relation to the health and fitness extension, the Council has allocated funding within its capital programme to fund the costs of this. The Council also allocates funding within its capital programme to fund regular improvements to the leisure centres. These allocations will be updated as part of the 2024/25 budget setting process. The contractor will be responsible for funding the cost of fitness equipment, at contract start and half-way through the initial contract period.

10.3. The Council is responsible for property maintenance costs above £15k. This is a higher threshold than is applied to the current contract.

10.4. The Council asked bidders to assume unit rates in relation to energy costs. The unit rates will be reset at the start of the contract based on market conditions at the time. The

Council will be responsible for price increases throughout the contract, but the contractor will be fully responsible for additional costs that arise from higher usage. The bid prices do not include any potential savings from investment in decarbonisation and energy saving measures. Where the Council funds such improvements (including where they are funded from grants) then the contract price will be renegotiated to allow any relevant savings to come to the Council.

11. RISK IMPLICATIONS

- 11.1 On 28 September, Project Board agreed to condense the project timeline to enable an earlier contract award date, to allow a longer, three-month, mobilisation period. This is to minimise the risk of a new operator not having sufficient time to mobilise the contract. The mobilisation period will be used to establish and embed the new Contract requirements. This period will be managed and monitored to ensure a successful launch of the new contract and to ensure business continuity is delivered.
- 11.2 During the mandatory 10-day standstill period, any unsuccessful bidders could potentially challenge the contract award. Should this happen, all pre contract award discussions must pause until any challenge has been successfully dealt with. This could potentially impact the contract start date. However, the Procurement team is confident that an open and fair procurement process has been conducted; meaning the risk of challenge is deemed low.
- 11.3 In the unlikely event the preferred bidder does not enter into contract, the Council will be required to go back out to the market to conduct a new procurement process. This is deemed a low risk, as all operators have been fully engaged and keen throughout the procurement exercise.
- 11.4 There is a risk that the preferred bidder fails to achieve the level of income predicted in their tender returns. This is mitigated by the fact that their pricing return has been reviewed to ensure it is realistic as part of the evaluation process and references have also been provided and reviewed. The financial standing of the bidders has also been reviewed and will continue to be monitored. Ultimately, the contract will place a requirement on the contractor to pay the management fee. The provider will either have a parent company guarantee or performance bond in place.
- 11.5 As referenced in paragraphs 10.3 and 10.4, there is some financial risk in relation to energy prices and the level of property maintenance that may be required.

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 At the Self Selection Questionnaire (SSQ) stage of the leisure procurement candidates were asked to self-certify they have an equal opportunities policy in place. This was to demonstrate the procurement candidates complied with their statutory obligations under the Equality Act 2010 and the Equality Act 2006. Candidates were also asked to confirm any finding of unlawful discrimination by the employment tribunal, the employment appeal tribunal, or any court or in comparable proceedings in any other jurisdiction. In

addition, they were asked to confirm that they have in place policies for 'Safeguarding Children' and 'Safeguarding Adults at Risk' that meet the requirements of the Hertfordshire Safeguarding Children Partnership (HSCP) and Hertfordshire Safeguarding Adults Board (HSAB). The council is an extended partner of both the Partnership and Board sharing the vision to safeguard and promote the welfare and well-being of adults and risk and children and young people. At preferred bidder stage, the Council will carry out diligence checks with the preferred bidder to ensure they meet expected standards and comply with their relevant statutory obligations.

13. SOCIAL VALUE IMPLICATIONS

- 13.1. As the recommendations in the report relate to a contract above the WTO GPA threshold, Social Value has been considered by using 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 was set at 10%.
- 13.2. The Social Value Portal was used to qualify and quantify the social value benefits for this procurement. On 13 April 2023 Project Board agreed the following TOMS measures would be given prioritisation and valued at (x2) the regular proxy value to recognise key priorities for the service area.

REF	Measure	Prioritisation Multiplier (x2)
NT4	No. of full time equivalent employees (FTE) hired on the contract who are NOT in Employment, Education, or Training (NEETs)	(x2)
NT9a	No. of weeks of training opportunities (BTEC, City & Guilds, NVQ, HNC - Level 2,3, or 4+) on the contract that have either been completed during the year, or that will be supported by the organisation until completion in the following years - delivered for specified groups (e.g. NEETs, under-represented gender and ethnic groups, disabled, homeless, rehabilitating young offenders)	(x2)
NT82	Carbon emissions reductions through reduced energy use and energy efficiency measures - on site	(x2)

14. ENVIRONMENTAL IMPLICATIONS

- 14.1 All bidders were required to submit a scored sustainability method statement and were evaluated on their approach to service delivery and how they will contribute to the Council's aim to achieve net zero carbon emissions by 2030, including identifying energy saving investments, the estimated cost of installation and the projected reduction in energy consumption and costs.

15. HUMAN RESOURCE IMPLICATIONS

- 15.1 There are no direct HR implications arising from this report as the staff for the leisure contract will be directly employed by the successful bidder.

15.2 Transfer of Undertakings Protection of Employment (TUPE) applies to this contract, the TUPE process will be managed in line with current legislation.

16. APPENDICES

16.1 None

17. CONTACT OFFICERS

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18. BACKGROUND PAPERS

18.1 None