

## **ITEM 8      Review of Procurement Process for the tendering of the Leisure Centre Management Contract**

Report of the Head of Community and Leisure Services

### **Recommended:**

**That the process for the procurement of the new Leisure Centre Management Contract, be endorsed.**

#### **SUMMARY:**

- At its meeting in December, OSCOM asked for a report outlining the tender process for the re-letting of the leisure centre management contract.
- The process has been rigorous and followed industry best practice guidelines as structured within the Sport England Toolkit. This report seeks to set out the procurement process.
- Whilst the project is still 'live' and contracts are yet to be signed, the purpose of this report is to remind OSCOM of the process followed to date.

## **1      Introduction**

- 1.1 In October 2014 the Council formally commenced a full market testing exercise for the re-letting of its Leisure Centre Management Contract (see appendix 1 – Cabinet minute 144 refers).
- 1.2 The approach followed industry best practice as outlined by Sport England through a dedicated procurement toolkit (developed for Local Authorities) - the outcome of which culminated in a presentation to Cabinet and Full Council for approval in November 2016.
- 1.3 This report seeks to set out the detail of the procurement and evaluation process.

## **2      Background**

### **2.1      Proposal to market test**

- 2.1.1 Prior to formal consideration for full market testing of the Leisure Centre Management Contract (presented to Cabinet in October 2014) informal consultation was undertaken with other local authorities which had recently undertaken or were going through retendering exercises.

- 2.1.2 This consultation was intended to seek to understand what may be possible in the market (in the current economic climate), what approaches other authorities had considered and why, and ultimately why they approached the process in the way they did. It was also helpful to learn what had gone well and not so well. These site visits and consultations were also helpful in understanding the detail of the significant savings and improved facilities that many had achieved through such processes.
- 2.1.3 At the time, detail was emerging regarding the new Procurement Directives which included only minor changes to the Competitive Dialogue procedure. (CD). The key feature of CD was that it enabled authorities to consider and compare emerging proposals against key outcomes and performance measures, when details of specifically how they may be achieved were not fully prescribed. For this reason CD is the preferred route to market for complex, high value procurements – especially those involving construction and management of facilities. Similarly, both the market and Sport England know what to expect from CD and using it gave us the opportunity to give bidders scope to define parts of the details within our specification.
- 2.1.4 Prior to formal consideration of full market testing, consultation was undertaken with National Governing Bodies (NGB's) regarding future demands for local sporting facilities. This was based upon population forecasts and projected facility demands and fed into the preparation of Test Valley's Sport and Recreation Strategy.
- 2.1.5 Given the above, and the value, potential complexity and importance of the Leisure Centre Management Contract, legal and procurement consultancy support was proposed for 'helping to take us through' such a process – with the nature of what that process might look like being the product of a future report. A corporate project board and project team were also established consisting of a Corporate Director, Heads of Legal and Democratic, Estates and Economic Development, Finance and Community and Leisure Services, along with project management and professional officer support. This approach is both pragmatic (and necessary given the value and importance of the project) and is consistent with the approach taken by many of the Authorities visited at pre-feasibility stage.

## **2.2 Proposal to appoint independent procurement consultants**

- 2.2.1 Formal approval to market test was quickly followed by a procurement process to appoint appropriate independent procurement support - which culminated in a report to Cabinet in March 2015 (see appendix 2 – Cabinet minute 299 refers) seeking to appoint RPT consulting.
- 2.2.2 The brief for RPT was to lead on the development of the procurement process, specification, scope of contract and the approach to the evaluation of prospective bids and bidders for the contract. It was also to provide professional corroboration and independent reassurance surrounding the use of a procurement process which we were not experienced at using. This in turn informed our understanding of market positions in relation to the Sport England Toolkit, where to 'pitch' our initial specification, and provided a suite of document templates.

- 2.2.3 Following RPT's appointment, further consultation was undertaken with stakeholder such as HCC (as landowner for the Andover Leisure Centre site), VL (as incumbent operator) and Sport England and high level key outcomes were refined. This culminated in a third report to Cabinet in September 2015 outlining the proposed procurement approach and seeking formal authority to tender (see appendix 3 – Cabinet minute 116 refers).

## **2.3 Procurement Strategy and Authority to Tender**

- 2.3.1 In addition to setting out the procurement strategy, the report also sought to delegate authority to commence with a CD procurement process and report back to Cabinet (and full Council) in November 2016.
- 2.3.2 Crucially, this report also set out high level outcomes which were believed to be feasible. Based upon market intelligence, this included;
- (a) Reduced revenue subsidy (diminish management fee paid to operator)
  - (b) Risk transfer (life cycle / maintenance costs transferred to operator)
  - (c) Major capital investment (in particular at ALC), and
  - (d) On-going service development
- 2.3.3 This report also highlighted the proposed use of the Sport England toolkit, DBOM (Design, Build, Operate and Maintain) contract, and the approach to dealing with the VL pension deficit liability – which was subsequently (and confidentially) reported to Cabinet in September 2015.

## **2.4 Procurement and evaluation process**

- 2.4.1 Being informed by market intelligence and having prescribed the outcomes to be achieved, the Sport England Toolkit drove a prescriptive process that followed the CD procedure. Whilst extremely rigorous, the process had to follow a prescribed format to mitigate the risk of subsequent challenge, once authority to tender had been granted.
- 2.4.2 The template documents in the Toolkit and guidance from RPT provided clear stages and milestones to progress from advertising to awarding the contract. The Sport England DBOM contract provided a framework for the contract that was adapted to our requirements. The Toolkit and DBOM contract have been refined over a number of years by Sport England and provide a structured, standard approach to procurements of this nature in a format that is understood by the market and is compliant with procurement legislation.

### **Specification**

- 2.4.3 The development of the contract specification was grounded in the Council's own Sport and Recreation strategy which included consultation with all NGB's as to the suitability and supply of current facilities and intelligent forecasting of future need based on participation and population forecasts. (This justified the requirement for our specifying an increase in swimming pool capacity in Andover, for example).

- 2.4.4 At over 40 years old, what was less clear was the suitability of the current ALC building for the ‘lifespan’ of the next contract. Equally there was uncertainty whether requiring tenderers to bid on the basis of a full capital replacement of ALC was achievable in addition to the outcomes described in 2.3.2 therefore the option for either a major refurbishment or a new-build was ‘left open’ in the tendering process for bidders to ‘bid back’ on, based upon their own assessment of viability against the service and evaluation outcomes.

Whilst it may be obvious to say that a ‘new build’ will inevitably cost more than a refurbishment (in capital terms) the lifecycle costs for a new build are likely to be significantly less (in terms of overall capital and revenue) so this ‘option’ was left open to bidders to consider based on their own experience / expertise.

- 2.4.5 In terms of service provision, ALC (and the portfolio generally) was considered to be fit for purpose and not ‘lacking’ in terms of capacity or need other than for swimming. In fact, with many schools now making their sports halls available to the community (something that wasn’t prevalent when the contract was first let) the need for sports hall space has actually reduced. However, because of the need for a hall for civic events, elections etc the requirement for a main hall of similar size to that which is there currently, remained.
- 2.4.6 What was clear however is that with ALC as one of the oldest and most expensive building to manage and maintain within the Council’s property portfolio significant investment in the facility would be necessary to enable service continuity. (Ultimately and in its simplest terms, what is proposed is a new building to enable service continuity, as opposed necessarily, to a new service).
- 2.4.7 The proposed specification, summarised to Cabinet in September 2015, was based upon data analysis, supply and demand forecasts, market intelligence and independent professional advice. The specification itself is a large document, but the descriptive document (which forms part of the suite of contract documents) outlines ‘the opportunity’ as it was to be described to the market and via our OJEU notice. For completeness, the descriptive document is attached – appendix 4

### **Evaluation Model**

- 2.4.8 Contract Standing Orders set out standard terms for running procurement processes. However, having sought authority to use the Sport England toolkit, the evaluation model criteria were established in general accord with the weighting proposed in the methodology within it. This placed equal emphasis on financial performance as it does on service, legal and technical performance.

## 2.4.9 Evaluation criteria weighting is shown in table 1 below

Tier 1	Tier 1 Weighting	Tier 2	Tier 2 Weighting
<b>Services</b>	40%	Delivery against Outcomes Framework	20%
		Quality and Customer care	5%
		Operational Delivery and Service Development	15%
<b>Technical</b>	10%	Capital Development & Design	5%
		Planning Risk	2%
		Maintenance Proposals	3%
<b>Commercial</b>	50%	Usage, Expenditure and Revenue	10%
		Affordability	20%
		Risk and Contract Acceptance with Performance Guarantees	10%
		Capital Investment Plan	7.50%
		Delivery & Risk	2.50%

2.4.10 Evaluation within each of these criteria was broken down into further sub-criteria (3 levels) in some cases to within 0.5%. For every area, scores were allocated on a scale of 0-5. So for example, for criteria that may score 1% of the overall marks and where the bidder scored 5, they would be given full marks (1%). If they scored 4, they would receive 80% of the marks (0.8%) and so on.

2.4.11 The evaluation criteria is outlined in full in appendix 5

2.4.12 Whilst this proved to be a labour intense element within the process, it also ensured a very robust and objective score based entirely on the prescribed evaluation criteria. ('Liking' elements of one bid or bidder over another would not and could not influence the final score. It is to this end that the process, once started, becomes automated, but is extremely robust).

### **Procurement process and timeline**

2.4.13 Competitive Dialogue gives the opportunity to advertise the broad aims of our requirement and gives bidders the chance to discuss the options that they are considering with us before submitting their final tender. This increases the chances that we will receive one or more affordable bids that meet our requirements and gives the market more scope for innovative solutions.

2.4.14 The amount of work involved for bidders and buyers is far higher than a standard tender process. This is partly due to CD only being used for complex, high value projects or requirements and also due to CD requiring more communication over a longer period than a standard tender.

2.4.15 During the process the number of bidders is reduced to minimise bidding costs for those who are unlikely to win and to ensure effort is focussed on those who have a reasonable chance of winning.

- 2.4.16 The opportunity was advertised in OJEU in early November 2015 and the full suite of procurement documents were made available on our website to allow potential bidders to review the information before deciding if they wished to submit a Pre-Qualification Questionnaire before the deadline of 8th December 2015.
- 2.4.17 The PQQ was based upon the standard Government template and is used to check bidders' experience and that we are able to do business with them - e.g. financial standing, insurances, no history of bribery or corruption, etc.
- 2.4.18 A Bidders Open Day was held on 20th November 2015 and was attended by nine organisations. The open day included a presentation that gave an overview of the opportunity and a tour of our leisure facilities.
- 2.4.19 Eight PQQs were received of which five passed. The unsuccessful bidders were given feedback as to the reasons why they were not progressing to the next stage.
- 2.4.20 The next stage was Invitation to Submit Detailed Solutions (ISDS) during which Dialogue Meetings with bidders started.
- 2.4.21 Dialogue is what sets CD apart from other procurement procedures as it gives bidders the chance to discuss the opportunity with the buyers and get feedback on their approach before submitting a bid. This allows bidders to discuss innovative solutions without risking that their bid is rejected if the buyers are not able to accept something that is suggested.
- 2.4.22 To ensure that all bidders are treated equally all bidders are given the same amount of time for Dialogue. All Dialogue Meetings were attended by the core evaluation team with further input as and when required from the legal/contracts, financial technical/facilities and leisure evaluators.
- 2.4.23 Due to the amount of work put forward from bidders, and the commercially sensitive nature of this information, strict protocols were adhered to regarding 'non-disclosure' of information. This is in part why it was a 'closed' process to Councillors until final evaluation (along with also ensuring absolutely impartiality and objectivity for the integrity of the process).
- 2.4.24 In addition to dialogue we shared non-commercially sensitive questions and answers with all bidders to ensure that all bids were based upon the same assumptions. While sharing information in this way is common to any procurement process the volume of questions during CD is far higher than for a standard tender given the complexity of the subject and the importance of every detail in high value contracts.
- 2.4.25 During this stage one bidder informed us that they were withdrawing from the process and the remaining four bidders submitted their proposals (ISDS).
- 2.4.26 These were evaluated fully by the core evaluation team (comprising of officers from Community and Leisure, Legal, Finance, (including audit and procurement) and Estates and Economic Development Services, with relevant sections also being evaluated by independent experts in legal/contracts, finance, technical/facilities and leisure.

- 2.4.27 The scores were collated by RPT and then moderated by the evaluation team to ensure that each score was allocated in accordance with the evaluation methodology and that there were adequate reasons why that score had been given.
- 2.4.28 One bidder was removed at this stage and three proceeded to Invitation to Submit Final Tenders (ISFT). It is common to invite two or three bidders to ISFT and this is usually decided by the margin between the scores of the second and third placed.
- 2.4.29 Feedback was given to all bidders so that the unsuccessful bidder knew why they were not proceeding and the remaining bidders could see which parts of their bid were strong and which could be improved.
- 2.4.30 The documents were reviewed and updated before ISFT to incorporate information that had been clarified during CD and to update the affordability threshold as all bidders had scored full marks for this section despite there being a significant margin between the bidders' projected income to the Council.
- 2.4.31 The ISFT were issued on 5 August 2016 with tender opening due by 26 September 2016. Two further Dialogue meetings were held with each bidder. In this stage bidders updated their ISDS submission to improve areas where they did not score highly or where the requirement had changed - such as affordability.
- 2.4.32 All three bids were received and evaluation was undertaken as at ISDS. Bidders were informed of the decision along with a feedback letter that included scores each of which were backed up by a justification that was linked to the evaluation criteria.
- 2.4.33 Given the granular nature of the evaluation criteria and the amount of care taken by bidders to refine their scores between ISDS and ISFT it is not surprising that scores were very close. A difference of 1 or 2 percent is not unusual for CD.
- 2.4.34 The evaluators' role is to apply the evaluation criteria as described in the documents and to demonstrate impartiality to all bidders. We are required to use objective criteria and to provide justification for each score in the feedback letters to bidders. This ensures fairness and transparency and provides a defensible position if a procurement decision is challenged. Throughout the process evaluators are required to maintain confidentiality with each bidder.
- 2.4.35 During this time, from September 2015 to November 2016 progress was reported via the Members Information Bulletin;
- (a) November 2015 – confirming expressions of interest received and 'bidders day' being held.
  - (b) January 2016 – confirming the formal submission of eight PQQ's, the shortlisting of these down to five companies to enter the next stage of the procurement process and to engage in dialogue with these companies from Jan to March 2016.

- (c) June 2016 – confirming that of the five companies invited to submit proposals, all had been evaluated, and that three would be taken through to the final stage (to engage in further dialogue from July to September 2016 and to then submit a final tender by the end of September 2016).

2.4.36 In January 2016, Cllr Ward was invited to OSCOM to present and discuss the performance of his portfolio. Much of this discussion centred on the Leisure Contract, and the potential to improve upon the commercial position of the contract for the Council, and that a formal report would be presented to full Council towards the end of the year once dialogue had closed and proposals evaluated.

2.4.37 The next report to Cabinet was November 2016 (recommending contract award) – this is the same confidential report that was presented to Full Council (it is not included in the appendices to this report as it contains commercially sensitive information).

### 3 Corporate Objectives and Priorities

3.1 The Council's Corporate Plan 2015-19, 'Investing in Test Valley' outlines our vision and priorities for the four years to 2019. The Corporate Plan sets out four priority aims which focus on ensuring the Borough remains a great place to:

- Live, where the supply of homes reflects local needs
- Work and do business
- **Enjoy the natural and built environment**
- Contribute to and be part of a strong community

3.1.1 As part of "**Enjoy the natural and built environment**" aim, the Council made a commitment to improve and deliver new leisure facilities for the Borough. Through the Corporate Action Plan (CAP) which shows in detail how the Council will make progress against these priority aims, Cabinet included the project to prepare and let a new Leisure Management Contract.

3.2 It is perhaps premature to evaluate the success (or otherwise) of the procurement process and the achievement of the outcomes required, as the process remains 'live' as due diligence continues and contracts are still to be signed.

3.3 In terms of a structured process that allows the development of solutions and options with bidders, it is fair to say that the CD process has been suitably flexible to allow open dialogue to refine bids, whilst at the same time being robust in terms of providing structure and absolute objectivity to evaluation (and the evidencing of this).

### 4 Conclusion

4.1 The CD process is the best way to ensure the Council achieves the best 'bang for its bucks' and the best outcome for the community. That said, it is unlikely that the Council will use it in the near future as reasons for using CD are closely linked to the subject of the contract.



- 4.2 There needs to be a lack of certainty as to the detail of what is to be procured and flexibility for bidders to respond to the means of achieving the outcomes described. The contract must also be worth many £Millions, otherwise the bidding costs associated with CD is likely to result in no bids coming forward and/or a lot of wasted time.

Background Papers (Local Government Act 1972 Section 100D)

Confidentiality

It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.

No of Annexes:	5 <ul style="list-style-type: none"> <li>• 3 Cabinet reports as referenced (excluding Pensions report 28 October 2015 and Preferred Bidder report from 2<sup>nd</sup> and 9<sup>th</sup> November 2016 which were both confidential)</li> <li>• extract from descriptive documents</li> <li>• evaluation criteria</li> </ul>		
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