



AGENDA ITEM: 8

SUMMARY

Report for:	Cabinet
Date of meeting:	
Part:	I
If Part II, reason:	<p>The Procurement Report is a Part 2 document as the report contains information relating to the financial or business affairs of the companies bidding for the contract.</p> <p>The report also contains information, which could be subject to a claim for legal professional privilege.</p> <p>(Local Government Act 1972, Schedule 12A, Part 1, Paragraphs 3 & 5).</p>

Title of report:	Operating Contract for the Management of Leisure Services
Contact:	<p>Cllr Neil Harden, Portfolio Holder for Residents and Corporate Services</p> <p>Author/Responsible Officers;</p> <ul style="list-style-type: none"> • Robert Smyth, Assistant Director (Performance, People & Innovation)
Purpose of report:	For Cabinet to review and approve the award of the contract for the management of the Council's leisure portfolio.
Recommendations	<p>That Cabinet approve the following recommendations:</p> <ol style="list-style-type: none"> 1. To award a 10-year contract (with an option to extend for a further 5 years) to Sports and Leisure Management Ltd (known as Everyone Active) for the delivery of the Leisure Services Contract. 2. To delegate authority to the Assistant Director (Performance, People & Innovation) in consultation with the Solicitor to the Council, Corporate Director (Finance and Operations) and Portfolio Holder for Residents and

	<p>Corporate Services to finalise the terms of contract.</p> <p>3. That Cabinet note that there will be a variation to the contract sum to take account of the final list of transferring employees under TUPE and authorise the Assistant Director (Performance, People & Innovation) in consultation with the Corporate Director (Finance and Operations) to agree the final contract sum.</p>
Corporate Objectives:	Clean, Safe and Enjoyable Environment – Leisure provision is central to delivering a borough that people can enjoy. This review will help ensure our approach continues to meet the needs of current and future residents.
Implications: Value For Money Implications'	<p><u>Financial</u></p> <p>The recommendation for the award of this contract would deliver a significant financial return for the Council over the contractual term compared to the current situation whereby the Council pays a subsidy. It would also lead to new investment in the facilities.</p> <p><u>Operational</u></p> <p>The recommendation for the award of this contract would ensure that the Council is managing its leisure services in the most effective way possible. The Service Specification and Leisure Operating Contract (and the performance framework) will also ensure that operational performance is delivered in the way the Council wants.</p> <p><u>Value for Money</u></p> <p>The recommendation for the award of this contract would deliver significant value for money through a positive financial return and improved quality of service.</p>
Risk Implications	<p>There is always a risk that the contract would not deliver the level of management fee proposed. However, this is mitigated by the detailed analysis that has been undertaken on the financial and quality returns including with specialist support from our leisure consultant. There are legal risks as identified in the report and the financial and procurement implications need to be considered.</p> <p>However, all these risks would be managed through careful planning and project management and by ensuring that sufficient resources are allocated to this process.</p>
Community Impact	Community Impact Assessment carried out and it identifies no adverse impact on the community. Furthermore, the nature of the service is such that it is expected that this contract will have a positive community impact.
Health And Safety	The new contract will improve the management of health and

Implications	safety in relation to leisure. The Service Specification and Asset Management Responsibilities Matrix (which form part of the Leisure Operating Contract) will ensure that the operator is taking a robust approach to the management of health and safety. Furthermore, the Council will receive more information and assurance that health and safety management is in line with the latest legislation and good practice.
Monitoring Officer/S.151 Officer Comments	<p>Monitoring Officer:</p> <p>The proposed award of contract follows a regulated and competitive procurement process. The process has been supported by specialist industry consultants including support from external contract and procurement lawyers.</p> <p>The successful bidder will enter into an operating contract which is based on a Sport England Model with bespoke amendments relevant to the contracted services and as such is deemed a robust contract for enforcement and performance monitoring purposes.</p> <p>S.151 Officer</p> <p>The viability of the payments to the Council proposed within the winning bid rests on the accuracy of the income and expenditure projections within that bid. The assumptions underpinning these projections have been tested by the Service in conjunction with the Council's retained consultants and they appear reasonable.</p> <p>As with all commercial contracts, it is imperative that the Council monitors the provider's performance robustly, from the start of the contract and throughout, in order to mitigate the risk of underperformance and/or non-payment.</p> <p>More detail is included within Part II of this report.</p>
Consultees:	<p>The following stakeholders have been consulted:</p> <ul style="list-style-type: none"> • Chief Executive • Portfolio Holder – Residents and Corporate Services • Corporate Director – Finance and Operations • Solicitor to the Council and Monitoring Officer • Group Manager – Procurement, Commissioning and Compliance
Background papers:	<ul style="list-style-type: none"> • Procurement Report Attached (Part II) • Community Impact Assessment Attached
Glossary of acronyms and any other abbreviations used in this report:	<ul style="list-style-type: none"> • TUPE - Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) • TSC - Tring Sports Centre • RLP - Ridgeway Learning Partnership • DST – Dacorum Sports Trust • DUA – Dual Use Agreement

1. Introduction

- 1.1 Ensuring residents have access to high quality leisure provision is central to the Council's corporate plan commitment to "*deliver a clean, safe and enjoyable environment*".
- 1.2 The Council has recently undertake a tender process for the management of its leisure services.
- 1.3 The following report therefore sets out the results of that process and recommendation for the award of the contract.

2. Background

The Existing Approach

- 2.1 In 2004, the Council created Dacorum Sports Trust (DST operating as 'SportSpace') and gave it responsibility for managing the Council-owned facility portfolio of Hemel Hempstead Leisure Centre, Berkhamsted Leisure Centre and Jarman Park Athletic Track.
- 2.2 As part of the contract, the Council also passed over obligations to operate the school-based dual use leisure facilities at Tring School, Hemel Hempstead School, and Longdean School.
- 2.3 In the last 14 years, the Council has paid grant subsidy for the management of the facilities. In addition, it provided a grant for sports development.

The Leisure Review

- 2.4 In May 2016, the Council commissioned a review of its leisure services. The review used a range of methodological tools including Sport England data, consultation with key stakeholders, surveys of local clubs and use of the Sport England Facilities Planning Model.
- 2.5 In December 2016, Cabinet considered the review, which concluded that the introduction of a new commercial contract could deliver a range of benefits including new innovations, improved performance and greater value for money for Dacorum taxpayers.
- 2.6 In March 2017, Cabinet approved the decision to terminate the existing agreement and to commission an operator to manage the Council's leisure facilities.

3. Preparing for Procurement

- 3.1 A leisure consultant (The Sports Consultancy) has been appointed to support the procurement process. Specialist legal advisors (Browne Jacobsen) have also been retained to help draft the relevant documentation and to respond to any legal queries.
- 3.2 The Council has undertaken a number of consultation activities to help understand what Members, clubs and users want in a leisure contract.
 - Consultation workshop with 8 Members
 - Consultation workshop with 31 residents and local sports club representatives
 - A survey of all 51 Members
 - A survey of local sports clubs
 - Interviews with representatives from sports clubs and Herts Sports Partnership
 - Reviewing written responses from clubs and users
- 3.3 The Service Specification, Assets Management Responsibilities Matrix and the Leisure Operating Contract have been produced with input, support and knowledge of senior officers from a number of areas across the Council. This includes Finance, Regulatory Services (inc. health and safety), Asset Management, CCTV, Resident Services, Procurement, IT, HR, Community Partnerships and Legal Services.
- 3.4 The Service Specification has also been reviewed by a Panel of Members to ensure that our approach is in line with the expectations of Councilors.
- 3.5 In June 2017, Cabinet reviewed and approved the key principles for the procurement of a new leisure management contract. This considered the key service standards within the Service Specification and the criteria for evaluation.
- 3.6 In July 2017, Audit Committee considered an independent leisure services procurement assurance review undertaken by Mazars. This concluded that the “*procurement process appears efficient, effective and compliant*”. The review also found that decision-making and governance arrangements were sufficient and in line with best practice.

4. The Leisure Operating Contract – Key Elements

Contract Term

- 4.1 The contract length is for a period of ten years with a potential five-year extension. This is due to commence on 1st April 2018.

Facilities

- 4.2 In line with the termination of the Funding Agreement and Lease Agreements, the following facilities have been included in the Leisure Operating Contract:

- Berkhamsted Sports Centre
- Hemel Hempstead School Courts (Dual-Use)
- Hemel Hempstead Sports Centre
- Jarman Park Athletics Track
- Longdean Sports Centre (Dual-Use)
- Tring Sports Centre (Dual-Use)

- 4.3 In parallel to this process, the Council has also been in discussion with Ridgeway Learning Partnership (RLP) about the future of Tring Sports Centre (TSC).

- 4.4 The Council will be bringing forward a Cabinet paper (Tring Sports Centre Management Responsibility) in January that sets out the Council's response (and recommendations) to this suggestion.

Contract Model

- 4.5 The operator will be responsible for managing and maintaining the facility in line with the Council's Service Specification, Asset Management Responsibilities Matrix and their Method Statement responses.
- 4.6 They will retain any profit (or absorb any loss) from the contract and they will provide the Council with an annual management fee (as outlined in their financial return).

5. The Procurement Process

Bidding Assumptions – TUPE and Equipment Costs

- 5.1 In advance of the tender, the Council requested key information including an up-to-date employees list (with terms and conditions), membership data and details of equipment.
- 5.2 However, as this information was not provided, the Council has given bidders a series of 'bidding assumptions' and a guarantee that they will be in a "no better, no worse" financial situation if the real position is different to the assumption.
- 5.3 This difference would be addressed through a variance to the management fee and a mechanism for agreeing the variance will be set out in the contract.

Minimum Criteria

- 5.4 Bidders were required to meet a series of 'Minimum Requirements' to ensure an appropriate level of financial sustainability.
- 5.5 This requirement has been assessed by the Finance Team and separately by the leisure consultant.

The Tender Process

- 5.6 The Council has used an OJEU open tender process. This is the Open Procedure pursuant to the Public Contracts Regulations 2015 ("Regulations"). The tender was managed through the Supply Hertfordshire e-tendering portal and on the Government 'Contracts Finder' e-tendering portal.
- 5.7 The process ran from 14th August to 8th November. This included two extensions following a request from Bidders.
- 5.8 During this period, Bidders were able to submit clarification questions (the Council received 147) and attend one-to-one clarification meetings. They could also arrange site visits and inspect equipment and machinery.
- 5.9 As part of the evaluation process, the Council has also issued a number of clarification questions to Bidders.
- 5.10 The bids were evaluated against pre-determined award criteria (60% quality and 40% price), which included:-

Evaluation Criteria	Sub Headings	Overall Score	Evaluation
Price	(Bidder's Proposed Management Fee ÷ Best Management Fee) x 40	40%	Tender Documents
Minimum Requirements	Tenderers must satisfy the requirements in Appendix A	Pass / Fail	Appendix A document
Quality	(Method Statement 1) Operator's approach and strategy to activity Programming & Pricing including: Activity Programming, Pricing Requirements and Opening Hours	15%	Tender Documents
	(Method Statement 2) A focus on outcomes for Sports Development and Outreach	13%	Tender Documents
	(Method Statement 3) Operator's approach to Customer Service & User Experience including: Customer Service, Event Management & Marketing & Publicity	12%	Tender Documents
	(Method Statement 4) Facilities management including: Catering and Vending, Cleaning, Maintenance of Buildings, Access, Water, Drainage, Ventilation, Heating, Lighting etc.	10%	Tender Documents
	(Method Statement 5) Operator's approach to Staffing including: Staffing, Safeguarding, Health and Safety Management	5%	Tender Documents
	(Method Statement 6) Provision of Financial Reporting and information sharing including: IT, Business Records and Operating Performance	5%	Tender Documents

5.11 The criteria was assessed qualitatively using the scale below. Each of these criteria was scored out of five and multiplied by the attributed weighting shown in the Evaluation Criteria table above.

Score	Guidance
5	Excellent response that meets all Authority expectations for delivery of the contract with a high level of justification and a strong emphasis on an innovative, approach that adds value
4	High standard response that meets all Authority expectations for delivery of the contract with no reservations on achievability and appropriateness.
3	Good response, which generally meets Authority expectations for delivery of the contract, but with minor reservations on achievability and/or appropriateness.
2	A below expectation response for delivery of the contract, only meeting a small number of the Authority expectations and with reservations on its appropriateness and achievability.
1	Poor response, with reliance on generic statements, barely meeting Authority expectations.
0	Very poor generic response, which fails to meet Authority expectations for reasons of irrelevance, lack of appropriateness and/or concerns over achievability.

- 5.12 Bidders were also provided with guidance on what we would expect to see in the Method Statement (see Appendix 1).
- 5.13 To evaluate the overall management fee, tenderers completed a full 10-year operating model using the Council's template and provided supporting commentary to explain the assumptions that underpinned their proposal.
- 5.14 Each bidder's management fees were scored by reference to the highest proposed management fee payable to the Council of all bids received (the "Best Total Proposed Management Fee"). The bidder proposing the Best Management Fee scored the maximum of 40% and lower bids were scored against the Best Management Fee.

Evaluation

- 5.15 The evaluation was undertaken by a panel of Senior Officers from Community Partnerships & Leisure, Procurement and Finance, supported by the Council's Leisure Consultants.
- 5.16 In addition, senior officers from various departments including Resident Services, Regulatory Services, HR, ICT and Asset Management reviewed responses to relevant Method Statements.
- 5.17 Eight organisations registered on the portal and three engaged in the clarification process and the Council received tenders from two bidders:
- Dacorum Sports Trust (known as Sportspace)
 - Sports and Leisure Management (known as Everyone Active)

Minimum Requirements

- 5.18 Bids were assessed against the Minimum Requirements. This includes grounds for mandatory exclusion, grounds for discretionary exclusion, economic & financial standing, technical & professional ability, modern slavery, and additional questions on insurance, equality and environmental management.
- 5.19 Both tenderers passed the minimum requirements check.

Quality Evaluation

Analysis of the scores is provided in Part II.

Method Statement	Weighting	DST	SLM
(Method Statement 1) Operator's approach and strategy to activity Programming & Pricing including: Activity Programming, Pricing Requirements and Opening Hours	15%	3 (9%)	4 (12%)
(Method Statement 2) A focus on outcomes for Sports Development and Outreach	13%	3 (7.8%)	5 (13%)
(Method Statement 3) Operator's approach to Customer Service & User Experience including: Customer Service, Event Management & Marketing & Publicity	12%	3 (7.2%)	4 (9.6%)
(Method Statement 4) Facilities management including: Catering and Vending, Cleaning, Maintenance of Buildings, Access, Water, Drainage, Ventilation, Heating, Lighting etc.	10%	4 (8%)	4 (8%)
(Method Statement 5) Operator's approach to Staffing including: Staffing, Safeguarding, Health and Safety Management	5%	3 (3%)	3 (3%)
(Method Statement 6) Provision of Financial Reporting and information sharing including: IT, Business Records and Operating Performance	5%	4 (4%)	4 (4%)
Total Score	60%	39%	49.6%

Financial Evaluation

Details of the financial evaluation are provided in Part II.

6. Awarding the Contract – Issues to Consider

- 6.1 In considering the recommendations of the report, Cabinet need to be aware of a number of implications that would occur if the contract were awarded.

Management Fee Profiling

- 6.2 Details of the implications of fee profiling are included in Part II of this report.

Tring Sports Centre Management Responsibility – Cabinet Paper

- 6.3 Details of discussions with Tring School in relation to Tring Sports Centre are included in Part II of this report.

Capital Improvements

- 6.4 Details of potential capital improvements are included in Part II of this report.

Breakage Costs

- 6.5 As noted in the Leisure Cabinet Report (December 2016), the existing Funding Agreement (on which notice has been served), contains a clause, which makes the Council liable for any actual costs and expenses reasonably incurred as a direct result of the Council exercising the termination clause.

- 6.6 Details of the potential costs are included in Part II of this report.

Legal Implications

- 6.7 Details of potential legal implications are included in Part II of this report.

7. Award and Implementation

Award

- 7.1 Following approval from Cabinet to award the contract, there will be a five-day call-in period after the publication of the cabinet minutes.
- 7.2 A Standstill period will then apply from Wednesday 27 December until Monday 8 January (to account for the Christmas period).

Implementation

- 7.3 A Leisure Mobilisation Group will be set up to work with the operator to manage the mobilisation and launch.

8. Recommendations

- 8.1 To award a 10-year contract (with an option to extend for a further 5 years) to Sports and Leisure Management Ltd (known as Everyone Active) for the delivery of the Leisure Services Contract.
- 8.2 To delegate authority to the Assistant Director (Performance, People & Innovation) in consultation with the Solicitor to the Council, Corporate Director (Finance and Operations) and Portfolio Holder for Residents and Corporate Services to finalise the terms of contract.
- 8.3 That Cabinet note that there will be a variation to the contract sum to take account of the final list of transferring employees under TUPE and authorise the Assistant Director (Performance, People & Innovation)) in consultation with the Corporate Director (Finance and Operations) to agree the final contract sum.

Appendix 1

SUBMISSION REQUIREMENTS AND GUIDANCE

Table Submission requirements and guidance

Title	Description	Weighting	Guidance
Method Statement One	Activity Programming and Pricing Requirements, including: opening hours	15%	<p>Part 1C of the Services Specification (Service Performance Requirements)</p> <p>Bidders should demonstrate a balanced programme of usage and activities at each facility, in order to meet the needs of the catchment area. The programmes should be responsive to changes in demand and market trends. Bidders should indicate how the programming and activities will be delivered (with relevant examples as appropriate), and contribute to a commercially sustainable offer.</p> <p>Taking into account the Authority's required discounts for certain target groups, as set out in the Services Specification ('Authority Pricing Requirements'), in setting their proposed user prices, Bidders should demonstrate what research they have undertaken and why prices have been set at a certain level. Bidders are required to indicate peak and off-peak user prices for all activity areas, as well as for memberships, block bookings, and casual usage across all user groups (adult, junior, senior, concessions). Bidders should recognise the requirement for some of these user prices to be protected by the Authority ('Core Prices'), as set out in the Services Specification.</p> <p>Bidders should also make clear how the prices contribute to balancing community use with ensuring commercial success.</p>
Method Statement Two	Sports Development and Out Reach,	13%	<p>Part 1C of the Services Specification (Service Performance Requirements)</p> <p>Bidders should demonstrate how they will help the Authority to embed their new Sports and Physical Activity Strategy.</p> <p>Bidders should demonstrate a focus on outcomes for sports development, outreach and associated wider agendas for improving participation and activity and explain how these outcomes will be achieved, linking their method statement to proposals for community outreach, balanced programming, pricing and marketing.</p> <p>Referring to the required outcomes set out in the Services Specification, Bidders should explain how they will encourage greater participation in under-represented groups and help to address inactivity to reflect the Authority's forthcoming Sport and Physical Activity Strategy, as well as the Sport England Strategy.</p>

Title	Description	Weighting	Guidance
Method Statement Three	Customer Service and User Experience, including: Event Management, Marketing and Publicity,	12%	<p>Part 1C of the Services Specification (Service Performance Requirements)</p> <p>Bidders should outline their approach to customer care and how it will be used to improve overall customer experience.</p> <p>Bidders should indicate how data collected from user surveys, general customer research and market trend information would be used to improve services, products and increase participation. Bidders should also provide details of their complaint procedures.</p> <p>Bidders should demonstrate their approach to event management and outline their approach to balancing sporting and non-sporting events.</p> <p>Bidders should demonstrate their approach to marketing and public relations indicating how their marketing activity will promote use of the facilities and support both community and commercial outcomes. Responses should indicate how Bidders would address the development of a relevant annual Marketing Plan(s) that reflects local trends, venue capacity, target use and the social demographics of the area.</p>
Method Statement Four	Facilities Management including: Asset Maintenance; Cleaning; Catering & Vending	10%	<p>Part 1D of Services Specification (Facilities Performance Requirements)</p> <p>Bidders should demonstrate how they would maintain the facility to the best possible standard. For clarity, Bidders will be responsible for the repair, maintenance and replacement of assets as defined in the Asset Management Responsibilities Matrix (AMRM).</p> <p>Bidders should explain any proposed alternative approaches to those indicated by the Authority in the AMRM stating clearly, why an alternative approach is likely to deliver better value for money to the Authority and the price difference.</p> <p>Bidders should include a detailed 10-year asset management plan as an Appendix to their response.</p> <p>Bidders are required to set out their proactive and reactive approach to the cleaning indicating, how this will ensure a consistently high standard of cleanliness through the facility.</p> <p>Cleaning techniques, methods and products used should be outlined in addition to whether staff will be directly employed or if cleaning will be subcontracted.</p> <p>Bidders are encouraged to set out how they intend to manage catering and vending services. Good responses will provide detail of the requirements needed for a high quality operation, the locations of the catering and vending within the centres and how healthy options will be provided for on menus and/or through vending machines.</p>

Title	Description	Weighting	Guidance
Method Statement Five	Staffing	5%	<p>Part 1E of Service Specification (Business Processes Performance Requirements)</p> <p>Bidders should demonstrate how they will ensure provision of sufficient on-site staff at all times to secure a high level of performance and standard of customer service and trained staff to operate the facility and all services delivered at all times. Bidders should provide details on the staff recruitment, training (including safeguarding) and workforce development strategies that would be put in place to assure the Authority that the services will continue to be provided by appropriately qualified staff. Details around apprenticeship schemes offered should be outlined here.</p> <p>The management structure for the contract is critical and Bidders should provide a clear Organisational Chart (for all areas within the contract) that not only summarises at a senior management level the key functions and responsibilities of each role, but details reporting lines for all staff.</p>
Method Statement Six	Financial Reporting and Information Sharing,	5%	<p>Part 1E of Service Specification (Business Processes Performance Requirements)</p> <p>Bidders are requested to set out their proposals with regard to IT and digital/web access, including their preferred choice of IT systems.</p> <p>Regarding financial management systems and reporting, Bidders should indicate what systems it proposes to use to track financial performance, what quarterly information it proposes to share with the Authority, and how and when key performance indicators will be reported. Bidders are encouraged to provide samples of the quarterly management reports they propose to share with the Authority during contract.</p>

Appendix 2 – 3

See Part II.