

Wards Affected:

All wards

ITEM 3**PROCUREMENT AND COMMISSIONING****18 APRIL 2017****INVITATION TO TENDER – LEISURE OPERATOR FOR COMMUNITY SPORTS FACILITY (REF: CU2575)**

Responsible Cabinet Member: Councillor Gifford (Cabinet member for Place)
Report Sponsor: Paul Sanders (Assistant Director, Community Facilities)
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Executive Summary:

This report is seeking approval to commence the tender process and to allow award to be made outside of the Procurement and Commissioning panel by the Service Director and Portfolio Holder for a leisure operator to manage the new community sports facility located in Central Milton Keynes.

1. Recommendation(s)

- 1.1 That the commencement of an open tender process for the procurement of a leisure operator for the Central Milton Keynes Community Sports Facility be approved. The rationale for this approach is set out in section 3.
- 1.2 That due to the facility opening in the summer of 2017, and the need for an operator to be in place at least 4 weeks beforehand, that following the tender evaluation, the decision to appoint the operator be designated to the Service Director and Portfolio Holder without the requirement to return to the Procurement and Commissioning.

2. Background

- 2.1 The procurement is needed in order to meet the leisure management service requirements for the new Central Milton Keynes Community Sports Facility.

This report requests approval to obtain tenders and approval to award for the provision of a leisure operator, where the estimated value will be based on the concession paid to the Council by the appointed operator.

The Council is in the process of taking a 125 year lease for the land from the site owners MKDP. MKDP are fully aware of the Council proposals to sub-lease the management of the facility to an operator.

2.2 Consultation

- (a) A sub-lease document and accompanying contract will be developed in partnership with the relevant Cabinet Member and the following key stakeholders:

- (i) Legal Services, Property Services, and the Finance Department
- (b) Soft market testing carried out by V4 Services (Leisure Consultants) concluded that a review of the current leisure market in Milton Keynes identified the following:
 - (i) A number of leisure operators in Milton Keynes would be interested in bidding to manage the Central Milton Keynes Community Sports Facility.

2.3 Specification

- (a) The procurement seeks to deliver the following service objectives:
 - (i) Getting Inactive People Active – work with partners and support multiple strategies and initiatives to get local people more active. This will be achieved by working with partners and stakeholders to offer a wide range of opportunities, and by ensuring that facilities are accessible as much as possible.
- (b) *A Procurement and Commissioning paper approved on 17 January 2017 stated that the specification would deliver:*

A 25 year full repairing and insuring lease at a ground or base rent of £10,000 pa for the first 5 years with rent reviews every 5 years (in accordance with CPI or to open market rents)*

However, the Council has now received the final draft lease from MKDP, which is at a nominal peppercorn value which is required to allow MKDP to transfer the site at less than full market consideration to MKC. The draft lease does not allow the Council to be paid rent in excess of a peppercorn value.

Therefore to ensure the Council still receives an income from the sub-lease the new operator would instead pay a management fee to MKC under a contract. This would be dictated by the market but would be expected to be in excess of the £10k per annum ground rent originally proposed in the report.

 - (i) Prospective operators will be required to put forward as part of their bid a proposal to pay a proportion of income to the Council by way of a percentage of the annual turnover.
 - (ii) The operator will also be required to pay £18,200 per annum into a sinking fund to be administered by the Council, such monies to be used solely for the replacement of the 3G surface as and when required.
 - (iii) The operator will also be required to fit out the interior of the sports pavilion within the first month of the lease start date to a specification agreed with the Council.
- (c) Public Services (Social Value) Act 2012 - officers have considered whether this procurement can deliver any element of Social Value and

have concluded that the following requirements can be built into the Specification:

- (i) Employment of local people
- (ii) Usage of local suppliers if they provide best value

2.4 Evaluation Criteria and Panel

- (a) The MEAT evaluation of the tender includes the following tender specific requirements, which are listed below:

2.5 A ratio of 80% weighting on price and 20% weighting on quality – please see below table

Area*	Evaluation Area	Weighting (%)
1	<i>Tender Price</i>	80%
2	<i>Quality</i>	20%
2a	<p>Community Use</p> <p>Please demonstrate how you will ensure that you will meet the minimum requirements for community use, as outlined in the community use agreement. [50%]</p> <p>How will you engage with the local community and offer access to the new facility to a wide range of user groups? [25%]</p> <p>How will you market the new facility within Milton Keynes to target a wide range of audiences? [25%]</p>	[60%]
2b	<p>Facility Management and Maintenance</p> <p>Please demonstrate how you will ensure that the new facility is managed and operated to a high standard. [50%]</p> <p>Please demonstrate how you will ensure that the new facility is maintained to a high standard. [50%]</p>	[40%]

- (a) Tenders will be evaluated by a panel comprising staff from the Leisure and Community Team / Finance / Procurement and the leisure consultant advising on the project.

2.6 Contract Terms and Conditions

- (a) The Council's standard Terms and Conditions for Services will be used.

Property Services have developed the Heads of Terms for the sub-lease of the Sports Facility in conjunction with the Community Facilities

Department and these will form part of the tender documentation. The Legal Department has been instructed to draft the necessary sub-lease.

- (b) The Council's Constitution further requires that all contracts in excess of £100,000 are sealed as deeds.

2.7 Project Management

Weekly team meetings will take place to discuss and update the programme, risk register and issues log. The project team reports to the Central Milton Keynes Community Sports Facility Project Board on a monthly basis, chaired by the Assistant Director for Community Facilities.

- (a) The Council's Project Manager for the procurement is the Leisure and Community Officer responsible for Contract Management.
- (b) The Council's Senior Client Officer for the procurement is the Leisure and Community Manager.

3. Alternative Options

3.1 The following options have been considered:

- (a) Do nothing – this is not a viable option because the new facility will need to be managed, and the Council may face criticism if the building is finished but not open to the public.
- (b) Delivery of the requirement internally (in-source) or through a Council controlled company– this is not a viable option because the department no longer has the in-house expertise to manage leisure facilities, and it would retain trading and property risk with the Council, and would not deliver the best financial outcome.
- (c) Existing Leisure Contract variation – we have been advised against this given the level of interest and the opportunity to ensure best value from a wider leisure market see (d) below.
- (d) Open (single stage) tender – this is the most viable and fair option because it gives a wide range of organisations the opportunity to bid to manage the new facility. This option will drive best value and fairness across the leisure market, either through a service concession or a lease alongside an associated contract – **this is the preferred option.**

4. Implications

4.1 Policy

This procurement seeks to implement the Council's policy for leisure facility management, adopted as part of the Sport and Active Communities Strategy by Milton Keynes Council and partners in 2014. The policy refers to procuring the management of leisure and community facilities to meet local needs, and ensure best value.

The award of this contract will progress the following outcomes within the Council Plan 2016-20:

A City of opportunity

An Affordable City

A Healthy City

4.2 Resources and Risk

The intent is to seek an income to MK Council benefitting revenue budgets and already identified as contributing to the Medium Term Financial Plan. The Risk Assessment for this contract is available if requested.

- (a) The key opportunity secured by this contract is the potential income for the Council from the lease that the operators will bid for. It is assessed that the delivery of this contract provides a medium likelihood that it will secure the opportunity, resulting MKC with a medium positive Impact.
- (b) The key threats for this contract have been assessed as:

Risk	Likelihood/Impact	Mitigation	Impact after mitigation
Lease of land is not completed	Low	Work with MKDP to complete	Low
Less than 2 tenders received	Low	Open tender process. Advertisement in Leisure Opportunities Magazine	Low
Tenders do not deliver income from contract as anticipated.	Medium	Business Plan shared as part of specification.	Low

The governance measures set out in 2.7 above provide a basis to conclude that these threats, properly managed represent a low likelihood with a medium Impact.

N	Capital	Y	Revenue	N	Accommodation
N	IT	N	Medium Term Plan	Y	Asset Management

4.3 Carbon and Energy Management

- (a) The project includes energy efficient features such as the lighting and solar panels on the roof.

4.4 Legal

The Council has the necessary statutory authority under Section 120 Local Government Act to lease its land for the purposes of its functions.

Under Section 123 Local Government Act 1972, Local Authorities have a duty to secure the “best consideration that can reasonably be obtained” when disposing (including granting a lease) of its land. An open tendering process will assist the Council in meeting this duty.

Provision of leisure services is a discretionary function of the Council.

It is proposed that the appointed operator would pay the Council for the right to operate the sports facility, either as a concession agreement (within the meaning of the Concession Contracts Regulations 2016 which came into force in April 2016), or under a long lease procured under the Light Touch Regime which came into force in April 2015.

For both options the value of the contract over 25 years is estimated to be £4,104,394 which is above the current thresholds and hence the full rules relating to advertising of the contract as stipulated in the Concession Contracts Regulations 2016 and EU Procurement Regulations 2015 would apply. The rules relating to transparency, fairness and equality apply regardless of the value. The Council’s contract procedure rules are also applicable.

The facility has been built using funding which is subject of a grant funding agreement. It is imperative that obligations of the Council relating to this funding agreement, particularly as relate to any claw back provisions and use of the facility are embedded in the documentation. As such, due consideration needs to be given and the recommended model for the provision of services should be one which achieves the desired commercial outcome whilst adequately protecting the Council.

4.5 Other Implications

N	Equalities/Diversity	N	Sustainability	N	Human Rights
N	E-Government	N	Stakeholders	N	Crime and Disorder
N	Carbon and Energy Policy				

Background Papers:

None