



## CABINET

12 JULY 2016

**Subject Heading:**

**Award of the Sport and Leisure Management Contract**

**Cabinet Member:**

**Councillor Melvin Wallace**, Cabinet Member for Culture and Community Engagement

**SLT Lead:**

**Sarah Homer**, interim Chief Operating Officer

**Report Author and contact details:**

Simon Parkinson, Head of Culture and Leisure, x4014

**Policy context:**

The Council's Culture Strategy 2013-15

**Financial summary:**

The award of the Sports and Leisure Management contract will result in the required MTFS savings of £700k per annum being achieved over the life of the contract. The identified savings assume that planning permission is secured for the major investment proposals included in the report.

**Is this a Key Decision?**

**Yes**

**When should this matter be reviewed?**

July 2017

**Reviewing OSC:**

Towns and Communities O&S

### **The subject matter of this report deals with the following Council Objectives**

Havering will be clean and its environment will be cared for

People will be safe, in their homes and in the community

Residents will be proud to live in Havering

## SUMMARY

This report seeks Member agreement to award the Council's Sports and Leisure Management Contract, for a period of 20 years, from October 1<sup>st</sup> 2016. The report also seeks Member agreement in principle to the building of a new Hornchurch Sports Centre, investment in new health and fitness facilities at Central Park Leisure Centre and to the continued Council funding of the Chafford Sports Complex, within the parameters that are identified in the report.

The report seeks Member agreement to award the contract to Tenderer A on the basis that they have submitted the most economically advantageous tender (ie a MEAT bid) to the Council, taking account of all relevant price and quality evaluation issues. The Exempt appendix to this report identifies the company name of Tenderer A and includes details of the two competing Bids submitted at the Best and Final Offer (BAFO) stage, including details that are deemed to be commercially sensitive.

## RECOMMENDATIONS

That Cabinet:

- 1 **Award** the Sports and Leisure Management Contract, for a period of 20 years starting on October 1<sup>st</sup> 2016, to Tenderer A, on the basis that they have submitted the most economically advantageous tender, taking account of all the relevant price and quality evaluation issues identified in this report;
- 2 **Agree in principle** to the Contract reverting to a 10 year period if Tenderer A is not able to secure planning permission to build the proposed new Hornchurch Sports Centre and to delegate responsibility to the Chief Executive and the Head of Culture and Community Access to negotiate and agree revised contractual arrangements at the appropriate time should that eventuality arise;
- 3 **Note** that the award of the Contract to Tenderer A will result in the Council receiving an average annual net payment of £967k through the life of the Contract, once the Council's Prudential Borrowing costs have been taken in to account and that this will deliver the already agreed MTFs savings of £700k per annum;
- 4 **Agree** to the Chief Executive in conjunction with the Head of Culture and Community Access negotiating and agreeing a final Contract price with Tenderer A, taking account of any agreed changes to the Contract and any associated agreed Variations to the Contract price;
- 5 **Note** that the funding required to progress all of the investments proposed by Tenderer A will be arranged and secured by the Council and that the costs associated with securing this funding have been

factored in to the financial analysis that shows the £700k MTFS savings will be achieved;

- 6 **Delegate** authority to the Head of Culture and Community Access, in consultation with the Deputy Director of Legal Services, to negotiate and agree a variation to the Contract that would allow the continued operation of the Chafford Sports Complex from October 1<sup>st</sup> 2016, subject to any revenue costs to the Council being mitigated as far as possible, the school paying for their use of the facilities, a break clause being included in the Contract to cover a situation where the Council develops a new sports and leisure facility in the south of the borough and subject to agreement being reached with The Chafford School and Tenderer A;
- 7 **Note** that as part of their tender submission Tenderer A will build a new Hornchurch Sports Centre on the site of the existing main car park and land to the west of that car park, subject to planning permission being secured;
- 8 **Delegate** authority to the Head of Culture and Community Access, in consultation with the Chief Executive and the Lead Member Culture and Community Engagement, to establish whether there is a strong business case for retaining and converting the existing Hornchurch Sport Centre sports hall in to a multi- purpose entertainment venue, rather than demolishing it;
- 9 **Receive** a further report on the potential conversion of the existing Hornchurch Sports Centre sports hall should there be a strong business case for so doing;
- 10 **Note** that as part of their tender submission Tenderer A will improve the health and fitness facilities at Central Park Leisure Centre, subject to planning permission being secured;
- 11 **Delegate** authority to the Head of Culture and Community Access, in consultation with the Deputy Director of Legal Services, to agree and sign the final Contract, the Leases and all other documents required to enact the Contract.

<b>REPORT DETAIL</b>
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**Background**

- 1 In February 2014 the Council's Cabinet approved the Tender Strategy for the procurement of the Council's next Sports and Leisure Management Contract, which is due to begin on October 1<sup>st</sup> 2016.
- 2 The objectives of the procurement were as follows (not in priority order)
  - Objective 1: Ensure that a high quality service is provided, with high levels of customer / user satisfaction;
  - Objective 2: Increase opportunities for people from all parts of the

community to participate and become involved in sport and physical activity;

Objective 3: Increase the number of borough (and non-borough) residents participating in sport and physical activity;

Objective 4: Ensure that the centres promote healthy living, including the provision of healthy eating options by the operator;

Objective 5: Ensure that health and safety, including the safeguarding of children / vulnerable adults and meeting environmental health standards, is a high priority for the operator;

Objective 6: Achieve a reduction in costs to the Council;

Objective 7: Secure the appropriate capital investment (repairs, maintenance and replacement) in the existing centres;

Objective 8: Secure realistic proposals to develop the existing sites for commercial leisure purposes.

3 Although the objectives outlined above were not in priority order, objective 6 and the need to achieve MTFs savings of £700k per annum, significantly influenced the procurement process. It was for this reason that the Council adopted a commercial approach to tendering the Contract and encouraged tenderers to submit investment proposals that would result in positive revenue benefits arising, as well as costs to the Council reducing. However, the Council has also ensured that tenderers submitted proposals that will deliver high quality services that met the Council's sports development, social and health objectives, including the continued delivery of the Physical Activity Scheme, which will be managed by the successful contractor under the terms of the new Contract.

4 In addition to setting up an Officer project board to manage the procurement process, the Council appointed two specialist consultants to act as a 'critical friend'. The intention was to utilise the knowledge and experience of Council officers and keep costs to a minimum; but to also seek specialist advice and guidance when and where required. The consultants appointed were legal consultant, Trowers and Hamlin and Leisure consultant, Max Associates.

5 Prior to the start of the tender process a comprehensive set out documents were produced, including the Contract, a Specification, Leases and Licences. Amongst other things, the Contract includes termination clauses, a profit share arrangement and compensation clauses should the Contractor not deliver the required service. These documents were updated in the light of the tender refinement discussions that took place with tenderers and ahead of the final documents being issued at the BAFO stage (see below).

6 The procurement process undertaken included an element of "tender refinement" (similar to competitive dialogue), with two rounds of tender refinement discussions taking place with bidders. This provided an opportunity for both the Council and tenderers to work together to develop the most appropriate solution, taking into account the needs and expertise of both parties. The procurement process that was followed and the associated timescales are set out below:

- Soft Marketing Testing (July 2014)
- Pre-Qualification Questionnaire (PQQ) (October – December 2014)

## Cabinet 12 July 2016

- Shortlisting of tenderers who had submitted PPQs (January – February 2015)
  - Tender Refinement discussions with bidders (first round) (April 2015)
  - Invitation to Tender (ITT) (October 2015– January 2016)
  - Shortlisting of tenderers who had submitted Stage 1 bids (January – February 2016)
  - Tender Refinement discussions with bidders (second round) (March 2016)
  - Best and Final Offer (BAFO) (April- May 2016)
- 7 At the Soft Market Testing session, twelve organisations attended and expressed an interest in tendering for the contract and eight organisations subsequently completed a Pre-Qualification Questionnaire. The Council undertook financial checks at this stage of the process. After analysis of the questionnaires, four organisations were shortlisted to submit Stage 1 bids, whilst the remaining four were informed that they didn't meet the Council's criteria for proceeding,
- 8 The four bidders that all submitted successful pre-qualification questionnaires were invited to participate in tender refinement discussions with the Council and Invitation to Tender documentation was distributed to bidders shortly after, in October 2015. Of the four shortlisted tenderers, two submitted Stage 1 bids. The other two tenderers pulled out of the tender process at this stage.
- 9 The two remaining tenderers had submitted high quality bids, so following evaluation, the Council shortlisted those two companies to go forward to the next stage – the Best and Final Offer (BAFO) stage. These two tenderers attended further tender refinement discussions with the Council in March 2016. Following these discussions, the BAFO documentation was provided to tenderers in April 2016. Both bidders submitted their final bids in May 2016.

### First Stage Bid requirements

- 10 At the Invitation to Tender (ITT) stage, all tenderers were required to submit a “Core Bid”, a “Mandatory Variant Bid” and an “Optional Variant bid”.
- 11 The “Core Bid” was for a contract term of 10 years and included the following facilities:
- (i) Hornchurch Leisure Centre – current centre retained and refurbished (i.e. no new build)
  - (ii) Central Park Leisure Centre
  - (iii) Romford Leisure Centre (due to open on 1<sup>st</sup> May 2018, so the term will actually be 8 years for this centre, allowing for a pre-opening period and submitted finance information from 1<sup>st</sup> April 2018 )
  - (iv) Broxhill Sports Park (new sports pavilion due to be open by the Contract start date; the outdoor facilities due to open by January 2017)
- 12 The “Mandatory Variant Bid” was for a contract term of 20 years and the facilities to be included were the same as the facilities in the Core bid, apart

from the fact that the Mandatory Variant Bid was to include the design, build, operation and management of a new Hornchurch Sports Centre (excluding the management of the existing Hornchurch Sports Centre, apart from the period that the existing centre will be retained whilst the new centre is being built). In fact the tenderers had two options to consider: they could either propose a new build on the site of the existing centre, incorporating the existing sports hall; or they could propose a new build on the site of the existing main car park, next to the depot facility.

- 13 The "Optional Variant Bid" related to either the refurbishment of the existing Chafford Sports Complex (option 1) or the build of a new Chafford Sports Complex on the site of the existing facility (option 2). At Stage 1 tenderers were asked to only submit bids if there would be no revenue burden to the Council and no negative impact on the other facilities in the Contract. In fact the tenderers could choose to submit two Optional Variant Bids (relating to the Chafford Sports Complex only) which would either relate to a Contract term of ten years, linked to the Core Bid or relate to a Contract term of twenty years, linked to the "Mandatory Variant Bid" (which includes the new build at Hornchurch).

#### BAFO Stage Bid requirements

- 14 Prior to the BAFO stage the Council reviewed its position and, in the light of the bids received at the ITT stage, decided to require the two shortlisted tenderers to submit a "Mandatory Variant Bid" relating to the management of the Chafford Sports Complex (rather than the "Optional Variant Bid" that was required at the first stage). Tenderers were advised that this "Mandatory Variant Bid" would not be evaluated by the Council at BAFO stage, but would inform post Contract award negotiations with both The Chafford School and the successful tenderer.
- 15 Other than the change identified in paragraph 3.14 all other bid requirements remained the same at the BAFO stage as at the ITT stage.

#### How the Evaluation of Bids was undertaken

- 16 The tender evaluation team comprised representatives of Culture and Leisure Services, Legal Services, Strategic Property, Health and Safety, Safeguarding, Trading Standards, Public Health, Pensions and Finance sections. The evaluation of the 1<sup>st</sup> stage bids included an evaluation of the tenderers' Business Plans, which resulted in either a 'pass' or 'fail' assessment by the evaluation team. In practice the two business plans submitted achieved a "pass" assessment; but if one of the Business Plans had achieved a "fail" assessment, then the entire bid would have failed at this point. By requiring tenderers to submit a Business Plan the Council could be sure that the tenderers' income and expenditure projections were realistic, taking account of the investment proposals, projected attendances and other matters included in the Business Plan.
- 17 The evaluation criteria and weightings used during the ITT stage and BAFO were 50% for "Price" and 50% for "Quality". The "Quality" evaluation was subdivided into more detailed criteria to ensure the Council's output requirements were met. This included four method statements that varied in

**Cabinet 12 July 2016**

weighting from 5% to 15%, Contract Risk with a weighting of 10% and Mystery Visits, with a weighting of 5%.

- 18 The “Price” score is based solely on the Tenderer’s submitted management fee, which is the payment it will make to the Council. This takes into account the rates, prices, costs and proposals as set out in their Financial model spread sheets. The “Price” score is evaluated in relation to the tenderer’s bidders best priced solution, comparing their “Core Bid” with their “Mandatory Variant Bid” (Hornchurch Sports Centre only and therefore excluding the Chafford “Mandatory Variant Bid”).
- 19 As part of the evaluation at both the ITT stage and the BAFO stage tenderers were asked to clarify a number of matters in their bids. The tenderers scores were then reviewed in the light of responses received and the evaluation team came to a judgement as to whether those scores should be altered or not.

**Evaluation of the Submitted BAFO Bids**

- 20 Tenderer A and B’s best “Price” scores at the BAFO stage are both linked to their “Core Bid” (ie retaining the existing Hornchurch Sports Centre), linked to a Contract term of 10 years.
- 21 Tenderer A and Tenderer B’s detailed scores for “Price” and “Quality” are highlighted in the table below (to one decimal point):

<b>Criteria</b>	<b>Weighting</b>	<b>Tenderer A Score</b>	<b>Tenderer B Score</b>
<b>1. Business Plan (Pass or fail – 1<sup>st</sup> Stage only)</b>		Pass	Pass
<b>2. Price</b>	<b>50%</b>	<b>50</b>	<b>26.1</b>
<b>3. Quality</b>	<b>50%</b>	<b>33.5</b>	<b>38</b>
3.1. <b>Contract Risk</b>	10%	8	10
3.2 <b>Method Statement</b> - Sports Development (including how the Ice Development Plan and Swimming Development Plan will be delivered)	15%	10	11.6
3.3 <b>Method Statement</b> - Community Health and Wellbeing	10%	5.4	7
3.4 <b>Method Statement</b> - Health and Safety	5%	2.5	4
3.5 <b>Method Statement</b> - Safeguarding	5%	4	2.5
3.6 <b>Mystery visits</b>	5%	3.6	2.9
<b>Total (Price and Quality)</b>	<b>100%</b>	<b>83.5</b>	<b>64.1</b>

- 22 Tenderer A submitted the best price (average payment to the Council, per annum, plus Prudential Borrowing costs) over the Contract term, so scored a maximum of 50 for Price. Tenderer B’s score was determined by assessing the percentage value of their Price vs. Tenderer A’s Price. Tenderer B received the best overall quality score.

## Cabinet 12 July 2016

- 23 Taking account of the Price and Quality scores, Tenderer A secured the highest over-all score and it is on this basis that they are being recommended to be awarded the Contract. In fact both of the bids submitted by Tenderer A (their “Core Bid” and their “Mandatory Variant Bid”) were better in financial terms and in overall evaluation terms (taking into account price and quality), in comparison to both of the bids submitted by Tenderer B; so the Council has the flexibility to award the Contract to Tenderer A for either a period of 10 or 20 years, depending on whether the Council would rather secure the building of a new Hornchurch Leisure Centre (subject to planning) or maximise revenue benefits to the Council. This issue is considered in more depth below.

### Hornchurch Sports Centre

- 24 In the first round of tender refinement discussions with the four shortlisted tenderers it became apparent that a rebuild or significant refurbishment of the existing Hornchurch Sports Centre could be significantly more beneficial to the Council, in comparison to the continued repair and maintenance of the existing building. The swimming pool and associated facilities was opened in 1956, whilst the sports hall was added to the facility in 1987. The Council’s Condition Survey shows that approximately £3.6m would need to be spent on basic repairs and maintenance during the life of the contract and the tenderers advised that significantly more than that would need to be spent on maintaining the type of high quality environment that customers are increasingly expecting to experience.
- 25 Hornchurch Sports Centre is poorly designed and expensive to operate because of the high percentage of redundant space and the high utility costs arising from the size of the building and its age.
- 26 Sports and leisure facilities are normally expected to have a life of approximately 50 years (Sport England assessment), so the Council would probably have to consider the replacement of the existing building, or a significant refurbishment of the existing building in the next 10-20 years; whether or not a procurement process linked to the management of the buildings was required.
- 27 The evaluation of the two bids submitted at the BAFO stage has confirmed that the Council would benefit more in financial terms if it awarded the contract on the basis of the existing Hornchurch Sports Centre remaining, linked to a Contract term of 10 years. Tenderer A has proposed that a retention of the existing building would result in an increase in revenue benefits to the Council of approximately £300k per annum (on average over the life of the Contract); in comparison to their “Mandatory Variant Bid”, which includes the build of a new leisure centre. The projected cost of the new Hornchurch Sports Centre is highlighted in appendix A.
28. Given the age of the building and the fact that it will almost certainly need to be replaced in the next 10 - 20 years; the significant repair and maintenance costs associated with the current building and the fact that revenue benefits to the Council linked to the Contract award have exceeded expectations, Officers are recommending that the Council proceeds on the basis that a new Hornchurch Sports Centre is built (subject to planning).



## Cabinet 12 July 2016

- 29 Tenderer A have proposed that the new Hornchurch Sports Centre is built on the existing main car park, next to the Council depot and on land immediately adjacent to it. A new car park would be built on the site of the existing Hornchurch Sports Centre, with the configuration to be determined by the Council and Tenderer A once the Contract has been awarded (and taking account of any decision to retain the existing sports hall). Temporary car parking arrangements will also be required during the period of the construction of the new centre as it is intended that the existing Centre will only be demolished (or reconfigured if there is a business case for retaining the sports hall) once the new centre is open to the public. All of these proposals will be subject to planning permission being secured.

### Chafford Sports Complex

- 30 As noted above the Council required tenderers to submit "Mandatory Variant Bids" at the BAFO stage for the continued operation of the Chafford Sports Complex, as from October 1<sup>st</sup> 2016. This is the date when the ownership of the Complex (and the land it sits on) transfers back to the School, so the inclusion of the Complex in the Council's Sports and Leisure Management Contract requires agreement from the School, as well as the Council, prior to any negotiations taking place with the appointed Contractor. No decision has been taken on this matter, by either the Council or the School, which is why the "Mandatory Variant Bids" relating to Chafford Sports Complex do not form part of the evaluation of bids received.
- 31 From the Council's perspective there is a desire to include the Chafford Sports Complex in the Contract providing that the costs to the Council are minimised as far as possible, providing there is not a negative impact on the rest of the Contract, providing the Complex (and the land it sits on) is leased back to the Council for the period of the next Contract (at a peppercorn rent), providing community use is maximised and providing the school pays an appropriate amount for its use of the facilities. The Council would also require a Break in the Contract and the Lease relating to the Chafford Sports Complex, in case a new sports facility is built in the south of the borough at any point in the future. This would not necessarily mean that the existing Chafford Sports Complex would be removed from the Contract; but there would clearly be a need for a complete review of provision in the south of the borough and alternative Contract arrangements would almost certainly need to be put in place relating to the existing Chafford facility if it remained open.
- 32 From the School's perspective they have previously agreed that the management of the Chafford Sports Complex should be included in the tender documents and they have indicated that they would be willing to consider the management of the Complex being included in the new Contract, subject to their costs being minimised as far as possible and subject to their guaranteed use of the facilities during the school day.
- 33 In view of the above it is proposed that negotiations take place with the Contractor and The Chafford School, once the Contract has been awarded, with the aim of agreeing a variation to the Contract that will secure the future

operation of the Chafford Sports Complex beyond 1<sup>st</sup> October 2016. Those negotiations will also need to consider whether the refurbishment option, or the new build option, is most likely to achieve the objectives of all the parties involved. It is also the case that these options would only proceed if planning permission was secured.

## **REASONS AND OPTIONS**

### **Reasons for the decision:**

The preferred bid has been selected because it achieved the best overall score, taking account of price and quality, when assessed against the evaluation criteria identified in the table included in paragraph 21 above.

### **Other options considered:**

In considering alternatives for the management of the Sport and Leisure facilities there is not a 'do nothing' option as the current contract for the management of the facilities comes to the end on September 30<sup>th</sup> 2016. The option of extending the contract for another 5 years has already been ruled out on the basis that it would not achieve value for money for the Council (as set out in the Tender Strategy produced in February 2014). The option of bringing the service back in house has been ruled out because of the tax implications that would arise and because it is believed that an experienced leisure operator is more likely to maximise the commercial opportunities that are available, in comparison to the Council. It is also the case that an external operator (providing it is delivering the contract through a Trust, Charity or similar organisation) can secure significant NNDR and VAT advantages, in comparison to the Council.

The option of retaining the existing Hornchurch Sports Centre has been considered but rejected given the age of the building, the fact that it will almost certainly need to be replaced in the next 10 - 20 years and because of the significant repair and maintenance costs associated with the current building.

## **IMPLICATIONS AND RISKS**

### Financial implications and risks:

Detailed financial implications, including the names of the tenderers and a financial analysis of their submitted bids, including information that is commercially sensitive, is included in the exempt Appendix attached to this report.

[Review of the financial arrangements associated with the current contract](#)

## Cabinet 12 July 2016

In the final full year of the existing Contract (relating to the 2015/16 financial year), the Council paid the current contractor £375k to manage and run the service provided at the borough's sports and leisure facilities. The total client budget in 2016/17, covering controllable expenditure associated with the current Contract, is £494k (this figure includes MTFS savings of £300k; but excludes support costs, capital depreciation costs and other uncontrollable costs). This figure of £494k has been used as a base line figure to establish the level of savings that the Council can secure from awarding the Contract to Tenderer A.

### MTFS Savings Requirements

The Council's agreed Budget Strategy requires annual savings of £700k per annum to be achieved in relation to the costs of managing and running the borough's sports and leisure facilities by 2017/18. The new Contract requires significant investment in the facilities in the early years of the Contract period, which means that the annual MTFS revenue saving can only be achieved from the start of the Contract if the payments from the Tenderer are averaged over the life of the contract. If this averaging of contract payments was not made then the Council would not be able to achieve the required MTFS savings in the early years of the contract.

There will be a requirement for Bridge Funding to secure positive average payments to the Council over the life of the Contract. The number of years when this Bridge funding is required is currently being determined, but is estimated to be up to 5 years. After that time period the future year surpluses would offset this initial cost.

### Capital Implications

Tenderer A, who officers are recommending be awarded the contract, has submitted significant investment proposals, with a total value of approximately £29m (20 year bid).

The Contract is structured so that the investment proposed by Tenderers (other than investment that would be deemed by the Council to be purely commercial) is to be funded by the Council, on the basis that the Council can borrow money (through Prudential Borrowing) at a lower rate than Tenderers can. This approach allows Tenderers to submit significantly better financial proposals to the Council, but the cost that the Council will bear as a result of this approach needs to be factored in to the revenue analysis before the net budget position can be established. This is covered in more detail in the Exempt appendix.

### Revenue Implications

An award of the contract to Tenderer A for 10 years, linked to their "Core Bid", will result in the Council achieving average annual savings of approximately £975,511 per annum (on average through the life of the Contract), taking account of the Council's borrowing costs; achieving the required MTFS savings (£700k per annum); an increase in the Client utility budgets (which is required because the existing budget is insufficient to cover projected utility costs when the new contract starts) and the creation of a Council sinking fund to replace the synthetic pitch at Broxhill after 10-15 years). The £975,511 figure reduces to £852,033 per annum when Romford Leisure Development Prudential Borrowing costs are factored in.

## Cabinet 12 July 2016

An award of the Contract to Tenderer A for 20 years, linked to their “Mandatory Variant Bid”, will result in the Council achieving average annual savings of approximately £680,715 per annum (on average through the life of the Contract), taking account of the same costs identified in the paragraph above. The £680,715 figure reduces to £557,237 per annum when Romford Leisure Development Prudential Borrowing costs are factored in.

These issues and financial details relating to the tenderers’ submitted bids (both “Core Bids” and “Mandatory Variant bids”) are highlighted in the tables included in Appendix A to this report.

The increase in client utility budgets is required because the current client budget is below the actual costs that are born by the Council and with energy prices set to rise in the future, it is considered prudent to increase the budget at the contract award stage. The increased budget takes account of the new Romford and Broxhill facilities which will also increase client utility costs. The Contract that is being let results in the Council bearing the risk in increased costs associated with increases in energy prices, but the Contractor will bear the risk associated any increase in energy consumption (Council officers have been advised that this represents the predominant market position and it also reflects the current contractual arrangements with the current operator)

It is important to note that the total savings are dependent on planning permission being secured for the major investment proposals. This issue is covered in more detail below but it is the case that the MTFs savings can be achieved even if the major investment proposals do not go ahead and so it would be a loss of additional financial benefits that would rise if planning permissions were not secured.

The revenue implications outlined above assume that planning permission is secured for the major investment proposed by Tenderer A, relating to the Hornchurch Sports Centre new build (in relation to the “Mandatory Variant Bid” only) and the health and fitness facilities investment at Central Park Leisure centre (relating to both bids). To ensure that this risk can be managed and mitigated as far as possible post the Contract award, tenderers were required to identify the reduced payments they would make to the Council should they not secure planning permission for the new Central Park facilities, where that was required. If the proposed new Hornchurch Sports facility did not secure planning permission the contract term would reduce to 10 years, with the contract payments being amended accordingly. The detailed financial implications are included in Appendix A to this report.

### Legal implications and risks:

Cabinet is being asked to agree a number of related Recommendations, principally concerning the award of the Sports and Management Contract and related matters concerning the management, operation and investment in a number of the Council’s sports and leisure facilities.

The Council have a general power under section 19 of the *Local Government (Miscellaneous Provisions) Act 1976* to provide as it thinks fit, recreational facilities. This is a widely drawn power which includes indoor and outdoor facilities; facilities for boating; premises for the use of clubs or societies having athletic, social or recreational objects. The power includes powers to provide buildings, equipment,

supplies and assistance of any kind. The Council has a general responsibility for education under the *Education Act 1996* to contribute towards the spiritual, moral, mental and physical development of the community to meet the needs of the population of their area. A local authority under the *Education Act 1996* has functions in respect of recreational and training facilities for children under 13; functions in respect of leisure-time activities etc. for persons aged 13 to 19 and certain persons aged 20 to 24. Such powers may be supplemented by other legislation notably the Council has a wide “general power of competence” under Part 1 Chapter 1 of the *Localism Act 2011* which gives it the same power to act of that of an individual subject to other statutory provisions limiting or restricting its use. The recommendations in report are compatible with the above statutory powers.

Any decision made by the Council must comply with the legal rules and principles arising from public administrative law. In particular the decision must be evidenced based in that the Council must take into account all relevant considerations and disregard all irrelevant considerations. Furthermore the decision must be in accordance with the law; the Council’s legal powers (see above) and must satisfy the principle of ‘Wednesbury-reasonableness’. Namely the decision must be rational and proportionate in the circumstances of the case. In particular, the decision maker must have regard to the benefits and detriments of each matter. The report has highlighted the benefits to the Council and the community in terms of health, education and general well-being. The Council must comply with its fiduciary duty owed to Council taxpayers and must be satisfied that the proposal overall, represents good value for money. In addition to the benefits the report has identified the various financial risks and ways in which this will be managed.

The *Local Government (Contracts) Act 1997* confers power on the Council to enter into a contract and section 111 of the *Local Government Act 1972* confers power on the Council can do anything which is calculated to facilitate or is conducive or incidental to discharge of its function

This contract has been treated as a public contract, which falls within Part B of the *Public Contracts Regulations 2006* (the Regulations). Accordingly the full EU Procurement rules do not apply except in relation to the requirements to comply with technical and professional specifications and to publish, in the EU Journal, an award of Contract Notice. However the procurement must still comply with the General EU Treaty Principles of equality, transparency, fairness and non-discrimination. Furthermore it could be argued that aspects of the contact form a service concession which would be exempt from the EU procurement Rules but must still comply with the EU Treaty Principles.

The Council will retain ownership of the buildings, but Lease agreements will need to be finalised with the successful tenderer at the same time that the Contract is finalised, to allow them to occupy and run services from the sports and leisure facilities included in the Contract. The Lease term will be coterminous with the length of the Contract.

A break clause has been included in the proposed Lease for The Chafford Sports Complex, to facilitate the possible development of a new sports and leisure facility in the south of the borough by the Council. Separate contractual arrangements and agreements will need to be drawn up with The Chafford School and Tenderer A if all parties agree that the sports complex on the school site is included in the

## Cabinet 12 July 2016

Contract. The Chafford School sports complex has not been included in the Contract and tenderers submissions relating to this facility have not been evaluated at this stage. A Variation to the Contract will be required if all parties agree to include The Chafford Sports Complex in the Contract.

It is a requirement of the tender for the successful bidder to provide suitable pension provision for staff that TUPE from both the existing contractor and from the Council. It is expected that the successful tenderer will apply within sufficient time in advance of the TUPE transfer to be an admitted body within the Havering LGPS Scheme

It appears from the details contained within this report the procurement has been carried out in accordance with EU Treaty Principles and has in turn achieved value for money.

As with all Contracts, the award of the Sports and Leisure Management Contract is subject to legal challenge; although there is no indication that this would arise at this juncture and this risk is considered low given the significant difference between the financial offer submitted by Tenderer A in comparison to Tenderer B.

There are no other legal or propriety issues to this report at this time

Human Resources implications and risks:

The Council has provided both tenderers with all relevant TUPE and Pensions information from the existing Contractor, to protect any transferring staff and to ensure that staffing costs can be fully costed in the bids. In addition, the new contractor will be fully responsible for delivering the Physical Activity Referral scheme under the new contract, so two members of the Council's staff will transfer to the employment of the Contractor once the Contract has been awarded. The two staff have been consulted on this transfer.

Equalities implications and risks:

An EIA was undertaken at the start of the project and has been updated at various stages throughout the procurement process. The EIA was considered when the contract documents were drafted and was also used to inform 'tender refinement' meetings with bidders. A final version of the EIA is attached, that includes how the winning bidder will meet the tender requirements.

The key equality issues that need to be considered as part of the new contract include age, disability, and ethnicity/race (*although other issues are highlighted as part of the EIA*).

In regards to age; the new contract needs to take into account that the older population in Havering which is forecast to grow further in the future as well as increases in children aged 5-10. Current participation rates are also low for 14-25 year olds. This will need to be monitored and addressed as part of the new contract.

With Havering's aging population, the number of disabled residents is likely to increase. Therefore Leisure Centre's need to ensure they are inclusive of this group and have the appropriate facilities in place. Current performance data for the

## **Cabinet 12 July 2016**

number of disabled customers is low in some areas of the borough and this also needs to be considered.

Whilst Havering remains one of the most ethnically homogenous boroughs in London and is less diverse than England as a whole, the population is becoming more diverse. In light of this, the Contractor will be required to consider the ethnic profile of the borough when considering programming and communication (signage, publicity materials) requirements and review this on a regular basis.

Equality issues will be monitored through quarterly and annual contract monitoring meetings and reports. The EIA will also be reviewed on an annual basis.

### **BACKGROUND PAPERS**

1. Facilities Development Strategy
2. Evaluation Framework