EXETER CITY COUNCIL

SCRUTINY COMMITTEE - RESOURCES
17 JUNE 2009

EXECUTIVE
29 JUNE 2009

LEISURE FACILITIES MANAGEMENT – A NEW CONTRACT

1. PURPOSE OF REPORT

1.1 To inform Members of the key elements of the new contract due to be let in 2010 for the management of the Council's contracted sports and leisure facilities.

2. BACKGROUND

2.1 On 28 September 2010 the current contract let by the Council to DC Leisure Management Ltd (DCL) expires. On the same day, management of the Riverside Leisure Centre will revert to the Council. Officers have therefore been working on the contents of a new single contract incorporating all of the facilities currently managed by commercial leisure management contractors.

2.2 The nature of the contract has been the subject of reports to Community Scrutiny and Executive to approve the general policy, but as the letting of this contract involves committing large sums of money over a number of years. The current contract with DCL for example costs the Council over £ 600,000 It is also appropriate to bring the issue before this committee to look at economic factors, such as length of contract, obligations on both parties to repair and maintain, utilities agreements and so on.

3. OPTIONS FOR LEISURE FACILITIES' OPERATION

3.1 There are 3 main types of operation for leisure facilities:

In-house

3.2 For many years the Council's facilities were managed by its own directly employed workforce. However, there has been no recent support for bringing the service back in-house, which would involve transferring approximately 300 staff to the Council under TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006). The Council's current expertise in leisure facilities operation is limited; there is a developed market for this type of contract and we feel that suitable quality can be obtained from a private contractor or trust.

Leisure management contractor

3.3 After many years of in-house management, a compulsory competitive tendering process resulted in a contract for 6 facilities being awarded to DCL from 1997. The Council pays DCL a substantial management fee for operating the facilities. However, the Council did make savings, and it is generally considered by leisure officers since that time that the service improved under the external contracting arrangements. There have been no major problems, and overall DCL has been flexible and accommodating. The risks have been shared between the Council and

DCL, and the cost of the service has become better known and so it has been easier to budget for the service effectively.

3.4 Riverside Leisure Centre is leased by the Council to Sainsbury's who employ Parkwood Leisure under a contract to manage the premises. Riverside accounts for approaching half of all visits to all of the Council's contracted facilities, and it is understood that Parkwood pays a significant sum to Sainsbury's for managing the site.

Trust

3.5 An option would be to have Exeter's facilities managed by a trust. This has advantages in that a trust can exploit a loophole in the law that enables 80% relief on the National Non-Domestic Rates (NNDR) and trusts also can benefit from VAT reductions. If the trust is a registered charity, further savings can be made.

3.6 However, a disadvantage with most trusts is that they tend to have few if any assets, and if they get into financial difficulty the only place to turn to is to the client, who then has to pick up the pieces. A trust would also be independent of the Council and so the Council would lose some control. This could be mitigated by having an exhaustive agreement with the trust, but the trust would have its own board of trustees and it may not be as straightforward to enforce compliance as with a commercial contractor.

3.7 The Council could establish its own trust to manage the leisure facilities, but the establishment and running of such a trust can be a very expensive process and it is not considered appropriate to establish a new trust to manage the facilities. An alternative could be for the Council to employ an existing private leisure trust – a trust established by a local authority specifically to manage its own leisure facilities, and which then extends its activities to manage others' facilities. A third option is a 'commercial' leisure trust, where a leisure management contractor is able to call upon its own hybrid trust model that can enjoy many of the financial benefits of trust status (such as the 80% NNDR relief).

3.8 Bearing in mind the information above, we do not recommend mounting an in-house bid for this contract. We also recommend discounting the formation of a new trust for the reasons set out. At this stage we do not feel that we should prohibit an existing trust from tendering alongside traditional contractors or that we should rule out a hybrid trust.

3.9 It is therefore proposed that the Council will, in accordance with European legislation, invite expressions of interest from organisations capable of providing this service, and will then evaluate which companies or trusts are most suitable to undertake the work. It is expected that about 4-5 organisations will then be invited to tender for the contract.

4. CURRENT TRENDS IN LEISURE CONTRACTING

4.1 Two forums have been held with prospective leisure facility management operators following the issue of a Prior Information Notice (PIN) in the Official Journal of the European Union (the 'European Journal'). This enabled the Council to discuss options for the contract and obtain feedback from leisure specialists on current trends in the industry.

4.2 The Council has engaged consultants Torkildsen Barclay to advise on the production of leisure contract documentation and procurement that reflects current practice in the sector. Although most of the overall contract arrangements have not changed significantly, document wording has been refined over the years to make it clearer and fairer to both parties. The more significant changes are dealt with later in this report.

4.3 As in the current contract, the contractor will keep all income received from users of the facilities, so encouraging the contractor to provide a good service to get people through the doors to maximise income. Tenders will be evaluated on both the quality of service that will be provided along with a contract sum – a figure, payable either to or by the Council, that is the difference between the cost to the contractor of managing the service less the income that the contractor expects to receive.

Major contractors

4.4 It is thought that there are relatively few contractors capable of delivering the services that the Council will require. Five potential operators attended the last PIN Forum, held in July 2008. Four of these were leisure management contractors and one was a private trust with charitable status.

5. THE SCOPE OF THE EXETER CONTRACT

Sites

5.1 It would be possible to include the Isca Centre (indoor bowls and bridge), but the current arrangement of a separate lease to Isca Centre Ltd (which comprises club members) is working well and the premises retain a good club atmosphere. The Council receives income from Isca Centre Ltd.

5.2 A new lease has recently been agreed for the management of Clifton Hill Golf Driving Range, including the provision of a number of improvements to be funded and implemented by the lessee.

5.3 It has not been possible to engage effectively with Carillion, the company operating Exeter's schools' leisure facilities, so these cannot be included in the contract at this stage. It is possible that they might be added sometime during the contract period.

5.4 Although it would be possible to split the remaining facilities into two or more contracts, it is considered that a single contract will provide the greatest benefits. The facilities included in the contract are therefore as follows:

Clifton Hill Sports Centre
Exeter Arena
Northbrook Approach Golf Course
Northbrook Swimming Pool
Pyramids Swimming & Leisure Centre
Riverside Leisure Centre
Wonford Sports Centre

5.5 It is now too late to factor into the contract the procurement of a new swimming pool. This in fact greatly simplifies the contract procurement process, and the contract will include effective change management clauses that will allow major facilities to be removed from and/or introduced to the contract.

Key risk factors

5.6 **Energy** – the cost of energy has soared since DCL started under the 1997 contract, and previously all of the risk was on the contractor. This is unsustainable, and in order that future possible energy price increases are not built into the tender price the new contract will make the contractor responsible for energy consumption and the Council responsible for energy price changes.

5.7 **Maintenance** – many of the Council's facilities are now becoming rather old and they are in need of substantial maintenance, both day to day and in terms of refurbishments and replacements. It is important to get the balance of responsibility right, and the Council has recently invested in an extensive condition survey. This will allow both the Council and tenderers to be better aware of the condition of the premises' structural elements and key items of plant, and it will assist in identifying who is responsible for each item. The survey will also help identify any shortcomings to be remedied by the outgoing contractors before the end of their contracts. The Council also has maintenance responsibilities and capital bids have been submitted for funding for essential works needed in preparation for the new contract.

5.8 **Closure due to plant etc failure** – with aging facilities there is a risk that a major item of plant could fail, leading to closure of a facility. It should be noted that the Council will also be committed to replacing items for which it is responsible as and when necessary. As far as possible this will of course happen before a failure occurs.

5.9 **Closure due to changes at the facilities** – if a new pool were to be built at an existing site, or there were to be a major refurbishment of a site during the term of the contract, the facility/ies involved may need to close. The contract will allow for quite major changes to occur without frustrating the contract, but the contractor will be entitled to appropriate compensation for loss of income and any increased costs.

5.10 **Limited funding to improve the facilities** – the contractors will be aware of the condition of the facilities, and will factor in that the premises will be older towards the end of the contract. At present it seems unlikely that there will be major funding made available by the Council for refurbishment of facilities in the foreseeable future.

5.11 **Staff** – over recent years new employment legislation, especially relating to the use of casual staff, has created substantial costs for leisure management operators. However, the new contract will continue to place the risk on the contractor.

5.12 **NNDR** – if the successful tenderer is a trust receiving NNDR relief, it is possible that the government may decide to close the loophole in the NNDR legislation and remove the relief. This could be worth in the region of £200,000pa and this will be the Council's risk.

5.13 **Customers leaving** – should the use of leisure facilities decline significantly (for example due to a change in society's culture, dissatisfaction with the facilities, or people not having expendable cash etc), and this leads to a shortfall of income, the risk would remain with the contractor. The contractor would need to work to retain and bring back customers, and it would be in the Council's interest to work with the contractor to improve the situation.

5.14 **Staff transfer issues -** Staff transfers in the public sector are governed not only by the rules of TUPE, but also by the guidance from central government, notably the following:

- The Cabinet Office's ‘Statement of Practice on Staff Transfers in the Public Sector’ with its annex, the ‘Treasury statement A Fair Deal for Pensions’. This states that TUPE will apply, and sets out the framework to be followed. The annex describes the pension protection for public sector employees in the event of a TUPE transfer.
- The ‘Code Of Practice On Workforce Matters In Public Sector Service Contracts (February 2003)’. Both this Code and the 2005 Code (below) protect “new joiners” to the contract, ensuring that a “two-tier” workforce does not exist and the provision of a “reasonable” pension.
- The ‘Local Government Act 2003’ ss. 101 and 102, which effectively enshrine the Code into law and ensure that there are suitable pension arrangements for staff transferred from a local authority to a contractor.
- The ‘Code Of Practice On Workforce Matters In Public Sector Service Contracts (March 2005)’. This guidance runs alongside TUPE. A tender from a contractor will not normally be acceptable unless it is clear that the contractor will comply with the relevant codes of practice

5.16 There is a risk that some contractors will be deterred from tendering by the need to comply with this.

5.17 **Lack of tenders** – There are relatively few established operators in the industry, and it is possible that some of those from whom we anticipate interest may not wish to bid. Following evaluation of the pre-tender submissions, other operators may not be deemed by the Council to be suitable to be invited to tender, so there is a risk that there may be only three or fewer tenders and therefore less chance of achieving the best overall value.

Contract terms – unchanged

5.18 Most of the fundamental principles remain unchanged between the old and the new best possible balance between service provision for Exeter’s residents and visitors, and keeping costs as low as possible.

5.19 Although the contractor will organise the programme of use of the facilities, there will be protection for existing clubs using the facilities.

5.20 Under the current arrangements the maintenance costs are shared and this will continue. The energy costs have been shared since 2007 when the DCL contract was extended to 2010, and this will continue in the new contract.

Contract terms – changed

5.21 Particular changes worth mentioning include the following:

- All 7 sites will be under a single contract, so improving harmonisation of activities through a single operator who will be able to offer a more complementary programme. There will also be a single membership scheme to all of the Council’s facilities.
- 10 year contract with an extension (by mutual agreement) of up to 5 years.

- The Council will continue to exercise control over the price to be charged by the contractor for fewer, core activities such as swimming and relinquish control over some for which it currently sets charges, for example, trampolining.
- The Council will assume responsibility for grounds maintenance at all sites except Exeter Arena. This is a relatively minor change, but there will be a need for an increase of £600 in the Parks & Open Spaces maintenance budget.
- The current LeisureCard will cease and tenderers will be asked to provide proposals for a new scheme.
- The (concessionary) XCard will continue and will be improved through extended weekend opportunities.
- There will be a requirement for better management reporting information to be provided by the contractor to the Council.
- Tenderers will be invited to submit proposals for capital improvements to develop the facilities during the term of the contract.
- The current limit on maintenance expenditure (agreed with DCL as part of the contract extension arrangements) will be removed.
- The contractual minimum opening times will be increased slightly to mirror the current actual opening times.
- The contractor will be required to achieve at least the minimum level of the Council's Green Accord environmental policy.

6. PROCESS FOR APPOINTING THE CONTRACTOR

Prior Information Notice Forum

6.1 Two PIN Forums have been held. The second had to be arranged due to a significant change in the Council's position, as in the first forum it had been intended to include the procurement of a new or refurbished swimming pool within the leisure management contract.

6.2 These discussions enabled the Council to develop the contract documentation in a way that will be acceptable to the leisure operators whilst protecting the Council's interests.

6.3 Operators are therefore already aware that a new contract is in the pipeline, and it will be perfectly acceptable for the Council to invite individual companies to apply to be included on the list of tenderers.

Formal invitation for expression of interest

6.4 An advertisement is scheduled to be published in June 2009 in the European Journal. Organisations contacting the Council will be sent a pre-qualification questionnaire and sufficient information on the nature and type of contract to enable them to establish whether they wish to express formal interest in the contract.

6.5 Applicants will need to provide information to the Council on a range of financial, organisational and technical issues, along with references etc. The responses will be assessed in order to identify those most suitable to be invited to tender.

6.6 Evaluation of tenders will be on a points system, the criteria for which must be published within the tender documentation. The most important factor is the split between the points awarded for the financial aspects of the bid, against those awarded for quality issues.

6.7 It is anticipated that tenders will be invited in October, to be returned to the Council by February 2010. A preferred bidder will be appointed in May, and following any clarifications the contract and leases are due to be finalised in June. This will provide 3-4 months' lead in period.

7. RECOMMENDED that

1) Members support the key contract features identified in this report and

2) Delegate approval of the detail of the contract documentation to the Director, Community and Environment in consultation with the Leader of the Council and the Portfolio holder for Environment and Leisure and appropriate Council officers.

HEAD OF LEISURE & MUSEUMS

S:PA/LP/ Committee/609SCR2 v2
15.5.09

COMMUNITY & ENVIRONMENT DIRECTORATE

Local Government (Access to Information) Act 1985 (as amended)
Background papers used in compiling this report:

Should Members want more background information, work was done in 2004 to identify the issues and evaluate the various options available to the Council, and a number of briefing papers were made available on the Members' site on the Intranet. They are still available for Members' information, and much of the material is still valid, although the financial figures have not been updated. Go to http://intranet/index.aspx?articleid=527.