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Report to: **Council**

Date: **28 July 2016**

Title: **HEALTH AND WELLBEING PROCUREMENT OUTCOME**

Portfolio Area: **Customer First**

Wards Affected: **all**

Relevant Scrutiny Committee: Overview and Scrutiny Panel

Urgent Decision: **Y** Approval and clearance obtained: **Y**

Date next steps can be taken:
Immediately

Author: **Chris Brook** Role: **CoP Lead - Assets**

Contact: **01803 861170 Chris.brook@swdevon.gov.uk**

RECOMMENDATIONS

That Council be RECOMMENDED to:-

- 1. approve the award of the Leisure Design, Build, Operate and Maintain contract, to the preferred bidder, Fusion Lifestyle.**
- 2. undertake prudential borrowing of £6.337 million as set out in Appendix 2.**
- 3. approve an asset transfer of the Totnes Pavilion to Tadpool, byway of a 25 year, full repairing and insuring lease.**
- 4. approve a loan facility to Tadpool of up to £1.5 million, to be subject to a business case, to be approved by the CoP Lead for Assets and CoP Lead for Finance (S151 Officer), in consultation with the Monitoring Officer, to be paid back over the lease period.**

1 Executive summary

- 1.1 South Hams District Council (SHDC) and West Devon Borough Council (WDBC) have been working towards the renewal of the contract for the operation of leisure services, including maintenance of the building facilities. The existing contract terminates at the end of November 2016 and the new contract start date would be 1st December 2016.
- 1.2 The procurement approach used to achieve this has been a competitive dialogue process, taking three bidders to the final round, ahead of selecting a preferred bidder to take forward.
- 1.3 The preferred bidder identified through this process is Fusion Lifestyle, following officer's assessment of the bids against the agreed cost and quality criteria.
- 1.4 Their solution meets and exceeds the affordability criteria required, offering a significant saving to both Councils over the 25 year contract term. Refer to Appendix 1 for full financial details.
- 1.5 The bid also includes capital investment in all centres, notably, a new 6 lane 25 metre indoor pool facility at Ivybridge and extensive new dryside facilities in Tavistock. See section 4 - 8 for further details.
- 1.6 The leisure facility in Totnes is to be excluded from the contract, as it is the subject of an asset transfer to Tadpool, on a 25 year lease.
- 1.7 The proposed contract will include the operation of Dartmouth Indoor Pool, which will come at no cost to the Council
- 1.8 Officers seek Council approval to appoint the preferred bidder, under contract for the next 25 years.

2 Background

- 2.1 West Devon Borough Council (WDBC) and South Hams District Council (SHDC) have recently completed a leisure procurement exercise for a new leisure contract for the next 25 years. The contract is a DBOM, or Design, Build, Maintain and Operate contract such that the day to day responsibilities of running the leisure service will fall to the successful bidder.
- 2.2 A team of officers have assessed the bids submitted through the procurement process of competitive dialogue, and made a recommendation based on the agreed evaluation criteria. This recommendation needs approval from Full Council in both WDBC and SHDC for the contract to be awarded.
- 2.3 The timing of this report and Member decision, is driven by the procurement timetable, working back from the end of the existing leisure contract termination date of the end of November 2016.
- 2.4 The Council has been working on this strategic leisure review for the past 3 years. Members considered and agreed, the leisure procurement process at SHDC Executive on 29 January 2015

(Minute E60/14) and WDBC Council on 12 February 2015 (Minute CM 79). This set the overall parameters of the procurement and agreed to delegate details to officers in consultation with the Joint Leisure Member Board and relevant Members.

- 2.5 Both WDBC and SHDC consider leisure provision as an important public service with tangible community and health outcomes and as such there is public benefit in seeking a cost effective manner of continuing this discretionary offer.
- 2.6 Leisure activities align with our strategic corporate priorities of healthy communities and are a cornerstone of emerging *Our Plan* priorities around the delivery of Health and Wellbeing. This is specifically:
 - a) To deliver positive health and wellbeing outcomes for communities;
 - b) To reduce health inequalities and social isolation;
 - c) To ensure local people have access to housing, employment, services, facilities; and
 - d) Activities that improve health outcomes and promote healthy lifestyles.
- 2.7 This procurement exercise has tested the market based on the following objectives:
 - o Deliver a sustainable service with controlled costs and clear community benefit outcomes
 - o Allow for local participation in future delivery
 - o Achieve reductions in revenue costs
 - o Draw in capital investment
 - o Look for long term arrangements with responsibility for centres passing to the operator
 - o Pursue joint procurement and contract between West Devon Borough Council and South Hams District Council
 - o Seek opportunities for future efficiencies, flexibility and service improvements

3 Outcomes/outputs

- 3.1.1 The procurement evaluation resulted in a winning score of 84.2 out of a possible 100, being awarded to Fusion Lifestyle.
- 3.1.2 Following a joint leisure board meeting Tuesday 12th July, the evaluation outcome was ratified and Fusion Lifestyle were notified that they are now the preferred bidder.
- 3.2 Subject to Council approval to enter into contract with the preferred bidder, the following are the key benefits derived from the preferred bidder's offer:

- 3.3 The financial offer is very strong. A financial summary is included in Appendix 1.
- 3.3.1 Details of the prudential borrowing costs are shown in Appendix 2.
- 3.4 Our preferred bidder has sports and community development at the core of its charitable objectives, to increase participation and levels of physical activity and health and wellbeing for the local communities it serves.
- 3.5 To achieve this increase in participation and health and wellbeing various programmes and resources will be developed, such as;
- Dedicated staffing team for sports and activity development across both Council areas
 - Pro-active outreach work with schools and communities including free sessions and 'pop up' activities
 - Target approach in working with hard to reach groups and areas
 - Creating new programmes, such as the 'Great Outdoors' with a focus to get people active outside in their local environment.
 - Innovative marketing and brand campaigns on a local and national basis
 - Inclusive and accessible pricing using a single approach across all sites
 - Significant investment in all the facilities in particular in revenue generating activities
- 3.6 **How will success be measured?**
- 3.6.1 The Contractor must ensure that its programming, pricing, policies, development plans, marketing and training are focussed to support the Authority in achieving the desired outcomes and targets as set out in the Authority's Outcomes Documents (procurement specification).
- 3.6.2 The Contractor shall submit proposals to the Authority for approval detailing how it will measure the delivery of the plans and targets set out in the Authority's Outcomes Documents that have been based on the Authority's strategic objectives as below;
- A more active district – through increased leisure centre usage and overall levels of physical activity.
 - Promoting community cohesion/ benefiting target groups – increase in use by target groups and sports volunteering.
 - Improving health and wellbeing by increased use of exercise referral schemes, targeted health programmes.
 - Partner engagement – through improved contacts and work with local partners and stakeholders

- Quality of Services – through improving Quest scores, increased User satisfaction levels and increased Member users.
- Providing local economic benefit – through better workforce development opportunities and increase in use of local suppliers.
- Sustainability/ Environmental improvements – through reduced CO2 emissions, reduced energy use and decrease in waste

4 Development Proposals (see Appendices 4 – 7 for plans)

4.1 A key part of this procurement was to attract capital investment into the leisure facilities across both Councils. The following section summarises these investment proposals centre by centre.

4.2 Ivybridge

4.2.1 Provision of a new 6 lane, 25m community swimming pool, located on the site of the existing outdoor pool and linked to new and improved changing facilities. The existing leisure pool is retained with new fun features provided.

4.2.2 Refurbishment and reconfiguration of the lobby, reception and foyer areas, with the creation of a new island reception, creating an improved first impression and providing additional flexibility for access control.

4.2.3 Conversion of the existing squash courts with a moveable wall so they can deliver squash provision as well as being additional multi purpose studio space.

4.2.4 Increased fitness studio space and capacity to offer a wider range of fitness classes.

4.2.5 Refurbishment and upgrade of gym facilities.

4.3 Meadowlands

4.3.1 Extension of the facility to enable a mixed dry and wetside offer.

4.3.2 Introduction of a new 35 station gym facility.

4.3.3 Construction of a new multi-purpose group studio space to enable a wider range of fitness provision.

4.3.4 Extension, refurbishment and reconfiguration of the existing changing areas to enable wet and dry change.

4.3.5 Creation of a new entrance, lobby and reception area, serviced by new office/admin area, café and/or high quality vending and offering viewing opportunities through into the pool area.

4.4 Dartmouth Pool

- 4.4.1 Construction of new link corridor between dry side and wetside.
- 4.4.2 Operation of the new pool and existing dryside facility as one centre.

4.5 Kingsbridge

- 4.5.1 Ground floor – refurbishment to the existing studio and the creation of a new studio of a similar size to existing.
- 4.5.2 Significant refurbishment of the dryside changing facilities.
- 4.5.3 1st floor - Introduction of a soft play space, extended gym facilities and the introduction of a new spin room.
- 4.5.4 These proposals result in the loss of squash provision.

4.6 Okehampton

- 4.6.1 Complete redecoration and re-branding. This centre is in the best condition of all of the sites, and as such has the least capital investment proposals.
- 4.6.2 Conversion of the first floor areas to create a new small spin class studio.

4.7 Programme

- 4.7.1 The key headlines of this programme are as follows:
- 4.7.2 Ivybridge Leisure Centre - works are projected to commence on site in November 2017 and be completed by February 2019;
- 4.7.3 Meadowlands Leisure Centre - works are projected to commence on site in November 2017 and be completed by March 2018;
- 4.7.4 Quayside Leisure Centre - works are projected to commence on site in November 2017 and be completed by May 2018;
- 4.7.5 Parklands Leisure Centre - works are projected to commence on site in June 2017 and be completed by September 2017;
- 4.7.6 Appendix 9 shows the development programme in full.

5 Totnes Pavilion/ Tadpool Asset Transfer

- 5.1 A thorough consultation and negotiation with Tadpool has been undertaken over the future options for Totnes Pavilion. The current situation where the wetside is leased to Tadpool and the dryside leased to a different operator is not deemed satisfactory or practical going forward.

- 5.2 The board of trustees for Tadpool, have accepted in principle the option of an asset transfer. The basis of this asset transfer is as follows:
- 5.2.1 A grant of £150,000 to address the maintenance backlog.
 - 5.2.2 A loan of up to £1,500,000 subject to a business case, to be approved by the CoP Lead for Assets and CoP Lead for Finance, to be paid back over the lease period.
 - 5.2.3 A lease for 25 years, on a full repairing and insuring basis.

6 Options available and consideration of risk

6.1 What alternative approaches could we take?

- 6.1.1 There are two options available to Members. Appointing the preferred bidder so that a new leisure contract can be entered into, or not.
- 6.1.2 So as to ensure the continued delivery of leisure, appointing the preferred bidder is the only option. However, there is no statutory requirement to operate leisure facilities, so in theory, it would be possible not to appoint the preferred bidder, but it would result in the closure of the leisure facilities in SH and WD.
- 6.1.3 Through the leisure services review, Members have already considered the following alternative leisure delivery options:
 - Outsource leisure services to the private sector;
 - Outsource the service to a trust or related organisational arrangement to take advantage of business rate relief and VAT reductions to achieve savings.
 - Provide leisure services in-house;
 - Transfer leisure services to another Local Authority e.g. a Town Council
 - Explore other forms of community based delivery in the context of the Localism agenda and current and emerging local investment plans in leisure facilities;
 - Stop the service in its current form and develop new partnerships to achieve alternative provision and new leisure uses for existing or redeveloped buildings, or on alternative sites.
- 6.1.4 These options have been analysed and tested through stakeholder liaison, soft market test and associated work. The outcome of this work resulted in the decision to maintain the leisure service based around the current centres, leading to this procurement process.
- 6.1.5 If the recommendation to appoint the preferred bidder is not approved, the options to provide leisure in one of the alternative ways as above, are limited such that the leisure centres would need to close in the short term.

6.2 Assessment of potential impacts and risks of these options

- 6.2.1 The procurement process has been very successful and appointing the preferred bidder represents the lowest risk option to the Councils.
- 6.2.2 To reduce procurement risks associated with the new contract, the Council has used a competitive dialogue procedure under the Public Contracts Regulations 2015. Furthermore, it has used and shall use Sport England procurement information for guidance and its toolkit information. This provides industry consulted contract documentation and advice.
- 6.2.3 This has enabled us to promote best practice and reduce costs and time for both the Council and contractor in the procurement of the leisure contracts; achieve fair contractual positions; and encourage partnerships which aim to deliver increases in participation and financially sustainable leisure provision.
- 6.2.4 The risks associated with the ongoing operation of the contract, have been minimised through the use of Sport England Standard contracts and outcomes. These are familiar to those in the industry, avoiding any unnecessary administrative burden to those involved.
- 6.2.5 The contract includes the lease of the facilities to the operator on a full repairing basis, so the historical complexities of shared maintenance responsibility shall cease going forward.
- 6.2.6 The contract also places responsibility for the financial delivery of the revenue projections with the operator. The management fee paid by the operator are therefore guaranteed whether they deliver the revenue projections.
- 6.2.7 This guarantee is based on the robustness of the operator who is a significant operator with a turnover of £84 million and reserves of £14 million in 2015. There is a risk that if the operator cannot deliver the projections and the company fails then the Councils would be responsible for any shortfall in financial performance.
- 6.2.8 If this situation were to occur then the Councils do have the ability to seek another operator who will benefit from facilities that have been invested in.

6.3 How have we evaluated the options and who was involved?

- 6.3.1 The procurement process has been undertaken by a full team of officers, including representatives of assets, finance, leisure, procurement and legal. The project team have evaluated the procurement process that forms this officer's recommendation.
- 6.3.2 Member Working Groups at both Councils since 2012 have been working on strategic reviews and stakeholder consultations with

support from our appointed leisure consultant to consider all options. Both Councils approved in early 2015 to establish a Joint Leisure Board to follow a joint procurement protocol and support the process with designated officers.

- 6.3.3 The award criteria applied during the evaluation of the bids were approved by Members at SH Executive (Minute E.12/15) and WD Hub in July 2015 (Minute Ref HC 7).

6.4 What consultation has taken place

- 6.4.1 Prior to the procurement process and during the leisure services review period, a core requirement was to consult with key stakeholders so that their views were sought and where, appropriate, incorporated.
- 6.4.2 This consultation took place at a local and regional level involving town Councils, community colleges / schools, community sports bodies such as Tadpool, Dartmouth Pool Trust, Okehampton Community Sports Association, Active Devon and Sport England.
- 6.4.3 Potential bidders were also alerted to the proposed procurement of the Council’s leisure centres through a soft market test exercise which generated a positive response and enabled further discussion with our local stakeholders.
- 6.4.4 During the procurement process, strict procurement regulations had to be observed. However, the leisure board acted to ensure Member scrutiny of this process. Furthermore, O&S have also had briefings as required.

7 Proposed Way Forward

7.1 Proposals

- 7.1.1 Subject to the outcome of this report, the next steps are to enter in to contract with the preferred bidder, for contract start on 1st December 2016.

7.2 Positive and negative impacts and plans to mitigate any negative risks or impacts. Can the risks and impacts be contained?

- 7.2.1 Reference Appendix 3 – Risk Allocation Matrix

8 Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance		There is no statutory obligation on the Council to provide leisure services as these are discretionary.

		<p>The procurement has been undertaken in accordance with Public Contracts Regulations 2015 and the Contract Procedure Rules of West Devon Borough Council as the Lead Council.</p> <p>The procurement process involved due diligence and governance throughout the tender period.</p> <p>There are no known State Aid risks associated with the financing of the leisure project as the Council will be borrowing for the purposes of financing capital projects. However, officers will keep these under review and ensure that the contract is awarded in accordance with existing laws.</p> <p>TUPE and Pensions issues will be matters for the incumbent provider and the new operator. The Councils role will be limited to facilitating the transfer in accordance with Transfer of Undertakings (Protection of Employment) Regulations 1981 (SI 1981/1794) (TUPE 1981) as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 (SI 2014/16).</p> <p>An Asset Transfer to TADPOOL is likely to be deemed as a relevant transfer pursuant to Transfer of Undertakings (Protection of Employment) Regulations 1981 (SI 1981/1794) (TUPE 1981) as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 (SI 2014/16). The Council will be required to facilitate the transfer in so far as TUPE and Pensions are concerned. There are no risks of liabilities to the Council as there are no Council employees who will be affected by the transfer. The transfer of employees will be between the current operator and TADPOOL. The Council role in these circumstances will be limited to facilitating the transfer thereby acting as a conduit between the current operator and TADPOOL.</p> <p>The Loan facility to TADPOOL may be subject to State Aid rules. The Council will need to be satisfied that the loan agreement does not fall foul of State Aid Rules. These will need to be addressed in the business to be approved by officers. The Council and TADPOOL will need to contact the Department of Business Innovation and Skills and establish whether this arrangement will fall within an</p>
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		<p>approved scheme for subsidised interest loans. Subject to these compliance, there are no legal risks to the Council in granting such a loan facility to TADPOOL.</p> <p>This report contains exempt information as defined in Paragraph 3 of Schedule 12A of the Local Government Act 1972 (information relating to the financial or business affairs of any particular persons including the authority holding that information). This exemption applies to the appendices only.</p>
Financial		The savings from the procurement are shown in Appendix 1. The details of the prudential borrowing costs are shown in Appendix 2.
Risk		The Procurement Evaluation Process will identify areas of risk and exposure and how these can be assessed and managed.
Comprehensive Impact Assessment Implications		
Equality and Diversity	N	None – all leisure facilities are intended to remain open. At this stage no reduction or loss of service is anticipated.
Safeguarding	N	None - future operators will be required to have comprehensive Safeguarding policies You need to set out what the Safeguarding implications are.
Community Safety, Crime and Disorder	N	Access to local affordable leisure facilities to continue.
Health, Safety and Wellbeing	Y	Access to local affordable leisure facilities to continue.
Other implications		

Supporting Information

- Appendix 1 – Financial Details
- Appendix 2 – Summary of Prudential Borrowing
- Appendix 3 – Risk Allocation Matrix
- Appendix 4 – Parklands
- Appendix 5 – Meadowlands
- Appendix 6 – Kingsbridge
- Appendix 7 – Ivybridge
- Appendix 8 – Development Programme

9 Background Papers:

Leisure Report - SHDC Executive on 29 January 2015 (Minute E60/14)

Leisure Report - WDBC Council on 12 February 2015 (Minute CM 79)

Leisure Service Procurement - SH Executive 23.07.15 (Minute E.12/15)

Leisure Service Procurement - WD Hub 14.07.15 (Minute Ref HC 7)