



COTSWOLD
DISTRICT COUNCIL

Council name	COTSWOLD DISTRICT COUNCIL
Name and date of Committee	COUNCIL – 15 MARCH 2023
Subject	AWARD OF CONTRACTS FOR THE MANAGEMENT OF THE COUNCIL'S LEISURE AND CULTURE FACILITIES
Wards affected	All
Accountable member	CLlr Jenny Forde - Cabinet Member for Health & Wellbeing Email: jenny.forde@cotswold.gov.uk
Accountable officer	Scott Williams - Business Manager (Contracts) Email: scott.williams@publicagroup.uk
Report author	Rachel Biles - Strategic Project Lead (Leisure) Email: rachel.biles@publicagroup.uk
Summary/Purpose	To seek authority to award a contract for; a. the management of the Council's leisure facilities b. the management of the Council's culture facilities
Annexes	<ul style="list-style-type: none">● Annex A - Project timeline.● EXEMPT Annex B - (i) Leisure Contract Invitation to Submit Revised Tender documentation.● EXEMPT Annex B - (II) Culture Contract Invitation to Submit Revised Tender documentation.● EXEMPT Annex C - (i) Leisure Invitation to Submit Revised Tender (ISRT) Evaluation Scorecard, (ii) Culture Invitation to Submit Revised Tender (ISRT) Evaluation Scorecard.● EXEMPT Annex D1 - (i) Leisure preferred bidder fee proposal, (ii) Culture preferred bidder fee proposal and impact on revenue budget. ANNEX D2 - (i) All bidders fee proposal for leisure, (ii) All bidders fee proposal for culture.● EXEMPT Annex E - Legal terms of the procured Leisure and Culture Contract.● EXEMPT Annex F - Bidders Information.
Recommendation(s)	<i>That, subject to the decision of Cabinet on 13 March 2023, Council resolves to:</i>



	<ol style="list-style-type: none"> 1. <i>Agree to award the Leisure Management Contract to the preferred bidder set out in EXEMPT Annex C (i).</i> 2. <i>Agree to award the Culture Management Contract to the preferred bidder set out in EXEMPT Annex C (ii).</i> 3. <i>Delegate authority to the interim Head of Legal Services for Contract finalisation.</i> 4. <i>Delegate authority to Deputy Chief Executive and s151 Officer, in consultation with the Cabinet Member for Health and Wellbeing and Leadership and Management Team (Chief Executive, Deputy Chief Executive and Director of Governance and Development), to accept capital investment proposals set out in preferred bidder's Leisure tender submission.</i> 5. <i>Notes the position set out in paragraph 5.6 for the mobilisation period and in the early process of embedding the new contracts.</i>
Corporate priorities	<ul style="list-style-type: none"> ● Deliver the highest standard of service ● Respond to the climate crisis ● Support health and wellbeing ● Enable a vibrant economy
Key Decision	Yes
Exempt	<ul style="list-style-type: none"> ● Main report - NO ● Annex A - Project timeline - NO ● EXEMPT Annex B (i) & (ii); Leisure and Culture Invitation to Submit Revised Tender documentation - YES ● EXEMPT Annex C (i) & (ii); Leisure Invitation to Submit Revised Tender and Culture Invitation to Submit Revised Tender scorecards respectively - YES ● EXEMPT Annex D1 (i) & (ii); Proposed bidders for Leisure and Culture Contract fee proposals respectively, Annex D2 (i) & (ii); All bidders fee proposal for leisure and Culture respectively - YES ● EXEMPT Annex E; Legal terms of the procured Leisure and Culture Contract - YES ● EXEMPT Annex F - Bidders information - YES
Consultees/ Consultation	<p>Overview and Scrutiny Committee, Cross party Leisure and Cultural Provision Working Group (Cllr. Jenny Forde, Cllr. Nigel Robbins, Cllr. Nick Maunder, Cllr. Gary Selwyn, Cllr. Stephen Andrews, Cllr. Ray Theodoulou, Cllr. Stephen Hirst, Cllr. Richard Norris), Leadership and Management Team (Chief Executive, Deputy Chief Executive, Director of Governance and Development, Publica Managing Director, Publica Group</p>



	Finance Director).
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1. BACKGROUND

- 1.1 In March 2021, the Council's Strategic Outcomes Planning Model (Active Cotswolds) was adopted and authority granted to undertake a leisure management options appraisal, to determine the most suitable delivery model, contract scope and contract terms for the Council's leisure facilities - [Minutes of a meeting of Cabinet held on Monday, 1 March 2021](#)
- 1.2 Leisure consultants Max Associates were appointed to undertake the options appraisal on behalf of the Council. To support this process a cross party Leisure and Cultural Provision Working Group was established. The purpose of the working group was to help determine the best delivery model for the provision of sustainable leisure and cultural activities, provided in Council owned and operated facilities. The working group was involved in identifying the key drivers for the new contracts via a paired comparison exercise and also supported the review of the options appraisal findings and potential bidders soft market testing.
- 1.3 In May 2022, the Cabinet granted authority for officers to commence procurement exercises for the appointment of a Leisure Management Contractor, and a Culture Management Contractor for the operation of the Council's leisure and cultural facilities - [Minutes of a meeting of Cabinet held on Monday, 9 May 2022](#)
- 1.4 As part of the procurement exercise, a commitment was given to provide the Overview and Scrutiny Committee with key updates on the procurement process and timeline. Updates were provided at the October 2022 and February 2023 Committee meetings - [Minutes of a meeting of Overview and Scrutiny Committee held on Tuesday, 4 October 2022](#) and [Minutes of a meeting of Overview and Scrutiny Committee held on Wednesday, 1 February 2023](#)
- 1.5 A Project Board was established to oversee the procurement, which included the Cabinet Member for Health and Wellbeing, Senior Officers from the Council and Publica, South West Audit Partnership (SWAP), legal advisors Trowers & Hamlin and leisure consultants Max Associates. Alongside the board was a project team, which also acted as the evaluation panel for bids received. This consisted of core Council officers, leisure consultants Max Associates and legal advisors Trowers and Hamlin, plus several other specialist officers (Community Wellbeing, Climate Action, Tourism Services, Assets and Council Priorities) who evaluated specific method statements.
- 1.6 Leisure Consultants Max Associates, who provided valuable support with the Leisure and Culture Management Option Appraisal, were also commissioned to support the procurement process as project coordinators.



- 1.7 The Leisure Management Contract (herein referred to as the 'Leisure Contract') is the operation of Cirencester Leisure Centre, Bourton on the Water Leisure Centre and Chipping Campden Leisure Centre. The Culture Management Contract (herein referred to as the 'Culture Contract') is the operation of the Corinium Museum, Cirencester and the Resource Centre, Northleach.
- 1.8 The development of the Leisure Contract utilises the industry standard Sport England's template for a Leisure Operating Contract. Within the Contract sits the Service Specifications which provide details of the Council's requirements and performance standards in respect of the various elements of the services. The Specifications are largely output based, therefore the Council will be adopting a Performance Monitoring System to ensure that the service outcomes it requires are met and adhered to, and that continuous improvement is achieved throughout the Contract period. This will ensure that a high quality service is being delivered and also enables the Council to demonstrate the measurable contribution the services are having to the Council's outcomes.
- 1.9 The development of the Culture Contract utilises the current Management Contract as a base document. This contract has been further refined to enhance and rationalise its existing structure and definitions, to capture the outcomes and requirements of the Council. The Council's requirements are set out in the Services Specification and the Council will be adopting a Performance Monitoring system to ensure that the service outcomes are met and adhered to. Contract Monitoring is included in the Specification to ensure that continuous improvement is achieved and close partnership working implemented.
- 1.10 Following the Commissioning and Procurement Board in July 2022, it was agreed that both procurements would follow a competitive procedure with negotiation processes and the contract term would be 10 years for both contracts commencing on 1st August 2023, with the option included to extend for up to a further 5 years on each contract. The extension option will be available at the Council's discretion, and will be subject to the established terms and conditions from the contract.
- 1.11 The procurement process for both the Leisure and Culture Contracts commenced on 2nd September 2022, with the publication of the notice within the Official Journal of European Union (OJEU) - please refer to Annex A for detailed project timeline.

2. MAIN POINTS

- 2.1 The procurement process consisted of several stages; OJEU Notice and Standard Selection Questionnaire, Invitation to Submit Initial Tender and negotiation, Invitation to Submit Revised Tender followed by preferred bidder and Contract award.

OJEU and Standard Selection Questionnaire (SSQ)



- 2.2 The Council invited expressions of interest through a SSQ from organisations wishing to enter into a contract with the Council for the provision of the services. This stage was designed as an initial assessment to identify and shortlist suitable potential candidates.
- 2.3 Six leisure organisations expressed an interest in the Leisure Contract at the SSQ stage and two organisations for the Culture Contract. Following assessment (suitability, economic and technical) one contractor was excluded and another subsequently withdrew from the leisure contract. Therefore four contractors were taken through to Invitation to Submit Initial Tender for leisure and two for culture.

Invitation to Submit Initial Tender (ISIT)

- 2.4 This stage applied to Candidates who were shortlisted from the SSQ phase. The full tender stage involved candidates submitting detailed and fully priced responses and method statements. Following evaluation the Council entered into negotiation with candidates, particularly around their capital investment and business viability proposals, in order to inform the Council's requirements for the revised tenders.
- 2.5 The ISIT submissions were received on 9th January 2023. All those invited to the ISIT stage submitted a bid. These were assessed by the evaluation panel on commercial impact (management fee, capital investment and legal markup (amendment or suggested changes to Contract)) and quality (contribution to strategic objectives, social impact, environmental management, research and intelligence), see table 1 and 2 below for weightings.
- 2.6 For the Leisure Contract the commercial and quality assessment of submissions resulted in a scoring range from 52.99% - 71.50%. As a consequence the lowest scoring candidate was not invited to submit a revised tender; the de-selected candidate's commercial submission would have resulted in a significant cost to the Council and furthermore the assessment of the quality method statements only met or partially met the evaluation criteria set out in the ISIT documents. Therefore three contractors were taken through to the revised tender stage for leisure.
- 2.7 The culture submission assessment of commercial and quality responses presented an overall scoring range of 55.15% - 66.50%. This meant both candidates were invited through to the revised tender stage.

Invitation to Submit Revised Tender (ISRT)



- 2.8 Following negotiation candidates were invited to submit revised tenders in response to the Council's agreed requirements- See EXEMPT Annex B (i) and (ii) for the Leisure and Culture Invitation to Submit Revised Tender documentation.
- 2.9 The ISRT submissions were received on 17th February 2023. All those invited to the ISRT stage submitted a bid. These were then re-assessed by the evaluation panel utilising the same evaluation criteria and weightings, from the ISIT stage as set out in tables 1 and 2 below, which were established using feedback from the cross party Leisure and Cultural Provision Working Group paired comparison exercise.

Table 1: Leisure Invitation to Submit Initial Tender and Invitation to Submit Revised Tender evaluation criteria and weightings

Evaluation Criteria and Weightings	% weighting
Price / commercial	
1 Management Fee	25%
2 Capital investment proposals	15%
3 Viability of business plan	5%
4 Acceptance of commercial terms and conditions	5%
	50.00%
Quality	
1 Delivering Strategic Objectives	20%
2 Social and economic benefits	10%
3 Environmental Management	10%
4 Research, intelligence, and product development	10%
	50.00%
	100.00%

Table 2: Culture Invitation to Submit Initial Tender and Invitation to Submit Revised Tender evaluation criteria and weightings

Evaluation Criteria and Weightings	% weighting
Price / commercial	
1 Subsidy Payment	25%
2 Commercialisation and ability to reduce subsidy	15%
3 Grant funding	5%
4 Acceptance of commercial terms and conditions	5%
	50.00%
Quality	
1 Delivering Strategic Objectives	10%
2 Commercial approach to developing services and assets	10%
3 Staff and volunteering	10%
4 Retail and catering	10%
5 Research, intelligence, and product development	10%
	50.00%
	100.00%



- 2.10 The evaluation panel was satisfied that all organisations complied with the tender process for both the Leisure and Culture Contracts.

Preferred bidder / Award of Contract

- 2.11 Following evaluation, preferred bidders for each Contract have been identified. Those identified are the most economically advantageous Tenders for the Council in line with the evaluation criteria set out in the Tender documentation.
- 2.12 Please see EXEMPT Annex C (i) Leisure Invitation to Submit Revised Tender scorecard and (ii) Culture Invitation to Submit Revised Tender scorecard, for final scores, rankings and preferred bidders for both contracts.
- 2.13 Following a Council decision to award the contracts, a contract award notification letter will be issued to all operators and a mandatory ten day (calendar days) standstill period will be observed. Unsuccessful bidders will be offered feedback detailing why their bid was unsuccessful. This will be followed by a contract mobilisation period to establish and embed the new Contracts, prior to a Contract go live date on 1st August 2023.

3. CONCLUSION AND RECOMMENDATIONS

- 3.1 That Cabinet recommends that Council resolves to enter into a contract with the Leisure Contract preferred bidder for the operation and management of the Council's leisure facilities, as set out in EXEMPT Annex C (i) Leisure Invitation to Submit Revised Tender scorecard, and resolves to enter into a contract with the culture contract preferred bidder for the operation and management of Council's culture facilities, as set out in EXEMPT Annex C (ii) Culture Invitation to Submit Revised Tender scorecard. And, delegate authority to the interim Head of Legal Services for Contract finalisation.
- 3.2 Within the Leisure Contract Invitation to Submit Revised Tender documentation - see EXEMPT Annex C (i), candidates were requested to submit capital investment proposals for the £1.2m investment which the Council has allocated to leisure centre improvements in the capital investment programme. It is recommended that Cabinet delegates authority to the Deputy Chief Executive and s151 Officer, in consultation with Cabinet Member for Health and Wellbeing and the Leadership and Management Team (Chief Executive, Deputy Chief Executive and Director of Governance and Development), to accept the capital investment proposals as set out in the preferred bidder's tender submission.



4. ALTERNATIVE OPTIONS

- 4.1 The Council is under no obligation through the procurement process to accept any tender or any part of any tender and reserves the right to cancel this procurement at any time and the Council shall not be liable for any losses, damages, costs, expenses, or other sums whatsoever to any of the bidders.
- 4.2 Council could decide not to support the key recommendation above, should this be the decision the procurement process will require restarting and the current contract expiry date of July 2023 would be surpassed. This would introduce significant risk in terms of ongoing provision of leisure and cultural services, and the Council would have to consider the future of its Leisure and Culture Services.

5. FINANCIAL IMPLICATIONS

- 5.1 EXEMPT Annex D (i) and (ii) sets out the preferred bidders fee proposal for the Leisure and Culture Contracts respectively and the impact on the revenue budget.
- 5.2 As part of the budget setting process for 2023/24, the draft Revenue Budget and Medium Term Financial (MTFS) considered by Cabinet in November 2022, included an additional £300,000 of revenue budget recognising uncertainty, cost and income pressures in the procurement of the new leisure and culture contracts. Council approved the 2023/24 Revenue Budget and MTFS at their meeting on 15 February 2023, which confirmed this provision to ensure the Council could agree a new contract for the Council's Leisure Centres and Corinium Museum in March 2023.
- 5.3 During the procurement process the Council communicated to all bidders the position around affordability over the contract term and the impact of any management fee profile bidders had submitted.
- 5.4 The Council's position was for bidders to understand how the profile of the fee would impact on the Council's financial resilience over the MTFS period. A higher fee in the initial years of the contract period would draw more heavily from the Financial Resilience Reserve than forecast in the MTFS. This would, by consequence, bring forward the point at which the reserve is fully depleted from 2026/27 and pose a risk to the Council's financial sustainability other things being equal.
- 5.5 To summarise, taking account of the financial analysis completed and scoring of the tenders received for the Leisure and Culture Contracts, the tenders submitted by the preferred bidders provides the best value to the Council and meets or exceeds the contract outcomes.
- 5.6 It is imperative that the Council supports the mobilisation phase to establish and embed the new Leisure and Culture Contract requirements. The Council's Section 151 Officer has confirmed that the Financial Resilience Reserve can be utilised to ensure adequate resources



are available during this period and in the early process of embedding the new delivery requirements of the new contracts. Expenditure and commitments in respect of this activity will be reported to Cabinet through the regular Financial Performance reports.

6. LEGAL IMPLICATIONS

Legal powers to enter into Leisure and Culture Contracts

- 6.1 The Council has the power to enter into the contracts. The powers include, in respect of the Leisure Contract, section 19 of the Local Government (Miscellaneous Provisions) Act 1976 which allows a local authority to provide such recreation facilities as it thinks fit. In respect of the Culture Contract section 12 of the Public Libraries and Museums Act 1964 allows the Council to provide and maintain museums and art galleries within its administrative area or elsewhere in England or Wales, and may do all such things as may be necessary or expedient for or in connection with the provision or maintenance thereof. Additionally s.1 of the Local Government (Contracts) Act 1997 gives power to enter into contracts to discharge the Council's functions.

Procurement process

- 6.2 The Council has conducted a procurement process in accordance with the requirements of the Public Contracts Regulations 2015 (as amended), and has identified preferred bidders to enter into the Leisure and Culture Contracts in accordance with the process explained in this and the accompanying Exempt Annex C (i) and (ii).
- 6.3 The Council has elected to procure the preferred bidders to both contracts pursuant to the Competitive Procedure with Negotiation, and the Council should therefore note that it is not permitted to negotiate any further on the principle terms of the Leisure or Culture Contract once it has identified the preferred bidders. It is important therefore for the Council to be satisfied as to the terms upon which the preferred bidders will contract with the Council, as set out in EXEMPT Annex E.

7. RISK ASSESSMENT

- 7.1 There is a risk that the preferred bidders fail to achieve the level of surplus/deficit predicted in their tender returns. In mitigation, the Contracts will be signed under seal which will commit the preferred bidders to the financial terms of their tender regardless of the marketplace fluctuations. The residual risk in these circumstances will therefore be mitigated by the ability to hold the preferred bidders to deliver the full life of the 10 year Contracts.
- 7.2 During the mandatory 10-day standstill period, any unsuccessful bidders could potentially challenge the contract award. Should this happen, all pre contract award discussions must



pause until any challenge has been successfully dealt with. This could potentially have a knock on effect to the contract go live date. However, it should be noted that the Procurement team is confident that an open, fair, transparent and robust procurement process has been conducted; meaning the risk of challenge is deemed low.

- 7.3 In the unlikely event the preferred bidder does not enter into contract, the Council will be required to go back out to the market to conduct a new procurement process. This is deemed a low risk as all operators have been fully engaged and keen throughout the procurement exercise.
- 7.4 Following the Contract award there will be a four month mobilisation period to establish and embed the new Contract requirements. This period will be managed and monitored to ensure a successful launch of the new contracts and to ensure business continuity is delivered.
- 7.5 It should be noted that similar to all industry sectors there is a heightened risk of bankruptcy across the Leisure and Culture sector in the post pandemic period of high global energy prices and inflation. This risk will be mitigated by carrying out robust due diligence checks on the preferred bidder at both the pre contract stage and throughout the duration of the contract.

8. EQUALITIES IMPACT

- 8.1 Under equality legislation, the Council has a legal duty to pay 'due regard' to the need to eliminate discrimination and promote equality in relation to:
- Race
 - Disability
 - Gender, including gender reassignment
 - Age
 - Sexual Orientation
 - Pregnancy and maternity
 - Religion or belief
- 8.2 The Council has a duty, in accordance of the Equality Act 2010 to have due regard to the need to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Equality Act 2010;
 - (b) advance equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it; and
 - (c) foster good relations between persons who share a Relevant Protected Characteristic and persons who do not share it, and the preferred bidders agree to use



best endeavours to assist the Council , and to co-operate as necessary in order to ensure that the Council can comply with such duties.

Preferred Bidders obligations

8.3 To assist the Council in complying with its duties under the Equality Act 2010, the preferred bidders must:

- (a) have regard to the Equality and Diversity Guidance;
- (b) have a written equality and diversity policy that, as a minimum, must include:
 - a commitment to the principles of equality and diversity and to observing all applicable legislative requirements;
 - a detailed description of how the preferred bidders will meet the diverse needs of users of the Leisure and Culture facilities;
 - a detailed description of how the preferred bidders will implement, monitor, evaluate and update the policy;
 - a detailed description of how the preferred bidders intend to ensure equality in relation to their own personnel.
 - The identity of a senior person within the preferred bidders organisation with responsibility for the policy and its effective implementation;
 - a detailed description of how complaints and issues are to be dealt with to comply with the 'Equality and Diversity Policy'
- (c) have and implement an equality and diversity training plan for their personnel;
- (d) have and implement a communications plan to promote their policies and procedures for ensuring that the Services are accessible for people with a disability and meet any specific language needs of the users of the Leisure and Culture Facilities.
- (e) Without limiting the generality of any other provision of the awarded contract, the preferred bidders shall not unlawfully discriminate and shall take all reasonable steps to ensure that their Personnel do not unlawfully discriminate as provided by the Equality Act 2010 and/or any other relevant legislation in force from time to time relating to discrimination in employment and the provision of goods, facilities or services.

8.4 The Council has a legal duty to ensure that all existing and new contracts undergo an equality impact assessment. Equality impact assessments are a key element of risk planning, will highlight any potential issues in advance and provide robust evidence of good practice.

8.5 To ensure that the Council is complying with its statutory obligations in relation to equalities and diversities and to assist the Council to carry out equalities impact assessments and make decisions that better take account of any equality and diversity needs of users of the Leisure



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and Culture Facilities, the preferred bidders shall, at the Council's request, use its best endeavours to provide the Council with equality and diversity information in accordance with the Equality and Diversity Guidance.

- 8.6 Any reports which relate to new policies, procedures or services or changes to policies, procedures or services must be accompanied by an appropriate equalities impact assessment (EIA).

9. CLIMATE AND ECOLOGICAL EMERGENCIES IMPLICATIONS

- 9.1 The Leisure buildings have benefited from substantial energy system upgrades through the Public Sector Decarbonisation Scheme (PSDS) programme, and the preferred bidders have committed to ensuring that the energy / carbon saving measures will be actively managed and maintained to ensure the projected benefits are delivered. There may be opportunities in the future for the Council to further enhance the energy / climate measures already in place, and the preferred bidders are willing and able to support this.
- 9.2 No significant ecological risks or issues are foreseen.

10. BACKGROUND PAPERS

- 10.1 None

(END)