

Report to: Cabinet

Date of Meeting: 7th November 2013

Subject: The Management of Southport Theatre and Conference Centre

Report of: Director of Built Environment

Wards Affected: Dukes

Is this a Key Decision? Yes

Is it included in the Forward Plan? Yes

Exempt/Confidential No.

Purpose/Summary.

To finalise operational arrangements for the Southport Theatre and Conference Centre (STCC) for 10 yrs from 1st April 2014. This is due to the existing arrangements coming to term on 31st March 2014.

Recommendation(s)

1. Subject to contract, the Cabinet accepts Tender No. 2, being the tender achieving the highest Price/Quality score in respect of the operation of the Southport Theatre and Conference Centre for a period of 10 years from 1st April 2014.
2. Cabinet request the Head of Corporate Legal Services to draw up appropriate Lease and Management Agreements with tenderer No 2
3. Cabinet agree that officers work with and support the successful tenderer in order to facilitate the successful transition to the new operational arrangements.

How does the decision contribute to the Council's Corporate Objectives?

	<u>Corporate Objective</u>	<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		✓	
2	Jobs and Prosperity	✓		
3	Environmental Sustainability		✓	
4	Health and Well-Being		✓	
5	Children and Young People		✓	
6	Creating Safe Communities		✓	
7	Creating Inclusive Communities		✓	
8	Improving the Quality of Council Services and Strengthening Local Democracy		✓	

Reasons for the Recommendation:

The Company recommended for the award of the operational tender for the STCC was a clear winner with the highest score in each category of scored assessment criteria.

What will it cost and how will it be financed?

(A) Revenue Costs. The budget for the operational management of the Theatre and Conference Centre is currently set at £335,850. As a result of the impending renewal of the contract, a saving expectation of £100,000 had been built into the 2014/15 budget as part of the £51million agreed savings proposals, thereby reducing the budget in the next financial year to £235,850.

Acceptance of Tender 2 would deliver a material reduction in the management fee and this is reflected in the scoring.

Any saving achieved over and above the £100,000 quoted above will be used to support the corporate budget.

(B) Capital Costs. There are no capital costs as a consequence of this award.

Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

Legal. It will be necessary to prepare appropriate legal agreements including a Lease and Management Agreement.	
Human Resources. Limited implications for the Council with the potential for a small number of staff to be involved as a consequence of TUPE regulations	
Equality	
1. No Equality Implication	<input checked="" type="checkbox"/>
2. Equality Implications identified and mitigated	<input type="checkbox"/>
3. Equality Implication identified and risk remains	<input type="checkbox"/>

Impact on Service Delivery:

Service delivery is not expected to be affected negatively and there is potential for improvement to be realised.

What consultations have taken place on the proposals and when?

The Head of Corporate Finance & ICT has been consulted and comments have been incorporated into the report (FD 2441/13)

The Head of Corporate Legal Services has been consulted and any comments have been incorporated into the report (LD1746/13)

Are there any other options available for consideration?

The only real alternative is in-house operation but the Council's resources were insufficient to respond to the ITT at this time.

Implementation Date for the Decision

Following the expiry of the "call-in" period of the Cabinet's decision the EU Legislated Alcatel Mandatory Standstill process will be carried out. Subject to no formal legal challenge being received implementation will take place thereafter.

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Background Papers:

Restricted access only

BACKGROUND

1. Under the Public Procurement Regulations 2006 (as amended), the Council carried out a European Union Open Procurement Procedure to seek to procure a contract for the operational management of Southport Theatre and Conference Centre over a 10 year period.
2. The Council's multi-disciplinary Working Group of officers compiled an Invitation To Tender (ITT) document setting out:
 - i) Instructions for tenderers
 - ii) Background, Specification and nature of the service
 - iii) The Council's key objectives
 - iv) Evaluation Criteria including:
 - Mandatory document checks
 - Pass/Fail hard-gate assessments (Financial, Equalities, Health & Safety)
 - Soft-gate assessment (References)
 - Price / Quality / Presentation scoring
 - v) Sample evaluation scoring methods
 - vi) Terms and Conditions
 - vii) Principal Terms for Lease, and Management Agreements
 - viii) Existing Operating protocol
3. The tendering opportunity, managed via the Council's Procurement Unit, was publicised and managed electronically within the North West Opportunities Portal, 'The Chest'. This in turn allowed the creation and publication of a contract notice in the Official Journal of the European Union.
4. Under the Open Procedure, interested providers were afforded a minimum of 40 calendar days to access the electronic ITT documentation within the Chest. Once the ITT was downloaded all bidders had access to a question and answer facility within the Chest. Various questions were posed by a variety of bidders and answers were provided accordingly for all to see. The Council took a decision that where answers to the questions raised were beneficial to all bidders, they should be published to all bidders. This ensured openness, fairness and transparency.
5. A total of 29 potential providers accessed the ITT document via The Chest portal. Of that number 26 providers showed no further interest. One provider formally opted out of the process commenting that information necessary for the compilation of a competent bid had not been made available. However the information in question was available for download to all bidders equally via The Chest portal. Two providers submitted formal tender bids.

The relatively low response from an initial high level of interest demonstrates how narrow the marketplace is for this specialist service. This is also evidenced by an earlier unsuccessful tender for this service failing due to insufficient response. The implications of this require careful management as set out in the following section.

6. Upon commencing evaluation of the bids it became clear to Working Group officers that there were issues with both submitted bids. Tender 1, had failed to

provide sufficient referencing. In respect of Tender 2 external investigations are still being carried out by both Police and the Health & Safety Executive in relation to an accident occurring at a managed venue. The Council's Health and Safety Assessor initially felt that there was insufficient information available to conclude either a 'pass' or a 'fail' in respect of the Health and Safety assessment and so evaluating officers knew that the risk needed to be managed. Desiring to maintain competition within the process the Working Group proposed a way forward to both bidders, seeking to pursue additional referencing on both bids. The bidders welcomed the dialogue and agreed to work with the Council in an effort to keep the procurement exercise on track.

Additional satisfactory operational references were sought and received in respect of Tender 1.

Additional satisfactory Health and Safety orientated references were sought and received in respect of Tender 2 as well as further supporting information which was then reviewed by the Council's H&S team who commented as follows:

"With regard to the general management of health and safety by this organisation, excluding the issue regarding the accident, it appears to be good. They have willingly shared all the additional documents we have requested and also provided a significant number of additional references regarding health and safety management from other authorities where they currently operate in similar venues and they are also satisfactory. The Council has done as much as it can reasonably be expected to do to understand, mitigate and manage the risk at this moment in time, with the information available"

The Council in drawing up the required agreements would reserve the right to terminate the contract, if appropriate and subject to reasonable notice, if a criminal conviction were to be secured against the company for this specific incident.

7. As a result of receiving the additional references in respect of both tenders the Working Group of officers was able to take both bids to Price / Quality evaluation. The ITT document laid out the evaluation Criteria weightings as follows:-

Stage 1

Price	40%
Quality	40%

Stage 2

In addition, for final, short-listed Companies only.

Supplier Presentation and Panel Questions	20%
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	100%

8. In respect of Price evaluation the Working Group had set out within the ITT document a clear desire to reduce the existing Council funded Management Fee Subsidy of circa £325,000.00 per annum. A price scoring model was established

whereby the bidders would attract scoring based upon the level of reduction from the existing fee, i.e. the greater the saving, the better the score achieved. Importantly the ITT document informed all bidders equally:-

“The Council is seeking a material reduction in the current management fee. Any proposed increase against the current management fee would result in a negative price score which in turn would detract from Quality scoring on that bid.”

Tender 1’s proposal indicated an increase to the current management which despite the clear indication of the Council’s objective immediately dictated a negative score on Price.

Tender 2 did propose a material reduction in the management fee payable to the operator which resulted in a positive score on Price.

9. Quality scoring was undertaken on both bids. Assessment of responses to a series of six Method Statements surrounding key operational requirements produced a score for each bidder.
10. Price / Quality scoring prior to considering the Presentation stage of the evaluation was determined to be:

	Tender 1	Tender 2
Price (40%)	-2.34	21.00
Quality (40%)	28.32	37.12
Sub total	25.98	58.12

Within the ITT document all bidders were equally informed:-

“Following Stage 1 evaluation, up to three Tenderers with the highest evaluation scores will be invited to undertake Stage 2 of the process.

To be invited to this stage the Tenderers score from Stage 1 must be sufficient that the available marks for Stage 2 would render them capable of winning the process.”

At this stage of the evaluation Tender 1 was 32.14 marks behind Tender 2. With only 20 Marks remaining for the Presentation stage it was not mathematically possible for Tender 1 to promote itself into a winning position and so only Tender 2 was invited to give a presentation to the Working Group of officers.

11. At Presentation Tender 2’s responses to the six Method Statements included in the ITT were explored further in order to provide an opportunity for the bidder to ‘breathe life’ into the proposal, and Working Group officers asked clarifying questions accordingly. Further the bidder was asked five additional questions which probed areas such as the bidder’s Charitable Trust Status and how that benefits the Council, working within the TUPE regulations in respect of STCC and the transfer of staff, transition arrangements, financial projections over the ten year contract period, and the bidder’s requirements on the Council for the successful delivery of their tender. The session was concluded with a non-scored

discussion surrounding the bidder's application of Health and Safety management and procedures, as Working Group officers wanted to follow up on earlier Health and Safety referencing and ensure due diligence in that regard.

12. The evaluation scores across the two bids received were concluded as follows:-

	Tender 1	Tender 2
Price (40%)	-2.34	21.00
Quality (40%)	28.32	37.12
Presentation (20%)	0.00	16.88
Total	25.98	75.00

13. In conclusion therefore Cabinet is recommended to accept Tender 2, subject to contract, due to it being consistently more attractive to the Council when measured against the Price/Quality driven scoring model as set out in the ITT.

Appendix I of this report is NOT FOR PUBLICATION by virtue of part 3 of Schedule 12A of the Local Government Act 1972. The public interest test has been applied and favours the information being treated as confidential.

The restricted content is contained in Appendix I of this report.

Should members wish to discuss Appendix I, the restricted content, they must do so without public and press in attendance.