

REPORT FOR: **CABINET**

Date of Meeting:	6 June 2013
Subject:	Libraries & Leisure Commissioning: Award of Contract
Key Decision:	Yes
Responsible Officer:	Paul Najsarek, Corporate Director of Community, Health and Wellbeing
Portfolio Holder:	Councillor Nizam Ismail, Portfolio Holder for Community and Cultural Services Councillor Thaya Idaikkadar, Leader of the Council and Portfolio Holder for Property and Major Contracts
Exempt:	No, except for Appendix B which is exempt under paragraph 3 of Part I of Schedule 12A to the Local Government Act 1972 (as amended) in that it contains financial and business information relating to the proposals received from bidders and the Council.
Decision subject to Call-in:	Yes
Enclosures:	Appendix A Outline Contract specifications Appendix B Exempt Part Two Analysis of tenders received Appendix C Inter Authority Agreement Appendix D SLAs for delivery of clienting functions Appendix E – EQIA

Section 1 – Summary and Recommendations

This report sets out the results of the tender process for the provision of library and leisure management services and seeks approval for the award of contracts for the commissioning of these services in partnership with the London Boroughs of Brent (leisure) and Ealing (libraries and leisure) as set out in the report.

Recommendations:

Cabinet is requested to:

- i) Approve the award of the contract for delivery of leisure management services to Sports & Leisure Management Ltd as set out in paragraph 2.8, in line with the specification and evaluation methodology as outlined in paragraph 2.4 of this report. *The award of contract for leisure management services requires approval by Harrow, Brent, and Ealing Councils.*
- ii) Approve the award of the contract for delivery of library management services to John Laing Limited as set out paragraph 2.8, in line with the specification and evaluation methodology as outlined in paragraph 2.4 of this report. *The award of contract for libraries management services requires approval by both Harrow and Ealing Councils*
- iii) Authorise the Corporate Director Community, Health & Wellbeing in consultation with the Portfolio Holder for Community & Cultural Services and the Portfolio Holder for Property and Major Contracts to finalise any contract details and to:
 - Conclude and sign the contracts for the provision of services as outlined in the body of the report
 - Enter into further discussions with the preferred bidder(s) as required to allow for mobilisation and contract start date of 1st September 2013 (or other specified date).
 - Provide capital financing of £1.7million for the delivery of physical improvements and lifecycle replacement of equipment at a fixed cost on terms to be agreed with the Director of Finance and Assurance as outlined in paragraph 5.6
- iv) Approve the shared contract management model as set out in paragraph 2.6 whereby Harrow will act on behalf of LB Ealing and Harrow as the client for library services and LB Ealing will act on behalf of LB Brent and Harrow for leisure services; and authorise the Corporate

Director Community, Health & Wellbeing in consultation with the Portfolio Holder for Community & Cultural Services and the Portfolio Holder for Property and Major Contracts to:

- Agree the terms of and execute an Inter Authority Agreement (Appendix C) which reflects the principles outlined in this report
 - Agree the terms of and execute Service Level Agreements for the joint clienting of contracts (Appendix D) which reflect the principles outlined in this report
- v) Approve the grant of leases to the new contractor of such Council premises as the contractor may occupy for the purpose of the performance of the contract; such leases to run concurrently with the contract and to reflect the terms of the contract on terms to be agreed with the Corporate Director of Environment and Enterprise in consultation with the Director of Legal and Governance Services
- vi) Note the extension of the existing leisure management contract with Greenwich Leisure Ltd under the terms of the previous contract for period of four months until 31st August 2013, to allow adequate time for handover and transfer of staff and facilities.

Reason: (For recommendation)

To allow the commissioning of resilient and cost effective library and leisure management services at the most economically advantageous cost to the Council. This is a cross borough joint tendering exercise and the outcome will also be presented to Ealing and Brent Councils for approval.

Section 2 – Report

2.1 Introduction

2.1.1 The Council has set a budget through the Medium Term Financial Strategy which requires savings of £200,000 in 2013/14 and an additional £400,000 in 2014/15 in terms of the provision of library and leisure services. An additional saving of £75,000 in 2013/14 from combining Gayton and Civic Centre libraries on the Gayton library site was approved in February 2013.

2.1.2 On 19 January 2012, Cabinet considered a report on the Future of Cultural Services in Harrow and approved the delegation of authority to the relevant Corporate Directors in consultation with the Portfolio Holders for Community & Cultural Services and for Property and Major

Contracts to explore the commissioning of leisure and library services in collaboration with partner boroughs (the London Boroughs of Ealing and Brent for leisure management and Ealing for library services) subject to further final approval of the service delivery options by Cabinet.

- 2.1.3 A further report was brought to Cabinet in June 2012 on the outcome of that process. Cabinet delegated authority to the Corporate Director of Community, Health and Wellbeing in consultation with the Portfolio Holders for Community & Cultural Services and for Property and Major Contracts, to invite tenders, engage in discussion with bidders and proceed with the evaluation of tenders following any necessary consultation and equality analysis of the proposals, for the commissioning of leisure and library management services in partnership with Brent (leisure) and Ealing (libraries and leisure)
- 2.1.4 This report outlines the results of that commissioning exercise and offers options for Cabinet for the future provision of comprehensive, resilient and cost-effective library and leisure services for Harrow.

2.2 Options considered

- 2.2.1 Officers in Harrow, Ealing and Brent have been working across the three boroughs on a tender exercise for the provision of library and leisure management services. Collaborative working across the three Boroughs has provided the sharing of procurement costs and resources and also created a relatively large 'package' of facilities and services to put to the market, which enabled potential providers to achieve economies of scale and pass these savings back to the Councils taking part in the procurement.
- 2.2.2 Quality of delivery of service and ensuring each borough retained strategic governance of its library and leisure services have been key considerations for the project from its onset. For example, the procurement process was designed so that method statements were required from potential contractors on the quality of service delivery and included key community benefits such as employment opportunities, supporting public health duties, equality of access, the use of local supply chains and increases in overall usage. Only those bids which were assessed as passing the quality threshold could then be considered for price. In terms of sovereignty and governance, each borough retains decision making for the strategic future of its services and there are change control mechanisms built into the contract to allow for this. This would include, for example, the implementation of a Harrow Card, if the borough decides to proceed with this project.
- 2.2.3 The current Harrow leisure contract with GLL Ltd terminates on 30th April 2013 and the contract will need to be extended until such time as the new contract can start. Leisure management services in Harrow

have been delivered by external providers for over 12 years. If Cabinet approve the recommendations in this report, the new contract arrangements will not commence until 1st September 2013 (or other specified date). The current contract allows for an extension of the contract and discussions have been held with the current provider who has extended the contract under these circumstances.

2.2.4 The following options were considered for the future delivery of library and leisure management services in Harrow:

Option 1: Continue to provide library services in house and commission leisure services externally as a single borough.

This option was explored through the feasibility stages of the joint project. Market testing has demonstrated that there are more cost savings available when jointly commissioning leisure services with partner boroughs. This includes the sharing of overhead costs. Significant cost savings have already been made in terms of the provision of library and leisure services in Harrow and this option could not achieve the level of savings required without consideration of significant reductions in levels of service.

Officers do not recommend this option.

Option 2: Share library services across two or more boroughs and commission leisure services externally jointly.

Market testing has demonstrated that there are more cost savings available when jointly commissioning leisure services with partner boroughs. Alongside the market testing and procurement of leisure and library services, officers explored alternative delivery models for libraries including a potential shared model across two boroughs. The market testing has demonstrated that procuring an external partner provider for library services will provide greater value for money for the service. In addition, Harrow would also need to seek a partner as Ealing would be unlikely to wish to proceed with this option at this time for that reason.

Officers do not recommend this option

Option 3: Jointly commission library and leisure management services across two or more boroughs.

Harrow has been working in partnership with Ealing and Brent Councils throughout the market testing and subsequent procurement of the leisure and libraries management contract. One of the key drivers of the three borough partnership approach was to gain improved contract prices, based on the increased scale that 3 boroughs could offer to the market, compared to three separate procurements. The original business case estimated up to £10-11million of savings across the full term of the contract for the three boroughs. Following the formal procurement exercise, the three boroughs are collectively set to achieve over £20million over the 10 years of the leisure

contract and the 5 years of the libraries contract. In addition, the selected bidders will be providing additional investment in a number of the facilities.

In addition, the three borough partnership has saved procurement costs, with tasks done once for all three boroughs; the partnership provides a basis for lower contract management costs; and will provide more seamless access to facilities, particularly for residents in parts of the borough that are close to the boundaries with Brent and Ealing.

Each Council is also considering entering into Prudential borrowing arrangements to take advantage of the Councils' advantageous borrowing rates to fund equipment expenditure, and in the case of Harrow and Brent, capital investment in improving the facilities. For Harrow this capital investment is of £1.7 million including lifecycle gym equipment replacement, branding and signage and Harrow Leisure Centre upgrade to include dry-side changing facilities for the gym area. This will significantly increase the savings from this project by reducing contractors' costs whilst enabling development which will increase usage and income generations, reflected in the pricing schedule. Any capital project will be agreed at a fixed price with the contractor taking the risk on deliverability to time and cost.

This option brings the following benefits for Harrow:

- Comprehensive and cost-effective delivery of leisure and library services
- Borough retained strategic governance and decision-making for services
- Key community benefits such as increased usage, employment opportunities, health benefits
- Capital investment in leisure facilities
- Management and monitoring of quality of service
- Delivering significant savings against targets

This report outlines the background to the procurement process and the outcome of the tender exercise is outlined in Appendix B (Exempt) and paragraph 2.8 below. This is a joint procurement exercise on behalf of three local authorities including Harrow. The contract for libraries management will require approval by both Harrow and Ealing Councils and the contract for leisure management will require approval by Brent, Ealing and Harrow Councils. All three Councils will consider the outcome of the tendering exercise in May 2013.

Officers recommend this option

2.2.5 Therefore Cabinet is requested to:

- iii) i) Approve the award of the contract for delivery of leisure management services to Sport & Leisure Management Limited as set out in paragraph 2.8, in line with the specification and evaluation methodology as outlined in paragraph 2.4 of this report. *The award of*

contract for leisure management services requires approval by Harrow, Brent, and Ealing Councils.

iv) ii) Approve the award of the contract for delivery of library management services to John Laing Limited as set out in paragraph 2.8 , in line with the specification and evaluation methodology as outlined in paragraph 2.4. *The award of contract for libraries management services requires approval by both Harrow and Ealing Councils*

iii) Authorise the Corporate Director Community, Health & Wellbeing in consultation with the Portfolio Holder for Community & Cultural Services and the Portfolio Holder for Property and Major Contracts to finalise any contract details and to:

- Conclude and sign the contracts for the provision of services as outlined in the body of the report
- Enter into further discussions with the preferred bidder(s) as required to allow for mobilisation and contract start date of 1st September 2013 (or other specified date)
- Provide capital financing of £1.7million for the delivery of physical improvements and lifecycle replacement of equipment at a fixed cost on terms to be agreed with the Director of Finance and Assurance as outlined in paragraph 5.6

iv) Approve the shared contract management model as set out in paragraph 2.6 whereby Harrow will act on behalf of LB Ealing and Harrow as the client for library services and LB Ealing will act on behalf of LB Brent and Harrow for leisure services; and authorise the Corporate Director Community, Health & Wellbeing in consultation with the Portfolio Holder for Community & Cultural Services and the Portfolio Holder for Property and Major Contracts to:

- Agree the terms of and execute an Inter Authority Agreement (Appendix C) which reflects the principles outlined in this report
- Agree the terms of and execute Service Level Agreements for the joint clienting of contracts (Appendix D) which reflect the principles outlined in this report

v) Approve the grant of leases to the new contractor of such Council premises as the contractor may occupy for the purpose of the performance of the contract; such leases to run concurrently with the contract and to be on terms to be agreed with the Corporate Director of Environment and Enterprise in consultation with the Director of Legal and Democratic Services.

vi) Note the extension of the existing leisure management contract with Greenwich Leisure Ltd under the terms of the previous contract for period of four months until 31st August 2013, to allow adequate time for handover and transfer of staff and facilities.

2.3 Background

2.3.1 Feasibility work was carried out by Ealing, Brent and Harrow Council officers to explore the potential to procure library and leisure services in partnership across more than one borough for these services either as one or separate service packages (i.e. leisure, libraries or libraries and leisure combined). The resulting business case is based on comprehensive data showing costs, income, staffing levels etc with a 10-year business model.

2.3.2 A cross borough senior officer steering board (the Brent, Ealing and Harrow Strategic Cultural Partnership) has met regularly to progress the project with an established working group made up of service heads and specialists from each borough being responsible for the day to day delivery of the project. Members from all three boroughs have been briefed on the project regularly on a joint and borough only basis. A Prior Information Notice advertising the proposed tender was published in February 2012.

2.3.3 Scope of Service

Services identified as in scope for Harrow from the start of the contract are as follows:

- Ten static libraries (adjusted to allow for the merger of Gayton and Civic centre libraries on one site);
- Libraries back office support services;
- Home library service;
- Schools Library Service
- Harrow Leisure Centre;
- Bannister Sports Centre and Track;
- Hatch End Swimming Pool

2.3.4 Contract Term

The contract term for leisure was set at 10 years. The contract term for libraries was set at 5 years, with the option of a further 5 year extension. The library contract term is shorter as this is a less established market and leisure bidders will need a longer period to develop demand and recoup any investment they make in the sports centres.

2.3.5 Specification of Service

Prior to the start of the formal procurement exercise, a series of soft market testing sessions were held with providers who were active in the leisure and libraries market to test the proposition. The results of this engagement informed the development of the service specification and procurement process. The service specifications are outcome based.

Service specifications for libraries and leisure are shown at Appendix A. At ITT stage, organisations were required to demonstrate how they would meet the outcomes in the specification(s) as listed in Appendix A.

Bidders were required to submit their price for running the service as specified.

2.3.6 The price for each Lot for evaluation purposes was the total cost/contribution over the length of the contract. In order to fully understand the resources bidders intended to deploy, bidders were asked to submit a detailed pricing schedule for each library and each sports centre for each Borough. A number of financial elements within the pricing model were scored within the quality envelope to ensure there was thorough review of key cost and income lines and that the resources being deployed matched the service being described in the method statements.

2.3.7 The evaluation and scoring of the tenders was based on the Most Economically Advantageous Tender using the following scoring ratio:

	Quality	Price
Leisure	40%	60%
Libraries	50%	50%

The higher ratio for price for leisure reflects that it is in the operator's interest to deliver a good quality service in order to attract customers and generate income. The boroughs can therefore place a higher emphasis on achieving the least cost option.

2.4 Procurement Process

2.4.1 Procurement for the services was in the form of three 'lots':

- Lot 1: Management of leisure / sports facilities;
- Lot 2: Management of library facilities / services;
- Lot 3: Management of both leisure and library facilities (note that in order to be eligible for Lot 3 bidders had to submit compliant bids for Lot 1 and Lot 2).

2.4.2 Leisure and libraries services are defined as Part B services under public procurement rules and therefore there was a degree of flexibility in managing the process within formal procurement practices. An enhanced PQQ (Pre-Qualification Questionnaire) was developed (PQQ+) that required organisations to demonstrate acceptably in a Method Statement their capability and proposals for achieving the minimum requirements in relation to:

- Sustainability – Equality, Social & Economic, Environment;
- Health & safety;
- Cleaning and housekeeping;
- Service user experience and relationship management;
- Marketing and communications (including 'outreach');
- Staff planning, management and development;
- Maintenance, environmental conditions and security;
- Catering and vending;
- Mobilisation, business continuity and exit planning.

2.4.3 The procurement was in two stages:

- Stage 1: PQQ “plus” – to disqualify organisations who as well as failing to provide acceptable basic information, also failed to satisfy minimum requirements for the service.
- Stage 2: Invitation to Tender (ITT) – bidders were invited to submit initial bids, which were then the subject of discussion and negotiation. Bidders were then invited to submit a Best and Final Offer.

2.4.4 The contract notice was published in the Official Journal of the European Union on 1st May 2012. At Stage 1, 4 PQQ+ submissions were received for Libraries; 4 for Leisure. 1 bidder expressed an interest in a Lot 3 bid. The evaluation of PQQ plus was in two sections:

- Section 1: Qualification questionnaire – Pass/Fail questions covering areas such as fraud, previous experience, organisational policy etc.
- Section 2: Technical questionnaire – scored method statements covering areas such as sustainability, service user experience, staff management, maintenance etc; plus leisure and library specific questions on opening hours, service development etc.

2.4.5 Following the assessment of the PQQ+ submissions, Invitations to Tender were issued to 3 bidders for Leisure and 2 bidders for Libraries. The bidder who wished to submit a Lot 3 bid was invited to do so, on the basis of their meeting the requirements for both Lots 1 and 2 at this stage.

2.4.6 Invitations to Tender were issued on 20th July 2012 with initial bids received on 4th September 2012. A detailed feedback, clarification and negotiation process took place and bidders were then invited to submit a Best and Final Offer, which was submitted by all bidders on 10th December 2012.

2.4.7 To demonstrate the quality aspect of their proposal, tenderers were required to provide method statements, supported by relevant extracts from the pricing schedules, against each of the Lot outcomes, listed in Appendix B. These method statements were assessed against the following criteria:

- a) Originality and persuasiveness of proposal;
- b) Operational viability of proposal;
- c) Deliverability and sustainability;
- d) Financial viability.

Tenderers were awarded scores from 0-4 (Major concerns – Concerns – Good – Excellent). The scores for each outcome were weighted. Only submissions which achieved a score of 66% or above of the

available quality points were considered for price evaluation and contract award. In addition, the boroughs reserved the right to disqualify any bidder who scored a 1 or 0 on an individual question deemed essential even if that bidder achieved the overall threshold score of 66%.

2.4.8 Lot 1 & 2 quality evaluation scores were used as the starting point for evaluating Lot 3. If a Lot 3 bidder failed to meet the quality threshold for either their Lot 1 or Lot 2 submission then their Lot 3 bid was not opened or evaluated.

2.4.9 Tender prices were established from the pricing schedules submitted by tenderers. The best (lowest) price received the maximum score available in this section, with the remaining bids receiving a score pro rata to the best price. In order to fully understand the resources bidders intended to deploy, bidders were asked to submit a detailed pricing schedule for each library and each sports centre for each Borough. A number of financial elements within the pricing model were scored within the quality envelope to ensure there was thorough review of key cost and income lines and that the resources being deployed matched the service being described in the method statements.

2.4.10 Following full evaluation of the Best and Final Offers from bidders, the boroughs found that while the bids met the required affordability criteria for Brent and Ealing, none of the bids met the savings targets required for Harrow's Medium Term Financial Strategy. To address this, all bidders who had passed the quality threshold for each Lot were invited to a further discussion with the boroughs, and were then invited to make a further final financial submission to seek to address this shortfall. The bidders were only required to review their pricing submission, to the extent that any changes in price would not have an impact on the quality of their offer.

2.4.11 The final score was made on the basis of the most economically advantageous tender (MEAT) using the ratios set out in paragraph 2.3.7 above, which combines price and quality aspects. Final scores across all method statements are detailed in the tender reports at Appendix B.

2.4.12 There was a significant movement in price from tenderers at all three stages of the negotiated process.

2.5 Contractual Arrangements

2.5.1 The contract for leisure services will be for 10 years, commencing on 1st September 2013 (or specified date).

2.5.2 The contract for libraries services will be for 5 years, commencing on 1st September 2013, with the option for an extension of a further 5 years at the absolute discretion of the boroughs.

2.5.3 Contractors will be required to agree an annual action plan with Harrow. The contract performance indicators include the following minimum targets:

- increased participation through usage in both libraries and leisure (2% library throughput, 2% library issues, 3% library members)
- increased participation by target groups to ensure accessibility of services for all (90% of relevant actions)
- development of libraries as community hubs to ensure use by non-traditional groups (90% of relevant actions)
- increased external grants and investment (90% of applications submitted in accordance with plan)
- improved user satisfaction (90% satisfaction)
- more word of mouth recommendations (80% in net promoter survey score)
- higher quality of service assessed through targets for mystery shopping exercises (80%)
- environmental sustainability through reduced utilities consumption and % of waste recycled (reduction on 2011/12 consumption levels, 25% waste recycled, 95% ethical accredited suppliers)
- social sustainability through staff satisfaction and staff/volunteer make-up representative of the ward profiles (75% staff satisfaction)
- economic sustainability through apprenticeships, work placements and jobs for borough residents and through the use of local suppliers. (2 apprenticeships, 100 days per year work placements for Council residents, number of jobs for council residents, 15% of suppliers to be local)

Failure to achieve 90% of performance targets in any year will mean the contractor forfeiting a percentage of the annual management fee.

2.6 Shared Contract Management

2.6.1 The most cost effective model for managing the contracts will be for the three boroughs to act as a single customer. This reduces both the Councils' overheads and enables the suppliers to offer lower prices. It is recommended that the joint contract management team for leisure services will have line management reporting into Ealing's Assistant Director of Leisure; and the joint contract management team for Libraries services will have line management reporting into Harrow's Service manager Libraries, Sports & Leisure.

2.6.2 The liaison between boroughs will be under-pinned by an Inter-Authority agreement (attached at Appendix C). This includes the Service Level Agreements between the lead boroughs and the partner boroughs (Appendix D). The Inter-Authority agreement sets out the following:

- the key objectives of the Parties for the Post Contract Award Project Phase;
- the principles of good faith and collaboration;

- the Post Contract Award Project Phase governance structures the Parties will put in place;
- the respective roles and responsibilities the Parties will have; and
- the Parties' rights and responsibilities if one or more of the Parties wishes to end some or all of the Post Contract Award Project Phase arrangements set out in the Inter-Authority Agreement.

2.6.3 Day-to-day Contract Management. The aim is to keep contract management overheads as low as possible, with a principle that day-to-day contract management activities are done once across the three boroughs. The contract management teams will monitor how the goals and targets that the boroughs set are being met.

2.6.4 The contract monitoring role will cover the following aspects:

- Monitor and report on performance, monthly, quarterly and yearly.
- Support the responsible officer in updating members on performance – at Cabinet or Scrutiny.
- Own the day-to-day relationship with the provider.
- Monitor maintenance and utilities performance.
- Ensure that contractually agreed activities are performed.
- In relation to Members' queries and public complaints, investigate the complaint and provide a draft response to the responsible Officer of the relevant borough.
- Provide assurance that the supplier is compliant with safety requirements and Health and Safety regulation
- In the event of major incidents, liaise between the provider and Responsible Officer.

2.7 Strategic Direction and Governance of the Services

2.7.1 At Member and Senior Officer level, policy and strategic matters will remain with each borough. These aspects will be discussed with Members and continue to be presented to all Cabinets / Executives. The responsible officers in all three boroughs will retain ownership of the strategic direction of the individual Borough's Library or Leisure Services, driving the long term commissioning and fulfilment of resident's need. In addition, contract performance will be subject to the Council's normal Scrutiny arrangements. The level of Member engagement with the responsible officer and contractors will remain unchanged.

2.7.2 In all boroughs the responsibility of the Service Manager, Head of Service or Assistant Director are wider than the services currently being contracted, and the proposed design accommodates these wider responsibilities. The costs for the contract management function will be covered from the current budgets, and the savings position accounts for these costs.

2.7.3 There is a Change Control mechanism contained with the draft contract and redevelopment break clauses within both the contract and the draft leases for Harrow to allow for the possibility of change to the leisure and library estate or to delivery of service. This may have a financial impact depending on the level of change required and negotiations with contractors.

2.8 Contract award

2.8.1 The outcome of the tender process is outlined in confidential Appendix B. This report recommends the award of contract as follows:

- **Library management Services (5 Years with an option to extend for a further 5 years) John Laings Ltd**
- **Leisure management services (10 years) Sport & Leisure Management Services Ltd**

2.8.2 The indicative timetable for implementation is as follows:

Decision to Award	Date
Cabinet decision to award - Ealing	21 May 2013
Cabinet decision to award - Harrow	9 May 2013
Cabinet decision to award - Brent	20 May 2013
Call-in period - Ealing	Ends 29 May 2013
Call-in period - Harrow	Ends 17 May 2013
Call-in period - Brent	Ends 28 May 2013
No call-in*	
Notification of decision to award	30 May 2013
Standstill period ends	9 June 2013
Mobilisation	
Contract engrossed, executed and delivered	1 July 2013
Consultation with staff and unions	May – July 2013
Go live	
Ealing Libraries	1 September 2013
Harrow Libraries	1 September 2013
Harrow centres	1 September 2013
Ealing - Northolt, Perivale	1 September 2013
Brent - Vale Farm	1 November 2013
Ealing - Acton TH	1 May 2014
Ealing - Gurnell	1 October 2018
Ealing - Dormers Wells, Swift Rd	1 October 2018

**** In the case of a call-in to Overview and Scrutiny Committees in any of the three boroughs, the notification of the decision to award and contract start date may need to be amended in the light of that event***

3. Implications of the Recommendation

3.1 Resources, costs

The majority of resources for this procurement were provided from existing officer time. Each borough was responsible for provision of specialist leads on Leisure and Libraries to cover their own interests. Functional specialisms were provided on a "Borough Lead" basis to ensure an equitable split of responsibilities.

Project and Programme Management	Ealing
Procurement	Harrow
Legal	Harrow
Finance	Ealing

In addition, each Borough committed to provide £25k to cover costs associated with the project, where there was a lack of existing capability or capacity. This fund (£75k) was allocated by the Steering Committee. For Harrow, this cost has been funded from existing budgets. There will be an additional cost for the implementation of TUPE arrangements of £3,500 which will be met from existing budgets.

An ongoing repairs and maintenance budget will need to be maintained to cover any expenditure above £5,000 for any one item (see paragraph 5.5 below). This amount can be reviewed annually in the light of actual spend required.

3.2 Staffing/workforce

If Members approve the award of contract for the management of library services, there will be a TUPE situation affecting c80 FTE council staff. In the event of TUPE applying, the Council will comply with the requirements of Transfer of Undertakings (Protection of Employment) Regulations 2006. In essence, staff continuity of service and any other rights are all preserved at the point of transfer. Both the Council and the *new employer* are required to inform and consult employees affected directly or indirectly by the transfer. The Council will conduct a thorough staff engagement process in line with statutory and local requirements. Through the Departmental consultative forum, regular communication has been held with the Trade Unions on this project and regular communications with both unions and staff will continue during the process, if Members approve the recommendations. The Trade Unions have expressed concerns regarding the externalisation of library services and the possible impact on their members, in particular the timing of the planned merger of Gayton and Civic libraries in relation to this project. Officers have outlined that these are two separate projects and will be responding formally to the Trade Unions' concerns.

In addition, there will be a TUPE transfer of the staff employed by the current contractor providing Leisure Services to the new leisure contractor.

Where employees are members of the Local Government Pension Scheme, the contractor must provide them with access to the LGPS or a broadly comparable pension scheme.

3.3 Equalities impact

A potential negative impact on staff has been identified in the Equalities Impact Assessment as is outlined in paragraph 9 below. Informal consultation has taken place with library staff being briefed from December 2012. Once a decision has been reached, all staff will be briefed formally through briefing sessions and written communications throughout the process. Formal consultation with Trade Unions has taken place on the EQIA. The EQIA has been amended to reflect issues raised (Appendix E).

3.4 Property and Assets

The freehold, and (where applicable) leasehold, ownership of the properties involved (both libraries and leisure facilities) will not be directly affected. However, the new providers will operate under a lease to operate from the Council's facilities for the duration of the contracts.

The granting of a sub-lease in respect of Stanmore Library creates a risk which is highlighted under section 8.

Harrow Leisure Centre site is one of 4 key strategic sites within the Area Action Plan and is likely to form an active development proposition during the early part of the proposed contract. There are also a number of other sites where it is likely that redevelopment opportunities and changes in connection with ongoing service delivery will need to be made.

It is important to note that to fully protect the Council's position; provision has been made within both the contract and the leases to enable the Council to (a) serve notice to redevelop sites; (b) cease or alter the provision of the service; and (c) require the service to be provided from an alternative location. These rights will be exercisable on a rolling basis after the expiration of the first 12 months, though any exercise of these options will have financial implications for the council

Before contract signature, officers will work to identify and define as clearly as possible the circumstances that might give rise to compensation events during the first 5 years of the libraries contract to provide the Council with a degree of economic certainty, particularly in relation to Harrow Leisure Centre.

In respect of other locations, compensation rights for the provider will be assessed at the time the break takes effect strictly in accordance with the lease and contract provisions

3.5 Community safety

There are no implications for community safety arising from this report. The service specification and draft contract outlines health and safety responsibilities for providers. Compliance will be monitored through contract monitoring processes and reported as required.

4 Legal Implications

4.1 The Public Libraries and Museums Act 1964 makes it the duty of every library authority to provide a “comprehensive and efficient library service for all persons desiring to make use thereof”. The proposals in this report would support this.

4.2 There are a number of legal powers that support the proposal for moving leisure and libraries provision to an external provider, as follows:

- a) Section 19 (1) of the Local Government (Miscellaneous) Provisions Act 1976: local authorities have power to provide such recreational facilities as they think fit and by virtue of section 1 of The Local Government (Contracts) Act 1997 they also have power to enter into a contract with another person in connection with the provision of those facilities.
- b) General power of competence: Section 1 of the Localism Act 2011 gives the Council power to do anything individuals may do and this includes entering into contracts for services and leasing arrangements.
- c) Power to make contributions towards others providing library facilities: Section 9(1) of the Public Libraries and Museums Act 1964: gives the Council an additional power to make contributions towards the expenses of any other person providing library facilities for members of the public.
- d) Power to provide goods and services: Section 2 of the Local Authorities (Goods and Services) Act 1970 allows local authorities to provide to other authorities and specified public bodies, goods and materials and administrative, professional and technical services on such terms as may be agreed. This is a wide power although it does not extend to services which are not administrative, technical or professional in nature.
- e) Power to provide officers: Section 113 of the Local Government Act 1972 allows an authority to place its officers at the disposal of another authority on such terms as they may agree. An officer provided under section 113 is treated for all purposes as an officer of the recipient authority for the discharge of its statutory functions. Such an officer can therefore hold statutory offices e.g. section 151 or monitoring officer and can exercise delegated authority etc. The providing authority must consult with the officer before entering into an agreement and it will probably be necessary to vary the officer’s contract of employment (see below).
- f) Power to delegate: With the exception of a small number of Council-only decisions and functions outside the general rules on delegation, Council functions are either executive, which can be discharged by the executive, an executive member or an officer, or non-executive, which can be discharged by Council, a committee, or an officer. Such functions can also be delegated to another local authority (which may then discharge it through a committee or an officer), in the case of non-executive functions (s.101 Local Government Act 1972), and to

another authority's executive (regulations under s.19 of the Local Government Act 2000) in the case of executive functions. The function of levying a rate can only be discharged by the authority itself. Non-executive functions may also be exercised jointly by one or more authorities and a joint committee established for the purpose or the functions delegated to an officer. Similarly, executive functions may be exercised jointly by a joint committee of executive members.

- g) Power to grant leases or licenses: The Council has the power to dispose of property under s123 of the Local Government 1972 Act. This is subject to an obligation to obtain the best consideration that can reasonably be obtained (except for leases of seven years or less) unless the Secretary of State's consent is obtained for the disposal whether by means of a general consent or otherwise.

- 4.3 The Boroughs have conducted the tender process in accordance with principles of transparency, fairness and equal treatment as required by regulation 4 of the Public Contracts Regulations 2006 (as amended) and the EC Treaty
- 4.4 The Council must comply with the requirements of The Transfer of Undertakings (Protection of Employment) Regulations 2006 because the award of the contracts will involve a service provision change, including consultation requirements with affected staff and Unions, and the provision to the new employers of employee liability information.
- 4.5 There are potential legal issues around granting a sub-lease of Stanmore library and redeveloping Harrow Leisure Centre that are covered in paragraphs 3.4 and 8 of this report

5 Financial Implications

- 5.1 The baseline budget for libraries is £3,002,832 after adjustment for changes in staff terms and conditions in January 2013, inflation and pre-existing MTFs savings of £25,000 for 2013/14 and support service charges for services which will be supplied by the contract. The net baseline budget for leisure is -£374,000. This incorporates an existing pressure on income attainment of -£174,000. Additional MTFs targets are £200,000 in 2013/14 and £400,000 in 2014/15 for commissioning cultural services, £71,000 pre-existing 2014/15 MTFs targets for libraries and £75,000 in 2013/14 for the merger of Gayton and Civic Centre libraries on the existing Gayton Library site.
- 5.2 The tender prices that all the authorities have received are all less than the current cost of service and in Harrow's case, achieve annual net savings of £745,845 for libraries and leisure. The net figures are inclusive of management fees, building repairs and maintenance, utilities costs etc (see paragraph 5.5 below). Incorporating all savings requirements, the overall savings for the Council are over **£930,000**

5.3 The savings are profiled across 2013/14 and 2014/15 to reflect part-year implementation in 2013/14 as follows in the table below:

	Full year £s	Yr 1 £s	Yr 2 £s	Total
Library Baseline budget	3,002,832			
Leisure Baseline budget	-374,000			
Target MTFS savings				
Commissioning cultural services		200,000	400,000	
Gayton Library/Civic Centre merger		75,000		
Existing library savings 2014/15			71,000	
Total		275,000	471,000	746,000
Savings identified				
Total potential net savings	-745,845	-175,237	-570,608	-745,845

5.3 In addition to the savings outlined above, the potential library contractor has indicated that a further saving of **£97,024** pa would be available to Harrow if the library contract were extended for the further five years of the potential contract period. This cannot be confirmed at this point as the library contract has been advertised for a period of five years with a potential five year extension and therefore the savings have not been expressed above. However, it may be possible to accrue for the annual uplift during the first five years, refundable to the contractor if the contract is not extended for a further five years or to be accessed by Harrow if it is extended.

5.4 The recommended bidders are well established companies with a strong track record in their respective fields. The evaluation process ensured that the required service standards and outcomes were clearly defined and will be delivered. The prices will be contractually guaranteed subject to any future agreed changes between the Council and the contractor.

5.5 A fundamental principle running through the contract has been an appropriate sharing of financial risks. It is not in the Councils' interest to place 100% of all risks on the contractor as this will translate through directly into additional cost. The key areas of risk items were considered are set out in the table below:

Risk Item	Risk Share
Income	100% contractor
Energy	Contractor takes risk on usage, Council takes risk on price
FM	Contractor responsible for first £5k on all repairs*
Pension	Contractor to retain risks on those elements they control (e.g. early retirements, pay increases above Local authority rates), Council to retain all risk they would have faced had service remained in-house
Inflation	No inflation allowed under the contract other than where the Council agrees a case submitted by the Contractor.

	Staff Costs: Where these apply, Contractor only awarded inflation up to Local Government increases
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*An ongoing repairs and maintenance budget will need to be maintained to cover any expenditure above £5,000 for any one item (see paragraph 5.5 below). Officers recommend that for year 1 of contract award this is maintained at £100,000 for both libraries and leisure combined and has been taken into account in savings calculations. This amount can be reviewed annually in the light of actual spend required.

5.6 Officers recommend that Harrow provides capital financing with the successful leisure contractor through Prudential borrowing arrangements to take advantage of the Council's advantageous borrowing rates (currently 3.5%) to fund equipment expenditure, and capital investment in improving the facilities. For Harrow, this capital investment is of £1.7 million including lifecycle gym equipment replacement, branding and signage and Harrow Leisure Centre upgrade to include dry-side changing facilities for the gym area. This will significantly increase the savings from this project by reducing contractors' costs whilst enabling development which will increase usage and income generation, reflected in the pricing schedule. Any capital project will be agreed at a fixed priced with the contractor taking the risk on deliverability to time and cost.

5.7 The saving in respect of amalgamating the Civic Library with Gayton library will still require that the other costs of the Civic Library site of £108,800 (in the Property Services base budget) is maintained for 2013-14 when the property is vacated. It is assumed that this cost will be reduced or removed from year 2 onwards when a new use is found for the Civic 7 building. Savings of ICT costs can be made in year 2 of contractual arrangements as this is an agreed reduction under the current ICT contract arrangements. Other assumed SSC savings are under review for reduction in Year 2.

6. Performance Issues

6.1 Quality of delivery of service has been a key area of the commissioning process and potential contractors were assessed first against the quality thresholds. Only those that passed this threshold were then considered on price. The specifications for both services (details in Appendix A) were outcome based specifications designed to provide higher standards at lower cost. For both services the Partnership set out expected outcomes (such as increased user satisfaction; reduced utility consumption; increased usage of libraries) and bidders had to show in their method statements how they would achieve these outcomes. The method statements then form an integral part of the contract documentation i.e. successful contractors will be contractually bound to deliver the outcomes they said they could achieve.

6.2 The improved performance is monitored through a set of performance indicators reported on a monthly, quarterly and annual basis. Contract

payments are based on the contractors meeting these targets. With leisure the operator will not meet challenging revenue targets without achieving increased usage. In libraries the contractor is obliged to increase throughput by 2%; issues by 2% and memberships by 3%. Failure to achieve 90% of performance targets in any year will mean the contractor forfeiting a percentage of the annual management fee. Thus the procurement process and the contract documentation is designed not only to achieve considerable savings but at the same time to drive up and maintain standards.

7. Sustainability and Environmental Impact

- 7.1 The bidding contractor(s) supplied information pertaining to environmental performance as part of the tender documents. The Contractor(s) demonstrated a clear responsibility for minimising the environmental impact of the contract(s), including targets relating to the reduction of carbon dioxide emissions, energy efficiency, noise pollution, waste minimisation, water conservation and green travel behaviour.
- 7.2 There are specific requirements in the tender and contract against Harrow's Sustainable Procurement Policy and 20% of the quality evaluation was assessed against delivery of this. Sustainability and community benefit outcomes made up approximately 15% of the Quality/Technical assessment of the tender award criteria.
- 7.3 Bidders were requested to provide action plans for the following to demonstrate their ability to achieve these outcomes:
- Supply chain diversity (giving locally-based organisations free and fair opportunity to compete for appropriate supply and sub-contracting opportunities)
 - Equality, diversity and inclusion (promoting equality and anti-discrimination)
 - Environmental Sustainability (committing to reduce environmental impact)
 - Meeting targeted recruitment and training needs
- 7.4 It is the Partnership's intention that contract delivery will contribute to improved performance in relation to environmental, social and economic sustainability. Therefore, the action plans provided by the successful suppliers will be appended to the contract document forming a contractual obligation by the supplier and monitored as part of the contract performance regime.

8. Risk Management Implications

Yes, Risk is included on the Directorate risk register

Yes, Separate risk register in place

Risks identified include:

- *Risk of challenge by an unsuccessful tenderer.* There is a risk that an unsuccessful tenderer might challenge the award of the contract on the grounds that the Council has not complied with the public procurement regulations. Harrow has provided the lead on procurement (through the Head of Procurement) for the three borough project and has used rigorous principles of openness and transparency throughout the tender process to minimise risk.
- *Risk of granting a sub-lease in respect of Stanmore Library.* The landlord's consent to sub-let is required and though it may not unreasonably withhold or delay giving its consent, the landlord will be alerted to all provisions when consent is sought.
- *Risk of perceived or actual reduction in current performance levels during mobilisation period.* Due to changes in management creating uncertainty amongst staff. This will be mitigated by a thorough mobilisation plan, communication with public, staff and unions and a robust contract management approach.
- *Contracted is changed or terminated before end date.* Due to strategic decisions or non-performance of contractor. Draft contract and lease have change control mechanisms and redevelopment and break clauses. Contract KPIs and performance payment mechanism are in place.

9 Equalities implications

Section 149 of the Equalities Act 2010 created the public sector equality duty. Section 149 states:-

(1) A public authority must, in the exercise of its functions, have due regard to the need to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

When making decisions in relation to service provision and in particular changing policies and the way services are provided, the Council must take account of the equality duty and in particular any potential impact on protected groups.

9.1 At the start of the procurement project, an Initial Equalities Impact

Assessment was conducted to inform the Cabinet report in June 2012. A full Equalities Impact Assessment has now been carried out and the following assessments were made:

There are sufficient safeguards within the specifications of services and through the implementation of TUPE regulations to ensure the minimisation of adverse impact in equality terms. There could be positive impact for specific groups as a result of the contractual requirements, should contracts be awarded.

9.2 The specification of services identifies the following as what 'good' will look like in equality terms:

The Contractor has:

- Equalities policies that place equality central to the way the organisation carries out all of its work including:
- Commitment to equality that is communicated effectively to all staff and volunteers and to communities where the organisation is working
- Clarity about what the organisation needs to do to address issues and barriers faced by under-represented groups in use of services, articulated in an action plan with SMART objectives
- Facility-specific action plans to maximise use by disabled people and minority and disadvantaged communities in their catchment areas, including outreach.

The facility-specific plans will be:

- Based on research into local demographics and the plans and priorities of local partners
- Have SMART objectives that relate directly to the required outcomes
- Provide for inclusive information (e.g. directional and information signage based on users' perception and regulatory requirements, induction loops, large print documentation, translation services, compliance with Web Content Accessibility Guidelines, Assistive Technology on library computers)
- Include comprehensive staff training - in equalities generally, in safeguarding children and vulnerable adults, and in impairment specific disability - plus continuous professional development (CPD) opportunities in working with disabled people e.g. use of assistive technologies, internet classes for adults with learning disabilities
- Provide for disabled role models (e.g. employees, volunteers, student work experience placements)

- Identify relevant performance indicators, measures and review processes

9.3 The following measures will be put in place to measure the protection and enhancement of service and targeted provision for low participant groups:

- i) Quarterly contract monitoring and annual review of contract to review requirements for low participant groups;
- ii) Annual user survey through the contract to identify low participant groups and how they use services, including targeted services.

10. Corporate Priorities

Please identify which corporate priority the report incorporates and how:

- Keeping neighbourhoods clean, green and safe.
- Supporting those who are most in need

By delivering well-maintained library and leisure facilities that offer inclusive services to support healthy lifestyles and reduce the opportunity to engage in crime for those at risk

- Supporting our town centre, our local shopping centres and businesses.

By enhancing our leisure facilities and supporting local businesses and employment through contractual obligations

Section 3 - Statutory Officer Clearance

<p>Name: Roger Hampson</p> <p>Date: 11 March 2013</p>	<p><input checked="" type="checkbox"/> on behalf of the Chief Financial Officer</p>
<p>Name: Stephen Dorrian</p> <p>Date: 12 March 2013</p>	<p><input checked="" type="checkbox"/> on behalf of the Monitoring Officer</p>

Section 4 – Performance Officer Clearance

Name: Alex Dewsnap



Divisional Director
Strategic
Commissioning

Date: 12 March 2013

Section 5 – Environmental Impact Officer Clearance

Name: John Edwards



Divisional Director
(Environmental
Services)

Date: 12 March 2013

Section 6 - Contact Details and Background Papers

Contact: Marianne Locke Divisional Director Community & Culture 020 8736 6530 x6530

Background Papers:

Cabinet Report: Future of Cultural Services in Harrow 19th January 2012

<http://modern.gov:8080/documents/g60644/Public%20reports%20pack%20Thursday%2019-Jan-2012%2019.30%20Cabinet.pdf?T=10>

Cabinet Report: Commissioning of Libraries and Leisure Management Services 20th June 2012

<http://modern.gov:8080/documents/g61243/Public%20reports%20pack%20Wednesday%2020-Jun-2012%2019.30%20Cabinet.pdf?T=10>

**Call-In Waived by the
Chairman of Overview
and Scrutiny
Committee**

NOT APPLICABLE

[Call-in applies]