

REPORT FOR: CABINET

Date of Meeting:	13 January 2011
Subject:	Sports and Leisure Facilities Management Contract Extension
Key Decision:	Yes Financial: Revenue expenditure more than £100,000
Responsible Officer:	Marianne Locke, Divisional Director Community & Culture
Portfolio Holder:	Councillor Rekha Shah, Portfolio Holder for Community and Cultural Services Councillor Thaya Idaikkadar, Portfolio Holder for Property and Major Contracts
Exempt:	No
Decision subject to Call-in:	Yes
Enclosures:	None

Section 1 – Summary and Recommendations

Recommendations:

Cabinet is requested to delegate authority to the Corporate Director of Community and Environment to agree an extension of the current contract for the provision of Leisure Facility Management for two years from March 2011 (as permitted by the current contract), subject to finalised negotiations on costs within the contract and improved performance measures.

Reason: The Council is required under Best Value legislation to review its service procurement arrangements regularly. To ensure continuation of leisure service delivery to the Council while it reviews longer term options for the service.

Section 2 – Report

2.1 Introduction

The Council has procured its Sports and Leisure Services through an external partner Leisure Connection Limited (LC) since January 1997. This contract controls the management of three leisure centres:

- *Harrow Leisure Centre*
- *Hatch End Pool*
- *Bannister Sports Centre*

The current contract dates from 2003 but from September 2008 was novated to an Industrial and Provident Society: Leisure in the Community Limited (LITC). The contract terminates on 31st March 2011 with an option to extend for a further two years. This report is submitted to Cabinet for approval to extend the contract in line with this provision in advance of the Sport and Leisure Centres Management Contract termination date of 31 March 2011.

2.2 Options considered

Within the limited timeframe available, there are only two options for the future delivery of the Council's sports and leisure facilities management.

A. Extend the LITC contract for up to two years.

The current contract with LITC allows for a 'once only' extension for up to two years ending in March 2013. Under the current public procurement regulations, this extension can be achieved without a formal competitive procurement process, providing that there are no significant changes to the contract terms and conditions which could be challenged as materially altering the commercial structure of the contract. The benefit of this option is continuation of service delivery in the short term at known cost whilst providing an opportunity to explore other possible options for managing the Council's leisure services (and possibly other cultural facilities) in the future. The risks are the inability to potentially reduce contract costs through a new procurement. However, negotiations are underway which could see a further reduction of at least £10,000 pa on the current contract costs.

B. Return the service to Council operation at the end of the LITC/LC Contract.

The contract could be terminated naturally on 31 March 2011 and the services returned in house. This would require the transfer of staff from LITC back to the Council under TUPE Regulations and a considerable revenue financial contribution from the Council over and above the current arrangement, although there would also be an income stream to offset costs to an extent. Financial risks to the Council include:

- The Council would cease to receive the annual Service Fee from the contractor
- The Council would have to pay the full NNDR on all three properties

- The Council would become responsible for all maintenance of Hatch End Pool and Bannister Sports Centre
- The Council would have to pay for the provision or replacement of equipment previously provided by the contractor.
- The Council would be responsible for the net revenue costs of operating the three facilities

This option is not viable in the timeframe available. A TUPE of staff into the Council for what could be a short time frame depending on the future provision options for sport and leisure would be costly and disruptive; and there could be additional management costs for the Council above and beyond the financial liabilities identified above.

2.3 Background

2.3.1 The current contract

LITC subcontracts day-to-day leisure centres' operation to Leisure Connections Ltd (LC), a specialist leisure management contractor managing over 70 leisure centres for English local authorities. Operating through LITC provides a range of fiscal reliefs including NNDR relief. LC staff are seconded to LITC to carry out the following duties:

- Control access to the facilities
- Collect income from customers
- Monitor use of facilities
- Monitor maintenance arrangements
- Monitor community programmes
- Prepare an Annual Report for the Council

2.3.2 Contract Fees

Harrow Council pays an annual administration charge of £10,000 to LITC for the administration of the contract. The contract requires Leisure Connection to pay the Council an annual sum index linked against the RPI (£245,895 in 2010/11). Other costs to the Council include clienting, maintenance, and rates.

2.3.4 Capital costs

The contract required the contractor to make capital investments in the facilities at commencement (2003/04). Further investment was agreed at novation to LITC. The Council also has a range of maintenance responsibilities within the contract.

Over the last three financial years, the Council has committed the following sums to meet its contractual responsibilities:

Harrow Council Leisure Centre Investment	2008/09 £	2009/10 £	2010/11 £
Capital expenditure	250,000	721,000*	100,000**

*To prolong the Harrow LC building life after Byron Park Redevelopment put on hold.

**For small works and also for any maintenance works that have a capital element e.g. M&E failure.

The net cost in total (revenue and capital) to the Council for 2010/11 is £148,462, projected to reduce to £142,180 in 2012/13

2.4 Current situation

2.4.1 It was decided to explore the extension of the existing contract after plans to rebuild the current Harrow Leisure Centre were abandoned because of the collapse of the property market. The capital for rebuilding was planned to come from site sales elsewhere in the Borough.

2.4.2 Significant capital expenditure has been invested in the Leisure Centre (refurbishment of the Changing Village, upgrade of Masefield Suite, improvement of CCTV and other M and E works) to ensure that it would remain fit for purpose for the immediate future, given the lack of investment opportunity in any new facility.

2.4.3 Given that any procurement exercise would have the limitation of marketing a building with significant building issues, a two year extension provides an opportunity to explore other possible options for managing the Council's leisure facilities in the future. In addition, there is the opportunity to assess the viability of the market as the economic landscape changes.

2.4.4 The performance of the Leisure Connection Harrow Contract manager was deemed to be unacceptable given the number of complaints received and the Council requested his removal. A new contract manager has been in place since August 2010 and there has been a significant improvement in communications between the Leisure Centre management and the centre users, with a much reduced rate of complaint.

2.5 Recommendation

Cabinet is requested to delegate authority to the Corporate Director of Community and Environment to agree an extension of the current contract for the provision of Leisure Facility Management for two years from March 2011 (as permitted by the current contract), subject to finalised negotiations on costs within the contract and improved performance measures.

This will ensure continued operation of the facilities whilst minimising financial risk to the Council pending a review/re-tendering exercise for leisure services going forward.

2.6 Legal Implications

2.6.1 Under the EC Treaty of Rome and The Public Contracts Regulations 2006 all contractors must be treated in an equal and non-discriminatory way and the Council must act in a transparent way. Service contracts, such as the leisure centres management contract, that are not subject to the full application of EU procurement rules (because they are Part B services) must be advertised appropriately to ensure competition and impartiality. However, the current contract with LITC contains a 2-year extension option until March 2013 and so it is lawful to extend the existing contract for 2 years on the existing terms.

2.6.2 The contract also expressly acknowledges the potential for changes to the operation and management of the facilities and services, and includes a Change Control Mechanism for agreeing modifications and variations to the contract. It is therefore lawful to vary the existing terms by agreement,

provided that those variations do not amount to an entirely different contract which could be subject to challenge by other leisure providers as materially altering the commercial structure of the contract. Material alterations include:

- extending the scope of the contract considerably to encompass services not initially covered by the initial award procedure;
- changing the economic balance of the contract in favour of the contractor in a manner not provided for in the terms of the initial contract.
- distorting competition to the detriment of potential bidders who would bid if the contract were re-tendered at the time of the relevant change.

2.6.3 An extension of the contract will also require an extension of the building leases with LITC for the same period.

2.7 Financial Implications

The £200,000 fee payable by LITC to the Council had not been increased by RPI on a compound basis and there have been discussions about the implementation of this process and the outstanding amounts due to the Council. The figures have now been agreed between the Council and the contractor and payments are now scheduled. The net cost to the Council for 2010/11 is £148,462, projected to reduce to £142,180 in 2012/13. Further negotiations to reduce costs to the Council are ongoing and are currently projected to produce a further saving of at least £10,000 pa to the Council. The above recommendation does not incur any additional unknown financial risks to the Council.

2.8 Performance Issues

There is a contractual obligation to carry out an annual review of performance against a schedule of performance indicators contained within the contract. These indicators include measurement of:

- complaints
- visits to centres
- customer satisfaction
- days lost per year
- security incidents
- health & safety contravention.

There is no financial penalty currently awarded for failure to meet agreed indicators or targets as part of the contract. Discussions will be held with LITC, subject to approval of this report to address enhanced contract measurement arrangements. Initial discussions have already taken place. There was an increased level of complaints in 2010/11 rising from 72 in Quarter 1 to 127 in Quarter 2. After negotiation with LITC and the introduction of a new Centre Manager from September, complaints have decreased: final quarter 3 figures will be available in January 2011.

2.9 Environmental Impact

There are no environmental issues from this recommendation

2.10 Risk Management Implications

Risk included on Directorate risk register? No

Separate risk register in place? No

The main risks and possible actions are outlined in para 2.2 above.

2.11 Equalities implications

There are no equalities issues arising from this recommendation. An Equalities Impact Assessment is available on request.

2.12 Corporate Priorities

The report supports the Council's current corporate priority to build stronger communities by securing the future of Leisure Facilities Management as a focus for community involvement in sport and physical activity.

This report also incorporates the draft corporate vision and priorities which are currently under consultation.

Section 3 - Statutory Officer Clearance

Name: Myfanwy Barrett	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 4 January 2011		
Name: Stephen Dorrian	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 31 December 2010		

Section 4 - Performance Officer Clearance

Name: Alex Dewsnap	<input checked="" type="checkbox"/>	Divisional Director Partnership, Development and Performance
Date: 31 December 2010		

Section 5 – Environmental Impact Officer Clearance

Name: John Edwards	<input checked="" type="checkbox"/>	on behalf of the Divisional Director (Environmental Services)
Date: 3 Dec 2010		

Section 6 - Contact Details and Background Papers

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

Background Papers:

1. Agreement for the provision of Management Services, improvement of facilities, partnership scheme for increased usage and community involvement for the Leisure Centre, Bannister Sports Centre and Hatch End Pool .

Call-In Waived by the Chairman of Overview and Scrutiny Committee	NOT APPLICABLE
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