

 the low tax borough	<b>London Borough of Hammersmith &amp; Fulham</b>  <b>CABINET</b>  <b>2 SEPTEMBER 2013</b>
<b>PHOENIX LEISURE CENTRE</b>	
<b>Report of the Cabinet Member for Residents Services : Councillor Greg Smith</b>	
<b>Open Report</b>	
<b>Classification - For Decision</b> <b>Key Decision: Yes</b>	
<b>Wards Affected: ALL</b>	
<b>Accountable Executive Director:</b> Executive Director Environment, Leisure and Resident Services; Lyn Carpenter	
<b>Report Author:</b> Ullash Karia, Head of Service Parks and Leisure	<b>Contact Details:</b> Tel: 020 7938 8171 E-mail: Ullash.Karia@RBKC.Gov.UK

## 1. EXECUTIVE SUMMARY

- 1.1. The Council's existing arrangement with Greenwich Leisure Limited (GLL) whereby GLL manages public use, including usage by other schools, of the swimming pool and gym facilities at Phoenix High School is due to expire 31st December 2013. Under Contracts Standing Orders (CSOs), the Council would normally run a competition to determine who should manage this arrangement on the Council's behalf after December 2013, should the school wish to continue making the facilities available for others to use.
- 1.2. Running an efficient competition at this moment in time, however, is not viable due to a forthcoming change in the school's leadership. The current Head Teacher, Sir William Atkinson, is retiring, and his successor will not be in post until the start of the new school year in September. At the same time, the school has become a foundation trust, which entitles it to acquire the Council's freehold, which may affect the structure of any future leisure management contract. The Council does not currently have sufficient clarity needed to underpin a good competition and secure an efficient outcome.
- 1.3. Approval is therefore sought for a number of interim measures. Namely, the waiving of Contracts Standings Orders to allow the negotiation of a new interim contract with GLL, at potentially reduced cost, for a period of no more than 19 months; and the placing of a Prior Information Notice to gauge potential market interest and support tripartite pre-procurement dialogue between interested

companies, Phoenix High School, and the Council on how to obtain Best Value from the tendering of a new contract in 2014/15.

- 1.4. The arrangement with GLL for managing public usage of the facilities at Phoenix High School is separate from the borough-wide Leisure Management contract between H&F and GLL, which does not expire until 2019. It is likely that any new contract for management of the Phoenix High facilities from 2015 will run until 2019 so that it is aligned with expiry of the borough-wide leisure management contract, also currently held by GLL.

## **2. RECOMMENDATIONS**

- 2.1. That the requirement of the Council's Contract Standing Orders to seek competitive tenders be waived in accordance with CSO 3.1, and that approval be given to negotiate with Greenwich Leisure Limited a new interim contract for the management of public leisure facilities at Phoenix High School, in accordance with CSO 9.11.
- 2.2. That the duration of this interim contract with GLL be aligned with the ending of the school academic year in July 2015.
- 2.3. That the interim contract with GLL continues, and for no more than the existing contract price of £388,000 per annum.
- 2.4. That the award of the final form of contract, following negotiations with GLL, be delegated to the Cabinet Member for Residents Services in consultation with the Executive Director of Environment, Leisure and Residents Services.
- 2.5. That a Prior Information Notice be posted to gauge future market interest and aid pre-procurement dialogue between interested organisations, Phoenix High School and H&F on what shape a future (2015-2019) contract should take to optimise value for money.

## **3. REASONS FOR DECISION**

- 3.1. The reasons for the above recommendations are described in the Executive Summary at the beginning of the report. The swimming pool (often referred to as the Janet Adegoke swimming pool) in particular, along with associated gym facilities, at Phoenix High School enables important public access to leisure and fitness facilities, especially for residents and other schools in the north of the borough. (Where other such opportunities are not easily accessed. It is important this access is continued, given the relative lack of nearby alternative provision and the importance of the pool to H&F's current Leisure strategy).
- 3.2. ELRS are currently conducting a Bi-Borough review of leisure services. Continuing the existing arrangement at Phoenix High school until July 2015 will allow the findings of the review to inform a new contract where appropriate.

- 3.3. The extension will enable ELRS to work and engage with the new Head of the School to explore opportunities to enhance community use and further develop initiatives around public health and in particular activities for young people.

#### 4. INTRODUCTION AND BACKGROUND

##### Background

- 4.1. The swimming pool and fitness centre was previously located on Bloemfontein Road, on the White City estate. Unable to afford the cost of extensive repairs needed to safely keep the pool open, the Council decided to close the site in April 2003. It was subsequently agreed by the school and the Council that the swimming pool including other facilities should also be relocated to the school site; construction on the new pool started in July 2004 and completed in 2005.

##### The facilities

- 4.2. The total build cost for the new centre was £4,889,571, funded by Children's Services. Phoenix Leisure Centre consists of:
- 1 x learner pool
  - 25m (5 lane) swimming pool
  - 45 station gym
  - Studio (1 court) – limited height
  - Sports hall (1 court) – limited height.
- 4.3. On 13th September 2005, Cabinet agreed to accept the tender submitted by Greenwich Leisure Limited for the sum of £2,342,563 for the first 6 years of the contract, with an option to extend it for a further 2 years at an additional cost of £624,335 over the last two years. . The total sum payable to GLL so far has been £2,966,898 over 8 years. The arrangement commenced on 1 January 2006 and is due to expire 31st December 2013.

#### 5. CURRENT USAGE

- 5.1. The swimming pool at Phoenix High School is heavily used by other local schools, who have access to the main facilities from 11.0am-4.30pm every day. 18 schools use the centre for a total of 22.5 hours per week, with good usage also made by local swimming and canoe clubs. Utilisation of the swimming pool is currently at 99%, within the current opening times.

Phoenix Usage 2011	Q1	Q2	Q3	Q4	Total
<b>Pool</b>	18356	19745	16526	17752	<b>72379</b>
<b>Dry (Gym, Studio, Sports hall)</b>	22189	22442	20807	21129	<b>86567</b>
<b>Total</b>	<b>40545</b>	<b>42187</b>	<b>37333</b>	<b>38881</b>	<b><u>158,946</u></b>

Phoenix Usage 2012	Q1	Q2	Q3	Q4	Total
<b>Pool</b>	26709	28198	19599	23681	<b>98187</b>
<b>Dry (Gym, Studio, Sports hall)</b>	26032	28263	28590	27342	<b>110227</b>
<b>Total</b>	<b>52741</b>	<b>56461</b>	<b>48189</b>	<b>50959</b>	<b><u>208350</u></b>

5.2. The majority of current usage comes from the Shepherds Bush Green and Askew wards and to a lesser extent from the Wormholt and White City ward. The site has a mixed and multicultural customer base, ranging from families on low income, unemployed, people with disabilities, through to people on to medium-to-high incomes. To accommodate catchment groups, GLL offer the following facilities and price reductions:

- For people on low incomes or are unemployed, GLL offer the H&F “Better Gym” product which allows users to train for only £19.95 per month (unlimited use) in the gym.
- For People with Disabilities, the site is registered as an IFI centre (Inclusive Fitness Initiative).

5.3. The 2012 annual user survey results suggest that customer satisfaction in the centre has increased from 70% in 2010 to 92% in 2012.

5.4. The gym, however, is under-utilised by the school and remains empty during large parts of the school’s current exclusive access. GLL believe there is an opportunity to open up community access to the gym at all times, and in return GLL would be in a position to run and operate an improved structured session for the school in regards to their curriculum. This is an option that could be further explored with GLL during the extension period, and with other potential providers expressing an interest following the publication of a Prior Information Notice.

## 6. SOLUTION

6.1. An interim solution is therefore needed that:

- ensures continuity of service provision in the short term;
- allows the new Head and School Governing Body time to consider and agree their future intentions regarding public and other schools use of the pool and other facilities;
- protects the Council from risk of possible challenge on the existing arrangement continuing without competition;
- facilitates pre-procurement dialogue with interested companies to help inform School and Council decisions on what the new contract should look like in order to optimise viability and value for all concerned

- supports longer-term (i.e. 2019) alignment with the borough-wide leisure management contract.
- As part of the longer-term retendering process, a range of options will be fully explored for the future provision of the service.

## **7. EQUALITY IMPLICATIONS**

- 7.1. The site has a diverse customer base, ranging from families on low income, unemployed people, people with disabilities and low, mid to high earners. As given at 5.1 of this report, the disabled access pool is used by 2 schools (Jack Tizzard and Cambridge School) on a regular basis. The new 19 month contract will continue take into account of disabled people's needs, which helps to improve equality of opportunity for disabled adults and children, and to facilitate equality of opportunity between disabled and non-disabled people. However, as the service will not change, it can also be said that there is no discernible impact arising from the recommendations in this report.
- 7.2 Implications completed by: Carly Fry Opportunities Manager Telephone 020 8753 3430

## **8. LEGAL IMPLICATIONS**

- 8.1. Although the Council accepted GLL's tender in 2005, no formal contract was ever entered into between the parties. There is however an implied contract in place, the terms of which are based upon those set out in the tender issued by the Council and GLL's tender response as may have been varied by the course of conduct of the parties and any correspondence between the parties over the last 7 years.
- 8.2. It is noted that it is proposed to enter into an interim contract with GLL to extend the current arrangements for a period of up to 19 months.
- 8.3. The provision of leisure management services are Part B services which are not subject to the full regime of the Public Contract Regulations 2006 (as amended). However, the Council should still comply with the general EU treaty principles of transparency, equality of treatment and non-discrimination. This would normally require a competitive procurement exercise to be carried. However, the reasons why it is not practical to carry out a competitive process for the interim arrangements are set out in this report.
- 8.4. It is advised that legal services work with the client department to ensure that a signed contract is put in place to cover the interim arrangements.
- 8.5. Implications completed by: Catherine Irvine, Senior Solicitor (Contracts), Telephone 020 8753 2774

## **9. FINANCIAL AND RESOURCES IMPLICATIONS**

- 9.1. The contract costs since the start of the existing contract are set out in this report. The recommendations as highlighted in section 2 of this report are supported as this provides more certainty for the Council in terms of funding requirements over the next eighteen months. Any re-negotiation of the management fee for this period of time, whether with GLL or another contractor, should be contained within the existing annual revenue budget of £388,000.
- 9.2. The bi-borough Leisure review should look to secure improved value for money for the Council in terms of longer-term leisure provision. The findings and recommendations from this review will be considered and reported separately.
- 9.3. Implications completed by Kellie Gooch, Head of Finance (ELRS) 020 8753 2203

## **10. RISK MANAGEMENT**

- 10.1. Contract risk management and maintenance of the contract register form part of the ongoing responsibility of the department under Contract Standing Orders. Where a contract has not been executed this may leave the council exposed to disputes over liability in the event of claims made by users of the facility and where issues arise in respect of contract performance. An internal audit of the contract register will be undertaken as part of the 2012 2013 audit programme. Risks identified in the options present a fair appraisal however the interim contract should be formerly executed and placed on the Council's contract to enable sufficient notice for a future planned re-procurement.
- 10.2. Risk Management comments approved/verified by the BiBorough Risk Manager Michael Sloniowski, ext.2587

## **11. PROCUREMENT AND IT STRATEGY IMPLICATIONS**

- 11.1. The current arrangement with GLL for managing public and schools access to the Swimming Pool and Phoenix Leisure Centre expires 31st December 2013, with previous options to extend having been exhausted. However, for reasons made clear in the report, the level of certainty and clarity about future intentions and requirements needed to run an efficient procurement for a new contract does not currently exist; nor would it be in the Council's interests to run a competition at this present time, for reasons also explained in the report.
- 11.2. Section 3.1 of the Council's CSOs allow waivers to the normal competition requirements where there are exceptional circumstances and/or it is not in the Council's interests to run a competitive exercise at any given moment in time.
- 11.3. Paragraph 9.11 of the Council's CSOs specifically requires Member authority before officers enter into any negotiation of contractual terms with commercial or voluntary organisations.

- 11.4. As the services are defined as being “Part B” rather than “Part A” under the Public Contracts regulations 2006 (as amended), they are not regulated in terms of statutory competition requirements.
- 11.5. The report recommends a pragmatic interim solution that seeks to ensure continuity of a sensitive front-line service, whilst at the same time leveraging cost reductions and better value for money from the incumbent provider; it also proposes engagement with the incumbent and other interested companies on how to best optimise value in a future contract. The H&F Corporate Procurement team has advised ELRS on possible options, and the recommended approach as highlighted in section 2 of this report is supported by the Director for Procurement and IT Strategy in H&F.
- 11.6. Implications completed by: Joanna Angelides, Principal Procurement Consultant, H&F: 0208 753 2586 & John Francis, Principal Procurement Consultant, H&F: 020 8753 2582.

**LOCAL GOVERNMENT ACT 2000**  
**LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT**

<b>No.</b>	<b>Description of Background Papers</b>	<b>Name/Ext of holder of file/copy</b>	<b>Department/ Location</b>
1.	None		