

Decision Maker: EXECUTIVE
FOR PRE DECISION SCRUTINY AT THE RENEWAL &
RECREATION POLICY DEVELOPMENT & SCRUTINY
COMMITTEE

Date: Wednesday 19 July 2017
Wednesday 5th July 2017

Decision Type: Non-Urgent Executive Key

Title: CONTRACT AWARD FOR THE PROVISION OF LIBRARY
SERVICES – PART 1

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Chief Officer: Executive Director of Environment & Community Services

Ward: All

1. Reason for report

- 1.1. Following pre-decision scrutiny at the meeting of the Renewal & Recreation Policy Development & Scrutiny Committee on 18th March 2015, the Portfolio Holder decided to implement a new approach to the delivery of library services in difficult financial circumstances. This included investigating the option of commissioning the Library service.
- 1.2. At their meeting on 9th November 2015, the Council's Executive instructed officers to market test the library service using a procurement strategy based on competition with negotiation to enable officers' flexibility to work with bidders to realise savings.
- 1.3. This report provides Members with the outcome of the market testing.

2. RECOMMENDATION(S)

- 2.1. **Members of the Renewal & Recreation Policy Development & Scrutiny Committee are asked to review this report and provide their comments to the Executive for their consideration.**
- 2.2. **Members of the Executive are asked to:**

- **Note the outcome of the full market testing exercise and agree, subject to consideration of the accompanying 'Part 2' report (DRR17/035), to award the contract for the provision of library services to Greenwich Leisure Limited for a period of 10 years with the option to extend for a further 5 years.**
- **Note the feedback on the recommendation from staff and their representatives to inform their decision making.**

Impact on Vulnerable Adults and Children

1. Summary of Impact: An Equality Impact Assessment indicates that it is not expected that there will be any adverse impact from commissioning the library service on vulnerable adults or children and young people. This is because the contract documents ensure that existing service levels are protected.
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Corporate Policy

1. Policy Status: Existing Policy
 2. BBB Priority: Excellent Council Supporting Independence Vibrant, Thriving Town Centres
Healthy Bromley Regeneration
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Financial

1. Cost of proposal: Details included in the Part 2 report
 2. Ongoing costs: Potential savings are identified in the Part 2 report
 3. Budget head/performance centre: Library Service and Repairs and Maintenance
 4. Total current budget for this head: £4.7m and £100k from repairs and maintenance budgets
 5. Source of funding: Existing revenue budget for 2017/18
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Personnel

1. Number of staff (current and additional): 148 staff (93.93 FTEs) and 31 casuals
 2. If from existing staff resources, number of staff hours: N/A
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Legal

1. Legal Requirement: Statutory Requirement: The Public Libraries and Museum Act 1964
 2. Call-in: Applicable:
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Procurement

1. Summary of Procurement Implications: This tender process was a two stage negotiated procedure with an initial expression of interest from three tenderers who were all invited to participate in the tender process, and in the subsequent tender stages were reduced to two and further reduced to a final tenderer as identified in this report on the basis that their bid represented best value. The tender process was carried out in accordance with the pre-agreed procurement strategy and was compliant with all relevant legislation and Council rules.
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): In 2016/17, Bromley's library service recorded 42,219 active users (an active user is defined as an individual who has had a transaction on their library account in the last year). The library service has a statutory duty to be available and accessible to all those who live, work and study in the borough. A 2014 estimate identified that 320,057 people live in the London Borough of Bromley.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments:

3. COMMENTARY

- 3.1. On 18th March 2015, following pre-decision scrutiny by the Renewal & Recreation Policy Development & Scrutiny Committee, the Renewal & Recreation Portfolio Holder approved a new approach to the delivery of library services in difficult financial circumstances. This decision followed a period of public consultation on these proposals, and included exploring the option to commission the library service; seeking an external provider to deliver direct management of the library service under the supervision of the Council. This proposal is in line with the Council's Corporate Operating Principles including the commitment that services are provided by whoever offers customers and council taxpayers excellent value for money.
- 3.2. On 9th November 2015, the Council's Executive reviewed the gateway report which set out the business case for market testing the library service based on:
- The outcome of soft market testing.
 - Consideration of alternative options to realise savings which included continued direct delivery by the Council whilst making efficiencies in other ways, a fully integrated shared library service with the London Borough of Bexley, a trust or industrial and provident society, and reorganisation of library property assets. An analysis of these options determined that they each presented higher risks and would most likely result in a reduction in the level or range of services offered as part of the library service.
 - A public consultation exercise that showed that Bromley library users especially valued the library service, but there was not an overwhelming preference from respondents for a commissioned library service, or a library service that is directly delivered by the Council.
 - Engagement with staff and their representatives, many of whom opposed the proposal to commission the library service.
 - An equalities impact assessment that anticipated that a commissioned library service would not negatively impact on the Council's ability to meet their statutory equalities duties.
- 3.3. The Council's Executive Committee agreed recommendations to market test the library service and begin a formal procurement exercise, agreeing a negotiated procurement strategy under the Light Touch Regime, as allowed for in the 2015 Procurement Regulations. This strategy was chosen to give the Council flexibility to work with bidders to realise savings. Members agreed the following contracting arrangements:
- The contract would have a duration of 10 years with the option to extend for a further five years
 - The contract terms allow for review to enable changes to service delivery or property arrangements and therefore contract price to be negotiated in the future, should this be required.
 - The contract terms made clear provisions of contract monitoring to safeguard commitments to protect service levels.
- 3.4. Building on the success of the Council's shared service for library back-office and management functions with the London Borough of Bexley, and in light of both Councils' previously stated ambitions to make savings, it was agreed that a joint procurement process would be undertaken in order to secure further discounts on service delivery through potential economies of scale. However, it was also agreed that the contract should allow for one authority to proceed to award exclusively.

Pre-Qualification Tender Stages

- 3.5. The opportunity for the provision of library services for Bromley and Bexley Councils was jointly advertised in the Official Journal of the European Union and on Contracts Finder on 10th March 2016 and key contract documents were published including terms and conditions, the specification, contract monitoring regime and instructions for applicants.
- 3.6. Although 18 organisations expressed an interest in the opportunity on the Council's e-procurement portal, three submitted Qualitative Selection Questionnaires before the closing date of 13th April 2016. Two organisations who had anticipated bidding decided not to proceed; one citing a decision to focus their business in their geographical location, and one because they did not secure the right bidding partner.
- 3.7. Qualitative Selection Questionnaires were evaluated independently by each Council's evaluation panels and a joint decision was taken to invite all three organisations to the tender stage. This decision complied with section 65 of the Public Contract Regulations that identified that the minimum number of bidders to be shortlisted for this procurement approach was three. Further, more specific information on the evaluation of Qualitative Selection Questionnaires is supplied in the accompanying 'Part 2' report (**DRR17/035**).

Initial Tenders

- 3.8. In accordance with a negotiated tender process, the three shortlisted bidders were issued with an invitation to submit an initial tender on 25th May 2016, and initial submissions were received before the deadline of 29th July 2016. The invitation to submit initial tenders also issued additional information to support bidding, including information pertaining to financial liability that may arise as a result of the Transfer of Undertakings (Protection of Employment) legislation, more detailed budget information relating to the current service delivery model, and more detailed information about the library properties. Officers also hosted bidders on site visits to libraries where this was requested in accordance with the instructions to applicants.
- 3.9. Initial tenders were received from all three shortlisted bidders in response to the detailed tender documents from all three bidders. In accordance with the process set out in the tender documents, initial tenders were subject to a robust commercial evaluation. Tenders were evaluated on the basis of:

- 60% price
- 40% quality

The 40% quality evaluation was further evaluated against weighted criteria as follows:

- Financial resources and contract affordability: 10%
- Quality and operational competence: 20%
- Technical ability: 20%
- Health and safety: 5%
- Customer care and service development: 20%
- Sustainability: 10%
- Deliverability of proposals: 15%

- 3.10. Tenders were evaluated by the officer Evaluation Panel for Bromley Council who scored bids independently and then agreed a consensus score for each of the bids.
- 3.11. During the time in which initial tenders were evaluated, there were two key developments affecting the scope of the tender. Firstly, in September 2016, the London Borough of Bexley decided that they would not be continuing with the tender process. Although the tender was designed so that the contracting decisions of each Council would be separate, this development was not anticipated and discussions around the future of the shared service for library back-office and management functions were required to inform any subsequent tender stages undertaken by Bromley.
- 3.12. Secondly, a separate market testing exercise did not identify suitable community management arrangements for the Council's six community libraries. As a consequence, the Council's Executive agreed a recommendation to include the six community libraries for direct management within the scope of this tender for a commissioned library service as set out in report **DRR116/069**.
- 3.13. All three bidders were notified of these changes in October 2016 and invited to meetings to clarify and negotiate on their initial tenders in November 2016. Bidders were specifically asked to present more information about how they had built up their price, and clarification questions were structured around the following areas:
- Price
 - Staffing
 - Allocation of pension liability
 - Service related issues
 - Facilities management
 - Key Performance Indicators
 - Bonds and Guarantees
 - Other contracting issues
- 3.14. Following these clarification and negotiation meetings with the three bidders, the officer Evaluation Panel recommended that one bidder should not proceed to the next tender stage. This was also agreed at the Commissioning Board.

Second Tenders

- 3.15. A second round of tenders was sought to allow for further clarification and negotiation.
- 3.16. Invitations to submit second tenders, including updated tender documents, were issued on 9th January 2017, however before the deadline for responses of 21st February 2017, one bidder informed the Council that they were no longer in a position to pursue the opportunity, and that they wished to withdraw from the tender process.

- 3.17. On the basis of this evaluation and negotiation (which is detailed in the accompanying 'Part 2' report [DRR17/035]) the Panel invited the remaining bidder to submit their final bid price.
- 3.18. With their permission, officers are able to reveal the identity of the final bidder as Greenwich Leisure Limited. On the basis of their final bid, officers are recommending that the contract for the provision of library services is awarded to Greenwich Leisure Limited.

Benefits of the bid

- 3.19. A summary of the benefits of their bid to deliver the library service on behalf of and under the supervision of the Council are as follows:
- Greenwich Leisure Limited is an experienced provider of library services. They currently operate library services in Greenwich, Wandsworth and Lincolnshire as well as prison libraries on behalf of the Ministry of Justice, equating to 88 local libraries (38 directly operated public libraries). They are a large, long established organisation with over 24 years' experience of working with local authorities and local communities.
 - Greenwich Leisure Limited's bid would deliver savings on the Council's annual operating budget. These will be delivered through:
 - Implementing efficiencies in operational and specialist support functions
 - Their improved purchasing power within the industry
 - Economies of scale
 - Savings from rate relief offered by Greenwich Leisure Limited's charitable status
 - Exploring opportunities to maintain income levels in the context of reductions in income from traditional income streams.
 - Greenwich Leisure Limited are committed to delivering added value and improvement to the library service, delivering on the Council's strategic aims and objectives by:
 - Bringing investment into library services
 - Developing new ICT capabilities
 - Expanding the activities programme in libraries
 - Providing excellent staff training opportunities
- 3.20. Greenwich Leisure Limited's bid is based on their taking an internal repairing lease on those library properties that the Council owns, and taking a sub-lease or under-lease on those library properties in which the Council is a tenant. Greenwich Leisure Limited are committed to cooperating with the Council in order to bring forward options for the re-development of library assets in order to provide new and improved library facilities in accordance with the Council's stated ambition of renovating and improving the physical condition of all library buildings as part of the new approach to the delivery of the library service in difficult financial circumstances.

Consultation with staff and their representatives

- 3.21. The Director for Culture, Renewal & Recreation led staff engagement during the market testing exercise, writing to staff to provide information at key milestones. On average, staff received communications every other month and a dedicated mailbox was set up to receive queries,

feedback or comments from library staff. The Libraries Operations and Commissioning Manager was also available to discuss concerns with staff where this was requested.

- 3.22. In addition, the Director for Culture, Renewal & Recreation led the formal consultation with staff on the recommendation to award a contract to Greenwich Leisure Limited. Formal consultation commenced on 28th April 2017, and staff were issued with a consultation document (**Appendix 1**) to which they were invited to respond by 12th June 2017. Additionally, staff meetings were set up in Central, Beckenham and Orpington libraries on 16th May, 31st May, 6th June and 7th June 2017. These were attended by 89 staff, and provided an opportunity for staff to raise and receive responses to queries or concerns.
- 3.23. A summary of the queries raised and responses given is at **Appendix 2**.
- 3.24. Officers have ensured that all staff engagement and consultation documents have also been shared with trade unions and departmental representatives, and that these representatives have had an opportunity to be engaged in the process and to comment on the recommendation.
- 3.25. Officers met with the trade unions on 9th June 2017. Subsequently, Unite have released a document as their formal response to the consultation; this is at **Appendix 3**. Unison also submitted a formal response to the consultation document; this is at **Appendix 4**.

Client Team

- 3.26. Subject to this recommendation being agreed, the contract will be managed and monitored by a thin client team of two officer posts who will be responsible for managing the contractual relationship with Greenwich Leisure Limited and monitoring performance in accordance with the Service Levels and Key Performance Indicators set out in the contract documents. The draft job descriptions for these roles are included at **Appendix 5**.

4. IMPACT ON VULNERABLE ADULTS AND CHILDREN

- 4.1. The impact of the proposals for a commissioned library service on children and young people was evaluated as part of an Equalities Impact Assessment at various stages during the commissioning process.
- 4.2. A Children’s PLUS Survey undertaken in April 2017 identified the age profile of children who use the library service in Bromley

Age	% of children visiting the library
0-7 years (Key Stage 1)	60%
7-11 years (Key Stage 2)	30%
11-16 years (Key Stage 3)	10%

The survey also identified that 30% of children who use the library service are from ethnic minorities.

5. POLICY IMPLICATIONS

- 5.1. The Renewal & Recreation Portfolio Holder approved a new approach to the delivery of library services following pre-decision scrutiny at the Renewal & Recreation Policy Development and Scrutiny Committee on 18th March 2015.
- 5.2. This approach is consistent with the council's stated ambitions around vibrant, thriving town centres, supporting independence, children & young people, and an excellent Council under its vision for Building a Better Bromley.
- 5.3. The Council's Corporate Operating Principles include a commitment that services will be provided by whoever offers customers and council taxpayers excellent value for money.

6. FINANCIAL IMPLICATIONS

- 6.1. The current budget available for the library service is £4.7m per annum.

7. PERSONNEL IMPLICATIONS

- 7.1. Engagement with staff and their representatives around the proposals to commission the library service and the subsequent market testing have been ongoing since the Recreation Policy Development & Scrutiny Committee and Renewal & Recreation Portfolio Holder agreed that officers should undertake those two activities on 18th March 2015.
- 7.2. Formal consultation on the detailed proposals to award a contract to Greenwich Leisure Limited for the provision of library services was conducted between 28th April 2017 and 12th June 2017, with consultation meetings scheduled as set out in paragraph 3.23.
- 7.3. There are 148 staff (93.93 FTEs) and an additional 31 casual staff working across the library services, of which 146 staff (91.93FTEs) are in scope for a proposed transfer to Greenwich Leisure Limited. It is proposed that 2 staff (2 FTEs) are retained to deliver client functions as set out in paragraph 3.26. Any staffing implications arising from these proposals or potential award will need to be carefully planned for and managed in accordance with Council policies and procedures and with due regard for the existing framework of employment law.
- 7.4. The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) will apply to these proposals and any legal and financial implications arising from this. The TUPE regulations preserve/protect employees' terms and conditions when a business or undertaking is transferred to a new employer. Contracts of employment remain the same when transferred to a new employer whilst employees remain in the same job. Continuous service and terms and conditions are protected at the point of transfer.
- 7.5. Should the proposed contract award be agreed then a further period of consultation on the detailed transfer proposals would take place with staff, trade unions and other staff representatives in accordance with employment legislation and the Council's managing change procedures. This will enable staff to explore in more detail the impact of the proposed transfer on their employment situation. Any measures envisaged by the transferor as a consequence of the transfer will be addressed during the subsequent TUPE consultation.
- 7.6. If Members agree to the recommendations in this report staff and their representatives will be updated as appropriate.

8. LEGAL IMPLICATIONS

- 8.1. This report seeks the approval of the Executive to award a contract to Greenwich Leisure Limited for the provision of the library service for a period of 10 years with the option to extend for a further 5 years.
- 8.2. The Public Contracts Regulations 2015 apply to this contract and the Council has carried out competition with negotiation procedure under the light touch regime which gives greater discretion on the process to be followed although the process must be fair and transparent.
- 8.3. Pursuant to rule 8.22 and 8.24 of the Contract Procedure Rules for a contract with a total value above £500,000/the EU threshold the Council must invite tenders from all suitable tenderers and comply with the Public Contracts Regulations 2015 and this had been followed.
- 8.4. In this case the Council invited tenders on an open basis and received 18 expressions of interest and three tenders as set out in paragraphs 3.6 and 3.9. Through the negotiated process, this was reduced to one final bidder, Greenwich Leisure Limited.
- 8.5. Where the contract value is £1 million and above Rule 13.1 requires any exception to the requirements of Rule 8 to be approved by the Chief Officer in agreement with the Director of Resources and Finance Director and with the approval of the Executive or the Council as appropriate.
- 8.6. Section 7 of the Public Libraries and Museums Act 1964 places a duty on the Council to provide a comprehensive and efficient public library service for residents and students in the Borough. The terms 'comprehensive' and 'efficient' are not defined within the Act; however the Act does require local authorities to provide free of charge access for people who live, work or study in the area to borrow or refer to books and other material in line with their needs and requirements.

In fulfilling this duty, the Council is required to have specific regard to the desirability of:

- (a) securing, by the keeping of adequate stocks, by arrangements with other library authorities, and by any other appropriate means, that facilities are available for the borrowing of, or reference to, books and other printed matter, and pictures gramophones records, films and other materials, sufficient in number, range and quality to meet the general requirements and any special requirements both of adults children; and
 - (b) encouraging both adults and children to make full use of the library service , and of providing advice as to its use and of making available such bibliographical and other information as may be required by persons using it; and
 - (c) Securing, in relation to any matter concerning the functions both of the library authority as such and any other authority whose functions are exercisable within the library area, that there is full cooperation between the persons engaged in carrying out those functions.
- 8.7. The report author will need to consult with the Legal Department regarding the execution of the contract.

9. PROCUREMENT IMPLICATIONS

- 9.1. This tender exercise has been carried out in an appropriate manner and in accordance with the Council's contract procedure rules (specifically 8.22 and 8.24) and in compliance with the relevant parts of the Public Contract Regulations 2015 for a competitive with negotiation procedure under the light touch regime.

Non-Applicable Sections:	None
Background Documents: (Access via Contact Officer)	<p>Update on the tender for the provision of library services – management report to the Commissioning Board (19th December 2016)</p> <p>DRR16/069 Community Management at Community Libraries: Outcome of Tender – report to the Executive Committee on 12th October 2016 (with pre-decision scrutiny by the Renewal & Recreation Policy Development & Scrutiny Committee on 20th September 2016)</p> <p>DRR15/089 Gateway Report: Proposals for a Commissioned Library Service – report to the Executive Committee on 9th November 2015 (with pre-decision scrutiny by the Renewal & Recreation Policy Development & Scrutiny Committee on 27th October 2015)</p> <p>DRR15/090 Gateway Report: Proposals for a Commissioned Library Service (Part 2) – report to the Executive Committee on 9th November 2015 (with pre-decision scrutiny by the Renewal & Recreation Policy Development & Scrutiny Committee on 27th October 2015).</p> <p>DRR15/024 Update on the Library Service Strategy – report to the Renewal & Recreation Policy Development & Scrutiny Committee on 18th March 2015.</p> <p>DRR14/090 Library Service Strategy – report to the Renewal & Recreation Policy Development & Scrutiny Committee on 18th November 2014</p>