

Record of Decision taken by Executive Councillor

Decision title: 5-year extension of the contracts for the provision of management and operation of sports and leisure facilities (Lot 1 and Lot 2) within the district of Somerset West and Taunton

Executive Councillor making the decision: Councillor Derek Perry

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Date of Decision: 20/03/2023

Details of decision:

Recommendation to approve:

A five-year extension to the Sports and Leisure Contract between Somerset West and Taunton Council and Sports and Leisure Management Limited (SLM) in respect of both the Lot 1 and Lot 2 contracts which includes a variation to the profile of Management Fee (payments made under the contract) for the remaining years of the contract.

This decision is made in accordance with clause 3.2 of the Contract for the provision of management and operation of sports and leisure facilities entered into by Somerset West and Taunton Council on 19th August 2019.

Reasons for proposed decision:

Request from Sports and Leisure Management Limited for an Operator change notice in accordance with clause 38 of the Contract (see attached at Appendix 1.) To extend the Term of the contract by 5 years and to vary the profile of the management fee for the remaining years of the contract.

Variation of the management fee and extension is aimed to negate the impact of Covid upon the financial provisions within the contract and aims to return the financial provision to the Council to that set out in the original tender and contract.

Alternative funding options sourced:

- 1) Reject the Operator change notice to extend the Contract and keep the contract as is, for a period of 10 years rather than 15 years and the pricing schedule to continue unchanged from 2021 until the contract end.
- 2) Reject the Operator change notice and vary the pricing schedule to reflect the amended payments made by the Parties due to Covid 19 and to be made for the remainder of the current contract term.
- 3) Extend Lot 1 by 5 years and vary the management fee as specified and do not extend or vary the Lot 2 contract.

The below has been completed:	Name(s)	Date
Relevant ward councillor(s) consulted	N/A as impacts all wards	
The following are if appropriate / applicable: Yes/No. If yes, the implications should be attached to this decision notice.		
Finance implications	Yes	See notes below
Legal implications	Yes	See notes below
Links to corporate aims	Yes	See notes below
Climate and Sustainability implications	No	
Community Safety Implications	No	
Equalities Impact	No	
Safeguarding Implications		
Risk management	Yes	See notes below
Partnership implications	Yes	See notes below

Any conflicts of interest declared by Leader or Executive Members consulted on the proposed decision. If Yes provide confirmation from Chief Executive to grant dispensation for the Leader's / Executive Member's views to be considered.

Background

The Council entered into a contract with SLM to deliver leisure services on behalf of the council across our indoor facilities as well as Vivary Golf Course and High Ropes. This was approved by the Shadow Full Council on 22nd January 2019 and the contract commenced on 1st August 2019.

As set out in the earlier report to Council the new contract delivered an improved financial position for the Council of £6.9m over the initial term with an option to extend on the same terms for up to a further 10 years. Due diligence was undertaken on the SLM proposed business plan and financial checks were undertaken on the company. We also looked at other contracts where SLM were contractually obliged to pay significant sums to Local Authorities and found no evidence that they had failed to meet their obligations.

On 20th March 2020 the government announced and enforced a lockdown of all leisure facilities and during that year a further 2 lockdowns were declared. In doing so the vast majority of customers cancelled their direct debits (for fitness and swimming lessons in particular) and all over the country income dropped off to all but nothing. Whilst employees were furloughed there were still considerable costs associated with the centres, these costs were covered by the council and government support for the financial year 20/21 (year 1 of the contract).

The Operator change notice is to address the impacts of Covid for the remaining years of the contract. It reflects that most of the centres were closed during 20/21 (three separate lockdowns) and therefore the growth in the centres memberships is over one year behind those anticipated when the tender was submitted and therefore the new reprofiled income from SLM to the Council reflects this lost year but has more aggressive targets to

ensure that the Council still received the total income of £6,273,449 set in the original tender in years 2 to 15. By allowing the extension SLM are able to reprofile membership income and expenditure models.

The provisions in relation to the financial aspects of the Lot 2 contract have remained unchanged during the COVID 19 pandemic and are not altered.

Financial Implications

The impact of the extension and reprofiling of the financial provisions (management fee) have been considered in respect of Somerset West and Taunton Council and Somerset Council (following 1st April 2023) with S151 Officers at both Councils.

Appendix A shows the details of the Pricing Schedule (Schedule 4 of both Contracts) and compares the fees received under the original tender for Lot 1 and Lot 2 against the reprofiled fees under the 15-year provision for the remaining years of the contract e.g. years 2 to 15.

Full Council agreed on the 25th August 2020 to pay an additional £667,000 into the Leisure Services contract (Lot 1) for year one of the contract (2020 -2021) due to the COVID 19 pandemic and the restrictions placed upon the leisure services. The 5-year extension and the reprofiling of the Management Fee (fees paid by both the Council (in red) and to the Council (in black)) allows the Council to receive the same fees £6,273,449 set over the original contract tender (prior to Covid variations), to be returned to the Council from years two to fifteen as set out in Appendix A. The new profile of payments now has much smaller changes from year to year allowing for easier budget setting for the Council from year to year.

In respect of the alternative options:

- 1) Reject the Operator change notice to extend the Contract and keep the contract as is for a period of 10 years rather than 15 and allow to continue with the pricing schedule as continue unchanged from April 2021 until the contract end.

[This has been rejected by the contractor as it ignores the impact that Covid has had on the contract and leisure provision, This would likely result in a costly legal dispute and possible retendering of the contract which would result in additional costs and within the current market a worse return in income for the Council.]

- 2) Reject the Operator change notice and vary the pricing schedule for years 2 to 10 to reflect the amended payments made between the Parties due to Covid 19 and to be made for the remainder of the Contract.

[This was rejected during discussions due to a net reduction in income to the Council over the period year 2-10 circ £800k as reflected in appendix A]

- 3) Extend Lot 1 by 5 years and vary the management fee as specified and do not extend or vary the Lot 2 contract.

[This has been rejected as it would lead to the two lots of the current leisure contract having two different termination dates of 2030 and 2035]

Legal Implications

The Operator (Sports and Leisure Management Group Ltd) have proposed the Operation Change Notice attached at Appendix B The Council under clause 38 of the Contracts has a duty to evaluate the operator Notice of Change, taking into account all relevant issues, this has been carried out and a summary of such are included within this decision notice. As part of this consideration, Somerset West and Taunton Council have considered the position of the Council post 1st April 2023 and consulted the two Councils monitoring officers.

In accordance with the provisions of clause 3.2 of the Contract (Lot 1 and Lot 2) *“the Contract may be extended by agreement between the Parties by any number of periods up to an aggregate of 10 years. If the Parties agree the extension the Contract will be extended and the definition of Expiry Date shall be deemed amended accordingly and the Operator shall continue to provide Services in accordance with this Contract. The Management Fee payable for any extension period shall be set out in the Pricing Tables.”*

The lot 1 and Lot 2 leisure contracts are therefore able to be extended by five years, with the agreement of both parties. It has also been considered the implications set out in the financial section and the reason for taking such a decision so far before the end of the contract.

The amendment of the pricing tables is aimed to reprofile the financial elements of the Lot 1 and Lot 2 contract to enable the Council to receive the same income and expenditure for Lot 1 and Lot 2 contracts.

In order to affect this decision a variation to both Lot 1 and Lot 2 contracts shall be drafted to amend the expiry date to 31st March 2035 and amend Schedule 4 the Pricing Tables to that shown as Appendix A, which reflects the payments to be made from the financial year 2021/22 until 2034/35.

A decision to extend the Sports and Leisure Management Contract, is an extension within a current contract's terms and conditions, with no amendment to the total contract value to the Provider (£110,000,000 over 20 years). Such a decision falls within the definition of a key decision for Somerset West and Taunton for the following reasons. It is likely to be significant in terms of its effects on communities living or working in an area comprising one or more wards in the District and to result in the Council incurring expenditure which is, or making of savings which are, significant (£500,000 or more) having regard to the Council's budget for the service or functions to which the decision relates.

As the decision to extend and/vary both Lot 1 and Lot 2 Sports and Leisure Management Contract falls as a Key Decision it must be made by a member of the Executive.

This Key Decision does not fall within the provisions of the section 24 direction as it is not entering into a new contract and the contract extension delivers income to the new Council. However the SCC key finance and legal officers and executive have been consulted.

Risk Management

The extension is within the original contract and does not change the amounts being paid to the Council during the length of the contract but does change the profile of the income. Therefore any challenge is unlikely.

Partnership Implications

Local Government Reform and the impact on the new unitary Council must be considered as part of this decision-making process. The extension was agreed between both the Cocunil and the contractor over a period of negotiation.

Appendices

Appendix 1	
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Decision Maker

I am aware of the details of this decision(s), considered the reasons, options, representations, and consultation responses and give my approval / agreement to its implementation.

Signed:



DEREK PERIN

Name:

21/3/23

Date:

Note – This decision record is for decisions taken by Executive Councillors. The decision(s) can be implemented following publication and the period for any call-in has expired.

Note: A copy should also be sent to the Governance Team – governance@somersetwestandtaunton.gov.uk

