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Cambridge City Council

COMMUNITY SERVICES SCRUTINY COMMITTEE

To: Scrutiny Committee Members: Kerr (Chair), Kightley (Vice-Chair), Blackhurst, Brown, Birtles, Blencowe, Moghadas and O'Reilly

Alternates: Councillors Pippas, Todd-Jones and Minns

Executive Councillor for Arts, Sport and Public Places: Councillor Cantrill

Executive Councillor for Community Development and Health: Councillor Pitt

Executive Councillor for Housing: Councillor Smart

Non-voting co-optees: Diane Best, Kay Harris and John Marais (Tenant/Leaseholder Reps) & Tom Dutton (PCT Representative)

Despatched: Tuesday, 27 November 2012

Date: Wednesday, 5 December 2012

Time: 5.00 pm

Venue: Committee Room 1 & 2 - Guildhall

Contact: Martin Whelan

Direct Dial: 01223 457013

AGENDA

1 APOLOGIES

To receive any apologies for absence.

2 DECLARATIONS OF INTEREST

Members are asked to declare at this stage any interests that they may have in an item shown on this agenda. If any member of the Committee is unsure whether or not they should declare an interest on a particular matter, they should seek advice from the Head of Legal Services **before** the meeting.

- 3 PUBLIC QUESTIONS (SEE INFORMATION BELOW)**

- 4 LEISURE MANAGEMENT CONTRACT - A REVISED APPROACH TO ENCOURAGE THE PAYMENT OF A LIVING WAGE** *(Pages 1 - 6)*

Information for the Public

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To: Executive Councillor for Arts, Sport and Public Places: Councillor Rod Cantrill
Report by: Head of Arts & Recreation, Debbie Kaye
Relevant scrutiny committee: Community Services Scrutiny Committee 5/12/2012
Wards affected: All Wards

**LEISURE MANAGEMENT CONTRACT – A REVISED APPROACH TO ENCOURAGE THE PAYMENT OF A LIVING WAGE
Not a Key Decision**

1. Executive summary

1.1 At a meeting of the Strategy and Resources Scrutiny Committee on 9.7.2012, the Executive Councillor for Customer Services and Resources instructed officers to:

“Report further to the Strategy and Resources Scrutiny Committee on measures to ensure that future council contracts pay at least the ‘Living Wage’.”

1.2 A full meeting of the City Council on 25 October unanimously requested the Executive Councillor for Customer Services & Resources to:

“Explore changing the Council’s procurement processes to encourage contractors to adopt a similar position and as legislation permits insist that contractors meet the Living Wage obligation.”

1.3 Officers are preparing a report on a Living Wage policy for the Strategy and Resources Scrutiny Committee and for the Executive Councillor for Customer Services and Resources.

1.4 The Council is currently in the midst of a procurement exercise for the provision of leisure management services from 1.10. 2013 onwards. The pre-qualification process has been completed and 6 potential tenderers have been identified. The next stage in the process is for the tender package (the invitation to tender – known as the ITT) to be issued. To ensure the project is kept to timetable, the ITT must be issued to the short

listed bidders in the week commencing 17.12.2012, which precedes the next meeting of the Strategy and Resources Scrutiny Committee.

1.5 At a meeting of the Community Services Scrutiny Committee on 11.10.2012, the Executive Councillor for AS&PP agreed it would only be possible to include a requirement to pay the Living Wage in the tender for the leisure management contract if the Council received clear legal advice that it is permitted to do so.

1.6 This report considers how to approach the Living Wage issue for the leisure management contract.

2. Recommendations

The Executive Councillor is recommended:

2.1 To agree that the invitation to tender (ITT) documentation for the leisure contract should:

- a) Identify strong support for the payment of Living Wage in this contract;
- b) Highlight the benefits that the Council believes this will provide;
- c) Include evaluation criteria that measure the performance of bidders in areas where the benefits of paying the Living Wage will be demonstrated.

2.2 To amend the previous decision relating to the capped annual fee for the contract and raise this by £25,000 to £675,000 per annum.

3. The Legal Position

3.1 The City Council has obtained detailed legal advice on the scope for requiring contractors to pay the Living Wage. A summary of the advice will be shared on a confidential basis with the Executive Councillor and members of the Scrutiny Committee. If members wish to receive detailed legal advice at this meeting, they are advised first to exclude the press and public. The legal position is not straightforward but the key points are summarised below.

3.2 Section 17 of the Local Government Act 1988 prevents authorities from taking account of what it terms “non-commercial considerations” in letting contracts. These include “the terms and conditions of employment by contractors of their workers”. Regulations made under the Act relax this prohibition by providing that “the Council may take account of terms and conditions of employment to the extent that it considers it necessary or expedient, in order to meet its “best value” duty; i.e. the Council’s obligation to “secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”.

3.3 The Public Services (Social Value) Act 2012 will allow the Council to have regard to non-commercial matters to the extent that it considers necessary or expedient to comply with its new duty to improve the economic, social and environmental well-being of Cambridge when letting contracts. However, this provision is not yet in force. When it takes effect, it will allow consideration only of “matters that are relevant to what is proposed to be procured” and the Council “must consider the extent to which it is proportionate in all the circumstances to take those matters into account”.

3.4 The Council also has an obligation to comply with EU procurement law, in particular the Public Contract Regulations 2006. EU procurement law requires that evaluation criteria must relate to the subject matter of the contract. This means that it is difficult to use commitment to the Living Wage as an evaluation criterion. There may be more scope for making payment of a Living Wage a contractual requirement but there would still be a need to demonstrate that this would achieve “best value”. There would also be a need to take care to avoid any cross-border anti-competitiveness.

3.5 Overall, there is a significant risk of legal challenge in relation to this procurement if the City Council either uses commitment to pay the Living Wage as an evaluation criterion or requires payment of the Living Wage as a contractual requirement. In consequence, this report explores the alternative approach of encouraging tenderers to make a commitment to the Living Wage and of seeking to identify and evaluate the benefits to the Council associated with payment of the Living Wage.

4. The Living Wage and this Leisure Management Contract

4.1 As set out in Section 3, the Council would need to demonstrate a clear “best value” justification for including any Living Wage requirement into the ITT to avoid it being classed as a prohibited “non-commercial consideration”. There is clearly a challenge to demonstrate how implementation of LW in the leisure contract can deliver better value given the possible extra cost or impact on service.

4.2 Organisations that have started paying the Living Wage have reported a number of benefits. These include:

- Improved recruitment and retention, reducing recruitment costs
- Better attendance
- Better productivity, motivation and loyalty
- Employees more willing to implement and adopt changes
- Better quality of service

- A workforce that has higher levels of experience, competence and training

4.3 The Council believes these are benefits that would significantly enhance the leisure management service and so has considered other ways to encourage payment of the Living Wage and to achieve some of its benefits in this contract without making it a requirement in the ITT. The preferred route is to identify the Council's strong support for the payment of Living Wage in the ITT; highlight the benefits that the Council believes this will provide; and include evaluation criteria that measure the performance of bidders in areas where the benefits of paying the Living Wage can be demonstrated. Officers have developed evaluation criteria that will be used in the ITT to assess the contractors experience and proposals for delivering these outcomes.

4.4 Submissions will be evaluated on a 30:70 price: quality split with a view to identifying the most economically advantageous tender. This means that 70% of the overall tender score will be based on an evaluation of the overall quality of the bid. The assessment will now focus on a number of objectives including:

- Improving access to leisure facilities and services
- Reducing the carbon footprint of the service
- Contribution towards achievement of the Council's Vision Statement and the objectives identified in the Council's Sports Strategy.
- Contractor-led access/card scheme to replace use of Leisurecard – to target increased participation by people in receipt of low incomes
- Approach to Safeguarding (the Protection of Children and Vulnerable Adults) and monitoring and local reporting arrangements.
- Staffing considerations
- Benefits consistent with paying a Living Wage (such as those identified in 4.2)
- Programming and opening times
- Potential for extended use of facilities and involvement by community groups/sports clubs/local people
- Delivery of Exercise Referral - to embed sustainability of the scheme and to extend provision across contract sites.

4.5 Clearly there may be additional costs to some contractors in paying the Living Wage, particularly for those who do not set minimum pay at the Living Wage level. The minimum wage is currently £6.19 for people aged 21 and over, and £4.98 for 18-20 year olds. The Living Wage has recently been increased to £7.45 per hour for areas outside London. The costs to an employer of increasing minimum pay from the statutory rates to the Living Wage rates also need to factor in the following:

- National Insurance and pension contributions payable by the contractor

- Rises to more senior staff to retain responsibility differential
- Any additional administrative costs arising from the contractor having to apply differential pay rates to staff employed (wholly or partly) on a local contract and those employed elsewhere.

4.6 The Executive Councillor for AS&PP took a decision on 11.10.2012 to cap the cost of the contract i.e. the management fee – at £650,000. The current cost of the contract is circa £700,000 per annum. The contract specification has an objective to reduce the carbon footprint of the service via a reduction in spending on utility consumption measured against the current usage baseline. This investment is intended to reduce the cost of the utility consumption to the contractor over the lifetime of the contracts and therefore enable the saving to be achieved.

4.7 Because the contract has been externalised for many years, unlike authorities transferring an in house service to one that encourages payment of the Living Wage, there is a cost differential. There is a case to be made for the Council to reduce the current saving requirements to ensure that this does not deter contractors from paying a Living Wage. It is proposed therefore to reduce the potential saving requirement to this contract by £25,000, raising the cap of the annual contract management fee to £675,000. This means that of submissions received from the ITT process, only those costing the Council a management fee of £675,000 (plus inflation using the Consumer Price Index -CPI) per annum or less will be accepted for further evaluation. This is a pass/fail criterion.

4.8 The Council will, of course, need to evaluate all tender submissions against its evaluation criteria in good faith and in accordance with its procurement rules. The Council aspires to achieve benefits consistent with paying the Living Wage as part of the tendering of the Cambridge leisure management contract. However, there is a risk that the approach outlined above in 4.3 to 4.7 would result in the Cambridge leisure management contract being awarded to a contractor who does not pay the Living Wage on the adjusted cost basis as recommended by this report.

5. Implications

(a) Financial Implications

Increasing the cap on the contract price from the previously stated figure of £650,000 to £675,000 could increase the cost to the Council by up to an additional £25,000. The expectation of a £50,000 saving on current contract costs of £700,000 per annum is to be reduced by £25,000 to support this.

(b) Staffing Implications

The staffing benefits are outlined in paragraph 4.2 of this report.

(c) **Equal Opportunities Implications**

An EQIA has been completed and this along with further consultation has informed development of the specification. The developments outlined in this report have been considered further against the EQIA findings and no adverse impacts have been identified.

(d) **Environmental Implications**

The Council anticipate a reduction in the cost of gas and electric consumption from the current baseline in the leisure management contract via investment in energy saving measures.

(e) **Procurement**

The decision to award the contract will be made at a meeting of the Community Development Scrutiny Committee on 16 May 2013.

(f) **Consultation and communication**

Discussions have been held with other local authorities on the application and use of Living Wage in similar situations.

(g) **Community Safety**

No implications

5. Background papers

None

6. Appendices

None

7. Inspection of papers

To inspect the background papers or if you have a query on the report please contact:

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