



**Executive**  
16 January 2012

**Report from the Director of  
Environment and  
Neighbourhood Services**

For Action

Wards Affected:  
ALL

**Cross-Borough Procurement of Cultural Services**

**1.0 Summary**

- 1.1 This report sets out the proposals for the future delivery of leisure services at Vale Farm Sports Centre and seeks Executive approval to carry out a shared procurement exercise with Ealing and Harrow as part of the West London Alliance.
- 1.2 The programme seeks to get the best possible price for the service whilst maintaining quality and service standards through a collaborative procurement exercise.

**2.0 Recommendations**

- 2.1 The Executive to give approval for the council to participate in a collaborative procurement exercise leading to the establishment of a framework agreement for leisure services at Vale Farm Sports Centre.
- 2.2 The Executive to give approval to the collaborative procurement exercise detailed in 2.1 above being exempted from the normal requirements of Brent's Contract Standing Orders in accordance with Contract Standing Orders 85(c) and 84(a) on the basis that there are good financial and operational reasons for Harrow leading on the procurement as set out in the report below.
- 2.3 The Executive give approval to publish an OJEU notice for leisure services at Vale Farm Sports Centre and to carry out the pre-qualification exercise.
- 2.4 The Executive ask officers to report back setting out the specification along with any necessary consultation results, equality impact assessment and seeking

approval to the tender evaluation criteria before inviting shortlisted suppliers to submit a detailed tender.

- 2.5 The Executive note the procurement options set out in 3.10-3.12 and give approval for officers to proceed with Option 1 – Lead Borough Model (weak) with a view to moving towards Option 2 – Lead Borough Model (strong).
- 2.6 The Executive note the proposed governance arrangements set out in paragraphs 3.16-3.19 and ask that officers will report back to the Executive for approval to the governance arrangements once they have been developed further.

### **3.0 Detail**

- 3.1 Whilst the Council has already done much to streamline and improve the efficiency of leisure services, the Council is facing significant and on-going budget shortfalls. This has led officers to carefully examine the best approach to maintain delivering savings whilst maintaining standards. In part this work has also been driven by the need to renew the contract for leisure services provision at Vale Farm Sports Centre by October 2013. This contract is held by Leisure Connection and a further extension is not allowed within the terms of the contract. Re-procuring just one sports centre is a small commercial opportunity for companies in the market and therefore it is unlikely to offer best value.
- 3.2 Officers have been actively participating in the work of the West London Alliance with the London Boroughs of Harrow and Ealing to consider future models of provision for a wide range of cultural services, including museums and archives, development services, libraries and leisure services.

### **Soft Market testing**

- 3.3 Initially the cross-borough work reviewed the market for cultural services, finding it to be complex with a patchwork of procurement and contracting strategies with different levels of market maturity:
- Sports provision – a well-established model of contracting and a mixed economy of providers. There is a well understood approach to potential savings through NNDR benefits, economies of scale and management efficiencies.
  - Museums and archives – not established as a model for contracting but a mixed economy of providers through trusts, specialist and private museums and community based initiatives, often with charitable status and NNDR benefits
  - Libraries – very immature market with the majority of public lending library services currently delivered in-house (London Borough of Hounslow is one of the few that has externalised its services) and a few multi-purpose Trusts outside London. No benchmarking data showing improved price or quality
  - Development services – in arts, sports, libraries many authorities work to generate more cultural activity, often through very small in-house teams, possibly working with a range of external partners such as the PCT,

schools and sports coaches. In a few cases these are part of multi-purpose Trusts.

- 3.4 As this list suggests there is a wide range of provider models. These range from mainstream commercial providers to in-house directly managed delivery.
- 3.5 The main companies and organisations within the cultural services market were invited to participate in a soft market testing exercise. This was designed to test the proposal and to inform the details of the project. Six organisations gave presentations and the key conclusions were that:
- While the libraries market is not mature, the more developed leisure market is preparing to grow into this area and would see the cross-borough project as an exciting opportunity.
  - It is possible for the boroughs to “procure” a Trust to deliver their services. The provider may be able to achieve NNDR and VAT benefits and it would be up to the successful provider create or have the appropriate legal form e.g. a company limited by guarantee with charitable status. See paragraph 3.7 for further information.
  - Other savings are dependant on a co-ordinated approach to the contract and contract management by the boroughs. The optimum length of contract was considered to be 10-15 years.
  - There was little interest in museums and archives.
- 3.6 The market testing shows that there is a well-developed market for leisure services and a joint procurement exercise compared to each borough going to market alone would save on legal and procurement costs and involve less officer time. A joint exercise also offers the market a more attractive commercial opportunity giving the councils more power in the negotiation and so offering a better deal for residents. The market testing also showed little interest in museums and archives and development services.
- 3.7 The way forward for libraries was less clear:
- The key saving relates to NNDR. In the event of a Trust being successful in the procurement exercise, the key cashable benefit would come from reduced Business Rates (NNDR) as they receive 80% relief on rates. Recent changes to NNDR collection means this 'benefit' will not be available to the council in the future. The government will set each local authority's rates baseline from an assessment during 2012 and base it on an average from the last 2-4 years (still to be determined by Central Government). If a trust were established after the baseline is set, then the authority would be paying less to itself so there would be no saving overall. In summary, any NNDR savings would still be achieved at Vale Farm Sports Centre but would not be achieved on the library buildings.
  - The external provision of library services is an exceptionally new market in the UK. This brings a high degree of risk to the council at a time when it is focussing on delivering its Libraries Transformation Plan, the library at the new Civic Centre and potentially the new library at Willesden Green (dependent upon the Executive decision of 16th January 2012).

- 3.8 Overall, following the market testing and research with other authorities it is recommended that Brent fully participates in a joint procurement exercise with Harrow and Ealing for leisure services at Vale Farm Sports Centre. Officers recommend that libraries, museums and archives and development services will not be included in the procurement exercise for Brent.

### **The Procurement Process**

- 3.9 A Steering Group of senior officers from Brent, Ealing and Harrow has been set up to oversee the procurement process.
- 3.10 The Steering Group has looked at a number of options for the procurement process. The preferred options are: Option 1 - Lead Borough Model (weak) and Option 2 - Lead Borough Model (strong). These options are described in more detail below.
- 3.11 Option 1- Lead Borough Model (weak)
- With this model, one of the boroughs acts as a lead authority. One contract is awarded by the lead authority but all three boroughs are signatories to it. While there is a common specification there are local variants. In the event of any performance issues the individual borough will take this up with the provider. The benefit of this model is that there will be a direct contractual relationship between each borough and the provider however this model will not maximise the use of economies of scale, as the provider will be subject to three different sets of contract management.
- 3.12 Option 2- Lead Borough Model (strong)
- This is similar to option 1 but with only the lead borough contracting with the provider. The other two boroughs contract with the lead borough to provide the services. Accordingly the contract entered into by the lead borough specifies all the services required within the 3 boroughs. The procurement benefits of this model are maximisation of economies of scale and the provider only has one borough to work with. However, the non-lead boroughs have to rely on the lead borough to deal with provider performance issues effectively. An additional legal agreement is required, because in addition to the partnership agreement set up at the beginning of the partnership and the agreement between provider and lead authority, there is also the need for an agreement between the non-lead boroughs and the lead borough as their service provider.
- 3.13 As such a large scale joint procurement is a new way of working for all three councils officers are of the view that option 1 is the best model at the current time as it enables the Council to retain control during the crucial early days of any new service. However, to deliver further efficiencies officers recommend that the 3 boroughs move towards option 2 as soon as possible once relationships between boroughs have developed and the new service is running smoothly. Discussions about who will be the lead borough are on-going.
- 3.14 As detailed in paragraphs 3.1-3.6 and section 4, Officers consider that there are good financial and operational reasons to participate in the collaborative

procurement. It has been agreed by the steering group that Harrow will be the lead borough for procurement advice. There are some difference between Harrow and Brent's Contract Standing Orders and Financial Regulations. As Harrow is the lead borough for procurement advice officers consider that there are good financial and operational reasons why Harrow's Contract Standing Orders and Financial Regulations should be used rather than Brent's. As a result approval is sought for the collaborative procurement to be exempt from the normal requirements of Brent's Contract Standing Orders and Financial Regulations.

3.15 In accordance with Brent's Contract Standing Orders 88 and 89, pre-tender considerations have been set out below.

Ref	Requirement	Response												
(i)	The nature of the service	Leisure services at Vale Farm Sports Centre. Any supplier tendering for the work will be asked to provide a specifically priced bid for each borough.												
(ii)	The estimated value	Based on current budgets the contract value would be over £20M per annum for all three participating boroughs.  The Vale Farm Sports Centre contract is £0.3m p.a. Vale Farm Sports Centre Based on the current budgets, over the 10 year life of the contract the value is over £200M for all three of the participating boroughs and £3M for Brent).												
(iii)	The contract term	For a period of 10 years for Vale Farm Sports Centre Leisure services.  The Contract(s) will start from 1 April 2013.												
(iv)	The tender procedure to be adopted	Two stage tender procedure with negotiation following Harrow's standing orders.												
(v)	The procurement timetable	Indicative dates are: <table><tr><td>Market research completed</td><td>End November 2011</td></tr><tr><td>Executive approval to participate in joint procurement</td><td>16/1/12</td></tr><tr><td>Public consultation and Equality impact assessment</td><td>January-March 2012</td></tr><tr><td>OJEU notice published</td><td>6/2/12</td></tr><tr><td>Receipt of PQQs</td><td>20/3/12</td></tr><tr><td>PQQ evaluation complete</td><td>16/4/12</td></tr></table>	Market research completed	End November 2011	Executive approval to participate in joint procurement	16/1/12	Public consultation and Equality impact assessment	January-March 2012	OJEU notice published	6/2/12	Receipt of PQQs	20/3/12	PQQ evaluation complete	16/4/12
Market research completed	End November 2011													
Executive approval to participate in joint procurement	16/1/12													
Public consultation and Equality impact assessment	January-March 2012													
OJEU notice published	6/2/12													
Receipt of PQQs	20/3/12													
PQQ evaluation complete	16/4/12													

Ref	Requirement	Response	
		Executive approval to invite to tender	April 2012
		ITT / ITN issued	April 2012
		Submission of tenders	June 2012
		Best and Final Offer	July 2012
		Tender evaluation complete	July 2012
		Award recommendation to Executive	Sept 2012 (tbc)
		Contract start date	1/4/13
(vi)	The evaluation criteria and process	<p>Prequalification documentation and shortlists are to be drawn up in accordance with Harrow's Standing Orders.</p> <p>Officers will report back to the Executive seeking approval to the tender evaluation criteria</p>	
(vii)	Any business risks associated with entering the contract	<p><b>Breakdown in cross-borough working</b>  There is a risk that during the duration of the project or after its launch, that the alliance breaks down due to changed political or business drivers. There is a strong track record of collaboration across west London and a strong commitment from the Chief Executives.</p> <p><b>Boroughs unable to agree contract or specification details</b>  It has not been agreed or finalised what form the contract will take. In principle, there would be a core contract with borough specific lots. Each borough would be able to specify what is included and excluded and when. However, if there is significant different in the requirements across the borough there would be an impact on the prices available from the suppliers and the resource needed to manage the differing requirements.</p> <p><b>Lack of capacity to deliver</b>  Each borough has committed time to develop the outline business case, data collection and project board governance from within existing resources.</p> <p><b>Primary legislative changes</b>  The key cashable saving is based on reduction in business rates. There is a risk of legislation changes for example on the charitable relief of NNDR, or local retention of NNDR will affect the business case however as we already receive NNDR savings for Vale Farm Sports Centre this will not</p>	

Ref	Requirement	Response
		<p>affect Brent Council.</p> <p><b>Potential for slippage from timetable</b> The timetable is tight for three boroughs to align their plans, proposals and specifications.</p> <p><b>Form of contract between the boroughs and the provider</b> The contract arrangements will be finalised during the dialogue process of the negotiation with a goal of managing the risks that will be faced during the contract period and ensuring the provider delivers the desired outcomes for residents.</p> <p><b>Building maintenance and lease arrangements</b> During the procurement process the most cost effective split of responsibilities will be determined to take advantage of the relative tax and funding positions for the leisure service provider and the authorities. The current model across the boroughs is for routine repairs to be transferred to the supplier, with the council retaining asset replacement liability. This will be finalised as part of the detailed specification.</p>

### Governance Arrangements

- 3.16 The Steering Group has been considering suitable governance arrangements for the cross – borough working arrangements. It is considered that a Lead Borough in Partnership model is the most appropriate.
- 3.17 In a Lead Borough in Partnership model one borough would take the lead and would chair all officer meetings. The same lead borough is project manager and also leads on legal, finance, HR and procurement advice though the non-lead boroughs also need to feed into this in order to give separate advice to their Executives when important decisions are required.
- 3.18 There is the potential for this model to contain an element of delegation of functions to the lead borough e.g. in the event of a casting vote for the lead borough however this would depend on how strong the role of the lead borough is decided to be. Authority would be needed under Brent's Constitution if there is to be any element of delegation of function. This model would also enable an element of shared services if that was considered desirable. Again, further authority would be required for this.
- 3.19 The proposal is still under development and discussions are on-going (as with the procurement models discussed above) about which borough would take the lead. At this stage the Executive is asked to note the proposed model in with a further report to the Executive in future to agree the detail.

## 4.0 Financial Implications

### Current budgets

- 4.1 Brent Council currently spends £300,000 providing leisure services at Vale Farm Sports Centre.

### Summary of the Business Case

- 4.2 One of the key aspects in assessing the benefit to the three boroughs of the proposed approach is to assess the financial position and other benefits of implementing the new arrangements. A joint procurement process could deliver a number of savings which will be quantified during the procurement process:

- Staffing and overhead costs if the supplier managed the services for the three boroughs as one contract
- Potential VAT advantages
- Staffing costs for the boroughs if they established one contract management arrangement rather than three
- Procurement and legal costs through going to procurement once rather than three separate times.

- 4.3 In the event of a Trust being successful in the procurement exercise, the key cashable benefit would come from reduced Business Rates (NNDR) as they receive 80% relief on rates. The NNDR saving for Vale Farm Sports Centre is £17,000 and this is not at risk from the changes in NNDR.

- 4.4 The table below gives a broad overview of other potential savings which will vary from borough to borough. These will be worked up in more detail over the coming months.

Saving	RAG Rating	Rationale for Rating
NNDR	<b>Green for Leisure</b>	This saving is already achieved for Vale Farm Sports Centre so will not result in further saving but in future cost avoidance.
Client-side Management	<b>Amber</b>	Client side management structures have yet to be agreed and determined; hence it is rated as Amber. Saving is estimated based on benefits of scale.
Net Management Overheads	<b>Amber</b>	Management Overheads will be determined during the procurement process. Experience from existing contracts is that current charges for ICT and FM are similar, but until later in the procurement process, suppliers are not willing to discuss precise levels.
Staff Savings	<b>Amber</b>	Staff savings model developed using experience from existing contracts and turnover figures. The estimates are predicated on levels of turnover in staff that may or may not occur.
VAT Savings	<b>Red</b>	VAT savings are complicated due to model for reclaiming VAT in local authorities; some local savings will result in lost VAT reclaims in other parts of the council.



<b>Saving</b>	<b>RAG Rating</b>	<b>Rationale for Rating</b>
Increased Income	<b>Red</b>	Through improved market analysis, trusts have a good track record of increasing income. However, forecasting income levels three to ten years in advance is rarely reliable, there would also need to be cross-borough agreement of price de-regulation, in order to provide the supplier with sufficient flexibility to drive increased income.
Gift Aid on Income	<b>Red</b>	In Leisure services, there are some income streams that can be treated as gift aid. However, take-up and legislative changes mean that the level of benefit is hard to predict, hence the Red rating.

4.5 In addition to the “cashable” benefits there are a number of softer “non-cashable” benefits, which are difficult to put a monetary value on, these include:

- Community involvement - a key non-financial benefit of trust status is increased community involvement in the running of services. For example, there may be an opportunity for the community to become involved through Board membership.
- Improved customer choice - with a contract operating across the three boroughs, there will be increased sophistication in provision, particularly close to the borough boundaries, meaning that residents could more readily use services provided by any borough.
- Increased access to grant funding - Trusts spoken to in the research phase indicated that their status makes it easier to raise capital funding from bodies like the National Lottery.
- Increased volunteering - there is evidence to suggest that facilities run by Trusts are better able to access volunteers, as members of the public are more likely to volunteer to work for a Charitable Trust than for a local authority.
- Higher participation rates - there is evidence to suggest that leisure trusts attract greater levels of participation.
- Staff empowerment – a trust can give staff the opportunity to be more involved in the running of services and be more entrepreneurial
- Partnership working - there are a number of examples where trusts have successfully implemented co-design of delivery, for example, improved partnership with local health bodies, resulting in improved outcomes for local residents.

4.6 It is important to note that whilst trusts will be actively encouraged to express an interest in tendering it will be open to all organisations, including purely commercial organisations, to express an interest in the procurement. All organisations will be treated equally throughout the process regardless of their legal form.

4.7 There are no immediate capital implications arising from this report, although there will be a need to ensure the assets are in an appropriate condition before

transferring them to the successful provider. It is likely that any significant capital liability will remain the responsibility of Brent Council.

- 4.8 The majority of the costs to deliver the project will be from officer time within the three boroughs, the initial cost estimates for the key tasks are shown below. The cost of running the procurement exercise is currently estimated as £25,000 for each borough. For Brent, this cost will be funded from existing budgets.

Activity	Lead Borough	2011/12	2012/13
<b>Absorbed Costs</b>			
Specification Development	All	N/A	N/A
Project Management	Ealing	N/A	N/A
Procurement Advice	Harrow	N/A	N/A
Legal Advice	Brent	N/A	N/A
<b>Bought In Costs</b>			
External Specialist Legal Advice	N/A	£45,000.00	£45,000.00
Specialist Financial Advice	N/A	£30,000.00	£30,000.00
<b>Total</b>			

## 5.0 Legal Implications

### Procurement

- 5.1 Leisure services are categorised as Part B services under the Public Contract Regulations 2006 ("the Regulations") and the contract therefore is not subject to the full application of the EU Regulations. It is however, subject to the overriding EU principles of equality of treatment, fairness and transparency in the award process.
- 5.2 Additionally, case law in the European Court of Justice has established that residual competition requirements still arise in relation to some Part B services, under general provisions of the Directive and the EU Treaty, on the basis that there is an established competitive market for them. Therefore, it is proposed that a voluntary OJEU notice will be issued for the contract to ensure compliance with the overriding EU principles.
- 5.3 The procurement and award of the contract is subject to the Council's Contract Standing Orders in respect of High Value contracts and Financial Regulations.
- 5.4 The contract is being procured by means of a collaborative procurement exercise. Under Contract Standing Orders 85(c) such collaborative procurements need to be tendered in accordance with Brent Standing Orders and Financial Regulations, unless the Executive grants an exemption in accordance with Standing Order 84(a). A request for an exemption under Standing Order 84(a) can be approved by the Executive where there are good

operational and / or financial reasons, and these reasons are set out in paragraphs 3.13 above.

## **Tupe and Pension Issues**

- 5.5 Whenever there is a service provision change, staff may have the right to transfer from one supplier of services to another under the TUPE regulations. This means that their contracts and benefits would remain intact, and their new terms and conditions would be with the new supplier of the service. An employee only has this right when the majority of their working time is spent working on that particular activity. If, for example, a new contractor was taking on council staff, then they would have to be made aware of all of the relevant terms and conditions governing that staff as per the agreement, including pension rights if that staff member were a part of the pension. TUPE protection is something which the employee would enforce, although the outgoing service provider would obviously have an interest in ensuring that they are no longer liable for the relevant employees.

## **6.0 Diversity Implications**

- 6.1 An initial Equalities Impact Assessment has been completed by the project team (see Appendix A). To ensure there is no negative impact the contract with an external provider will include:
- Protection and enhancement of service and targeted provision for protected groups
  - Quarterly contract monitoring and annual reviews for review requirements for protected groups
  - Annual user survey through the contract to identify the attitudes of protected groups and how they use the services.
- 6.2 Further work will be carried out on the EIA as the detailed specification is completed.

## **7.0 Staffing and Accommodation Implications**

- 7.1 The services at Vale Farm Sports Centre are currently provided by external contractors.
- 7.3 During the next stage of procurement the Steering Group will explore the opportunities for one authority to take the lead on the on-going contract management. This could have further staffing implications.

## **Background Papers**

Equalities Impact Assessment

## **Contact Officer**

Jenny Isaac, Assistant Director (Neighbourhood Services) 0208 937 5001

Sue Harper, Director of Environment & Neighbourhood Services