

ABERDEEN CITY COUNCIL

COMMITTEE	Strategic Commissioning
DATE	13 th September 2018
REPORT TITLE	Sport Aberdeen Contract
REPORT NUMBER	COM/18/112
DIRECTOR	Frank McGhee
CHIEF OFFICER	Craig Innes
REPORT AUTHOR	Alison Watson
TERMS OF REFERENCE	Purpose 1 and 7 and Remit 1.3

1. PURPOSE OF REPORT

This report seeks Committee approval for the Head of Commercial and Procurement Services to adjust and extend Sport Aberdeen's contract.

2. RECOMMENDATION(S)

That the Committee:-

- 2.1 approves option 1 as detailed at section 3.4 and instructs the Head of Commercial and Procurement Services to adjust and extend Sport Aberdeen's contract to ensure that it is outcomes-focused and contains robust contract management measures.

3. BACKGROUND

- 3.1 On 6th March 2018, Council instructed the Head of Commercial and Procurement Services to bring forward an all options business case report to the September 2018 meeting of the City Growth and Resources Committee on the best way forward for sport in Aberdeen given the imminent contractual 10-year agreement with Sport Aberdeen is about to end. The agreement with Sport Aberdeen ends in 2020. In accordance with the Terms of Reference for Committees, this instruction was transferred from the City Growth and Resources Committee to the Strategic Commissioning Committee.
- 3.2 The current arrangement for the management and development of the city's indoor and outdoor sports facilities and for the provision of sport, physical activity and wellbeing services targeted at those most in need are delivered by the Council's Arm's Length External Organisation (ALEO), Sport Aberdeen. It commenced trading in 2010 under a 10-year contract (Funding and Service Provision Agreement). This arrangement provides for an annual funding arrangement linked to the submission of a company business plan. The Sport

Aberdeen business plan annual report is the subject of a separate report to this Committee.

3.3 Having reviewed the organisations which can be influenced by the Council, it was agreed by Finance, Policy and Resources Committee in December 2017 that a larger organisation be created to deliver those activities currently undertaken by Sport Aberdeen and Garthdee Alpine Sports and also those provided by the Council's own Adventure Aberdeen service. It is therefore appropriate that the Council now considers the contractual arrangements with Sport Aberdeen, including the length of the contract period.

3.4 In reviewing the contractual position, three options available to the Council for consideration are: -

Option 1: - Continuation with the existing arrangement with Sport Aberdeen as the Council's primary sport and active lifestyles ALEO, with an extension to the current contract but with revised outcomes and efficiency options.

Option 2: - Market-testing via an external procurement exercise to commission a range of sport, physical activity and wellbeing services from the end of the existing contract with Sport Aberdeen.

Option 3: - Bring back in-house the delivery of services currently delivered by Sport Aberdeen at the end of its contract term.

3.5 Advantages and disadvantages of these three options are as follows: -

<p>Option 1 – Extension of Sport Aberdeen's Contract (on revised terms) This option would see the extension of the contract with Sport Aberdeen to deliver its current services including those recently added following the incorporation of Adventure Aberdeen and Garthdee Alpine Sports.</p>

<p>Advantages</p>

<p>1. As an ALEO constituted as a company limited by guarantee and as a charity, all surpluses are ploughed back into the company for the benefit of the citizens of Aberdeen. There are no shareholders and no dividends to be paid.</p>

<p>2. As a charity, Sport Aberdeen is able to access external funding, not otherwise available to public sector organisations.</p>
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<p>3. Such a contract extension is permitted under Regulation 13 of the Public Contracts (Scotland) Regulations 2015 (the "Teckal Exemption") as the company is primarily concerned with the delivery of services back to the Council and is subject to the control of the Council. This means that a contract for provision of services can be awarded to Sport Aberdeen without the need for an OJEU-compliant tender process.</p>
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4. Sport Aberdeen has a thorough understanding of Aberdeen, its place in the community and a detailed knowledge of its competitors, all of which contribute to a solid business plan and delivery programmes.

5. It allows for Sport Aberdeen to continue to build its brand reputation, deliver its current leisure facility refurbishment plans (backed by a £5 million Aberdeen City Council bank guarantee) and continue to move towards delivery of more of its services digitally.

6. Sport Aberdeen has modernised its service delivery over the last 5 years, with a reduction in its grant from £6,085,000 in 2011/12 to £5,458,903 in 2017/18.

7. As the strategic lead for sport and physical activity in the city, Sport Aberdeen leads the Active Aberdeen Partnership (AAP), which is gaining momentum as a cohesive strategic partnership of local sporting, health and wellbeing and physical activity and allied bodies.

8. The Council can work strategically with Sport Aberdeen to review the level of revenue support that it provides and to facilitate the opportunity for Sport Aberdeen to attract new revenue streams.

Disadvantages

1. The Council cannot demonstrate full market testing under this option.

2. Inability to secure additional borrowing that other companies may be able to.

3. Some companies may have a longer track record of commercial acumen than Sport Aberdeen.

Option 2 – Full Market Testing under OJEU Tender Process
This option would see the Council going to market under a full OJEU tender process for the services currently provided by Sport Aberdeen. Estimated timescales would be 12-18 months.

Advantages

1. Full market testing of required services through a robust commissioning process would enable the Council to demonstrate best value.

2. Some companies may have a longer track record of commercial acumen than Sport Aberdeen.

3. Some companies may have ability to access considerable borrowing (although all investment will be repayable, with interest), through the contract fee.

Disadvantages

1. It is estimated that market testing would incur costs in excess of £100,000

for full market testing via OJEU procurement, including legal, consultancy and other fees.
2. Similar costs would be incurred by Sport Aberdeen if it was to respond to the advertised market opportunity. With no guarantees in place this could be perceived as a high-risk strategy and inefficient use of public funding.
3. The Council would be unable to influence service delivery, except via the commissioned services framework / contract. Variations to this can be costly for the Council, as external companies would seek to recover their costs/ profit elements.
4. Potential reduction in quality of service delivery offered by Sport Aberdeen during the remainder of their contact term, if their energies are directed towards tendering for a new contract, with an adverse impact on the city's citizens.
5. Sport Aberdeen provides an all-encompassing model. The main market competitors provide sporting facilities within an equivalent leisure centre. We are not aware at this time of any competitors being able to provide an offering That also covers the use of pitches, playing fields, golf courses, pavilions, etc. this is not to say that the scope of contract could not be disaggregated further however it is fair to suggest that the economies of scale leveraged through a fully managed service would proportionately diminish.

Option 3 – Bring Services In-House Bring the services currently delivered by Sport Aberdeen back in-house, with the TUPE transfer of all Sport Aberdeen staff.
Advantages
1. The Council would be able to directly control service delivery.
2. Potential economies of scale.
Disadvantages
1. Loss of Non-Domestic Rates relief would add to the cost of the Council directly delivering the same services.
2. Less flexibility to operate commercially and to respond proactively to new opportunities as they present themselves.
3. Instability felt throughout the organisation which may lead to loss of senior and key staff, all of whom have played a significant role in the modernisation of service delivery and investment programmes over the last few years.
4. Limited capital investment since Council-owned leisure facilities do not feature within the Council's current capital programme.
5. Loss of access to external funding sources available to charities.

- 3.6 Having reviewed the available options and their individual merits and disadvantages outlined above it is recommended that a contract extension with Sport Aberdeen be progressed with efficiency options and revised outcomes. This would enable greater linkage to the LOIP outcomes and would include robust contract management provisions to ensure Sport Aberdeen is delivering against those outcomes.
- 3.7 It is also proposed that the new arrangement would require Sport Aberdeen to respect terms and conditions of the Council, in particular arrangements in relation to pay awards. There is also a requirement for the arrangement with Sport Aberdeen to take account of the Integrated Joint Board, having been created after Sport Aberdeen was set up, particularly in relation to sustaining adults in the community.
- 3.8 Therefore it is recommended that the Committee instructs the Head of Commercial and Procurement Services to adjust and extend Sport Aberdeen's contract.

4. FINANCIAL IMPLICATIONS

- 4.1 The Council provided Core funding of £5,458,903 to Sport Aberdeen in 2017/18. As the remit of Sport Aberdeen is expanded, the 2018/19 equivalent funding would be £6,013,164 incorporating Garthdee Alpine Sports and Adventure Aberdeen.
- 4.2 Other services may be directly commissioned from Sport Aberdeen and would be met from within the appropriate existing budgets. Such purchases would remain outside the SLA that governs use of the Core funding.
- 4.3 There are no direct financial implications arising from this report. If Committee approves the recommendations, officers will prepare a detailed options appraisal and thereafter report to a future Committee seeking approval of a revised contract with robust contract management provisions with a start date of 1 April 2020. Part of the options appraisal will also focus on options for growing Sport Aberdeen's financial independence from the Council.

5. LEGAL IMPLICATIONS

- 5.1 The internal Commercial Legal Team will be involved in preparing and advising on the revised contract.

6. MANAGEMENT OF RISK

	Risk	Low (L), Medium (M), High (H)	Mitigation
Financial	No risk arising from this report as budget is set by	N/A	N/A

	Council on an annual basis.		
Legal	Risk of delay or no agreement as regards the proposals to revise the SLA.	L	Proposals will be discussed and explained to Sport Aberdeen and they will have opportunities to put forward their own proposals.
Employee	Risk of instability to Sport Aberdeen employees due to current contract being due to expire in 2020.	L	This recommendation provides stability to Sport Aberdeen employees.
Customer	Risk of poor service provided to customers.	L	The proposal to extend Sport Aberdeen's contract with revised outcomes should contribute to customer satisfaction.
Environment	Not applicable.	N/A	N/A
Technology	Not applicable.	N/A	N/A
Reputational	Not applicable.	N/A	N/A

7. OUTCOMES

Local Outcome Improvement Plan Themes	
	Impact of Report
Prosperous Economy	The revised contract will link directly to the LOIP outcomes for a prosperous economy.
Prosperous People	The revised contract will link directly to the LOIP outcomes for prosperous people.
Prosperous Place	The revised contract will link directly to the LOIP outcomes for a prosperous place.
Enabling Technology	The revised contract will link directly to the LOIP outcomes of enabling technology.

8. IMPACT ASSESSMENTS

Assessment	Outcome
Equality & Human Rights Impact Assessment	Not required for this report.
Privacy Impact Assessment	Not required for this report.
Duty of Due Regard /	Not required for this report.

9. BACKGROUND PAPERS

Finance, Policy and Resources Committee, re-adjourned meeting of 6 December 2017. Agenda Item 9.3: Review of Sports Organisations

Council budget meeting of 6 March 2018

10. APPENDICES (if applicable)

None.

11. REPORT AUTHOR CONTACT DETAILS

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