

Report to Council

Subject: Waiver of Contract Standing Orders – Concession Contract
Gedling Country Park Visitor Centre

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Purpose

To request a waiver of Contract Standing Orders to enable the Council to enter into a new concession contract with Nottingham City Council (the City) for the provision of catering, cleaning and marketing services at the soon to be completed visitor centre at Gedling Country Park.

Background

History

- 1.1 In 2013 the Council gained control of part of the former Gedling Colliery site. It has invested time, money and resources into turning the site into Gedling Country Park. New footpaths have been installed, drainage work has been carried out to increase site safety and boundary fencing has been put up to secure the site and define the boundary. A new access road, car park and play area off Spring Lane have also been built to encourage visitors to this fantastic resource for the local community.
- 1.2 More recently a new visitor centre comprising of a café with outdoor seating area and public toilets has been planned. The visitor centre is currently under construction with completion scheduled for June 2017.

Requirements for the running of the visitor centre

- 1.3 Running the visitor centre will require catering, cleaning and marketing services. The Council has considered the best method of delivery for these services in terms of sustainability, experience of provider, value for money and social value aspects such as a commitment to pay all employees the National Living Wage.

- 1.4 The Council could run the café and provide these services itself. However the Council does not have specific in-house knowledge of catering, menu planning, and marketing and does not benefit from the economies of scale to be able to effectively provide staff to meet the peaks and troughs in demand for staffing the café and running the premises (including toilets). It is therefore considered unlikely that the Council would make a meaningful level of profit from running the café itself.
- 1.5 This lack of experience therefore means that attempting to run the facility in-house could impact on the overall success of the café. The Council therefore intends to procure the services from an external provider.

Provisions in Contract Standing Orders in relation to Waivers

- 1.6 The Council's Contract Standing Orders for procurement require that either tenders are invited or frameworks are used where the estimated value, or amount, of a proposed Contract exceeds £50,000 but this requirement may be waived by direction of the Council where it is satisfied that there are special circumstances. The special circumstances (Special Conditions) which exist in relation to this matter are outlined in paragraph 2.6 below. Such a waiver cannot be given where the contract value exceeds the E.U. threshold unless an exemption is available under the E.U. Procurement Regulations.
- 1.7 The estimated aggregate value of the concession contract for the proposed 5 year period is disclosed in the Exempt Appendix. The projected amount falls under the E.U. threshold for Concession Contracts but is above £50,000. Therefore unless a waiver is granted by Council, the tender, framework or competitive process must be used.
- 1.8 The definition of the Purpose of the Council's Contract Standing Orders includes that contracts should:
- achieve value for money
 - be consistent with the highest standards of integrity
 - ensure fairness and transparency in the allocation of contracts
 - ensure compliance with legal requirements
 - ensure that non-commercial considerations do not influence any contracting decision
 - prevent fraud and corruption

- 1.9 When it comes to evaluating tenders the Standing Orders further state that in the case of a concession the highest price that is offered should be the winning bid unless considerations other than price apply. These other considerations can include: quality, organisational qualification and delivery date.

Proposal

- 2.1 This proposal is put forward following investigation of the different methods of procurement, allowed under Standing Orders, to bring about the best value for money outcome for the Council and its customers. Procurement via tender or framework would be compliant with Standing Orders. However, in this case it is believed that much better outcomes in terms of value for money and income generation for the Council and higher levels of customer service and satisfaction will be delivered by not following the more traditional procurement process prescribed. It is therefore proposed that Council approves the waiver of Contract Standing Orders to enable it to enter into a new concession contract with Nottingham City Council for the provision of catering and ancillary services at the visitor centre at Gedling Country Park. This contract is to commence upon the opening of the facility and is to last for a period of five years. The five year period has been determined as suitable for Gedling Borough Council and the City to establish a successful business operation. Break clauses and contract extensions have been considered but at this point with the arrangements planned for quarterly performance review meetings and the Council's on going managerial involvement in the operation to ensure value for money and quality they are not considered necessary. Additionally it was determined that break clauses provide a level of uncertainty for the contracting parties and therefore may be less attractive financially. Nottingham City's 'Bean Culture' Café offer has been tested and they were found to provide high quality snacks, meals and a selection of drinks that prices as to ensure value for money.
- 2.2 Research into the tender process was carried out into similar café operations. This revealed that due to the capacity of the café, the construction not being complete hence no actual turnover amounts, and the Special Conditions that the Council is seeking to impose (as outlined in paragraph 2.6 below) only small to medium sized operators would be likely to make a tender bid for such a venture. Research that has been undertaken suggests that the maximum amount that such operators would be likely to bid would be less than £10,000 per annum

and that the Special Conditions would be likely to deter bidders. It should be noted that the projected income from the proposed concession to be provided by the City (shown in the Exempt Appendix) is substantially in excess of £10,000 per annum.

- 2.3 The Council also made enquiries with operators which run businesses in the East Midlands and would be willing and able to enter into such a concession through a framework arrangement. There were a limited number of operators who met these criteria. Unfortunately, other than the City (who are an experienced providers) and who will be able to draw on the knowledge, and practices of its own Parks Department in relation to the development of park related events and functions as evidenced through their 'Eat Culture' and 'Bean Culture' brands, none expressed an interest. It would appear that this lack of interest was due to two uncertainties. Firstly, that as the premises were not built there was no absolute guarantee to operators about when it would be completed and secondly, as this will be a new enterprise, the Council had no information on expected numbers of visitors to the café from which operators could estimate turnover and profit.

Timeframes

- 2.4 The Council would like to open the visitor centre immediately after completion of the building works in order to provide catering and toilet facilities to users of the Country Park. Detailed discussions have therefore progressed with the City – a partner with whom the Council shares public sector aims and aspirations and already benefits from a good and efficient working relationship. The City have confirmed that it is willing to provide these services upon completion of the building works, currently scheduled for June 2017. Due to operational lead in times associated with opening a service such as this it is also unlikely that a private provider would be able to open the café on the expected visitor centre completion date.

Special conditions

- 2.5 The Special Conditions that the Council would like to introduce into the concession contract are set out below and have been agreed by the City. It is not expected that a private provider would agree to these conditions.

- All running costs and cumulative deficits are to be met before any profit share;
- Any net cumulative losses (over the 5 year contract period) on running costs will be borne by the City;
- 50% of the costs of the fit out of the new kitchen area will be charged to the City on a pro rata basis linked to the expected lifespan of the kitchen cabinetry and equipment;
- All employees are to be paid the National Living Wage and are, where there will be no adverse commercial effect, to be recruited from within Gedling Borough;
- Opening hours are to be agreed with the Council and include provision for the service to operate throughout the year but with anticipated closures on Christmas Day and New Years' Day;
- The City will keep the cafe open and keep the toilets clean during café opening hours for a 5 year lock in period whether any profits are made or not;
- The Council is to share in 50% of any profits that are made each year, payable annually. This will require the City to declare their turnover to the Council on an open book basis. The Exempt Appendix shows the estimated profits as projected by the City. These figures are significantly in excess of the maximum amount of £10,000 as detailed in paragraph 2.3. (This information cannot be placed in the public domain as it contains commercially sensitive information belonging to the City);
- The Council will be able to control certain elements of the way in which the café is operated. For example, it will be able to input into menu design, marketing materials and pricing;
- There will be ongoing dialogue and planning concerning the cafe's operational and strategic management and about events held on the park. Quarterly performance monitoring meetings will enable both Councils to monitor and improve on all aspects of the café's business outcomes;
- On event days organised by the Council the City will not have exclusive rights to operate mobile catering units in the park, providing flexibility and choice of the event catering offer as appropriate for the event.

Summary

- 2.6 In summary, all of the above factors indicate that a waiver of Standing Orders in this instance will produce best value for the Council and the highest levels of customer service and satisfaction for its customers. The Council's research has shown that other than the City there are currently no providers who have businesses in the East Midlands who are interested in delivering the service via a Framework. Research has shown that the concession fee that the Council could hope to obtain via a tender would be less than £10,000 per annum which is substantially lower than the potential returns under the proposed contract with the City Council, as shown in the Exempt Appendix. In addition, the Special Conditions make it highly likely that private providers would be deterred from bidding for such a concession. Under this contract not only is the Council's share in the profits likely to be the highest that is likely to be achieved it will also benefit from partnership with the City who are an experienced, quality provider who will be able to operate the café from the completion date of the visitor centre.

Resource implications

- 3.1 At its meeting in March 2016, Council approved an indicative annual revenue budget of £50,000 for the repair and maintenance of the buildings and the ongoing operation of the visitor centre (café/toilets). As part of the 2017/18 budget reduction proposals Council approved a proposal for a catering concession which seeks to generate a net income stream, after accounting for all operating costs of the visitor centre, and ensure the ongoing maintenance costs of the building are covered.
- 3.2 Any profit share exceeding the Council's expectations will reduce the payback period associated with the capital build costs of the visitor centre.
- 3.3 Attached in the Exempt Appendix is the estimated value of the proposed concession contract which is projected to deliver the commitment set out in the budget reduction proposals.

Appendices

Exempt Appendix - Contract Pricing Information

Recommendation

- 4.1 It is recommended that Council agrees to waive Contract Standing Orders to enable the Council to enter into a new concession contract

with the City Council for the provision of catering, cleaning and marketing services at the visitor centre at Gedling Country Park.