

## **URGENT REPORT TO THE LEADER**

**11 NOVEMBER 2022**

### **GATEWAY 3 CONTRACT AWARD REPORT: SPLASHES SPORTS CENTRE WORKS**

Portfolio Holder: Councillor Howard Doe, Deputy Leader and Portfolio Holder for Housing and Community Services

Report from: Richard Hicks, Director of Place and Deputy Chief Executive

Author: Bob Dimond, Head of Sport, Leisure, Tourism & Heritage  
Robert Banks, Capital Projects Programme Manager  
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#### Summary

This report seeks agreement to award the procurement of the New Splashes Sports Centre Works Contract. Additional capital funding was recommended by Cabinet and subsequently approved by Full Council at its meeting on 10 November 2022.

#### Procurement Overview

Total Build Contract Value: £18,488,974.00  
Total Project Budget: £23,650,000, of which build budget allocation is £20,346,566 including risk allowance  
Contract Term: 24 Months

#### 1. Budget and Policy Framework

- 1.1. This report is within the Council's policy and budget framework and ties in with all the identified Core Values, Strategic Priorities, Strategic Council obligations and Departmental/Directorate service plans. This procurement has been classified as high risk, and is therefore a matter for Cabinet.
- 1.2. The Leader has urgency powers to make decisions which would ordinarily be made by the Cabinet. These provisions are set out in the Constitution (paragraph 3.2 of Part 3 (Responsibility for Cabinet functions) of Chapter 3 (Responsibility for Functions) of the Constitution.

- 1.3. The Chairman of the Regeneration, Culture and Environment Overview and Scrutiny Committee has agreed that the taking of these decisions are urgent and cannot be reasonably deferred until the next Cabinet meeting on 15 November 2022, in accordance with Section 11 (Cases of special urgency) of the Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012 and Rule 17 (Special Urgency) of the Access to Information Rules (Part 2 of Chapter 4 in the Constitution). This is because the companies that have submitted bids, have agreed to hold their prices until 11 November 2022. Not meeting this deadline would risk the costs of the contract increasing further.
- 1.4. Additionally, and in line with rule 15.11 of Chapter 4, Part 5 of the Constitution, call-in can be waived where any delay likely to be caused by the call-in process would seriously prejudice the Council's or the Public's interests. The Chairman of the Regeneration, Culture and Environment Overview and Scrutiny Committee has agreed that the decisions proposed are reasonable in all the circumstances and to them being treated as a matter of urgency and to waive call-in.

## 2. Background Information

- 2.1. Medway Council wishes to build a fun, family-friendly sports centre in Rainham.
- 2.2. The new centre will be of comparable scale to the one it is replacing and will be on the same site as the previous Splashes Sports Centre, which closed to the public in March 2020.
- 2.3. Medway Council is committed to making the new centre carbon-neutral wherever possible, and will be seeking innovative, cost-effective ways of achieving this.
- 2.4. The previous Splashes Sports Centre has been demolished, and a report outlining this proposal was previously brought to Cabinet.
- 2.5. In July 2021, Cabinet agreed to instruct officers to develop detailed proposals for a new Splashes sports centre in Rainham to provide modern, family-friendly sports and physical activity facilities in the east of Medway, complementing other Council sports facilities. As a result a professional design team, Space&Place, was appointed through open tender to design the new centre.
- 2.6. Planning permission for the new centre has been granted and an Invitation To Tender for the construction phase of the project was issued.
- 2.7. Capital funding for the project has been approved by Full Council in three phases (June 2020, July 2022 and November 2022) as the project has evolved and changing market demands were realised.

### 3.1. Parent Company Guarantee/Performance Bond Required

3.1.1. The awarded contractor is to provide a Performance Bond or Parent Company Guarantee.

## 4. Procurement Process

### 4.1. Procurement Process Undertaken

4.1.1. The procurement process undertaken was an Open ITT (Public Contracts Regulations 2015 compliant) process procedure in line with Medway Council's Contract Procedure Rules. Site visits were made available to all bidders

### 4.2. Evaluation Criteria Used

4.2.1. The procedure included a "pre-qualification technical ability questionnaire" which covered the regulatory exclusions necessary (fraud etc.) and utilised reference and case study information to demonstrate experience. All bids received passed the suitability criteria.

#### Tender Evaluation

4.2.2. Tenders were evaluated to determine the **Most Economically Advantageous Tender** (MEAT) taking into consideration the following award criteria:

Quality Score: **50%**  
Social Value Measures: **5%**  
Price/Cost Score: **45%**

Quality Evaluation Breakdown		
Section	Weighting %	
<b>1</b>	<b>Ability To Deliver / Organisational Details</b>	<b>15%</b>
<b>2</b>	<b>Programme / Key Risks</b>	<b>10%</b>
<b>3</b>	<b>Testing / Commissioning / Certifying</b>	<b>10%</b>
<b>4</b>	<b>Health &amp; Safety</b>	<b>5%</b>
<b>5</b>	<b>Meeting The Employers Requirements / Quality</b>	<b>10%</b>
	<b>Quality</b>	<b>50%</b>
	<b>Social Value Measures</b>	<b>5%</b>
	<b>Cost</b>	<b>45%</b>

### 4.3. Contract Management

4.3.1. Contract management will be the responsibility of the Capital Projects Programme Manager and the Head of Sport Leisure, Tourism & Heritage.

## 5. Risk Management

Risk	Description	Action to avoid or mitigate risk	Risk rating
Development costs	Tenders for the building works are over budget	Tender returns have been received so there is a clear indication of market value. Early approval brings the greatest cost-certainty, accepting there could be ongoing volatility in the sector.	C3
Tender applications	Insufficient quality of applications received	Tender returns received demonstrate there is sufficient quality	D3
Capital funding	Full Council does not approve the addition to the Capital budget	Cabinet has previously approved the principle of building a new Splashes sports centre. Previous funding of £17.85m for the project has been added to the capital budget.	D1
Project delivery	The project is not delivered within the anticipated timeframe	The project is on programme to enable works to start on site in early 2023. The timeframe is reviewed by the Splashes project board. Accepting unforeseen incidents may occur in a large capital project there is no reason to suggest at this stage there will be a delay in the project, subject to the decisions of Cabinet and full Council.	E3
Affordability	Capacity to fund the project.	The Council faces financial pressures on many fronts and servicing the costs of the borrowing will need to compete against those other calls on limited resources.	A2

Likelihood	Impact:
A Very high	1 Catastrophic (Showstopper)
B High	2 Critical
C Significant	3 Marginal
D Low	4 Negligible
E Very low	
F Almost impossible	

## 6. Financial Implications

6.1. The procurement requirement and its associated delivery as per the recommendations will be funded through additions to the capital budget recommended by Cabinet and approved by Full Council.

6.2. The report considered by Council on 10 November 2022 stated:

6.2.1. Full Council has already approved borrowing of £17.85 million to deliver the new leisure centre on the Splashes site. Circa £2.3 million has been spent to date, including £186,000 for demolition and almost £2.0m on architects and project management. This expenditure to date, together with other client side budgets for communications, ICT, fixtures, fitting and equipment and provision for risk, bring the total commitment before the construction contract is let to £4.7 million.

6.2.2. Following a procurement exercise the bids for the construction contract have come in significantly higher than the budget available and a further £5.8 million is required in order to let a contract.

6.2.3. The revenue cost of servicing £23.65 million of borrowing, assuming an interest rate of between 4% and 5% is estimated at in excess of £1.6 million per annum, taking the cost over 30 years to over £48.0 million.

6.2.4. Prior to the closure of the original facility, Splashes was subsidised, operating with a revenue budget of £306,184 per annum. This pressure was removed from the Council's 2021/22 budget when Splashes was closed. The latest estimates suggest that the net operating budget would need to be in excess of £500,000, taking into account:

- The adverse impact of the 'cost of living crisis' on income projections;
- General inflation running at more than 9%;
- projected increases in the national living wage;
- Inflation on energy costs estimated at between 75% and 100%.

6.2.5. Ultimately, the net revenue impact of the operating costs and financing costs on the Council's budget would represent a pressure of at least £2.1 million per annum, although the major part of this would not impact until the 2024/25 financial year. Equivalent savings would need to be identified through the budget setting process in order to fund this additional cost.

6.2.6. It should be noted that if the scheme does not progress, all expenditure incurred to date on demolition and design fees would need to be written off against general reserves, as there would be no asset against which to justify the borrowing.

## 7. Legal Implications

7.1. This procurement activity was above the FTS threshold and therefore an FTS notice was required.

7.2. The procedure gives a high degree of confidence that the Council's primary objectives for procurement are met, as required by Rule 1.2.1 of the Council's Contract Procedure Rules ("the CPRs").

7.3. Under the Council's Contract Procedure Rules, the procurement is a Category B high-risk procurement (Rule 2.4), and the process set out in this report meets the requirements for such procurements. The procurement was advertised on the Kent Business Portal, in compliance with rule 3.3 of the CPRs.

7.4. Medway Council has the power under the Local Government (Contracts) Act 1997 and the Localism Act 2011 to enter into contracts in connection with the performance of its functions.

7.5. The process described in this report complies with the Public Contracts Regulations 2015 and Medway Council's Contract Procedure Rules.

7.6. This is a Category B, Level 4 high-risk procurement, the Monitoring Officer, in consultation with the Procurement Board will therefore set the risk and reporting stages for the remainder of the procurement process for Gateway 4 and 5 (if required).

7.7. Once the contract is awarded, the Council will be contractually bound to see the project through to completion, subject to any cancellation provisions contained within the contact. Such provisions normally only permit terminations in specific circumstances, which may not apply at a future date, and usually include the award to damages (compensation) to the innocent party.

## 8. Other implications

### 8.1. TUPE Implications

8.1.1. TUPE does not apply to this activity

### 8.2. Procurement Implications

8.2.1. We received an excellent amount of initial interest in the requirement published, with 76 expressions of interest. However, this resulted in a return of just 2 bid submissions, although with the initial interest Category Management had hoped for a higher number of submissions

8.2.2. Both bid submissions were compliant and through the evaluation process a preferred contractor, evaluated as the most economically advantageous tenderer, is identified in the Exempt Appendix.

### 8.3. ICT Implications

8.3.1. The project team will liaise with ICT regarding any IT concerns during the construction stages.

## 9. Social, Economic & Environmental Considerations

9.1. Social value consideration given by the contractor include:

- Committing to reducing inequalities around paying a real living wage and addressing the gender pay gap.
- Committing to reducing carbon emissions including during construction utilising HVO instead diesel for all welfare and plant.

## 10. Recommendations

10.1. Noting the recommendation made at Cabinet on 18 October 2022 and the decision made by full Council on 10 November 2022, to add a further £5.8million to the Splashes Redevelopment Scheme in the Capital Programme, to enable development of the new Splashes Sports Centre, the Leader is asked, using urgency powers, to agree to award the contract to the bidder outlined in section 2.2 of the Exempt Appendix as they have been evaluated as the most economically advantageous against the Council's award criteria, as per the evaluation spreadsheet contained within 2.1 of the Exempt Appendix.

10.2. The Leader is asked to agree that recommendation 10.1 is considered urgent and therefore should not be subject to call in.

## 11. Suggested reasons for decision

11.1. The bidder outlined in section 2.2 of the Exempt Appendix has been evaluated as the most economically advantageous against the Council's award criteria preferred procurement route. Securing a contract on 11 November 2022 will mitigate the risk of the contract price increasing further.

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Appendix

Exempt Appendix 1 – Financial analysis

Background Papers

None

.....(signed) 11 November 2022 (date)

Councillor Alan Jarrett, Leader of the Council