

Report to the Cabinet

Meeting to be held on Thursday, 10 August 2017

Report of the Head of Service - Procurement

Part I

Electoral Divisions affected:
All

Procurement Report - Request Approval to Commence Procurement Exercise (Appendix 'A' refers)

Contact for further information:

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Executive Summary

In line with the County Council's procurement rules, this report sets out a recommendation to approve the commencement of a procurement exercise for the Preston Youth Zone Operator.

This is deemed to be a Key Decision and the provisions of Standing Order No. 25 have been complied with.

Recommendation

The Cabinet is recommended to approve the commencement of the procurement exercise as set out in Appendix 'A'.

Background and Advice

Appendix 'A' of this report sets out the details of the procurement exercise, and the basis upon which it is proposed to carry out the processes including:

- the description of the service being procured;
- the estimated annual contract value and the funding position;
- the contract duration and;
- the proposed basis for the evaluation of the tender submissions.

Where approval has been received from the Cabinet to undertake a tender process which is deemed to be a Key Decision, the subsequent award of the Contract on the satisfactory completion of the tender exercise shall not be deemed a Key Decision and can be approved by the relevant Head of Service or Director.

On the conclusion of the procurement exercise, the award of the contract will be made under the County Council's Scheme of Delegation to Heads of Service, and in accordance with the Council's procurement rules.

Consultations

Relevant Heads of Service and key operational staff have been consulted in drawing up the proposals to undertake the procurement exercise included in this report.

Implications:

This item has the following implications, as indicated:

Legal

The County Council as a public authority must comply with both procurement regulations and the state aid rules.

The state aid rules in essence prohibit public authorities from granting forms of aid which benefit specific recipient organisations where such aid has a potential to impact upon inter- state competition. The youth zone scheme clearly raises the possibility of conferring unlawful state aid given the proposal to grant a long lease at a peppercorn rent in relation to a valuable facility. The value of the aid itself gives rise to an *assumption* that there will be an impact upon competition.

The potential for state aid issues is negated by opening the opportunity to competition through a procurement process which complies with the Public Contracts Regulations. 2015. Appointing an operator following an open tender process does not create an unfair advantage to the recipient but offers a fair and transparent opportunity to all those interested in delivering the services (including operators from other EU states). Under a compliant procurement process all bids would be evaluated on an equal basis according to pre-published criteria and there is thus no detrimental impact upon inter-state competition..

There are a number of exemptions to the state aid rules ("block exemptions"). The particular exemption which the County Council would seek to rely upon in relation to Preston Youth Zone can only be applied where a fully compliant procurement exercise has been conducted in advance of the relevant contract (under which aid is granted) being awarded.

The County Council could be challenged if it contravenes the state aid regulations with potentially serious consequences both in financial terms and in terms of reputation. Those claiming to have been disadvantaged could claim financial recompense as indeed could the recipient of the aid as any contract would have to be set aside.

Procurement requirements must also be considered in relation to the operational aspects of the youth zone. The arrangement described in the report provides the recipient with an opportunity to operate a service which generates income and as such could be regarded as a concession contract and would therefore fall within the

ambit of the Public Contracts Regulations 2015 notwithstanding that the County Council is not proposing to enter into any fee paying arrangement with the operator. The County Council will undoubtedly enter into an agreement with the operator setting out the terms of the relationship which could potentially be interpreted as a service contract which of course would be subject to the 2015 regulations.

A single procurement exercise which complies with the 2015 regulations would meet all legal obligations in relation to state aid and procurement.

As the successful tender is expected to take on the operational and financial risk of PYZ, the procurement will be conducted under the scope of the Concession Contracts Regulations 2016.

The Concession Contract Regulations 2016 came into force in April 2016 and cover all in-scope concession contracts advertised via OJEU after that date. A concession contract is defined as follows:

A concession contract is a contract that:

- is for pecuniary interest (i.e. for money);
- is for the provision and management of services;
- involves the right to exploit those services (with or without payment from the Council);
- involves the assumption of operating risk by the concessionaire (in relation to demand or supply); and
- involves an operating risk that is not just nominal or negligible – the concessionaire is subject to market fluctuations etc.

Financial

The revenue contribution of £0.150m is provided for within the County Council's budget.

List of Background Papers

Paper	Date	Contact/Tel
Procurement Rules	July 2016	Rachel Tanner (01772 534904)

Reason for inclusion in Part II, if appropriate

N/A