

To: Cabinet
Date: 24 January 2024
Report of: Head of Community Services
Title of Report: Leisure Services Contract Award

Summary and recommendations	
Purpose of report:	To recommend that Cabinet award a contract to Serco Leisure Ltd to manage and develop Oxford's three leisure centres, Hinksey Outdoor Pool, and the Oxford Ice Rink.
Key decision:	Yes
Cabinet Member:	Councillor Chewe Munkonge, Cabinet Member for Leisure and Parks
Corporate Priority:	Support Thriving Communities
Policy Framework:	Thriving Communities Strategy

Recommendations: That Cabinet resolves to:	
1.	Award a ten-year contract (with a five-year extension option) for managing and developing the Council's three leisure centres, Hinksey Outdoor Pool and the Oxford Ice Rink to Serco Leisure Ltd, subject to officers completing necessary due diligence and pre-contract negotiations;
2.	Delegate authority to the Interim Executive Director (Communities and People), in consultation with the Head of Financial Services (Section 151 Officer), Head of Law and Governance (Monitoring Officer) and the Cabinet Member for Leisure and Parks to: <ul style="list-style-type: none"> i) complete due diligence, contract negotiation and final contract terms prior to the award of the contract; ii) agree, subject to the limits set by procurement law and the Council's Constitution and for a maximum period of 2 months from the contract start date, interim arrangements for the delivery of the contract services by Serco Leisure Ltd where necessary to allow them to complete contract mobilisation after 29 March 2024; iii) vary the current contractual arrangements with Fusion to enable them to continue to provide essential members data systems and related back-office support functions for a period of up to 2 months to ensure the continuation of these specific functions and ensure a smooth transition, to the end May 2024, only should the need arise; and

- iv) establish necessary service and corporate staff arrangements for the effective commissioning, delivery and management of the leisure services contract; and
3. **Agree** to receive annual reports on the performance of leisure services and the contractor, and agree the business plan priorities for the following year.

Appendices	
Appendix 1	Tender Scoring Criteria
Appendix 2 (Confidential)	Summary Report of In-House Proposals
Appendix 3 (Confidential)	Summary of Preferred Bidder
Appendix 4 (Confidential)	Financial Assessment
Appendix 5	List of Fees and Charges for Serco Limited
Appendix 6	Oxford's Programmes to Increase Physical Activity
Appendix 7 (Confidential)	Due Diligence
Appendix 8	Equalities Impact Assessment
Appendix 9	Risk Assessment

Summary

1. The current contract for leisure service with Fusion Lifestyle expires on 29 March 2024, and we have considered options for future delivery.
2. We considered the feasibility of in-house delivery arrangements and concluded that they could not meet the Council's requirements.
3. Due to the scale of the service requirements, the Council is required to contract through the formal procurement process and to legally adhere to its procedures and outcomes. The recommendations of this report are the conclusions of this tender process through which Serco Leisure Ltd scored best and is considered the preferred bidder in line with Council's procurement policies and our legal requirements.
4. The report also explains further steps we need to take with Serco Leisure Ltd to complete our due diligence, pre-contract negotiations, and with Fusion to vary the current contract to provide for the continuation of specific data system and related back-office function for a period of up to two months, should the need arise and to ensure a smooth transfer of services from 30 March 2024.
5. We will set up necessary service and corporate staffing and management arrangements for effectively commissioning and delivering the leisure services contract. These arrangements will assure that the contract terms are delivered, and improvements in quality of services and facilities are made.

Background

6. In 2009 Oxford City Council entered a contract with Fusion Lifestyle to manage Oxford's three leisure centres, Hinksey outdoor pool, and Oxford Ice Rink. The contract was for an initial 10-year period with a five-year extension option, which was extended, taking the contract to March 2024.
7. While initially successful with usage levels increasing and operating costs reducing, in the face of the challenges posed by the Brexit, Covid pandemic and subsequent cost of living concerns, the contract with Fusion has since 2019 seen a decline in levels of usage and service standards. Table 1 below shows that Oxford's leisure centres have also struggled to recover - except for Hinksey Outdoor Pool where usage has increased to pre-pandemic levels.

Table 1: Comparison of usage over the Fusion contract period

Site	2009 (yr. one of the Fusion contract)	2014	2022
Barton	57,496	138,123	67,625
Ferry	265,036	639,331	123,722
Hinksey	34,634	62,357	63,325
Leys	353,792	414,172	125,298
Oxford Ice Rink	178,285	191,830	126,107
TOTAL	889,243	1,445,813	516,077

8. We have also experienced corresponding reductions in levels of customers satisfaction with the quality of leisure services, and a rise in dissatisfaction with the quality of maintenance and poor availability of sessions.
9. In response to reducing standards, increasing costs, and deepening inequalities the Council developed a new approach to leisure provision which has sought to integrate provision with social and health responses to tackling inequalities. This joined up way of working is central to [Oxford's Thriving Communities Strategy](#), which was adopted by Council in January 2023. The Strategy explains the value of leisure, the broader role it plays, and the challenges we face in delivering high quality leisure services and a range of actions for combatting them, including:
 - Working with public health services, the NHS and other anchor organisations to ensure Oxford's leisure centres play a greater role in tackling health inequalities;
 - Reducing the number of children leaving primary school who cannot swim 25 metres, and
 - Taking a lead in reducing the city's impact on climate change and building on the £13m decarbonation of leisure.
10. The outcomes and measures in the Thriving Communities Strategy have helped to shape our requirements for the future management of leisure centres.
11. At the start of the process each political group leader was asked for a representative for a cross-party steering group which has been in place over the tender period. Progress updates were provided to a session that was held for all members and

updates offered to each political group. We have provided regular briefings and updates on progress on the tender process to CMT and Leaders meetings, alongside regular meetings with the Cabinet Member for Leisure and Parks.

12. The following sections of this report set out:
 - a) Our requirements for future leisure provision.
 - b) Managing leisure services through in-house arrangements
 - c) Formal external tender and evaluation process.
 - d) Conclusion and recommendations.
 - e) Managing the transition.

Considerations and Reasons for Decision

Our requirements for future leisure provision

13. We distilled the main elements of our integrative approach into service specifications and tender assessment criteria, which focus on ensuring the leisure centres are clean, safe, accessible, and inclusive with increased targets for underrepresented groups. The criteria and specifications, which are the basis for preparing our in-house proposals and evaluating the tenders, have two core elements:

- i) Qualitative – the nature and quality of proposals in terms of active engagement with communities, customer participation targets, quality of customer service, innovations and energy management, health and safety focus, building and facilities operations, and management. Staffing and training levels were a key part of the evaluation and the dialogue with the bidders, this covered aspects such as employee terms and conditions and how each of the bidders worked with trade unions.
- ii) Costs – the average management fee payable to the Council and the deliverability of business plans. Delivering high quality services in a financially sustainable way is core to the Councils requirement, as defined by the MTFP assumptions for leisure services of a net annual income of £500k.

14. Our assessed quality requirements also reflect core Council objectives, including:

- Ensuring social value, by promoting healthier lifestyles and collaborative working with our partners and communities;
- Bidders have been asked to develop more effective and financially sustainable ways to improve access and inclusion. This includes pricing, marketing and community outreach, programming and concessions. We will be having further conversations with the successful bidder to make sure aspects such as concessionary pricing are used as effectively as possible to support our equality, diversity and inclusion work; and
- Promoting effective carbon reduction management - criteria explains how targets will be set for the successful bidder and reviewed annually to ensure the centres support Oxford's climate ambitions.

15. The assessment criteria were weighted with 60% of the total possible marks being for the quality of offers of in tender submissions, and 40% for the competitiveness costs and business plan deliverability. The full criteria are shown at Appendix 1.

Managing leisure services through in-house arrangements.

16. We prepared proposals to assess the feasibility of managing the leisure services through our in-house arrangements. By setting out how the Council could deliver the services itself, the in-house proposal also provided a “comparator” for considering external options.
17. The service requirements and criteria applied to the tender process were also applied in preparing the in-house proposal.
18. To assure its robustness and accuracy, the in-house team built-in check and challenge sessions, of its assumptions and costing, at different stages in its preparation by two leisure industry consultants.
19. The report of the in-house delivery proposal is attached at Appendix 2. It shows that the in-house arrangements scored well against the ‘qualitative’ element of the criteria, especially around delivery of close working with local partners and community services; good staff terms and conditions; good customer participation and services; and health and safety focus. Council arrangements are also likely to be adaptable to deal with social and legislative changes.
20. However, the costs of delivering the in-house arrangements are significant and would not be affordable. We estimate that an effective in-house operation would require significant upfront investment and an annual net operating costs to the Council of approx. £1.75m over the next 10-year period (minus annual net invest to save income of c£150k). This is significantly outside the Council’s budget expectations of an annual income of £500k.
21. We found that the high costs of the in-house proposal result mainly from:
 - Taking longer to mobilise and fully insource the services – we estimate more than six months and therefore great costs (compared to around three months for external leisure operators);
 - Not being able to realise higher income levels in the early years of the contract, particularly to grow membership sales;
 - Lack of existing critical mass and access to supply chains would create significant costs for several years; and
 - Facing higher mobilisation costs due in large part to fewer economies, and greater costs of ICT and data transfer compared to the market and longer implementation timescales.
22. Our findings reflect the experience of other local authorities that have in-sourced their leisure services, who found it took longer to in-source and was more expensive to operate leisure services on return to Council management.
23. **The report concludes that it would not be feasible to in-source the future delivery of leisure services - it would not be financially sustainable.** Mobilising for the transfer of services would be especially challenging for in-house arrangements, which take longer to set up and cost more. There would also be real risks of “switch-over” falls in service quality and increases in customer complaints over the early months. These would, therefore, bring significant risks to the Council’s reputation.

Formal Tender Procurement Exercise

24. The Council has a duty to deliver best value in its arrangements for the provision of its services and functions. When procuring contracts this is achieved by carrying out a competitive tendering process which allows the Council to assess offers from the market against its chosen criteria on a like-for-like basis. The bid achieving the best score against the Council's criteria becomes the Council's preferred bid and the Council may not award the contract to another qualifying bidder. The law requires that contracts of the nature discussed in this report are procured following prescribed procedures. The process conducted to procure the Leisure Services Contract has complied with the Council's procurement policies and with the legal framework.
25. A project team of officers from across the Council - including legal, finance, property, procurement and leisure services, was established to steer the procurement exercise, and to assess and evaluate tender proposals. In addition, a cross-party steering group was also set up to help advise the process and provide constructive challenge throughout.

Tender Procurement Process

26. The Council used the Sport England leisure procurement framework, which is the industry standard, and adapted it to reflect our local needs. At the start of the tender process the project team also invited prospective bidders to a market day to talk about our ambitions and to gain feedback. The project team prepared the tender specification which was then launched through an invitation to prospective bidders to engage in a competitive dialogue tender process.
27. The procurement route used involved a series of structured phases of dialogue with bidders. Following each phase, the Council refined and clarified its specification and contract documents and bidders were asked to submit either initial, interim or final tenders setting out how their proposed service delivery model would fulfil the Council's requirements. This process ensured that all bidders had a clear understanding of the Council's requirements and that there was a level playing field. It also enabled the Council to better understand the offers being developed by the individual bidders.
28. Five bids were received from GLL, Fusion Lifestyle, Serco Leisure Ltd, Parkwood and SLM. After interim tenders were assessed, the three highest scoring bids were progressed to the final round. They were SLM, Serco, and Parkwood. Through further dialogue the project team also refined the final tender documentation to best reflect the Council's requirements in specific areas, such as on concessions and accessibility.
29. Following the submission of final tenders, the project team reviewed all the procurement documents used, including draft contracts, service specifications and schedules. Having done so, the Council reissued the finalised documentation and asked the remaining three bidders to review and amend their submissions as far as necessary to take into account any changes made by the Council.

Tender Evaluations

30. A tender assessment panel was established to evaluate the tenders including officers from procurement, finance, property, community services and an independent leisure consultant. The assessment team individually scored each bid. Each evaluator in the assessment team scored each bid on an individual basis. The

scores were then reviewed in a moderation meeting to achieve one final score per question for each bidder.

31. The quality element of the scoring accounts for 60% of the overall score, which are shown in Appendix 1. These include employee development, community outreach, innovation, repair and maintenance, marketing, pricing, concessions, customer service and environmental management.
32. The cost element of the scoring represented 40% of the overall score, which includes 30% for the average annual management fee, calculated over 10 years, and 10% for the deliverability of the business plan. Bidders were provided with a financial template and guidance and assumptions to arrive at the average annual management fee. Bidders were also invited to incorporate their invest-to-save proposals into their income and expenditure proposals, for which the Council offered financial support in the form of a capital grant of £2million.
33. All three bids scored well on the quality of their offers and should provide a good and engaging leisure service. However, they varied in relation to their costs and affordability to the Council. Of the three final bids only two offered a service that scored well enough to satisfy the costs criteria, with Serco Leisure scoring best. SLM were scored in second place followed by Parkwood in third.
34. **Having carried out a robust and compliant process, and carefully evaluated the tenders the evaluation panel concluded that Serco Leisure overall scored best against the procurement criteria.**

Benefits of Serco Leisure's Bid

35. Serco Leisure Ltd is a subsidiary of Serco UK, and one of the UK's leading national operators of leisure centres and sporting facilities. It operates independently from the Serco UK's other sector subsidiaries that are concerned individually with defence; justice and immigration; transport; and citizen services.
36. Serco Leisure's bid scores well on quality and they have included investments that will increase participation, with the main investment being the conversion of half of the sports hall at the Leys Pools & Leisure Centre so it can be used for soft play and TAGactive (a new concept suitable for all ages that combines fun, technology and exercise). All gym equipment will be replaced with brand new modern equipment suitable for all levels of fitness. Alongside this Barton Leisure Centre will benefit from a new spin studio and new group exercise studio with be created at Ferry. All the centres will be promoted and branded as Oxford's local community centres.
37. Serco are committed to continuing and building on the Council's positive work with the health system where we have a range of pilots underway focused on areas such as healthy weight, smoking cessation, foot care for older people and maternity support. Serco's fees and charges are included as Appendix 5. They have been benchmarked against local competition and neighbouring councils.
38. Serco will continue to offer free swimming, the programming and times for these sessions need to be worked through as the current provision has not been as affective as we would like. Serco will simplify the confusing fees and charges with a small number of standard membership charges and 40% discount for concessions. While Fusion's wide range of fees and charges makes direct comparisons difficult, Serco's monthly concessionary price is £24 per month for gym, swim, and class membership (concession) which is in line with the current price.

39. We currently operate a range of pay as you play concessionary prices, ranging between £2.10 and £2.60. Serco's pay as you play concession range from £1.80 for people with a disability, £2.65 for teens with the highest pay as you play being £5.25 for an adult gym.
40. The standard membership cost for Serco is £48 for a full membership with reductions of up to £10 available for single site memberships. Fusion's cost is currently £41, although it would have increased in this year's fees and charges.
41. Serco are also introducing a worthy causes fund where they have committed 0.8% of their turnover (c50k) to be invested to increase inclusive usage at the centres.
42. Additionally, the Council will continue to offer a range of inclusive physical activity programmes shown in Appendix 6, these include You Move which provides free and low-cost activities for families and Move Together which targets support for people with long term health conditions, with many of these sessions taking place in leisure centres. The Council has committed a further £50k in its consultation budget to further enhance these activity programmes next year.
43. A year one review will take place to see how effective this approach is to increase usage, especially usage in target groups such as young people.
44. Serco scored well in relation to employee development, with structured training plans, development for employees, and positive employee terms and conditions.
45. Further information on the bid can be found in Appendix 3.

Pre-contract Engagements, Negotiations and Mobilisation

46. Officers will continue due diligence checks with Serco Leisure as part of the pre-contract engagement to ensure that the information submitted by them during the procurement is accurate. Our due diligence has not identified issues with Serco Leisure in deliver the Council's leisure services, nor that awarding the contract to them would adversely impact the Council's reputation.
47. We are mindful of the reducing time available before the ending of the current contract with Fusion on 29 March 2024, and the launch of the new with Serco Leisure from 30 March. To ensure the smooth transfer of services, in parallel to our due diligence, officers will seek to engage with Serco Leisure as early as possible to finalise service requirements and the contract, and to agree mobilisation priorities. We are planning to engage swiftly to:
 - i) Complete pre-contract discussions to see that it contains the appropriate, legally advised, provisions for ensuring the delivery of expected obligations and performance by Serco Leisure, and that it contains the right provision for actions where such requirements may be at risk of not being met. We will also engage early with Serco Leisure in relation to any obligations in the contract which many need to be suspended because of the limited period for mobilisation. Any temporary relief from obligations will be limited to a period of up to 2 months from the contract start date; and
 - ii) Arrange mobilisation priorities with Serco Leisure. They already have extensive plans detailing how they will ensure a smooth transition from Fusion's system to their own. However, we will need to engage early to ensure that their plans can be implemented within the reduced mobilisation period

available, and to identify elements of functions that may be at risk of delay where the Council may need to support.

48. To support the mobilisation plans and actions of Serco Leisure, and to further mitigate any risks to the smooth transition of services, we are preparing our additional transition plan and arrangements which set out the main steps that we will take to secure the effective handover from 29th March. We are focussing on identifying areas where the Council may need to intervene to support Serco Leisure to ensure minimal disruption during transfer period. Our early assessment is that this is likely to relate to switching over of membership data systems and related back-office functions. Therefore, to complement and support Serco Leisure's mobilisation, and to ensure smooth transfer, we will:
- i) Work with Fusion on their decommissioning and hand-over plans, and to complete their exiting arrangements;
 - ii) Engage with Fusion, should the need arise, to put into place a short-term variation to the current contract to specifically enable the continuation of essential members data systems and related back-office support functions for a period of up to 2 months to ensure the continuation of these specific functions and ensure a smooth transition, to the end May 2024. Fusion have confirmed their willing to agree to such a contract variation to provide these facilities for this period at reasonable costs; and
 - iii) Establish internal contract and client management arrangements to ensure that the Leisure Service contract is effectively managed and that its expected performance is delivered. The preparation of these arrangements will be informed by the detail review of corporate commissioning and clienting arrangements we are currently carrying out, and the planned full review of our Communities Services.

Conclusions and Recommendation

49. Delivering the future leisure services through in-house arrangements is not financially feasible or viable to the Council. There would be real risks to the transfer of services, further deterioration in service quality and the Council's reputation.
50. The Leisure Futures contract may only be awarded in accordance with the requirements of procurement law which stipulate that having identified a compliant bid that best meets the Council's specified criteria the Council may not award the contract to another provider. The tender from Serco Leisure has been identified as the winning bid as it scored best against the Council's specified criteria and satisfies the qualitative and costs requirements for the leisure services.
51. We recommend, therefore, that subject to completing due diligence and contract negotiations, Council should approve the award of a 10-year contract (with a five-year extension option) to Serco Leisure to manage and develop the Council's three leisure centres, Hinksey Outdoor Pool and the Oxford Ice Rink.
52. With the current contract due to expire on 29 March 2024, we recommend Cabinet agrees for officers to engage with Serco Leisure to complete due diligence and agree the final terms of the contract as soon as practicable, and to delegate responsibility to the Interim Executive Director Communities and People, in consultation with the lead member for Leisure and Parks services, to take all necessary steps to implement the recommendations and decisions of this report.

Financial implications

53. The MTFP agreed at Cabinet in December 2023 as part of the Consultation budget included a management fee income assumption of £500k per annum. Based on the final bid submitted by Serco Leisure it is anticipated that this will be exceeded over the initial 10-year period of the contract, although due to profiling of the income in the initial 4-year MTFP period this is marginal, with early years providing far less than the £500k per annum assumed. This will require a commensurate use of reserves to fill deficits arising in early years of the MTFP which will be topped up in later years. Appendix 4 gives more detail on the breakdown of the management fee.
54. The Capital Programme included within the MTFP allows for a capital grant payment of £2 million to be used on schemes that provide a financial return of a minimum of 5%. Whilst such schemes will need to be approved by the Council the income and expenditure has been included by bidders as part of the submissions and included in the average management fee accordingly. Should the projects not take place then the average management fee will be reduced accordingly. Further details are shown in Appendix 4.
55. Bidders have been advised that any uncompleted dilapidation works identified by the Council that arise from the existing contract will be agreed and undertaken by the existing management contractor but the cost will sit with the Council.
56. The MTFP Consultation Budget also provides for:
- One new post to assist with client monitoring and corporate property matters in addition to the current leisure well-being and client officer currently employed.
 - £600k of capital works to leisure centres over and above day to day and life cycle repairs to be provided by the bidders.
57. Other points worthy of note include:
- The Council will directly pay the utilities through its new energy contract for the next 12-month period. Serco Leisure may be able to procure utilities at a lower cost, which we would explore adopting in the future which could provide further efficiencies
 - The operator shall be responsible for increases in utility costs as a result of increases in consumption over and above the base consumption levels and will benefit from decreases in utility costs as a result of decreases in consumption below the base
 - Serco Leisure are responsible for price increases up to RPI, with the Council being responsible for price increases beyond RPI.
 - Fees and charges (Appendix 5) have only recently been made. It also assumed these fees and charges will be agreed by the Council.
 - The centres will have effectively full repairing leases. However, The Ice Rink and Ferry Leisure Centre will also have schedules of condition, with the Council funding costs over £100,000. The Council has included a separate budget to Serco Leisure to cover its cost obligations.

Legal issues

58. The Council is bound by the laws on public procurements when undertaking procurements of services. These define the procedures to be used and the basis on which contracts may be awarded. They are designed to promote effective competition and ultimately to ensure that contracting authorities obtain value for money in their procurements. Deviation from the procedures and requirements would put the Council at the risk of a challenge.
59. A challenge from a disappointed bidder would have implications for the continuity of the leisure services and for the Council's financial position. The Council's ability to enter into a contract may be suspended pending determination of a challenge, and a successful challenge can result in the Council being prevented from entering into the contract, or, where the contract is already effective, being shortened or declared ineffective; in the alternative a challenger may be awarded damages to compensate them for the income they would have earned had their bid been successful. Further, a contractor whose contract is declared ineffective or is shortened may be entitled to recover damages for their loss of profit. It is not unusual for the costs of defending procurement challenges in complex procurements to rise to above £250k.
60. The procurement of this contract followed a procedure designed to identify all the relevant issues for the Council's future leisure services provision and the bidders' ability to provide the services within the scope of the specification set by the Council. All bidders successfully qualified to bid by demonstrating their experience, competence, and track record of delivering good levels of service and consumer satisfaction. The qualifying bidders then competed to offer best value for money against the Council's specified criteria. The procedure used was complex, reflecting the nature of the services and the basis on which the leisure market operates, and evolved as it progressed. Wherever complex procurements are undertaken there is a risk of challenge. Legal advice has been provided throughout the procurement by the Council's internal legal advisers supported by external advisers specialising in the procurement of public sector leisure contracts and this advice has been taken into account in the ongoing conduct of the procurement. Advisers believe that the risks have been effectively managed.
61. Officers are confident that the procedure followed was robust and that the winning bid best meets the qualitative and financial requirements set by the Council. As such, the Council may not award the leisure contract to any other bidder without putting itself at an unacceptable risk of challenge.
62. The alternatives to awarding the contract as set out in the recommendations are to abandon the procurement and either 1) provide the leisure services in-house on an interim basis while a new procurement is undertaken, or 2) provide the services permanently on an in-house basis. The operational and financial implications of operating the service in-house are discussed above (paragraphs 16 to 23).
63. While the Council does have the discretion to abandon the procurement there are legal and contractual risks in doing so as well as significant operational and financial implications. The Council would have to conduct any abandonment in accordance with the principles of procurement law. A failure to do so would bring a risk of challenge with cost implications both in terms of the legal costs of defending such a challenge and the potential damages payable for a breach of the procurement rules. Further, although the Council's tender documents specify that costs incurred by bidders may not be recovered in the event of an abandonment, it is possible that disappointed bidders may seek to recover their costs of engaging in the procurement.

Defending any such challenge would require substantial officer time as well as financial commitment.

64. A new contractor would not be in place and operational for at least 15 months following the re-commencement of procurement.
65. Operating the leisure service in-house on a temporary basis would bring substantial additional long-term costs as a result of the rules on the transfer of employment contracts to a new service provider (the "TUPE" rules). Fusion employees would transfer to the Council and would become entitled to join the Local Government Pension Scheme. Upon completion of a new procurement the employees would transfer to the new contractor with their entitlement to membership of the LGPS (or an equally beneficial scheme) intact. Any prospective bidder would therefore build these additional costs into their financial model to the Council's cost. In the event the Council adopted an in-house model these costs would be borne directly by the Council.
66. Should the recommendations in this report be approved the Council will need to inform the remaining bidders of the outcome of the process and observe a "standstill period" of 10 days during which it may not enter into the contract. Any claim issued by a disappointed bidder for breach of the procurement rules during this period will trigger an automatic suspension preventing the Council entering the contract until it has made a successful application to the court to do so. Such an application could be heard within weeks, but the outcome is uncertain – the court will balance the Council's interests in a continuing service (which may be satisfied in this case by extending the Fusion contract for the duration of proceedings) against the disappointed bidder's loss of opportunity to win the contract.
67. Disappointed bidders will often seek to extend the standstill period while they obtain sufficient information from the Council to inform their claim. This is generally accepted practice in procurement challenges and accords with guidance issued by the specialist court dealing with public sector procurement challenges. Officers should be ready to engage fully and constructively with disappointed bidders considering a challenge in order to address any concerns as early as possible and minimise the potential for delay. The Council's procurement team keeps full records of decisions made during the procedure and the reasons for them to promote speedy resolution of concerns.
68. Once the standstill period and any agreed extension has expired the Council may enter the contract. However, further work will be required to finalise contract terms (as set out in paragraphs 45 to 47 above) including the granting of leases, and to manage the transfer of information from Fusion to the new provider. Such transfers are governed by the rules on data protection and a review will be required to ensure that they are made in a compliant manner.
69. Given the limited time available for mobilisation of the new contractor it is likely that certain obligations in the contract will need to be varied on a temporary basis. Any such measures will amount to modifications to the contract governed by the procurement rules and so must be strictly limited in terms of scope, duration, and financial implications. It is for this reason that recommendation ii) above limits both the period of the variation and its extent.
70. The Council has obtained legal advice on alternative interim arrangements. The options are 1) an extension of the contract with Fusion to allow a longer mobilisation period, and 2) entering into a separate interim contract with the winning bidder. Both carry procurement risks which are less manageable than the option of varying the

terms of the new contract temporarily. The option of an extension to the Fusion contract would be particularly challenging because of the financial position and unresolved contractual issues between the parties. The option of an interim services contract creates additional contractual complexity in the transfer of the contractor's liabilities between the interim and longer-term contract which can be avoided by entering into the new service contract with a temporary variation.

Level of risk

71. A full risk register is shown at Appendix 9. The key immediate risks are ensuring that service standards do not reduce while we transition from Fusion to Serco Leisure and longer term that the new contract delivers its promise. Paragraphs 44 to 46 of this report explains the position in relation to mobilisation and transition, and the measures proposed to ensure the contract delivers the targeted outcomes.

Equalities impact

72. The equalities impact has been considered all the way through the process; a full review can be seen as Appendix 8. The assessment demonstrates how a range of data sources have been used to ensure people with protected characteristics have been considered throughout this work with targeted sessions for underrepresented groups and a new inclusive access fund created.

Report author	Ian Brooke
Job title	Head of Community Services
Service area or department	Community Services
Telephone	01865 252705
e-mail	ibrooke@oxford.gov.uk

Background Papers: None

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