

THE OPENNESS OF LOCAL
GOVERNMENT BODIES
REGULATIONS 2014/
THE LOCAL AUTHORITIES
(EXECUTIVE ARRANGEMENTS)
(MEETINGS AND ACCESS TO
INFORMATION) (ENGLAND)
REGULATIONS 2012



RECORD OF OFFICER DECISION
TAKEN

Decision Taker: Ken Miles

Subject: Procurement of Independent Certifier for Leisure Centre Project

Record of Decision Taken:

Reason(s) for the Decision: Appointment of this post through a framework as originally intended is not practicable and running an open tender for the appointment would cause a delay in the wider project procurement process. Any further delays are likely to threaten delivery of the new leisure centre. There is insufficient time to take this urgent decision request to the next Strategy & Resources as the Independent Certifier will be needed as soon as the main contractor is appointed. This is likely to be in early August 2019 so an urgent decision is requested from the Chief Executive .

Information: An Independent Certifier is required as part of the external and internal project team for the delivery of a new leisure centre on Seven Brethren Bank. Funding for the post was agreed at Council on 13th March 2019 (paragraph 4.11 of report entitled "Leisure Provision at Seven Brethren").

The Independent Certifier role will be delivered through a joint post, representing both NDC and the leisure contractor and will be responsible for certifying payments from NDC to the contractor during the construction phase of the project. As such, it's important that both NDC and the leisure contractor are happy that the Independent Certifier has the necessary skills and experience for the job and that they will be impartial in their duties.

Currie & Brown UK Limited have the necessary experience and expertise to fulfil the requirements of the role and have a good understanding of the project. The project is fairly unique in that it is using the standard Sport England's Design Build Operate and Maintain (DBOM) contract template, but NDC is financing the project through prudential borrowing, with the leisure operator paying off the council's loan through twenty annual "management fee" payments. Sport England is investing significant funds in the project through its capital funding grants programme and is happy with NDC's approach to funding the build through prudential borrowing. Sport England's DBOM contract template requires the Independent Certifier role to be filled and has approved the suitability of Curry and Brown.

The value of the IC post is approximately £98k and the original procurement approach to the appointment was through a call-off contract from an NHS framework agreement.

Parkwood, Curry & Brown and NDC have considered three different contract templates for the IC role for this be-spoke project. The favoured template was proposed by Parkwood Leisure and has been used by Parkwood for another DBOM leisure centre project. The terms and conditions of this contract are closely aligned to the overarching DBOM contract, which is helpful as the documents will cross reference one another.

Unfortunately the preferred contract terms and the fact that the contract is a joint appointment make it inappropriate to appoint through the NHS framework as originally planned.

There is now insufficient time to run an open tender for the appointment of the Independent Certifier. The DBOM procurement has been running for over 12 months and any further delays could invalidate the tenderer's build costs and business case, risking the whole project. For that reason an urgent decision to appoint Curry & Brown as Independent Certifier is requested, with the council's standard contract & procedure rules set aside. Due to timings of NDC's committee cycle there is insufficient time to take an urgent decision request to the next Strategy and Resources Committee so an urgent decision is requested from the Chief Executive.

Alternative Options considered and rejected at the time of the decision:

Appointment through the NHS framework rejected as terms of preferred contract terms are not compatible with framework terms and conditions.

We could run an open tender for the IC role, but this would delay the procurement of the DBOM contract considerably. The DBOM procurement has now been running

for over 12 months and further delay could invalidate the tenderers build costs and business case, risking the whole leisure centre project

Declaration of any Conflict of Interest made by any Councillor consulted by the officer or declared when granting the specific authorisation to take the decision
(including details of any dispensations granted by the Ethics Committee)

None

List Of Background Papers that were relied on in making the decision or the decision is based (but not including published works or those which disclose exempt or confidential information (as defined in rule 10 of appendix 15 (Access to Information Procedural Rules) and the advice of a political advisor)

N/A

Date that decision was taken: 20/9/19



Date of Publication of decision:

Financial Implications: (NOTE: Please state if there are any financial implications. If so, state if there are sufficient funds within the agreed budget. If there are not sufficient funds, please state how the decision will be financed)

Consultation undertaken:

The following have been consulted prior to the decision being taken:

Consultee	Consulted Yes / No / Not applicable	Date
Leader	Yes	19/8/19
Deputy Leader	Yes	19/8/19
Chief Executive	Yes	
Head of Service (Finance)	Yes	19/8/19
Legal	N/A	
Finance	N/A	

GUIDANCE NOTES TO OFFICERS:

Exempt/Confidential information: Please note that the contents of the decision or background papers must not disclose exempt or confidential information (as defined in rule 10 of appendix 15 (Access to Information Procedural Rules) and the advice of a political advisor) as the record of decision is a public record.

Publication of record: Please forward the decision together with any background papers that have not already been published to Member Services for publication. The record and background papers must be kept by the decision taker for **6 years** from the date that the decision was taken.