

APPENDICES 1 & 2 AND PLANS 1 & 2 ONLY OF THIS REPORT ARE EXEMPT/CONFIDENTIAL UNDER ACCESS TO INFORMATION PROCEDURE RULES 10.4 (3). APPENDIX 1 AND THE PLANS WILL BE CIRCULATED AT THE MEETING.

Report of : Director of City Development

To : Executive Board:

Date: 14 May 2008

Subject: PROPOSED LEEDS ARENA – SELECTION OF PREFERRED OPERATOR

Electoral Wards Affected:

CITY WIDE

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In

(Details contained in the report)

Executive Summary

The report informs Members as to the progress made with the procurement of an operating partner for the proposed Leeds arena. Members will recall that in June 2007, the City Council commenced an international competition to procure an experienced, high quality operator for the new facility.

The report summarises the strong response from bidders to the competition, advises that two companies have been invited to participate in the final tender stage of the operator procurement process, evaluates the two final tender submissions, recommends a preferred and reserve operator for the proposed arena and seeks authority to enter into a legal agreement with the preferred and reserve operator on terms outlined in the report.

1.0 PURPOSE OF THIS REPORT

1.1 The purpose of this report is to:-

- (i) Seek Executive Board's approval to the selection of a preferred and reserve operator for the proposed Leeds Arena.
- (ii) Authorise the Director of City Development to enter into a legal agreement with the preferred operator (or reserve operator should the need arise) of the Leeds Arena on the terms contained in the Appendix 2 of the report which is Confidential/Exempt under Access to Information Procedure Rules 10.4.(3)

1.2 This report is marked as Exempt for Call In on the basis that the City Council took the decision to pursue a two stream procurement process to select a preferred operator for the proposed arena at a meeting of the Executive Board on 13 December 2006. Thereafter, at its meeting on 4 July 2007, Executive Board authorised the Director of City Development under the Council's scheme of delegation, to approve both the long and short list of potential operators during the Competitive Dialogue procurement process. Both decisions determined by the Executive Board were subject to the Council's Call In procedures. The recommendations contained in this report are consistent with the decisions made by the Executive Board on 13 December 2007 and 4 July 2007.

1.3 Under the Council's Constitution, a decision may be declared as being Exempt from Call In if it is considered that any delay would seriously prejudice the Council's or the public interest. Officers have been advised by the Council's retained consultants that there has to be a clear, transparent process for achieving the selection of a preferred operator and a structural procurement programme needs to be pursued and adhered to and any delay could prejudice the competitive element of the process and the ability to achieve the optimum financial proposal for the Council.

1.4 Appendices 1 and 2 and plans 1 and 2 of this report are confidential as they evaluate the shortlisted bidder's proposals and their financial offer to operate the arena and set out the basis of the Council's proposed legal agreement with the operator respectively. It is considered that the public interest in maintaining this information as exempt outweighs the public interest in disclosing the nature of the operator's proposals, as disclosure may prejudice the outcome of the procurement process and the financial offer made by the proposed preferred operator to manage the arena. Accordingly, the Appendices and plans are marked as Exempt/Confidential under the Council's Access to Information Procedure Rules 10.4 (3).

1.5 Members of Executive Board should note that Appendix 1 and the accompanying plans will be circulated at the meeting.

2.0 BACKGROUND INFORMATION

2.1 The Council's Executive Board at its meeting on 13 December 2006, agreed to support the findings and recommendations contained in PMP Ltd's report on the proposed funding and procurement of a multi purpose arena and approved an

overlapping, two stream competitive procurement process to select a preferred operator for the proposed arena.

- 2.2 In the first instance, the Council would hold an international competition to select an experienced, high quality partner to operate and maintain the arena. This would be closely followed by the selection of a developer partner, who would also bring forward a site for the arena development. Both competitions would be progressed via the OJEU Competitive Dialogue Process.
- 2.3 During the operator selection competition, interested parties were required to develop an indicative (commercially sustainable) business plan and a programme of events and services proposed for the arena. Once selected, the preferred operator would work alongside the Council to both finalise the arena specification and contribute to the selection of the preferred developer/site, the outcome of which will be reported to Executive Board for approval in November 2008.
- 2.4 The detailed arena specification has yet to be determined and will be influenced by the preferred operator once selected. However, outline specifications have been developed by the operators, which have been based on the initial research undertaken to date and which is likely to reflect the following:-
- Circa 12,500 seats.
 - An entertainment focussed layout to accommodate the national and international concert circuit.
 - Flexibility in building construction, facilities, seating arrangements and rigging to accommodate a range of event types that will support the operator's business plan.
 - An event programme that would seek to maximise visitors to the city, which would ensure operational profitability, a sustainable and resilient business plan and will provide a significant socio-economic benefit to the city.
 - An architectural approach that will promote a high quality design, commensurate with its proposed location, which will contribute to the life of the city.
 - A sustainable transport design and operating solution.
- 2.5 Members of Executive Board should note that the procurement process is operator centric, as the operator will be the driving force behind the arena throughout its life. Based on the Council's brief, the operator bidders were required to come forward with their proposals for the event programme and hence their business plan, financial contribution to the developer (e.g guaranteed rent, capital contribution, profit share etc) and other key matters such as the detailed form and duration of the proposed lease with the developer. The configuration and internal functional specification of an arena will influence programming, the experience of both event goers and performers and will hence influence programming and the business model.
- 2.6 The operator bidders were, therefore, asked to set out their Facilities Requirements for the arena that would enable them to deliver their programme and business plan. They were required to advise as to the number and type of seating, seating bowl configuration and scale and form of hospitality provision. With regard to the seating bowl configuration, no two arenas are identical. Nevertheless, there are three generic

bowl configurations: sport/360 (in the round), horseshoe (end stage) and fan. Each configuration is flexible in its use, but each places priority on a particular component of the programme (e.g sports and concerts). The generic issues to consider when looking at each configuration model are outlined below;

Sport in the Round/360 Configuration

- Sight lines optimised for competitive sport
- Seats and concessions generally sport orientated
- Flexible use
- Generally less good for conference/entertainment use
- Get in/out constraints for concerts/entertainment

Horseshoe Configuration

- Sight lines primarily optimised for competitive sport but compromised by flexibility
- Seats and concessions are generally a compromise for sport and entertainment
- Very flexible use
- Site lines are less good for concert/conference/entertainment use
- Efficient get in/out for concerts etc

Fan Configuration

- Sight lines optimised for concerts and family entertainment
- Seats and concessions generally concert/conference orientated
- Optimised get in/out for concerts etc
- Flexible use
- Good for exhibition sport, but generally not optimised for competitive sport

2.7 Executive Board, at its meeting on 4 July 2007, agreed the evaluation criteria to be used to assess the initial expressions of interest from potential operator partners (financial 60% and technical 40%) and, then thereafter through the Invitation to Participate in Dialogue and Invitation to Continue Dialogue stages of the operator procurement process that assessment of submissions would be based on the following (but not restricted to) broad criteria:-

i) Financial/Commercial Proposals (50%)

- Underwritten capital/revenue streams
- Additional projected capital/revenue streams
- Commercial proposals
- Contract structure proposals/agreement
- Facilities requirements

ii) Operational (25%)

- Proposed event programme
- Method Statements
- Services specification
- Robustness of supporting financial information (business model)

iii) Deliverability (25%)

- Robustness of capital cost estimates
- Robustness of proposals
- Risk

2.8 Executive Board also at its meeting on 4 July 2007, authorised the Director of City Development under the Council's scheme of delegation, to approve both the long and short list of potential operators of the proposed arena during the Competitive Dialogue Process, but with Executive Board ultimately determining the selection of the preferred and reserve operating partner for the proposed arena.

3.0 CURRENT POSITION

3.1 In June 2007, an OJEU Notice advertising the proposed arena development sought expressions of interest from potential arena operators. A Pre-Qualification Questionnaire (PQQ) was issued to all parties expressing an interest in the project. Six (6) PQQ submissions were received from companies with national/international expertise, were evaluated and the Director of City Development authorised that all six bidders should be taken forward to the Invitation to Participate in Dialogue (ITPD) Stage of the operator procurement process. The six companies selected, which represented a strong field and included a number of arena operators with international experience were (in alphabetical order):-

i) **Anschutz Entertainment Group (AEG)**

3.2 AEG is a private limited company formed in 1997. It is a wholly owned subsidiary of a North American based parent company. The ultimate parent company owns or controls a collection of companies and venues, including facilities in North America, mainland Europe and the UK (The O², London). Within the group also sits ownership of a series of professional sports teams including LA Galaxy and a live entertainment division, which produces live events throughout Europe and world wide. AEG has experience of operating arenas, stadia and entertainment venues and other commercial developments and owns and/or provides arena venues in some of the world's leading cities i.e. Staples Centre, Los Angeles (USA), Prudential Centre, Newark (USA) and O2 World, Berlin (opening September 2008).

ii) **Global Spectrum**

3.3 Global Spectrum is a limited partnership created in 2000, although its creator had significant previous operational experience prior to this. The company is based in North America and operates a large number of arena and stadium facilities across the continent and in Asia. The ultimate parent company operates in a wide range of fields, owning and operating sports franchises, managing facilities, selling tickets, providing food and beverage services and programming sports television networks. Global Spectrum provides these services on a management and/or consulting basis for both the pre-opening/design and construction phase of a new facility and on-going operations for existing venues. The company does not currently have any presence in the UK or Europe, although several senior members of staff forming part of the bid team have arena development and operational experience in England. For the company's last completed fiscal year, Global Spectrum managed facilities collectively presented over 7,000 events, had an event attendance of 16.4m people with over \$500m in gross revenue.

iii) **Livenation**

3.4 Livenation was formed in 1979 and specialises in the ownership, operation and management of entertainment venues. There are over 70 companies within the group in the UK. The ultimate parent company is US based. The parent group has extensive venue operating experience across North America and also the UK. The Company also delivers event promotions and creation, marketing partnerships, ticketing and security services. Livenation act as operator for a range of arenas in the UK and Europe i.e. Sheffield Hallam Arena, Wembley Arena (promoter), Cardiff International Arena and the Point Arena in Dublin.

iv) Logistik/GL Events

3.5 Logistik/GL Events is a consortium formed to deliver a single submission for the Leeds operating contract. Logistik is a UK based private limited company. It is a design and communications agency with five departments including events and communications experience, design and build, digital media production, catering and brand development. GL Events is a public limited company formed in 1989 with its headquarters in France. It has over 70 subsidiaries worldwide and is active in venue management, event management and services, with offices and a presence in 15 countries. The consortium has experience of operating venues in Europe, Asia, South America and the UK, mainly focused in convention and conference facilities.

v) Quintain Estates

3.6 Quintain Estates is a public limited company formed in 1992. The company's primary area of business is real estate investment and development and they have experience of venue management and operation. They have experience of delivering development to support stadia and arenas, but are presently not directly responsible for their day to day management.

(vi) SMG

3.7 SMG is a private limited company formed in 1995. The company specialises in entertainment venues, stadium, arenas, theatre and convention/conference centre management, offering full service management solutions. SMG is part of the European arm of a North American based parent company. They operate a number of entertainment venues/arenas in the UK and Europe, as well as ancillary services such as food and beverage provision and facilities management. SMG's core business is the staging of concerts within these venues i.e. MEN Arena, Manchester, Metro Radio Arena, Newcastle, Odyssey Arena, Belfast and the Koonig-Pilsener Arena, Oberhausen.

3.8 The ITPD Stage of the operator procurement process was designed to assess the bidder's high level proposals, approach to and suitability for operating an arena. During the ITPD Stage, two bidders (Quintain Estates and Logistik/G L Events) informed the City Council that they had withdrawn from the operator competition and would not be submitting proposals. Submissions were subsequently received from the four remaining bidders on 19 September 2007. Following detailed evaluation of the submissions, the Director of City Development authorised that all four of the bidders would be taken forward to the Invitation to Continue Dialogue (ITCD) Stage of the procurement competition.

3.9 The ITCD Stage of the procurement process provided the four remaining bidders with the opportunity to further develop the financial and commercial elements of their proposals namely, their proposed rental payable to the developer and any proposed

contributions to the capital cost of the arena.

- 3.10 The operator bidders were required to submit a Mandatory Based Bid (MBB) for the Council owned site at Elland Road and a Mandatory Variant Bid (MVB) based on the delivery of an arena on a city centre site. For the MBB, bidders were required to submit a business plan, offer of financial contribution (rental to be paid to the developer) and a mark up of the proposed legal documentation to be concluded with the developer. The bidders were also asked to provide a capital cost estimate for the level of building specification required to sustain their proposed business plan and financial contribution.
- 3.11 For the MVB, bidders were required to submit a commentary on the amendments to their position (the MBB bid), including capital cost and financial contribution implications.
- 3.12 Bidders were also permitted to submit an Optional Variant Bid (OVB) proposing amendments/additions to the facility mix and any alternative approaches to the composition of their proposed capital/revenue contribution.
- 3.13 The bidder ITCD submissions contained responses to 10 areas of analysis relating to the three key evaluation criteria previously agreed by Executive Board and the sub-criteria agreed by the Arena Project Board. These were weighted to reflect the relative importance of each area as identified in table 1 below. This approach allowed a full review of the commercial offer proposed by each bidder and analysis of any risks associated with each bid. Members of Executive Board should note that whilst earlier evaluation of operator submissions had focussed primarily on the operational proposals of the respective bidders, the ITCD stage of the process focussed more on the commercial elements of the bidder's proposals namely, in terms of their proposed annual rental payment to the developer and any contributions towards the capital cost of the arena

Table 1: ITCD Operator Evaluation Criteria and Weightings

Criteria	Submission Area	Weighting
Commercial (50%)	Operator Council Contract	7.5%
	Developer – Operator Contract	7.5%
	Acceptance of/proposed amendments to Facilities Specification	5%
	Contribution to the Project	30%
Operational (25%)	Acceptance of/proposed amendments to Services Specification	5%
	Services Method Statements	5%
	Subcontracting arrangements	5%
	Robustness of business case/supporting financial information	10%
Deliverability (25%)	Robustness of/risk associated with capital cost projections	10%

- 3.14 Following the detailed evaluation of the four operator submissions against the criteria detailed in table 1 above, the Director of City Development authorised that Livenation and SMG should be taken forward to the Final Tender Stage of the operator procurement process.
- 3.15 Final Tenders from the two remaining operator bidders were launched on 13 March 2008, with tender submissions made to the Council's Corporate Procurement Unit on 19 March 2008. Bidders were requested to provide marked up clean versions of legal documentation to be concluded with the Council and the preferred developer, along with services specification and facilities requirements, offer of a financial contribution and a detailed build cost of the bidder's proposed arena which would support and deliver their operational and business plan proposals. Appendix 1 and plans 1 and 2, the contents of which are Exempt/Confidential under Access to Information Procedure Rules 10.4 (3) provide an evaluation summary of the two final bidder's tender submissions and will be circulated to Members at the meeting.

4.0 COMPLIANCE WITH COUNCIL POLICIES

- 4.1 The Vision of Leeds 2004 to 2020 identifies a major project to improve the cultural life of the city, including developing a new, large scale international cultural facility such as an arena.

5.0 LEGAL AND RESOURCE IMPLICATIONS

- 5.1 Upon selection of the preferred operator for the arena, it is proposed that the City Council will enter into a legal agreement with the preferred operator in order to govern the relationship between the Council and the operator during the period between the selection of the operator and the execution of the lease for the arena between the operator and preferred developer. The agreement provides for the operator to be the sole operator party engaged with the Council in the selection of the proposed developer and, sets out the structure for this relationship. The agreement also provides the Council with a mechanism to manage changes to the operator proposal, should this be necessary during the remainder of the developer competition, in a clear and transparent manner.
- 5.2 A summary of the terms that have been proposed by the proposed preferred operator in their tender submission are detailed in Appendix 2 of the report, the contents of which are Exempt/Confidential under Access to Information Procedure Rules 10.4 (3),
- 5.3 The period of the Council/Operator agreement is anticipated to last from May 2008, until completion of the lease between the operator and developer, when the arena building is ready for occupation, though some clauses in the agreement will continue beyond this date i.e. Council's approval rights in relation to naming right sponsors for the arena.
- 5.4 Members of the Executive Board should note that Appendix 2 of the report also details the principal variations from the position adopted by the preferred operator which have been proposed by the proposed reserve operator in their tender response. The variations will become relevant if the preferred bidder withdraws from the procurement process or revises their submission in a manner that results in the reserve bidder's submission being more economically advantageous to the Council and they are asked to proceed as preferred operator for the arena.

- 5.5 Existing budget provision in Capital Scheme No. 12589/ARE will meet the cost of pursuing the operator procurement process.
- 5.6 At its meeting in December 2006, Executive Board acknowledged the requirement for up to circa £20m as the level of public sector investment that may be needed to facilitate the development of the proposed arena. Members of Executive Board should note that Yorkshire Forward have been actively involved in the process to select an operator and a developer for the Leeds arena and are currently minded to provide financial support for its development. The Yorkshire Forward Board will consider a report on 5 June 2008, which will seek approval to provide match funding for up to £10m towards the construction of an arena in Leeds

6.0 CONSULTATIONS

- 6.1 The Arena Project Board has been consulted throughout the operator procurement process. The Project Board supports the recommendations contained in the report.
- 6.2 Yorkshire Forward has been consulted and is supportive of the recommendations contained in the report.

7.0 RISK ASSESSMENT

- 7.1 Given the nature, scale and complexity of the proposed arena development, there are a number of risks associated with the preferred operator's involvement in the project.
- 7.2 Due to the nature of arena design proposed and detailed in table 2 of Appendix 1, the contents of which are Exempt/Confidential under Access to Information procedure Rules 10.4 (3), there is a lack of directly comparable benchmark data. Accordingly, despite the provision of a significant amount of information provided by the bidder, there is a residual risk in relation to capital cost estimates for the development of the arena that delivers their business plan proposals.
- 7.3 Until such time as the various legal agreements are concluded, there remains a risk that the preferred operator may seek to re-examine some of the fundamental points of the documentation that they have not raised to date. Members should note that nothing in the preferred operators approach to date has suggested that this might be the case.
- 7.4 Given the significant commercial sensitivity associated with the proposed operation of the arena, there is a risk that disclosure of the financial offers made could impact on the operational proposals and subsequently the level of public sector support required to facilitate the arena development.
- 7.5 The preferred operator's business plan may not be achievable. Whilst this risk can not be completely mitigated, the robust evaluation of the bidder's financial model has concluded their proposals to be robust and deliverable in overall terms, whilst the bidder has also offered a parent company guarantee to support their proposals.

8.0 CONCLUSIONS

- 8.1 The procurement process to identify a preferred and reserve operator for the proposed arena has demonstrated significant and world wide interest in operating and managing the new facility. The competitive procurement process that has been

pursued by the Council produced a number of high quality submissions from companies with national/international expertise in operating such a venue.

8.2 On the basis of the high quality submissions received, a preferred and reserve bidder is recommended to Members.

9.0 RECOMMENDATIONS

9.1 Executive Board is recommended to:-

- (i) Approve bidder B as the preferred operator for the proposed Leeds arena as detailed in Appendix 1 of the report, the details of which are Exempt/Confidential Under Access to Information Procedure Rules 10.4 (3).
- (ii) Authorise the Director of City Development to enter into a legal agreement with the preferred arena operator on the terms outlined in Appendix 2 of the report which is Exempt/Confidential under Access to Information Procedure Rules 10.4 (3).
- (iii) Approve bidder A as the reserve operator for the proposed Leeds arena as detailed in Appendix 1 of the report, the details of which are Exempt/Confidential under Access to Information Rules 10.4 (3).
- (iv) Authorise the Director of City Development to enter into a conditional legal agreement with bidder A on the terms outlined in Appendix 2 of the report, the contents of which are Exempt/Confidential under Access to Information Procedure Rules 10.4 (3).
- (v) Authorise that in the event that the preferred operator for the arena as detailed in Appendix 1 of the report the content of which is Exempt/Confidential under Access to Information Procedure Rules 10.4 (3), withdraws from the project or varies their submission in a manner which results in the reserve bidder's submission being more advantageous to the Council, that the Director of City Development with the concurrence of the Executive Member for Development and Regeneration, may take appropriate action to secure the reserve bidder pursuant to the conditional agreement previously entered into with bidder A as the preferred operator for the arena.