



NOT FOR PUBLICATION

Appendix 1, Plans 1 to 3 and Appendix 2 (which will be circulated at Executive Board) of this report are Exempt/Confidential under Access to Information Procedure Rules 10.4 (3). It contains information relating to the financial or business affairs of any particular person (including the authority holding that information) which if disclosed to the public would, or would be likely to prejudice the commercial interest of the Council.

Report of : DIRECTOR OF CITY DEVELOPMENT

To : EXECUTIVE BOARD

Date: 5 NOVEMBER 2008

Subject: PROPOSED LEEDS ARENA, SELECTION OF PREFERRED DEVELOPER/SITE

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 arena is a key project that will contribute to the delivery of the Council's Strategic Plan, which identifies as one of its key priorities the development of high quality facilities of national and international significance. The report informs Members as to the progress made with the procurement of a developer and site for the proposed Leeds arena.

Members will recall that in July 2007, the City Council commenced a competition to procure a developer and site to deliver a new arena for the city. The report summarises the developer procurement process and compares the bidder's best commercial offer with the Council's Public Sector Comparators, in order to assess value for money and viability. The report recommends the selection of a preferred and reserve site for the arena development and, seeks authority to incur expenditure and to enter legal agreements on terms outlined in Appendix 1 of the report to facilitate the development on the preferred site (or reserve site should the need arise), the contents of which are Exempt/Confidential under Access to Information Procedure Rules 10.4(3).

The report seeks Executive Board approval to finalise both the project delivery mechanism and scheme proposals/costs for the development of the arena on the preferred site (or reserve should the need arise) and approval to report back on the financial implications to the Council when a firm commitment to the delivery of the arena has to be made. It seeks authority to transfer funding from the Strategic Development Fund and to inject funds into existing Capital Scheme No. 13307.

1.0 PURPOSE OF THIS REPORT

1.1 The purpose of this report is to seek Executive Boards approval to:-

- i) Determine the developer procurement process for the arena as detailed in Appendix 1 of the report, which is Exempt/Confidential Under Access to Information Procedure Rules 10.4 (3).
- ii) Select a preferred and reserve site for the development of the arena as detailed in Appendix 1 of the report, which is Exempt/Confidential under Access to Information Procedure Rules 10.4 (3).
- iii) Authorise the Director of City Development to enter into legal agreements to facilitate the development of the arena on the preferred site on the terms contained in Appendix 1 of the report, which is Exempt/Confidential under Access to Information Procedure Rules 10.4 (3).
- iv) Authorise the transfer of funding from the Strategic Development Fund and to inject funds into existing Capital Scheme No. 13307 to facilitate the development of the arena on the preferred site as detailed in Appendix 1 of the report, which is Exempt/Confidential under Access to Information Procedure Rules 10.4 (3).
- v) Instruct officers to finalise both the project delivery mechanism and scheme proposals/costs for the development of the arena on the preferred site and to report back on the financial implications to the Council.

1.2 This report is marked as Exempt from Call In on the basis that the City Council took the decision to pursue a two stream procurement process to select a preferred developer/site 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 the short listing of potential developers/sites during the Competitive Dialogue Procurement process,. Both decisions taken by the Executive Board were subject to the Council's Call In procedures. The recommendations contained in this report relating to the selection of the preferred site for the arena are consistent with the decisions taken by Executive Board in December 2006 and July 2007.

1.3 With regard to the proposed legal agreements to be entered into to progress the arena development on the preferred site, the proposed funding arrangements and the authority to incur expenditure, under the Council's Constitution, a decision may be declared as being Exempt from Call In if it is considered that any delay in concluding the funding arrangements and legal agreements may result in parties to the agreements seeking to renegotiate the terms of such agreements and as such could increase the level of public sector gap funding required to facilitate the arena

development.

- 1.4 Appendix 1 and plans 1 to 3 of this report are confidential as they evaluate the short listed bidders' proposals and their financial offers to develop the arena, compares the bidder's financial offers with the evolving Public Sector Comparators and sets out the basis of the Council's legal agreements and funding contribution to facilitate the development of the arena. It is considered that the public interest in maintaining this information as exempt outweighs the public interest in disclosing the developer's proposals, the terms of the respective legal agreements and funding provision, as disclosure may prejudice the outcome of the procurement process and the cost to the Council of developing the arena. Accordingly, Appendix 1 and plans 1 to 3 are marked Exempt/Confidential under Access to Information Procedure Rules 10.4 (3).

2.0 BACKGROUND INFORMATION

- 2.1 The Council's Executive Board at its meeting on 13 December 2006, agreed to support the findings 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 an operator and developer/site to deliver a new arena for the city.
- 2.2 The operator competition has proceeded ahead of the developer competition and concluded in May 2008, with SMG Europe (Ltd) being appointed as the preferred operator for the arena. SMG has subsequently entered into an agreement with the City Council whereby they would contract to enter into a 25 year, full repairing insuring lease to operate a 12,500 seat arena at a location to be determined in the city. Executive Board should note that the Competitive Dialogue procurement process has provided the opportunity for the Council to benefit from SMG's considerable industry knowledge, in order to develop the most appropriate arena facilities and services solutions.
- 2.3 At its meeting on 4 July 2007 Executive Board, agreed the evaluation criteria to be used to assess the initial expressions of interest from potential developers and, then thereafter, through the Invitation to Participate in Dialogue and Invitation to Continue Dialogue stages of the developer procurement process agreed that assessment of submissions would be based on the following (not exhaustive) criteria, with appropriate weightings:-

i) Financial and Economic Impact (60%)

- Level of public sector contribution required.
- Compliance with the public sector grant requirements.
- Robustness of financial proposal and the ability to manage and control the financial risk of a development of the scale proposed.
- Level of direct investment
- Level of ancillary development ie investment 'unlocked' as a result of the arena development.
- Direct operational impact ie new jobs created, training etc.

- Indirect operational impact ie secondary spend.
- Interface with and contribution to the public domain.
- Contribution to unlocking further development.

ii) **Technical Capability (20%)**

- Compliance with operator's requirements.
- Location and environment ie accessibility to public transport, city centre, car parking etc.
- Design and quality ie compliance with specification, design quality, functionality, whole life cycle cost etc.

iii) **Deliverability (20%)**

- Land ownership ie site assembly, acquisition and availability.
- Town planning.
- Site development capacity ie ability of the site to accommodate the arena and any required enabling development.
- Buildability ie complexity of the site from a construction perspective.
- Dependence on enabling development.
- Transport and access.
- Timing and programme ie overall timescale for delivery, when site would be available to allow development to commence etc.
- Response to contractual documentation ie comments on proposed contract with the proposed operator and the Council and its partners with regard to the proposed public sector investment etc.

2.4 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 developers of the arena during the Competitive Dialogue process, but with Executive Board ultimately determining the selection of the preferred and reserve developer/site.

3.0 CURRENT POSITION

3.1 In July 2007, an OJEU Notice advertising the proposed arena development sought expressions of interest from potential arena developers. A Pre-Qualification Questionnaire (PQQ) was issued to all parties expressing an interest in the project. Three (3) PQQ submissions were received from companies, were evaluated and the Director of City Development in September 2007 authorised taking forward two companies to the Invitation to Participate in Dialogue (ITPD) Stage of the procurement process.

3.2 The aim of the ITPD stage of the procurement process was to enable the Council to discuss all aspects of the project with the bidders, so that a solution may be reached which is capable of satisfying the Council's needs and requirements. The two companies selected to participate in the ITPD Stage were:-

i) **Montpellier Estates**

3.3 The Company is an established property investment company that has brought together a professional advisory team that has been involved in the delivery of arena schemes in the UK.

ii) **GMI**

3.4 GMI is an established property development company which has carried out numerous development projects ranging in size up to £360m. It also has an established construction company which is used to deliver development schemes in the UK.

3.5 Submissions were subsequently received from the two bidders. In February 2008, following detailed evaluation of the developer submissions, the Director of City Development authorised that both bidders should be taken forward to the Invitation to Continue Dialogue (ITCD) stage of the procurement competition. This period would enable bidders to develop their scheme proposals, deal with identified areas of weakness in their respective ITPD submissions and, would allow the Council's retained consultants to work with the bidders to formulate a proposal that could meet the gap funding available.

3.6 The developer ITCD submission requirements comprised three main evaluation criteria as previously agreed by Executive Board namely, technical (20%), deliverability (20%) and financial/economic (60%). These criteria were split to further sub criteria (reflecting the information required from bidders in their proposals at the ITCD Stage) and weighted to reflect the relative importance of each area as identified in table 1 below:

Table 1: ITCD Developer Evaluation Criteria and Weightings

Criteria	%Weight
Technical (20%)	
Site and Location	4
Development Proposal-Scheme Master Plan and Arena Design	6
Accessibility	4
Neighbourhood and Amenity	2
Environmental	4
Deliverability (20%)	
Land Assembly	4
Arena Facilities and Services Requirement	4
Contractual Terms	4
Scheme Deliverability and Project Risk	6
Programme	2
Financial and Economic (60%)	
Financial Appraisal	25
Arena and Associated Cost Plan	10

Funding	5
Cashflow	5
Economic Impact	10
Social Impact	5
Total	100%

- 3.7 Early in the ITCD Stage, bidders were advised as to the potential for public sector funding through prudential borrowing supported by the guaranteed rental income from SMG. Bidders were, therefore, invited to submit optional variant bids. The purpose of introducing the potential for prudential borrowing was to secure the optimum proposal from the potential developers by utilising the Council's ability to secure borrowing at very competitive rates.
- 3.8 During the ITCD Stage of the procurement process, feedback from bidders given the worsening economic climate indicated that proposals and the required public sector gap funding were likely to be at a level that would challenge project viability. Accordingly, the Project Board decided that the dialogue process should focus on working with bidders to establish an understanding of their best possible commercial bid position and introduced an interim Commercial Submission. The bidders were invited to focus on their commercial proposals and to submit a shortened version of the ITCD requirements on 10 September 2008. The emphasis was for bidders to focus on submitting their best commercial offers.
- 3.9 Bidders were requested to submit the following information:
- Scheme and arena design proposals.
 - Arena costs (based on Quarter 1 2008 prices)
 - Financial appraisals to support their base bid and any optional variant bid(s)
 - Outline contract structure to deliver the arena and any associated scheme
 - Economic and social impact information
- 3.10 The bidders were advised that their submission would be compared with the Council's Public Sector Comparators in order to assess value for money. On the basis of that evaluation, the Council would then determine whether to continue to full tender with bidders or to close down the existing competition with no contract awarded. Appendix 1 of the report, the contents of which are Exempt/Confidential under Access to Information Procedure Rules 10.4 (3), provides an evaluation summary of the bidder's interim commercial submissions compared with the Public Sector Comparators to identify to what extent the developer competition is likely to yield value for money for the Council.

4.0 COMPLIANCE WITH COUNCIL POLICIES

- 4.1 The Vision for Leeds 2004 to 2020 identifies a major project to improve the cultural life of the city, including developing a new, large scale international facility such as an arena.
- 4.2 The development of a multi purpose arena is key to the delivery of the Council's Strategic Plan, which has as one of its strategic outcomes the provision of enhanced cultural opportunities through encouraging investment and development of high

quality facilities of national and international significance.

5.0 LEGAL AND RESOURCE IMPLICATIONS

- 5.1 Upon selection of the preferred site for the arena, it is proposed that the City Council will need to enter into a number of legal agreements to facilitate the development of the arena on terms detailed in Appendix 1 of the report, the contents of which is Exempt/Confidential under Access to Information procedure Rules 10.4(3).
- 5.2 Members of Executive Board should note that Yorkshire Forward have been actively involved with the Council in the process to select 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 30 October 2008 which will seek approval to provide gap funding support towards the construction of the arena. The outcome of the Yorkshire Forward Board meeting will be reported to the Executive Board at the meeting, the details of which are Exempt/Confidential under Access to Information Procedure Rules 10.4 (3).

6.0 CONSULTATIONS

- 6.1 The Arena Project Board has been consulted throughout the developer procurement process and in the formulation of the public sector comparators. The Project Board supports the recommendations contained in the report.
- 6.2 Yorkshire Forward, which is represented on the Leeds Arena Project Board, has been fully consulted and is supportive of the recommendations contained in the report.

7.0 CONCLUSION

- 7.1 Having regard to the best commercial offers received from developers on 10 September and the comparison of such bids with the Council's evolving Public Sector Comparators, a preferred and reserve site for the proposed development of the arena is recommended to members.

8.0 RECOMMENDATIONS

- 8.1 Executive Board is recommended to;
- (i) Determine the developer procurement competition for the proposed arena as detailed in Appendix 1 of the report, which is Exempt/Confidential Under Access to Information Procedure Rules 10.4(3).
 - (ii) Approve the preferred site for the proposed arena as detailed in Appendix 1 of the report, which is Exempt/Confidential under Access to Information Procedure Rules 10.4(3).
 - (iii) Approve the reserve site for the proposed arena as detailed in Appendix 1 of the report, which is Exempt/Confidential under Access to Information procedure Rules 10.4(3).
 - (iv) Authorise that in the event that the preferred site for development of the arena as detailed in Appendix 1 of the report, which is Exempt/Confidential under Access to Information Procedure Rules 10.4 (3) cannot be delivered, ceases to

be the most economically viable, or no longer offers the best value for money 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 pursue the development of the arena at the reserve site.

- (v) Authorise the Director's of Resources and City Development to enter into legal agreements that are economically advantageous to the City Council and which will financially support the to development of an arena on the preferred site the details of which are contained in Appendix 1 of the report, which is Exempt/Confidential Under Access to Information Procedure Rules 10.4 (3).
- (vi) Authorise the incurring of expenditure from existing Capital Scheme No. 13307 to progress the development of the arena on the preferred site as detailed in Appendix 1 of the report, which is Exempt/Confidential Under Access to Information Procedure Rules 10.4 (3).
- (vii) Instruct officers to report back on the proposed project delivery model and scheme proposals/costs for the development of an arena on the preferred site.
- (viii) Authorise the transfer of funding from the Strategic Development Fund into existing Capital Scheme No. 13307 as detailed in Appendix 1 of the report, which is Exempt/Confidential Under Access to Information Procedure Rules 10.4 (3).
- (ix) Authorise an injection of funds as detailed in Appendix 1 of the report, which is Exempt/Confidential Under Access to Information Procedure Rules 10.4 (3) into existing Capital Scheme No. 13307, comprising funding from Yorkshire Forward (subject to the formal approval of the Yorkshire Forward Board) with the balance in the first instance to be funded from unsupported borrowing.

Supporting Documentation; Leeds Arena Marketing Brief