

 Executive – 10th June 2009		Agenda Item No.
Title	Newbold Comyn Golf Project Update	
For further information about this report please contact	Rose Winship rose.winship@warwickdc.gov.uk 01926 456223 Tim Wall walltw@aol.com 07711 546360	
Service Area	Cultural Services	
Wards of the District directly affected	Leamington Willes, Clarendon, Manor, Crown	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006	Yes	
Date and meeting when issue was last considered and relevant minute number	Executive – December 2008 Minute 657	
Background Papers		

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	Yes
Included within the Forward Plan? (If yes include reference number)	Yes Ref (W)

Officer/Councillor Approval		
With regard to officer approval all reports <u>must</u> be approved by the report authors relevant director, Finance, Legal Services and the relevant Portfolio Holder(s).		
Officer Approval	Date	Name
Relevant Director		Andrew Jones
Chief Executive		Chris Elliot
CMT		
Section 151 Officer	13/5/09	Mike Snow
Legal	11/5/09	Peter Oliver
Finance	13/5/09	Mike Snow/Mel Gillman
Portfolio Holder(s)	13/5/09	Sue Gallagher
Consultation Undertaken		
Please insert details of any consultation undertaken with regard to this report.		
Final Decision?		No
Suggested next steps (if not final decision please set out below)		
Further reports to Executive –August and December 2009 and February 2010		

1. SUMMARY

- 1.1 The report outlines the progress to date in the Budget and Improvement Programme (BIP) project to relet the contract for the management and maintenance of Newbold Comyn Golf Course.
- 1.2 The current golf management contract (David Playdon Ltd) expires on 31st March 2010; the grounds maintenance contract to maintain the course (Glendale Grounds Maintenance) expires in 2013, however the contract includes a clause which allows the authority to terminate the golf course element of the contract before 2013 should it be appropriate. Discussions have taken place between WDC and Glendale on this issue with confirmation that the notice period for this variation to the contract is 2 weeks.
- 1.3 The project aims to identify an operator who will manage and maintain Newbold Comyn Golf Course on behalf of Warwick District Council, investing in the course and associated facilities. The successful contractor will be required to implement a business plan which will provide a continuing financial return to the Council whilst maintaining the inclusive ethos of the course through opportunities for “pay and play golf”.
- 1.4 The project to re-let the contract is part of the corporate BIP and as such progress is being monitored by the BIP Board. In order to meet the objective of awarding a new contract from 1st April 2010, a timetable has been produced that maps out the stages of the competitive dialogue process, the procurement process that has been selected for use with this project (Appendix A). The first milestone in this timetable was the hosting of an Open Day for prospective operators held on 22nd April 2009. Nine companies with experience of golf course management attended the Open Day which included a tour of the course and facilities, a presentation by officers and a question and answer session.
- 1.5 The next milestone is the issue of the Official Journal of the European Union (OJEU) notice, Pre Qualification Questionnaire (PQQ) and Descriptive Document to interested companies. Deadline for return of the PQQ is 22nd June 2009.

2. RECOMMENDATION

- 2.1 Members are asked to note the progress made to date on this project and agree that officers report back to the Executive in August 2009 with details of the response to the PQQ and the list of companies selected to submit outline solutions.
- 2.2 Members agree that the Golf Working Party continues to receive monthly updates from the Golf Project Board throughout the process.

3. REASONS FOR THE RECOMMENDATION

- 3.1 The nature and complexity of this project makes it essential that all stakeholders are appropriately involved in the process from start to finish. The competitive dialogue process differs from the traditional competitive tendering process where a detailed specification is established at the start of the process and which traditionally elected members would approve before the tendering process commences. So that members are kept up-to-date, the Executive will receive regular reports.

Regular progress reports will also be made to the Golf Working Party and members should note that the group was represented by Cllr John Barrott at the Open Day on 22nd April.

- 3.2 Further reports to the Executive are scheduled for August and December 2009 and February 2010. Provided that the timescale for the procurement is adhered to, these reports will allow members the opportunity to approve short listed operators and the final selection of the successful contractor.
- 3.3 Officers are aware that the competitive dialogue process is relatively new and that this project will present a number of challenges in the coming 12 months. It is essential that the process is seen to be transparent and fair throughout. Elected members are an essential group of stakeholders in the process and as such must satisfy themselves that the project is being managed effectively. As a key stakeholder in the project, Newbold Comyn Golf Club have been involved by attending the Open Day as an observer and have confirmed details of their wishes for the future of the course to the project team. This information will be used later in the project as part of the evaluation process
- 3.4 The Pre Qualification Questionnaire is a fundamental element of the competitive dialogue process and will test the ability of potential partners to meet the requirements of the project. This will be accompanied by a descriptive Document clarifying the facilities to be included in the project, timescales and the key aims and objectives that are to be addressed in the submitted proposals. Bidders satisfying the PQQ stage are then invited to submit online solutions that meet the aims and objectives of the project.

4. ALTERNATIVE OPTION CONSIDERED

- 4.1 The competitive dialogue process was considered to be the most appropriate procurement process for the project due to the complexity of possible solutions. Full details of this justification are outlined in Appendix B. In selecting the competitive dialogue process, advice has also been sought and followed from Suzanne Burrell, Senior Solicitor, Warwickshire County Council who has been co-opted onto the group to bring her expertise of this process to the project, and the WDC Procurement Officer who is a member of the Project Team.

5. BUDGETARY FRAMEWORK

- 5.1 The project has a budget of £78k allocated to it, as approved by Executive in December 2008. Expenditure against this budget is being monitored as part of the project:

Expenditure to date: £13,150
(This includes project manager fees, WCC legal fees, printing and advertising)

- 5.2 Budget remaining: £64,850
It is anticipated that the remaining budget will cover the costs of the project.
- 5.3 Due to the nature of the Competitive Dialogue process it is not possible at this stage to quantify the financial impact of any new contract for the course as this will emerge as we enter into dialogue with the shortlisted companies. It is the aim of the

project to reduce or remove the current cost to the Council of running the course of £123,000 pa.

6. POLICY FRAMEWORK

- 6.1 The Council has stated that it will take a structured approach to managing projects to ensure effective use of resources. Project management is such an approach to ensure that outputs from projects are maximized. The Corporate Strategy also includes an objective “To manage the Councils resources effectively and ensures its services are of a high standard”
- 6.2 The draft Sustainable Community Strategy includes the following aim, “The built and natural environment has been protected and enhanced” in particular to “protect and promote parks, open spaces and natural habitats”. Whilst the golf course is a sporting facility it is also a valuable and significant area of open space and natural habitat which needs to be protected for the future.

7. BACKGROUND

- 7.1 Following the appointment of the Project Manager in February 2009, a Project Team of officers has been established. This includes representatives of service areas who will contribute to the project. The team meets monthly, with weekly meetings of the key officers to maintain the impetus of the project. A Project Board has been established who receive updates from the Project Manager and make decisions at key points throughout the process. Membership of the Project Team and Board are attached (Appendix C). A Project Initiation Document (PID) has been produced and approved by the BIP Programme Board.
- 7.2 A report to Executive in December 2009 will summarise the outline solutions received from short listed companies, and the report to the February Executive will ask members to approve the selection of the successful contractor.
- 7.3 The aims of the Budget and Improvement Programme are to achieve savings or make efficiencies in service delivery, without compromising the level of service to the customer. The course currently costs the authority £123k per annum. It is generally accepted that there will be a need for significant capital investment in the course and ancillary facilities in the near future. Through the competitive dialogue process it is anticipated that an operator will be identified that will be in a position to invest in the course, make improvements to the course and associated facilities and in doing so protect the future of the course by providing ongoing financial benefits to the Council.

APPENDIX A

Timescale for Competitive Dialogue process

	Start	Finish
Pre-contract stage	Thu 26/03/09	Mon 18/05/09
Document working party	Thu 26/03/09	Thu 26/03/09
Supplier day	Wed 22/04/09	Wed 22/04/09
Documents under draft	Mon 20/04/09	Mon 18/05/09
 PQQ Stage	 Tue 19/05/09	 Fri 03/07/09
Issue contract notice	Tue 19/05/09	Sat 20/06/09
Receipt of PQQ	Sun 21/06/09	Sun 21/06/09
Evaluate PQQs	Mon 22/06/09	Thu 02/07/09
Select Participants	Fri 03/07/09	Fri 03/07/09
 Dialogue stage	 Mon 06/07/09	 Mon 09/11/09
Invitations to participate in dialogue (ITPD)	Mon 06/07/09	Mon 06/07/09
Outline Solutions dialogue	Tue 14/07/09	Tue 04/08/09
Submission of outline solutions	Wed 05/08/09	Wed 05/08/09
Review of Outline solutions	Thu 06/08/09	Tue 25/08/09
Shortlist for detailed solutions	Wed 26/08/09	Sun 06/09/09
Issue Invitations to participate in dialogue (ITPD)	Mon 07/09/09	Mon 07/09/09
Detailed Solutions dialogue	Tue 08/09/09	Mon 28/09/09
Submission of detailed solutions	Tue 29/09/09	Tue 29/09/09
Review of detailed solutions	Wed 30/09/09	Sun 08/11/09
Close of competitive dialogue. Tenders sought	Mon 09/11/09	Mon 09/11/09
 Tender Stage	 Tue 10/11/09	 Fri 18/12/09
Final tenders with bidders	Tue 10/11/09	Thu 17/12/09
Tenders returned	Fri 18/12/09	Fri 18/12/09
 Evaluate bids	 Sat 19/12/09	 Fri 15/01/10
Final Claifications	Sat 16/01/10	Sun 31/01/10
Determine preferred bidder	Mon 01/02/10	Mon 01/02/10
Mandatory 10 day standstill period	Tue 02/02/10	Sun 14/02/10
Implementation stage	Mon 15/02/10	Sat 03/04/10
Begin due diligence	Mon 15/02/10	Sun 21/03/10
Commence Contract	Thu 01/04/10	Thu 01/04/10
Dispatch award notice	Mon 15/02/10	Sat 03/04/10

APPENDIX B

Newbold Comyn Golf Course Procurement Project Competitive Dialogue Justification

Warwick District Council is a “contracting authority” for the purposes of the EU procurement regime and so it is subject to the Public Procurement Regulations. The Regulations apply in full to the procurement process, and include an obligation to advertise in the Official Journal of the European Union (OJEU).

The Newbold Comyn Golf Projects’ main objective is the retention and development of golf facilities and as such can be determined as a service contract. After examining the procedures available (the open, restricted, competitive negotiated or competitive dialogue) the conclusion is that the competitive dialogue procedure is likely to be the most appropriate procedure for this procurement on the basis that the Project is a "particularly complex contract" where the use of the open or restricted procedure will not allow the award of the contract.

Choice of procedure – overview of procedures available

The open, restricted, competitive dialogue and competitive negotiated procedure are briefly summarised below:

- The **open** procedure involves inviting all interested parties to tender and requires full contract documents to be issued to tenderers at the invitation to tender stage. It does not allow for a short listing process and contract negotiations are not permitted.
- The **restricted** procedure allows contracting authorities to draw up a short list of interested parties by undertaking a selection/pre-qualification stage prior to the issue of the invitation to tender documents. The subsequent procedure is the same as the open procedure in that full contract documents should be issued to tenderers at the invitation to tender stage and contract negotiations are not permitted.

1..1 The restricted procedure has the advantage of allowing a tightly controlled, streamlined procedure to be conducted. Where a contracting authority’s requirements are clear at the outset and where a contract can be drawn up to meet the project’s requirements, with no need for further discussion or negotiation then the restricted procedure is the appropriate procedure to adopt.

- The **competitive dialogue** procedure allows contracting authorities to draw up a short list of interested parties using a selection/pre-qualification stage, as in the restricted procedure. The short listed parties (tenderers) are then invited to participate in a dialogue during which any aspects of the project may be discussed and solutions developed. There is flexibility about how this dialogue stage is conducted and it can be used to reduce the number of tenderers and solutions. When the contracting authority is satisfied that it has solutions that meet its requirements it formally declares the dialogue closed and invites those tenderers remaining to submit final tenders. Only limited discussion or negotiation is permitted with tenderers after they have submitted their final tenders and following appointment of the preferred bidder.
- The **competitive negotiated** procedure allows contracting authorities to draw up a shortlist of interested parties by undertaking a selection/prequalification stage prior to the issue of the invitation to negotiate documents which starts the negotiation phase. There are no detailed rules governing the conduct of the negotiation phase although the general principles requiring openness, transparency and equal

treatment of all tenderers do apply together with a requirement that the process is not conducted in such a way as to distort competition.

Choice of procedure – which procedure is appropriate for the Newbold Comyn Golf Project?

The Council must first of all consider whether use of the open or restricted procedures are appropriate. Only if the open or restricted procedures are not appropriate and, in the words of the Directive, “will not allow the award of the contract” can it go on to consider use of the competitive dialogue or competitive negotiated procedures.

Can the open or restricted procedures be used?

- The Council is of the view that the open and restricted procedures are not appropriate for a project of this type.
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- Open procedure: the technical complexity of the project means that it is not in the interests of either the bidders or the Council to run a process which involves all interested parties submitting a full tender. In addition to this the Council is unlikely to be able to determine the best commercial option for the surrounding site in conjunction with the golf course (which is being offered as a single business opportunity). The open procedure seems entirely inappropriate, and so it is sensible to consider if the restricted procedure would be appropriate and lead to the award of the contract.
- Restricted procedure: Unlike the open procedure, a short listing process is permitted. However, the Rules require five suitably qualified candidates to be invited to tender. As in the case of the open procedure, practical experience of procurements with complex requirements demonstrate that this would be too costly in administrative, financial and commercial terms for both the Council and tenderers and is unlikely to lead to a meaningful tendering process resulting in realistic tenders. It is very likely that a significant number of tenderers would drop out if they are still one of five at the invitation to tender stage and so there is also a danger of a lack of competition resulting from this approach. There is a clear need to have the option to reduce the number of tenderers down during the procurement process which is not possible under the restricted procedure.
- Restricted procedure: the restricted procedure requires the Council to specify its requirements at the outset in a manner which allows tenderers to submit fully costed tenders. The Council will be able to specify its desired overall outcomes in outline terms. However, a procurement of this type is complex, with many variables, and so the Council will not be in a position to identify at the outset the detailed solution or solutions best able to meet its requirements to the degree required to allow tenderers to submit a meaningful bid in response. It needs to work with bidders developing solutions which meet its output requirements – a method of working which is not possible under the restricted procedure.
- Restricted procedure: the restricted procedure requires full legal contract documents to be issued to tenderers at the invitation to tender stage (once the shortlist is drawn up). No negotiation is permitted. The nature of the procurement is such that it is not possible to issue final contract documents to tenderers at this stage. There are too many variables and uncertainties which would impact on the contract terms. These include, for example, how the desired outcomes are to be delivered in practice, what risks the tenderers will be prepared to accept, lease terms and how the project will be financed.

If the Council comes to the conclusion that the use of the open or restricted procedures will not allow the award of the contract then it can go on to consider use of other procedures. If a contracting authority is of the view that the competitive dialogue procedure is the most appropriate

procedure for it to follow then it must go on to consider whether the provisions covering use of the competitive dialogue procedure can be satisfied.

The European Commission states:

“In the case of particularly complex contracts...where contracting authorities consider that the use of the open or restricted procedure will not allow the award of the contract, [they] may make use of the competitive dialogue...”

The availability of the open or restricted procedures is discussed above. If the open or restricted procedures are not considered appropriate then the other condition which needs to be met is that the contract is “particularly complex”. This is defined as projects where authorities are not objectively able to define:

- the technical means capable of satisfying their needs or objectives and/or
- the legal and/or financial make up of a project.

The inclusion of the requirement for objectivity also assists. It would not be objectively reasonable to expect the Council to be in a position to prepare the required documents at the outset of the procurement.

The OGC Guidance refers to circumstances where there may be a number of technical solutions available which means that the contracting authority cannot define its needs at the outset, thus justifying use of the competitive dialogue procedure. In this case it is highly likely that there may be a number of technical solutions which could potentially meet the contracting authority’s requirements. For example, there are options surrounding inclusion of surrounding properties and grounds, redevelopment or focus on the course alone.

The European Commission in its Explanatory Note states that in its opinion it would be “fairly rare” for a contracting authority to find itself in a position where it would not be able to define technical means at all. However, it concedes that contracting authorities would more often be in the position where they are not able to determine which of several possible solutions would be best suited to satisfy their needs and in these circumstances the contract would be considered to be “particularly complex”.

Recommendations

Choice of Procedure: The recommendation is that the competitive dialogue procedure is likely to be the most appropriate procedure for this procurement.

APPENDIX C

Project Board

Project Sponsor	Rose Winship – Head of Cultural Services
Senior Users	Andrew Jones - Deputy Chief Executive
	Jenny Clayton – Strategic Finance Manager
	Newbold Comyn Golf Club representative
Senior Suppliers	Mark Croston – Cultural Development and Strategy Manager
	Mel Gillman – Procurement Manager
Project Manager	Tim Wall

Project Team

Project Manager	Tim Wall
Cultural Services	Mark Croston
	Tom Duckham
Neighbourhood Services	Graham Redfern
Finance	Melanie Gillman
Property	Tony White
Planning	John Beaumont
Legal	Suzanne Burrell and Max Howarth
Economic Development/Estates	Chris Makasis