

Report on behalf of Tony Hill Executive Director of Public Health

The Report and Appendices 1, 2, 3 and 4 are open.

Appendix 5 is exempt and not for publication by virtue of Section 100A of the Local Government Act 1972 and paragraph 3 of part 1 of Schedule 12A of the Local Government Act 1972 as the Appendix contains information relating to the business affairs of bidders in a confidential procurement. That confidential information is relevant to this procurement and probably also to other procurements in the local government sector given the limited number of potential contractors in the market. The information therefore has a high commercial value and the law of confidence places a legal obligation on the Council to maintain bidder confidentiality. The law places a high public interest on compliance with that obligation. In the event that the Council fails to keep the information confidential then the aggrieved bidder may be able to bring a claim for compensation. In these circumstances the public interest in the Council complying with its legal obligations regarding confidentiality and protecting itself from litigation outweighs any interest in disclosing the information particularly where as much information as possible has been made available to the public in the open parts of the report.

Report to:	Executive
Date:	01 December 2015
Subject:	Library Services – Contract Award
Decision Reference:	I009800
Key decision?	Yes

Summary:

This report presents the results of the Library Services Procurement, describing the process adopted and the solutions arising. The Executive are asked to approve the award of a contract to Greenwich Leisure Limited and are asked to approve a number of ancillary matters.

Recommendation(s):

That the Executive:

1. notes the outcome of the final tender evaluation;
2. approves and decides to award a contract for the delivery of Library Services to Greenwich Leisure Limited to deliver their proposed solution
3. authorises the Executive Director of Public Health to notify all bidders in the procurement of the Council's decision to award a contract to Greenwich Leisure Limited to deliver their proposed solution
4. authorises the Executive Director of Public Health to appoint Greenwich Leisure Limited as the Preferred Bidder
5. authorises the Executive Director of Public Health to appoint Vision – Redbridge Culture and Leisure Ltd as the "Reserve Bidder" following any breach by the Preferred Bidder of its obligations under the Preferred Bidder letter or where the Preferred Bidder is unable to deliver its Solution at any time.
6. delegates to the Executive Director of Public Health authority to determine the final form of the contract and once he is satisfied that the appropriate standstill period has been complied with, approve the entering into of all contract and other legal documentation necessary to give effect to the said contract provided always that in the event that the Executive Director of Public Health proposes to award a contract to the Reserve Bidder he consults with the Councillors forming the Sounding Board (as described in paragraph 1.10 below) before making such an award.

Reasons for Recommendation:

The Council has undergone a thorough and comprehensive procurement that has delivered a Library Service Final Tender offering the Most Economically Advantageous Tender ("MEAT") to the Council.

The Final Tender provides significant savings, guaranteed improved performance levels whilst offering additional activities. At the same time, service delivery risk will sit with the Service Provider.

Acceptance of the recommendations would be consistent with the Council's Best Value obligations.

Alternatives considered:

1. Award a contract for delivery of the Library Services to Greenwich Leisure Limited from the 4 April 2016.

2. Not award a contract and keep the provision of the Library service in-house – this would enable the Council to retain control of the day to day delivery of the services. This would mean the cost overrun and service delivery risk remains with the Council and the write off of costs incurred to date in the procurement. Whilst the Council is under no legal obligation to award a contract it must give reasons for abandoning procurements in a manner which has regard to EU general obligations of transparency and non-discrimination and is rational and reasonable. The Council must have regard to its duty of best value when deciding how to proceed.

1. Background

- 1.1 Information in the body of this report is not commercially sensitive. However, Appendix 5 is exempt and not for publication by virtue of Section 100A of the Local Government Act 1972 and paragraph 3 of part 1 of Schedule 12A of the Local Government Act 1972.
- 1.2 There is a glossary of the acronyms used in the report at Appendix 1.
- 1.3 On 2 July 2013 the Executive resolved to undertake a consultation on a preferred new model of delivering library services in Lincolnshire. Alongside that consultation it invited expressions of interest from community groups interested in operating community library services as part of community hubs. An expression of interest in the delivery of the service as a whole was received from Greenwich Leisure Limited (GLL). Because GLL were a relevant body for the purposes of the Community Right to Challenge provisions of the Localism Act 2011, the Council were obliged to consider whether to accept that expression of interest. On the 5 December 2014 the Council determined to accept that expression of interest under the Localism Act 2011 triggering an obligation to undertake a procurement relating to the services to which the expression of interest related.
- 1.4 On the 3 February 2015 the Executive adopted a new model of library provision set out in paragraph 1.5 below for the library service. It went on to delegate to the Executive Director of Public Health, in consultation with the Executive Councillor for Libraries, Heritage, Culture, Registration and Coroners Service, the authority to conduct a procurement exercise as required by the Localism Act 2011 to tender the delivery of the new model up until the point of contract award. Tony McGinty Consultant in Public Health was subsequently identified as the Project Director responsible for transition to the new service model and the delivery of the procurement.
- 1.5 The new model is briefly described below:

Statutory provision delivered under the Public Libraries and Museums Act 1964

- 10 Tier 1 libraries in Lincoln, Grantham, Boston, Spalding, Gainsborough, Stamford, Skegness, Louth, Sleaford and Mablethorpe. Each will be open for at least 45 hours per week, over six days, closing at 6pm on at least one day. All these libraries will offer free access to computers and the internet, along with other services like printing.
- 5 Tier 2 libraries in Bourne, Long Sutton, Woodhall Spa, Market Rasen and Horncastle. Each will be open at least 18 hours per week, over a minimum of 5 days (including a Saturday), and closing at 6pm on at least one day. All these libraries will offer free access to computers and the internet, along with other services like printing.
- Universal services including a website and 'virtual catalogue' (also available as a smartphone app), giving access to services 24-hours-a-day, seven-days-a-week and a telephone help-service, offering access to people who are not online or uncomfortable with apps and
- A range of targeted support, such as a home library service, for people who cannot reach their Tier 1 or Tier 2 library.

Non-statutory provision

- Support to up to 40 community hubs, including library services, developed in partnership with local volunteers.
- Mobile library services for any communities that do not benefit from these services and where there is a proven demand.

1.6 The development of community hubs is driven by the Council's recognition that in times of serious financial challenge and reducing budgets the Council must move from providing services to communities towards supporting communities to take more control and a bigger role in delivering services for themselves.

1.7 Community groups receive:

- Ongoing professional support
- Free library stock and the systems to manage it, along with free support to provide computers for public use.
- Virtually free use of the council-owned buildings that have been chosen to house community hubs.
- A grant of £15,000 for any adaptations communities want to make to these buildings.
- £5,167 per year for running costs, guaranteed for four years.

- 1.8 A Project Team was set up to deliver the procurement and report to the Project Director consisting of:

David Coleman (DC)	Chief Legal Officer
Sophie Reeve (SR)	Chief Commercial Officer
Simon Oliver (SO)	Chief Technology Officer
Nicole Hilton (NH)	Lead Commissioner
Jane Maddison (JM)	Project Manager
Suzanne Caygill (SC)	Strategic PM Advisor
Chris Cullen	Library Services IT
Michelle Grady (MG)	Assistant Head of Finance
Michelle Owens (MO)	Operations Officer Property
Will Brown (WB)	Library Service Manager
Fiona Fielding (FF)	Procurement Adviser
Michaela Finan (MF)	Project Officer
Ethan Thorpe (ET)	Strategic Communications Officer

- 1.9 The Project Team was supported by Jade Reynolds (Legal Support), Gary Porter (Library Service), Steve Roberts (Fleet Management), Ian Sprigg (H&S), Jo Ray (Pensions), Jasmine Sodhi (Equality), Andy Morris and Mandy Cooke (Safeguarding).
- 1.10 The Project Team and Project Director reported to the Sounding Board consisting of Councillor M J Hill OBE, Leader of the Council and Executive Councillor for Governance, Communications and Commissioning; Councillor C N Worth, Executive Councillor for Libraries, Heritage, Culture, Registration and Coroners Service.

2. Procurement Stages

- 2.1 The formal procurement process commenced on the 4 February 2015 with the issue of a Prior Information Notice to the Official Journal of the European Union (OJEU). A market engagement event was held on 11 March 2015 which 9 organisations attended. The formal Contract notice was published in OJEU on the 16 April 2015.
- 2.2 The procurement fell under the classification of a Part B service within the Public Contract Regulations 2006 and as such allowed the Council to apply a flexible approach to the procurement. The Council adopted a competitive dialogue-type approach allowing it to explore through dialogue different potential solutions with different bidders before choosing the solution best able to meet the Council's requirements. The evaluation framework was developed to select the Most Economically Advantageous Tender to the Council. This allowed the Council to look at the technical, commercial and legal issues in the round and select the solution which best met the

Council's needs. The advantage of the competitive dialogue approach is that it puts Bidders under great competitive pressure. The disadvantage is that it is complex and resource intensive as detailed commercial agreements must be negotiated and finalised with more than one Bidder, in this case 3 Bidders.

- 2.3 To ensure that the procurement was manageable the Council's procurement strategy had a two stage evaluation process. The first stage consisted of a submission by the Bidders of a Pre- Qualification Questionnaire (PQQ) by the 18 May 2015. Six PQQ submissions were received and three Bidders were successful at this stage. The three Bidders then submitted a Detailed Solution by the 14 August 2015 before being allowed through to the dialogue phase of the process. The third and last stage was the submission of the Final Tender by the 19 October 2015 which was evaluated to establish the winner of the procurement.
- 2.4 A PQQ allows the Council to carry out a shortlisting exercise where only those Bidders meeting the Council's selection criterion are invited to participate in the dialogue. The selection criteria relate to a Bidders economic and financial standing and/or technical or professional ability. It is designed to ensure that only organisations with the appropriate technical abilities and financial robustness are selected. Vision, Vivacity and Greenwich Leisure all passed the PQQ evaluation. A short pen picture of these three organisations is set out in Appendix 2.
- 2.5 Detailed Solutions were invited from these 3 Bidders who were provided with the Specification and asked how they would deliver the services. The Specification is contained at Appendix 3. The Specification sets out the number of libraries which are to be managed and operated and the Community Hubs which are to be supported along with those other services to be delivered as set out in paragraph 1.5 (save that the telephone service will continue to be delivered through the customer service centre by Serco). The Specification sets out the Council's preferred model so the successful Service Provider will as a minimum provide the same services as would be provided by the Council under its new model if it provided the services in-house. At the same time the Council presented each Bidder with the Contract and Schedules which contained the Council's preferred risk allocation position which it wished to contract on.
- 2.6 Bidders developed two Detailed Solutions, one for the delivery of the Core Library Services and one for the support of the Community Hubs and delivery of the Mobile Services and were asked to mark up the Council's contract.
- 2.7 At that point the Bidders were invited into a series of dialogue meetings with the Council from the end of August through to early October. The purpose of the meetings was to ensure that the Bidders' service delivery proposals were of sufficient quality and that opportunities were taken to cut cost.

- 2.8 So that bidders could minimise the risk premium they charged the Council, the Council provided them with as much information and data as possible regarding matters such as: the extent of the Council operations; the assets and third party contracts involved in delivering the services; the current levels of performance; and the number of staff engaged on the services. The Council managed this through a secure electronic data room.
- 2.9 A document 'banking' process was followed when the contract documents were agreed. This culminated in a particularly intense period between the 5th and 13th October 2015 when the technical and commercial aspects of the Contract and associated Schedules were agreed with each Bidder. At that point the competitive dialogue phase was closed and Bidders delivered their Final Tender prices by the 19 October 2015.

3. Final Tender and Evaluation

- 3.1 To incentivise competitive pricing whilst maintaining quality and appropriate risk allocation, the weightings against the Criteria and Sub Criteria for the Library Services Detailed Solution were as follows;

Table 1: Weightings - Scores

Criteria	Weighting (%)	Sub Criteria	Weighting (%)
Service Delivery	50	Transition	7.5
		Operations	30
		Innovation	5
		Social Value	7.5
Financial	40	Affordability and Pricing	38
		Lowest Price	2
Legal and Commercial	10	Risk Allocation and Commercial Terms	10

- 3.2 The total mark for each Bidder was obtained by marking both of the Bidder's Service Delivery Plans together, then multiplying the mark by the weightings set out in Table 1 above. The scores for each criterion were added together to determine the overall score.
- 3.3 All Bidders acquitted themselves well but two Bidders did particularly well GLL and Vision – Redbridge Culture and Leisure Ltd. The winning Bidder is GLL. Details of the scoring are set out in Appendix 5.

4. Council Key Deliverables

- 4.1 The following principles underpinned the library services contract strategy:

- deliver an affordable Solution providing excellent value for money within the available budget constraints
- deliver more flexible and innovative services using best practice from elsewhere to meet the need for continual change
- improve overall performance
- thriving community hubs
- provide absolute transparency around pricing, cost, service and performance through the contract.
- deliver social value particularly through enhancing community resilience and enabling communities to serve themselves.

Flexibility

- 4.2 In the first instance to ensure an effective transition the Council decided to retain responsibility for delivering the library IMT. However, we have reserved the right to explore with the successful Service Provider, early in the contract period, inclusion of all IMT Library Services (Systems, Support & Maintenance and provision of End-User Computing) within the contract except for those located in the Customer Service Centre. Following discussion in the dialogue the Council is reasonably confident that GLL has the necessary experience to deliver a fully managed IMT services and as a result there may be additional savings to be had in the future if a positive business case can be made out.
- 4.3 The procurement is also wide enough for the Council and GLL to consider extending the contract to include the management or operation of the Heritage and Archive Services in whole or in part subject to lawfulness, due diligence and best value considerations.
- 4.4 At the outset VinciMouchel will deliver the soft facilities management to the Tier 1 and Tier 2 libraries but again the Council has reserved the right to transfer this element of the service to GLL once the services have been transitioned if it makes sense to do so.
- 4.5 The contract can be extended by a further 5 years at the option of the Council.

Affordability and savings

- 4.6 To test the affordability of the Bidders' proposals the Project Team calculated the cost of the Council operating the tendered Library Services (based on the new model set out in paragraph 1.5). The net cost once income had been accounted for was approximately £4.4 million based on the 2014/15 revenue budgets.

- 4.7 The £4.4 m figure represents the front line services and does not include the cost of the mobile fleet; property costs including soft and hard Facilities Management and IMT support as the Council will continue to be responsible for these at a cost in the order of £1.4 million p.a.
- 4.8 Throughout the procurement it was made clear that the Council expected to achieve substantial savings on the current cost of delivery of £4.4 million p.a. and all of the bidders responded to this challenge. Further details are available in Appendix 5.
- 4.9 The contract allows the Bidders to retain income earned from operating the services to defray the service charges made to the Council encouraging them to be entrepreneurial. The contract contains a mechanism for sharing surpluses.

Service Delivery

- 4.10 The service specification which the Bidders must comply with is based on the current level of service and in their bid they were invited to set out what additional value they would offer.
- 4.11 All of the Bidders agreed to improve the service's performance year on year on key matters such as stock issues, number of visitors and increasing hours of Community Use at a time when library performance has been falling in the county in line with national trends. Further details are contained within Appendix 5.
- 4.12 The benefits the Council can expect to receive from contracting with GLL include improved frontline services; service delivery underpinned by a Quality Management System so that staff are supported in their dealings with the public; proactive marketing of the service including social media activities; encouragement of local library initiatives to take up opportunities to be a focal point of the local community; high priority on staff development and training. Other likely benefits are noted below:
- Additional and more consistent engagement of volunteers in delivery of services;
 - The potential for a more streamlined, and customer friendly IMT system that also reduces staffing costs for routine transactions with customers and suppliers;
 - Access to a highly specialised team of expert librarians from the national team;
 - Dedicated management resource to support community hubs over the life of the contract;
 - Commitment to offer support to hubs to mirror activities being delivered in core libraries.

Transparency and Probity

- 4.13 Each Bidder has shared its Financial Model providing details of service delivery costs and charges including information on margin and overheads. Under the contract the Council has full access to records and books of account for the provision of the Library Services.

Risk Transfer

- 4.14 The Council set out its preferred risk position in the contract it tabled at the beginning of the procurement. Whilst some of the bidders have moved further away from that position than others all have offered the Council an acceptable risk share. See paragraphs 4.15-4.16 below.

Main Service Provider Risks

- 4.15 The detail of the Bidders approach to risk transfer is commercially confidential and so it is only possible to discuss it here in overview. More detail is set out in Appendix 5. Under a contract GLL will be responsible for delivering the Library Service from the 4 April 2016 when the assigned staff will transfer. From that date GLL must deliver the Library Service for the contract price (subject to any adjustments necessary to reflect an increase or decrease in the staff transferring across).
- 4.16 GLL must deliver the Library Services in accordance with the service levels set out in the Key Performance Indicators. In the event that GLL fails to meet any of the Key Performance Indicators then a service credits regime will apply. See Appendix 5 for further detail of the performance regime.

Main Council Risks

- 4.17 The Council must pay for the services. If it terminates the contract early without GLL being at fault then it must pay compensation based on GLL's breakage costs. The Council must provide the mobile fleet, the buildings, the IMT and hard and soft facilities management. A failure to do so which prevents GLL from carrying out its contractual obligations will release GLL from those obligations. The Council must bear the cost of a change in law affecting the delivery of library services but only to the extent that it must compensate GLL for the increased costs of delivery.

Other Key Matters

Staff

- 4.18 It is anticipated that TUPE will apply and that approximately 180 people currently delivering the Services and employed by the Council will TUPE across to GLL. As staff are transferring directly from the Council they enjoy pension protection and GLL will be an admitted body in the LGPS to ensure the staff protections are met.

Volunteers

- 4.19 There are over 80 volunteers working in the Tier 1 and Tier 2 libraries. It is hoped that they will continue to work in the service following the transition after which recruitment, retention, management, supervision motivation, and payment of out of pocket expenses (e.g. travel expenses, training, health and safety and access to systems) will become the responsibility of GLL.

Duration

- 4.20 It is anticipated that the contract will be signed in December 2015 providing an initial 3 month transition period with operational service delivery passing to GLL on the 4 April 2016 for an initial period of 5 years. The Council is able to extend the contract at its discretion for a further 5 years. This provides flexibility whilst recognising the significant cost of procurements of this type.

Schools and Prisons

- 4.21 GLL will continue to provide specified library services to the community primary and secondary schools and to specified prisons at the request of and at the cost of the schools and Ministry of Justice. Currently service take up by schools is minimal with the consultancy service being purchased by 38 schools in 2014-15; 25 schools in 2013-14; and 28 schools in 2012-13. GLL will provide professional advice, stock management, training courses and individual support to School Librarians, teachers and students.

Property

- 4.22 The Council must maintain ownership/head lease of those buildings from which the Library Services are delivered to protect its long term ability to deliver an efficient and comprehensive library service. Therefore where the Council owns the buildings it will continue to do so and retain asset management responsibilities i.e. roofs, drainage, major capital works (boiler/window replacement etc).
- 4.23 The Council will grant GLL a Lease or Sub-Lease (in the case of Grantham, Boston and Mablethorpe) of the existing premises at a peppercorn rent. As a consequence from day one the Core Libraries will be delivered from their existing locations though possible location changes could be discussed during the contract. The Bourne library is an exception as the building is owned and the library is operated by South Kesteven District Council staff on behalf of the Council and these arrangements will continue.
- 4.24 It is anticipated that there will be no issue securing permission for the Council to grant a sub- lease of its tenancy in respect of the Grantham site now that the successful Bidder has been identified (in principle consent has already been provided regarding the Mablethorpe and Boston sites).

- 4.25 As GLL is a not for profit organisation 80% of the Non Domestic Rates will be rebated. GLL will be responsible for utility costs.
- 4.26 Currently Lexicon House in North Hykeham houses much of the library service's reserve stock and some staff. The building is leased until the 13 October 2018 and prior to the procurement the Council had intended to transfer the reserve stock and centralise all the library support functions at the Eastgate Centre in Sleaford building a new library distribution centre at a cost of £2.6m with annual running costs of £50,000.
- 4.27 Following discussions with bidders the view is that the reserve stock is much larger than necessary and a substantial reduction should be made to reduce the current levels (approx. 200,000 items) perhaps by as much as 80 – 85% to a more manageable 30,000 – 40,000 items. Additionally all of the bidders proposed that books should not be given a 'home' (i.e. books would stay at the branch to which they were returned) and therefore there would not be the requirement for so many movements of stock. Bidders stated that greater use would be made of underutilised space within the libraries to house the reserve stocks. For the above reasons, a decision has been reached by the service that the proposed distribution centre at Eastgate, Sleaford is no longer required.

Mobile Vehicles

- 4.28 The Council leases 9 mobile vehicles from Kier, 5 large mobile libraries and 4 smaller vehicles to deliver the Home Delivery Service and to rotate stock. Kier has agreed to the vehicles being driven and operated by GLL. The operator's licence will continue to be in the Council's name.

Financial security and due diligence

- 4.29 As indicated in paragraph 2.4 above, the Council, through the PQQ, only permitted organisations which had a robust financial standing to participate in the procurement providing reasonable assurance that the organisations had sufficient financial standing to deliver the services through the contract term. This evaluation looked at the contract price in comparison to the companies' turnover, their profit or loss for the past three years, and their liquidity (i.e. the assets they hold in comparison to their liabilities). The PQQ investigations and evaluation were carried out in May 2015. At that time the Council's finance officers were satisfied that the three organisations had sufficient financial standing for the Council to be content to sign a contract with any of them. GLL has confirmed that there have been no material changes to its financial standing since then.
- 4.30 Greenwich Leisure Limited, passed all of our evaluation criteria, the annual estimated LCC contract value was only 4% compared to their reported turnover which indicates the company is more than able to take on a contract of this size. They had reported a surplus in their previous three years of financial accounts and their liquidity was acceptable.

- 4.31 Vision Redbridge Culture & Leisure, passed all of our evaluation criteria, the annual estimated LCC contract value was 25% compared to their reported annual turnover, which indicates the company is able to take on a contract of this size. They reported a surplus in two of the three years of accounts evaluated, which alongside their liquidity was considered acceptable.
- 4.32 The contract also requires the bidders to take out an appropriate level of insurance to cover third party and employee liability and property contents insurance. This provides a level of protection/redress through the contract term.
- 4.33 As part of the service due diligence there have been site visits to libraries that each of the Bidders operates. These visits were attended by the Lead Commissioner and Project Manager. During the visits the Bidders were able to demonstrate how they deliver quality library services, explain how they operated their systems and how they interact and engage with customers, staff and suppliers as well as their approach to partnership governance. The visits, whilst not evaluated, have provided assurance to the Project Team that both GLL as the Preferred Bidder and Vision – Redbridge Culture and Leisure Ltd as the Reserve Bidder have the capability to deliver the services.
- 4.34 As part of the dialogue, discussion has taken place between the Council's Chief Technology Officer and senior IT representatives from the bidders to seek appropriate assurance that the IT aspects are properly covered. Further information is contained within Appendix 5.
- 4.35 The Council is not aware of any news stories or other information calling into question the suitability and/or probity of GLL. The PQQ they completed assessed their general standing and fitness to deliver the Library Services Contract. It looked at organisational capability, financial strength and any legal issues which may impede GLL's ability to contract. In summary GLL passed the PQQ assessment with minimal issues or concerns at the time of evaluation. GLL has conducted itself throughout the procurement in an open and transparent manner. GLL signed a Declaration of Good Standing which required them to certify that they do not have any convictions for what, under the Public Contracts Regulations (2006), would amount to a mandatory exclusion from the tender process.

Complaint to the Department of Culture Media and Sport

- 4.36 A complaint was made to the Department of Culture Media and Sport (DCMS) that the Council has failed to carry out duties relating to the public library service imposed on it by the Public Libraries and Museums Act 1964.
- 4.37 In a letter dated the 26 March 2015 DCMS has indicated that the Secretary of State is not minded to order an Inquiry into the Library Service's compliance with Section 7 of the Public Libraries and Museums Act. However, a decision has yet to be made to this effect. It is anticipated that

now the judgement on the second judicial review is available and there will be no appeal a decision indicating that there will be no inquiry will shortly be made. The Council is in correspondence with the DCMS to speed this up.

Contract Award

- 4.38 The Council is under no legal obligation to award a contract though it must give reasons for abandoning procurements in a manner which are transparent, non-discriminatory and rational. A potential advantage of retaining the service in-house is that it would enable the Council to keep control of the day to day delivery of the services. The Council has learnt much from the dialogue with bidders. Material savings have already been made as a result of the decision not to proceed with the Sleaford Distribution Centre. The Council could itself seek further efficiencies in the way services were delivered whilst improving service delivery thereby saving a management fee.
- 4.39 However, if the service remained in-house service delivery and cost overrun risks would remain with the Council. Whilst there has been a high degree of satisfaction with the existing library service, performance against CIPFA key indicators has been falling over recent years (in line with national trends) and Lincolnshire has not performed well against its comparator authorities coming 14th out of 16 in 2013/14 with Lincolnshire coming 15 out of 16 for the number of library visits per 1,000 population; 16 out of 16 for the annual book issues per 1,000 population; 16 out of 16 for the number of active borrowers per 1,000 population and 7 out of 16 for the book issues per active borrower. GLL has offered significant service improvement on key indicators including footfall and stock issues which are contractually guaranteed from the outset. GLL is a large organisation managing and operating successful libraries and leisure centres under 40 separate contracts providing access to a network of specialist staff which otherwise would be unaffordable. This resource and new senior management will create the environment to review the current operational practice and service offer (whilst complying with the service specification) to ensure that the service benefits from new opportunities and initiatives.
- 4.40 Like the performance improvements the savings offered by GLL which are set out in Appendix 5 are guaranteed through the price. Some of the savings such as relief on NNDR are not available to the Council. Further at a time when the Council is finding it increasingly difficult to invest in staff training and development GLL make impressive commitments in this area to the benefit of staff and customers alike. In the event of a non- award the Council would have to write off the resources expended in the procurement which have been considerable. For the reasons set out in paragraphs 4.39 and 4.40 the balance of the argument is to award.

Contract Management

- 4.41 The contract that has been negotiated is comprehensive and captures the commercial deal negotiated. The KPIs are challenging, there are open book

arrangements in place; extensive Council audit rights; obligations to price change in accordance with the same commercial positions taken in the competition around for example profit margin and surpluses arrangements. However for the Council to receive the benefits of the contract there will need to be a dedicated contract management function within the Council sufficiently well- resourced and knowledgeable to ensure that the relationship is managed in accordance with the contract throughout the term.

5. Legal Obligations and Formalities

- 5.1 There are legal formalities which need to be completed before a contract can be awarded. The Public Contracts Regulations 2006 require that having decided to award a contract, the Authority must notify all bidders who have participated in the procurement, of the winner and then leave 10 clear working days to elapse / standstill before the contract is concluded. In the event that a bidder challenges the award during the standstill period, the contract cannot be awarded until the challenge has been resolved.
- 5.2 The Council is under a legal obligation to consider particular matters before deciding how to proceed. These matters are referred to below.

Public Services Social Value Act

- 5.3 In January 2013 the Public Services (Social Value) Act 2013 came into force. Under the Act the Council must before starting the process of procuring a contract for services consider two things. Firstly, how what is proposed to be procured might improve the economic social and environmental wellbeing of its area. Secondly, how in conducting the process of procurement it might act with a view to securing that improvement. The Council must only consider matters that are relevant to the services being procured and must consider the extent to which it is proportionate in all the circumstances to take those matters into account. In considering this issue the Council must be aware that it remains bound by EU procurement legislation which itself through its requirement for transparency, fairness and non-discrimination places limits on what can be done to achieve these outcomes through a procurement.
- 5.4 The Council considered these issues in the way it set out the procurement and the contract in a variety of ways as discussed in the following paragraphs. Social Value was used as a level 2 evaluation criterion and bidders were required to explain how they would deliver social value throughout the contract. Details of this are included in Appendix 5.
- 5.5 Throughout the procurement the Council emphasised the importance of achieving savings where possible in service costs without reducing quality and reflected this in the evaluation weightings so as to provide more sustainable services over time and to better protect other front line Council spending on essential services thereby helping to maintain well -being.

- 5.6 The Council reflected on and secured the economic, environmental and social well-being of the area in the development of the contract by;
- making the service delivery plans contractually enforceable
 - specifying the minimum service offer
 - requiring significant improvements in the performance levels of the Library Services
 - requiring Bidders to set out their offer to vulnerable groups
 - making appropriate contractual provision for Health and Safety and Equal Opportunity requiring bidders to comply with the law and best practice
- 5.7 In terms of the Social Value offer from GLL the award of the contract will achieve increased social value to that offered by the current in-house provision. The details are set out in Appendix 5. GLL have successfully gained ISO14001 and EMAS accreditation for environmental management and have also received a Carbon Trust award for reducing their carbon emissions. A number of activities and programmes will be delivered that will aid the Council in achieving the objectives of the Health and Wellbeing Strategy.
- 5.8 The approach adopted represents a balance between improving the economic social and environmental wellbeing of the area with other objectives and in particular the need to deliver value for money. In considering the matters referred to in paragraphs 5.4-5.7 and the information set out in the social value section in Appendix 5, it is considered the Executive will be fulfilling its statutory obligations under the Act.

Equality Act 2010

- 5.9 The Council's duty under the Equality Act 2010 needs to be taken into account by the Executive when coming to a decision.
- 5.10 The Council must, in the exercise of its functions, have due regard to the need to:
- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - Foster good relations between persons who share a relevant protected characteristic and persons who do not share it: Equality Act 2010 section 149(1).

5.11 Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

5.12 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

5.13 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.

5.14 Compliance with the duties in this section may involve treating some persons more favourably than others.

5.15 The relevant protected characteristics are:

- (i) Age
- (ii) Disability
- (iii) Gender reassignment
- (iv) Pregnancy and maternity
- (v) Race
- (vi) Religion or belief
- (vii) Sex
- (viii) Sexual orientation

5.16 A reference to conduct that is prohibited by or under this Act includes a reference to:

- (i) A breach of an equality clause or rule
- (ii) A breach of a non-discrimination rule

- 5.17 It is important that the Executive are aware of the special duties the Council owes to persons who have a protected characteristic as the duty cannot be delegated and must be discharged by the Executive. The duty applies to all decisions taken by public bodies including policy decisions and decisions on individual cases and includes this decision.
- 5.18 To discharge the statutory duty the Executive must consider the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process.
- 5.19 An Impact Analysis is attached at Appendix 4 and identifies the potential for some impact on persons with a protected characteristic in particular the elderly, disabled, those from an ethnic minority and women in the case of any transfer of employment. The mitigating factors are explored in detail in the impact analysis and relate to the benefits of the change proposed, and the commitments made by GLL. The analysis indicates that the overall impact on all groups with protected characteristics including staff is likely to be positive or neutral. There is likely to be a neutral impact on good relations between those sharing and those not sharing protected characteristics. The Impact Analysis and the conclusions drawn from it will be kept under review throughout the contract duration so that as issues arise any potential for differential impact can be mitigated.
- 5.20 In these circumstances it is open to the Executive to conclude that in so far as the benefits which advance equality relate to GLL's commitments then the benefits will be lost unless the Council is able to find an alternative way of delivering them. Either way the legal duty is simply to have due regard to the need to advance equality and as a consequence so long as the Executive carefully consider the Impact Analysis at Appendix 4 and paragraphs 5.09 - 5.20 of this report it is entitled to adopt the recommendations or one of the alternatives considered.

Best Value

- 5.21 The Local Government Act 1999 imposes a "best value duty" on the Council.
- 5.22 Section 3 of the Act states that "A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness."
- 5.23 GLL's commitment to continually improving performance indicators entitles the Executive to come to the view that the option to award a contract best secure continuous improvement in the delivery of library services.

Child Poverty Strategy

- 5.24 The Council is under a duty in the exercise of its functions to have regard to its Child Poverty Strategy.
- 5.25 The Strategy identifies that poverty is not only a matter of having limited financial resources but that it is also about the ability of families to access the means of lifting themselves out of poverty and of having the aspiration to do so. The following four key strategic themes form the basis of Lincolnshire's Child Poverty strategy: Economic Poverty, Poverty of Access, Poverty of Aspiration and Best Use of Resources. The Child Poverty Strategy has been taken into account in this instance and it is recognised that public libraries have an important role to play in providing access to children and families to resources and sources of information and training that contribute to alleviating poverty of access and aspiration. The model of library service submitted to competition reflects the importance of this both in the measures taken to ensure targeted provision and enable access to Tier 1 and Tier 2 Libraries but also in the support given to the development of community library provision. Further, some of the social value benefits being proposed as set out in Appendix 5 will serve to increase opportunities and aspirations for young people. Also the savings being realised through the proposed contract demonstrate Best Use of Resources in ensuring that a greater proportion of the Council's available resources can be allocated to front line services

Joint Strategic Needs Assessment (JSNA) and Joint Health and Wellbeing Strategy (JHWS)

- 5.26 The Council is under a duty in the exercise of its functions to have regard to its JSNA and its JHWS.
- 5.27 The JSNA for Lincolnshire is an overarching needs assessment. A wide range of data and information was reviewed to identify key issues for the population to be used in planning, commissioning and providing programmes and services to meet identified needs. This assessment underpins the JHWS 2013-18 which has the following themes:-
- Promoting healthier lifestyles
 - Improving the health and wellbeing of older people
 - Delivering high quality systematic care for major causes of ill health and disability
 - Improving health and social outcomes and reducing inequalities for children
 - Tackling the social determinants of health
- 5.28 The additional theme of mental health runs throughout the document.

5.29 The following connections can be identified:

- The savings that can be realised from the proposed contract enable a greater proportion of the Council's resources to be allocated to front line services directly relevant to the achievement of the strategy
- The proposed contract will see a company enter the Lincolnshire economy, thus helping to maintain local jobs and creating the potential for further employment which would tackle social determinants of ill health
- The Library Service will ultimately provide the technology base from which to pursue a number of aspects of the strategy and in particular will (i) provide fuller access to information and (ii) give a greater choice of channels through which to access advice and information as to preventative services and ways in which to promote health and wellbeing
- The innovation identified in the chosen bid will add activities directly relevant to health choices and add additional outlets to address the underlying determinants of health such as aspiration and educational attainment.

6. Matters Outstanding

6.1 There are a number of matters to address before a contract can be concluded such as the securing of appropriate sub leasing arrangements on the Grantham, Boston and Mablethorpe libraries and the conclusion of the DCMS complaint but these matters can be dealt with following the decision to award a contract. Recommendation 6 delegates to the Executive Director of Public Health authority to determine the final form of the contract and enter into that contract once he is satisfied that all outstanding matters have been appropriately resolved.

7. Conclusion

7.1 Driven by the need to make savings and improve services, and to comply with the Localism Act the Council has carried out considerable work over the last 12 months so as to tender delivery of its Library Services. Key work streams have been soft market testing, developing the procurement and contract documentation, selecting bidders and managing the procurement through the competitive dialogue approach in such a way so as to deliver sound affordable solutions. The Sounding Board has had continual oversight of the procurement. Prior to placing the contract notice the Executive approved commencement of the procurement on 3 February 2015.

7.2 As part of the work carried out, the Council, in discussion with the bidders, has set out an ambitious programme for transition; has drawn up comprehensive output specifications and challenging service levels and has

developed a robust contract. The procurement and evaluation is now complete. A winning Final Tender has been identified. The Council must now decide whether or not to authorise the award of a contract.

Legal Comments:

The Council has the power to enter into the proposed contract.

The Council must comply with its procurement obligations under the European Treaty and under the Public Contracts Regulations 2006 and as a consequence if it decides to award a contract must do so to the Most Economically Advantageous Tender. The Report sets out why the recommended tender is the most economically advantageous.

The report at paragraphs 5.1 -5.29 sets out the matters which the Executive must have regard to before coming to a decision in order to discharge its duties under the Public Services Social Value Act 2013, the Equality Act 2010, the Local Government Act 1999 (Best Value), the Health and Social Care Act 2012 and the Child Poverty Act 2010.

The recommendations are lawful and consistent with the Council's Policy Framework. Consequently, the decisions are within the remit of the Executive so long as they are not contrary to and are wholly in accordance with the budget.

Resource Comments:

Acceptance of the recommendations in this report will assist the Council in continuing to deliver cost effective high quality library services in an ongoing environment of reductions in central Government funding, and will achieve the savings identified for the service in accordance with the budget.

Value for money has been secured in this exercise by conducting it under a competitive dialogue process with full open market participation.

8. Consultation

a) Has Local Member Been Consulted?

N/A

b) Has Executive Councillor Been Consulted?

Councillor M J Hill OBE, Leader of the Council and Executive Councillor for Governance, Communications and Commissioning; and Councillor C N Worth, Executive Councillor for Libraries, Heritage, Culture, Registration and Coroners Service are on the project Sounding Board and have been updated regularly.

c) Scrutiny Comments

This Report will be considered by the Community and Public Safety Scrutiny Committee at its meeting on 25 November 2015 and the Committee's comments will be reported orally to the Executive on 1 December 2015.

d) Policy Proofing Actions Required

In general terms the Library Services project has been developed within the strategic context of the Council's Vision for Public Health services and within the Council's Commissioning Principles. Specifically with regard to the Council's policy proofing toolkit, the Library Service is likely to maintain and possibly support the increase local employment, skills and training and provide social value as set out in Appendix 5.

The procurement process has been managed by an experienced team against a tight timetable under the guidance of the Sounding Board in accordance with the Public Contracts Regulations and the Council's contract and financial regulations. The project has been structured in such a way so as to deliver Value for Money by entering into detailed discussions with more than one bidder and by enabling bidders to innovate.

9. Appendices

These are listed below and attached at the back of the report:

Appendix 1 Glossary

Appendix 2 Pen Picture of GLL, Vision and Vivacity

Appendix 3 Contract Specification

Appendix 4 Impact Analysis

Appendix 5 Commercially confidential information

10. Background Papers

Executive report -Future Shape of Library Provision dated 03/02/15

Executive Councillor Libraries, Heritage, Culture, Registration and Coroners Service-To consider Expressions of Interest received for the provision of Library Services under Section 81 of the Localism Act 2011 dated 3 December 2014.

This report was written by Sophie Reeve and Fiona Fielding, who can be contacted on 01522 552578 and 01522 553956.