

## Commissioning and Procurement Executive Committee – 14 March 2023

<b>Subject:</b>	Supply of catering services at Theatre Royal and Royal Concert Hall		
<b>Corporate Director:</b> <b>Director:</b>	Frank Jordan – Communities, Environment and Resident Services Hugh White – Sports and Culture		
<b>Portfolio Holder:</b>	Councillor Pavlos Kotsonis – Leisure, Culture and Planning		
<b>Report author and contact details:</b>	Peter Ireson – Venue Director <a href="mailto:Peter.ireson@nottinghamcity.gov.uk">Peter.ireson@nottinghamcity.gov.uk</a>		
<b>Other colleagues who have provided input:</b>	Holly Fisher – Lead Procurement Officer Maria Balchin, Senior Commercial Business Partner Richard Bines – Solicitor Contracts and Commercial Team		
<b>Key Decision</b>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<b>Subject to call-in</b>
			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Reasons:</b>	<input type="checkbox"/> Expenditure	<input checked="" type="checkbox"/> Income	<input type="checkbox"/> Savings of £750,000 or more
taking account of the overall impact of the decision			<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital
Significant impact on communities living or working in two or more wards in the City			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Type of expenditure:</b>	<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital		
:			
<b>Total value of the decision:</b>	up to £6.4m		
<b>Wards affected:</b>	All		
<b>Date of consultation with Portfolio Holder:</b>	14/03/2023		
<b>Relevant Council Plan Key Outcome:</b>			
Clean and Connected Communities	<input type="checkbox"/>		
Keeping Nottingham Working	<input type="checkbox"/>		
Carbon Neutral by 2028	<input type="checkbox"/>		
Safer Nottingham	<input type="checkbox"/>		
Child-Friendly Nottingham	<input type="checkbox"/>		
Healthy and Inclusive	<input type="checkbox"/>		
Keeping Nottingham Moving	<input type="checkbox"/>		
Improve the City Centre	<input checked="" type="checkbox"/>		
Better Housing	<input type="checkbox"/>		
Financial Stability	<input checked="" type="checkbox"/>		
Serving People Well	<input type="checkbox"/>		
<b>Summary of issues (including benefits to citizens/service users):</b>			
<p>The Council engages CGC Events Ltd under a concession contract at the Theatre Royal and Royal Concert Hall (TRCH) to provide the majority of catering services for customers attending the programme of events and the daytime offer in Yarn Bar. This excludes ice creams and confectionary which are sold directly by the Council.</p> <p>The concession agreement provides a guaranteed income for the Council whilst ensuring CGC Events Ltd take on the operating risks. As well as contributing to the Council Plan Key Outcomes highlighted above, the concession contract also contributes to the Council meeting its statutory duty around Best Value.</p> <p>The concession contract was last tendered in 2017 and awarded to CGC Event Ltd for an initial 5 years with the option to extend for up to an additional 5 years. By agreement the parties chose to extend the contract for 18 months up until 30 June 2024. Hence there is now the requirement to undertake a full procurement process to secure a commercially viable and compliant solution for the Council from July 2024.</p>			

**Exempt information:**

An appendix to the report is exempt from publication under paragraph number 3 of Schedule 12A to the Local Government Act 1972 because it contains information relating to financial or business affairs of any particular person (including the authority holding that information) and, having regard to all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

It is not in the public interest to disclose this information because financial information is based on initial estimates, there is also a breakdown of financial elements of project included and sharing this information would not be recommended as it may prejudice the tender process and the income the Council could generate.

**Recommendations:**

- 1 To approve the undertaking of a full procurement process in accordance with the Concessions Contracts Regulations 2016 to secure a concession contract for the supply of catering services at the Theatre Royal and Royal Concert Hall for 5 years duration.
- 2 To delegate authority to the Corporate Director of Communities, Environment and Resident Services to award and sign the contract to the successful concessionaire following completion of the tender process.

**1. Reasons for recommendations**

- 1.1 The contract with the existing catering contractor at TRCH expires on 30 June 2024.
- 1.2 The approval requested in this report will allow the Council to initiate the tender process to secure a catering concession contractor and ensure a continuity of catering provision, and income for the Council without the operating risk. This will allow TRCH to offer the full catering service expected by its customers, generating a significant financial contribution supporting the sustainable operation of the venue.

**2. Background (including outcomes of consultation)**

- 2.1 TRCH is one of the busiest and most success large scale performing arts venues in the UK. Presenting a year round programme the venue sells in excess of 600,000 tickets a year. As well as providing a full catering service to audiences attending performances, the venue facilities also include Yarn Bar which is open to the general public during the day.
- 2.2 The Council has historically chosen to externalise the majority of the catering services at TRCH through a concession contract. This has been in order to optimise the financial return to the Council whilst also transferring the risks inherent in managing a catering operation in a commercial environment.

**3. Other options considered in making recommendations**

- 3.1 To grant a longer extension to the existing contract. This was discounted as it was felt that there is the need to test the market to provide assurance that the Council is receiving the optimum financial return and the highest quality provision for TRCH's customers.

3.2 Consideration was given to taking the catering contract in-house, but discounted, as this would mean in-sourcing the inherent risks of a catering operation. Using an external catering contractor who is able to benefit from economies of scale and dedicated business expertise means that TRCH is able to receive a guaranteed return.

#### 4. **Consideration of Risk**

4.1 There is the risk that the catering contractor procured is unable to meet the Council's requirements at TRCH. This risk is mitigated by the Council using experience staff at TRCH working with procurement colleagues to ensure that the tender specification and assessment criteria secure a contractor of the highest quality.

4.2 There is the risk that delays in the procurement process or contractual arrangements may delay the handover and mobilisation of the catering operation to the successful contractor beyond the current contract extension. This is mitigated by starting the procurement process 16 months in advance with the potential to also negotiate a further extension with the incumbent contractor if necessary.

#### 5. **Finance colleague comments (including implications and value for money/VAT)**

5.1 This decision seeks approval to undertake a compliant procurement process to secure income from a new supply of catering services at the Theatre Royal and Concert Hall.

5.2 Upon completion of the procurement process, the Medium Term Financial Plan (MTFP) will be updated to reflect the expected income to the Council.

5.3 There is an exempt appendix outlining the financial details for this proposed contract. The appendix is exempt in order to secure the most advantageous income stream for the Council.

Maria Balchin, Senior Commercial Business Partner - 20 February 2023

#### 6. **Legal colleague comments**

6.1 The Concession Contracts Regulations 2016 are concerned with in-threshold, contracts for services or work where such services or works benefit the contracting authority (the City Council in this instance as it meets the definition in Regulation 4 as a local authority governed by public law) or its residents, in furtherance of the strategic objectives of the contracting authority, or to satisfy the contracting authority's statutory obligations. The Council's own Contract Procedure Rules require that where these regulations apply they must be complied with. Through the compliant procurement process the Council must treat economic operators equally and without discrimination and must act in a transparent manner.

6.2 The Service Concession contract in question appears to represent a contract for pecuniary interest concluded in writing by means of which the Council is entrusting the provision and management of the catering services to an economic operator, the consideration of which consists in this case, solely in

the right to exploit the services that are the subject of the contract. Under regulation 3 the concession contract must meet the following requirement:

- The award of the contract involves the transfer to the concessionaire of the operating risk in exploiting the works or services encompassing demand or supply or both.
- The part of the risk transferred to the concessionaire involves real exposure to the vagaries of the market, such that any potential estimated loss incurred by the concessionaire is not merely nominal or negligible.
- The concessionaire is deemed to assume operating risk where, under normal operating conditions, it is not guaranteed to recoup the investment made or the costs incurred in operating the works or services which are the subject-matter of the concession contract.

Compliance with Concession Contracts Regulation 2016 will mean, under regulation 31 that we must make known the intention to tender with a Concession Notice which must contain the information set out in Annex V to the Concessions Directive (Directive 2014/23/EU) including the indicative contract value and where possible the duration of the contract.

The services contract in question will need to secure best value demonstrating that our arrangements are economic, efficient, effective, and fully consider the outcomes for citizens and service users in accordance with the duty under section 3 of the Local Government Act 1999  
Legal Services will support with the draft of the relevant contract and with the review of the tender documents required.

The report highlights the possibility of the current contract possibly requiring a further extension due to the length and complexity of the tender process. In the event this is necessary any extension would need to comply with the requirements of regulation 43 of the Concession Contracts Regulations 2016.

Advice will need to be provided by colleagues in the property law team to include the grant of any property law rights to enable the award of the new concession opportunity and ending of any existing propriety rights for the outgoing economic operator.

Richard Bines – Solicitor Contracts and Commercial Team – 20.02.2023

## 7. **Other relevant comments**

### 7.1 Procurement

Approval is sought to undertake a full procurement exercise in compliance with the Concession Contract Regulations 2016 to award a contract for the delivery of the catering function within the Theatre Royal and Concert Hall.

Procurement will support the development and tendering of the contract to provide a compliant and commercially viable solution to meet the needs of the Council.

Holly Fisher, Lead Procurement Officer (Products) – 07 February 2023

**8. Crime and Disorder Implications (If Applicable)**

8.1 N/A.

**9. Social value considerations (If Applicable)**

9.1 The concession contract has the potential to create social value through generating and sustaining jobs at the venue and within the local supply chain. This will be factored into the procurement process and criteria.

**10. Regard to the NHS Constitution (If Applicable)**

10.1 N/A.

**11. Equality Impact Assessment (EIA)**

11.1 An EIA is not required as there are no implication identified from the proposals in this report, however the procurement process will ensure that the chosen contractor provides a menu and catering service which is accessible to all.

**12. Data Protection Impact Assessment (DPIA)**

12.1 A DPIA is not required as there are no implications identified from the proposals in this report, however the procurement process will ensure that any data protection implication are identified and addressed including a DPIA and any data sharing agreements'

**13. Carbon Impact Assessment (CIA)**

13.1 A CIA is not required as there are no implication identified from the proposals in this report, however the procurement process will ensure that the successful contractor signs up to the Council's Business Charter Principle 'to be environmentally responsible'.

**14. List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)**

14.1 None.

**15. Published documents referred to in this report**

15.1 None.