

Commissioning and Procurement Executive Committee - 10 October 2023

Subject:	Merchandise Concession Contract at the Royal Concert Hall		
Corporate Director: Director:	Colin Parr – Communities, Environment and Resident Services Hugh White – Sports and Culture		
Portfolio Holder:	Councillor Pavlos Kotsonis – Leisure and Culture and Planning		
Report author and contact details:	Peter Ireson – Theatre Royal & Royal Concert Hall Venue Director Peter.ireson@nottinghamcity.gov.uk		
Other colleagues who have provided input:	Maria Balchin, Senior Commercial Business Partner Richard Bines, Solicitor, Contract and Commercial Team Louise Dobson, Lead Procurement Officer		
Key Decision	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Subject to call-in <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Reasons: <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		
Type of expenditure:	<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital		
Total value of the decision: £1.1m			
Wards affected: All			
Date of consultation with Portfolio Holder: 21/07/23			
Relevant Council Plan Key Outcome: <div style="display: flex; justify-content: space-between;"> <div> Green, Clean and Connected Communities Keeping Nottingham Working Carbon Neutral by 2028 Safer Nottingham Child-Friendly Nottingham Living Well in our Communities Keeping Nottingham Moving Improve the City Centre Better Housing Serving People Well </div> <div style="text-align: center;"> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> </div> </div>			
Summary of issues (including benefits to citizens/service users): <p>The Council currently engages National Merchandise, part of Nottingham Ice Centre Ltd under a concession contract to provide merchandise sales services at the Royal Concert Hall.</p> <p>The concession agreement provides income for the Council whilst ensuring that National Merchandise take on the operating risks.</p> <p>Since the Covid closedown, the contract with National Merchandise has lapsed and continued on an implied basis on the existing terms. There is now the requirement to undertake a full procurement process to secure the best value, commercially viable service that the market can offer and provide certainty for the Council going forward through a new contractual agreement.</p> <p>As well as contributing to the Council Plan Key Outcome highlighted above, the concession contract also contributes to the Council meeting its statutory duty around Best Value.</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 undertaking a procurement process to secure a concession contract for the supply of merchandise sales services at the Royal Concert Hall for a period of 5 years.
- 2 To delegate authority to the Corporate Director of Communities, Environment and Resident Services to award and enter into a concession contract with the successful concessionaire following completion of the tender process.

1. Reasons for recommendations

- 1.1 The original contract with the merchandise contractor at the Royal Concert Hall has expired and there is the need to tender for and award a new concession contract.
- 1.2 Offering a 5-year contract, rather than a shorter period, is more likely to attract suitable concessionaire bids, as bidders will feel they have the opportunity to recoup and make a return on any necessary investment.
- 1.3 The approval requested in this report will allow the Council to initiate the tender process to secure a merchandise sales concession contractor, ensuring a continuity of merchandising sales provision and income for the Council without the operating risk. This will allow TRCH to offer the full merchandise service expected by its customers and visiting companies generating a 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. Many of the one-night shows and events visiting the Royal Concert provide a range of merchandise to sell to audience members.
- 2.2 The Council has historically chosen to externalise merchandising sales provision through a concession contract. This has been to optimise the financial return to the Council whilst also transferring the risks inherent in managing the merchandise operation in a commercial environment.

3. Other options considered in making recommendations

- 3.1 To continue with the informal contractual arrangement that has arisen from the conduct of the parties following the expiry of the existing formal concession contract. This was discounted as there is the need to put a compliant contract in place as well as 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 managing the merchandise sales service in house, but discounted, as this would mean in-sourcing the inherent risks (supply and demand) of a merchandise operation and exposing the Council to the vagaries of the market. Using an external merchandise contractor, with a large number of trained staff providing the same service at a range of venues and who can benefit from economies of scale and dedicated business expertise, means that the Council is able to receive a higher level of income at no risk.
- 3.3 Consideration was also given to including the opportunity to supply merchandise sales service at the Theatre Royal and therefore include that in the concession contract tender process. This was discounted as the theatre's weekly programme sees limited merchandising opportunities and the Theatre Royal staff who already sell the in-house programmes can also sell merchandise at no additional cost or risk. Companies visiting the Theatre also tend not to outsource any merchandise and hence sales reconciliations can be managed within a single show settlement with the producer.

4. Consideration of Risk

- 4.1 There is the risk that the merchandising sales contractor procured is unable to meet the Council's requirements at TRCH. This risk is mitigated by the Council using experienced staff at TRCH working with procurement colleagues to ensure that the tender specification and assessment criteria secure a contractor of the highest quality. It is also mitigated by offering a 5-year contract which is more likely to attract suitable concessionaire bids, as bidders will feel they have the opportunity to recoup and make a return on any necessary investment.
- 4.2 There is the risk that delays in the procurement process or contractual arrangements may delay the handover and mobilisation of the merchandise operation to a successful tender concessionaire. This is mitigated, to an extent, by the opportunity to continue the rolling contract with the existing contractor.

5. Best Value Considerations

- 5.1 The proposal in this report represents best value for the Council, as through procuring an external concessionaire the Council will secure the optimal financial return at no risk.
- 5.2 The concession contract has the potential to create social value through generating and sustaining jobs at the venue and in the local supply chain. This will be factored into the procurement process and criteria.
- 5.3 The procurement process will ensure that the successful contractor signs up to the Council's Business Charter Principle 'to be environmentally responsible'.

6. Finance colleague comments (including implications and value for money/VAT)

- 6.1 Contained in an exempt appendix.

7. Legal colleague comments

- 7.1 This report seeks a decision to approve a full procurement process to secure a concession contract for the supply of merchandise sales services at the Royal Concert Hall for 5 years' duration.

- 7.2 The opportunity will be regarded as a true concession where it involves the transfer to the concessionaire of an operating risk in exploiting the services encompassing demand or supply risk or both over the term proposed. The risk transferred to the concessionaire is likely to mean 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 investments made or the costs incurred in providing the services which are the subject-matter of the concession contract.
- 7.3 Calculation of the value of a concession opportunity is based on the total turnover of the concessionaire generated over the duration of the contract (net of value added tax but inclusive of VAT from 1 January 2022) as estimated by the Council, in consideration for services which are the object of the concession contract and the supplies incidental to such services. The estimated value must be calculated using an objective method specified in the concession documents.
- 7.4 The value of the decision is below the financial threshold at which the Concession Contract Regulations 2016 must be applied, nevertheless the general principles applicable to procurement should be followed and the Council can at its discretion opt to follow the Concession Contract Regulations 2016 in any event. The Council must ensure it treats economic operators equally and without discrimination and must act in a transparent and proportionate manner throughout its procurement process.
- 7.5 In addition to the above the Council's own constitution Contract Procedure Rules must be followed.
- 7.6 Legal Services are content to support the process as appropriate and in particular with the drafting of the concession contract, which will need to contain adequate provisos in relation to termination, modification, possible sub-contracting and liability in particular.
- 7.7 In so far as the existing contractual relationship is concerned the Council must ensure that it acts/ gives notice in accordance with the relevant termination provisions specified in the existing contract.

Richard Bines, Solicitor, Contract and Commercial Team – 19/07/23

8. Procurement colleague comments

- 8.1 This decision seeks to undertake a compliant tendering exercise and enter into a contract which will generate % income from sale of merchandise sold at events. Procurement Team will work with TRCH to ensure a compliant procurement process is undertaken and seek best value and % is achieved.
- 8.2 No procurement concerns.

Louise Dobson, Lead Procurement Officer – 28/09/23

9. Other relevant comments

- 9.1 None.

10. Crime and Disorder Implications (If Applicable)

- 10.1 N/A

11. Social value considerations (If Applicable)

- 11.1 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.

12. Regard to the NHS Constitution (If Applicable)

- 12.1 N/A

13. Equality Impact Assessment (EIA)

- 13.1 An EIA is not required as there is no implication identified from the proposals in this report, however the procurement process will ensure that the chosen contractor provides a merchandise sales service which is accessible to all.

14. Data Protection Impact Assessment (DPIA)

- 14.1 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 is identified and addressed including a DPIA and any data sharing agreements.

15. Carbon Impact Assessment (CIA)

- 15.1 A CIA is not required as there is 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'.

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

- 16.1 None.

17. Published documents referred to in this report

- 17.1 None.