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Contract

## **GB-Rugby: New Leisure Centre - Leisure Management**

RUGBY BOROUGH COUNCIL

F20: Modification notice

Notice identifier: 2023/S 000-036017

Procurement identifier (OCID): ocds-h6vhtk-04223f

Published 6 December 2023, 5:07pm

### **Section I: Contracting authority/entity**

#### **I.1) Name and addresses**

RUGBY BOROUGH COUNCIL

Town Hall, Evreux Way

RUGBY

CV212RR

#### **Contact**

Catrina Rimen

#### **Email**

[catrina.rimen@rugby.gov.uk](mailto:catrina.rimen@rugby.gov.uk)

#### **Telephone**

+44 1788533732

#### **Country**

United Kingdom

**Region code**

UKG13 - Warwickshire

**Justification for not providing organisation identifier**

Not on any register

**Internet address(es)**

Main address

[www.rugby.gov.uk](http://www.rugby.gov.uk)

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**Section II: Object**

**II.1) Scope of the procurement**

**II.1.1) Title**

GB-Rugby: New Leisure Centre - Leisure Management

Reference number

RT1213009

**II.1.2) Main CPV code**

- 92000000 - Recreational, cultural and sporting services

**II.1.3) Type of contract**

Services

**II.2) Description**

**II.2.1) Title**

GB-Rugby: New Leisure Centre - Leisure Management.

**II.2.3) Place of performance**

NUTS codes

- UKG13 - Warwickshire

Main site or place of performance

Warwickshire

#### **II.2.4) Description of the procurement at the time of conclusion of the contract:**

Rugby Borough Council is looking to contract with an external partner for the management and improvement of its leisure facilities. The services to be provided are within the New Leisure Centre (Queen's Diamond Jubilee Centre) and Athletics Track. The Procurement method used will be a Restricted Process (PQQ and ITT) under Part B Services

#### **II.2.7) Duration of the contract, framework agreement, dynamic purchasing system or concession**

End date

31 March 2031

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## **Section IV. Procedure**

### **IV.2) Administrative information**

#### **IV.2.1) Contract award notice concerning this contract**

Notice number: [2012/S 123-000000](#)

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## **Section V. Award of contract/concession**

### **Contract No**

RT1213009

### **Lot No**

RT1213009

### **V.2) Award of contract/concession**

#### **V.2.1) Date of conclusion of the contract/concession award decision:**

5 February 2013

**V.2.2) Information about tenders**

The contract/concession has been awarded to a group of economic operators: No

**V.2.3) Name and address of the contractor/concessionaire**

Greenwich Leisure Limited

Woolwich

Country

United Kingdom

NUTS code

- UKI51 - Bexley and Greenwich

Mutuals Public Register

IP27793R

Internet address

[www.gll.org](http://www.gll.org)

The contractor/concessionaire is an SME

No

**V.2.4) Information on value of the contract/lot/concession (at the time of conclusion of the contract;excluding VAT)**

Total value of the procurement: £32,000,000

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## **Section VI. Complementary information**

### **VI.3) Additional information**

This contract was advertised as set out above. However, in law this advertisement was incorrect and it was then a services concession contract with no 'inter-state element' and Rugby Borough Council voluntarily decided to comply with the Public Contracts Regulations 2006 when there was no obligation to do so. It is now a 'light touch' services concession contract pursuant to the Concession Contracts Regulations 2016 as since the contract was entered into the law has changed.

The contract which was entered into was a contract for 10 years from 1st April 2013 with a modification clause which allowed the parties to extend it for up to a further five years from its 1st April 2023 subject to the terms of the said contractual clause.

The identified value of the contract in the original notice did not take into account the 5 year extension which would have added about £10,000,000 to the value of the contract. The value of the contract at present taking into account the 5 year extension is now calculated at about £32,000,000. The value of the contract with the 8 year extension is now calculated as approximately £40,000,000. However, it should be noted that the original calculations were not carried out at the relevant time.

The original OJEU number of the original contract notice and award notice are not known and can no longer be searched for on TED (only notices 2014 onwards are available), hence the reason for a dummy number being entered. A restricted procedure was followed - to the best of our knowledge the contract notice was placed on or around 12/06/2012 with the PQQ documents being published soon afterwards via the Delta e-sourcing portal, followed by the ITT documents which were published in September 2012 .

### **VI.4) Procedures for review**

#### **VI.4.1) Review body**

The High Court of Justice

London

Country

United Kingdom

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## **Section VII: Modifications to the contract/concession**

### **VII.1) Description of the procurement after the modifications**

#### **VII.1.1) Main CPV code**

- 92000000 - Recreational, cultural and sporting services

#### **VII.1.3) Place of performance**

NUTS code

- UKG13 - Warwickshire

Main site or place of performance

The Queen's Diamond Jubilee Centre Bruce Williams Way, Rugby CV22 5LJ

Rugby Athletic Track Bruce Williams Way, Rugby CV22 5LJ

#### **VII.1.4) Description of the procurement:**

Rugby Borough Council was looking to contract with an external partner for the management and improvement of its leisure facilities. The services to be provided are within the New Leisure Centre (The Queen's Diamond Jubilee Centre) and Athletics Track. The Procurement method used was be to a Restricted Process (PQQ and ITT) under Part B Services which it is now acknowledged was an incorrect procedure as this is a concession contract. The type and extent of the services were correctly identified and so therefore was the overall nature of the contract which remains unchanged. The modification extends the length of the contract and not its nature with the exception of the modifications set out in this award notice.

#### **VII.1.5) Duration of the contract, framework agreement, dynamic purchasing system or concession**

End date

31 March 2031

#### **VII.1.6) Information on value of the contract/lot/concession (excluding VAT)**

Total value of the contract/lot/concession:

£40,000,000

#### **VII.1.7) Name and address of the contractor/concessionaire**

Greenwich Leisure Limited

Woolwich

Country

United Kingdom

NUTS code

- UKI51 - Bexley and Greenwich

Mutuals Public Register

IP27793R

Internet address

[www.gll.org](http://www.gll.org)

The contractor/concessionaire is an SME

No

## **VII.2) Information about modifications**

### **VII.2.1) Description of the modifications**

Nature and extent of the modifications (with indication of possible earlier changes to the contract):

The concession as awarded was a 10 year contract entered into by the parties on 14th May 2013 for the delivery of services as set out in this therein and described briefly in this Award Notice (Contract Period). The Contract include includes wide and detailed modification provisions (known as Variation provisions in the Contract) which could take place during the Contract Period including the opportunity for the parties to agree 5 year extension of the Contract Period. These provisions are set out in Part 1 of Schedule 6 of the Contract. The majority of the modifications which have been made will be as provided for within the contract and therefore comply with regulation 43 (l) (a) of the regulations. The additional 3 years and financial provisions associated with these and a number of other modifications arising from the Covid pandemic fall outside the provisions of the contract. Together none of the modifications alter the overall nature of the contract and nor does the increase in value arising from the 3 years exceed 50% of the value of the original contract either taking into account a 5 year extension was envisaged.

## VII.2.2) Reasons for modification

Need for modification brought about by circumstances which a diligent contracting authority/entity could not foresee.

Description of the circumstances which rendered the modification necessary and explanation of the unforeseen nature of these circumstances:

The Contract provided that certain capital works and a refresh of the fitness equipment included within the Contract would take place during the Financial Year 2018/19. The parties informally agreed to a Variation in 2018 that these works and refresh would instead take place during the Financial Year 2019/20 with a modification of the financial terms. The financial modification was that the Contract Price would be paid in full by the Concessionaire to the Council for the Financial Year 2018/19 and for the Financial Year 2019/20 would be reduced to take into account the sums incurred on the capital works and equipment refresh by the Concessionaire. This financial modification took into account the deferral. The first refresh duly took place in the Financial Year 2019/20 and has now been completed in accordance with the above parties' agreement. This modification was not considered substantial within regulation 43 (1) e) and is included for completeness.

The timescale for the Council to trigger an extension was a notice from the Council to the Concessionaire between 30 April 2021 and 30 September 2021 setting out terms. The Contract gave the Concessionaire an opportunity to respond indicating whether or not it wanted an extension and to include responding on the terms offered by the Council. However, prior to these dates the Worldwide Sars (Covid) pandemic took place. Leisure centres and outdoor activities were required by law to close between March and July 2020 and again between December 2020 and April 2021 with social distancing requirements in force between and beyond those periods. These social distancing requirements precluded the Concessionaire from fully opening the facilities. Covid has caused significant short, medium and long-term financial difficulties for leisure contractors such as and including the Concessionaire because of the closures and reduced opening. The Council could not have foreseen Covid.

During the Financial Year 2021/2 the Council gave careful consideration to whether or not it was appropriate to extend the Contract, the preferred length of the extension and the terms. It consulted Sport England, obtained specialist leisure advice which recommended that an extension was in the Council's best interests. On 10th September 2021 the Council served a formal notice seeking an extension of 5 years pursuant to the Contract. The Concessionaire and the Council had agreed informally that the Concessionaire they wished to extend the Contract. The Concessionaire agreed in principle to an extension and asked for 8 years rather than the 5 years provided for in the Contract and asked for a number of the contractual provisions to be varied citing the impact of the Covid closures and social distancing requirement on its business model and therefore income. Taking

into account that the Concessionaire's opportunity of exploiting the services has been significantly eroded by Covid the Council concluded that these modifications were needed and that the modification set out below has been brought about by circumstances which the Council could not have foreseen however diligent.

The totality of the modifications which have taken place informally or will take place and which are all to be included in a formal contract variation are as follows and are not separated out into regulation 43 (1) (b) or (c) modifications as this is not considered necessary:

- Agreed with the Concessionaire that the sum of £357,104.82 which was payable to the Council pursuant to the Contract for the Financial Year 2020/21 would not be payable.
- Paid the Concessionaire the total net sum of £91,249.85 during the Financial Years 2020/2021 and 2021/22 (a sum paid in addition to the grants of £253,110 which the Council secured and passported to the Concessionaire.
- That the Council would fund procure and/or commission from the Concessionaire certain improvements to the facilities which it had no obligation to do, namely the conversion of part of the sports hall to a soft play area, improvements to the front entrance and gates and the installation LED lighting at the Queen's Diamond Jubilee Centre. These would improve the leisure offer to the public and the Concessionaire's income generation both of which were necessary so that the Concessionaire could offset the impact of Covid.
- Agreed to an 8 year contract extension (which is 3 years more than the extension which could have been entered into by the parties pursuant to Part 1 of Schedule 6 of the Contract).
- Agreed a financial spreadsheet setting out revenue payments to be made by the Concessionaire to the Council pursuant to the Contract for the period from 1st April 2023 until the 31st March 2031 when the Contract ends. This also includes a further equipment refresh and the terms for this .
- Agreed that the 8 year extension would be in two parts for 9 months from 1st April 2023 to 31st December 2023 and the 1st January 2024 to 31st March 2031 with the latter period conditional upon the pre-conditions that the award could be made in compliance with the law and a required consent for the extension of the lease of the facilities be achieved and thereafter the extended contract be entered into.
- Agreed a re-basing of the base cost for each utility for each of the Financial Years of the Contract from 1st April 2023 to the end of the Contract of £200,000. this sum will be the total cost of the base usage for all of the Utilities from the Financial Year 2023/4.

- A number of minor modifications which are together are not substantial within the meaning of regulation 43 (1) e) of the Concession Contracts Regulations 2016.
- A surrender and regrant of an updated lease of the facilities for the remaining contract period on slightly varied terms. As an interest in land, the lease is outside the requirement of the Concession Contracts Regulations but is ancillary to the Contract and is set out for completeness.

### **VII.2.3) Increase in price**

Updated total contract value before the modifications (taking into account possible earlier contract modifications, price adaptations and average inflation)

Value excluding VAT: £32,000,000

Total contract value after the modifications

Value excluding VAT: £40,000,000