

Subject:	Brighton & Hove Music and Arts Service Alternative Governance		
Date of Meeting:	13 October 2016		
Report of:	Pinaki Ghoshal, Executive Director, Families, Children and Learning		
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Ward(s) affected:	All		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 The purpose of this report is to inform Members of the possible outcomes following the publication of a Prior Information Notice (PIN) in regards to Brighton & Hove Music and Arts Service (BHMA) and approve the subsequent action to be taken as set out in this report.
- 1.2 The key driver for this project is to secure the long term sustainability of the service by linking it up with a wider arts and cultural offer for the city. There is no intention to reduce the scale of the work which the service offers to children and young people in the city.

2. RECOMMENDATIONS:

The Policy, Resources & Growth Committee are recommended to:

- 2.1 Authorise the next steps in the procurement process following the publication of the PIN on 23 August 2016 as set out in 3.10.
- 2.2 Delegate authority to the Executive Director of Families, Children and Learning to award a contract for a term of up to 25 years, incorporating break provision exercisable at each 5 year interval to deliver the management of BHMA.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 The BHMA service manages the local delivery of the National Plan for Music Education. This award-winning music education hub has a strategic role in leading a partnership of over 20 organisations, working with all schools in the city as well as community settings to deliver our local Music Education Plan.

- 3.2 The service works directly with over 5,500 pupils a year running whole class ensembles, small group and one to one singing and instrumental lessons. The service also runs a programme of out-of-school Music Centre activities and performances, holiday courses and an annual music summer school. The service also provides professional development opportunities for teachers and delivery of innovative programmes for children and young people with SEND and/or in challenging circumstances. Subsidised rates are offered for those children and families on a low income to ensure equal access.
- 3.3 BHMA is the lead organisation for SoundCity, the Music Education Hub for the City. The Hub partnership acts as a gateway for local areas to create music education provision that works in a local context, both in and out of school. Other SoundCity partners include Glyndebourne, Brighton Dome & Brighton Festival, University of Sussex and the Royal Pavilion and Museums. SoundCity is also a lead partner in Our Future City, the Cultural Education Partnership for the city.
- 3.4 The aspiration for BHMA is to develop a sustainable model that does not include Council funding. BHMA currently generates approximately £752,000 per annum through fees for lessons and instrument hire, and receives around £315,000 in grant income with a substantial proportion of this from Arts Council England (ACE).
- 3.5 The Council provides a number of below the line provisions including premises at County Oak Avenue and support services.
- 3.6 A new governance model for the management of the BHMA is a work stream of the Cultural Services Modernisation programme which was established to develop the recommendations in the Ernst & Young report. In November 2015 the Children, Young People and Skills Committee agreed a report with the recommendation that a full business case for the merger of the BHMA with BD&BF as part of the development of a Cultural Education Hub for the City be presented to Policy, Resources & Growth Committee in January 2016.
- 3.7 In light of the income generated by this service, it was determined that any transference of duties to a third party would constitute an award of a concession contract and advice confirmed that the council was required to make the opportunity known to the market in a fair, open and transparent procedure in accordance with Public Contracts Regulations 2015. Accordingly, a Prior Information Notice was published on 23 August 2016 advertising the opportunity in order to ascertain market interest. The publication of the PIN and the process set out in this report was approved by the Procurement Advisory Board on 18 July 2016.
- 3.8 The publication of a PIN marks the start of a 35 day period in which suppliers can express interest in competing for the contract. The council reserves the right to withdraw the PIN at any stage and therefore the PIN acts as a means to test the market free from any commitment. The PIN also allows for an expedited procurement process, should the council decide to pursue this as an option.
- 3.9 The PIN will be closed on 27 September 2016.

- 3.10 There are three possible outcomes following closure of the PIN. Each outcome will require a specific course of action in order to remain compliant with Public Contracts Regulations 2015. The outcomes and actions are detailed below:

No responses

Following publication, no responses have been received to the PIN. It is recommended that the Council directly approaches suitable organisation(s) and negotiates directly to identify a provider and agrees the management contract.

One response

Following publication, one response was received to the PIN. It is recommended that the authority negotiate directly with the respondent to agree the management contract.

More than one response

Following publication, two (or more) responses have been received to the PIN. It is recommended that a competitive tender takes place. A panel will be convened to evaluate each tender to determine the most economically advantageous tender (MEAT) submission.

- 3.11 The contract will be awarded with a start date of 1 April 2017. The contract will be awarded for a term of 25 years with break clause provisions exercisable at 5 year intervals.

- 3.12 It is the intention that both routes to an eventual contract, be it through direct negotiation or a competitive tender, will explore alternative and innovative delivery models whilst ensuring that the finances are robust and sustainable.

- 3.13 Where the contracting-out of a service to another provider involves a transfer of staff covered by the Transfer of Undertakings (Protection of Employment) (TUPE) regulations, there will be pension-related costs of transfer. Consideration will need to be given to:

- An assessment of the current pension liabilities for any transferring staff and any deficit in the pension fund (this information is provided by the pension fund and in the case of the Music Service is approximately £69K, as the LGPS is currently only 75% funded and in order to be fully funded from the outset this money would need to be put in by BHCC to ensure that the scheme is fully funded at the start). Any pension deficit is normally payable by the awarding authority and will be taken into account in assessing value for money.
- A 'bond' may be required from the provider to insure against outstanding pension liabilities in the case of business failure/insolvency. Tender invitations will therefore ask for prices with or without a bond. In the case of the Music Service the bond amounts would be for £107K for staff to remain in the LGPS and £27K for staff to remain in the Teacher's Pension Scheme.
- Whether or not the council will act as a 'guarantor'. This can be considered in addition to a provider bond to offer additional assurance to the pension fund. There is no direct financial implication.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

4.1 The approach above complies with contract standing orders and procurement regulations. Alternative options are;

- a) Cancel the PIN and continue to manage the service
- b) Cancel the PIN and close the service. In relation to the Council's role in respect of the HUB the Arts Council would seek another entity to manage the HUB and administer the grant which is earmarked for the region. It should be noted that grant funding for music hubs in the financial year 2017-18 has not been confirmed at the date of this report.
- c) Cancel the PIN and make a direct award of a contract, running the risk of challenge. This could potentially delay the process and result in a declaration of ineffectiveness or a claim in damages.

5. COMMUNITY ENGAGEMENT & CONSULTATION

5.1 The Council's change management process will be followed in relation to staff and trade union engagement.

5.2 Consultation will be undertaken with staff and Unions in line with Transfer of Undertakings (Protection of Employment) 2006 (TUPE) requirements. This is planned for January 2017 in time for the contract to begin on 1 April 2017.

6. CONCLUSION

6.1 The proposal set out in this report supports the objective of moving to a new governance model which will achieve the long term sustainability of the service, whilst maintaining the services currently offered to children and young people in the city.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications

7.1 The report updates on the position re Music & Arts following the publication of a Prior Information Notice (PIN).

7.2 The 2016/17 budget position for Music and Arts is Gross Expenditure of £1.166m which is funded by:

Income generation re fees	£752,000
ACE/MEH grant	£315,000 (until 31 March 2017)
Dedicated schools grant	£46,000 (until 31 March 2017)
Council funding	£7,000 (until 31 March 2017)
Other income	£46,000
Total income	£1,166,000

7.3 The significant financial issues that are still required to be resolved concern:

- Potential pension deficit of £69k re TUPE
- Decision re costs of bonds £124k needed to mitigate this risk
- Treatment of costs of any support service functions

Finance Officer consulted: David Ellis Date: 22.9.2016

Legal Implications:

- 7.4 The appointment of an economic operator to manage the service on a concession basis is subject to the Concession Contract Regulations 2016 and must comply with the overriding principles of transparency, non-discrimination and equality in the process of procuring and awarding all contracts.
- 7.5 A “services concession contract” means a contract by means of which a contracting authorities entrusts the provision and the management of services to one or more economic operators, the consideration for which consists either solely in the right to exploit the services that are the subject of the contract or in that right together with a payment from the concessionaire.
- 7.6 It is a requirement that —
 (a) the award of the contract shall involve the transfer to the concessionaire of an operating risk in exploiting the services encompassing demand or supply risk or both; and
 (b) the concessionaire is not guaranteed to recoup the investments made or the costs incurred in operating the the service
- 7.7 Failure to advertise the contract is a direct breach of the CCR which may result in any contract awarded directly being challenged and declared ineffective or may result in a claim for damages.
- 7.8 The Council’s Contract Standing Orders provide that every contract shall comply with the EU Treaty, the EU Public Procurement Directives and all relevant EU and domestic legislation.

Lawyer Consulted: Judith Fisher Date: 29.9.2016

Equalities Implications:

- 7.9 A full Equalities Impact Assessment will be carried out and there will be a full consultation process with staff and trade unions.

Sustainability Implications:

- 7.10 There are no sustainability implications.

Any Other Significant Implications:

- 7.11 There are no other significant implications.

SUPPORTING DOCUMENTATION

Appendices:

None

Documents in Members' Rooms:

None

Background Documents:

None